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

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Decided on 06.11.2019

+ **W.P.(C) 952/2012**

POONAM JAISWAL

..... Petitioner

Through: Ms. Iti Sharma, Adv.

versus

DDA AND ANR

..... Respondent

Through: Mr. Arun Birbal, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J. (ORAL)

1. The principal grievance of the petitioner is that even though she has paid the entire money qua the flat allotted in her favour, she has not been allotted the flat. Sans unnecessary verbiage, the following broad facts are required to be noticed to adjudicate the petition:

2. The Delhi Development Authority (in short "DDA") had floated a scheme known as Expandable Housing Scheme, 1995 (hereafter referred to as "1995 Scheme") for allotment of flats in Dwarka, Rohini, Narela, and Kondli Gharoli.

2.1. Pursuant to which, the petitioner applied for allotment of a flat under the 1995 Scheme.

3. On 28.3.1995, the petitioner was allotted a flat described as flat no. 795, Sector-A-6, Pocket-7, Type-A, Narela. Consequent thereto, the DDA issued a demand-cum-allotment letter dated 15/30.5.1995.

3.1. As per the demand-cum-allotment letter, the petitioner was required to

pay a total sum of Rs.2,86,250/-.

4. It is not in dispute that qua payment of the aforementioned price, a certain flexibility was given to the allottee i.e. the petitioner in this case. Consequently, the petitioner on 14.5.1996, deposited 50% of the demanded amount with an option to deposit the balance 50% in instalments.

5. It appears that on 6.9.1995, the petitioner had requested for cancellation of her allotment and sought refund of the registration money deposited with her application; which was an amount of Rs.15,000/-.

6. This request of the petitioner was declined by the DDA as the request for refund was made beyond the stipulated period of 60 days.

6.1. The DDA, in fact, forfeited the registration money deposited by the petitioner as per the terms of the 1995 Scheme.

7. It appears that the petitioner, thereafter, changed her mind and, accordingly, made a request for restoration of the flat allotted to her. It is in this background that the petitioner deposited Rs.1,43,125.00, on 14.5.1996; an amount which was equivalent to 50% of the cost demanded by the DDA.

8. The DDA on 24.11.1999 served a notice on the petitioner for deposit of the balance amount in instalments, which were three in number. In response to this, the petitioner, on 23.12.1999, requested for extension of time by three months on account of her illness.

8.1. On 31.12.1999, the DDA, once again, called upon the petitioner to deposit the money against the remaining three instalments. The record shows that the petitioner, on 18.5.2002, repeated her request for extension of time by another three months for depositing the balance sum due to illness.

9. The DDA for some reason did not cancel the petitioner's allotment and instead issued a notice on 18.1.2005 to the petitioner for depositing of

the amounts against the remaining three instalments.

9.1. It is in response to this notice that the petitioner on 2.6.2005 deposited Rs.1,60,000/- via her power of attorney holder, one, Ms. Geeta Sharma.

10. The record also shows that the DDA issued a communication dated 17.4.2006 to the petitioner asking her to deposit Rs.3,08,946/-. Via this letter, the DDA called upon the petitioner to not only pay the balance instalments but also monies towards penal and restoration charges as well as capitalized surcharge.

10.1. Thus, the total amount demanded vide letter dated 17.4.2006 i.e. Rs.3,08,946/-, was a sum of balance three instalments and aforementioned charges. It is not in dispute that the petitioner pursuant to this communication, on 17.5.2007, deposited a sum of Rs.3,10,000/-.

11. It is the petitioner's case that, thereafter, a request was made to the DDA to handover the physical possession of the flat to her.

11.1. Although the relevant correspondence, if any, made in this behalf is not on record, there is a reference to a letter dated 27.8.2008, issued by the petitioner's power of attorney holder i.e. Ms. Geeta Sharma, in the DDA's letter dated 11.12.2008, whereby, for the first time, her request for handing over the flat was rejected.

12. It appears that the petitioner pursued the matter even thereafter and, in fact, made a representation to that effect vide letter dated 21.9.2011.

13. The DDA vide impugned letter dated 30.12.2011, once again, reiterated that after the petitioner's request had been examined by the competent authority, had reached a conclusion that her request could not be acceded to.

14. The petitioner was, thus, advised to apply for refund of the amount

deposited with the DDA.

15. Given this situation, the petitioner approached this Court by way of the captioned writ petition, which came up for hearing for the first time on 17.2.2012. Notice in this petition was issued. Since then, the respondents have filed a counter affidavit and two additional affidavits in the matter. The petitioner has placed her rejoinder on record as well.

16. The moot question which arises for consideration is: whether the petitioner at this juncture is entitled to the relief prayed for in the writ petition. In the writ petition, the prayer made is for quashing of the impugned letter dated 30.12.2011, whereby, the petitioner's request for handing over the flat was rejected and, as indicated above, she was advised to seek refund from the DDA.

16.1. The consequential prayer made in the writ petition is for handing over of the flat.

17. Mr. Arun Birbal, who appears for the DDA, resists the writ petition on the following grounds:

(i) Firstly, the petitioner's request for allotment of the flat was rejected as far back as on 11.12.2008. The instant writ petition has been filed in February 2012. There is a delay of nearly three years in approaching this Court.

(ii) Secondly, the petitioner, admittedly, paid the entire consideration for the flat only on 17.5.2007, whereas the demand-cum-allotment letter was issued as far back as on 15/30.5.1995 and therefore, there was a delay of nearly 12 years. There is no policy for condoning a delay as large as this.

(iii) Thirdly, the delay by the petitioner in making the entire

payment and the rejection of her flat led the DDA to allot the flat to, one, Mr. Mahinder Singh on 25.11.2014. Thus, there is no flat available for the allotment.

(iv) Fourthly, the letter dated 17.4.2006 pursuant to which the petitioner deposited the balance amount did not have the approval of the competent authority. The competent authority, for condonation of such delay, at the relevant point in time, was the Lieutenant Governor. In other words, the letter had been issued by an officer without the approval of the competent authority.

18. Ms. Iti Sharma, who appears for the petitioner, has refuted each one of these submissions. It is her contention that though there was a delay in making the payments, the delay was explained. The petitioner could not make the payment of the balance sum between 1996 and 2007 on account of her illness. Ms. Sharma submitted that, in any event, the DDA vide its notice dated 18.1.2005 called upon the petitioner to pay the balance instalments. The petitioner pursuant to this notice, deposited Rs.1,60,000/- on 2.6.2005. The petitioner, thereafter, received another letter dated 17.4.2006 calling upon her to pay an additional amount of Rs.3,08,946/-, which was inclusive of penal and restoration charges as well as capitalized surcharge.

18.1. These circumstances, according to Ms. Sharma, point in the direction that the DDA chose to condone the delay. It was her contention that this decision was taken by the DDA for good commercial reasons as at the relevant point in time, the flat situate in Narela had no takers even though DDA was offering a 30% discount.

18.2. Insofar as the delay between 11.12.2008 and February 2012 was concerned, which is when the instant petition was filed, Ms. Sharma says

that the petitioner has not been served with the letter dated 11.12.2008; the petitioner was given a copy of the same only when the petitioner's power of attorney holder, one, Ms. Geeta Sharma sought information with respect to the allotment of the flat *via* an application filed under Right to Information Act, 2005 (in short "RTI Act") .

18.3. For this purpose, Ms. Sharma referred to the RTI application dated 3.12.2008 and the consequent reply dated 6.1.2009.

18.4. Ms. Sharma, thus, emphasized that it was only with the reply dated 6.1.2009, that the DDA furnished, for the first time, a copy of the letter dated 11.12.2008.

18.5. As regards contention that the letter dated 17.4.2006 did not have the approval of the competent authority, Ms. Sharma submits that no such stand was taken by the DDA in its counter affidavit dated 17.4.2012. It is Ms. Sharma's contention that as the litigation progressed, the DDA filed affidavits contrary to the record to demonstrate that the letter dated 17.4.2006 did not have the approval of the competent authority. It was her submission that, in any event, a bare perusal of the letter dated 17.4.2006 would show that the officer concerned, who was a senior officer, portrayed to the petitioner that the said communication had the approval of the competent authority.

18.6. The argument of Ms. Sharma, thus, was that since there is no case of collusion set up by the DDA, the petitioner was entitled to rely upon what was stated in the letter dated 17.4.2006. In any case, according to Ms. Sharma, the fact that the petitioner was called upon to pay not only the balance cost of the flat but also other charges which included penal and restoration charges as well as capitalized surcharge, the DDA did no favour

to the petitioner by offering a chance to make the balance payment.

19. Having heard the counsel for the parties and perused the record, what emerges from the record is as follows:

- (i) The petitioner was allotted a flat vide a draw of lots held 28.3.1995. The petitioner after issuance of the allotment letter on 14.5.1995 paid Rs.1,43,125; which was 50% of the cost of the flat.
- (ii) The DDA issued notices to the petitioner on 24.11.1999, 31.12.1999 and 18.1.2005 for depositing the balance amount.
- (iii) The petitioner on 2.6.2005 deposited a sum of Rs.1,60,000/-.
- (iv) On 17.4.2006, the Assistant Director/EHS, DDA wrote to the petitioner in response to her letter dated 9.8.2005. The letter being crucial for arriving at a decision in this case is extracted hereafter:

" From:

*Asstt. Director/EHS
D Block, 2nd floor,
Vikas Sadan, New Delhi.*

To,

*Smt. Poonam Jaswal
W/o Sh. Vikram Jaswal
H. No. 422, Sector-10,
Panchkula, Haryana-134109.*

Sub: Regarding allotment of the flat no. 795, Pkt.-7, Sector A-6 at Narela.

Sir,

Please refer to your letter/this office letter dated 09.08.05 on the above noted subject. In this connection I am directed to request you to kindly submit the following documents immediately that further action on the subject could be taken:

- 1. You are request (sic: Requested) to deposit the dues:*
- 2. Balance M/I Rs.2486.00*
- 3. Penalty on M/I Rs.2,83,220.00*
- 4. Restoration charges Rs.20,000.00*
- 5. Capitalized s.chrage Rs.3240.00*

Total

Rs.3,08,946.00

Yours faithfully,

*Asstt. Director/EHS
DDA, Vikas Sadan,
2nd Floor, D-Block,
INA, New Delhi."*

(v) Pursuant to the letter dated 17.4.2006, the petitioner deposited a sum of Rs.3,10,000/- with the DDA on 17.5.2007.

(vi) Despite this, a letter dated 11.12.2008 was issued to the petitioner rejecting her request for handing over the flat.

(vii) The impugned letter whereby the DDA maintained its stand for not entertaining the request of the petitioner for handing over the flat was issued on 30.12.2011. By this letter, the petitioner, as noted above, was advised to apply for refund of the amount deposited with the DDA.

20. Given these facts, what is clear is that each of the submissions made by Mr. Birbal for the reasons to follow cannot be accepted.

20.1. Insofar as the first submission of Mr. Birbal is concerned that there was delay in approaching the Court, the petitioner has averred that the letter dated 11.12.2008 was received by her along with the DDA's reply to RTI queries raised by her power of attorney holder i.e., one, Ms. Geeta Sharma. This reply is dated 6.1.2009.

20.2. I must indicate that though there is no reference to the letter dated 11.12.2008 in the letter dated 06.01.2019, there is reference to this aspect of the matter in the petitioner's letter dated 21.9.2011. Therefore, since the

petitioner did not have the knowledge of the fact that her request for handing over the flat had been rejected till she received the communication dated 6.1.2009 through her power of attorney holder, the delay for this period, cannot be put against her.

20.3. The record shows that instead of approaching the Court, the petitioner attempted to sort out the matter with the DDA. In this behalf, it needs to be noticed that in the impugned letter, there is a reference to the petitioner's letter dated 23.9.2011. It was only when the DDA rejected the petitioner's request via the impugned letter i.e. 30.12.2011, and advised her to seek refund that she was compelled to approach the Court. It is trite to say that there is no period of limitation prescribed for a writ action. The only limitation, if at all, in law, is laches.

20.4. Given the fact that the petitioner was pursuing her matter with the DDA between January 2009 and December 2011, the petitioner, in my view, has broadly explained as to why she did not approach the Court till February 2012. Therefore, this contention is untenable and is, therefore, rejected.

21. Second contention of Mr. Birbal that the period between date of allotment and the date by which the balance amounts were paid by the petitioner was far too long and hence could not be condoned, in my view, is also untenable. The reason, why I say so, is this. Between 1999 and January 2005, the DDA had issued several notices calling upon the petitioner to pay the balance instalments. It is pursuant to the last request made on 18.1.2005 that the petitioner deposited Rs.1,60,000/- on 2.6.2006. Thereafter, as noticed hereinabove, the letter which the DDA questions as being unauthorized was issued on 17.4.2006. *Via* this communication, the petitioner was called upon to pay a further sum of Rs.3,08,946/-. The

petitioner, admittedly, paid Rs.3,10,000/- on 17.05.2007, which was accepted by the DDA. Given these facts, in my view, the DDA cannot turn around and say that the delay between the date when the instalments were due and when actually paid, cannot be condoned. The DDA having called upon the petitioner to make the balance payment, impliedly, condoned the delay.

21.1. It is for this reason, as indicated hereinabove, that this submission of the DDA has no merit.

22. This brings me to the contention of Mr. Birbal that the letter dated 17.4.2006 does not have approval of the competent authority. I have already extracted the letter. The letter has been issued by an officer of the rank of Assistant Director/EHS, DDA. The letter states that it is issued based on a direction issued to the signatory to communicate the decision contained therein. Mr. Birbal insists that there was no underlying authorization conferred on the officer, who had issued the letter.

22.1. As, correctly, argued by Ms. Sharma that if there was no collusion between the officer and the petitioner, then surely the petitioner was entitled to rely upon the letter and was not required to look further as to whether the officer had obtained the approval of the competent authority. This aspect, therefore, cannot be put against the petitioner. The analogous doctrine which would apply to the facts of this case would be the doctrine of indoor management and ostensible authority. The petitioner was entitled to law of ostensible authority of the concerned officer.

23. The last contention of Mr. Birbal that since the flat has already been allotted to, one, Mr. Mahinder Singh, the consequential relief sought for by the petitioner cannot be granted, is an aspect which would require

modulating the relief, in view of the fact that the petitioner has made out a case for quashing the impugned letter dated 30.12.2011.

23.1. Thus, although the flat has already been allotted despite the petitioner paying the entire amount on 17.5.2007, the DDA will consider allotting a flat to the petitioner of a kind which was the subject matter of the demand-cum-allotment letter dated 15/30.5.1995.

23.2. For this purpose, the DDA will hold a mini-draw within next three months and the petitioner will accordingly, be allotted a flat.

24. Before I conclude, I may also indicate that since the allotment had been made jointly in favour of the petitioner and her deceased husband, Sh. Vikram Jaswal, the DDA will have liberty to inquire as to whether there are any legal heirs who may lay claim to the flat.

24.1. Ms. Sharma, on the other hand, insists that the allotment was made only in favour of the petitioner, though the application was made jointly by the petitioner and her deceased husband.

24.2. According to me, this aspect need not detain me from concluding these proceedings. In case any other legal representative claims a right to the allotment of the flat, the DDA will put this aspect to the petitioner, the petitioner will have liberty to obtain a 'No Objection Certificate' from the legal heirs or the petitioner will have the flat allotted jointly with other legal heirs.

25. The captioned writ petition is disposed of in the aforementioned terms.

RAJIV SHAKDHER, J

NOVEMBER 06, 2019/pmc