

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 3624/2013**

Judgment reserved on :04.07.2019

Date of decision: 17.11.2022

BIMLA DEVI CHURIWAL

..... Petitioner

Through: Ms.Richa Kapoor, Advocate
Versus

DELHI DEVELOPMENT AUTHORITY

..... Respondent

Through: Mr.Arjun Pant, Advocate

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT

ANU MALHOTRA, J.

1. The petitioner vide the present petition seeks the quashing of the correspondence dated 16.11.2012 along with the letters referred therein vide which the petitioner was held ineligible for allotment under the scheme of consideration as per her seniority on the alleged ground of non supply of the income tax certificate in 1981 which the petitioner submits is false and seeks directions to the respondent the Delhi Development Authority (DDA) to allot an alternative LIG plot to her in sector 36 or 37 Rohini at the cost prevalent in the year 2012, when her priority matured, but was not included in the draw held on 12.6.2012 and thus missed consideration by the respondent.

2. The petitioner has submitted that in the year 1981 the Respondent DDA launched a scheme known as the Rohini Residential Scheme for the EWS Janta, LIG and MIG category plots of land and that the petitioner applied vide application No. 45461

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dated 26.03.1981 to book an LIG plot admeasuring 32 square meters for herself after depositing Rs.2000/- towards registration charges vide receipt No. 15202 dated 26.03.1981. The petitioner has submitted the copy of the receipt dated 26.03.1981 issued by the DDA of the deposit of the sum of Rs.2000/- by the applicant/petitioner under the Rohini LIG Scheme vide applicant No. 45461.

3. The petitioner has submitted further that initially the respondent adopted the methodology of including the names of all registrants of a particular category in a draw of lots as and when plots of that category were ready for allotment and whosoever was successful, would get the plot in his name but there being a large number of applicants but due to administrative problems in the year 1986 the DDA decided to allot priority numbers to the pending registrants and took, out a computerized draw of all pending registrants and at seriatim culled out names with reference to the registration number and assigned a priority number to each registrant and the applicant herein i.e. the petitioner was assigned priority No. 15452 by the DDA for the purpose of allotment and as and when the plots as per this methodology were ready and available for allotment the corresponding number of registrants in terms of their priority, were included in the draw of lots and plots were allotted.

4. The petitioner submitted that each time she visited the office of the DDA to enquire about the status of her allotment, she was returned back with the reply that her priority had not matured and that she thus waited patiently knowing that it would take time for her priority to mature. The petitioner submits that in the interregnum she changed

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her residential address to BH-45, Salt Lake City, Near Tank No.7, Kolkatta- 700 091 and intimated the same to the respondent DDA vide a letter dated 9.12.2004 and along with the same submitted a copy of the ration card and FDR and an acknowledgement receipt dated 9.12.2004 was also issued by the DDA .

5. The petitioner submits that sometime in the year 2012 when she came to Delhi she visited the office of the respondent DDA and enquired about the status of her priority and to her shock and dismay she learnt that ‘priorities’ immediately before her and after her had been allotted a plot in a draw held on 12.06.2012 but that the DDA had missed the consideration of the petitioner’s name in the said draw due to its own fault and whimsical reasons. The petitioner has placed on record a copy of the details of allotment made by the respondent vide draw dated 12.6.2012 as Annexure P-3 to submit that priority Nos. 15451,15453 and 15454 had been allotted a plot. The petitioner submits that she brought this matter to the attention of the DDA Officials and also filed an RTI dated 01.10.2012 bearing ID No. 5476 seeking a copy of the file of the petitioner maintained by the respondent and in response to the RTI, the respondent wrote a letter dated 16.11.2012 stating therein that the registration of the petitioner under the Scheme had been cancelled on account of non-submission of Income proof of the year 1980-81 and income tax assessment of the year 1981-82 and that it was alleged by the respondent that vide letters dated 14.04.1983, 21.08.1984 and 14.04.1986 she had been called to the office of the respondent along with the said documents but that the petitioner had not come and that another letter dated 2.4.2008 had

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been sent to the petitioner calling upon the petitioner to submit the documents and take refund of the earnest money deposited at the time of the registration but that the petitioner had not responded.

6. The said letter dated 16.11.2012, the copy of which is placed on record as Annexure P-4 indicates that it was mentioned therein that it was open to the petitioner to file an appeal within 30 days from the date of issuance of the said letter to the First Appellate Authority, i.e., Dir.(R)/DDA, Vikas Sadan, New Delhi. The said letter is addressed to Bimla Devi Chulwal, 122, Vinobha Puri, Lajpat Nagar-2, New Delhi-24.

7. The petitioner submits that she replied to the letter informing that none of the letters referred to by the DDA in its letter dated 16.11.2012 had been received by her and that thus she had not responded or visited the office of the DDA and that the petitioner had indeed submitted her income proof in the form of income tax certificate to the respondent DDA at the time of registration as reflected in the FDR dated 26.3.1981 wherein in the section of enclosed documents, 'Income Certificate' had been ticked and the DDA was thus requested to scan the records and documents carefully and the petitioner also submitted that in the alternative she was willing to give an affidavit to the effect that she had submitted her income proof at the time of registration but no reply was received from the DDA.

8. Inter alia, the petitioner submits that the respondent DDA appears to have misplaced the documents or intentionally removed the documents from the file and has injured her rights and that the

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petitioner has been awaiting the shelter for the last 30 years. Inter alia, the petitioner submits that the non-submission of the Income-Tax Certificate in any case cannot be fatal to the registration of the petitioner and cannot vitiate her rights to allotment and that the respondent DDA has itself has demanded the said documents at later stages and the same could have been deposited by the petitioner even after the allotment without any detriment and that the DDA had no reason whatsoever to withhold the priority number of the petitioner from inclusion in the draw dated 12.6.2012 on the ground of non-submission of Income Tax Certificate.

9. The petitioner submitted a copy of the balance sheet of income for the year 1980-81 as Annexure P-7 to the petition and submitted that even though she is a housewife she was capable of paying the cost of the plot. The petitioner has further submitted that she had registered for a lower income group category plot for which category in any case the income tax proof did not hold much relevance as the income proof sought was for the year 1981 whilst the priority matured in the year 2012.

10. Inter alia, the petitioner submits that the petitioner is covered by the missing priority policies of the DDA as per which if the priority of the registrant is missed for fault of the DDA, the registrant would be allotted a plot at the cost prevalent in the year the priority was missed and as early as in the year 1995, the DDA passed a policy dated 20.5.1995 wherein in Column 7 it was laid down that in cases where the allotment has not been made due to non-inclusion of the name of registrant in the draw, the allotment would be made to such registrant

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in the next draw of lots at the rates prevalent at the time when the registrant would have got the allotment according to his / her priority position which benefit was however subject to the error being detected within one year of the draw in which the priority was missed.

11. The petitioner has placed on record a copy of the policy dated 25.5.1995 of the DDA as Annexure P-8 to the petition and submits that the condition of detection of one year was impugned and was finally put to rest by the Hon'ble Division Bench of this Court in LPA No. 184/2000 titled *Smt.Attar Kaur V. DDA* submitting that it was held therein that a registrant, whose name was not included in the relevant draw of lots because of fault of DDA and DDA did not realize its mistake in one year, cannot be penalized for faults of DDA and for DDA's amnesia and that it was held that DDA was duty bound to detect the error and rectify the same and for both its faults i.e. of not including the name of the registrant and for not rectifying the error, and that the DDA alone is to bear the burden and not the registrant.

12. Inter alia, the petitioner has submitted that thereafter the DDA modified its policies several times in accordance with various decisions of this Court and passed the policy dated 25.2.2005 vide which the DDA prescribed that if priority of a registrant was missed for fault of the DDA, the registrant would be redressed by allotting him a flat/ plot in the next draw of lots at the cost prevalent in the year the priority was missed provided the registrant approached the DDA within 4 years of the draw which decision was maintained in the

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subsequent policy dated 6.6.2006. The copies of the said policies dated 25.2.2005 and 6.6.2006 of the DDA have been submitted on record by the petitioner as Annexure P-10 (Colly). Inter alia the petitioner submits that her case is case is squarely covered by the various judicial pronouncements where similarly situated registrants whose priority had been missed by the DDA were held to be entitled to an allotment through a mini draw at the cost prevalent in the year their priority was missed.

13. The petitioner has placed reliance on the verdict of this Court in W.P.(C) No. 4859/2000 titled *Shri Mohinder Malik Vs DDA*, WP(C) No. 4887 of 2005 titled *Krishan Swarup Sharma Vs. D.D.A*, WP(C) No. 562 of 2007 *Narender Kaushik Vs. D.D.A.*, WP(C) No. 9615 of 2007 titled *Raman Sharma Vs. D.D.A* and WP(C) No. 935 of 2008 titled *Rajender Singh Vs. D.D.A.* and submits that the impugned action of the DDA of not including the name of the petitioner in the draw held on 12.06.2012 when priorities below that of the petitioner had been covered, is arbitrary, illegal and *malafide*.

14. Inter alia the petitioner submits that the petitioner has been arbitrarily and intentionally discriminated by the DDA and had been subjected to harassment against the established procedure, settled norms, declared and practiced policies of the respondent in utter violation of the law and infringement of articles 14 & 16 of the Constitution of India.

15. The petitioner submits that the petitioner is a widow lady and has been waiting for the last 30 years to be allotted a flat in Delhi so

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that she can stay near her two brothers who also reside in Delhi and thus live her remaining life in the company of family.

16. Inter alia, the petitioner submits that she has found out from the office of the respondent DDA that the plots in sectors 30, 32, 35, 36 and 37, Rohini were covered in the draw dated 12.6.2012, when the priority of the petitioner was missed by the DDA and that plots in all the said sectors had been allotted except some plots in the sector 36 and 37 which were still lying vacant and that she is entitled to the allotment of a plot in Sector 36 or 37 Rohini.

17. The respondent DDA vide the counter affidavit dated 23.7.2013 of its Director (RL) has refuted the prayer made by the petitioner and submitted to the effect that on scrutiny of the registration application of the petitioner it was found that she had not submitted her Income proof for the year 1980-81/for the assessment year 1981-82, the DDA thereafter, vide letter dated 17.12.1982 requested her to deposit the same along with an affidavit/undertaking as required in the Brochure and that the petitioner submitted her Income proof for the Assessment Year 1981-82 and affidavit vide letter dated 27.12.1982 but since the petitioner had not furnished the full details of the Income proof of the year 1980-81, the DDA vide letter dated 21.8.1984 requested her to furnish the Income proof of the year 1980-81 with full details (husband + wife) and Income Tax Assessment for the year 1981-82 and that the letter dated 21.8.1984 returned undelivered with the postal authority's remark "**not known**" and thereafter the Registration No. 45461/Priority No. 15452 was cancelled vide letter dated 14.04.1986 and she was requested to submit the FDR duly discharged so that the

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action for refund of the earnest money deposited by her could be initiated.

18. It is further submitted by the respondent DDA through the counter affidavit that since the petitioner did not furnish the original FDR, the DDA vide letter dated 02.04.2008 again requested her to furnish the original FDR and other required documents to expedite the refund of the registration money but that the letter dated 02.04.2008 was also returned undelivered with the postal authority's remarks that the address was incomplete and could not be found with it having been submitted by the respondent that the letter was sent at the second address i.e., P.O. Lachhmangarh, Distt. Sikar, Rajasthan, mentioned by the applicant in the Rohini Registration Application No. 45461.

19. The respondent has submitted that the RTI applicant ID No. 5476 dated 1.10.2012 by the applicant was examined and replied in detail by the DDA vide letter dated 16.11.2012

20. Inter alia, the respondent submits that the petition is barred by delay and laches in as much as the petitioner has approached the Court after an inexplicable and unexplained delay. The respondent however does not refute that the petitioner vide the application No. 45461 dated 26.3.1981 had got herself registered for allotment of an LIG plot under Rohini Residential Scheme -1981.

21. The respondent has further submitted that as the registration of the petitioner under the Rohini Residential Scheme-1981 had already been cancelled, the case of the petitioner cannot be covered under policy of the DDA dated 25.5.1995. The respondent also submits that in as much as the registration of the petitioner under the Rohini

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Residential Scheme-1981 had already been cancelled and the petitioner had mentioned the change of address much after the date of the cancellation, the case of the petitioner is not covered under any judgment as relied upon by the respondent.

22. Through the short rejoinder affidavit filed on behalf of the petitioner dated 28.1.2014 the petitioner has reiterated the contentions raised in the petition and has submitted to the effect that the stand taken by the Respondent, with respect to the Registration No.45651 / Priority No. 15452, allotted to the Petitioner being cancelled vide letter dated 14.04.1986, due to non-submission of the Income proof of the Assessment Year 1981-1982 is vehemently opposed and she reiterates that the Income proof for the assessment year 1981-1982, alongwith an affidavit, and the same has been duly admitted by the Respondent in its counter affidavit. Further, the respondent has stated that the DDA letter dated 21.08.1984, was undelivered with postal authority's remarks "**not known**". The petitioner submits that the DDA allegedly cancelled the allotment of the petitioner in the year 1986 but that she was not intimated nor was she aware of such cancellation, and thus the petitioner could not take any action against the illegal cancellation. The petitioner reiterates that vide letter dated 09.12.2004 she informed the respondent about the change of address to Kolkata, and gave the complete address of Kolkata, alongwith with a copy of the ration card and FDR and that respondent issued acknowledgement receipt dated 9.12.2004. The petitioner submits that she came to Delhi, visited the office of respondent DDA to enquire about the status of her priority and to her shock and dismay she came to know that

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priorities immediately before and after her had been allotted a plot in a draw held on 12.06.2012 but DDA missed consideration of petitioner's name in said draw due to its own fault and whimsical reasons not sustainable in law.

23. Inter alia, the petitioner has submitted that even if the registrant failed to submit the document in question i.e. Income tax certificate of the year 1980-81 the same cannot be considered fatal to the registration of the petitioner and cannot vitiate her right for allotment accrued on 12.6.2012 in as much as the DDA has itself demanded the said documents at later stages and the same had been deposited by the petitioner and even could have been deposited after the allotment at the time of payment without any detriment.

24. Inter alia, the petitioner submits that even assuming that the registrant had not submitted her income tax proof no harm was being caused to the DDA if it included the name of the petitioner in the draw and thereafter sought the income tax proof, as is also the usual practice of DDA where certain documents are sought by the DDA from the registrant before handing over the possession of the plot. Furthermore, all other submissions made in the petition were reiterated by the petitioner and she submitted that the DDA had no reason whatsoever to withhold the priority number of the petitioner from inclusion in the draw dated 12.6.2012 on the ground of non-submission of the Income Tax Certificate.

25. Through its written synopsis dated 20.11.2017, the respondent has reiterated the submissions made through its counter affidavit to the petition reiterating to the effect that the petition was barred by the

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delay and laches in as much as the petitioner did nothing regarding her application dated 26.3.1981 till the year 2013 when she filed the present petition and that she cannot be rewarded for sleeping over her rights.

26. On a consideration of the submissions made on behalf of either side, it is essential to observe that the contention of the petitioner that she falls within the missing priority policies of the DDA dated 25.5.1995 cannot be accepted in as much as the non-inclusion of the petitioner in the draw held on 12.6.2012 was not because the allotment of her priority number 15452 was missed to be considered by the DDA for allotment of an LIG plot and rather the allotment had been cancelled on 14.4.1986 as the petitioner despite information sent on 14.4.1983 by the DDA calling upon her to come with documents did not come with the requisite documents and despite the petitioner having failed to submit a complete Income proof with full details on 21.8.1984 did not appear before the DDA and rather the information sent to her by the DDA asking her to come with full details was returned 'undelivered'.

27. Furthermore, the contention of the petitioner that she had submitted her change of address application to the respondent is inconsequential in as much as the said application was submitted by the petitioner to the respondent on 9.12.2004 and the cancellation of the registration of the application of the applicant for the LIG flat had already been made on 14.4.1986 and thus the case of the petitioner thus does not fall within the parameters and ambit of the policies dated 25.5.1995, 25.2.2005 and 6.6.2006 relied upon on behalf of the

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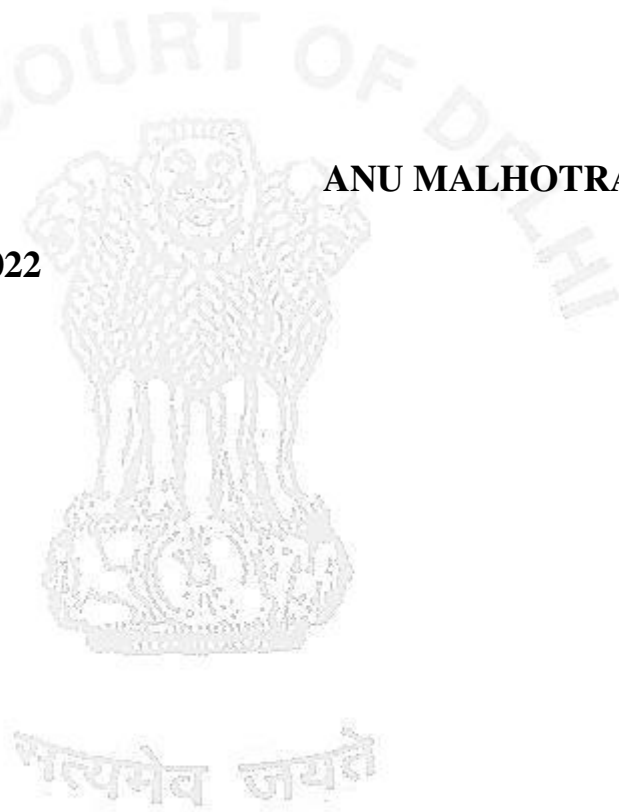
petitioner and likewise the reliance placed on the verdicts relied upon on behalf of the petitioner is also wholly misplaced.

28. The petition is clearly barred by laches and is thus dismissed due to inexplicable and unexplained delay.

29. However, the refund of the earnest money deposited by the petitioner be made to her by the respondent within a period of four weeks.

ANU MALHOTRA, J.

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