



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

Date of decision: 06th APRIL, 2022

IN THE MATTER OF:

+ **W.P.(C) 5696/2022 & CM APPL. 16974/2022**

CHANCHAL KOCHAR

..... Petitioner

Through: Mr. Ankit Singh, Advocate

versus

DELHI DEVELOPMENT AUTHORITY

..... Respondent

Through: Mr. Prabhsahay Kaur,
SC for DDA with Ms. Laavanya
Kaushik, Ms. Ragini Juneja,
Advocates..

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

SUBRAMONIUM PRASAD, J. (ORAL)

1. The instant contempt petition has been filed with the following prayers:

“a) A Writ of Certiorari calling for the records of the case for perusal;

b) A Writ of Certiorari quashing the action of the Respondent /DDA in refusing to condone the delay in payment and consequent restoration of the allotment of the flat by rejecting her representation in this regard vide letter dated 22.02.2022 (ANNEXURE P-1), in a perfunctory manner and without application of mind and without taking into consideration the relevant/ material facts and grounds/provisions of the policy in this regard, being illegal, arbitrary, discriminatory, unjust and in violation of the Rules, Regulations, policy and principles of equity, justice and good conscience and in infringement of the



legal and fundamental rights of the Petitioner;

c) A Writ of Mandamus directing the Respondent No. 1/DDA to condone the delay in payment in respect of the earlier allotment of MIG Flat no. 32, Pocket 8, Sector 13, Dwarka, Phase II, New Delhi, subject to payment of interest and restoration charges and then allot her either the same flat (if it is still available) or a similar flat in the same locality i.e. Dwarka, New Delhi;

d) A writ of mandamus commanding the Respondents to pay the costs of this Petition to the Petitioner.

e) 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. The facts, in brief, leading to the filing of the instant petition are as follows:

- a) It is stated that in the draw held by the DDA, the husband of the Petitioner was allotted MIG Flat no. 32, Pocket 8, Sector 13, Dwarka, Phase II, New Delhi on 22.12.2001 at the disposal cost of Rs. 7,43,600/-. A demand-cum allotment letter dated 26.12.2001 was issued to the husband of the Petitioner as per which an initial amount of Rs.3,93,045/- was to be deposited on or before 30.01.2022.
- b) It is stated that between the years 2003 and 2007, the husband of the petitioner made regular payments amounting to Rs.4,53,284/-. However, the total amount could not be deposited within the time stipulated on account of the fact that the Petitioner's husband was suffering from various heart-related ailments and was under treatment. The Petitioner's husband eventually passed away on



06.02.2008.

- c) It is stated that the Petitioner approached the respondent/DDA in order to enquire about the allotment of the aforementioned flat and she was advised to first apply for mutation/transfer of the registration allotment of the demised flat. Accordingly, the Petitioner made a request to DDA *vide* letter dated 28.05.2008, giving an undertaking to pay the balance amount in order for the said premises to be transferred in her name. *Vide* letter dated 01.07.2008, the respondent/DDA informed the Petitioner herein that the said premises had been transferred in her name, however, the same was for refund purposes only. The Petitioner also made a request for regularisation of the said flat on 18.07.2008, however, the same was to no avail.
- d) In response to the applications made under the RTI Act, the Petitioner was made aware of the payment that had been made by her husband along with the balance amount which was due to be payable. It is stated that, accordingly, the Petitioner made a payment of Rs.4,57,000/- which was in addition to the money that had already been deposited by her husband, i.e. Rs.4,56,284/-, with the amount deposit totalling to Rs.9,10,284/- which was more than the balance consideration that had to be paid for the said demised flat.
- e) It is stated that the Petitioner approached the Respondent/DDA yet again on 18.10.2021 for issuance of possession letter of the allotted flat or any other flat in place of the said demised flat, but she received no response to the same. Thereafter, the Petitioner approached this Court by way of filing the writ petition bearing W.P. (C) 12450/2021 seeking allotment/possession of the said flat or any other similar flat



in the same sector, and *vide* Order dated 12.11.2021, this Court directed the DDA to treat the said petition as a representation.

- f) *Vide* letter dated 22.02.2022, the DDA, in compliance with the Order of this Court dated 12.11.2021 in W.P. (C) 12450/2021, rejected the representation of the Petitioner. The relevant portion of the said letter has been reproduced as follows:

“Whereas, the allottee didn’t deposit the demanded amount within stipulated time the allotment of the flat stood automatically cancelled as per clause 1 & 2 of demand cum allotment letter. Thereafter, the flat was re-allotted under subsequent Housing Scheme in 2008 through a computerized draw to an eligible applicant. As mutation was allowed for refund purpose only, even then an amount of Rs.4,75,000/- was deposited against the said flat on 30.04.2009.

In view of the above, it is stated that the allotment of the flat under reference already stands cancelled as per terms and conditions of Demand cum Allotment letter and the mutation was allowed in favour of the petitioner for refund purpose only. Thereafter, depositing any payment against the said flat doesn’t confer any right, title, interest against an automatically cancelled flat.”

3. Aggrieved by the same, the Petitioner has approached this Court by way of filing of the instant writ petition seeking setting aside of the letter dated 22.02.2022 issued by Respondent/DDA and condonation of delay in payment of the amount with respect to the allotted flat.
4. Heard Mr. Ankit Singh, learned Counsel for the Petitioner, Ms. Prabhsahay Kaur, learned Standing Counsel for the DDA, and perused the material on record.
5. Mr. Singh, appearing for the Petitioner, states that the Petitioner’s



husband was ailing from 2003 to 2007 and he was not in a position to deposit an amount of Rs.3,93,045/- within the stipulated time. He states that with great difficulty some payments were made between 2003 and 2007. He states that the Petitioner's husband eventually passed away on 06.02.2008.

6. It is stated by Mr. Singh that after the Petitioner's husband passed away, the Petitioner approached the DDA officials to know the current status of the allotment. The Petitioner made a request for allotting the flat in her name. It is stated that in the year 2009, the entire amount for a sum of Rs.4,57,000/- was deposited with the DDA and the entire total sum of Rs.9,10,284/-, which was more than the price of the flat, had been paid. He, therefore, states that the DDA ought to have allotted the flat to the Petitioner.

7. Learned Counsel for the Petitioner places reliance upon the judgment of the Division Bench of this Court dated 11.08.2008 in Raj Kumar Sharma vs. Delhi Development Authority in **LPA No.188/2008** wherein this Court had directed the allotment of a flat to a person who had been unable to make the payment due to financial incapacity and where the payment was eventually made after one year from the due date. Mr. Singh appearing for the Petitioner, therefore, prays that the Petitioner should be allotted the flat on parity.

8. A perusal of the facts by this Court reveals that the last date for payment of money for the allotment of the said flat was in the year 2002. Bits and pieces of payments were made between 2003 and 2007. The total amount was paid in the year 2009, which is virtually after seven years from the last date of payment. Material on record discloses that from 2009 till 2020, when the petitioner filed W.P. (C) 12450/2021, there is nothing to



show that the Petitioner took any step in furtherance of allotment of the property in her name.

9. The writ petition bearing W.P. (C) 12450/2021 was filed in the year 2021. The claim of the Petitioner is categorically barred by laches. Furthermore, a perusal of the order dated 11.08.2008 passed by the Division Bench of this Court in LPA No.188/2008 shows that in the facts of that case this Court condoned the delay of one year. Even though in the said order several instances have been cited where this Court has condoned longer delays in depositing the money but they cannot be cited as a precedent in the absence of any rule permitting condonation of delay.

10. It is well settled in various judgments of the Supreme Court that the discretion to condone delay must be exercised judiciously based on the facts and circumstances of each case [Refer to Basawaraj and Anr. v. Special Land Acquisition Officer, (2013) 14 SCC 81]. Relying upon Basawaraj and Anr. (supra), the Supreme Court had recently observed as follows in Majji Sannemma alias Sanyasirao v. Reddy Sridevi and Ors., 2021 SCC OnLine SC 1260:

“20. In the case of Basawaraj (supra), it is observed and held by this Court that the discretion to condone the delay has to be exercised judiciously based on facts and circumstances of each case. It is further observed that the expression “sufficient cause” cannot be liberally interpreted if negligence, inaction or lack of bona fides is attributed to the party. It is further observed that even though limitation may harshly affect rights of a party but it has to be applied with all its rigour when prescribed by statute. It is further observed that in case a party has acted with negligence, lack of bona fides or there is inaction then there cannot be any justified ground for condoning the



delay even by imposing conditions. It is observed that each application for condonation of delay has to be decided within the framework laid down by this Court. It is further observed that if courts start condoning delay where no sufficient cause is made out by imposing conditions then that would amount to violation of statutory principles and showing utter disregard to legislature”

11. In the instant case, the Petitioner has failed to showcase any sufficient cause that could be attributed to her delay in seeking allotment of the said flat and, therefore, the Petitioner cannot be allowed to take advantage of her negligence and/or inaction. Consequently, the judgment of this Court cited by the Petitioner cannot be construed as a precedent for the Petitioner to claim parity.

12. In any event, Ms. Prabhsahay Kaur, learned Standing Counsel for DDA, submits that the said flat has already been allotted to somebody else. It is well settled that a writ can be filed only when there is a right, and in the absence of the right accrued to the Petitioner, their writ cannot be entertained. The Petitioner has failed to rely upon any provision which authorises DDA to condone the delay. Therefore, there is no right vested with the Petitioner to claim allotment of the said flat even if there is a delay in the payment.

13. With these observations, the instant petition is disposed of, along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

APRIL 06, 2022

S. Zakir