

\$~

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

Date of decision: 10th December, 2018

+ W.P.(C) 13278/2018 & CM APPL. 51644/2018

NARINDER BHATIA Petitioner

Through: Mr. Dilip Singh, Adv.

versus

DELHI DEVELOPMENT AUTHORITY & ORS ..Respondents

Through: Mr. Dhanesh Relan, SC for
DDA

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

%

J U D G M E N T (O R A L)

1. *Vide* order passed today, this writ petition was dismissed with costs of ₹ 25,000/-, for reasons to be recorded separately. This judgment proceeds to record the reasons therefor.

2. On 17th February, 1995, Mr. Suresh Chandra Sinha (Respondent No.2 herein) applied for allotment of a house, under the Expendable Housing Scheme-1995, and was allotted House No. 140, Pocket-26, Sector-24, Rohini, *vide* demand-cum-allotment letter dated 1-15th August, 1995. The amount was to be deposited in six equal installments, to be paid on quarterly basis.

3. Respondent No.2 paid the first three installments well in time, but the remaining three installments were paid on 6th November, 1998, though the last date for payment thereof was 16th January, 1997.

4. At this stage, it may be noted that the demand-cum-allotment letter issued to the petitioner, contained the following clause:

“4. The amount demanded should be paid on or before the due date mentioned in para (2) and (3) above. Extension of time making the payment of the demanded amount upto a maximum period of 90 days from the due date is admissible. The allottee will have to pay interest @ 12% per annum for the first month and (a) 18% per annum for the next two months. In case, the payment of the amount asked for in the demand letter is not made within 90 days of the due date, the allotment shall stand cancelled automatically. DDA, however, reserves the right to restore the allotment and regularize the period of default in making the payment after charging interest @ 24 % p.a. (for the period beyond 90 days) with restoration charges as applicable and such other terms and conditions as may be decided from the time to time.”

5. The above property No.140, Pocket-26, Sector-24, Rohini was purchased by the petitioner, from Respondent No.3, against valuable consideration.

6. Consequent thereupon, the petitioner approached the Delhi Development Authority (Respondent No.1 herein and referred to, hereinafter, as “the DDA”) seeking possession of the property.

7. The DDA, however, refused to grant possession of the aforementioned flat to the petitioner, resulting in the petitioner moving the learned Civil Judge (West District), *vide* Suit No.399/2007, Sh.Narender Bhatia v. DDA & Ors., containing the following three prayers:

“A. That the plaintiff be declared as a true and lawful purchaser of the Flat No.140, Pocket 26, Sector 24 Rohini

Residential Scheme Delhi which is shown in red colour in the attached site plan.

B. That a decree of permanent injunction be passed in favour of the plaintiff, their agents, servants, attorney etc. thereby restraining the defendants, their agents, servants, assigning or parting with the possession or creating any third party in any manner, whatsoever of the above said property more clearly shown in the attached site plan.

C. A decree of mandatory injunction be passed in favour of the Plaintiff and against the defendant no.1 directing the defendant no.1 to execute the necessary documents in favour of the plaintiff purchaser as per law.”

8. The DDA, in its written submission before the learned senior Civil Judge, pointed out that the fourth and fifth installments had been paid, by the petitioner, after a delay of 843 days and that, therefore, the allotment of the Flat stood automatically cancelled.

9. The learned Senior Civil Judge framed the following issues on 14th March, 2011:

“(1) Whether the plaintiff is entitled to relief of declaration as prayed for? OPP

(2) Whether the plaintiff is entitled to relief of permanent injunction as prayed? OPP

(3) Whether the plaintiff is entitled to relief of mandatory injunction as prayed for? OPP

(4) Whether the plaintiff has no locus standi to file the present suit? OPD/DDA

(5) Whether the suit is barred by limitation? OPD/DDA”

10. Common findings were returned, by the learned Senior Civil

Judge, on Issue Nos. 1, 2, 3 and 4, in respect whereof, the learned Senior Civil Judge found/observed as under:

(i) The demand-cum-allotment letter had been issued in favour of Respondent No.2, and the petitioner was a stranger to the said allotment.

(ii) The allotment letter contained a specific covenant to the following effect:

“ The amount demanded should be paid on or before the due date mentioned in para (2) and (3) above. Extension of time for making the payment of the demanded amount maximum period of 90 days from the due date is admissible. The allottee will have to pay interest @1.2 %per annum for the first month and @18 % per annum next two months. In case, the payment of the amount asked for in the demand letter is not made within 90 days of the due date the allotment shall stand cancelled automatically. DDA, however reserves the rights to restore the allotment and regularize the period of default in making the payment after charging interest @ 24 %for the period beyond 90 days) with restoration charges as applicable and such other terms and conditions as may be decided from time to time.”

(iii) No doubt, the DDA had a policy of accepting delayed payment; however, the delay was required to be condoned either by the Principal Commissioner or, in appropriate circumstances, the Hon'ble Lieutenant Governor. In the present case, as the delay in making payment was of more than one year, power to condone the delay was vested in the Hon'ble Lieutenant Governor.

(iv) There was no denial of the fact that, in depositing the fourth and fifth installments of the costs of the flat, the petitioner was guilty of delay of 843 days.

(v) In the circumstances, the petitioner (i.e. the plaintiff before the learned Senior Civil Judge) had failed to satisfy the court as to how the payment made by Respondent No.2 was correct, entitling him to re-allotment.

(vi) There was no evidence to indicate that Respondent No.2 had ever approached the office of the Hon'ble Lieutenant Governor with a request for condonation of delay.

(vii) The parties were bound by the terms of allotment, which clearly stated that, in case payment was not made within 90 days of the due date, the allotment would automatically stand cancelled.

(viii) Though the DDA had a mechanism to restore allotment and regularised the period of default by charging interest and recover restoration charges, the original allottee had to approach the DDA therefor.

(ix) There was no averment that any such request had been made by the original allottee (Respondent No. 2) to the DDA. In the circumstances, the DDA was entitled to cancel the allotment

of the flat.

(x) The petitioner was not in possession of the property. Neither was Respondent No.3 ever given possession of the property. Having filed a suit for declaration of his title over the property, the petitioner ought to have sued for the consequential relief of possession, but no such relief was contained in the application.

(xi) This would involve valuation of the suit at a much higher level. For all these reasons, the learned Senior Civil Judge held that the petitioner's suit was liable to be dismissed.

11. Admittedly, the aforementioned judgment of the learned Senior Civil Judge was never challenged, and has attained finality.

12. The writ petition avers that “after dismissal of the said suit, the petitioner got the file re-examined and was advised that the appropriate remedy in the facts of the case was to file a writ petition such as the present writ petition”.

13. Purportedly goaded by the said advise, the petitioner approached this Court by way of WP(C) 4149/2016.

14. A reading of the said writ petition would reveal that the contents thereof are substantially similar to the contents of the present writ petition.

15. The prayers in the said writ petition read thus:

“i. writ of certiorari or any other appropriate writ or direction quashing the automatic cancellation of the allotment by the respondent no. 1 in favour of Respondent No. 2 in terms of demand cum allotment block letter' dated 1.8.1995 to 15.8.1995 at Annexure P-3 in respect to the property bearing no. 140, Type A, Pocket 26, Sector 24, Rohini, Delhi in file no.504(1689)/95/EHS/RO, A/c No. 9500552 arising out of application no. 001550 and directing the respondent no. 1 to hand over possession of the same to the Petitioner and execute all the title documents etc. in relation to the aforesaid flat in favour of the Petitioner.

ii. a writ of mandamus or any other appropriate writ or direction, restraining the respondent no. 1 thereafter from interfering with the peaceful possession and enjoyment of Petitioner in respect of the said property bearing no. 140, Type A, Pocket 26, Sector 24, Rohini, Delhi.

Any other or further relief which this Hon'ble court may deem fit and proper under the circumstances of the case may be passed against in favour of the petitioner and against the respondents.”

16. When the said writ petition came up for preliminary hearing before this Court, on 26th May, 2016, the following order was passed:

“W.P.(C) 4149/2016 and CM APPL. 17505/2016

Learned counsel for the petitioner seeks permission to withdraw this petition with liberty to file a fresh petition or avail other legal remedies available to him in accordance with law.

The petition and the application are dismissed as withdrawn with liberty as prayed for.”

17. The petitioner again approached the DDA with a representation,

dated 13th November, 2018, for condonation of the delay, on its part, in making the last three installments against allotment of the plot.

18. Purportedly aggrieved by the silence, on the part of the DDA, towards this representation, the petitioner has moved this Court by way of the present writ petition, containing the following prayers:

- “i. Issue an appropriate writ/ order/direction to call the record of respondent no. 1 pertaining to the registration, allotment and cancellation of the house under expendable scheme having file no. 504(1609)/95 and House No. 140, pocket-26, Sector-24, Rohini, Delhi;
- ii. Issue an appropriate writ/order/direction for restoration of allotment by setting aside the automatic cancellation and consequently direction to handover the possession of the house no. 140, Pocket 26, Sector-24, Rohini, Delhi and execute the conveyance deed after completion of formalities, in the interest of justice;
- iii. Complete the necessary formalities in time bound manner;
- iv. Pass any further order may deem fit and proper in favour of the petitioner.”

19. It is clear, at first glance, that the present writ petition is merely a third avatar of the same cause of action, i.e. the power of the DDA to condone the delay, on the part of the petitioner, in effecting payment of the last two installments, and the consequences thereof.

20. The judgment of the learned Senior Civil Judge, not having been challenged, has attained finality. The petitioner ought not, therefore, to have filed WP(C) 4149/2016, in the first place, and appears to have done so only because the period for appealing against

the order of the learned Single Judge had expired.

21. This Court was, apparently, not inclined to entertain the writ petition, compelling the petitioner to withdraw the writ petition with liberty to seek legal remedies in accordance with law. Piggybacking on the same liberty, the petitioner has re-approached this Court, ventilating, substantially, the same cause of action and the same pleas, the sole difference being that, in the interregnum, the petitioner has addressed a representation to the DDA on 13th November, 2018.

22. This approach amounts, in my opinion, to sharp practice. It is not permissible for a litigant to go on approaching the court for the same cause of action, again and again. Even worse would be a situation, such as the present, in which the appropriate remedy, originally sought by a litigant, i.e. by way of a civil suit, had not succeeded.

23. The proper remedy for the petitioner would have been to appeal against the said order, which was never done. Instead, one misconceived writ petition was filed, withdrawn and a second misconceived writ petition has been filed now.

24. It is apparent that, the petitioner is indulging in forum shopping, trying his luck in one proceeding after another, before different fora.

25. Such an approach has severely to be deprecated, and this Court

does so.

26. I had repeatedly queried learned counsel for the petitioner, as to whether he was interested in pursuing this writ petition, given the fact that the issue in question had been raised and decided by the learned Civil Judge. Learned counsel for the petitioner, however, argued the matter at length, seeking to submit that he had never raised the issue of condonation of delay before the learned Senior Civil Judge.

27. As already noted hereinabove, the judgment of the learned Senior Civil Judge consider, the issue of condonation of delay, at length. Whether such consideration was right, or wrong, does not arise for consideration, as the petitioner has not chosen to challenge the said judgment.

28. For all the above reasons, the writ petition is dismissed with costs of ₹ 25,000/-, to be paid to the Delhi High Court Library Fund.

DECEMBER 10, 2018

dsn

C. HARI SHANKAR, J