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

Judgment reserved on: 26.07.2023

Judgment pronounced on: 20.10.2023

+ **W.P.(C) 11025/2016 and CM APPL. 43087/2016**

WILLS JOHN

..... Petitioner

Through: Mr. Manoj V. George, Advocate.

versus

DELHI DEVELOPMENT AUTHORITY

..... Respondent

Through: Ms. Shobhana Takiar, Standing
Counsel with Ms. Devika Mohan and
Mr. Kuljeet Singh, Advocates.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

J U D G M E N T

: **JASMEET SINGH, J**

1. This is a petition seeking, inter alia, the following substantial reliefs:-

- “a) Issue a writ of mandamus to the Respondents to grant the possession of Flat No. 5, Sector 18, Pocket 4, Block B, Rohini, Delhi to the Petitioner immediately, after setting aside the cancellation order and after affording the petitioner an opportunity to tender the balance amount payable as per the terms of the allotment letter;*
- b) Award compensation to the Petitioner for the delay of 19 years*



caused by the Respondent in handing over the possession of the flat;

- c) Direct the Respondent to initiate an investigation into the matter as to why money was illegally demanded from the Petitioner and why was the flat cancelled without any notice to the Petitioner.”*

Brief Facts

2. The brief facts giving rise to filing of the present petition are as under:-
- a. The petitioner's father, Late Mr. P. Thankachan (hereinafter referred to as “the allottee”), applied for allotment of a flat under the IVth Registration Scheme on New Pattern, 1979 (hereinafter referred to as “NPRS-79”) of the Delhi Development Authority (hereinafter referred to as "DDA") on 22.09.1979 by paying an amount of Rs. 1,500/- as a deposit to be adjusted towards payment of the cost of the LIG flat. He was issued a Certificate of Registration dated 05.06.1980 bearing Registration No. 33628 and Priority No. 29935 by the Housing Branch of DDA.
 - b. The DDA issued a demand-cum-allotment letter (hereinafter referred to as “DAL”) dated 22.07.1996, with block dates 02.07.1996 – 05.08.1996 for an LIG Flat bearing No. 5, Sector 18, Pocket 4, Block B, Rohini, Delhi at a disposal cost of Rs. 2,97,800/- in favour of the allottee, as per which the allottee was either required to deposit the entire amount of Rs. 2,97,800/- within 30 days or convey acceptance within 30 days from date of issue of the letter by paying Rs. 15,000/-. The allottee was then required to deposit amounts ranging between



Rs. 1,06,637.26/- to Rs. 1,09,303.18/- depending upon the date on which the amount is deposited in the account of DDA as stated in the DAL. Moreover, the allottee was required to deposit an amount of Rs. 3020.82/- every month for a period of 144 months (twelve years) starting from 10.10.1996. The allottee was also required to deposit the ground rent of Rs. 1220/- after expiry of two years as stated in the DAL.

- c. On 20.10.1997, the allottee made the Confirmation Deposit of Rs. 15,000/- to the respondent-DDA, though belatedly. Vide letter dated 21.10.1997, the allottee intimated the DDA about the Confirmation Deposit and requested for extension of time to deposit the balance amount, which was granted by the DDA till 31.12.1997 (with usual charges) vide letter dated 01.12.1997. Thus, the delay in making the late Confirmation Deposit was condoned by the DDA.
- d. Vide letter dated 08.12.1997, the allottee enquired from the respondent-DDA about any interest amount due, whether payable or not, to which the DDA did not furnish a response.
- e. On 29.12.1997, the allottee further deposited Rs. 1,09,304/- along with other documents which was acknowledged vide Receipt No. 4766 dated 30.12.1997.
- f. The allottee informed the respondent-DDA about the payment of Rs. 1,24,304/- made by him in terms of the DAL and requested the DDA to inform him about the balance amount payable by him on numerous occasions vide letters dated 23.01.1998, 15.04.1998, 01.06.1998, 13.08.1998 and



26.11.1998.

- g. The allottee further deposited Rs. 1,00,000/- on 12.05.1999 as demanded by the respondent-DDA after taking loan from his Employee Provident Fund (EPF) Account.
- h. The allottee again requested the respondent-DDA for issuance of possession letter and handing over the possession of the flat on various occasions vide letters dated 28.12.1999, 19.09.2000, 01.12.2000, 18.01.2001, 07.03.2001, 18.10.2001.
- i. The respondent-DDA made a demand of Rs. 1,90,828 vide letter dated 09.11.2000 under various heads, which included ground rent, service charges, interest and restoration charges. The allottee, through his numerous letters, expressed his financial difficulty and sought possession of the flat to be able to continue paying instalments.
- j. On 08.02.2003, the allottee expired, leaving behind his wife, Mrs. Sara Thankachan and his son, Mr. Wills John (the petitioner herein) as only legal heirs.
- k. On 03.02.2009, the respondent-DDA transferred the registration of the flat in the name of the late allottee's wife Mrs. Sara Thankachan and the petitioner, Mr. Wills John. Despite various attempts by the petitioner and his mother to get the possession of the allotted flat, the same was not done.
- l. On 04.07.2015, the petitioner's mother expired, leaving behind the petitioner as the only legal heir.
- m. An RTI application was filed by the petitioner under the Right to Information Act, 2005 (hereinafter referred to as "RTI Act")



dated 28.09.2015 enquiring about the status of the flat, however no reply was given by the respondent-DDA. The petitioner then preferred an appeal before the First Appellate Authority of DDA under the RTI Act on 10.11.2015, whereafter replies were received from the DDA dated 15.03.2016 and 24.05.2016 which stated that the file of the petitioner is not traceable in the office of the respondent-DDA and the flat stands cancelled. It was also mentioned that a total of Rs. 2,24,304/- has been paid against the allotted flat and a sum of Rs. 12,41,049/- is still due.

3. Hence, this writ petition was filed.
4. The respondent-DDA has filed a counter affidavit, wherein it has stated primarily as under:-
 - a. It being a very old case, the allotment file relating to the flat in issue is not traceable at the office of the DDA. However, an attempt has been made to reconstruct the file on the basis of the copies of the documents supplied by the petitioner through his counsel to the counsel for the DDA and on the basis of other available records with the DDA. The counter affidavit is thus filed on the basis of the reconstructed file.
 - b. That the DAL shows that the allottee had got himself registered with NPRS-79 for allotment of an LIG Flat. The registrant was allotted the priority number 29935. The registrant was thereafter allotted LIG Flat No. 5, Sector-18, Pocket-4, Block-B, Rohini, Delhi at a total disposal cost of Rs. 2,97,800/-. The allotment was made in the draw held on 29.03.1996 and the allottee was informed accordingly vide the aforesaid DAL.



After the confirmation deposit, the allottee was required to deposit amounts ranging between Rs. 1,06,637.26/- to Rs. 1,09,303.18/- depending upon the date on which the amount is deposited in the account of DDA as stated in the DAL. The allottee was further required to deposit an amount of Rs. 3020.82/- every month for a period of 144 months (twelve years) starting from 10.10.1996. The allottee was also required to deposit the ground rent of Rs. 1220/- after expiry of two years as stated in the DAL.

- c. As per the copies of challans and proof of payments made available by the petitioner and as verified by the Accounts Branch of DDA, the allottee made the following payments:

Confirmation charge	15,000/-	Dated 20.10.1997
Initial deposit	109304/-	Dated 29.12.1997
Cash receipt	100000/-	Dated 03.11.2019
Total payment	2,24,304/-	

- d. As per the copy of the DAL supplied by the petitioner, the allotment of flat was subject to terms and conditions as contained in the DAL and as per Delhi Development Authority (Management and Disposal of Housing Estates) Regulations, 1968 (hereinafter referred to as “DDA Regulations”). It was stipulated in the DAL that in the event the requisite payments are not made, the registration will be automatically cancelled without any further notice.
- e. As per the documents made available by the petitioner, the allottee was advised to deposit an amount of Rs. 85,789.89/-



vide letters dated 09.12.1999 and 20.01.2000, and vide letter dated 09.11.2000, he was requested to deposit an amount of Rs. 1,90,828.35/-. Vide letter dated 14.08.2007, the allottee was advised to deposit an amount of Rs. 2,62,210.70/-. However, no payments came to be made despite these letters by DDA. Vide letter dated 12.11.2001, the petitioner was also advised to avail the penalty reliefs scheme of DDA but no payments were deposited by the allottee or the legal heirs who were substituted after death of the allottee.

- f. As per the computer record available with DDA, the status of allotment of the said flat against registration number 33628 and priority number 29935 showed 'cancelled'.
- g. In pursuance of direction of this Court in the present writ petition, the flat in issue bearing No. 5, Second Floor, Pocket-4, Block-B, Sector-18, Rohini, New Delhi was inspected by DDA and the same was found to be re-allotted to one Sh. Vijay Bhan under DDA Housing Scheme-2010 on 24.10.2016 and a court case titled "*Neetu and Ors. v. DDA*" is pending in respect of the flat. It was only in the year 2015 that the petitioner volunteered to make the payment of the balance amount in lieu of the possession of the flat but by that time the allotment was cancelled.
- h. The NPRS-79 has already been closed in the year 2012 after due advertisement in the leading newspapers. Thereafter, the registrants have also been informed through the advertisements in the newspapers that the NPRS-79 stands closed and the



registrants are required to seek refund of the registration amount. Since the registrant in this case did not make payment within time despite repeated advises, the allotment stood cancelled, disentitling him from the allotment of the flat. It is open for the petitioner to seek refund of the deposited amount as permissible along with the relevant documents in original as per the norms on the subject.

Submissions (Petitioner)

5. Mr. George, learned counsel for the petitioner states that the petitioner has made substantial payments and despite the same, the possession was not given.
6. Mr. George, learned counsel in the present case has relied upon the DDA Regulations, more particularly Regulations 36, 51 and 54 to argue that the flat was purchased under a hire-purchase agreement and the petitioner was never put in possession, contrary to the above regulations.
7. Regulation 36 of the DDA Regulations reads as under:

“36. Handing over of Possession of Property (Hire-Purchase) –
(1) The possession of the property shall be handed over to the hirer on the completion of the following events:
a) The hirer has paid the first installment and such other dues as shall have been demanded by the Authority.
b) The hirer has executed the agreement mentioned in Regulation No. 35.
c) The Registered Agency of which the hirer is a member has been duly registered in the manner prescribed by



Regulation 41 and such Agency has executed an agreement with the Authority as provided in Regulation No. 35.

(2) The possession of the common portions and common services shall be handed over to the Registered Agency after such Agency has executed the agreement prescribed in Regulation No. 35.”

8. Regulation 51 of the DDA Regulations reads as under:

“51. Status of Hirer – During the Hirer-purchase period, a hirer shall remain the tenant of the Authority and shall have no other rights except that of tenancy.”

9. Regulation 54 of the DDA Regulations reads as under:

“54. Transfer of Ownership to Hirer – The hirer shall cease to be a tenant and shall be the owner of the property only after the last installment of hire purchase and all other dues have been paid by him to the Authority and the transfer of the property to him has been effected through a Conveyance Deed executed in such form as may be prescribed by the Authority and the common portions and common services have been transferred to the Agency through a Conveyance Deed executed in such form as may be prescribed by the Authority.”

10. It is stated by the learned counsel for the petitioner that during the continuation of the hire-purchase agreement, the allottee had the right to reside in the allotted flat as a tenant as per Regulation 51 of the DDA Regulations, and also as per the DAL itself. Further, he states that as



per Regulation 36(1)(a), which is one of the conditions of handing over the possession of the property to the hirer, the property should have been handed over to the hirer on the payment of the first instalment and other dues as demanded by the DDA. He states that the allottee has paid Rs. 2,24,304/- by 19.05.1999 to the respondent-DDA and thus, was eligible to get the possession of the flat.

11. Lastly, he argues that the respondent-DDA has cancelled the allotment without issuing any notice to the petitioner.

Submissions (Respondent)

12. Ms. Takiar, learned standing counsel for the respondent, at the outset states that the petition is barred by limitation. The DAL is of the year 1996, wherein the present petition has been filed in the year 2016. For the same, she relies on the observations of the Hon'ble Supreme Court in *Surjeet Singh Sahni v. State of U.P. & Ors.*, 2022 SCC OnLine SC 249.
13. Ms. Takiar further states that in the present case, despite numerous letters, the petitioner failed to pay the amounts due and payable and hence, the allotment in favour of the petitioner was cancelled.
14. Lastly, she submits that the DAL itself states that in case of non-payment of dues, the flat would be cancelled and hence, no specific notice was required to be issued to the petitioner.

Analysis

15. I have heard learned counsels for the parties.

On Limitation

16. As regards the issue of the petition being barred by delay and laches is concerned, I find force in the contention of the petitioner that the



respondent-DDA had never communicated that the allotted flat of the petitioner stood cancelled. There is no document or averment to show that the flat in question was cancelled by the respondent-DDA for non-payment of charges. It is only when the petitioner sought information through RTI, and pursuant to the order of the CIC that the petitioner got to know on 15.03.2016 that the allotment in favour of the petitioner stood cancelled. Prior to that, there was no cancellation and correspondingly, no cause of action arose for the petitioner to approach this Court.

17. The judgment of ***Surjit Singh Sahni*** (supra) is distinguishable as in that case the writ petition was filed after the expiry of three years of the cause of action. The Hon'ble Supreme Court was of the view that once a suit for specific performance is barred by limitation, the writ petition should not have been entertained. In the present case, the respondents have never communicated that the flat allotted to the petitioner has been reallocated to somebody else and that the allotment to the petitioner stood cancelled. Hence, the cause of action for filing the present writ petition arose for the first time only when the petitioner became aware of the cancellation of his flat and its reallocation to somebody else in the year 2016. Prior to that, the petitioner had no way of finding out that his allotment had been cancelled by the respondent-DDA.
18. In the present case, immediately on receiving the impugned letter dated 15.03.2016, the petitioner has approached this Court in the year 2016 and hence, there is no question of the petition being barred by delay and laches.

On Cancellation



19. As regards the cancellation is concerned, a perusal of the DAL shows that the petitioner was to pay Confirmation Deposit of Rs. 15,000/- (for LIG flat), in the absence of which the offer would stand terminated and registration would stand cancelled without any further notice.
20. The allottee deposited the amount of Rs. 15,000/- on 20.10.1997. Although the deposit was made belatedly, the delay was condoned by the respondent-DDA vide its letter dated 01.12.1997 and an extension was granted by the respondent till 31.12.1997 for depositing the balance payment.
21. The petitioner has made payment pursuant to the time extension granted by the respondent-DDA. It is the case of the petitioner that having done so, the respondent-DDA cannot, without issuing a notice, cancel the allotment of the petitioner.
22. In support of this contention, the learned counsel for the petitioner has placed reliance upon **Amarjit Sharma v. DDA**, 2014 SCC OnLine Del 3087, wherein a coordinate bench of this Court has observed as under:

“28. As long as there is any other address of the applicant available in the records of the respondent/DDA, it remains its obligation to make every effort to direct the said letter to the said address as well. Even after making such attempts if the allotment letter is returned undelivered, then the respondent/DDA would be justified in stating that it cannot be blamed by a registrant for cancellation of the allotment.

...

33. In view of the aforesaid facts and circumstances, the present petitions are allowed. It is directed that the respondent/DDA



shall allot flats to the petitioners as per their entitlement, preferably in the same area, if available. As for the cost of the flats, keeping in mind the fact that the present petitions have been filed in the year 2012, it is directed that the flats shall be allotted at the cost that was prevalent on the date of filing of the respective petitions. The petitioners shall complete all requisite formalities as required within four weeks from the date of intimation and the allotments shall be made within three months from today.”

23. Mr. George also places reliance upon ***Digvijay Singh v. D.D.A.***, 2012 SCC OnLine Del 658, wherein it was observed:

“6. Having failed to substantiate its claim that the demand-cum-allotment letter and the cancellation notice had been duly dispatched by the respondent/DDA and/or delivered to the petitioner, benefit of doubt ought to be given to the petitioner...”

to urge that the notice of termination needs to be served upon the petitioner. The respondent-DDA has failed to show any document/letter to show that the order of termination was ever served by the respondent-DDA upon the petitioner.

24. The argument of Ms. Takiar that in terms of the DAL, non-payment of dues automatically leads to cancellation is also not well founded.
25. Reference is to be made to Clause 2 of the DAL, which reads as under:

“2. Allottee is requested to convey acceptance of offer within 30 days from the date of issue of this letter through Confirmation Deposit of Rs. 10,000/- (EWS), Rs. 15,000 (LIG) or Rs. 20,000



*(MIG). OR The Allottee has the option to deposit the entire amount shown in col 14 within 30 days. **In the absence of such confirmation**, the offer shall stand terminated & Registration shall stand cancelled without any further Notice.”*

(emphasis added)

26. The above stated clause of the DAL clearly states that only in the absence of a Confirmation Deposit (Rs.15,000/- in this case) within a period of 30 days could the offer be terminated and the registration automatically cancelled without providing a notice to the allottee. Since the allottee made the payment of Rs. 15,000/- and the same was accepted by the respondent-DDA, the caveat in Clause 2 of the DAL does not get attracted, and the offer could not have been automatically cancelled without issuing notice.
27. The action of the respondent-DDA of cancelling the allotment made to the petitioner is in violation of the principles of natural justice.
28. The letters dated 15.03.2016 and 24.05.2016 are not termination letters or show cause notices, rather only RTI replies to the petitioner's queries regarding the status of his allotted flat.
29. In ***SP Kureel v. Delhi Development Authority***, 2013 SCC OnLine Del 4504, a coordinate bench of this Court has held that the cancellation of allotment without issuing a show cause notice to the allottee is in violation of the principles of natural justice. The Court made the following observations:

“9. In Dhani Ram Kapoor this Court held as under:-

“3. Mr. Saini, learned counsel appearing for the petitioner, has contended that the amount raising from Rs.



1,29,400/- to Rs. 2,15,600/- in the facts and circumstances of the case is illegal and arbitrary. Mr. Saini has further contended that the cancellation of the flat by the respondent Authority after allotment without giving an opportunity of being heard, is totally arbitrary and illegal, more so, when the petitioner had deposited the full amount as demanded by the respondent and was also paying regular instalments. Mr. Saini has also contended that the respondent adopted double standards in treating the petitioner as in other cases where even the amount demanded by the respondent has not been deposited, the respondent Authority had issued show cause notices to them whereas in the case of the petitioner, even after the amount has been deposited and monthly instalments for two months have also been paid, without giving any notice the respondent has cancelled the allotment of the petitioner, which is against the principles of natural justice. Learned counsel has contended that even the cancellation order was not communicated to the petitioner. Mr. Saini in support of his contentions has cited the case of Kanta Raju v. DDA C.W.P. No. 587/1990 decided on 18.12.1990, in which it is held that:-

“.....When a flat is allocated by a State Authority to a private citizen then that private citizen, like the petitioner, gets an interest therein. If the State



authority wants to cancel such allotment or allocation, then the principles of natural justice will come into play. It will be contrary to the principles of natural justice if an allotment made is sought to be cancelled without any show cause notice.”

...

11. Thus, on the basis of law laid down in Dhani Ram Kapoor, the DDA was required to follow the principles of natural justice and to issue a show cause notice before taking the drastic action of the cancellation of the flat.”

(emphasis supplied)

30. Hence, the impugned action of the respondent cancelling the allotment of the petitioner without following the principles of natural justice is bad in law and cannot be sustained. In my opinion, the petition needs to be allowed on this ground alone, however, I am also proceeding to decide the case on merits.

On Merits

31. The petitioner has been allotted a flat vide the DAL dated 22.07.1996. Subsequently, on an application made by the petitioner, the Confirmation Deposit was accepted by the respondent-DDA and the time for making the balance payment was extended till 31.12.1997 (with usual charges) by the respondent-DDA vide letter dated 01.12.1997.
32. The petitioner in response made the following payments:-



Confirmation charge	15,000/-	Dated 20.10.1997
Initial deposit	109304/-	Dated 29.12.1997
Cash receipt	100000/-	Dated 03.11.2019
Total payment	2,24,304/-	

33. In this view of the matter, once the time was extended by the respondent-DDA itself and the petitioner has made payments pursuant to the said extension, and the same have been accepted by the respondent without any protest or demur, the respondent-DDA should have handed over possession of the allotted flat to the petitioner on hire-purchase basis.

34. Section 2(21) of the DDA Regulations reads as under:

“2. ...

(21) "Hire-purchase" or "Hire-purchase System" means a system in which a participant takes steps to secure rights in a property under a scheme by payment of deposit and also a specified number of monthly instalments spread over a specified number of years, during which he remains a tenant on the terms and conditions set for the purpose and on the expiry of the said years ceases to be a tenant and becomes owner after payment of all dues.”

35. The hire-purchase concept, thus, envisages that the allottee is put in possession of the flat/property in question and does not get ownership till the entire payment is made. However, during the said period the allottee makes payment towards rent which is adjusted towards the purchase price. Once the entire payment is made, the ownership is



transferred in favour of the allottee.

36. As per the DAL, the petitioner was required to deposit Rs. 2,39,970/-, out of which he has made a payment of Rs. 2,24,304/-.
37. In addition, a perusal of the demand letters of the respondent show that the same are totally contrary to law and facts. The substantial component of the demand in the demand letters of the respondent-DDA show that the respondent is seeking monthly instalments as well as interest on those monthly instalments. Before charging the instalments and the interest on those instalments, the basic feature of the hire-purchase agreement i.e. putting the petitioner in possession of the allotted flat has not been complied with. The fulcrum of the demand letters is itself misconceived and faulty as under the hire-purchase system under the DDA Regulations, before the owner can ask for payment of hire-purchase charges, the allottee must be put in possession of the allotted flat.
38. The respondent-DDA having failed to hand over possession of the allotted flat has not performed its part of the obligation. The respondent-DDA cannot, without performing its part of the obligation, call upon the petitioner to make the balance payment and cancel the allotment unilaterally.
39. Hence, the demand letters issued by the respondent were without any basis and the actions on the part of the respondent-DDA are violative of the DAL dated 22.07.1996, and the letter granting extension dated 01.12.1997.
40. For the said reasons, the petition is allowed and a writ of *mandamus* is issued directing the respondent to hand over LIG Flat bearing No. 5,



Sector 18, Pocket 4, Block B, Rohini, Delhi. The cancellation order is also quashed.

41. In case the above-said flat is not available and is subject-matter of other proceedings, the respondent-DDA shall allot a similar flat to the petitioner. Keeping in mind the principles of equity, the respondent-DDA is only entitled to charge the petitioner with charges in accordance with the DAL dated 22.07.1996, excluding monthly instalments, interest on the monthly instalments, ground rent and interest on the ground rent, as the respondent-DDA can only charge the same once the petitioner is put in possession of the allotted flat.
42. The petition is allowed in the aforesaid terms.

JASMEET SINGH, J

OCTOBER 20th, 2023
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Click here to check corrigendum, if any