

*

HIGH COURT OF DELHI AT NEW DELHI

+

**W.P. (C) No.1779/2013 & C.M. No.3390/2013 &
Crl. M.A. No.250/2014**

Decided on : 11th March, 2016

AJIT KUAMR BISWAS

..... Appellant

Through: Ms. Tasneem Ahmadi & Mr. Parmod
Kumar, Advocates.

Versus

DELHI DEVELOPMENT AUTHORITY

..... Respondent

Through: Mr. Amitabh Marwah, Advocate.

CORAM:

HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI, J.

1. This is a writ petition filed by the petitioner under Articles 226 & 227 of the Constitution of India seeking a writ of mandamus or any other writ in the nature of mandamus directing the respondent to restore the allotment of shop No.31 measuring 13.85 square meters in Chittranjan Park, New Delhi and directing the respondent to handover the possession of the said shop to the petitioner in a time bound manner.

2. Briefly stated the facts of the case are that the petitioner is claiming himself to be belonging to schedule caste and alleges that in the year 1985, he was sent for election duty to Mizoram where he met with a serious accident as a consequence of which he was hospitalized for a period of five years. The petitioner had to go through a surgery, after

which he was examined by the Medical Board of All-India Institute of Medical Sciences and was declared handicapped with a disability certificate dated 2.11.1992. It has been stated that as the petitioner could not continue his employment after the aforesaid disability having been suffered, he made a request for allotment of a shop to the then Hon'ble Prime Minister of India. Vide letter dated 30.10.1985, the petitioner was informed by the Prime Minister's office that the DDA has approved the allotment of a shop to the petitioner. This was followed by a letter dated 24.12.1985 from the DDA wherein it was intimated to the petitioner that he has been allotted shop No.31 in Chittaranjan Park and a demand-cum-allotment letter would follow. The petitioner did not receive the demand-cum-allotment letter as a consequence of which he applied for copies of relevant documents through RTI and managed to obtain the written intimation dated 14/16.5.1986 sent by the Vice chairman DDA to the Deputy Director, whereby it was directed to prepare the Demand-cum-Allotment letter so that the same could be collected by the petitioner on 19.05.1986. However, the letter was not ready on the said date and could not be obtained by the petitioner. Thereafter, the petitioner made representation for issuance of a Provisional Demand letter which was considered vide noting dated 7.6.1988. It has been stated by the petitioner that pursuant to the noting dated 7.6.1988, another noting on the file of the DDA was made and a resolution was passed and a demand-cum-allotment letter dated 13.6.1988 came to be issued to the petitioner on 4.7.1988 demanding a sum of Rs.1,27,205/-. On 22.9.1988, the petitioner received another demand letter from the DDA asking him to deposit a sum of Rs.2,46,955/- within a period of 30 days. The petitioner felt

aggrieved by such an exorbitant amount of the cost of the shop being demanded by the DDA and vide letter dated 1988, he objected to the increase and the demand made by the DDA on the basis of the revision of the reserve price. The petitioner did not receive any reply to his letter, on the contrary, he received a cancellation letter dated 21.11.1990. The petitioner continued to visit the Ministry of Urban Development as well as DDA for restoration of the shop till 18.2.2000; however, the petitioner was not successful in the same. It has been alleged that on 25.1.2008, the petitioner managed to arrange the sum demanded and as the shop was still lying vacant, he deposited the said amount of Rs.2,46,955/-. The petitioner also approached the DDA for the purpose of consideration of his case sympathetically on humanitarian grounds but the DDA vide letter dated 30.4.2009, rejected the request of the petitioner on the ground that there was no system of making allotment to the petitioner out of turn. On 5.11.2009, the petitioner requested the Lt. Governor being the Chairman of the DDA for reconsideration of the decision and he had already deposited the sum of Rs.2,46,955/-. Since the petitioner did not hear anything, on 17.5.2010 he again made a representation to the DDA. In July 2010, the petitioner attended the public hearing. On 29.7.2010, the petitioner made an application to the Vide Chairman, DDA and gave various instances when the DDA had restored the shop or the flat to the allottee in spite of repeated failure to make payment. A communication was received from the DDA after a year and a half that the letter dated 6.12.2012 sent by the petitioner seeking response to his representation during public hearing was disallowed and thus, the petitioner finally filed the present petition seeking the aforesaid relief on 16.3.2013.

3. The respondent filed its reply affidavit and raised objections to the maintainability of the writ petition itself on the ground of delay and laches. It has been stated that the allotment of the shop to the petitioner was cancelled on 22.11.1990 and since that date, no acknowledgement was issued to the petitioner from the respondent/DDA intimating that the petitioner was entitled to any shop. It is also stated that the petitioner has no legal right vested in him and in any case, even if a period of three years is counted from the cancellation of the shop, the said period would expire on 22.11.1993. It is the case of the petitioner that the shop having been cancelled almost 20 years back, could not be restored. It has also been stated that the respondent/DDA believe that the petitioner is not a resident of G-32/1, Shaheen Bagh, Kalindi Kunj Road, Okhla, New Delhi and the present petition has been filed as a motivated petition at the behest of some person, who is pushing up the present petitioner with a view to acquire the shop illegally. So far as the representation of the petitioner is concerned, it has been admitted that the petitioner has suffered a disability to the extent of 20-25 per cent as certified by Dr. A.C. Mehra in his medical report; however, it is denied that the aforesaid disability of the petitioner in any way hampers in discharge of his normal duties. On the basis of the aforesaid facts, the respondent has challenged the right of the petitioner to get the shop allotted. The petitioner has filed his rejoinder contesting the claim of the respondent and reiterating the plaint as has been averred in the writ petition.

4. I have heard both Ms. Ahmadi, the learned counsel for the petitioner as well as Mr. Marwah, the learned counsel for the respondent and have also gone through the record.

5. There is no dispute about the fact that a writ of mandamus can be issued to the State when the petitioner has a right to a particular thing. In the instant case, it can by no stretch of imagination be said that the petitioner has a right to get a shop allotted to him. It is not in dispute that the petitioner was on election duty when he had suffered an accident because of which he came to suffer certain disabilities permanently which has been opined to be to the tune of 20-25 per cent. It is also very lucky of the petitioner that on account of the aforesaid disability having been suffered by him, the petitioner had approached the Prime Minister of India for exercise of discretion in his favour for the purpose of getting a shop allotted by the DDA for the purpose so that he could earn his livelihood as he had become unfit to carry on his normal duties. This request of the petitioner was acceded to not only by the Prime Minister's officer but also by the DDA inasmuch as they chose to allot shop No.31 in the market of Chittranjan Park, New Delhi. However, it is also not in dispute that at the time when the shop was allotted to the petitioner, the cost of the shop claimed from him was to the tune of Rs.2,46,955/-. The petitioner admittedly did not deposit even a single penny till 22.10.1988, which was the due date, so as to keep his right alive. On the contrary, he started contesting the total quantum of cost payable by him in respect of the shop in question. The petitioner ought to have realized the fact that the DDA is an organization which has the complete control over the

Nazul land. There was a constant pressure of getting an allotment out of turn or otherwise from the DDA and once this was done, it was not open to the petitioner to have challenged the factum of the cost. The petitioner instead of accepting the allotment and depositing the cost started raising the objections with regard to the payment of cost of the shop in question. Since the petitioner did not deposit the cost despite sufficient time having been given to him, the respondent was constrained to cancel the allotment of the shop way back in the month of November, 1990. Once the allotment of shop is cancelled, the right of the petitioner which was in existence, ceased to be there. Therefore, after the right of the petitioner to get an allotment was cancelled, the petitioner could not be said to be having any right to get the allotment of the shop in question. During all these years, the petitioner after cancellation had been allegedly approaching the DDA for revocation of that order of cancellation. So much so, he had not even paid a single penny and was only approaching the DDA for cancellation of the allotment. Finally, in the year 2009, for the first time, that is, almost after two decades that the petitioner had deposited the cost of the flat. Certainly, the cost of the shop so demanded from the petitioner in the year 1990 could not have remained static even after expiry of more than 20 years. The petitioner had surreptitiously, after deposit of the cost, now contended that he has been able to generate the funds and deposit the amount of Rs.2,46,955/- with the respondent/DDA. Even if this amount is deposited, it is not a ground which deserves to be taken into consideration inasmuch as in case the petitioner had to pay the cost, he had to pay the interest also which has not been done and in any case, after a lapse of almost two decades, the

shop in question would not be kept waiting for being allotted to the present petitioner. Therefore, I feel that the aforesaid facts clearly show one thing that merely because a shop was offered to the petitioner by way of demand-cum-allotment letter on compassionate ground of having suffered a permanent disability does not get converted into a right to get an allotment more so when the allotment itself which had taken place in favour of the petitioner stands cancelled by the DDA. Therefore, the net result of the aforesaid facts clearly show that the petitioner is not entitled to any allotment of shop.

6. In addition to this, the respondent has also rightly raised the issue of limitation. As a matter of fact, the law of limitation would not be applicable to the facts of the case but certainly it would govern the broader aspects of various matters pertaining to the petitioner. The shop was cancelled in the year 1990 and the petition has been filed only in the year 2011, that is, almost after two decades. These two decades cannot be brushed aside as a ground for delay by simply saying that the petitioner was trying to approach the Chairman or Vice Chairman with a view to get helpful order. On this, the law of limitation is not applicable to the writ petition but it is very clear that delay and laches defeat the rights of the party and the Supreme Court in a number of cases has categorically laid down that the delay can be fatal to the case of the petitioner.

7. In the instant case, considerable delay in approaching to the court concerned is sufficient in itself to oust the petitioner from the allotment.

8. For the above mentioned reasons, I am of the considered view that the petitioner has not been able to prove that he has any right to get the allotment and secondly, the petitioner has not been able to explain as to why he filed the writ petition belatedly despite the fact that he was educated. In other words, the writ petition in question filed by the respondent deserves to be held barred by delay and laches. Accordingly, the writ petition is not maintainable and the same is dismissed.

MARCH 11, 2016
‘AA’

V.K. SHALI, J.

