

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: February 08, 2018

Judgment delivered on: April 03, 2018

+ W.P.(C) 1671/2013

SATYA PAL BATRA

..... Petitioner

Through: Mr. Sitab Ali Choudhary, Ms. Rubina
and Mr. Azharuddin Choudhary, Advs.
with petitioner in person.

versus

D.D.A.

..... Respondent

Through: Ms. Manika Tripathy Pandey,
Mr. Ashutosh Kaushik and
Ms. Raveena Tandon, Advs.

CORAM:

HON'BLE MR JUSTICE V. KAMESWAR RAO

J U D G M E N T

V. KAMESWAR RAO, J

1. The present petition has been filed by the petitioner with
the following prayers:-

*"In the premises aforesaid, it is most humbly and
respectfully prayed that this Hon'ble Court may be
pleased to issue:-*

*a) A writ of Certiorari calling for the records of the
case for perusal;*

*b) A Writ, order or direction in the nature of Certiorari
quashing the action on the part of the Respondent DDA
Firstly, in not mutating & transferring, for all*

purposes, in favour of the petitioner, the Registration (of his deceased wife) Bearing No.7/622 (having Application No.88759), for allotment of an LIG plot under Rohini Residential Scheme 1981 rather not responding in this regard till date despite the Petitioner is ready and willing to fulfill all the other formalities required to be done as and when directed and also ready & willing to bear restoration or other charges, if any and Secondly, not handing over the possession of the allotted LIG plot bearing No. 040, Pocket No. 01, Block No-A, Sector-04, Rohini, Delhi measuring 32.3 sq. meters despite making the entire demanded amount of money within the stipulated time, in gross violation of the rules, regulations and policy beside being in violation of the principles of equity, justice and good conscience and in infringement of the legal and fundamental rights of the petitioner;

c) A writ, order, direction in the nature of prohibition prohibiting the Respondent DDA from cancelling the allotted LIG plot bearing No. 040, Pocket No. 01, Block No-A, Sector-04, Rohini, Delhi measuring 32.3 sq. meters to his wife.

d) A writ, order, directions in the nature of mandamus commanding the Respondent DDA to forthwith 'transfer and mutata' the said registration No. 7/622 (of his deceased wife having Application No. 88759) for all purposes, in favour of the Petitioner, for allotment of an LIG plot under Rohini Residential Scheme, 1981 and hand over the possession of the said allotted LIG plot bearing No. 040, Pocket No. 01, Block No-A, Sector-04, Rohini, Delhi measuring 32.3 sq. meters to the Petitioner but if the said allotted plot is not available then immediately thereafter allot, through a mini draw, another LIG plot to the Petitioner in same sector/zone or atleast in Developed in Sectors of Rohini to him as per his 'entitlement and policy' in this regard and grant possession thereof after making payment of restoration & other charges, if any in this regard and execute the lease/conveyance

deeds in respect thereof in favour of the Petitioner;

e) A Writ of mandamus commanding the Respondent DDA to pay the cost of the petition to the petitioner;

f) 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.”

2. It is the case of the petitioner that in February, 1981 the respondent DDA announced a Scheme for allotment of flats under MIG, LIG and Janta categories to the Citizens of India. On March 27, 1981, Smt. Sanno Devi, his wife got herself registered with the DDA vide application No.88759 and deposited ₹2,000/- vide Rohini Registration Receipt No. 7/662 for allotment of LIG plot under the said Scheme. On August 04, 1982 unfortunately his wife Smt. Sanno Devi passed away leaving the petitioner as her only legal heir. The DDA, on December 13, 1983, vide allotment cum demand letter allotted LIG Plot No.040, Pocket No.01, Block No.-A, Sector-04, Rohini, Delhi measuring 32.3 sq. meters to his wife and directed to deposit ₹1816.18/- within 30 days from the receipt of the said letter.

3. On December 20, 1983 the petitioner deposited the amount of ₹1816.18/-. On January 30, 1984, the petitioner informed the DDA that his wife has passed away on August 04,

1982. He had enclosed a death certificate along with the said letter. He requested that the plot allotted, be given to him as per policy and rules. The DDA vide letter dated June 02, 1984 in the name of the wife of the petitioner informed that on scrutiny it was found that she had not submitted certain documents such as affidavit/undertaking as required in the Brochure. It is the case of the petitioner that he vide letter dated July 18, 1984, again informed the DDA that his wife had passed away. He further informed that after her death, the petitioner is her only legal heir, as she died issueless. It is the case of the petitioner that way back on January 30, 1984, the petitioner had applied for mutation and submitted required documents as demanded by DDA but DDA had not responded positively. It is the case of the petitioner that despite making the payment of entire demanded amount of money within the stipulated time to the DDA and visiting the office of DDA several times and requesting to mutate and transfer the said registration in his favour, the DDA did not respond for the reasons best known to them. It is averred that the DDA being a statutory authority should act fairly, in just proper and legal manner without any discrimination, favour.

4. It is averred that on March 03, 2013, the petitioner came

to know through a public notice that the DDA had scheduled to dispose off by way of auction the remaining/left out plots in developed sectors of Rohini on March 13, 2013 to March 15, 2013 and thereby depriving the petitioner and similarly situated registrants from their legal and fundamental rights and entitlement of having a plot in developed sectors of Rohini despite making payment of the entire demanded amount of money into the account of the DDA.

5. The DDA has filed a counter affidavit. The basic facts are not disputed. It is also stated that the DDA vide letter dated December 22, 1987 requested the petitioner to furnish the required documents for mutation of the plot. The DDA also refers to the reminders having been sent on July 31, 1990 and September 22, 1992. However, the reminder dated September 22, 1992 returned undelivered from the postal authorities with the remarks "*no such person at this address*". Therefore, the DDA cancelled the allotment of plot in question and sent a cancellation letter dated March 24, 1995 to the petitioner due to non submission of required documents for transfer of plot in his name. The petition is also contested on the ground of inordinate delay of more than 30 years in approaching the DDA and this

Court.

6. A rejoinder has been filed by the petitioner.

7. It is the submission of Mr. Sitab Ali Choudhary, learned counsel for the petitioner that the respondent could not have cancelled the registration as there was no concealment of material facts by the original registrant as well as by the petitioner and the DDA has accepted the application form filled in by the original registrant, who is the wife of the petitioner. He stated that the petitioner is also eligible for mutation, allotment of plot and possession thereof. According to Mr. Choudhary cancellation of registration on the alleged ground of non deposit of documents is illegal, as the non deposit of documents is only an irregularity and not a violation of mandatory condition. He further stated, the demanded amount having been paid, could not have resulted in the cancellation of registration. According to him, the impugned action of the respondent is in violation of Articles 14, 21 and 300A of the Constitution of India. He stated that the cancellation of the registration, if allowed cannot be compensated by the respondent paying interest on the amount deposited towards the registration, inasmuch as the cost of the land has now sky rocketed and the petitioner cannot be made to suffer due to

lapses/fault and whims and fancies of the respondent DDA. He also states, the petitioner is entitled to allotment on the rates as were applicable at the time of original allotment and alternatively, the petitioner may be allotted on the present rates. He relied upon the following judgments in support of his contention:-

- (i) ***Asha N.Madani v. DDA (1997) I AD (Delhi) 385;***
- (ii) ***Dhani Ram Kapoor v. DDA (1997) I AD (Delhi) 578;***
- (iii) ***DDA v. Sukhjinder Singh Bhatia L.P.A. No. 195/2010 decided on March 23, 2010;***
- (iv) ***Bhupinder Singh Vohra v. DDA W.P.(C) No. 2624/2010 decided on February 24, 2011;***
- (v) ***Sanmukh Singh v. DDA W.P.(C) No. 400/2011 decided on January 12, 2012;***
- (vi) ***Rakesh Kumar v. DDA CW No. 7242/1999 decided on May 02, 2001;***
- (vii) ***Amar Nath Hira v. DDA W.P.(C) No. 453/2008 decided on December 16, 2009;***
- (viii) ***Shiv Narain v. DDA CW No. 475/2002 decided on September 17, 2002;***
- (ix) ***DDA v. Banwari Lal Arya LPA No. 137/2013 decided on March 05, 2013;***
- (x) ***DDA v. Sukhjinder Singh Bhatia LPA N. 195/2010 decided on Mach 23, 2010;***
- (xi) ***Sukhjinder Singh Bhatia v. DDA W.P(C) No. 5333/2008***

decided on July 27, 2009;

(xii) Bhagat Singh Manral v. DDA W.P.(C) No. 9724/2006

decided on August 10, 2009;

(xiii) Vinod Bhojwani v. DDA W.P.(C) No. 9214/2009 decided on May 05, 2010;

(xiv) Mohinder Singh v. Delhi Development Authority W.P(C) No.1096/2011 decided on May 19, 2011.

8. On the other hand, Ms. Manika Tripathy Pandey, learned counsel for the respondent would submit Smt. Sanno Devi vide application No.88759 got herself registered for allotment of an LIG plot under Rohini Residential Scheme 1981 by depositing the registration money, against which she was issued a FDR No.28472. She stated, Smt. Sanno Devi was allotted an LIG plot No. 40, Pocket No.1, Block-A, Sector 40 Rohini measuring 32.3 sq. meters. The allotment cum demand letter was issued to her on December 13, 1983 to deposit the cost of the plot within the stipulated period and the demanded cost of plot was ₹1816.18 which was deposited vide Challan No.124525 dated December 20, 1983. Since she had not submitted the required documents, therefore the respondent DDA vide letter dated June 02, 1984 requested her to submit the required documents. In response thereto, petitioner vide letter dated July 18, 1984 intimated that

Smt. Sanno Devi had died on August 04, 1982. The petitioner furnished a copy of death certificate of late Smt. Sanno Devi. Thereafter, DDA vide letter dated December 22, 1987 requested the petitioner to furnish the required documents for mutation of above said plot. She would state, the reminders in this regard were sent to him on July 31, 1990 and September 22, 1992. However, the reminder dated September 22, 1992 returned undelivered from the postal authority with the remarks “*No such person at this address*”. Therefore, DDA cancelled the allotment of plot in question and sent a cancellation letter dated March 24, 1995 to the petitioner, due to non submission of required documents for transfer of plot in his name. She seeks the dismissal of the writ petition on the ground of inordinate delay of more than 30 years in approaching DDA and this Court. She would rely upon the judgment in the case of ***Brinda Ghosh vs. DDA W.P.(C) 6871/2009 decided on February 13, 2012.***

9. Having heard the learned counsel for the parties, the issue which arises for consideration is, whether the petitioner is entitled to a direction from this Court to the respondent DDA to firstly mutate the registration bearing No.7/622 for allotment of a LIG plot under the Rohini Residential Scheme 1981 and to handover

the possession of a LIG plot in his favour. I may also state here, on March 13, 2013 when the matter was listed for the first time, this Court had passed the following order:-

“Notice. Counsel for the Respondent accepts notice. Counter Affidavit be filed within four weeks with advance copy to counsel for Petitioner who may file Rejoinder thereto within two weeks thereafter.

List on 1st May, 2013.

CM No.3139/2013

Notice. Mr.Arun Birbal, Advocate accepts notice on behalf of Respondent.

List on the date fixed. In the meanwhile, the Respondent shall not cancel the allotment of LIG plot bearing No.40, Pocket No.01, Block No.A, Sector-04, Rohini, Delhi. In case the allotment already stands cancelled, the Respondent shall reserve one LIG plot measuring 32.3 sq.mtrs in the same sector or zone in Rohini for allotment to the Petitioner in the event of the Petitioner succeeding in the Writ Petition.

A copy of this order be given dasti to counsel for the Petitioner under the signature of the Court Master.”

10. An additional affidavit has been filed by the respondent

DDA on March 04, 2014 wherein the following has been stated:-

“1. That it is humbly submitted that this Hon’ble Court vide its order dated 13.3.2013 had directed DDA not to cancel the allotment made to the Petitioner in Sector 4 Rohini. That it had also specified that in case the allotment already stood cancelled, DDA had been directed to reserve one LIG plot measuring 32.3 square metres in the same sector or zone in Rohini for allotment to the petitioner, in event of the Petitioner succeeding in the Writ Petition.

2. That it is humbly submitted that pursuant to the said

*directions of the Hon'ble Court; the department reserved an LIG plot in the developing sector for the allotment since no LIG plot was vacant/available in the same sector or zone. That it is humbly submitted that a letter dated 25.07.2013 was also issued to the petitioner intimating the same. A copy of the letter dated 25.07.2013 is enclosed and marked as **Annexure R2**.*

3. That it is further submitted that pursuant to the directions of this Hon'ble Court dated 21.01.2014, this is humbly stated that one plot bearing No.2234, Pocket I, Block C, Sector 34, (under Rohini Residential Scheme), measuring 32 square metres in area has already been reserved in the Inventory Register at page 23 C, as per report."

11. The basic facts are not in dispute. The case of the respondent is that the respondent DDA has sent communication/reminders dated December 22, 1987, July 31, 1990 and September 22, 1992 to furnish the required documents for mutation. The petitioner denies the receipt of these communications. The last reminder being September 22, 1992 was returned undelivered from the postal authority with the remarks "*no such person at this address*". This observation of the postal authority is of some significance, inasmuch as Smt. Sanno Devi had applied for allotment of the plot with the address Sanno Devi, C/o Jaidev Rajpal, 18F, Vijay Nagar, Delhi, whereas the present petition has been filed by the petitioner with the

address Satya Pal Batra, S/o Ishar Das, R/o H.No. 1521, Sector-15, Sonipat, Haryana. It is not the case of the petitioner that the petitioner had intimated to the DDA, the change of his address. If that be so, in the absence of communicating to the DDA, the change of address, the DDA had rightly sent the communication to the only address available in their records. That apart, it is noted that after the communication dated July 18, 1984 no communication has been placed by the petitioner till the filing of the writ petition in the year 2013, depicting that he had been following up with the authorities, who had represented to him that his case was under consideration. It is clear that the petitioner has approached after more than 29 year. The learned counsel for the respondent is justified in taking the plea of inordinate delay/delay and laches for the petitioner to approach this Court. That part, the registration having been cancelled on March 24, 1995 in the absence of any response from the petitioner, cannot be faulted. The learned counsel for the respondent is also justified in relying upon the judgment of this Court in the case of **Brinda Ghosh (supra)**, wherein in paras 7 to 12, this Court has held as under:-

“7. The Court finds force in the aforesaid submission

made by the counsel for the respondent/DDA. It is not denied by the petitioner that upon demise of her father on 31.12.1991, he was survived by his wife (mother of the petitioner) as his legal heir and that she did not take any steps whatsoever to approach the respondent/DDA for getting the registration mutated in her favour. It is also an undisputed fact that the mother of the petitioner expired on 2.3.2008, which was after a period of seventeen long years from the date of the demise of Late Amal Chandra Biswas and after a period of 6 years from the date of issuance of the demand-cum-allotment letter to the original registrant. It was only after the demise of the mother of the petitioner that it is alleged that the petitioner started to make efforts to locate papers for the registration and she sought to approach the respondent/DDA to intimate them about the death of the original registrant and also his wife and to inquire about the status of the allotment under the NPRS 1979.

8. The aforesaid explanation offered for approaching the Court so belatedly cannot cut any ice for the reason that it was incumbent on the part of the predecessor-in-interest of the petitioner, i.e., her mother, to have approached the respondent/DDA within a reasonable period from the date of the demise of her husband for getting the registration mutated in her favour. However, no such steps were taken by her during her lifetime.

9. Merely because the petitioner now claims that upon the demise of her mother in the year 2008, she had discovered some documents relating to the registration, that in itself cannot mean that she can approach the respondent/DDA at any odd time asking for mutation of the registration in her favour. Furthermore, a perusal of the letter dated 7.8.2010 addressed by the respondent/DDA to the petitioner which forms the basis of the claim of the petitioner that the respondent/DDA had carried out mutation of the registration in her favour, falsifies such a stand.

Rather, a perusal of the original records produced by the learned counsel for the respondent/DDA, which contains the carbon duplicate of the letter dated 7.8.2010, bears out the submission of the counsel for the respondent/DDA that the said letter was issued calling upon the petitioner to furnish the necessary documents only for the purposes of refund and not for „reference purposes“ as wrongly typed out in the typed version of the document placed by the petitioner at page 28 of the paper book.

10. Counsel for the petitioner submits that even if the successor-in interest of the original registrant had not taken any steps to get the registration mutated in her name, the respondent/DDA is under an obligation to mutate the registration in the favour of the petitioner upon the demise of her mother.

11. The aforesaid argument is completely fallacious and liable to be turned down. It is not permissible for an applicant to keep sleeping over her rights for an inordinately long duration and wake up one fine morning to claim a statutory right against a Government authority. Both, the petitioner as also her deceased mother ought to have shown some diligence on their part to keep the registration of Late Amal Chandra Biswas alive. However, they have miserably failed to demonstrate that they were vigilant. It is pertinent to note that the NPRS 1979 in question was floated in the year 1979 and three decades have already passed and still the petitioner and many others like her keep approaching the Court seeking allotments under the said Scheme.

12. No doubt, delay and latches have been found to have occurred for genuine reasons in some cases pertaining to allotment of MIG Flats under the said Scheme right upto the year 2004, which also dates back to almost eight years, but such a situation cannot be permitted to continue forever. Every Housing Scheme that is floated by a Government agency has a

life and timeline and it ought to exhaust itself thereafter. It is not that a successor-in-interest of an original registrant can rise from his/her slumber as per his/her convenience and approach the Court claiming to be a legal heir and thus seek entitlement to mutation of the registration in his/her favour. The present case is one such case where the Court declines to exercise its discretion in favour of the petitioner for the reason that the petitioner has failed to offer a just or a sufficient reason to explain the delay of about seventeen years in approaching the DDA with a request for mutation of the registration in her favour.”

12. Insofar as the judgments relied upon by learned counsel for the petitioner are concerned, in **Asha N. Madani (supra)**, this Court has held the term with regard to deposit of documents is directory and had directed allotment of plot in favour of the petitioner therein.

13. Insofar as the judgment in the case of **Dhani Ram Kapoor (supra)** is concerned, there this Court has held that a flat once allotted, cannot be cancelled without following the principles of natural justice.

14. In the case of **Sukhjinder Singh Bhatia (supra)**, the Coordinate Bench of this Court considering the prayer of the petitioner therein for his consideration in the draw of lots and allotment of LIG flat on the ground that his allotment letter was sent at the wrong address, has allowed the writ petition by

holding that the petitioner had not received the demand cum allotment letter for the draw of lots held in 1993 as the same was sent on a wrong address and on that ground could not have cancelled the allotment. The Bench had granted the relief in favour of the petitioner directing DDA to include the name of the petitioner in a mini draw/draw of lots within three months. In the appeal, the Division Bench by observing that the DDA could not substantiate their contention by showing the proof that the respondent (petitioner in the writ petition) had received the demand cum allotment letter, has dismissed the appeal filed by the DDA.

15. Similarly, in ***Bhupinder Singh Vohra (supra)***, the Coordinate Bench of this Court has allowed the writ petition on the ground that the case of the petitioner is covered by the wrong address policy of the DDA, inasmuch as despite the petitioner therein intimating the change of address, the DDA has sent the communication to the earlier address, which was not received by the petitioner therein. The Court granted the relief to the petitioner therein.

16. Similarly, in ***Sanmukh Singh (supra)***, this Court on a finding that the DDA has dispatched the demand cum allotment

letter to a wrong address, has granted the relief in favour of the petitioner therein.

17. Insofar as **Rakesh Kumar (supra)** is concerned, the Coordinate Bench of this Court has granted the relief to the petitioner therein by directing the DDA that the petitioner therein be charged with the rate of original allotment.

18. Similarly in **Amar Nath Hira (supra)**, the Coordinate Bench of this Court has granted the relief to the petitioner for allotment of a flat by making the payment as per the current cost.

19. Similarly, in **DDA v. Banwari Lal Arya (supra)**, the Division Bench of this Court has dismissed the appeal filed by the DDA against the order of the learned Single Judge, who granted the relief in favour of the respondent by holding that the demand cum allotment letter sent to the postal address of the respondent was received back unserved; it was obligatory for the DDA to send the said letter at the permanent address, which has been disclosed in the application form.

20. In **Bhagat Singh Manral (supra)**, the Coordinate Bench of this Court had granted the relief in favour of the petitioner by holding that despite intimation of change of address, the same was not recorded by the DDA, and had sent the demand cum

allotment letter at a wrong address. The Coordinate Bench of this Court directed the allotment of the flat at the cost prevalent in the year 1994.

21. Similarly, in the case of *Vinod Bhojwani (supra)*, the Coordinate Bench of this Court, holding that the demand cum allotment letter was sent by the DDA at a wrong address, granted the relief to the petitioner therein.

22. Similarly, in the case of *Mohinder Singh (supra)*, the Coordinate Bench of this Court has granted the relief in favour of the petitioner therein on a finding that the allotment letter should have been sent at the occupational address, which was available in the file of the DDA and directed the DDA to issue demand cum allotment letter in favour of the petitioner with 12% simple interest on the on the amount of the initial demand made by the DDA.

23. Suffice to state, the judgments referred to, are not applicable to the facts of this case as it is not his case that there was a change of address, which was intimated to the DDA and also it is not the case of the petitioner that the communications/reminders dated December 22, 1987, July 31, 1990 and September 22, 1992 have been sent on the wrong

address, because of which, he did not receive the communications. So, it follows, the communications referred to above were sent to the right address, but were not responded to resulting in the impugned decision attaining finality. So, it must be held that the writ petition is hit by inordinate delay/delay and laches. There is one more aspect which requires a reference, which is during the hearing, it was put to the learned counsel for the petitioner whether the house in Sonapat (as mentioned in the amended memo of parties) is owned by the petitioner, the answer was in the affirmative, as he got the same through succession. If that be so, it is not a case where the petitioner is without shelter. He having one, this court is of the view that even on this ground the court should not exercise extra-ordinary jurisdiction in favour of the petitioner particularly in the facts of this case. The writ petition is dismissed. No costs.

V. KAMESWAR RAO, J

APRIL 03, 2018/ak