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

+ W.P.(C) 11406/2015 & CM APPLs.30060/2015, 26919/2016

MAJOR GULSHAN KUMAR (RETD.) Petitioner
Through: Mr. Sunil Kumar Mund, Advocate with
Mr. K.K. Malvaya and Mr. Amarnath
Jaiwal, Advocates.

versus

DELHI DEVELOPMENT AUTHORITY Respondent
Through: Mr. B.S. Dhir, Advocate for DDA.

% Reserved on: 22nd March, 2017
Date of Decision: 18th April, 2017

CORAM:
HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J:

THE ISSUE

1. The issue that arises for consideration is as to what is the legal wrong that has been committed by respondent-DDA in not allotting a shop to a successful tenderer for nearly twenty years after receipt of entire consideration?
2. It is pertinent to mention that present writ petition has been filed seeking a direction to the respondent-DDA to allot a shop of similar size that had been allotted to the petitioner in 1996 as well as to award compensation for the delay in allotting a shop.

FACTS OF THE CASE

3. The admitted facts of the present case are that in 1996, the petitioner was declared the highest bidder in an Ex-Servicemen Tender, vide Tender Form No. 000085 dated 26th December, 1996 in respect of shop no.28, CSC-II, Block-G, Preet Vihar, Delhi admeasuring 9.69 sq. mtr. In accordance with the Demand Notice dated 6th January, 1997, the petitioner paid the entire amount of Rs.3,06,453/- towards allotment of the said shop. However, respondent-DDA did not hand over possession of the shop to the petitioner for nearly ten years.

4. On 6th July, 2006, the petitioner vide letter informed the respondent-DDA that he had visited the Preet Vihar market and found that Shop No. 28 was non-existent as the said market had only twenty seven shops.

5. Consequently, respondent-DDA on 1st May, 2012 decided to allot an alternative shop to the petitioner. Accordingly, vide letter dated 25th May, 2012, respondent-DDA offered a list of vacant shops in East zone to the petitioner with an option to choose one of the three shops in the three markets.

6. However, without waiting for the petitioner's option, the respondent-DDA held a Mini draw on 12th February, 2013 wherein the petitioner was allotted shop bearing no.4, Ground Floor, LSC (CSC), Mayur Vihar, Pocket 4, Phase-IV, Delhi admeasuring 18.69 sq. mtrs.

7. The petitioner vide letter dated 8th May, 2013 requested the respondent-DDA to allot him a smaller shop, i.e., of a size that he had bid for. In fact, the petitioner sought allotment of Shop no.1 or 7, CSC, Chilla Dallupra or Shop no.16, CSC, Dilshad Garden, Block B, Scheme No.575.

8. But, the petitioner's request was declined and he was requested by respondent-DDA to accept the allotment of shop no.4, Ground Floor, LSC (CSC), Mayur Vihar, Pocket 4, Phase-I, Delhi admeasuring 18.69 sq. mtr.

9. On 13th February, 2015, the petitioner intimated that he was ready to accept the allotment of the Mayur Vihar shop provided the excess area approximately 9.69 sq. mtrs. was charged at 1995-96 rates instead of 2012-2013.

10. But, the competent authority decided that for the area measuring 9.69 sq. mtrs. that had been already bid and allotted would be the rate prevalent in 1995-96 and for the remaining area (measuring 9 sq. mtr.), the prevalent rate of 2012-2013 would be charged.

11. The petitioner intimated to the respondent-DDA that as he had retired from the Indian Army, he was not in a position to pay for the excess area at the enhanced rate.

12. As once again there was a stalemate, the petitioner filed the present writ petition.

13. During the pendency of the proceedings, the respondent-DDA on 11th December, 2015 offered certain alternative shops to the petitioner admeasuring between 8 and 11 sq. mtrs. in East Zone. However, the petitioner refused to accept the same on the ground that the shops offered were situated in an inferior area.

14. On 29th July, 2016, this Court directed the Commissioner (Land Disposal), DDA to consider the feasibility of dividing the shop which was allotted to the petitioner in 2013 into two parts and allocate the part admeasuring 9.69 sq. mtrs. to the petitioner. However, the said suggestion

was not found feasible by the respondent-DDA.

15. Thereafter, the respondent-DDA offered a list of 16 shops to the petitioner to choose from. The petitioner opted for one of the 16 shops bearing no.23, Sector B, Pocket 7, Vasant Kunj, New Delhi. The petitioner also gave option for two other shops, which according to him were available but not in the list of sixteen shops.

16. Though, the Commissioner (Land Disposal), DDA by way of affidavit dated 6th January, 2017 admitted that the shop bearing no.23, Sector B, Pocket 7, Vasant Kunj was available, yet he stated that as the other two shops opted for by the petitioner were neither in the list of shops that was offered nor available, the petitioner should give two more shops as option as the Mini Draw can only be held when a person furnishes three options.

17. As the petitioner insisted that he was legally entitled to allotment of Shop No.23, Sector-B, Pocket-7, Vasant Kunj, New Delhi, the matter was taken up for hearing.

ARGUMENTS ON BEHALF OF PETITIONER

18. Learned counsel for the petitioner stated that respondent-DDA even after receiving the entire consideration amount in 1997 had failed to hand over possession of a shop to the petitioner till date. He contended that the respondent was legally bound to offer an alternative shop to the petitioner in a comparable locality of the same zone without demanding any extra charges from the petitioner. He submitted that the action/inaction of the respondent-DDA in the present case had resulted in petitioner being deprived of his valuable right to property in a very casual and arbitrary manner.

ARGUMENTS ON BEHALF OF RESPONDENT-DDA

19. Per contra, learned counsel for the respondent-DDA stated that the respondent-DDA had always cooperated with the petitioner as would be apparent from the number of alternative shops that had been offered to the petitioner at different times by the DDA. He stated that the respondent-DDA cannot act in accordance with the whims and fancies as well as choice of the petitioner in violation of its rules and regulations. He contended that the matter could not be resolved as the intention of the petitioner was dishonest and mala fide.

20. Learned counsel for respondent-DDA submitted that the matter in issue pertained to a contract/tender and consequently, the same could not be agitated in a writ proceeding.

COURT'S REASONING

RESPONDENT-DDA OFFICIALS ARE ALONE TO BE BLAMED FOR THE DELAY IN ALLOTMENT OF A SHOP TO THE PETITIONER. THE CONTENTION THAT THE INTENTION OF THE PETITIONER IS DISHONEST AND MALAFIDE IS CONTRARY TO FACTS

21. Having heard learned counsel for the parties and having perused the papers, this Court finds that though nearly twenty years ago the petitioner, a retired Major, had been declared the highest bidder for a shop in Preet Vihar by respondent-DDA in an Ex-serviceman Tender and had paid the full consideration, yet he has not been given possession of a shop till date.

22. Initially, the petitioner was allotted a non-existent shop in Preet Vihar and thereafter a shop double the size in Mayur Vihar than he had bid for and

when the petitioner stated that being a retired Army officer he could not pay the current market price for the excess area, there was no response from DDA. During the pendency of the proceedings, when petitioner was agreeable for allotment of Shop No. 23, Sector B, Pocket 7, Vasant Kunj, New Delhi, respondent-DDA took the stand that petitioner must give two other options as otherwise according to its rules and regulations, a mini draw for allotment cannot be held.

23. In the opinion of this Court, there is no question of holding a mini draw or asking for two more options from the petitioner as he was a successful tenderer who was legally entitled to a shop in 1996. Inefficiency and/or negligence on the part of the DDA officials is writ large in the present case.

24. Moreover, regulations, office orders are enacted and enforced to ensure justice and they do not have to be blindly complied with, if they result in injustice.

25. It seems to this Court that just to avoid any eventuality of an adverse finding in audit and vigilance enquiry, the respondent-DDA officials are insisting on following a procedure which is not only inapplicable to the present case, but has led to injustice.

26. Consequently, respondent-DDA officials are alone to be blamed for the delay in allotment of a shop to the petitioner. The contention of learned counsel for respondent-DDA that the intention of the petitioner is dishonest and malafide is contrary to facts and untrue.

EVEN IN CONTRACTUAL MATTERS DECISIONS OF GOVERNMENT AND STATUTORY ORGANISATIONS ARE SUBJECT TO RULE OF LAW AND HAVE TO BE REASONABLE, JUST AND FAIR.

27. It is settled law that the activities of the Government and statutory organisations like Delhi Development Authority have a public element and are subject to rule of law. Consequently, their decisions even in contractual matters have to be reasonable, fair, just and guided by the public interest. In ***Rathi Alloys and Steel Ltd., Alwar vs. Collector, Central Excise, Jaipur, (1990) 2 SCC 324*** the Apex Court held that, “rule of fairness is yet another principle which is well settled and precludes public bodies, specially the government departments.....” In ***Kumari Shrilekha Vidyarthi & Ors. Vs. State of U.P. & Ors., (1991) 1 SCC 212*** the Supreme Court held as under:-

“24. The State cannot be attributed the split personality of Dr Jekyll and Mr Hyde in the contractual field..... The requirement of Article 14 being the duty to act fairly, justly and reasonably, there is nothing which militates against the concept of requiring the State always to so act, even in contractual matters. we find no reason why the requirement of Article 14 should not extend even in the sphere of contractual matters for regulating the conduct of the State activity.

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27..... every holder of a public office is a trustee whose highest duty is to the people of the country and, therefore, every act of the holder of a public office, irrespective of the label classifying that act, is in discharge of public duty meant ultimately for public good.....

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48. It is in consonance with our commitment to openness which implies scrutiny of every State action to provide an effective check against arbitrariness and abuse of power. We

would much rather be wrong in saying so rather than be wrong in not saying so. Non-arbitrariness, being a necessary concomitant of the rule of law, it is imperative that all actions of every public functionary, in whatever sphere, must be guided by reason”

28. In the present case, the respondent-DDA officials have failed in their duty to act fairly, justly and reasonably.

DOCTRINE OF LEGITIMATE EXPECTATION IS ATTRACTED TO THE PRESENT CASE.

29. Another derivative of the public trust doctrine is legitimate expectation which is based on a rooted legal right. Its essence is fair play in administrative action. For invocation of doctrine of legitimate expectation there has to be a promise, a past practice and a legal relationship between the parties. The Supreme Court in ***Sethi Auto Service Station and Another Vs. Delhi Development Authority and Others, (2009) 1 SCC 180*** summarised some of the important decisions on this concept as under:-

“24. The protection of legitimate expectations, as pointed out in De Smith's Judicial Review (6th Edn.), (Para 12-001), is at the root of the constitutional principle of the rule of law, which requires regularity, predictability and certainty in the Government's dealings with the public. The doctrine of legitimate expectation and its impact in the administrative law has been considered by this Court in a catena of decisions but for the sake of brevity we do not propose to refer to all these cases. Nevertheless, in order to appreciate the concept, we shall refer to a few decisions.

25. At this juncture, we deem it necessary to refer to a decision by the House of Lords in Council of Civil Service

Unions v. Minister for Civil Service [1985 AC 374 : (1984) 3 WLR 1174 : (1984) 3 All ER 935 (HL)] , a locus classicus on the subject, wherein for the first time an attempt was made to give a comprehensive definition to the principle of legitimate expectation. Enunciating the basic principles relating to legitimate expectation, Lord Diplock observed that for a legitimate expectation to arise, the decision of the administrative authority must affect such person either (a) by altering rights or obligations of that person which are enforceable by or against him in private law, or (b) by depriving him of some benefit or advantage which either: (i) he has in the past been permitted by the decision-maker to enjoy and which he can legitimately expect to be permitted to continue to do until some rational ground for withdrawing it has been communicated to him and he has been given an opportunity to comment thereon, or (ii) he has received assurance from the decision-maker that they will not be withdrawn without first giving him an opportunity of advancing reasons for contending that they should be withdrawn.

26. *In Attorney General of Hong Kong v. Ng Yuen Shiu* [(1983) 2 AC 629 : (1983) 2 WLR 735 : (1983) 2 All ER 346 (PC)] , a leading case on the subject, Lord Fraser said: (All ER p. 351g-h)

“... when a public authority has promised to follow a certain procedure, it is in the interest of good administration that it should act fairly and should implement its promise, so long as implementation does not interfere with its statutory duty.”

27. Explaining the nature and scope of the doctrine of legitimate expectation, in *Food Corporation of India v. Kamdhenu Cattle Feed Industries* [(1993) 1 SCC 71] , a three-Judge Bench of this Court had observed thus: (SCC p. 76, para 8)

“8. The mere reasonable or legitimate expectation of a citizen, in such a situation, may not by itself be a

distinct enforceable right, but failure to consider and give due weight to it may render the decision arbitrary, and this is how the requirement of due consideration of a legitimate expectation forms part of the principle of non-arbitrariness, a necessary concomitant of the rule of law. Every legitimate expectation is a relevant factor requiring due consideration in a fair decision-making process. Whether the expectation of the claimant is reasonable or legitimate in the context is a question of fact in each case. Whenever the question arises, it is to be determined not according to the claimant's perception but in larger public interest wherein other more important considerations may outweigh what would otherwise have been the legitimate expectation of the claimant. A bona fide decision of the public authority reached in this manner would satisfy the requirement of non-arbitrariness and withstand judicial scrutiny. The doctrine of legitimate expectation gets assimilated in the rule of law and operates in our legal system in this manner and to this extent.”

28. *The concept of legitimate expectation again came up for consideration in Union of India v. Hindustan Development Corpn. [(1993) 3 SCC 499] Referring to a large number of foreign and Indian decisions, including in Council of Civil Service Unions [1985 AC 374 : (1984) 3 WLR 1174 : (1984) 3 All ER 935 (HL)] and Kamdhenu Cattle Feed Industries [(1993) 1 SCC 71] and elaborately explaining the concept of legitimate expectation, it was observed as under: (Hindustan Development Corpn. case [(1993) 3 SCC 499] , SCC p. 549, para 35)*

“35. ... If a denial of legitimate expectation in a given case amounts to denial of right guaranteed or is arbitrary, discriminatory, unfair or biased, gross abuse of power or violation of principles of natural justice, the same can be questioned on the well-known grounds attracting Article 14 but a claim based on

mere legitimate expectation without anything more cannot ipso facto give a right to invoke these principles. It can be one of the grounds to consider but the court must lift the veil and see whether the decision is violative of these principles warranting interference. It depends very much on the facts and the recognised general principles of administrative law applicable to such facts and the concept of legitimate expectation which is the latest recruit to a long list of concepts fashioned by the courts for the review of administrative action, must be restricted to the general legal limitations applicable and binding the manner of the future exercise of administrative power in a particular case. It follows that the concept of legitimate expectation is 'not the key which unlocks the treasury of natural justice and it ought not to unlock the gates which shuts the court out of review on the merits', particularly when the element of speculation and uncertainty is inherent in that very concept."

Taking note of the observations of the Australian High Court in Attorney General for New South Wales v. Quinn [(1990) 64 Aust LJR 327 : (1990) 170 CLR 1] that "to strike down the exercise of administrative power solely on the ground of avoiding the disappointment of the legitimate expectations of an individual would be to set the courts adrift on a featureless sea of pragmatism", speaking for the Bench, K. Jayachandra Reddy, J. said that there are stronger reasons as to why the legitimate expectation should not be substantively protected than the reasons as to why it should be protected. The caution sounded in the said Australian case that the courts should restrain themselves and restrict such claims duly to the legal limitations was also endorsed.

29. Then again in National Buildings Construction Corpn. v. S. Raghunathan[(1998) 7 SCC 66 : 1998 SCC (L&S) 1770] , a three-Judge Bench of this Court observed as under: (SCC p. 75, para 18)

“18. The doctrine of ‘legitimate expectation’ has its genesis in the field of administrative law. The Government and its departments, in administering the affairs of the country, are expected to honour their statements of policy or intention and treat the citizens with full personal consideration without any iota of abuse of discretion. The policy statements cannot be disregarded unfairly or applied selectively. Unfairness in the form of unreasonableness is akin to violation of natural justice. It was in this context that the doctrine of ‘legitimate expectation’ was evolved which has today become a source of substantive as well as procedural rights. But claims based on ‘legitimate expectation’ have been held to require reliance on representations and resulting detriment to the claimant in the same way as claims based on promissory estoppel.”

30. This Court in Punjab Communications Ltd. v. Union of India [(1999) 4 SCC 727] , referring to a large number of authorities on the question, observed that a change in policy can defeat a substantive legitimate expectation if it can be justified on “Wednesbury” reasonableness. The decision-maker has the choice in the balancing of the pros and cons relevant to the change in policy. Therefore, the choice of the policy is for the decision-maker and not for the court. The legitimate substantive expectation merely permits the court to find out if the change in policy which is the cause for defeating the legitimate expectation is irrational or perverse or one which no reasonable person could have made. (Also see Bannari Amman Sugars Ltd. v. CTO [(2005) 1 SCC 625] .)

31. Very recently in Jitendra Kumar v. State of Haryana [(2008) 2 SCC 161 : (2008) 1 SCC (L&S) 428] it has been reiterated that a legitimate expectation is not the same thing as an anticipation. It is distinct and different

from a desire and hope. It is based on a right. It is grounded in the rule of law as requiring regularity, predictability and certainty in the Government's dealings with the public and the doctrine of legitimate expectation operates both in procedural and substantive matters.

32. An examination of the aforementioned few decisions shows that the golden thread running through all these decisions is that a case for applicability of the doctrine of legitimate expectation, now accepted in the subjective sense as part of our legal jurisprudence, arises when an administrative body by reason of a representation or by past practice or conduct aroused an expectation which it would be within its powers to fulfil unless some overriding public interest comes in the way. However, a person who bases his claim on the doctrine of legitimate expectation, in the first instance, has to satisfy that he has relied on the said representation and the denial of that expectation has worked to his detriment. The Court could interfere only if the decision taken by the authority was found to be arbitrary, unreasonable or in gross abuse of power or in violation of principles of natural justice and not taken in public interest. But a claim based on mere legitimate expectation without anything more cannot ipso facto give a right to invoke these principles.”

30. Recently, the Supreme Court while expounding on the doctrine of legitimate expectation in ***Lalaram & Ors. Vs. Jaipur Development Authority & Anr., 2015 (13) Scale 78*** has observed as under:-

“133. A parallel doctrine founded on the doctrine of fairness and natural justice baptised as "legitimate expectation" has grown as well in the firmament of administrative law to ensure the predication of fairness in State action. The concept of "legitimate expectation" is elaborated in Halsbury's Laws of England, Fourth Edition, Volume 1(1) 151 as hereunder:

“81. Legitimate expectations.--A person may have a legitimate expectation of being treated in a certain way

by an administrative authority even though he has no legal right in private law to receive such treatment. The expectation may arise either from a representation or promise made by the authority, including an implied representation, or from consistent past practice. The existence of a legitimate expectation may have a number of different consequences; it may give locus standi to seek leave to apply for judicial review; it may mean that the authority ought not to act so as to defeat the expectation without some overriding reason of public policy to justify its doing so; or it may mean that, if the authority proposes to defeat a person's legitimate expectation, it must afford him an opportunity to make representations on the matter. The courts also distinguish, for example in licensing cases, between original applications, applications to renew and revocations; a party who has been granted a licence may have a legitimate expectation that it will be renewed unless there is some good reason not to do so, and may therefore be entitled to greater procedural protection than a mere applicant for a grant."

134. In espousing this equitable notion of exacting fairness in governmental dealings, this Court in Food Corporation of India [Food Corporation of India v. Kamdhenu Cattle Feed Industries, (1993) 1 SCC 71] proclaimed that there was no unfettered discretion in public law and that a sovereign authority possessed powers only to use them for public good. Observing that the investiture of such power imposes with it, the duty to act fairly and to adopt a procedure which is "fair play in action", it was underlined that it also raises a reasonable or legitimate expectation in every citizen to be treated fairly in his dealings with the State and its instrumentalities.

135. The observance of this obligation as a part of good administration, is obligated by the requirement of non-arbitrariness in a State action, which as a corollary, makes it incumbent on the State to consider and give due

weight to the reasonable or legitimate expectations of the persons, likely to be affected by the decision, so much so that any failure to do so would proclaim unfairness in the exercise of power, thus vitiating the decision by its abuse or lack of bona fides. The besieged decision would then be exposed to the challenge on the ground of arbitrariness. It was propounded that mere reasonable or legitimate expectation of a citizen, may not by itself be a distinct enforceable right in all circumstances, but the failure to consider and give due weight to it, may render the decision arbitrary. It was thus, set down that the requirement of due consideration of legitimate expectation formed a part of the principle of non-arbitrariness, a necessary concomitant of the rule of law. In reiteration to the above enunciation, this Court in Monnet Ispat (Supra) did rule as well, that the doctrine of legitimate expectation is founded on the principle of reasonableness and fairness and arises out of the principles of natural justice and can be invoked as a substantive and enforceable right.”

31. In the present case, the respondent-DDA officials by accepting petitioner's tender and consideration amount as well as by allotting shops to twenty-seven of the twenty-eight tenderers violated petitioner's legitimate expectation of allotment of a shop in reasonable time.

UNJUSTIFIED DELAY IS A WELL-RECOGNISED AND COMMON SPECIES OF MAL-ADMINISTRATION

32. Unjustified delay is a well-recognised and common species of maladministration, either as a major or a contributory ground. [See [1997] PL 159 (McMurtrie)]. In the United Kingdom, a husband who applied in April 1984 for entry clearance for his wife to join him had,

despite many enquiries, to wait until May 1988 before it was granted. The Commissioner found that there had been unacceptable delay and the Home Office apologised and made an ex gratia payment of £1,000. [Selected Cases 1992, HC 1992-3, No. 11, ii. 2, 22-31]. In another case, after administrative confusion between two counsel with similar names, a barrister did not receive the fees that were due to him from the Legal Aid Board. For eighteen months he received no satisfactory response to his letters requesting payment and when payment was eventually made, it was sent to the wrong address. The Commissioner found that there had been serious delay. The Legal Aid Board apologised and paid interest on the main bill as well as a further £60 compensation for the fruitless correspondence. [Selected Cases 1993, HC 1992-3, No. 400, i. 3, 34-6]. And in the Barlow Clowes case, one of the species of maladministration found by the Commissioner was a delay from early July 1987 (when the Department of Trade was alerted to the Stock Exchange's doubts about the firm) until 13 October 1987 (when a recommendation was made to the minister that the firm should be investigated) [First Report, 1989-90, The Barlow Clowes Affair, HC 1989-90, No. 76, paras 6.53-6.61]. According to H.W.R. Wade & C.F. Forsyth, the importance of minimising delay should not be underestimated. Whether the subsequent decision is favourable to the applicant or not, the applicant will have been subjected to unnecessary frustration and stress; and small grievances will have grown into large ones. [See: *Administrative Law, Tenth Edition* page 83-4].

**EVEN THE INDIAN COURTS HAVE GRANTED RELIEF IN CASES
OF INORDINATE DELAY IN ALLOTMENT**

33. The Indian Supreme Court while dealing with a similar issue of delay in allotment by a public authority in ***Lucknow Development Authority Vs. M.K. Gupta, (1994) 1 SCC 243*** has observed as under:-

“9. Facts in Civil Appeal No. 6237 of 1990 may now be adverted to as it is the only appeal in which the National Commission while exercising its appellate power under the Act not only affirmed the finding of State Commission directing the appellant to pay the value of deficiency in service but even directed to pay compensation for harassment and agony to the respondent. The Lucknow Development Authority with a view to ease the acute housing problem in the city of Lucknow undertook development of land and formed plots of different categories/sizes and constructed dwelling units for people belonging to different income groups. After the construction was complete the authority invited applications from persons desirous of purchasing plots or dwelling houses. The respondent applied on the prescribed form for registration for allotment of a flat in the category of Middle Income Group (MIG) in Gomti Nagar Scheme in Lucknow on cash down basis. Since the number of applicants was more, the authority decided to draw lots in which flat No. II/75 in Vinay Khand-II was allotted to the respondent on April 26, 1988. He deposited a sum of Rs 6132 on July 2, 1988 and a sum of Rs 1,09,975 on July 29, 1988. Since the entire payment was made in July 1988 the flat was registered on August 18, 1988. Thereafter the appellant by a letter dated August 23, 1988 directed its Executive Engineer-VII to hand over the possession of the flat to the respondent. This information was given to him on November 30, 1988, yet the flat was not delivered as the construction work was not complete. The respondent approached the authority but no steps were taken nor possession was handed over. Consequently he filed a complaint before the District Forum that even after payment of

entire amount in respect of cash down scheme the appellant was not handing over possession nor they were completing the formalities and the work was still incomplete. The State Commission by its order dated February 15, 1990 directed the appellant to pay 12% annual simple interest upon the deposit made by the respondent for the period January 1, 1989 to February 15, 1990. The appellant was further directed to hand over possession of the flat without delay after completing construction work up to June 1990. The Commission further directed that if it was not possible for the appellant to complete the construction then it should hand over possession of the flat to the respondent by April 5, 1990 after determining the deficiencies and the estimated cost of such deficient construction shall be refunded to the respondent latest by April 20, 1990. The appellant instead of complying with the order approached the National Commission and raised the question of jurisdiction. It was overruled. And the appeal was dismissed. But the cross-appeal of the respondent was allowed and it was directed that since the architect of the appellant had estimated in October 1989 the cost of completing construction at Rs 44,615 the appellant shall pay the same to the respondent. The Commission further held that the action of the appellant amounted to harassment, mental torture and agony of the respondent, therefore, it directed the appellant to pay a sum of Rs 10,000 as compensation.

10. Who should pay the amount determined by the Commission for harassment and agony, the statutory authority or should it be realised from those who were responsible for it? Compensation as explained includes both the just equivalent for loss of goods or services and also for sufferance of injustice. For instance in Civil Appeal No. ... of 1993 arising out of SLP (Civil) No. 659 of 1991 the Commission directed the Bangalore Development Authority to pay Rs 2446 to the consumer for the expenses incurred by him in getting the lease-cum-sale agreement registered as it was additional expenditure for alternative site allotted to him. No misfeasance was found. The moment the authority came to know of the

mistake committed by it, it took immediate action by allotting alternative site to the respondent. It was compensation for exact loss suffered by the respondent. It arose in due discharge of duties. For such acts or omissions the loss suffered has to be made good by the authority itself. But when the sufferance is due to mala fide or oppressive or capricious acts etc. of a public servant, then the nature of liability changes. The Commission under the Act could determine such amount if in its opinion the consumer suffered injury due to what is called misfeasance of the officers by the English Courts. Even in England where award of exemplary or aggravated damages for insult etc. to a person has now been held to be punitive, exception has been carved out if the injury is due to, 'oppressive, arbitrary or unconstitutional action by servants of the Government' (Salmond and Heuston on the Law of Torts). Misfeasance in public office is explained by Wade in his book on Administrative Law thus:

“Even where there is no ministerial duty as above, and even where no recognised tort such as trespass, nuisance, or negligence is committed, public authorities or officers may be liable in damages for malicious, deliberate or injurious wrong-doing. There is thus a tort which has been called misfeasance in public office, and which includes malicious abuse of power, deliberate maladministration, and perhaps also other unlawful acts causing injury.” (p. 777)

The jurisdiction and power of the courts to indemnify a citizen for injury suffered due to abuse of power by public authorities is founded as observed by Lord Hailsham in Cassell & Co. Ltd. v. Broome [1972 AC 1027 : (1972) 1 All ER 801] on the principle that, 'an award of exemplary damages can serve a useful purpose in vindicating the strength of law'. An ordinary citizen or a common man is hardly equipped to match the might of the State or its instrumentalities. That is provided by the rule of law. It acts as a check on arbitrary and capricious exercise of power. In Rookes v. Barnard [1964 AC 1129 :

(1964) 1 All ER 367, 410] it was observed by Lord Devlin, 'the servants of the government are also the servants of the people and the use of their power must always be subordinate to their duty of service'. A public functionary if he acts maliciously or oppressively and the exercise of power results in harassment and agony then it is not an exercise of power but its abuse. No law provides protection against it. He who is responsible for it must suffer it. Compensation or damage as explained earlier may arise even when the officer discharges his duty honestly and bona fide. But when it arises due to arbitrary or capricious behaviour then it loses its individual character and assumes social significance. Harassment of a common man by public authorities is socially abhorring and legally impermissible. It may harm him personally but the injury to society is far more grievous. Crime and corruption thrive and prosper in the society due to lack of public resistance. Nothing is more damaging than the feeling of helplessness. An ordinary citizen instead of complaining and fighting succumbs to the pressure of undesirable functioning in offices instead of standing against it. Therefore the award of compensation for harassment by public authorities not only compensates the individual, satisfies him personally but helps in curing social evil. It may result in improving the work culture and help in changing the outlook. Wade in his book Administrative Law has observed that it is to the credit of public authorities that there are simply few reported English decisions on this form of malpractice, namely, misfeasance in public offices which includes malicious use of power, deliberate maladministration and perhaps also other unlawful acts causing injury. One of the reasons for this appears to be development of law which, apart, from other factors succeeded in keeping a salutary check on the functioning in the government or semi-government offices by holding the officers personally responsible for their capricious or even ultra vires action resulting in injury or loss to a citizen by awarding damages against them. Various decisions rendered from time to time have been referred to by Wade on Misfeasance by Public Authorities. We shall refer to some of them to

demonstrate how necessary it is for our society. In Ashby v. White [(1703) 2 Ld Raym 938] the House of Lords invoked the principle of ubi jus ibi remedium in favour of an elector who was wrongfully prevented from voting and decreed the claim of damages. The ratio of this decision has been applied and extended by English Courts in various situations. In Roncarelli v. Duplessis [(1959) 16 DLR 2d 689] the Supreme Court of Canada awarded damages against the Prime Minister of Quebec personally for directing the cancellation of a restaurant-owner's liquor licence solely because the licensee provided bail on many occasions for fellow members of the sect of Jehovah's Witnesses, which was then unpopular with the authorities. It was observed that, 'what could be more malicious than to punish this licensee for having done what he had an absolute right to do in a matter utterly irrelevant to the Alcoholic Liquor Act? Malice in the proper sense is simply acting for a reason and purpose knowingly foreign to the administration, to which was added here the element of intentional punishment by what was virtually vocation outlawry.' In Smith v. East Elloe Rural District Council [1956 AC 736 : (1956) 1 All ER 855] the House of Lords held that an action for damages might proceed against the clerk of a local authority personally on the ground that he had procured the compulsory purchase of the plaintiff's property wrongfully and in bad faith. In Farrington v. Thomson [1959 UR 286] the Supreme Court of Victoria awarded damages for exercising a power the authorities knew they did not possess. A licensing inspector and a police officer ordered the plaintiff to close his hotel and cease supplying liquor. He obeyed and filed a suit for the resultant loss. The Court observed:

“Now I take it to be perfectly clear, that if a public officer abuses his office, either by an act of omission or commission, and the consequence of that is an injury to an individual, an action may be maintained against such public officer.”

In Wood v. Blair [The Times, July 3, 4, 5, 1957 (Hallet J and Court of Appeal)] a dairy farmer's manageress contracted typhoid fever and the local authority served notices forbidding him to sell milk, except under certain conditions. These notices were void, and the farmer was awarded damages on the ground that the notices were invalid and that the plaintiff was entitled to damages for misfeasance. This was done even though the finding was that the officers had acted from the best motives.

11. Today the issue thus is not only of award of compensation but who should bear the brunt. The concept of authority and power exercised by public functionaries has many dimensions. It has undergone tremendous change with passage of time and change in socio-economic outlook. The authority empowered to function under a statute while exercising power discharges public duty. It has to act to subserve general welfare and common good. In discharging this duty honestly and bona fide, loss may accrue to any person. And he may claim compensation which may in circumstances be payable. But where the duty is performed capriciously or the exercise of power results in harassment and agony then the responsibility to pay the loss determined should be whose? In a modern society no authority can arrogate to itself the power to act in a manner which is arbitrary. It is unfortunate that matters which require immediate attention linger on and the man in the street is made to run from one end to other with no result. The culture of window clearance appears to be totally dead. Even in ordinary matters a common man who has neither the political backing nor the financial strength to match the inaction in public oriented departments gets frustrated and it erodes the credibility in the system. Public administration, no doubt involves a vast amount of administrative discretion which shields the action of administrative authority. But where it is found that exercise of discretion was mala fide and the complainant is entitled to compensation for mental and physical harassment then the officer can no more claim to be under protective cover. When a citizen seeks to recover

compensation from a public authority in respect of injuries suffered by him for capricious exercise of power and the National Commission finds it duly proved then it has a statutory obligation to award the same. It was never more necessary than today when even social obligations are regulated by grant of statutory powers. The test of permissive form of grant is over. It is now imperative and implicit in the exercise of power that it should be for the sake of society. When the court directs payment of damages or compensation against the State the ultimate sufferer is the common man. It is the tax payers' money which is paid for inaction of those who are entrusted under the Act to discharge their duties in accordance with law. It is, therefore, necessary that the Commission when it is satisfied that a complainant is entitled to compensation for harassment or mental agony or oppression, which finding of course should be recorded carefully on material and convincing circumstances and not lightly, then it should further direct the department concerned to pay the amount to the complainant from the public fund immediately but to recover the same from those who are found responsible for such unpardonable behaviour by dividing it proportionately where there are more than one functionaries.”

34. A Division Bench of this Court while dealing with a similar case of negligence in allotment by DDA officials in ***Krishan Kant Aggarwal and Ors. Vs. DDA, (2004) 77 DRJ 445 (DB)*** held as under:-

“16. Public office is permitted to be occupied by the Public Officer-Public Servant keeping faith in them that they will act legally, intelligently and diligently so as to see that the public may not suffer. What is to be done when it is found that the officer has acted negligently, as a result of which public at large are suffering loss, as in the instant case, according to the respondent higher amount was to be charged but was not charged and after the contract was concluded it was realized that they are required to charge more. It is not a case of misrepresentation, fraud, or mistake of fact. On “As is where

is basis” the property was to be dealt with. Thus, with an open eye tenders were invited after the construction was completed and the same was finalized. Therefore, there is no question of mistake of fact. It is a case where the officer(s) concerned has acted negligently and, therefore, such officer must suffer and must pay the loss suffered by the respondent/DDA. The public functionary should be duty conscious rather than power charged.

17. The concept of authority and power exercised by a public functionaries has many dimensions. The authority empowered to function under a statute while exercising power discharges public duty. It has to act to sub-serve general welfare and common good, in discharging this duty honestly and bona-fide. If in discharging his duties he has acted negligently and the public sector is required to suffer, the question is whether the negligent officer should be asked to pay or the public exchequer should suffer. There is battalion of officers including Civil Engineers, Planners, Architects and Legal Advisors. Was it not the duty of the respondent before making offer to the public at large to verify the area offered and the amount to be charged for such an offer? In a modern society no public officer can arrogate to itself the power to act in a manner negligently. He is required to act intelligently and diligently so as to see that public exchequer may not suffer. In the instant case, DDA is required to suffer as the officer concerned has not discharged duties, as required. Therefore, in a case like this, it is the bounden duty of the respondent authority to make a detailed inquiry and on the material placed before it should come to the conclusion whether department is required to suffer on account of negligent act of a particular officer of officers or not and it must find out by taking proper care as to who is the officer responsible and, thereafter, must recover the amount. This exercise must be done by the respondent within a reasonable period and according to us three months' period is sufficient to make an inquiry and to make report to this Court about the action taken in the matter.

18. *It is in view of this we direct the Vice-Chairman, DDA, to immediately conduct an inquiry and to recover the amount of loss which DDA is likely to suffer from the erring officers. We further direct that within a period of three months inquiry shall be completed and report shall be placed before the Court indicating whether amount has been recovered or not and if not, why?*

19. *Learned Single Judge held that the respondent would have taken due care before the bid. However, after coming to this conclusion the learned Single Judge observed that in the counter affidavit as it is pointed out that the consistent decision had been taken in respect of similarly situated persons by giving them options, respondent should not be compelled to allot a shop of a higher floor area than the floor area sold. In pur opinion, this approach is not proper because there is a concluded contract and consistently respondent has come out that the area indicated in earlier tender notice was required to be offered. It may be noted that area would remain the same but because of the mezzanine floor the shopkeeper may have additional advantage of the mezzanine floor. But so far as the size of the shop is concerned that would remain the same. It is in view of this we allow these appeals with the aforesaid directions."*

35. The Supreme Court in ***Chief Administrator, Haryana Urban Development Authority & Anr. vs. Shakuntla Devi, (2017) 2 SCC 301*** in similar facts upheld the grant of compensation by way of interest @ 12% per annum.

UNDER ARTICLE 226 THIS COURT HAS EXTREMELY BROAD JURISDICTION AND IT CAN PASS WHATEVER ORDERS ARE NECESSARY FOR DOING EQUITY AND JUSTICE.

36. It is settled law that this Court has extremely broad jurisdiction under

Article 226 of the Constitution and under the said Article it can pass whatever orders are necessary for doing equity and justice. The Supreme Court in *Naresh Shridhar Mirajkar & Ors. Vs. State of Maharashtra & Anr., (1966) 3 SCR 744* has held that “*unlike a inferior court, in respect of a High Court, which is also a Court of Record, it is assumed that every action is within its jurisdiction, unless expressly shown otherwise.*”

CONCLUSION

37. Keeping in view the aforesaid findings, almost twenty year's delay in allotment of a shop to the petitioner, who was a successful tenderer and who had paid full consideration, constitutes harassment of a common citizen by public authority which is socially abhorring and legally impermissible. The delay in allotment constitutes mal-administration besides being violative of petitioner's legitimate expectation and constitutional right to own a property.

38. In fact, the case at hand shows the malaise that affects the Indian administration. It is apparent that the duty to act fairly, justly and reasonably has been violated by the respondent-DDA officials who have dealt with the present case.

39. Consequently, the present writ petition is allowed and the respondent-DDA is directed to forthwith allot Shop No.23, Sector-B, Pocket-7, Vasant Kunj, New Delhi, to the petitioner at the cost that was prevalent on 26th December, 1996 i.e. the date when bid was accepted. Respondent-DDA is also directed to pay 12% per annum simple interest to the petitioner from the date the petitioner deposited the consideration amount till the date of possession. The petitioner is also held entitled to cost of Rs.1 lac.

Respondent-DDA is at liberty to recover the aforesaid cost and interest from its officials after holding an inquiry in accordance with law.

MANMOHAN, J

APRIL 18, 2017

rn/js