

\$~6

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

+ **W.P.(C)No.7794/2017**

Date of decision: 14.01.2020

SUNITA MITTAL

..... Petitioner

Through: Mr. Akshay Ringe with Mr. Nitish
Ojha, Advs.

versus

DELHI DEVELOPMENT AUTHORITY & ORS Respondents

Through: Mr. Sidharth Joshi with Ms. Ambareen,
Advs. for DDA.
Mr. Sachin, Adv. for R-5.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J. (ORAL):

1. This is a petition whereby the petitioner has sought a direction from this Court qua respondent No.1/Delhi Development Authority (hereafter referred to as the "DDA") for refund of an amount deposited by her towards the allotment of a plot along with interest at the rate of 18% per annum.
2. There is no dispute that the petitioner had deposited a sum of Rs.35 lakhs with the DDA on 28.6.2007.
 - 2.1 However, the deposit came about in a curious circumstance.
 - 2.2 It is the petitioner's case that she was approached by one, Mr. P.S. Sharma and one, Mr. Surender Garg i.e. respondent No.5. Mr. Surender Garg/respondent No.5 is a relative of the petitioner.
 - 2.3 The petitioner found out, at some point in time, that she was duped and the money was wrongly deposited with the DDA.
 - 2.4 In fact, the record shows that there is no dispute that a criminal

proceeding is underway both against Mr. P.S. Sharma as well as Mr.Surender Gard/respondent No.5.

2.5 It is not in dispute that in the criminal proceedings, the petitioner has not been arrayed as an accused.

3. It is in these circumstances that the petitioner has approached this Court for refund of Rs.35 lakhs. The petitioner is aggrieved by the fact that neither has she been allotted a plot, nor has the money been refunded to her.

4. These aspects of the matter were recorded by me, broadly, in the order dated 15.10.2019 and in the subsequent order dated 7.11.2019. It was via order dated 7.11.2019 that Mr. Surender Garg was arrayed as respondent No.5. This direction was issued as the DDA was not sure as to whom the money had to be returned. Mr. Siddharth Joshi, who appears for the DDA, had taken this stand on 7.11.2019 which has been noted in paragraph 3 of the said order.

5. Pursuant to Mr. Surender Garg being arrayed as respondent No.5, the said respondent has filed a counter-affidavit. In the counter-affidavit, Mr.Surender Garg/respondent No.5 has, on merits, taken, *inter alia*, a stand that the petitioner's assertions that she had been duped was false.

5.1 However, Mr. Surender Garg/respondent No.5 has accepted the position that Rs. 35 lakhs was deposited by the petitioner.

5.2 Likewise, Mr. Joshi reaffirms that the aforementioned amount does not belong to the DDA.

6. I may also indicate that the counsel for Mr. Surender Garg/respondent No.5 has also made assertions that the petitioner has not approached this Court with clean hands and that the petition is not maintainable.

7. Having heard the counsel for the parties and given due regard to the background in which the petitioner has approached the Court, I am inclined to order refund of Rs.35 lakhs by the DDA to the petitioner *sans* the interest. This

direction is being issued in the peculiar facts and circumstances of the case given the fact that the deposit of money by the petitioner with the DDA is not in dispute and the DDA does not stake a claim to Rs.35 lakhs which is lying deposited with it. Besides this, as noted above, Mr. Surender Garg/respondent No.5 also does not stake claim to Rs.35 lakhs.

7.1 If I were to elaborate, the peculiar circumstances which obtain in this case are: that apart from the petitioner being made to deposit, based on a fake demand letter, Rs. 35 lakhs with the DDA with the assurance that she would be allotted a flat, the DDA, despite a direction issued by this Court on 05.03.2009 in W.P.(C)6988/2009 did not decide the petitioner's representation. The DDA, it appears, lodged a complaint in Economic Offences Wing (EOW), *inter alia*, against the petitioner.

7.2 As noted above, the admitted position of the DDA, today, is that the petitioner is not arrayed as an accused. The status reports of respondent No. 4/EOW placed on record also bear out this fact. I have not been told anything to the contrary.

7.3 Thus, the petitioner, in effect, is aggrieved by the inaction of the DDA *qua* its representation for refund of Rs. 35 lakhs.

8. Qua the aspect of interest, my view is as follows: although, Rs.35 lakhs was deposited by the petitioner way back in 2007, this petition was filed only in 2017. There was no demand for interest prior to 08.02.2017. Besides this, DDA may have defences *qua* the plea of interest vis-à-vis limitation, period, and rate which would require the parties to lead evidence. Therefore, while I decline to order payment of interest, the petitioner would have liberty to agitate her claim for interest in an appropriate action before the concerned court.

8.1 Given this backdrop, the assertion made on behalf of respondent no. 5/Mr. Surender Garg that the petitioner has not approached the Court with

clean hands is not sustainable. Respondent no. 5/Mr. Surender Garg is in no position to make such an averment. As regards the objection taken qua the maintainability of the writ petition, I have already etched out the peculiar facts of this case and, therefore, given the fact that there is no dispute as to whom the money belongs, this objection has no legs to stand on. This objection is, accordingly, rejected.

9. In view of the foregoing discussions, it is directed that the DDA shall refund Rs.35 lakhs to the petitioner within three weeks from the receipt of a copy of this order.

10. Liberty is, however, given to the petitioner to agitate the aspect concerning interest, if she so desires, by taking recourse to an appropriate remedy subject to all defences being open to the DDA if such an action is filed.

11. The writ petition is, accordingly, disposed of.

12. *Dasti.*

JANUARY 14, 2020/pmc

RAJIV SHAKDHER, J