

\$~

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

Judgement delivered on: 12th January, 2016

+

W.P.(C) 7068/2014

RAJINDER PAL MALIK

..... Petitioner

Represented by: Dr. Jose P. Verghese and
Mr. Jawahar Singh, Advocates.

Versus

THE VICE CHAIRMAN, DDA

..... Respondent

Represented by: Mr. Dhanesh Relan,
Standing Counsel.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J.

1. Vide the present petition; petitioner seeks directions thereby directing the Delhi Development Authority ('DDA') to hand over the possession of a piece of land within the stipulated period as the petitioner was fully covered under the Gadgil Assurance Scheme ('GAS') and consequently, DDA may be directed to allot 'B' Type Govt. land to the petitioner.

2. The case of the petitioner is that he is 76 years old, who had been migrated from Pakistan after the partition of India. He had filed a Writ Petition being CWP No.1588/1984 stating therein that he was fully covered under the GAS and since he was entitled for allotment of 'B' Type Govt. land pursuant to Khosla Award, he made an application on 26.11.1980. However, no allotment made so far.

3. Initially, respondent / DDA resisted the claim of the petitioner, nevertheless, it had agreed before this Court to consider the case of the petitioner for allotment of land under category 'B'. Accordingly, the said petition was disposed of vide order dated 18.09.2001 with a direction to DDA that it will be bound to treat the petitioner for allotment under category 'B' in consonance with the GAS contained in resolution No. 262 dated 16.10.1970 and that DDA shall make the allotment by 31.12.2001. The said order was reiterated in Review Petition No. 12657/2001, wherein this Court clarified that the petitioner shall be allotted a plot in accordance with the GAS. However, since the DDA did not comply with the order to make allotment by 31.12.2001, the petitioner filed a Contempt Petition No.62/2002 and the respondent therein, i.e., Secretary to the Government of India, Ministry of Urban Development and Poverty Alleviation filed its reply/affidavit thereby stating as under:

"It is submitted from the records it transpires that vide its order 18.09.2001 in CWP. No. 1588/1984 the Hon'ble Court had directed DDA to make allotment of land to the petitioner under category "B" in consonance with the Gadgil Assurance contained in Resolution No. 262 dated 16.10.1970 by 31.12.2001. DDA has conducted a draw to allot particular plots to the eligible persons under the Gadgil Assurance Scheme 14.05.2002. Accordingly, they have allotted Plot No. 8A/79G, WEA, Karol Bagh, New Delhi, ad-measuring 25 Sq. Yds. to the petitioner, vide their letter No. S1 (10)/71-OSB/1594 dated 15.05.2002. Copy enclosed as Annexure-II). Hence, there is no contempt of the order of the Hon'ble Court."

4. Then, DDA wrote a letter dated 15.05.2002 to the petitioner stating therein as under:

“A draw of residential plots was held on 14.05.2002 for allotment to the persons who have been eligible under Gadgil Assurance Scheme. You have been allotted plot bearing No. 8A/79G, WEA Karol Bagh, New Delhi measuring 25 Sq. Yards., in category ‘B’ under Gadgil Assurance Scheme..... the possession of plot will be handed over to you wherever feasible.....”

5. Ld. Counsel appearing on behalf of the petitioner submitted that possession of the said plot had never been handed over to the petitioner. Thus, vide the present petition, petitioner seeks directions thereby handing over the possession of plot bearing No. 8A/79G, WEA, Karol Bagh, New Delhi, measuring 25 Sq. Yds. in category ‘B’ under the GAS.

6. Ld. Counsel for the petitioner further submitted that during arguments, DDA expressed doubts about the said allotment vide order dated 15.05.2002. To the said objection, counsel for the petitioner submitted that since the order dated 15.05.2002 was produced by DDA before this Court in contempt proceedings, therefore, the DDA is bound to comply with the said order.

7. Ld. Counsel for the petitioner further submitted that allotment of plot No. 79G, Block-8A, WEA, Karol Bagh, New Delhi, which was accepted on 14.05.2002 has never been canceled. Thus, the petitioner is entitled for the same.

8. Ld. Counsel further submitted that the petitioner was also entitled to another plot, i.e., plot bearing No.8A/70G, WEA, Karol Bagh, New Delhi, which was allotted to the petitioner vide order dated

03.12.2007. The said additional allotment was made after draw of lots held on 13.08.2007 against premises bearing Old No. T5323/2, New No. T/143, Block No. 8A, Western Extension Area, New Delhi, which was demolished being unauthorized occupation. Thus, the petitioner was allotted two plots in the draw held, i.e., (i) one plot as per GAS Resolution No. 262 dated 16.10.1970 by 31.12.2001 as per this Court's orders and as per draw held on 14.05.2002 and communicated to the petitioner vide letter dated 15.05.2002; (ii) another additional plot as per draw held on 13.08.2007 and communicated to the petitioner on 03.12.2007 by DDA as a Squatters (Scheme framed by DDA in the year 2007).

9. Ld. Counsel submitted that DDA as a party in principle agreed to allot both plots mentioned above in different draws at different times. Hence, there were two offers and acceptance of terms of contract by both, which cannot be changed unilaterally by DDA.

10. Ld. Counsel further submitted that petitioner had submitted all essential documents for allotment of plot under both schemes, i.e., the Gadgil Assurance Scheme, 1970 and Squatter Scheme, which were adopted by DDA in the years 2000 and 2007 respectively.

11. Ld. Counsel submitted that this Court in ***Jagbhushan Lal Vs. Union of India 2003 (66) DRJ 378***, had laid down as to what are the essential documents under GAS Gadgil Assurance Scheme, which are required to make a person eligible for allotment. In Paras 7 and 8 of the said Judgment, this Court held as under:

“7. I am thus of the considered view that the case of the petitioner for entitlement under category 'A' should not have been rejected merely on account of fact that the voter's list of June 1951 was not produced. A reading of the scheme makes it apparent that the refugees registration certificate is the essential requirement before a person can be considered under the scheme. The person has to also make payments of damages assessed by the authorities so that his application can be considered. The documents enlisted in Para 3 of the scheme are meant to verify and confirm so that a person who is not entitled should not secure any benefit. Once the entitlement can be confirmed from some of the documents, the further requirement of production of documents of same nature to verify the same aspect cannot be treated as an essential requirement. If a person has produced ration card, electricity/water/telephone bills which date back to 1950, coupled with other letters addresses at the place of occupation, the factum of occupation of the petitioner prior to 15th August, 1950 can be verified. These are matters to be examined on the basis of the documents submitted by a person and the case should not merely be rejected because of non-production of one of the documents, which is only to examine the validity of the case of a person, when such verification can take place from the other documents produced.

8. Since, the only reason for non grant of category 'A' entitlement to the petitioner was the non production of voter's list of June 1951 while undisputedly, as admitted by learned counsel for respondent, other verifications have taken place in respect of case of the petitioner on the basis of other documents produced, I am of the considered view that the petitioner would be entitled to category 'A' entitlement.”

12. Ld. Counsel submitted that DDA cannot change the policy as such allotment of two plots by DDA amounts to promissory estoppels as held by the Coordinate Bench of this Court in the case titled as ***Sheelawanti & Ors. Vs. DDA and Anr. 57 (1995) Delhi Law Times 801 (FB)***, wherein the Full Bench of this Court held as under:

“42. The DDA is estopped from acting contrary to the promise made to the registrants under the Scheme, who acted on the said promise and the doctrine of promissory estoppels is clearly applicable to the facts on hand. We, therefore, allow this writ petition to that extent and issue a writ in the nature of Mandamus directing the DDA to adhere to its original scheme of allotting flats on hire purchase basis in accordance with the brochure issued in the year 1982.”

13. Learned Counsel submitted that DDA being the subordinate authority to the Central Government cannot change or modify the policy framed under GAS. He further submitted that DDA cannot change the contract unilaterally and has to hand over the possession of two plots as per the offer and its acceptance twice as stated above.

14. It is well settled principle of law that a person would be bound by the terms of contract subject of course to its validity. A contract in certain situations may also be avoided. With a view to make novation of a contract binding and in particular some of the terms and conditions thereof, the offeree must be made known thereabout. A party to the contract cannot at later stage, while the contract was being performed, impose terms and conditions which were not part of the offer and were based upon unilateral issuance of office orders, but not communicated

to the other party to the contract and which were not even the subject matter of a public notice.

15. The stand taken by the DDA itself is that relationship between the parties arises out of the contract. The terms and conditions were there, which were required to be complied with by both the parties. Having not done so, it relies on or on the basis of the purported office orders which were not backed by any statute, new terms of contract could not be thrust upon the other party to the contract.

16. While concluding his arguments, learned Counsel for the petitioner submitted that DDA is a subordinate authority to the Central Government, which framed Gadgil Assurance Scheme, 1970 adopted by DDA in its resolution passed in 2000. Moreover, as per the order passed by the Division Bench of this Court, directions were to treat the petitioner under GAS. The DDA neither had the powers to review the policy of the Central Government nor should disobey the orders of the Court. The petitioner is running from pillar to post, resultantly, he was harassed, humiliated and put to economic loss including time and energy especially since, December, 2001. The petitioner has been approaching authorities and this Court as well from time to time, but all in vain as the possession of the plots have not yet been handed over to the petitioner despite no delay or laches on the part of the petitioner. Initially, petitioner filed W.P.(C) No. 1588 in the year 1984, wherein this Court vide order dated 18.09.2001 directed the DDA to make the allotment to the petitioner by 31.12.2001. Despite, the DDA has not complied with that order.

17. On the other hand, respondent /DDA filed its counter-affidavit to the instant petition and amended affidavit on 08.04.2015 stating therein that the petitioner was in unauthorized occupation of premises No. 5323/2, Block 8A, WEA, Karol Bagh, New Delhi. His name was considered by the Review Committee for allotment of alternative plot under GAS. However, it was rejected as his father had already received rehabilitation benefit, which was duly conveyed to the petitioner vide letter dated 21.06.1980. The name of the petitioner was reconsidered by Review Committee in the meeting vide Minutes dated 19.06.1985. As per Minutes of Meeting, his name was recommended for the allotment of plot under Category 'B' in the nearby locality.

18. It is specifically stated in the letter issued under the signature of Director (Lands) on 22.02.2002 that this Court directed the respondent to make allotment of plot to the petitioner by 31.12.2001. The petitioner is one of the unauthorized occupants at Block 8A, WEA Karol Bagh, who was to be rehabilitated at the same site after removal of unauthorized encroachment and development and demarcation of plot. The major portion of the site has been got vacated by some of the occupants but some of them obtained stay against demolition, as a result of which development and demarcation of plot could not be carried out. The efforts were being made to get the stay vacated so as to make allotment of specific plot to the eligible occupants by draw of lots.

19. It is further stated that pursuant to order dated 25.09.2007, passed in Contempt Case Nos. 713/2006 and 723/2006, W.P.(C)

No.6033/2007, LPA No. 97/2006 and Authority Resolution Item No. 55/2007 dated 27.06.2007 regarding allotment of alternative plots in lieu of the unauthorized occupants of Government land at Block 8-A, WEA, Karol Bagh, as per draw of lots held on 13.08.2007, plot bearing No. 70G was allotted to the petitioner vide allotment letter dated 03.12.2007. Accordingly, the petitioner was asked to complete all the formalities within a period of 45 days from the date of issue of the letter failing which the matter will be closed without any further reference to the petitioner. However, the petitioner never completed the formalities and submitted incomplete documents pursuant to letter received by the respondent on 06.07.2009. Thus, there is delay in submission of requisite documents, so the possession could not be handed over to the petitioner.

20. Learned Counsel for the respondent further submitted that the petitioner filed W.P.(C) No. 4395/2013 and the same was disposed of vide order dated 15.07.2013 referring to the speaking order issued by DDA vide its letter dated 27.11.2012, wherein the petitioner was directed to file all the required documents/affidavit etc. in Old Scheme Branch within 30 days of the issue of the order to obtain the possession of the said plot, failing which the action will be initiated for cancellation of allotment as per the policy of DDA without any further reference. As per the aforesaid speaking order, last and final opportunity was given to the petitioner to submit all the requisite documents and affidavit etc. Besides, non-delivery of order, petitioner has submitted required documents and affidavit. Moreover, in the

amended counter-affidavit filed by the respondent/DDA it is specifically stated that the file was sent to COD (Coordination Officer, Damages) for damage clearance, but the record is not traceable in COD Branch.

21. Learned Counsel further submitted that though the stand of the petitioner is that he had submitted all the requisite documents, however the documents alleged to have been filed by the petitioner in December, 2012, had not been annexed with the petition, yet this Court directed the respondent/DDA to reply the petitioner's legal notice dated 24.06.2013 within a period of four weeks.

22. Also directed that if the DDA is satisfied with the documents alleged to have been furnished by the petitioner, it may hand over the possession of the plot to him.

23. While concluding his arguments, learned Counsel for the respondent/DDA submitted that petitioner failed to submit the required documents, therefore, his case could not be considered and possession of the plot in question could not be given to him. The petitioner cannot be benefitted for his wrong doing. Hence, the present petition is liable to be dismissed.

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

25. Admittedly, the petitioner filed a Writ Petition being CWP No. 1588/1984, wherein DDA agreed before this Court to consider the case of the petitioner for allotment of land under category 'B'.

Accordingly, the said petition was disposed of vide order dated 18.09.2001 with a direction to the DDA to treat the petitioner for allotment under category 'B' in consonance with the Gadgil Assurance Scheme, which was adopted in the year 1972 and that DDA was to make allotment by 31.12.2001.

26. The said order was reiterated in Review Petition No. 12657/2001, wherein this Court clarified that the petitioner shall be allotted a plot in accordance with the GAS. However, since the DDA did not comply with the order to make allotment by 31.12.2001, the petitioner filed a Contempt Petition No. 62/2002 and the respondent therein, i.e., Secretary to the Government of India, Ministry of Urban Development and Poverty Alleviation filed its reply/affidavit thereby stated that pursuant to order dated 18.09.2001 passed in WP (C) No. 1588/1984, the DDA conducted a draw on 14.05.2002 to allot particular plots to the eligible persons under the GAS. Accordingly, the petitioner was allotted Plot No. 8A/79G, WEA, Karol Bagh, New Delhi, ad-measuring 25 Sq. Yds. vide letter dated 15.05.2002. Thus, the above noted contempt petition was disposed of.

27. It is pertinent to note here that DDA stated in the above noted letter dated 15.05.2002 to the petitioner that he had been allotted aforementioned Plot bearing No. 8A/79G, in category 'B' under GAS and the possession of plot will be handed over to the petitioner whenever feasible. However, the possession of the said plot has never been handed over to the petitioner. Moreover, the DDA did not send any letter to the petitioner for cancellation of the same. Thus, the present

petition.

28. As argued by learned counsel for the petitioner that the DDA has mixed the claim of the petitioner with Plot No.8A/70G, WEA, Karol Bagh, New Delhi, allotted under the Rehabilitation Scheme, which the petitioner received against Premises No.5323/2, Block 8A, WEA, Karol Bagh, New Delhi, wherein the petitioner was in unauthorized occupation. However, the petitioner has not received any possession of plot No.8A/79G till date under the GAS as was allotted by DDA to the petitioner vide letter dated 15.05.2002. It is pertinent to mention here that Plot No.8A/70G was given to the petitioner as per the draw held on 13.08.2007 and communicated to the petitioner on 03.12.2007 by DDA as a Squatters (Scheme framed by DDA in the year 2007). The petitioner had submitted all the essential documents for allotment under both the schemes mentioned above, despite that DDA is repeatedly asking the petitioner to submit the documents. In this way, DDA had compelled the petitioner to file the petition as noted above before this Court and thereafter the contempt petition, despite that, the DDA failed to give possession of the plot to the petitioner.

29. So far as the submission of DDA that the petitioner was asked to submit the requisite documents, which he failed to do, therefore, possession of the plot could not be given to the petitioner and the same stands automatically cancelled. However, the DDA failed to produce any cancellation letter to this effect.

30. In view of the above discussion, I am of the considered opinion that after the aforesaid two schemes were introduced by the DDA, the petitioner was eligible for allotment of the plots in both the schemes, i.e., plot No. 8A/79G, WEA, Karol Bagh, New Delhi, ad-measuring 25 Sq. Yds. as per GAS and as directed by this Court vide order dated 18.09.2001 passed in CWP. No. 1588/1984 and another plot bearing No.8A/70G, WEA, Karol Bagh, New Delhi, as per draw held on 13.08.2007 and communicated to the petitioner on 03.12.2007 by DDA as a Squatters (Scheme framed by DDA in the year 2007). Though, the petitioner has been waiting for the plots for several years yet the respondent/DDA is contending that the possession of the plots in question could not be given to the petitioner as he failed to submit the required documents. However, DDA did not send any letter to the petitioner for cancellation of the same. Thus, the result is that the petitioner is being denied the right to own his plots and suffered consequences. In the circumstances, the respondent/DDA is clearly estopped from acting contrary to the promise made and the doctrine of promissory estoppel is clearly applicable to the facts of the present case.

31. For the reasons recorded above, the DDA is directed to take steps to hand over the possession of the abovementioned plots to the petitioner within two months from the date of receipt of this order without asking further documentation from him in this respect.

32. In view of the above, the present petition is allowed.

33. No order as to costs.

**SURESH KAIT
(JUDGE)**

JANUARY 12, 2016

jj/sb