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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CONT.CAS(C) 652/2015

SUMAN BALA

..... Petitioner

Through

Mr. J.K. Chawla with Mr. Hemant
Singh, Advocates

versus

KEWAL KUMAR SHARMA & ORS Respondents

Through

Mr. Peeyosh Kalra, ASC (Civil),
GNCTD with Mr. Sudhindra Tripathi
and Ms. Sona Babbar, Advocates for
R-1 to 3.
Mr. Satyendra Singh, SDM (West),
Punjabi Bagh, New Delhi.
Mr. Sanjeev Sabharwal, Standing
Counsel for R-4/DDA.

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Date of Decision : 18th August, 2015**CORAM:****HON'BLE MR. JUSTICE MANMOHAN****J U D G M E N T****MANMOHAN, J: (Oral)****CM APPL. 15505/2015 in CONT.CAS(C) 652/2015**

Allowed, subject to just exceptions.

CONT.CAS(C) 652/2015

1. Petitioner alleges wilful disobedience of the order dated 8th September, 2014 passed in W.P.(C) 5902/2014 whereby the petitioner was directed to

appear before the Director (Housing) DDA at 3.00 p.m. on 19th September, 2014 in the office at Vikas Sadan, INA, New Delhi along with all the required documents. The SDM (West), Punjabi Bagh was also directed to remain present at that time along with the files and after carrying out necessary verification, including the genuineness and identity of the allottee, the possession of the flat allotted to the petitioner was to be delivered within eight weeks of the said verification, provided all the necessary formalities in this regard were completed.

2. It is the petitioner's case that the SDM (West), Punjabi Bagh even after carrying out the necessary verification, including the genuineness and the identification of the petitioner, has not sent the verification letter to the DDA in respect of the flat bearing no. 44, Ground Floor, Pocket 16, Sector 22, Rohini, Delhi till date.

3. The SDM (West), Punjabi Bagh is personally present in Court. He states that as he is not in possession of the original record, he cannot verify the documents furnished by the petitioner. He clarifies that he is only in possession of photocopies of disbursement register received from the Economic Offences Wing.

4. Learned counsel for the petitioner states that in the past comparison of documents have been done by the previous SDMs after verification from the original record available in their office. He states that what the SDM is stating today is factually incorrect.

5. Mr. J.K. Chawla, Advocate, who in the past has appeared in a number of similar matters states that out of 3147 cases recommended for allotment, only about 100 allottees remain who have not been given possession of the flats. He states that some of the officials of Delhi Administration have a vested interest

in not closing the Scheme as otherwise the Camp for Punjab Migrants would have to be shut down.

6. The SDM states that he is not involved in running of the Punjab Migrants Camp and consequently cannot comment about the same.

7. This Court is of the view that lack of proper policy coupled with inordinate delay in implementation can frustrate any welfare scheme. The Punjab Migrants Scheme of DDA seems to be one of such instance.

8. The Punjab Migrants Scheme was devised by DDA in the year 2000 at the instance of NHRC to provide succour to individuals displaced due to terrorism in the State of Punjab. However, the said scheme has not been fully implemented till date.

9. It is pertinent to mention that displacement in Punjab had commenced in the mid 1980's. The belated allotment letters issued in 2008 to the petitioner and other similarly situated individuals were not processed by the DDA pending verification by the SDM in 2009.

10. One of the earlier writ petitions being W.P.(C) 2119/2013 was filed by an allottee-Mr. Pal seeking peaceful possession of the flat allotted to him under the Scheme. Keeping in view the tardy investigation and the pace at which Government officials work, a Coordinate Bench of this Court disposed of the said writ petition on 21st May, 2013 by directing the officials of DDA and SDM to decide the pending applications within a strict time frame. The order dated 21st May, 2013 passed in W.P.(C) 2119/2013 is reproduced hereinbelow:-

“Sometime in the year 2000, a scheme was introduced for allotment of residential flats by DDA to the migrants from Punjab. The petitioners before this Court who claim to be such immigrants also applied for allotment of a residential flat under the said scheme and deposited the requisite registration money. On receipt

of demand letter from DDA, the balance amount towards price of the flat was deposited by these petitioners with DDA.

2. A letter was sent by respondent No. 3-SDM (West), Punjabi Bagh, New Delhi to DDA. The said letter, to the extent it is relevant, reads as under:

“It has been brought to my notice that serious malpractices have been alleged in the above mentioned allotment dated 20.8.2008. It is informed that original allottees are not presently in possession of the NOCs issued from this office and the individuals applying for physical possessions are not original allottees but middlemen and dealers. This defeats the very purpose of this scheme as the benefit does not reach the individuals for which it is meant.

In light of the above, it is suggested that before handing over the physical possession to all the above mentioned allottees, they should be directed to approach the office of the undersigned for proper verification of their documents/claims. Physical possession should not be given in any of the above cases without such verification.

Further, it is requested that all the names and addresses of the successful allottees for the above mentioned draw may kindly be sent to the undersigned for proper re-verification.”

The aforesaid letter was followed by another letter dated 03.10.2009, requesting DDA that pending inquiry the possession/allotment of flat shall not be made till further orders.

3. The grievance of the petitioners is that though they deposited prices of the flat with DDA more than three years ago, the possession of the allotted flat is not being given to them on account of instructions issued by respondent No. 3 to DDA not to handover the possession to them. In its counter-affidavit, the respondent DDA has stated that allotment to Punjab Migrants under the aforesaid scheme was made by it after getting recommendation for allotment from SDM (West), Punjabi Bagh, who after verifying the

genuineness of the applicants as migrants from Punjab and their eligibility under the said scheme issued the recommendation letters. It is further stated in the counter-affidavit of DDA that before the possession letter could be issued, the above-referred letter dated 30.03.2009, followed by the letter dated 03.10.2009, was received from SDM (West), Punjabi Bagh, as a result of which the possession of the flat could not be allowed. It is also stated in the counter-affidavit of DDA that the matter was being investigated by the Economic Offences Wing of Delhi Police.

4. In his short affidavit, SDM (West), Punjabi Bagh has stated that pursuant to complaints received from various individuals/organization regarding procurement of allotments made to Punjab migrants on the basis of forged and fabricated documents as well as double/triple/multiple allotment to individual migrants and group of persons, the matter was discussed in a meeting convened by Chief Secretary, Delhi where it was decided that with regard to the allegations of double/triple/multiple allotment to an individual or a group of persons, DDA will obtain Adhar Cards from the allottees to ensure that no double/triple/multiple allotment was made and thereafter it will furnish a certificate of Government of NCT of Delhi in this regard. It was also decided that Economic Offences Wing shall also take cognizance of the complaints and investigate the matter. Pursuant to the decisions taken in the aforesaid meeting on 03.10.2012, letters were written to concerned officers of DDA and Crime Branch though desired progress could not be achieved as a result of which even genuine allottees are facing difficulties in obtaining possession.

5. It would thus be seen that neither DDA nor SDM (West), Punjabi Bagh wants to deny possession of the flats to the genuine allottees. The only concern of SDM (West), Punjabi Bagh seems to be to ensure that more than one allotments are not made against the same set of documents and only genuine and duly verified migrants are able to get possession of the flats from DDA, such allotment being a welfare scheme meant for rehabilitation of those who have migrated from Punjab. The concern shown by SDM (West), Punjabi Bagh is genuine and needs to be taken into

consideration. But, simultaneously, it is also to be ensured that genuine allottees do not suffer merely on account of certain complaints received by the SDM (West), Punjabi Bagh, which may or may not be factually correct. In these circumstances, with a view to ensure that genuine allottees do not suffer any more and at the same time, no malpractice is allowed to prevail in the matter of allotment of flats under the said scheme, the writ petitions are disposed of with the following directions:

- 1) the petitioners shall appear before Director (Housing) of DDA at 03.00 PM on 27.05.2013 in office at Vikas Sadan, INA, New Delhi along with all the original documents, including original registrations slips, original challans, original demand letter and proof of their identify as well as their present address. The SDM (West), Punjabi Bagh shall also remain present at that time along with relevant files. After carrying out necessary verifications including the genuineness and identify of the allottee, the possession of the flat allotted to him shall be delivered within four weeks of such verification provided all other necessary formalities in this regard are completed. DDA before issuing possession letter will also verify that the payment in terms of the demand letter was made within the time stipulated in this regard in the said letter;*
- 2) The SDM (West), Punjabi Bagh shall also help in the process of verification to be carried out in terms of this order.*
- 3) The original NOC which has been submitted to DDA shall also be verified at the time of the aforesaid hearing;*
- 4) DDA shall also ensure that not more than one allotment is made against one set of documents and there has been no breach of the terms of the Scheme, by the allottee.*
- 5) Handing over possession in terms of this order shall not affect the investigation by Delhi Police.*

The writ petition stands disposed of.

Dasti under the signatures of Court Master.”

11. It is pertinent to mention that this Court had not directed that plots/flats be allotted on the basis of forged and fabricated documents. This Court had only directed the respondents to take a decision. Respondents were at liberty to accept and/or reject the application. But the respondents instead of acting on the said order, moved an application for recall/modification of the order dated 21st May, 2013.

12. In the said application, this Court passed the orders dated 2nd September, 2013 and 9th September, 2013. The same are reproduced hereinbelow:-

A. Order dated 02nd September, 2013:-

“Present application discloses a very sorry state of affairs.

The Punjab Migrants Rehabilitation Scheme was devised by DDA to provide succour to individuals displaced due to terrorism in the State of Punjab. However, the said Scheme has not been fully implemented till date. It is pertinent to mention that displacement in Punjab had commenced in the early 1980's.

The belated allotment letters issued to the petitioner had been stayed/pending inquiry by the SDM and EOW. Though the inquiry has been formally pending for more than eight months, the investigation is still not complete and no decision has been taken till date.

Keeping in view the tardy investigation and the snail pace at which Government officials work, this Court had disposed of the writ petition by directing the officials of DDA and SDM to decide the pending applications within a strict time frame.

This Court has not directed that plots/flats be allotted on the basis of forged and fabricated documents. This Court has only directed respondents to take a decision. Respondents are at liberty to accept and/or reject the application. But, it seems to this Court that by moving frivolous applications like the present one, respondents' officials do not want to take a decision and/or discharge their duties.

In the opinion of this Court, the intent and purpose of the Punjab Migrants Scheme stands frustrated as for all these years genuine displaced petitioners have not received alternative accommodation despite the same being available. It is pertinent to mention that in the meantime the Punjab problem has even been solved.

Consequently, Ms. Asma Manzar, Commissioner (Housing) and Mr. A. K. Bisht, Director (Housing) of respondent-DDA are directed to be personally present in Court on the next date of hearing.

List on 9th September, 2013 at 2.15 p.m.

Order dasti under signature of Court Master.”

B. Order dated 09th September, 2013:-

“In pursuance to the last order, Ms. Asma Manzar, Commissioner (Housing) and Mr. A.K. Bisht, Director (Housing), DDA as well as Mr. J.S. Rana, SDM, Punjabi Bagh, New Delhi are personally present. Mr. Rajiv Nanda, learned counsel has today in Court handed over a copy of the letter dated 07th September, 2013 written by SDM, Punjabi Bagh to Director (H)-II/DDA. The same is taken on record.

All the three officers assure this Court that they shall meet on 19th September, 2013 at 2.00 p.m. at the office of Director (Housing) and take a decision with regard to all pending applications. They also assure and undertake to this Court that sentiments expressed by my learned Predecessor on 21st May, 2013 and this Court on 2nd September, 2013 in W.P.(C) 2119/2013 shall be kept in mind while disposing of the applications.

Let an action taken report be filed within a period of four weeks.

List on 24th October, 2013.

Order dasti under signature of Court Master.”

13. Though in the said case after completion of enquiry, the conveyance deed was executed on 7th May, 2015 but investigation with regard to other

similar allottees under the Scheme is still not complete.

14. Today itself, this Court in a petition being W.P.(C) 657/2013 filed by some other similarly situated allottees virtually reiterated the directions given on 21st May, 2013. The order passed today in W.P.(C) 657/2013 is reproduced hereinbelow:-

“Present writ petition has been filed for issuance of the directions to the respondents to hand over possession of flat under the Rehabilitation Scheme for Punjab migrants.

It is the case of the petitioner that though she had been allotted flat under the aforesaid Rehabilitation Scheme and has paid the entire amount asked for by Delhi Development Authority, yet she has not been handed over possession due to the objections raised by the SDM.

Learned counsel for petitioner states that an identical petition has been disposed of by this Court vide order dated 21st May, 2013 in W.P.(C) No.2119/2013.

Consequently, keeping in view the order dated 21st May, 2013 passed in W.P.(C) No.2119/2013 as well as the fact that the possession of flat to petitioner and investigation has been pending for the last several years, present petition stands disposed of with the following directions:-

- 1) Petitioner shall appear before Director (Housing) of DDA at 3.00 PM on 1st September, 2015 in office at Vikas Sadan, INA, New Delhi along with all the original documents, including original registration slip, original challans, original demand letter and proof of her identity as well as her present address. The SDM (West), Punjabi Bagh and/or SDM, Kalkaji shall also remain present at that time along with relevant files. After carrying out necessary verifications including the genuineness and identify of the allottee, the possession of the flat allotted to her shall be delivered within eight weeks of such verification provided all other necessary formalities in this regard are completed. DDA before issuing possession letter will also verify that the payment in terms of the demand letter was made within the time stipulated in this regard in the said letter.*

- 2) *The SDM (West), Punjabi Bagh and/or SDM, Kalkaji shall also help in the process of verification to be carried out in terms of this order.*
- 3) *The original NOC which has been submitted to DDA shall also be verified at the time of the aforesaid hearing.*
- 4) *DDA shall also ensure that not more than one allotment is made against one set of documents and there has been no breach of the terms of the Scheme, by the allottee.*
- 5) *Handing over possession in terms of this order shall not affect the investigation by Delhi Police or any other statutory authority.*

The DDA is directed to forward copy of this order to the SDM (West), Punjabi Bagh and/or SDM, Kalkaji by registered post as well as by hand within a period of one week.

Order dasti under signatures of Court Master.”

15. In the opinion of this Court, the intent and purpose of the Punjab Migrants Scheme stand frustrated as in all these years genuinely displaced persons have not received alternative accommodation, despite the same being available. It is pertinent to mention that in the meantime, the Punjab problem has been solved.

16. Due to time lag in the implementation of the Scheme and absence of any restriction on sale of flat for a particular number of years, the real beneficiaries are unlikely to enjoy the flat and there are bound to be disputes with respect to identity of beneficiaries and legal heirs.

17. In absence of restriction of sale and conversion upon the original allottees, the intended purpose of such allotments is likely to be defeated. Since land in Delhi is scarce and very expensive, vested interests are bound to exploit the lack of restriction on sale and conversion of flat.

18. To put it mildly, the Punjab Migrants Scheme may not achieve the purpose for which it had been devised.

19. Consequently, this Court directs the Vice Chairman, DDA or his nominee in consultation with SDM (West), Punjabi Bagh to forthwith decide all disputes with regard to eligibility and entitlement of the applicants/beneficiaries under the Punjab Migrants Scheme. In the event, they believe that the applicants/beneficiaries are not genuine, they should reject the same, but in no circumstances should the applications be kept pending as this Court is of the view that with passage of time not only the chances of disputes but chances of scams also increase.

20. For the future, the Vice Chairman, DDA is directed to issue instructions to DDA's planning and policy department that they must formulate a Standard Operating Procedure whereby not only watertight eligibility and entitlement criteria is stipulated, but also a strict time frame for implementation of the Scheme is prescribed as open-ended schemes tend to be taken over by vested interests.

21. The Vice Chairman, DDA, should also consider the suggestion that beneficiaries of the welfare scheme should not be allotted flat/land on outright sale basis, but on hire-purchase/rental basis for certain lock-in period and thereafter, only the ownership rights should be transferred to the beneficiaries. There should be stringent conditions to rule out the practice of illegal transfer/exchange of property to persons who are not entitled for allotment under the welfare schemes.

22. This Court may clarify that the intent of the present order is not to disparage any institution, but to ensure that the actual intended beneficiaries of a welfare scheme get benefit within a strict time frame.

23. Accordingly, present contempt petition is disposed of with the additional direction to the SDM (West) Punjabi Bagh as well as Director Housing (DDA) to verify the petitioner's original documents on 01st September, 2015 at 3:00 p.m. at the office of Director Housing situated at Vikas Sadan, INA, New Delhi.

Order dasti under signature of Court Master.

MANMOHAN, J

AUGUST 18, 2015

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