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

% *Judgment delivered on: March 10, 2015*

+ **W.P.(C) 8045/2012**

M.P.NAURIYAL Petitioner

Represented by: Mr.R.K.Saini, Advocate.

Versus

DELHI DEVELOPMENT AUTHORITY Respondent

Represented by: Ms.Shobhana Takiar, Advocate.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J.

1. Vide the present petition, petitioner has *inter alia* prayed as under:-

“a) A Writ of Certiorari calling for the records of the case for perusal;

b) A Writ of Certiorari quashing the action of the respondent in not including the name of the petitioner in the draw held in February 2008 alongwith his contemporaries and then refusing to allot him a flat in the same area at the same cost, as a missing priority case, being illegal, arbitrary, discriminatory and in violation of the Rules, Regulations, Policy and the principles of equity, justice and good conscience;

c) A writ of Mandamus commanding the respondent to immediately allot to the petitioner an LIG Flat, in the same area where his contemporaries were allotted flats in the tail-end priority draw of LIG Flats in February 2008 and his name was missed out/not included therein, by holding a mini draw and issue him the demand letter in respect thereof at the same cost at which flats were allotted to his contemporaries in the draw held in February 2008, deliver possession after payment and also execute the conveyance deed in his favour;

d) Any other writ, order or direction, which may be deemed fit and proper in the facts and circumstances of the case and in the interest of justice.”

2. Brief facts of the case are that on 04.06.1980, the petitioner was registered with the respondent/Delhi Development Authority ('DDA') under the New Pattern Registration Scheme, 1979 ('NPRS 1979') for allotment of a LIG Flat. Accordingly, DDA allotted a LIG Flat to the petitioner in Kondli Gharoli vide allotment-cum-demand letter of block dates 03.03.1993 -10.03.1993. However, the petitioner did not accept the aforesaid Flat and vide letter dated 08.04.1993 he sought cancellation of the same. As per the policy prevailing at that time, in such an eventuality, the registrant was to be given one more chance for allotment by putting his name at the tail-end of the priority list. Only

condition was that he was liable to pay the cancellation charges. On 20.05.1993, DDA informed the petitioner that allotment of the Flat in Kondli Gharoli had been cancelled and he would be informed about the cancellation charges in due course. However, DDA failed to inform the petitioner about the cancellation charges. The petitioner of his own deposited an amount of Rs.300/- on 26.05.1993 as cancellation charges. Same was accepted by DDA and no further amount was demanded from the petitioner.

3. Thereafter on 10.09.2002, petitioner changed his residence to RZ-I/134, Mahavir Enclave, Palam, New Delhi, and accordingly, requested DDA to make necessary changes in its records. Pursuant thereto, vide letter dated 21.11.2002, DDA informed the petitioner about the change of address.

4. Mr.R.K.Saini, learned counsel appearing on behalf of the petitioner submitted that neither DDA inform the petitioner about any pending balance towards cancellation charges to be paid nor gave any information that his name was not included in the tail-end priority list. But the fact remains that DDA failed to include the name of the

petitioner in the tail-end priority list in the draw held during month of February, 2008 for said category.

5. Mr.Saini further submitted that as per the policy/guidelines dated 25.05.1995 regarding cases where allotment was not made due to non-inclusion of the names of the registrants in the draw, the allotment would be made in the next draw at the rates prevailing when the registrants would get allotment according to their priority position. The respondent has not denied in its counter-affidavit that draw for tail-end priority category was held in February, 2008.

6. Learned counsel further submitted that the petitioner vide letter dated 03.05.2012 sought refund of the amount, however, the same was never refunded by the respondent.

7. Mr. Saini submitted that the petitioner came to know regarding closure of NPRS 1979 only through a Public Notice dated 22.11.2012, which reads as under:-

“ DELHI DEVELOPMENT AUTHORITY
HOUSING DEPARTMENT
PUBLIC NOTICE

*Attention of all the registrants registered under
New Pattern Housing Registration Scheme-79,
Ambedkar Awas Yojana Scheme-89, Janta Housing
Registration Schemes-96 or any other Housing*

Registration Scheme of DDA for the allotment of different categories of flats like- Janta, LIG, MIG, EHS, etc., is invited. All allotments under these schemes have already been made and all eligible applicants have been allotted flats. No allotment is pending as on date and all these schemes have already been closed.....”

8. As per the aforesaid Notice, all eligible applicants were allotted flats, no allotment was pending and all the Schemes noted above had already been closed.

9. However, on 17.12.2012, petitioner withdrew the aforesaid request dated 03.05.2012 for refund of the cancellation amount and asked the respondent to allot him Flat in Delhi since the DDA had closed the scheme in question through Public Notice noted above. Since there was no response from DDA, hence, the present petition

10. Learned counsel submitted that the respondent/DDA failed to include the name of the petitioner in the draw held in February, 2008 for the tail-end category. Till then the petitioner was eligible for allotment. Though petitioner requested DDA on 17.12.2012 for withdrawal of the amount, however, till the amount was not refunded, claim of the petitioner continued. It is an admitted fact that the

respondent neither refunded the registration amount nor included the name of the petitioner in the draw held in the month of February, 2008.

11. Learned counsel submitted that a similar issue came before this Court in WP(C) No. 2129/1998, titled as ***“B.K.Nigam Vs. Delhi Development Authority”***, decided on 24.05.2002, wherein the petitioner was registered under the “Registration Scheme on New Pattern 1979” for allotment of an MIG Flat. Petitioner was allotted a flat in Narela in a draw held in January/May 1994. Since the said flat was a Janta Flat, the petitioner sought cancellation of allotment and refund of the registration money, however, the DDA took no steps for refund of the registration amount. After considering the issue, this Court held as under:-

“ The aforesaid facts also go to establish that the registration of the petitioner was never cancelled and his registration money was never refunded by the respondents and the petitioner’s name was rightly included in the draw of lots held on 29th March 1996. The contention of the respondents that the petitioner had himself opted for refund of the registration amount and for cancellation of allotment and was thus rightly refused issue of the demand-cum-allotment letter is without merit. The stand of the respondents is categorical in their affidavit that “the demand letter was not issued to the petitioner as the request of those allottees who had applied for refund of the registration amount and the cancellation

charges was under consideration.” The allotment was made pursuant to the court’s order in 1996. The aforesaid admission clearly suggests that the registration of the petitioner was alive at the time when the allotment was made in March, 1996.

Thus, it is clear that the respondents were at fault in allotting a janta flat instead of an MIG flat. The registration of the petitioner has not been cancelled and is still alive as the respondent did not take any action on the petitioner’s letter for refund/cancellation and further allotted an MIG flat in a draw held on 29th March 1996. The respondent-DDA are bound to allot an MIG flat to the petitioner, more so in list of the orders of this court in CWP 1906/94.”

12. Moreover, in batch of appeals, LPA No. 179/2008 being the lead case, filed by the DDA, the Division bench of this Court while disposing of the same vide order dated 04.06.2008, held as under:-

“From the judgment of the learned Single Judge, it is clear that though the learned Single Judge found that there was some breach on the part of the respondents herein in not making the payment in time, at the same time, the learned Single Judge was persuaded to allow the Writ Petitions filed by the respondents herein by balancing the equities and reminding the DDA that it was not to act as mere property developer, like a private entrepreneur, and in view of the fact that DDA is a public authority. These sentiments are expressed by the learned Single Judge in the following words:-

19. A humane system of government must provide some way of assuaging grievances, not only for the sake of justice but also because

accumulated discontent may ultimately prove fatal to a democracy. A State Authority must evolve some mechanism to receive feed back of the public reaction qua it's functioning. This helps in the assessment of its functioning and formulation of corrective policy. The institution of ombudsman is a direct consequence of such a mechanism being put into motion.

20. Justified grievances may arise out of State actions which may otherwise be legal, in any case not illegal."

*We agree with this approach of the learned Single Judge. When two views were possible and the learned Single Judge chose one particular view in exercise of his discretion, it is not even proper for the Appellate Court to interfere with this discretionary exercise. That apart, we are of the opinion that the view taken by the learned Single Judge is in tune with the obligation cast upon the statutory bodies like the DDA. The Constitution of India makes it obligatory for the State to provide the right to adequate housing to all its citizens. There have been several important judgments that have clearly established the relation between the right to housing and right to life as guaranteed by Article 21. The Supreme Court of India has held that the right to shelter or adequate housing is a fundamental human right emanating from this provision [see **U.P. Avas Evam Vikas Parishad v. Friends Coop. Housing Society Ltd. AIR 1996 SC 114, Francis Coralie v. Union Territory of Delhi AIR 1981 SC 746 and Chameli Singh and others v. State of UP (1996) 2 SCC 549**].*

Delhi Development Authority is a statutory body created under the Delhi Development Act 1957. The main purpose with which DDA is created, as is clear from the provisions of Section 6 of the said act,

is to promote and secure the development of Delhi according to plan and for that purpose it is given power to acquire, hold, manage and dispose of land and other property as well as carrying out building, operations, amongst others. One of the public duty thus cast upon the DDA is to provide residential and other types of accommodations to the people of Delhi at reasonable cost. The Supreme Court reminded DDA of this duty more eloquently in the case of Delhi Development Authority v. Joint Action Committee, Allottee of SFS Flats 2008 (2) SCC 672. When we look into the aforesaid public duty of public authority like DDA, we find no fault in the approach of the learned Single Judge.”

13. Learned counsel relied upon the case of **Anurag Sahay Vs. DDA** decided on 22.11.2012 in W.P.(C) No. 7247/2011, wherein this Court held as under:-

*6. Present writ petition has been opposed by learned counsel for the DDA primarily on the ground of delay and laches. Counsel for the respondent has relied upon **Banda Development Authority, Banda, v. Moti Lal Agarwal and Others**, reported at (2011) 5 SCC 394, more particularly para 17, which reads as under:*

“17. It is true that no limitation has been prescribed for filing a petition under Article 226 of the Constitution but one of the several rules of self-imposed restraint evolved by the superior courts is that the High Court will not entertain petitions filed after long lapse of time because that may adversely affect the settled/crystallized rights of the parties. If the writ petition is filed beyond the period of

limitation prescribed for filing a civil suit for similar cause, the High Court will treat the delay unreasonable and decline to entertain the grievance of the petitioner on merits.”

7. *Mr.S.D. Salwan, learned counsel for the respondent, submits that petitioner has been sleeping over his rights. Counsel further submits that petitioner has not given any explanation as to why since the year 2000 the petitioner did not enquire from the DDA or approach this Court earlier. Counsel next submits that New Pattern Registration Scheme, 1979, already stands closed by the DDA and due publication, in this regard, was also made by DDA in leading newspapers from time to time. Mr.Salwan further submits that the petitioner had not actually provided his occupational address and just written the word ‘service’ against the column ‘occupation’, and, thus, he cannot derive any benefit of the judgments, sought to be relied upon, by the counsel for the petitioner.*

8. *Mr.Saini, learned counsel for the petitioner, submits that in the case of **Mohinder Singh v Delhi Development Authority**, W.P.(C) 1096/2011 similar situation had arisen and the Court had taken a view that DDA is duty bound to go through the entire file to ascertain if any other address is available and the demand-cum-allotment letter sent at the occupational address, which was available in the file of the DDA. Para 13 of this judgment read as under:*

*“13. In the case of **Hirdayapal Singh** (supra), applicant (petitioner in the case) had mentioned only one address in the application WP(C)7247-2011 Page 5 of 8 form, but subsequently he informed the DDA about his permanent address and the court was of the view that once demand letter was returned undelivered the DDA should have sent the demand letter at all the addresses*

available in the file of the DDA. To my mind the case of the petitioner is on a better footing as at the time of registering herself for allotment of a LIG flat the petitioner along with the application form had enclosing his salary certificate issued by the school where the petitioner was working, filing of a copy of the salary certificate was a mandatory requirement and thus has to be considered to be a part of the form. No doubt the petitioner has been careless in filling up the application form and not providing his occupational address in the column provided, but the file of the DDA would comprise not more than seven pages, which include four annexures and two pages of the application form. The DDA should have acted in the interest of the allottee, a common citizen, who has been waiting for more than two and a half decades for a flat in his name. In such a situation when the allotment letter was received back, DDA was duty bound to go through the entire file to ascertain if any other address was available and the demand-cumallotment letter should have been sent at the occupational address which was available in file of the DDA. The common man must derive the benefit of the policy dated 25.2.2005 and in my view in the facts of the present case, once demand-cum-allotment letter was received back to the DDA undelivered, the DDA should have carefully perused the file and ensured that demand-cum-allotment letter is sent at all the addresses available in the file.”

9.

10. *I have heard learned counsel for the parties and considered their rival contentions. The basic facts of this case are not in dispute that the petitioner applied for allotment of a flat under New Pattern Registration Scheme, 1979, for allotment of an LIG flat. At the time*

of registration, the petitioner had mentioned his residential address as House No.B-60, Kidwai Nagar, New Delhi, and he had also informed DDA with regard to WP(C)7247-2011 Page 6 of 8 his occupational address. It is also not in dispute that thereafter the petitioner changed his residence, however, the petitioner did not inform the DDA with regard to change of his residential address. It is also not in dispute that demand-cum-allotment letter sent to the petitioner at his old residential address i.e. Kidwai Nagar was returned to the DDA undelivered and thereafter the demand-cum-allotment letter was not sent at the occupational address of the petitioner.”

14. Learned counsel for the petitioner further submitted that in its counter-affidavit, the respondent/DDA had not denied the averments made in the case. Moreover, vide order dated 11.02.2013, this Court directed the respondent/DDA to keep one LIG Flat reserved in Kondli-Gharoli/East Zone. Therefore, the respondent cannot take the shelter of the plea that since the NPRS 1979 had been closed, no flat is available with them.

15. On the other hand, Ms. Shobhana Takiar, learned counsel appearing on behalf of the respondent/DDA submitted that the petitioner applied under NPRS 1979 for which draw was held in the month of March, 1993. The petitioner succeeded in the draw, but, refused to take the said Flat. Thereafter, a mini draw was held in the

month of February, 2008, the said draw was published and if the name of the petitioner was not included in that draw, the petitioner would have approached this Court earlier in that year itself. Thus, the present petition is hit by delay and laches and deserves to be dismissed on this ground alone.

16. To strengthen her arguments, learned counsel for the respondent has relied upon the case of ***State of Madhya Pradesh Vs. Bhailal Bhai & Ors., (1964) 6 SCR 261***, wherein the Apex Court held as under:-

“17. At the same time we cannot lose sight of the fact that the special remedy provided in Art. 226 is not intended to supersede completely the modes of obtaining relief by an action in a civil court or to deny defences legitimately open in such actions. It has been made clear more than once that the power to give relief under Art. 226 is a discretionary power. This is specially true in the case of power to issue writs in the nature of mandamus. Among the several matters which the High Court rightly take into consideration in the exercise of that discretion is the delay made by the aggrieved party in seeking this special remedy and what excuse there is for it. Another is the nature of controversy of facts and law that may have to be decided as regards the availability of consequential relief. Thus, where, as in these cases, a person comes to the Court for relief under Art. 226 on the allegation that he has been assessed to tax under a void legislation and having paid it under a mistake is entitled to get it back, the court, if it finds that the assessment was void, being made under a void

provision of law, and the payment was made mistake, is still not bound to exercise its discretion directing repayment. Whether repayment should be ordered in the exercise of this discretion will depend in each case on its own facts and circumstances. It is not easy nor is it desirable to lay down any rule for universal application. It may however be stated as a general rule that if there has been unreasonable delay the court ought not ordinarily to lend its aid to a party by this extraordinary remedy of mandamus.....

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21..... It appears to us however that the maximum period fixed by the legislature as the time within which the relief by a suit in a civil court must be brought may ordinarily be taken to be a reasonable standard by which delay in seeking remedy under Art. 226 can be measured. The Court may consider the delay unreasonable even if it is less than the period of limitation prescribed for a civil action for the remedy but where the delay is more than this period, it will almost always be proper for the court to hold that it is unreasonable.....”

17. Learned counsel also relied upon the case bearing WP(C)

No.17473/2004 titled as ‘**I.G. Peter Vs. DDA**’, wherein this Court held

as under:-

“5. NPRS 1979 has become a festering ground of corruption. Property dealers have infiltrated DDA and this court has no reasons to suspect that some senior officers of DDA themselves have become property dealers.

6. All of a sudden people are rising from slumber and filing writ petition that their properties had matured years back but letter of allotment was not received by them. How have these people arisen from the slumber?

7. Property dealers are locating files in office of DDA and are tracing out people who had not responded when letters of allotment were issued. These property dealers are contacting the applicants and are using the applicants as front to file writ petitions.

8.....

9. Even till today the scam continues. Thus, it is in the interest of DDA to locate all the so called misplaced files pertaining to NPRS, 1979 for the reason one by one each misplaced file is ultimately surfacing and at public expense at old rates flats are being directed to be allotted to persons who missed their priorities.”

18. Learned counsel submitted that as per the policy of the respondent, flats under tail-end priority list were to be allotted only in those cases where the registrants have at least deposited the cancellation charges upto 31.12.1993; however, the present case does not come under any of the policy of the respondent. Since the policy in question had already been closed after giving due publication in the leading newspapers, therefore, the petitioner is now entitled only for refund of the registration money.

19. Moreover, the judgments relied upon by the petitioner have been passed keeping in view the facts and circumstances of each case, therefore, the same are not applicable in the present case.

20. Learned counsel further submitted that when the allotment of February, 2008, was made, it was widely advertised in the Newspapers as well as the respondent displayed the list of successful allottees, mentioning flat number, locality etc. at the reception counter of the respondent. The petitioner was never diligent in following up his claim.

21. Learned counsel further submitted that calculation of cancellation charges was worked out and same was intimated to the petitioner vide letter dated 22.11.1994. In para 13 of the counter-affidavit, it is submitted that there may be fault on the part of the respondent but the petitioner is equally negligent. The culpability of the petitioner is not less. The petitioner has not given any reason why he has chosen to approach this Court belatedly in the year 2012 whereas his priority matured in the year 1993.

22. I have heard the learned counsel for the parties.

23. It is not in dispute that on 04.06.1980, the petitioner was registered with respondent/DDA under the New Pattern Registration Scheme, 1979 for allotment of LIG flat. Accordingly, the DDA allotted a flat to the petitioner in Kondli Gharoli vide allotment-cum-demand letter of block dates 03.03.1993-10.03.1993, however, the petitioner did not accept the aforesaid flat and vide letter dated 08.04.1993 sought cancellation of the same. As per the policy prevailing, the registrant was to be given one more chance for allotment by putting his name at the tail-end of the priority list subject to payment of the cancellation charges. On 20.05.1993, DDA informed the petitioner that the allotment of the flat in Kondli Gharoli had been cancelled and he shall be informed about the cancellation charges in due course. However, the DDA failed to do so. But, the petitioner of his own deposited an amount of Rs.300/- on 26.05.1993 as cancellation charges. The same was accepted by DDA and no further amount was demanded from the petitioner.

24. It is also not in dispute that on 10.09.2002, the petitioner changed his residence to RZ-I/134, Mahavir Enclave, Palam, New Delhi, and accordingly requested DDA to make necessary changes in

its records. Pursuant thereto, vide letter dated 21.11.2002, DDA informed the petitioner about the change of address.

25. Admittedly, DDA neither informed the petitioner about any pending balance towards cancellation charges to be paid nor gave any information that his name was not included in the tail-end priority list. The DDA has also not disputed that as per the policy/guidelines dated 21.05.1995 regarding cases where allotment was not made due to non-inclusion of the name of the registrants in draw, in such cases, the allotment shall be made in the next draw at the rates prevailing at that time when the registrants would get the allotment according to priority position.

26. The DDA has fairly conceded in its counter-affidavit that draw for tail-end priority category was held in February 2008.

27. It is pertinent to mention here that vide letter dated 03.05.2012, the petitioner sought refund of the amount, however, the same was never refunded by the respondent/DDA. The petitioner came to know regarding closure of NPRS 1979 Scheme through a public notice dated 22.11.2012 that all eligible applicants were allotted flats and no

allotment was pending. Thereafter, on 17.12.2012, the petitioner withdrew the aforesaid request dated 03.05.2012 for refund of cancellation amount and asked the respondent to allot a flat in Delhi since the DDA had closed the Scheme in question through a public notice mentioned above. Since there was no response from DDA, hence the petitioner was constrained to file the present petition. Thus, in my considered opinion, there is no delay on the part of petitioner in filing the present petition.

28. It is important to note that the respondent/DDA failed to include the name of the petitioner in the draw held in February, 2008 for the tail-end category. Till then, the petitioner was eligible for allotment of a flat. Though petitioner had requested for withdrawal of the registration amount, however, till the amount was not refunded, claim of the petitioner continued. Admittedly, neither the respondent refunded the registration amount nor included the name of the petitioner in the draw held in the month of February, 2008. Thus, it is established that the registration of the petitioner was never cancelled and his registration money was never refunded by the respondent and his name was not included in the draw held in February, 2008. The

above noted facts clearly suggest that the registration of the petitioner was alive at the time when the allotment was made in February, 2008.

29. A similar issue came before this Court in the case of ***B.K.Nigam*** (*supra*) which was decided on 24.05.2002 whereby the respondent/DDA was directed to allot a flat to the petitioner therein.

30. It is pertinent to mention here that vide order dated 11.02.2013, this Court directed the respondent/DDA to keep one LIG flat reserved in Kondli Gharoli/East Zone. The DDA has failed to give any plausible reason as to why name of the petitioner was not included in the mini draw held in 2008.

31. In view of the above discussion and the legal position, I am of the considered view that since the fault lies on the part of DDA, the petitioner must succeed.

32. Accordingly, the respondent/DDA is hereby directed to allot a flat of the same category, if left out from the draw held in February, 2008 or any other flat of the same category in Delhi, within six months from receipt of this order.

33. In case, no such flat is available, then the DDA shall include the name of the petitioner in first draw to be held after passing this order.

34. I hereby make it clear that the petitioner shall pay the same rate as applicable on the allottees of the draw held in February, 2008.

35. Accordingly, the present petition is allowed on above terms with no orders as to costs.

**SURESH KAIT
(JUDGE)**

March 10, 2015
sb/'sn'