

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

% *Judgment Reserved on: January 27, 2017*
Judgment Delivered on: February 15, 2017

+ **RSA 60/2014**

SHRI HARI PRAKASH Appellant
Through: Mr.Arbind Kumar Garg, Advocate
versus

DELHI DEVELOPMENT AUTHORITY Respondent
Through: Mr.Rajiv Bansal, Mr.Shlok Chandra,
Mr.Anurag Tripathi & Ms.Uma
Lohray, Advocates

CORAM:
HON'BLE MS. JUSTICE PRATIBHA RANI

JUDGMENT

RSA 60/2014

1. This Regular Second Appeal under Section 100 of Code of Civil Procedure has been filed by the appellant/plaintiff assailing the judgment dated 21st September, 2013 passed in RCA No.7/13/13 whereby the First Appellate Court allowed the appeal preferred by respondent/defendant - DDA and set aside the judgment dated 21st November, 2012 passed by learned Trial Court in Suit No.111/2007 vide which suit of the appellant/plaintiff was partly decreed.
2. The facts as pleaded by the appellant/plaintiff in Civil Suit No.111/2007 are as under:-

(i) After acquisition of 13 bigha and 19 biswas land, which was in the name of Sh.Udai Singh, situated in Village Bhor Garh, Narela by the Central Government vide award No.5/79-80 and 19/78-79, his grandfather late Sh.Udai Singh applied for allotment of an alternative plot and also deposited ₹5000/- on 18th January, 1993 vide challan No.493363.

(ii) Initially Plot No.2, Pocket-VIII, Sector-B4, Narela, Delhi measuring 334 sq.mtrs. was allotted but due to non-availability of the plot in the said size, alternative plot bearing No.4, Pocket-XI, Sector B-4, Narela was allotted vide recommendation letter dated 13th September, 1988.

(iii) Before lease/mutation of the said plot could be done, Sh.Uday Singh expired.

(iv) All the legal heirs of late Sh.Udai Singh relinquished their respective share in favour of the appellant/plaintiff vide relinquishment deed dated 23rd December, 2005,

(v) The appellant/plaintiff applied for mutation of the said property in the year 2006 in terms of letter dated 13th September, 1988. When he visited the office of DDA on 15th January, 2007, he was informed about the cancellation of the said plot.

3. The suit was contested by the respondent/defendant - DDA taking the following pleas:-

(i) The first two allotments were made on 18th March, 1993 and then on 31st December, 1999.

(ii) As the allotment letter was received with the report that the addressee has expired, communication was sent to the legal heirs of late Sh.Udai Singh.

(iii) No intimation of death of Sh.Udai Singh was ever given by legal heirs of late Sh.Udai Singh.

(iv) The third allotment was made vide demand-cum-allotment letter dated 26th June, 2003 addressed to the legal heirs of late Sh.Udai Singh.

(v) Show cause notice was also sent on 29th March, 2004. On not getting any response or reply from the legal heirs of late Sh.Udai Singh, allotment was cancelled vide letter dated 21st June, 2004.

(vi) As per Government policy, only three chances could have been given for allotment of alternative plot which have been availed by the appellant/plaintiff.

(vii) The appellant/plaintiff has no right for allotment dehors the scheme for allotment.

4. On the basis of pleadings of the parties, the learned Trial Court settled the following issues in this case on 18th November, 2008:-

‘(i) Whether the plaintiff is entitled to the decree for declaration as prayed for? OPP.

(ii) Whether the plaintiff is entitled to mandatory injunction as prayed for? OPP.

(iii) Whether the plaintiff is entitled to decree for permanent injunction as prayed for? OPP.

(iv) Whether the defendant has served any show cause notice to plaintiff for cancelling his plot? OPD.

(v) Whether the suit of plaintiff is barred for mandatory notice under Section 53-B of the DDA Act OPD.

(vi) Whether the plaintiff has locus-standi for filing the present suit? OPD.

(vii) Relief.’

5. Vide judgment dated 21st November, 2012 the learned Trial Court held that the appellant/plaintiff denied having received any show cause notice. DDA had failed to prove that the show cause notices have been sent before cancellation. Thus, any action taken pursuant to the show cause notices which were never delivered to the allottee, even if assumed to have been issued, must be held to be bad. The suit was partly decreed granting the following relief:-

'Issue No.7 : Relief

In view of the aforesaid discussion, suit of the plaintiff is partly decreed. Plaintiff is entitled to declaration that cancellation of allotment of alternative plot bearing No.4, Pocket-11, Sector B-4, Narela, Delhi is null and void. Plaintiff is further entitled to permanent injunction restraining defendant, agents, successors etc. from alienating or creating third party interest in the suit property till the previous allotment survives. Plaintiff is not entitled to declaration that he is entitled to the suit property. Plaintiff is further not entitled to mandatory injunction directing defendant to transfer the allotment of suit property in his name. In view of the facts of the case, parties to bear their own costs. Decree sheet be prepared accordingly. File be consigned to record room.'

6. The First Appellate Court reversed the finding of the learned Trial Court observing as under:-

'8. To see as to whether the suit of the respondent/plaintiff could have been partly decreed or not, a look has to be made to the findings of the trial Court on issue No.4, the findings of which have been relied upon for the findings on issue No.1. The findings on issue No.1 are also based on findings on issue No.2. Thus, the findings on issue No.4 are firstly looked into.

If the findings of the trial Court are perused, it is noticed that it has taken the view with regard to Ex.DW1/10 that it might be possible that the same might have been received by some other member of his family. Thus, it held that it cannot be

ruled out that show cause notice was issued and was indeed served. Though the trial Court has made reference to Ex.DW1/10, but if a look is made to the cross-examination of Shri Hari Singh, respondent/plaintiff, PW-1, it is not Ex.DW1/10 but it is Ex.PW1/10 to which, he has stated that it might have been received by the elder member of his family. To quote from his testimony:

“Ex.PW.1/10 might be received by my elder member of the family.”

Ex.PW1/10 is a letter of dated 18.1.1993 allotting alternative plot i.e. plot No.4, Pocket-XI, Sector-B4, Narela, Delhi. It has also come in his cross-examination that he did not inform the appellant/DDA regarding the death of his grandfather Sh.Udai Singh, the original allottee. He has further stated that he was not aware as to whether any member of his family informed the appellant/DDA regarding the death of the grandfather. When the respondent/plaintiff had relied upon document Ex.PW1/10 and has admitted that it might have been received by elder member of his family, the fact remains that the appellant/DDA was informing the allottee in respect of allotment of the alternative plot from time to time. Even if appellant/DDA has not placed on record any postal receipt or acknowledgment card, the fact that letter Ex.DW1/10 which is the show cause notice has been sent at the same address which was on Ex.PW1/10, to which the respondent/plaintiff admitted that it might have been received by some of his family members, it cannot be said that the respondent/plaintiff has not been informed before cancellation of alternative plot.

9. *Not only this, respondent/plaintiff failed to intimate the death of his grandfather to appellant/DDA as it has come in his cross-examination. Therefore, the findings recorded by the Trial Court on this issue cannot be said to be as per record. Therefore, this issue is decided against the respondent/plaintiff and in favour of the appellant/DDA.*

10. *Coming to the findings on issue No.1 and 2, since the trial has based its findings on issue No.4 for partly decreeing*

the suit in favour of the respondent/plaintiff and against the appellant/DDA, the findings on issue No.4 having gone against the respondent/plaintiff, partly decreeing the suit under this issue in favour of the respondent/plaintiff and against appellant/DDA also goes. The fact that findings on issue No.1, 2 and 4 have gone against respondent/plaintiff, his suit could not have been partly decreed by the trial Court.

11. In view of the above, I am of the opinion that the judgment passed by the Trial Court is erroneous and suffers from legal infirmity. Therefore, the appeal is allowed. The judgment and decree of dated 21.11.2012 passed by the Trial Court is hereby set aside. TCR be sent back with a copy of the order. Appeal file be consigned to Record Room.

Before parting with, it would not be out of place to mention that the respondent/plaintiff had asserted his right to the suit property as one of the LRs, though the respondent/plaintiff does not succeed in the appeal, however, the fact that he is one of the LRs, the appellant/DDA before allotting plot No.4, Pocket-XI, Sector-B4, Narela, Delhi to any third party may consider the claim of the LRs of Sh.Udai Singh, who was the original allottee of alternative plot.'

7. I have heard Mr.Arbind Kumar Garg, Advocate for the appellant as well as Mr.Rajiv Bansal, Advocate for the respondent.

(i) Mr.Arbind Kumar Garg, learned counsel for the appellant has questioned the legality of the judgment of the First Appellate Court contending that the First Appellate Court had drawn the presumption of service of allotment letters/show cause notice only on the ground that all the communications bear the same address despite the fact that DDA has not filed postal receipt, AD Cards or dispatch details of show cause notice. It has been further contended that no show cause notice was ever sent to Mr.Udai Singh before allotment in his favour was cancelled. It has also been argued that if the DDA made the allotment in the name of legal heirs of late Sh.Udai

Singh then show cause notice was also required to be served on the legal heirs only. It has been vehemently argued by the learned counsel for the appellant that any show cause notice or communication about cancellation of the plot addressed to a dead person cannot have a binding effect upon his legal heirs especially when there is no proof of service of show cause notice exhibit DW-1/7 before the allotment was cancelled for the third time. Highlighting that DDA has not placed on record any proof of dispatch and service, the impugned judgment by the First Appellate Court which is passed basically on drawing the presumption about service of allotment and cancellation notices being perverse need to be reversed in second appeal. In support of his submissions, learned counsel for the appellant has relied upon Sona Devi Vs. DDA, 2001 (60) DRJ 244, Karmvir Singh Vs. DDA, 148 (2008) DLT, 2008 and Sunder Singh Gahlawat & Anr. Vs. DDA, 115 (2004) DLT 127.

8. Mr.Arbind Kumar Garg, Advocate for the appellant has submitted that the appellant is ready to pay even prevailing market rate for the allotment of plot and this was recorded in the proceedings dated 4th March, 2015 and 21st April, 2015. DDA has also given the prevailing market price for the said land. The appellant is ready to pay the market price but DDA is not accepting the same.

9. On behalf of the respondent, Mr.Rajiv Bansal, Advocate has submitted that the allotment of alternative plot can be made only under the policy. As per the policy prevailing at the relevant time, three chances could be availed to have an alternative plot which is now reduced to two only. Learned counsel for the DDA has referred to the communications which proved that three chances were duly given to the allottee and his legal heirs but they failed to take any step. Once the legal heirs of late Sh.Udai Singh failed to

avail the three chances provided to them, now they cannot be given any plot even at the prevailing market rate. It being not a matter of right, only under the scheme this benefit could be extended. The legal heirs of late Sh.Udai Singh failed to avail the three chances provided under the scheme.

10. In respect of service of allotment letters and show cause notices, learned counsel for the respondent has drawn the attention of this Court to the admission made by PW-1, Hari Prakash (appellant himself) that communications must have been received by the family members. Thus, it was not necessary to prove on record postal receipt and A.D.Card when receipt of allotment letters and other communications. It has been contended that the death of allottee late Sh.Udai Singh came to the notice of DDA only on the basis of communication sent to him that returned with the endorsement that the addressee had expired. Till the year 2006, his legal heirs neither intimated DDA about the death of Sh.Udai Singh nor made any request for their substitution. On failure of the legal heirs to avail the opportunities to get an alternative plot, there is no possibility of now extending this benefit to the appellant under the policy of DDA. Learned counsel for the respondent/DDA has relied upon the following judgments in support of his submission:-

- (i) Ramanand Vs. Union of India & Others, AIR 1994 DELHI 29;
- (ii) New Makrana Marble Traders & Ors. Vs. Union of India & Ors., 105 (2003) DELHI LAW TIMES 412;
- (iii) Suresh & Anr. Vs. UOI & ANR., ILR (2008) I DELHI 1346;
- (iv) Nasiruddin & Ors. Vs. MCD & Ors., W.P.(C) 7239/2011 decided on 29th September, 2011;
- (v) Ramwati Vs. Govt. of NCT of Delhi, LPA Nos.227 and 228/2014 decided on 11th August, 2014.

11. The following substantial question of law was formulated on 27th January, 2017:-

‘Whether the findings of the First Appellate Court are contrary to the evidence led by the appellant/plaintiff before learned Trial Court and suffer from perversity?’

12. I have considered the rival contentions and also carefully gone through the communications exchanged in respect of allotment of alternative plot to Sh.Udai Singh and his legal heirs.

13. The appellant before this Court is grandson of late Sh.Udai Singh whose land measuring 13 bighas and 19 biswas situated in Village Bhore Garh, Narela was acquired by the Central Government vide award No.5/79-80 and 19/78-79. As per the policy of the Government, late Sh.Udai Singh was eligible to get an alternative plot. He applied for the allotment of an alternative plot and also deposited ₹5000/- and complied with the requirements for allotment of an alternative plot.

14. The fact to the extent of acquisition of the land of Sh.Udai Singh, his eligibility for allotment of alternative plot as well allotment by DDA of alternative plot thrice, is not in dispute. What is disputed by the appellant/plaintiff is non-receipt of the communications from the DDA to Sh.Udai Singh or his legal heirs due to which the compliance could not be done.

15. There is no dispute that as per policy of DDA, three allotments were made in favour of the recommendee by allotting alternative plot. As per the DDA, intimation was sent to the allottee. When the envelope Ex.DW1/3 sent was returned with the report Ex.DW1/4 that the addressee has expired, thereafter further communications were addressed to his legal heirs.

16. It is worth noting that as per para 6 of the affidavit Ex.PW1/X filed by the appellant/plaintiff Sh.Hari Prakash, the recommendee late Sh.Udai Singh was survived by five sons whose names are also mentioned therein which also included name of Sh.Hukum Singh. In the year 1993, the payment of ₹5000/- in the name of late Sh.Udai Singh was deposited by Hukum Singh. It was so stated by PW-1 Sh.Hari Prakash. This could only be pursuant to allotment/demand letter being received by the legal heirs of late Sh.Udai Singh.

17. Till the cancellation of the plot, there was no communication received from any legal heir either about substitution or for mutation/restoration of the alternative plot within the time frame provided under the policy 'Large Scale Acquisition, Development & Disposal of land in Delhi-1961'.

18. The question is, whether as per policy of the Government, three opportunities were given by the DDA by making allotment of an alternative plot, sending communication of allotment and demand of payment to Sh.Udai Singh/his legal heirs to comply with the requirements and deposit the money.

19. The first communication on behalf of late Sh. Uday Singh is Ex.PW1/5 dated 8th March, 2006 by his grandson i.e. appellant/plaintiff Sh.Hari Prakash to the DDA for mutation in his name as other legal heirs have relinquished their share. This was responded by DDA vide communication dated 28th June, 2006 informing that as three chances of allotment have already been availed, it was not possible to substitute the recommendation in his favour.

20. Thereafter, the appellant/plaintiff filed a suit for declaration, mandatory and permanent injunction with the prayers that cancellation of alternative plot be declared as null and void, the appellant/plaintiff be

declared entitled to have alternative plot bearing Plot No.4, Pocket-XI, Sector-B4, Narela, Delhi and also for direction to the DDA to transfer the allotment of said plot to him. In addition, decree for permanent injunction was also prayed for restraining the DDA from transferring or alienating or creating any third party interest in the suit property.

21. At the outset, it is required to be noted that the findings of First Appellate Court on the main issue i.e. issue No.(iv) regarding service of demand-cum-allotment letters and show cause notices before cancellation, have been examined with reference to the documentary and oral evidence led by the parties with a view to ascertain whether such findings are based on appreciation of evidence in right perspective or suffers from perversity.

22. At this stage, I would like to refer to the communications, statement of PW-1 and defence evidence which show that the first appellate Court has rightly held in its judgment that all the three chances have been availed by the allottee/his legal heirs.

First allotment

23. DW-1, Sh.Dharmender Sharma, Assistant Director (R), DDA posted in the Land Sales Branch (R) of Lands Disposal Department of DDA made the statement to the following effect and proved the related documents as under:-

- (i) The case of Sh.Udai Singh, grandfather of the plaintiff was considered as per policy and allotment has been cancelled for non-payment.
- (ii) Plot No.2, Pocket-8, Sector B-4, Narela measuring 334 sq meters was allotted vide demand cum allotment letter dated 18th January, 1993(DW-1/1).
- (iii) It was cancelled vide letter No.3254 dated 18th April, 1994 (DW-1/2) due to non-payment of premium.

(iv) Sh.Udai Singh was given the opportunity vide letter exhibit DW-1/3 for restoration of plot subject to payment and other charges but the letter returned with the report exhibit DW-1/4 that the addressee has expired.

Second allotment

24. Vide letter exhibit DW-1/5 dated 20th May, 1997 the legal heirs of late Sh.Udai Singh were asked to submit the mutation document but to that no response was received. Second allotment was made vide demand-cum-allotment letter dated 31st December, 1999 exhibit DW-1/6 followed by show cause notice dated 4th August, 2000 exhibit DW-1/7 and then cancellation letter dated 2nd August, 2001 exhibit DW-1/8.

Third allotment

25. Lastly, plot No.4, Pocket-11, Sector B-4, Narela measuring 334 sq. Mtrs. was allotted and demand cum allotment letter dated 26th June, 2003 exhibit DW-1/9 was sent to the legal heirs of late Sh.Udai Singh. It was followed by show cause notice dated 29th March, 2004 exhibit DW-1/10 and the cancellation letter dated 21st June, 2004 exhibit DW-1/11.

26. DW-1, Sh.Dharmender Sharma has stated that as per the policy the recommendee was entitled to three chances for getting an alternative allotment. He has also stated that the first communication received from the plaintiff vide letter dated 8th March, 2006 was duly replied by DDA vide letter dated 28th June, 2006 exhibit DW-1/12 intimating that three chances have already been availed and thereafter no substitution can be made. During cross-examination of DW-1 nothing material has come out except giving the suggestion that no communication was sent and the documents have been fabricated and manipulated to fill up the lacuna.

27. In his cross-examination, PW-1 has admitted it to be correct that allotment was made in favour of the recommendee Udai Singh thrice. He has

also admitted that first allotment was made on 18th January, 1993 vide letter no. 1112 and this letter was served on his grandfather. **The amount deposited vide exhibit PW-1/2 in 1993 was by his uncle Hukum Singh. He admitted that he or his family members never informed the DDA about the death of Sh.Udai Singh.** He has admitted that under the policy only three chances were to be given to the recommendee.

28. The contention of the appellant that all the communications were in the name of a dead person hence not binding on the appellant does not find favour with this Court. Ex.PW-1/8 is the communication addressed to the Land Acquisition Collector by the Land & Building Department, Delhi Administration on the subject of allotment of alternative plot under the scheme of 'Large Scale Acquisition, Development & Disposal of land in Delhi-1961' and reads as under:-

"Sir,

I am directed to forward herewith an application in respect of Sh.Uday Singh S/o Sh.Harphool for an alternative plot in lieu of his/her acquired land. It is requested that necessary verification may please be made and required report be sent to this office alongwith the following information:-

(i) Whether the physical possession of land has been handed over to DDA/Lab Department. If so, when?

(ii) Whether the land under reference has been acquired in whole and the compensation in full has been paid to the applicant, if so, when?

Yours faithfully,

(G.C.Pillai)

Under Secretary (LA)"

Copy of this communication has been sent to Sh.Udai Singh S/o Harphool R/o House No.194, Village Bhorgarh, Delhi with reference to his request for an alternative plot in lieu of his acquired land.

29. Exhibit PW-1/1 is the application by Sh.Udai Singh for allotment of an alternative plot. Exhibit PW-1/9 is another communication dated 14th March, 1988 addressed to Sh.Udai Singh in respect of allotment of alternative plot asking him to comply with the requirements mentioned therein, to appear before the Under Secretary (LA) on 21st March, 1988 personally along with ration card. It was also informed that no representation shall be entertained in his place. As per the death certificate of Sh.Udai Singh exhibit PW-1/X (affidavit of appellant/plaintiff Hari Prakash has also been exhibited as Ex.PW1/X, he expired on 19th July, 1988 i.e. almost after four months of the communication exhibit PW-1/9.

30. Though Sh.Udai Singh expired on 19th July, 1988, the payment of ₹5,000/- has been made on 18th January, 1993 vide challan (photocopy exhibit PW-1/2) in the name of a dead person (Sh.Udai Singh). As per PW-1 this payment was made by Sh.Hukum Singh – son of late Sh.Udai Singh (as per para 6 of affidavit Ex.PW1/X of the appellant/plaintiff). Thus the legal heirs of late Sh.Udai Singh were fully aware about the request of Sh.Udai Singh to DDA for allotment of an alternative plot.

31. Factum of death of Sh.Udai Singh on 19th July, 1988 was in the personal knowledge of all his legal heirs and admittedly DDA was never informed about his death. Even from the copy of the challan exhibit PW-1/2 it cannot be made out that amount has been deposited in the name of a dead person. It may be noted here that exhibit DW-1/10 dated 18th January, 1993 is a letter sent by registered AD post to Sh.Udai Singh about allotment of Plot No.2, Pocket-VIII, Sector-B4, Narela, Delhi measuring 334 sq.mtrs. and thereafter this amount has been deposited in the name of Udai Singh. Though DDA has not placed on record any postal receipt but all the letters were addressed at the correct address and were being received by or on

behalf of the addressee is proved from the fact that compliance was done even after the death of late Sh.Udai Singh by depositing ₹5,000/- on 15th February, 1993.

32. For the first time DDA came to know about the death of Sh.Udai Singh when the communication Ex.DW1/3 addressed to him was returned with the report exhibit DW-1/4 that addressee had expired. Thereafter the subsequent communications were addressed to legal heirs of late Sh.Udai Singh. Exhibit DW-1/9 dated 26th June, 2003 informing about allotment of alternative plot No.4, Pocket-XI, Sector-B4, Narela, Delhi is also addressed to legal heirs of late Sh.Udai Singh with direction to deposit the payment as per the details. The show cause notice dated 29th March, 2004 exhibit DW-1/10 is also addressed to the legal heirs of late Sh.Udai Singh which was followed by cancellation of Plot NO.4, Pocket 11, Block Sector B-4, measuring 334 sq. mtrs. vide exhibit DW-1/11.

33. **For the first time, the appellant/plaintiff communicated with DDA vide letter dated 8th March, 2006 Ex.PW1/5 with the application for mutation with reference to letter dated 13th September, 1988.** In this communication, the appellant/plaintiff remained silent about the developments during this period of 18 years. **There is no mention even to the effect that there was no communication received from the DDA in respect of the allotment of an alternative plot for all these 18 years. Even there is no reference of the payment deposited in the year 1993 by Sh.Hukum Singh in the name of deceased Sh.Udai Singh.**

34. The said communication dated 8th March, 2006 reads as under:-

“Dear Sir,

Sub: Mutation of recommendation in respect of Letter No.F-33(35)/97/87/L&B/alternative/377174 dated 13th September, 1988

My Grandfather Sh.Uday Singh S/o sh.Harphool Singh R/o Village Bhorgarh, Narela, Delhi was the owner in respect of and in occupation of 13 Bighas 19 Biswas of land in village Bhorgarh, Narela, Delhi. The Govt. of National Capital Territory of Delhi under its "Large Scale Acquisition Development and Disposal of land in Delhi-1961 vide Award No.5/79-80 and 19/78-79, acquired the said land. In terms of the said 'Scheme' Late Sh.Uday Singh was assured of issuance of alternative plot measuring 400 sq. yds vide letter dated 13.09.1988. A copy of the said letter dated 13.09.1988 is also enclosed for your kind perusal.

Late Sh.Uday Singh had sionce been deceased. The legal heirs of late Sh.Uday Singh had agreed to issue No Objection Certificate for transfer/mutation of recommendation in my name.

I, therefore, request you to kindly provide me the necessary details and the list of documents required for getting my name mutated in the recommendation.

Thanking you,

Yours sincerely,

(Hari Prakash)"

35. DDA sent the reply vide communication dated 28th June, 2006 Ex.PW1/7 which was followed by another communication dated NIL September, 2006 Ex.PW1/6 from the appellant/plaintiff which reads as under:-

Dear Sir,

Sub: Mutation of recommendation in respect of property bearing plot bearing No.4, Pocket 11, Sector B-4, admeasuring 334 sq. mtrs., situated in Narela Residential Scheme, Delhi

This is with reference to your letter dated 28.06.2006, bearing No.F.11(166)88/LSB/8174.

I wish to inform you that I had never received any recommendation/allotment in the name of the legal heirs of Late Sh.Uday Singh and as such, your allegation that Late Shri Uday Singh had availed of all the three chances if false and frivolous.

Please inform me as to when the third allotment and in whose name such an allotment was recommended. Please also inform me the Plot No. and other details in respect of the plot. Date of Show Cause Notice and Cancellation, if any, served upon the applicant or the legal heirs of Late Sh.Uday Singh, be also supplied to me.

Kindly do the needful at the earliest.

Thanking you,

Yours sincerely,

(HARI PRAKASH)

36. Despite the fact that DDA has not filed any postal receipt, AD Card in respect of above communications, these have admittedly been received by the appellant/plaintiff and duly responded. Exhibit PW-1/4, the relinquishment deed in favour of the appellant/plaintiff has been executed in the year 2005 i.e. after about 17 years of death of recommendee Sh.Udai Singh. When the allotment stood cancelled way back in the year 2003 on failure of the legal heirs to avail the three chances, this relinquishment deed in respect of non-existent property hardly had any effect on this issue.

37. The documentary evidence placed on record by the parties clearly established that it was not a case of 'no communication' to the recommendee or his legal heirs about the allotments made by the DDA under the policy. The recommendee/legal heirs failed to avail the three chances provided by

the DDA under the policy. Almost after about three years of cancellation of the third chance, it is not permissible to get the allotment restored.

38. Reliance placed by learned counsel for the appellant on the decision reported as *Sona Devi Vs. DDA*, 2001 (60) DRJ 244 is of no help to the appellant. It was in the peculiar facts on noticing that the allotment letter was not sent by the registered post which was a departure from the practice, dispatch register was having entry in a different colour of ink that the Court considered it to be an attempt to cover up the lapses and held that the writ petitioner, Sona Devi did not receive the letter of allotment. It was in the above circumstances that writ was issued.

39. In the second decision relied upon by the learned counsel for the appellant, the issue involved was about maintainability of the suit without service of notice under Section 53(B) of Delhi Development Act. The Court considered that the suit was filed after withdrawing the writ petition which was considered sufficient to relieve the litigant from the necessity of issuing notice under Section 53(B) of Delhi Development Act. The suit filed without service of notice was held to be maintainable.

40. The appellant has also relied upon *Sunder Singh Gahlawat & Anr. Vs. DDA*, 115 (2004) DLT 127. In that case the DDA was held to be at fault to the extent that the letter was sent at the address other than the place where the addressee/allottee was residing. The recomendee expired in the year 1989 whereas the first allotment was made in the year 1993. In the given circumstances it was observed that had the DDA issued the allotment letter dated 11th January, 1993 at the address where he was residing with the father of the petitioners, at least knowledge of the allotment would have enured to the petitioner and other could have acted promptly. When the second allotment was made, it was accepted by the petitioners. The Court held that

the petitioners clearly acquiesced in the allotment at the price demanded and could not resile from the same. The relief granted was only to the extent that the demand of cancellation charges was quashed.

41. The appellant herein was aware of the death of late Sh.Udai Singh in the year 1988. The entire communication made by the DDA was addressing allottee/legal heirs of late Sh.Udai Singh. Sh.Hukum Singh – son/legal heir deposited the amount of ₹5,000/- after about 5 years of death of late Sh.Udai Singh for allotment of plot. Admittedly, DDA was never informed about the death of Sh.Udai Singh nor ever requested to substitute the legal heirs prior to the communication dated 8th March, 2006 Ex.PW1/5. DDA was addressing the legal heirs as the communication Ex.Dw1/3 sent to the recommendee Udai Singh was returned with the report Ex.DW1/4 that the addressee has expired. Thus, it was a case where all the three chances for getting an alternative plot were given to the recommendee/legal heirs and duly communicated.

42. In the decision reported as New Makrana Marble Traders & Ors. Vs. UOI & Ors., 105 (2003) DLT 412 the issue of allotment of alternative plot in case of acquisition of land has been dealt as under:-

“... in case of acquisition of land, there is no right to get an alternative plot... the judgment of the Full Bench of the Court in Ramanand’s case is absolutely clear in this behalf and has repeatedly been followed. The same is the position in the case of Division Bench in Bhagwana’s case (supra)....”

43. The real controversy in this appeal pertained to service of demand-cum-allotment letters and show cause notices before cancellation of the alternative plot allotted to recommendee, non-compliance of which resulted in cancellation of the allotment of alternative plot. In view of deposition of PW-1 in para No.5 of the affidavit wherein all the allotments have been duly

mentioned and his cross examination that the notice Ex.PW1/10 was received by elder member of the family, presumption of service of the communications can be drawn under Section 114(f) of Indian Evidence Act, 1872. It may also be noted that the appellant/plaintiff failed to rebut this presumption by leading any evidence to the contrary. Once it is established that all the communications were duly addressed to the recommendee and on being reported (Ex.DW1/4) on the communication Ex.DW1/3 that addressee has expired, to his legal heirs. Long silence on the part of the legal heirs of late Sh.Udai Singh by not availing the three chances resulted into cancellation of allotment each time.

44. Since the learned Trial Court had committed clear cut and gross illegality and perversity in holding that no notice was sent or served, the First Appellate Court had rightly set aside the decision of the learned Trial Court being inconsistent with the evidence adduced by the parties in respect of three chances for allotment of alternative plot being provided by DDA to the recommendee/Udai Singh and his legal heirs.

45. After setting aside the judgment of the learned Trial Court the First Appellate Court has expected DDA to consider the case of the appellant as legal heirs of Udai Singh before allotting plot No.4, Pocket 11, Sector B-4, Narela, Delhi to any third party. These observations could not have been made by the First Appellate Court when the right of the appellant to get an alternative plot no longer survived.

46. The observations requiring the DDA to examine the claim of the appellant/plaintiff being contrary to the policy of allotment of alternative plot are set aside.

47. The substantial question of law is answered against the appellant.

48. RSA No.60/2014 is dismissed.

49. No costs.

50. LCR be sent back alongwith copy of this order.

CM No.3335/2014 (Stay)

Dismissed as infructuous.

**PRATIBHA RANI
(JUDGE)**

FEBRUARY 15, 2017

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