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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 5636/2013 & CM APPL. 12461/2013

GAGAN EDUCATIONAL SOCIETY Petitioner
Through: Mr. Puneet Kumar Agarwal,
Advocate.

versus

DELHI DEVELOPMENT
AUTHORITY AND ANR Respondents
Through: Mr. Arun Birbal, Advocate with
Mr. Sanjay Singh, Advocate for
R-1/DDA.
Mr. Ripu Daman Bhardwaj, Advocate
with Mr. R.P. Singh, Advocate for
respondent No.2/UOI.

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Reserved on : 11th August, 2015
Date of Decision : 14th September, 2015

CORAM:
HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J:

1. Present writ petition has been filed seeking quashing of interest/restoration charges to the tune of Rs. 12,49,638 levied by the respondent-DDA vide letter dated 11th January, 2013. Petitioner also seeks possession of plot no. 16, Sector A-7, Narela, Delhi. Lastly, the petitioner

seeks directions to respondent no. 1 – DDA to pay interest on the amount already deposited with them at 18% per annum.

2. The relevant facts of the present case are that the petitioner was declared successful in an auction bid for the said plot vide letter dated 28th May, 2012 and it was directed to pay the balance amount, as per the payment schedule, within ninety days from the issue of the Demand-cum-Allotment letter. The relevant clause of auction document containing the terms and conditions is as follows:-

“7. The demand-cum-allotment letter would be sent to the successful bidder immediately after the bid is accepted by the Competent Authority. The highest bidder is required to make payment of the balance 75% of the bid amount, as demanded vide said demand letter referred to above, within 90 days from the date of issue of the same by a Bank Draft/ Pay Oder only in the Branches of Central Bank of India/State of India Vikas Sadan, INA, New Delhi.

The Competent Authority may, in his absolute discretion, extend the last date of payment up to the maximum period of 180 days, beyond the last date for payment with reference to the date of issue of demand letter, subject to payment of interest on the balance amount @ 12% p.a. where the delay does not exceed 30 days and @ 15% where it exceeds 30 days (for whole delay period).

(emphasis supplied)

3. The allotment letter dated 28th May, 2012 issued by DDA also contained a similar condition. The relevant portion of the allotment letter is reproduced hereinbelow:-

“The balance payment of Rs.7,01,50,050/- (i.e 75% of the premium/bid amount) will be deposited within 90 days from the issue of this demand-cum-allotment letter. This amount is to be paid by way of Bank Draft/Pay orders only in the Branches of

Central bank of India/State Bank of India, Vikas Sadan, INA, New Delhi through Bank Challan.....”

You are therefore, requested to deposit the demanded amount and the required documents as referred to above, within the stipulated period failing which the auction bid shall automatically stand cancelled and amount of earnest money deposited by you on 26.3.2012 shall also stand forfeited, without any further notice.”

(emphasis supplied)

4. It has been averred in the petition that the allotment letter dated 28th May, 2012 was actually despatched by the DDA on 12th June, 2012. In support of the same, the petitioner has annexed a copy of the envelope as well as the internal noting of respondent-DDA showing the actual date of despatch as 12th June, 2012.

5. The petitioner deposited the balance amount of Rs.7,01,50,050/- towards total cost of the plot, documentation charges, and ground rent on 27th August, 2012, i.e., within ninety days of alleged despatch/issue of the demand letter dated 28th May, 2012. Thereafter, the petitioner submitted a request for handing over the possession of the plot vide letter dated 05th September, 2012.

6. However, the respondent-DDA vide letter dated 11th January, 2013 despatched on 16th January, 2013 directed the petitioner to deposit Rs.12,49,638/- towards restoration charges and interest on delayed payment within two days. The relevant portion of the letter dated 11th January, 2013 is reproduced hereinbelow:-

“ Kindly refer to your letter dated 29.8.12 vide which you have submitted the challan of balance 75% premium of land amounting Rs.71,01,50,050/- .

It has been intimated by the Account Wing of DDA that the premium has been paid late by two days and an amount of Rs.12,49,638/- is out-standing against the society as per detail given below:-

- | | | |
|----|--|---------------|
| 1. | Restoration Charges | Rs.8,11,200/- |
| 2. | Interest on belated period on premium for 1 ^{1/2} month @ 15% on Rs.7,01,50,000/- | Rs.4,38,438/- |

Total	Rs.12,49,638/-
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You are therefore, requested to deposit the above said amount within 30 days and submit the 3rd copy of Challan so that necessary action for handing over the possession can be initiated.”

7. It is the petitioner’s case that the demand raised is illegal as the alleged delay in payment was caused on account of respondent-DDA itself as the demand letter dated 28th May, 2012 was actually despatched on 12th June, 2012. In support of the same, petitioner has annexed the RTI reply of DDA which clearly states that the DDA did not have enough funds to despatch the letter till 8th June, 2012. The relevant portion of the RTI reply reads as under:-

“ The letter NO.0f.11(06)12/I.L. had been received on 4/6/2012 and dispatched on 12/6/2012. We received temporary advance from cash main branch on 8/6/2012. Photo copy of letter receipt from post office is placed opposite for your information.”

8. It is the petitioner’s case that the act of issuance of demand letter has to be computed from despatch of the said letter and the issuance of demand letter is not complete on mere signature of the competent authority if the same is not despatched.

9. Learned counsel for the petitioner in support of his submissions relied upon the judgment of the Supreme Court in ***Delhi Development Authority Vs. H.C. Khurana, (1993) 3 SCC 196*** wherein it has been held as under:

“The meaning of the word 'issued', on which considerable stress was laid by learned Counsel for the respondent, has to be gathered from the context in which it is used. Meanings of the word 'issue' given in the Shorter Oxford English Dictionary include: to give exit to; to send forth, or allow to pass out; to let out;... to give or send out authoritatively or officially; to send forth or deal out formally or publicly; to emit, put into circulation'. The issue of a chargesheet, therefore, means its despatch to the government servant, and this act is complete the moment steps are taken for the purpose, by framing the chargesheet and despatching it to the government servant, the further fact of its actual service on the government servant not being a necessary part of its requirement. This is the sense in which the word 'issue' was used in the expression 'chargesheet has already been issued to the employee', in para 17 of the decision in Jankiraman.”

(emphasis supplied)

10. Learned counsel for the respondent-DDA stated that the Commissioner (LD) had opined that in such cases ninety days period granted for depositing the balance payment had to be considered strictly from the date of demand-cum-allotment letter i.e. 28th May, 2012.

11. Having heard the learned counsel for parties, this Court is of the view that the legal question that arises for consideration is whether the words ‘issued’ and ‘served’ can be used interchangeably. In the opinion of this Court, the expressions ‘issue’ and ‘served’ in the present context have the same meaning and can be used interchangeably.

12. In fact, the Supreme Court in ***Banarasi Devi v. Income Tax Officer, Calcutta AIR 1964 SC1742*** while discussing the very same issue has explicitly held:

“the expression "issued" and "served" are used as interchangeable terms both in dictionaries and in other statutes. The dictionary meaning of the word "issue" is "the act of sending out, put into circulation, delivery with authority or delivery". Section 27 of the General Clauses Act (Act X of 1897) reads thus :

"Where any Central Act or Regulation made after the commencement of this Act authorizes or required any document to be served by post, whether the expression "serve" or either of the expressing, "give" or "send" or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, prepaying and posting by registered post, a letter containing the document, and unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post."

It would be seen from this provision that Parliament used the words "serve", "give" and "send" as interchangeable words.

(emphasis supplied)

13. It is pertinent to mention that Section 43 (1)(d)(1) of the Delhi Development Act, 1957 states that,

‘All notices, orders and other documents required by this Act or any rule or regulation made thereunder to be served upon any person shall, save as otherwise provided in this Act or such rule or regulation, be deemed to be duly served-.....

(d) in any other case, if document is addressed to the person to be served and

(i) is given or tendered to him, or

(ii) *if such person cannot be found, is affixed on some conspicuous part of his last known place of residence or business, if within the [National Capital Territory of Delhi] or is given or tendered to some adult member of his family or is affixed on some conspicuous part of the land or building to which it relates, or*

(iii) *is sent by registered post to that person.*

(emphasis supplied)

14. Furthermore, Section 27 of General Clauses Act lays down 'meaning of service by post' as

"Where any Central Act or Regulation made after the commencement of this Act authorizes or required any document to be served by post, whether the expression "serve" or either of the expressing, "give" or "send" or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, prepaying and posting by registered post, a letter containing the document, and unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post."

(emphasis supplied)

15. A harmonious reading of both the above provisions would undeniably lead to conclusion that the date of issue from which the limitation period of ninety days would commence cannot be construed as the one printed on the notice, rather it would be the date of despatch, i.e. 12th June 2012.

16. The matter in issue can also be examined from a practical perspective. Suppose an official of DDA raises a demand upon an auction purchaser by way of a letter, but forgets to post it, can it be urged by the DDA that even though the letter remained in the drawer/file of the officer, yet as the

demanded amount was not deposited within the time stipulated by the said letter, the auction purchaser has lost the right to purchase the property. In the opinion of this Court if DDA's submission is upheld, it will lead to absurd and inequitable results.

17. Consequently, this Court is of the view that there is no delay on the part of the petitioner in depositing the amount and the restoration charges with interest levied vide notice dated 11th January, 2013 is illegal and it is hereby set aside. The petitioner's prayer for interest is declined as it was obliged to make payment to DDA. Accordingly, possession of plot in question is directed to be handed over to petitioner within six weeks.

18. With the aforesaid observations and direction, present writ petition and application are disposed of.

MANMOHAN, J

SEPTEMBER 14, 2015

js/sn