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

Decided on: 25.04.2022

+ W.P.(C) 8519/2011

SHAIL SHUKLA

..... Petitioner

Through: Mr. M.A. Niyazi, Mr. Dilip Singh, Ms. Raj Lakshmi and Ms. Kirti Jaswal, Advocates

versus

DDA

..... Respondent

Through: Mr. Gaurav Dua and Ms. Sayesha Khanna, Advocates.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZRI, J. (ORAL)

The hearing has been conducted through hybrid mode (physical and virtual hearing).

1. The case has been received on transfer.
2. In 1981, the petitioner got registered for allotment of a plot of land under Rohini Residential Scheme MIG 1981. A draw of lots was held on 27.03.1991. Her name was included as per priority and she was allotted Plot No. 169, Pocket-12, Sector-24, Rohini admeasuring 60 sq. mtrs. A total cost of Rs.59,805/- was sought from her and after adjustment of the amount deposited for registration and interest accrued thereupon, she paid the remaining amount of Rs.51,310/- in three instalments as under:



*" i. Rs. 6,490.75 being 25% of the premium not later than 30 days from the date of issue of demand letter.
ii. Rs. 29,880.00 being 50% of the premium not later than 31.1.1992.
iii. Rs. 14,940.00 being the balance 25% not later than 28.2.1993 and the petitioner was required to submit the documents prescribed overleaf along with the payment made in the first instance."*

3. DDA issued an acknowledgement letter to the petitioner in this regard. Since the plot of land was not being handed over to her for almost a decade thereafter and there was no worthwhile response from DDA, apropos her repeated attempts to receive the possession of the allotted land, she, out of frustration sought the refund of the payments made by her. By communication dated 24.08.2006, she was asked to meet the Assistant Director, LSB, Rohini. DDA had sought certain documents from her in terms of its letter dated 13.12.2006. By her letter dated 18.07.2008, the petitioner informed DDA as under:-

न्यायमेव जयते



Typed copy

No.37273/LSB/RO

Dated: 18.7.2008

To,

Dy. Director
Land Sales Branch (Rohini)
C-3rd Floor, Vikas Sadan,
New Delhi.

Sir,

Reference to your letter No.38309 dated 13.12.06 in connection with the refund of deposit against the allotment of plot 169 put 12, sector 24 measuring 60 sq. mts. in Rohini Residential Scheme 1981, I submit the following documents as required by you.

1. Affidavit that the applicant is the original registrant.
2. Bank A/c No. with full details.
Ms. Shail Shukla A/c No.30366 Canara Bank – Rajinder Nagar, N.D.
3. Original demand cum allotment letter dated 8.11.91.
4. Original 4th copies of challans vide which amount has been deposited.
5. Original FDR duly discharged has already been submitted.
6. Residence proof duly attested by Gazetted Officer.
7. 3 Specimen signatures & photograph duly attested by Gazetted Officer.
8. Copies of correspondence made by me to DDA duly attested by Gazetted Officer.

I shall be thankful to you if you do the needful at the earliest.

Thanks

Yours sincerely

Sd/-
SHAIL SHUKLA
15, EAST END ENCLAVE
DELHI-110092.

TRUE COPY

(Signature)



4. On 09.06.2009, the petitioner further intimated DDA as under:-

Typed copy of ANNEXURE - P-10

Miss Shail Shukla
15, East End Enclave,
New Delhi-110092.

Dated: 9.6.2009

Assistant Director
LSB (Rohini)
Delhi Development Authority.

Sub: Refund of deposit against allotted plot No.169, Pocket No.12, Sector-24. (File No. 25 (802)91/LSB/RC/49749,

Sir,

Reference to your letter regarding abovementioned subject (file No.F.25(802)91/LSB/49749 dt. 29.5.2009, I furnish the following details for your kind consideration:-

1. As regard original demand-cum-allotment letter dt. 8.11.91 is enclosed.
2. Regarding the original FDR, I state that it has already been submitted on 6.12.1991 vide my letter dt. 5.12.91 (Photocopy of my letter dt. 5.12.1991 received by your office on 6.12.1991 is enclosed as proof) FDR No.22417 dt. 2.4.1981.
3. Residential proof duly attested is also enclosed herewith.

I shall be thankful to you if my case is expedited & refund is given to me as early as possible.

Thanks

Yours faithfully,

Sd/-
(SHAIL SHUKLA)

- Encl: 1. Original Demand-cum-allotment letter dt. 8.11.91
2. Photocopy of my letter dt. 5.12.91 received by your office on 6.12.91 regarding original FDR.
 3. Residential Proof duly attested.

TRUE COPY

(Signature)



5. By a letter dated 05.12.1991 received by DDA on 06.12.1991, the petitioner had intimated the Joint Director, DDA, Land Sales Branch, Rohini apropos the plot of land allotted to her and that she was depositing the entire amounts demanded by DDA along with nine documents which included her FDR Receipt No. 22417 for Rs.5,000/-. The first demanded amount was accepted, admittedly and only because the duly discharged original FDR of Rs.5,000/- had been produced and submitted to DDA. The second and third instalments were paid thereafter and duly accepted by DDA. That being the position, no other document was required to be produced by her.
6. On 29.05.2009, DDA wrote to the petitioner seeking the Original Demand-cum-Allotment letter dated 08.11.1991, original FDR duly discharged by affixing revenue stamp, and residence proof duly attested only by Gazetted officer. Firstly, insofar as the original duly discharged FDR had already been handed over to DDA, there could be no question of it being supplied to DDA yet again. Two originals are inconceivable. Surely the DDA did not issue two "original FDRs" for the petitioner there could be no possibility of submitting yet another "original FDR". Secondly, the Original Demand-cum-Allotment letter too was given to DDA at the time of paying the first instalment. The petitioner's letter dated 09.06.2009 to DDA clearly records that the Original Demand-cum-Allotment letter dated 08.11.1991 was enclosed with it. This letter was duly



received by DDA on 09.06.2009 (Annexure P-10). So was the duly attested proof of residential address supplied along with the said letter. In effect, all documents sought by DDA from the petitioner have been supplied to it.

7. It is not in dispute that DDA has misplaced the file. The application for recall of refund of monies was made on 20.11.2005. For six years nothing happened. DDA was asking for documents already supplied to it. Despite a lapse of six years, the petitioner was neither handed-over possession of the plot of land nor was she refunded the monies. Therefore, by letter dated 29.08.2011, she withdrew her application for refund of monies and asked for possession of the allotted land. DDA declined the said request. The petitioner seeks a mandamus to DDA to allot and handover the said plot of land or similar plot in a developed sector in Phase I/II/III, Rohini.
8. By order dated 08.06.2012, this court had inter alia directed as under:

"...C.M. No. 7736/2012 in W.P.(C.) No. 8519/2011

Issue notice. Mr. Arun Birbal accepts notice on behalf of the respondent.

The case of the petitioner/applicant is that the respondent is in the process of holding draw in respect of about 21000 plots in Phases I, II and III in Rohini on and 12th June 2012. The petitioner seeks either inclusion of the petitioner's name in the said process or reservation of the plot for the petitioner in case the petitioner succeeds in the present writ petition. Learned counsel for the respondent submits that the respondent shall provide a plot to the petitioner, in case the petitioner succeeds, and, therefore, opposes the present application. Let the reply be filed



within four weeks. Rejoinder before the next date.

List on 27th August 2012.

Till the next date one plot shall be kept reserved to be allotted to the petitioner in case the petitioner finally succeeds in the writ petition. The aforesaid reservation shall not create any equity in favour of the petitioner.

...."

9. This order was confirmed on 27.08.2012. In the Written Submissions filed by DDA, it is recorded that as per the order dated 08.06.2012, Plot No. 23, Sector-1, Pocket-B, measuring 60 sq. mtrs. had been kept reserved during the pendency of the present writ petition. There is no document on record to show that DDA ever cancelled the petitioner's allotment of the aforesaid property. Nor is there anything on record to show that monies paid by the petitioner were refunded to her before she recalled her request for refund. In effect, nothing substantive happened towards giving effect to the request of refund in intervening six years while her request was kept pending. The recalling of her request, in effect, restores her position to what it was before the request. Especially, because during the pendency of the request, DDA did nothing, either to cancel the allotment or to refund her money. DDA cannot claim to have any special right or equity for cancelling her allotment. That being the position, the petitioner would be entitled to the reliefs which she seeks in this petition.

10. The learned counsel for the respondent relies upon the dicta of



this court in M.P. Nauriyal vs. Delhi Development Authority 2015 LAWPACK(Del) 57304. In the said case, the petitioner had been registered with DDA and an LIG flat was allotted to him but he did not take possession of the same, instead he sought cancellation and refund of the money, which was not given by DDA. The petitioner requested for withdrawal of registration amount. Since the registration was never cancelled and DDA had neither handed-over possession of the flat to the petitioner nor his name was included in the draw held in February 2008, the court had directed DDA to keep one LIG flat reserved. It further held as under:

“...11. Learned counsel submitted that a similar issue came before this Court in WP(C) No. 2129/1998, titled as 'B.K.Nigam Vs. Delhi Development Authority', decided on 24.05.2002, wherein the petitioner was registered under the 'Registration Scheme on New Pattern 1979' for allotment of an MIG Flat. Petitioner was allotted a flat in Narela in a draw held in January/May 1994. Since the said flat was a Janta Flat, the petitioner sought cancellation of allotment and refund of the registration money, however, the DDA took no steps for refund of the registration amount. After considering the issue, this Court held as under:-

"The aforesaid facts also go to establish that the registration of the petitioner was never cancelled and his registration money was never refunded by the respondents and the petitioner's name was rightly included in the draw of lots held on 29th March 1996. The contention of the respondents that the petitioner had himself opted for refund of the registration amount and for cancellation of allotment and was thus rightly refused issue of the



demand-cum allotment letter is without merit. The stand of the respondents is categoric in their affidavit that "the demand letter was not issued to the petitioner as the request of those allottees who had applied for refund of the registration amount and the cancellation charges was under consideration." The allotment was made pursuant to the court's order in 1996. The aforesaid admission clearly suggests that the registration of the petitioner was alive at the time when the allotment was made in March, 1996. Thus, it is clear that the respondents were at fault in allotting a Janta flat instead of an MIG flat. The registration of the petitioner has not been cancelled and is still alive as the respondent did not take any action on the petitioner's letter for refund/ cancellation and further allotted an MIG flat in a draw held on 29th March 1996. The respondent-DDA are bound to allot an MIG flat to the petitioner, more so in list of the orders of this court in CWP 1906/94...."

11. In the present case too, the petitioner's allotment was alive all along. She having been allotted the land, paid all the monies; having submitted all documents and not being handed-over the land for years, had out of exasperation sought for refund of her monies. However, before refund of monies could be made or cancellation of allotment could take place, she having withdrawn her refund request, continued with her status as an allottee. The petitioner cannot be blamed for any inaction on her part. DDA is the one which has been indolent and unresponsive for the last almost four decades, since the date of her registration under the Rohini Residential Scheme MIG 1981.
12. The learned counsel for the respondent refers to the decision of a Division Bench of this court in *Tajinder Singh vs. Delhi*



Development Authority 2007(144) DLT 97, which dismissed the claim of that petitioner for allotment of a flat, on the ground that the allottee had sought a refund of the registration money, pursuant to which his registration was cancelled, therefore, he could not seek allotment of a flat; the refund could not be made to the petitioner on account of failure in submitting the original documents and he had not revealed to the court that he had sought cancellation of the registration and there was inordinate delay in filing of that petition. None of these issues are relevant to the present case because from 1991 to 2005, DDA did nothing to hand over the possession of the plot to the present petitioner. Nor did DDA do anything to either refund the monies or cancel the allotment between 2005 and 2011, failing which her request for refund was withdrawn. All documents, which were sought from the petitioner have been supplied to DDA. There is ample verification of the same, as noted hereinabove, in the form of receipts to show that all documents were submitted and all monies have been duly and promptly paid. In the circumstances, the cited judgment is distinguishable and is not relevant.

13. Three decades have passed since the petitioner was allotted the flat and made all the payments. She is now in the eighth decade of her life and would rather see the fruition of her endeavours in this temporal world. She has established her case for handing over of the plot reserved for her by DDA i.e. Plot No.23, Sector-1, Pocket-B, measuring 60 sq.mtrs.



14. In view of the above, the said plot of land, which stands secured by this court's previous orders, be handed-over to the petitioner, within four weeks from the receipt of copy of this order, subject to completion of codal formalities. In this regard, the petitioner shall appear before the Director, Land Sales Branch, DDA on 19.05.2022 at 11:00 am or on such other dates as may be coordinated with the latter.

15. The petition is disposed-off in terms of the above.

NAJMI WAZIRI, J

APRIL 25, 2022/RW/SS



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