

% Date of decision: 7th February, 2019

..... Respondent

..... Appellant

..... Respondent

..... Appellant

..... Respondent

..... Appellant

..... Respondent

AND

+ LPA 277/2018 & CM. Nos. 20322/2018 and 20323/2018

DELHI DEVELOPMENT AUTHORITY Appellant

versus

SHASHI BALA PATHAK Respondent

AND

+ LPA 278/2018 & CM. Nos. 20328/2018 and 20329/2018

DELHI DEVELOPMENT AUTHORITY Appellant

versus

GANDETI KRISHNA RAO Respondent

AND

+ LPA 279/2018 & CM. Nos. 20332/2018 and 20333/2018

DELHI DEVELOPMENT AUTHORITY Appellant

versus

RAJENDRA PRASAD Respondent

Present:

Mr. Rajiv Bansal, Sr. Adv. with
Mr. Dhanesh Relan, Ms. Parul Panthi,
Ms. Vaishali Rawat and Ms. Gauri
Chaturvedi, Advs. for appellant/DDA.
Mr. C. Mohan Rao and Mr. Lokesh Kumar
Sharma, Advs. for appellants in item nos. 8
& 10 to 13.
Mr. Yashish Chandra and Mr. Shantanu,
Advs. for appellants in item Nos. 9 and 14.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE V. KAMESWAR RAO

V. KAMESWAR RAO, J. (ORAL)

1. The challenge in this batch of Intra Court Appeal is to the order dated 8th December, 2016 passed by the learned Single Judge in a batch of Writ Petitions (WPs) filed by the respondents herein challenging the action of the DDA (appellant herein) in not issuing fresh demand-cum-allotment letters.

2. The facts as noted from the record are, in the year 1996 respondents herein had applied for allotment of flats in a Scheme. On 31st March, 1997, draw of lots were held and the respondents were allotted flats. In the year 1998, demand-cum-allotment letters were issued to the respondents, however, some of the respondents challenged the demand raised in the said letters. The learned Single Judge of this Court, in the case of ***Raj Kumar v. DDA, W.P.(C) 2142/1999***, decided on 27th November, 2003, repelled the challenge to the upward revision in the disposal cost, but directed the respondents to choose an option between payment of consideration for the allotted flat at the current cost (then prevailing) within 45 days from the date of judgment or to make payment of the original cost with interest @ 12% per annum on the 50% of the amount from the date of allotment and balance 50% of the amount from the date when the amenities became available. It was noted by

the learned Single Judge that from the appellant's file noting dated 24th March, 2005, it is clear that a decision was taken not only to waive off the limitation of 45 days for exercise of option for payment at current cost but also decided to consider the cases of even those allottees who had exercised the option for the payment of the current cost beyond 45 days. As the current cost was working out to be less than the old cost plus interest, a decision was required to be taken as to whether all allottees irrespective of the factum of having exercised option for payment at current cost would be charged current rates. However, no decision was taken by the DDA on the ground that similar matter was pending consideration before the higher authorities.

3. The case of the respondents before the learned Single Judge was that they have come to know that allotment letters had been issued to similarly placed allottees as late as 2014 and 2015 and they filed representations calling upon the appellant / DDA to issue demand letters. A plea of delay and laches was taken by the appellant / DDA as according to DDA, cause of action for filing the writ petitions had arisen in the year 2003. The respondents had approached DDA only in 2015 for allotment of flats. That apart, they sought parity qua the cases of K.K. Swajana Mitran and Smt. Leela. The said plea of parity was contested by the appellant DDA by stating that the said two persons were not fence-sitters, unlike the respondents herein

inasmuch as they had been taking active steps through various communications to pursue their allotment and as such the benefits were given to the said two persons and no parity can be sought by the respondents herein.

4. The learned Single Judge on both these pleas has held that pursuant to the judgment of this court in the case of ***Raj Kumar (Supra)***, it was the appellant DDA which was to issue the demand-cum-allotment letters, which it failed to do. In fact, the plea taken was that the matter was pending consideration before the competent authority and as such the respondents were not issued the demand-cum-allotment letters. It was stated in the counter-affidavit filed by the appellant / DDA that in few similar cases where demand-cum-allotment letters were issued, the same were under challenge by way of writ petitions and this court in ***Madan Lal Nayak v. DDA, W.P(C) 3257/2007 decided on 19th March, 2008*** and ***Madan Lal Nayank v. DDA, W.P(C) 8983/2008 decided on 21st May, 2010*** directed the DDA to make calculations and issue demand-cum-allotment letters to the petitioners therein within 30 days. The DDA had also admitted that it had recently in the year 2014 and 2015 issued demand-cum-allotment letters as well as the conveyance deeds and handed over possession of flats to similar allottees. The learned Single Judge on the issue of delay and laches has inter alia held that delay and laches is one of the facets to deny exercise of discretion while

dealing with a writ petition. He also held that it is not an absurd impediment. He held that the doctrine of delay and laches is not a constitutional limitation on exercise of writ jurisdiction. He relied upon the judgment of this court in the case of ***Pooja Khemka v. DDA 2015 SCC Online Del. 12399***, wherein it was *inter alia* held that failing to exercise jurisdiction at a belated stage will lead to iniquitous and absurd result as well as cast confusion, inconvenience and bring injustice, inasmuch as owners of adjoining similar properties who had purchased similar flats in the same auction would pay 'X' as unearned increase, whereas petitioners (in that case) being neighbours of the said properties would pay '4X' as unearned increase. The court also held that respondent DDA in that case has not been prejudiced due to any alleged delay in filing the said writ petition. It was observed that the DDA would be within its right to claim interest on the fresh demands of unearned increase.

5. It would suffice to state that the learned Single Judge has held that DDA, by raising the plea of delay, is trying to place premium on its own wrong. He held that demand in terms of the judgment in ***Raj Kumar (Supra)*** could have been raised by the DDA alone. He observed that at no point of time, the allotments to the respondents were cancelled. In other words, the allotments are subsisting even as of today. He was of the view that had the respondents approached this court earlier by way of writ petition, DDA

would have stated, it was not in a position to issue demand letters as cases of old allottees were still pending consideration. He held that the writ petitions filed by the respondents herein is because of the inaction on part of the DDA and also the issuance of demand-cum-allotment letters on 27th August, 2014 and 7th May, 2015 to K.K. Swajana Mitran and Smt. Leela. In this manner, he answered the plea of delay and laches.

6. We may state here, the learned Single Judge had also relied upon the judgment of a Coordinate Bench of this court in ***Naresh Kumar and Ors. v. Union of India and Ors. W.P.(C) 7393/2011*** decided on 10th October, 2011. He held that the case of the respondents herein is similar to the case of K.K. Swajana Mitran and Smt. Leela, and has directed DDA to raise fresh demands on the respondents. He has granted liberty to the DDA to claim interest from the date of original demand till payment by the respondents in accordance with the judgments of this Court in ***Raj Kumar (Supra)*** and ***Madan Lal Nayak (I) and (II) (Supra)***.

7. Mr. Rajiv Bansal, learned Sr. Counsel appearing for the appellant / DDA would submit that the learned Single Judge could not have entertained the writ petitions on a cause of action accrued in the year 2003, after eleven years, while also granting parity with the cases of K.K. Swajana Mitran and Smt. Leela inasmuch as those two persons had been pursuing their remedy

with DDA since the beginning, unlike the respondents herein who had approached DDA after more than 11 years. In other words, K.K. Swajana Mitran and Smt. Leela were not only vigilant allottees, but also allottees who exercised their options and informed the DDA qua the same. He also referred to the writ petition filed by the Smt. Leela inasmuch as the demand-cum-allotment letter issued to Smt. Leela in 2007 which was challenged by her in 2010 pursuant to which challenge, she agreed to pay the demand as per the formula set in the case of *Madan Lal Nayak (I) and (II) (Supra)*. So, fresh allotment letter was issued to her on the basis of her agreement to a fresh demand. However, the respondents herein were silent for 11 years and made a representation only thereafter.

8. We are unable to appreciate the submission made by Mr. Bansal for the reasons already stated by the learned Single Judge which we have noted above. The learned Single Judge has exercised his discretion in favour of the respondents i.e the writ petitioners for certain good and valid reasons, which according to us cannot be faulted. That apart, we find that appeals, being LPA Nos. 273/2018, 275/2018, 276/2018, 277/2018, 278/2018 and 279/2018, are barred by delay of 464 days and LPA No. 274/2018 is barred by delay of 341 days in filing and 121 days in re-filing. The reasons given for seeking condonation of delay are administrative in nature, showing the movement of

the file. The same does not inspire confidence nor can be sufficient reasons for condoning the delay.

9. We accordingly dismiss the respective applications for condonation of delay in all the Appeals and the Appeal itself as being without merit.

CM. No. 20306/2018 in LPA 273/2018

CM. No. 20312/2018 in LPA 274/2018

CM. No. 20316/2018 in LPA 275/2018

CM. No. 20319/2018 in LPA 276/2018

CM. No. 20322/2018 in LPA 277/2018

CM. No. 20328/2018 in LPA 278/2018

CM. No. 20332/2018 in LPA 279/2018

Dismissed as infructuous.

V. KAMESWAR RAO, J

CHIEF JUSTICE

FEBRUARY 07, 2019/jg