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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 9383/2014 & CM APPL. 21209/2014

RITU GULATI

..... Petitioner

Through

Mr. Kirti Uppal, Senior Advocate
with Ms. Sahiba Pantel, Advocate

versus

DELH DEVELOPMENT AUTHORITY Respondent

Through

Mr. Pawan Mathur, Standing Counsel

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Date of Decision : 11th January, 2017.**CORAM:****HON'BLE MR. JUSTICE MANMOHAN****J U D G M E N T****MANMOHAN, J: (Oral)**

1. The petitioner had earlier filed a writ petition being W.P.(C) 4211/2013. The prayer clause of the said writ petition is reproduced herienbelow:-

- “a. A Writ of Certiorari calling for the records of the case for perusal;
- b. A Writ of certiorari quashing the order passed by DDA communicated vide letter dated 22.01.2013 whereby the representation of the petitioner for restoration of allotment of the plot no. 455 Pocket-2, Block-C, Sector 32, Rohini or any similarly placed plot has been rejected without any valid

reason for ground in violation of the rules Regulations and scheme and the Principles of Equity, Natural Justice and Good Conscience;

- c. A writ of Mandamus commanding the respondent DDA to forthwith restore the allotment of the demised plot i.e. plot restore the Plot no. 455, Pocket-2, Block-C, Sector-32, Rohini, Or in alternative a similarly situated plot in any developed sector of the Rohini Residential Scheme in favour of the petitioner and deliver possession and execute lease deed also in respect thereof;
- d. A Writ of mandamus commanding the respondent to pay the cost of this petitioner to the petitioner.
- e. Any other writ, order of direction, which may be deemed fit and proper in the facts and circumstances of the case and in the interest of justice.”

(emphasis supplied)

2. The said writ petition after some arguments was unconditionally withdrawn. The said order disposing the writ petition is reproduced hereinbelow:-

“After some arguments, learned counsel for the petitioner wishes to unconditionally withdraw the present writ petition and applications. Accordingly, the same are dismissed as withdrawn.

DDA is directed to refund the amount deposited by the petitioner within a period of eight weeks in accordance with its policy on completion of requisite formalities by the petitioner.”

(emphasis supplied)

3. Subsequent to the unconditional withdrawal of the writ petition, the petitioner filed a fresh representation with the Hon’ble Lt. Governor seeking condonation of delay in paying the demand.

4. The said representation was rejected by the Office of Lt. Governor vide letter dated 18th December, 2013. The said rejection letter has led the petitioner to file the present writ petition with the following prayers:-

- “a) *A writ of certiorari calling for the records of the case for perusal;*
- b) *A Writ of Certiorari quashing impugned Order dated 18.12.2013 (ANNEXURE P-20) as an illegal, arbitrary, discriminatory, malafide, unjust, unwarranted, uncalled for and without jurisdiction and in violation of Rules and Regulations, ‘Policy & Scheme’ in this regard and the Principles of Equity, Natural Justice and Good Conscience and in infringement of the Legal and Fundamental Rights of the Petitioner;*
- c) *A Writ of Certiorari quashing the action & inaction of the Respondent/DDA Firstly, in cancelling the allotment of plot made under Rohini Residential Scheme, 1981 to the Petitioner without any valid reason or ground and Secondly, refusing to restore the same despite the policy in this regard, being illegal, arbitrary, discriminatory, malafide, unjust, unwarranted, uncalled for and without jurisdiction and in violation of the Rules Regulations, ‘Policy & Scheme’ in this regard and the Principles of Equity, Natural Justice and Good Conscience and in infringement of the Legal and Fundamental Rights of the petitioner;*
- d) *A Writ, order or directions in the nature of Mandamus commanding/directing the Respondent DDA to forthwith restore the allotment of the demised plot i.e. Plot No.455, Pocket-2, Block C, Sector 32, Rohini, in favour of the Petitioner and deliver the possession thereof and in case the demised plot is not available, allot him a similar size of plot in the same sector or in any developed sectors in Rohini, and thereafter execute lease deed also in respect thereof;*
- e) *Any other writ, order or direction, which may be deemed fit and proper in the facts and circumstances of the case and in the interest of justice.”*

5. On the last date of hearing, this Court had opined that the present writ petition was barred by principles of re-litigation. However, learned counsel for petitioner had taken some time to examine the legal proposition.

6. Today, Mr. Kirti Uppal, learned senior counsel for the petitioner states that present writ petition is maintainable as the petitioner had subsequent to the withdrawal of the writ petition filed another representation with the Hon'ble Lt. Governor in accordance with the policy. Consequently, according to Mr. Uppal, the present writ petition is maintainable and does not amount to re-litigation.

7. In the opinion of this Court, by filing a fresh representation seeking a relief which had been specifically denied by the respondent and by this Court in the earlier writ petition, petitioner cannot maintain a second writ petition stating that the fresh representation and the order rejecting it, constitutes a fresh cause of action.

8. In fact, in the present case, prayer (d) in the present writ petition is similar to the prayer (c) of the W.P.(C) 4211/2013 and the impugned order dated 18th December, 2013 is only a letter of intimation written by the Office Superintendent in the office of the Hon'ble Lt. Governor intimating the petitioner of the facts of the case. It is not an adjudication of any rights of the petitioner in any manner. Accordingly, the earlier rejection order dated 22nd January, 2013 constitutes the real cause of action.

9. The practice of filing a representation seeking a relief which has already been denied by the Court needs to be deprecated and such a representation cannot be taken to be a fresh cause of action either for limitation or for filing a fresh writ petition. Consequently, this Court is of the view that the present writ petition amounts to re-litigation. A Division

Bench of this Court in *N.D.Qureshi Vs. Union of India & Another, 2008*

(13) *DRJ 547* to which this Court was a party has observed as under:-

“12. Moreover, from the above narrated facts, it would be apparent that the petitioner has been re-litigating for a considerable number of years. In our view on the principle of res judicata and re-litigation the petitioner is even barred from raising new pleas for the same old relief. The Hon’ble Supreme Court in K.K.Modi Vs. K.N.Modi and others, reported in (1998) 3 SCC 573 has held that it is an abuse of the process of the court and contrary to justice and public policy for a party to re-litigate the same issue which has already been tried and decided earlier against him. This re-agitation may or may not be barred as res judicata. But if the same issue is sought to be re-agitated, it also amounts to an abuse of the process of the court. The Hon’ble Supreme Court has further held that if a spurious claim is made in a case, it may also amount to an abuse of process of the court. In our view, frivolous or vexatious proceedings amount to an abuse of the process of the court especially where the proceedings are absolutely groundless-like in the present case.”

(emphasis supplied)

10. In view thereof, present writ petition amounts to re-litigation. Accordingly, the writ petition and application are dismissed.

JANUARY 11, 2017

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MANMOHAN, J