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

+ W.P.(C) 815/2015

SHASHI BALA PATHAK Petitioner
Through: Mr. R.K. Saini, Advocate.

versus

DELHI DEVELOPMENT AUTHORITY Respondent
Through: Mr. Dhanesh Relan with Ms. Akshita
Manocha, Advocates.

WITH

+ W.P.(C) 817/2015

SUBHASH CHAND DHIGAN Petitioner
Through: Mr. R.K. Saini, Advocate.

versus

DELHI DEVELOPMENT AUTHORITY Respondent
Through: Mr. Dhanesh Relan with Ms. Akshita
Manocha, Advocates.

WITH

+ W.P.(C) 4698/2015 & CM APPL. 8502/2015

SUSHMA LAKRA @ SUSHMA SYLDIAC BARA Petitioner
Through: Ms. Maninder Acharya, Senior
Advocate with Mr. Lokesh Kumar
Sharma and Mr. Yashaswi S.K.
Choubey, Advocates.

versus

DELHI DEVELOPMENT AUTHORITY Respondent
Through: Mr. Dhanesh Relan with Ms. Akshita
Manocha, Advocates.

WITH

+ W.P.(C) 5824/2015 & CM APPL. 10508/2015

NIRMALA Petitioner
Through: Ms. Maninder Acharya, Senior
Advocate with Mr. Lokesh Kumar
Sharma and Mr. Yashaswi S.K.
Choubey, Advocates.

versus

DELHI DEVELOPMENT AUTHORITY Respondent
Through: Mr. Dhanesh Relan with Ms. Akshita
Manocha, Advocates.

WITH

+ W.P.(C) 7361/2015 & CM APPL. 13545/2015

GANDETI KRISHNA RAO Petitioner
Through: Mr. R.K. Saini, Advocate.

versus

DELHI DEVELOPMENT AUTHORITY Respondent
Through: Mr. Dhanesh Relan with Ms. Akshita
Manocha, Advocates.

WITH

+ W.P.(C) 8146/2015 & CM APPL. 16949/2015

SURESH KUMAR Petitioner
Through: Mr. R.K. Saini, Advocate.

versus

DELHI DEVELOPMENT AUTHORITY Respondent
Through: Mr. Dhanesh Relan with Ms. Akshita
Manocha, Advocates.

AND

+ W.P.(C) 8148/2015 & CM APPL. 16958/2015

RAJINDER PRASAD Petitioner
Through: R.K. Saini, Advocate.

versus

DELHI DEVELOPMENT AUTHORITY Respondent
Through: Mr. Dhanesh Relan with Ms. Akshita
Manocha, Advocates.

% Date of Decision : 08th December, 2016

CORAM:
HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J:

1. Petitioners, who are allottees under the Expandable Housing Scheme, 1996 (hereinafter referred to as “Scheme, 1996”) challenge non-issuance of

fresh Demand-cum-Allotment Letters. In fact, the petitioners seek Demand-cum-Allotment letters at the same rate/cost, as issued in 2014-15 to the other allottees of the Scheme, 1996.

2. The relevant facts of the present cases are that in 1996, the petitioners had applied for allotment of flats under the Scheme, 1996.

3. On 31st March, 1997, draw of lots was held and the petitioners were allotted flats. In 1998, Demand-cum-Allotment letters were issued to the petitioners. However, some of the petitioners challenged the demands raised in the said letters.

4. A Coordinate Bench of this Court in ***Raj Kumar Vs. Delhi Development Authority, CWP 2142/1999*** decided on 27th November, 2003 repelled the challenge to the upward revision in the disposal cost, but directed the petitioners to choose an option between payment of consideration for the allotted flat at the current cost within forty-five days from the date of the judgment or to make payment of the original cost with interest @12% p.a. on the 50% of the amount from the date of allotment and balance 50% of the amount from the date when the amenities became available.

5. From the respondent-DDA's file noting dated 24th March, 2005, it is apparent that it took a decision not only to waive off the limitation of forty-five days for exercise of option for payment at current cost, but also decided to consider the cases of even those allottees who had exercised the option for payment of current cost beyond forty-five days. In the note, it was also stated that as the current cost was working out to be less than the old cost

plus interest, a decision was required on the issue as to whether all the allottees irrespective of the factum of having exercised option for payment at current cost, could be charged the current rates.

6. However, no decision in this regard was taken by the respondent-authorities on the ground that a similar matter was pending consideration before the higher authorities.

7. It is the case of the petitioners that on coming to know about the issuance of the allotment letters to similarly situated allottees as late as 2014 and 2015, they filed representations calling upon DDA to issue demand letters.

8. Since the respondent-DDA failed to redress the grievance of the petitioners, the present petitions were filed.

9. Ms. Maninder Acharya learned senior counsel for petitioners states that in accordance with the judgment in ***Raj Kumar Vs. Delhi Development Authority*** (supra), respondent-DDA was required to issue fresh demands after calculating interest in the manner provided in the judgment and the interest was to be calculated till the date of issuance of the fresh demand letters. She refers to the respondent-DDA's counter affidavit in extenso to contend that respondent-DDA had admitted that it had failed to issue Demand-cum-Allotment letters in accordance with the judgment in ***Raj Kumar Vs. Delhi Development Authority*** (supra).

10. Ms. Acharya, also contends that no period of limitation is provided in the event of payment of current cost along with interest.

11. Ms. Acharya points out that in the cases of similarly situated allottees under the Scheme, 1996, like ***Shri K.K. Swajana Mitran*** and ***Smt. Leela***, respondent-DDA had issued fresh allotment-cum-demand letters in respect of Expandable Housing Scheme flats on old cost along with interest, as late as 27th August, 2014 and 7th May, 2015.

12. On the other hand, Mr. Dhanesh Relan, learned counsel for respondents contends that the present writ petitions are barred by delay and laches. He states that though the cause of action for filing the present writ petitions had arisen in the year 2003, the petitioners had approached the DDA only in 2015 for allotment of flats.

13. Mr. Relan, states that the petitioners have failed to bring on record any cogent reason and/or circumstance to justify the delay of more than a decade and thus, according to him, petitioners are no more than 'fence-sitters'.

14. Mr. Relan further states that the reliance of the petitioners on ***Shri K.K. Swajana Mitran*** and ***Smt. Leela***'s cases is entirely misplaced as they were not mere fence-sitters like the petitioners but vigilant allottees who had taken active steps through various communications to pursue their allotments. He states that if fence-sitters are given the same benefit as given to vigilant allottees, respondent-DDA would not be able to close any of its scheme.

15. Mr. Relan submits that the petitioners cannot be allowed to take advantage of their own delay and inaction. He emphatically contends that if the present writ petitions are entertained, it would open flood gates of

litigation. He, in support of his submissions, relies upon the following judgments:-

a) ***Banda Development Authority, Banda Vs. Moti Lal Agarwal & Ors., (2011) 5 SCC 394*** wherein it has been held as under:-

“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/crystallised 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.”

b) ***State of Uttar Pradesh & Ors. Vs. Arvind Kumar Srivastava & Ors., Civil Appeal 9849/2014*** decided on **17th October, 2014** wherein it has been held as under:-

“23) The legal principles which emerge from the reading of the aforesaid judgments, cited both by the appellants as well as the respondents, can be summed up as under:

(1) Normal rule is that when a particular set of employees is given relief by the Court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.

(2) However, this principle is subject to well recognized exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the Court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.”

16. In rejoinder, Ms. Acharya states that the present cases are admitted cases of default on the part of the respondent-DDA and the said admission is on affidavit.

17. Learned senior counsel for petitioners contends that the demand letters which the respondent-DDA was obliged to issue in terms of the judgment in ***Raj Kumar vs. Delhi Development Authority*** (supra) had to be calculated, keeping in view the date on which the amenities in the flats had been made available by respondent-DDA. She refers to the judgments in ***Madan Lal Nayak & Ors. Vs. Delhi Development Authority, W.P.(C) 3257/2007*** decided on ***19th March, 2008 (Madan Lal Nayak I)*** and ***Madan Lal Nayak Vs. DDA, W.P.(C) 8983/2008*** decided on ***21st May, 2010 (Madan Lal Nayak II)*** by the learned Single Judges of this Court to contend that the amenities in the flats were not available at least till 21st May, 2010.

18. Having heard learned counsel for parties, this Court is of the view that the admitted position is that in pursuance and in accordance with ***Raj Kumar Vs. Delhi Development Authority*** (supra), it was the respondent-DDA

which had to issue Demand-cum-Allotment letters—which it has failed to issue till date.

19. In the counter affidavit, it is stated that as a similar matter was pending consideration before the competent authority, the petitioners were not issued demand-cum-allotment letters. It is further stated that in a few similar cases where Demand-cum-Allotment letters were issued, the same were challenged by way of writ petitions and this Court in ***Madan Lal Nayak I & II*** (supra) directed the DDA to make calculations and issue Demand-cum-Allotment letters to the petitioners therein within thirty days.

20. In the counter affidavits filed by DDA, it has also been admitted that it has as recently as 2014 and 2015 issued Demand-cum-Allotment letters as well as conveyance deeds and handed over possession to similar allottees.

21. The relevant admissions in the counter affidavit of the DDA are reproduced hereinbelow:-

(vi) Petitioner did not opt for current cost, however, the DDA had to issue demand letter as per court order, i.e., petitioner shall pay interest @12% p.a. on 50% of the amount from the date of allotment cum demand and at 100% of the amount from the date the amenities were made available.

*(vii) It is pertinent to mention here that the demand cum allotment letters issued in few similar cases were further challenged before this Hon'ble Court vide case titled **Madan Lal Nayak Vs. DDA, W.P.(C) 3257/2007** wherein it was ordered by this Hon'ble Court that DDA will make calculations and issue demand-cum-allotment letter to the petitioners on the basis of calculation sheet shown in the court today within 30 days, the petitioner will be liable to pay interest @12% till the date when the demand-cum-allotment*

letter is issued and payment will be made in terms of the payment scheduled in the demand-cum-allotment letter.

(vii) Till date, petitioner was not issued any fresh demand-cum-allotment letter as per record. However, it is submitted that the record reveals the approval of VC/PC, DDA for allotment on current cost. Later on the then Director (Housing) – II opined that, A similar matter is under consideration for decision of the competent authority regarding the cost to be charged. It was further directed to put up the matter accordingly thereafter.

(viii) The case remained pending and could not be put up. The petitioner has moved to this Hon'ble Court and filed the instant writ petition praying therein to issue writ of mandamus directing DDA to issue fresh demand letter on the same basis and at the same rate/cost, as issued to the other allottees of Expandable Housing Scheme, 1996.

(ix) Here it is pertinent to mention that the department has issued DAL, handed over possession letter and even executed Conveyance Deed in similar cases to the allottees who were party to court cases. The recent cases wherein the Department has approved allotment on the same basis are as under:-

WPC No.	Name of petitioners/allotees
2094/2011	Mahendri Devi
1189/2011	Ram Narain Yadav
6307/2011	Pitamber Pandey
3287/2011	Rajesh Sharma
3302/2011	Harsharan Kaur
5160/2011	Harsharan Kaur
5160/2011	Ramesh Kumar
5283/2011	Raj Kumar Sharma
5284/2011	Surender Kumar Sethi
6306/2011	Navin Kumar
6715/2011	Vimala Devi

(emphasis supplied)

22. In fact, in response to the additional affidavit filed by the petitioners, it has been admitted by DDA that in the case of **Smt. Leela**, a Demand-cum-Allotment letter with block date of 07th May, 2015 was issued after taking approval from the competent authority. The relevant portion of the respondent-DDA's additional affidavit is reproduced hereinbelow:-

“Contents of para 3-5 of the additional affidavit are denied as being false and fabricated. It is most humbly submitted before this Hon’ble Court that an earlier writ was filed bearing no. 526/1999 by one, Smt Leela, which was decided on 12.12.2003, in view of the decision in writ petition number 2142-2143/1999. Smt. Leela has approached DDA in the year 2011. Smt. Leela was issued a DAL with block date of 7.05.2015 after the genuineness verification and approval from the competent authority.”

(emphasis supplied)

23. Undoubtedly delay and laches is one of the facets to deny exercise of discretion while dealing with a writ petition. It has been held in cases that if a writ petition is filed beyond the period of limitation prescribed for filing a civil suit for similar cause, the Court should treat the delay as unreasonable and decline to entertain the petition. However, delay and laches is not an absolute impediment. There can be mitigating factors, like continuity of cause of action as pleaded by the petitioners or if the whole thing shocks the judicial conscience. Consequently, the doctrine of delay and laches is not a constitutional limitation on exercise of writ jurisdiction.

24. In fact, this Court while sitting in Division Bench in **Jaipur Golden Gas Victims Association Vs. UOI & Ors., (2009) 164 DLT 346** has held that the test to be applied is whether laches on the part of the petitioner is

such as to hold that the petitioner by its act and conduct has given a go-by to his rights.

25. Further, this Court in a batch of writ petitions reported as ***Pooja Khemka vs. Delhi Development Authority, 2015 SCC OnLine Del 12399*** has held as under:-

*“25. The Supreme Court in **Tukaram Kana Joshi and Others Vs. Maharashtra Industrial Development Corporation and Others, (2013) 1 SCC 353** has held as under:-*

“13. The question of condonation of delay is one of discretion and has to be decided on the basis of the facts of the case at hand, as the same vary from case to case. It will depend upon what the breach of fundamental right and the remedy claimed are and when and how the delay arose. It is not that there is any period of limitation for the courts to exercise their powers under Article 226, nor is it that there can never be a case where the courts cannot interfere in a matter, after the passage of a certain length of time. There may be a case where the demand for justice is so compelling, that the High Court would be inclined to interfere in spite of delay. Ultimately, it would be a matter within the discretion of the Court and such discretion, must be exercised fairly and justly so as to promote justice and not to defeat it. The validity of the party's defence must be tried upon principles substantially equitable. (Vide P.S. Sadasivaswamy v. State of T.N., State of M.P. v. Nandlal Jaiswal and Tridip Kumar Dingal v. State of W.B.)

14. No hard-and-fast rule can be laid down as to when the High Court should refuse to exercise its jurisdiction in favour of a party who moves it after considerable delay and is otherwise guilty of laches. Discretion must be exercised judiciously and reasonably. In the event that the claim made by the applicant is legally sustainable, delay should be condoned. In other words, where circumstances justifying the conduct exist, the illegality which is manifest, cannot be sustained on the sole ground of laches. When substantial justice and technical considerations are pitted against each other, the cause of substantial justice

deserves to be preferred, for the other side cannot claim to have a vested right in the injustice being done, because of a non-deliberate delay. The court should not harm innocent parties if their rights have in fact emerged by delay on the part of the petitioners. (Vide Durga Prashad v. Chief Controller of Imports and Exports, Collector, Dehri Rohtas Light Railway Co. Ltd. v. District Board, Bhojpur, Dayal Singh v. Union of India and Shankara Coop. Housing Society Ltd. v. M. Prabhakar)

26. *Consequently, this Court is of the opinion that in the alternative if present writ petitions are assumed to have been filed at belated stage and are not entertained, it would lead to iniquitous and absurd result as well as cause confusion, inconvenience and bring in injustice inasmuch as owners of adjoining similar properties who had purchased similar plots in the same auction would pay 'X' as unearned increase, whereas petitioners being neighbours of the said properties would pay '4X' as unearned increase.*

27. *Moreover, respondent-DDA in the present case has not been prejudiced due to any alleged delay in filing the present writ petitions. In fact, this Court while deciding the issue in the initial writ petitions has held that respondent-DDA shall be entitled to claim interest on the fresh demands of unearned increase."*

26. Keeping in view the aforesaid mandate of law and the facts of the present cases, this Court is of the opinion that the respondent-DDA having admitted that it was obliged to issue the demand letter and having failed to do so on account of the fact that the cases remained pending with the competent authority, a statutory authority like DDA cannot be permitted to defeat the rights of the allottees by taking recourse to the objection of delay. In fact, the respondent-DDA by taking recourse to the objection of delay is trying to place premium on its own wrong—which is not permitted in law.

27. In any event, the availability of amenities is linked to the raising of demand by DDA. Since the respondent-DDA alone is privy to the fact as to when the amenities were made available, the demands in accordance with the judgment in ***Raj Kumar Vs. Delhi Development Authority*** (supra) could have been raised by the respondent-DDA alone.

28. It is pertinent to mention that at no stage have the allotments in favour of the petitioners been cancelled. Accordingly, the said allotments are subsisting as of today.

29. In fact, if the petitioners had approached this Court earlier by way of writ petitions, the respondent-DDA would have stated that it was not in a position to issue demand letters as cases of other allottees were pending consideration.

30. Consequently, this Court is of the view that in the present batch of matters it is only the inaction on the part of the respondent-DDA in not issuing fresh Demand-cum-Allotment letters on the petitioners, as were issued on 27th August, 2014 and 07th May, 2015 to ***Shri K.K. Swajana Mitran*** and ***Smt. Leela*** that a cause of action accrued to the petitioners to file the present writ petitions. Accordingly, present writ petitions are not barred by delay and laches.

31. In similar facts where the delay in allotment of flats had occurred on account of inaction of DDA, a Coordinate Bench of this Court in ***Anurag Sahai Vs. D.D.A., 2012 SCC OnLine Del 5839*** held that the judgment in ***Banda Development*** (supra) would not be applicable

32. Also, the respondent-DDA being an instrumentality of the State is required to act fairly and justly and to treat similarly placed persons equally.

It was the duty of the respondent-DDA to raise revised demands upon the petitioners after earlier demands had been quashed by this Court. After all, it is settled proposition of law that there can be no disparity between the same set of persons in identical circumstances.

33. A Division Bench of this Court in ***Naresh Kumar and Ors. Vs. Union of India and Ors., W.P.(C) 7393/2011***, decided on **10th October, 2011** has held that if a general issue of law affecting large number of persons is decided by a Court, it is expected that the officials apply themselves properly and do not foist litigation on others. The relevant portion of the said order is reproduced hereinbelow:-

“8. If a general issue of law affecting large number of persons is decided by a Court and a specific reference is made that the department should consider extending the principle of law declared across the board to all so that others are not forced in litigation, it is expected that the bureaucrat applies himself properly and does not foist litigation on the others.

9. The note extracted herein above says that the Ministry of Finance has agreed to extend the implementation of the Court judgment to only those applicants who approach the Court and not the others.

10. The decision creates an artificial distinction not recognized by law for the reason it would be arbitrary to say that law means A for those who go to the Court, and it means B for those who do not.

11. While disposing of the writ petition and directing the respondents to treat the mandamus issued vide order dated 9.10.2009 passed in WP(C) No.12258/2009 as the mandamus issued in the instant writ petition, we censure Sh.Pritam Lal, Under Secretary, (Pr-V), Government of India, Ministry of Home Affairs.....”

34. Consequently, as the petitioners are identically placed to *Shri K.K. Swajana Mitran* and *Smt. Leela*, present writ petitions are allowed. Respondent-DDA is directed to raise fresh demands on the petitioners. It is clarified that respondent-DDA shall be entitled to claim interest from the date of original demand till payment by the petitioners in accordance with the judgment of this Court in *Raj Kumar Vs. Delhi Development Authority* (supra) as well as *Madan Lal Nayak & Ors. Vs. Delhi Development Authority, W.P.(C) 3257/2007* decided on *19th March, 2008* (*Madan Lal Nayak I*). With the aforesaid directions, present batch of writ petitions stands disposed of.

MANMOHAN, J

DECEMBER 08, 2016

js/rn