



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

% **Judgment reserved on : 25 July 2024**  
**Judgment pronounced on : 09 September 2024**

+ **W.P.(C) 10299/2023 & CM APPL. 39843/2023**

**SHYAM SUNDER SETHI** ..... Petitioner  
Through: **Ms. Sonia Arora, Advocate**

versus

**DELHI DEVELOPMENT AUTHORITY & ANR.**

..... Respondents  
Through: **Mr. Anish Dhingra and Mr.**  
**Nakul Ahuja, Advs. for R-**  
**1/DDA.**

**CORAM:**  
**HON'BLE MR. JUSTICE DHARMESH SHARMA**

### **J U D G M E N T**

1. The petitioner is invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India, 1950 for issuance of a writ, order or direction, thereby seeking the following reliefs:

“a) Quash the impugned order dated 19.05.2023, by virtue of which the representation (WP(C) 8489/2022 vide order dated 27.05.2022 was directed to be treated as a representation) has been rejected and it has been held that the Petitioner is not entitled to allotment of the plot bearing no. Plot No. 1095, Block C-4, Sector-34, Rohini, New Delhi.

b) Issue an appropriate writ, order or direction to the Respondents to issue a demand cum allotment letter with regards to the plot bearing no. Plot No. 1095, Block C-4, Sector-34, Rohini, New Delhi at the cost prevailing at the time when the draw of lots was held on 12.06.2012.”

### **BRIEF FACTS:**

2. The petitioner applied for the allotment of a flat under the MIG category in the Housing New Registration Scheme, 1976, floated by



respondent No. 1, and he deposited Rs. 7,500 and was issued the FDR with registration certificate bearing No. 6515 on 11.05.1976. Due to the delay in allotment and following the announcement of the Rohini Residential Scheme, 1981, by respondent No. 1, which allowed transfers of applications for allotment from the 1976<sup>1</sup> and 1979<sup>2</sup> schemes, the petitioner claims that he duly transferred his registration and was subsequently issued Registration Receipt No. A/751/81 dated 20.04.1981 under the MIG category of the Rohini Residential Scheme, 1981.

3. The petitioner claims that after waiting for over a decade without receiving an allotment under the Housing New Registration Scheme, 1976, he submitted a request for cancellation and a refund in 1991, which the respondents failed to act upon. As the petitioner was approaching retirement in 2005 and did not own a house, he withdrew his cancellation request on 14.01.2004, citing that the cancellation request had not been accepted and that the deposited amount had remained with respondent No. 1 since 1976. Therefore, the petitioner requested that his case be considered for the allotment of a plot under the MIG category of the Rohini Residential Scheme, 1981. It is asserted that since his cancellation request had not been processed, he was assured that he would be allotted a plot according to his priority number in the forthcoming draw of lots.

4. It appears that the respondents conducted a draw of lots on 12.06.2012, wherein the Petitioner was declared eligible for the

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<sup>1</sup> Housing New Registration Scheme 1976

<sup>2</sup> New Pattern Scheme, 1979



allotment of a 60 sq. meter plot, specifically Plot No. 1095, Block C4, Sector 34, Rohini. However, despite this, the respondents have failed to issue the requisite demand-cum-allotment letter to date. Aggrieved by the respondent's acts and omissions, the petitioner issued a legal notice on 26.03.2022.

5. Since the respondents failed to redress the petitioner's grievance, the petitioner was compelled to file WP(C) No. 8489/2022 before this Court, which was disposed of *vide* order dated 27.05.2022, with directions that the writ petition of the petitioner be treated as a representation for issuance of a demand-cum-allotment letter in his favour, and that the same be considered by the respondents within a period of ten weeks. The petitioner claims that, since he did not receive any response from the respondent No. 1, he filed CONT. CAS (C) 591/2023, and as a result, the impugned order dated 19.05.2023 was passed, thereby declining his request on the ground that, *vide* application dated 24.06.1991, he had requested the cancellation of registration under the Rohini Residential Scheme and sought a refund of the earnest money along with interest by returning his FDR No. 24931 dated 20.04.1981. It was also stated that his request for cancellation of registration and refund was processed and approved by the competent authority and *vide* letter reference No. M/243480/91/626/LSB(R)/1828 dated 17.09.1991, he was requested to submit the required documents for the refund of the registration amount, but same were not submitted, and hence, the petitioner was not eligible for the allotment of the flat.



6. It was also recorded that his subsequent letter dated 10.10.2023, requesting for restoration of the registration under the Rohini Residential Scheme on the ground that his earnest money had not been refunded, was also considered by the competent authority and was declined. Suffice to state that, thereafter the order dated 11.10.2017 was passed by this Court in the Contempt Petition, which reads as follows:

**“7.** In the present case, as per the directions contained in WP(C) 8489/2022 dated 27.05.2022, the order was supposed to be passed by the respondent on or before 05.10.2022.

**8.** Thereafter even after service of the legal notice dated 03.03.2023, the respondent did not act. Only when the contempt petition was filed, the respondent passed the order.

**9.** The act of the respondent shows that the respondent is taking its own sweet time and citizens have been put to undue harassment and trouble.

**10.** Once an order has been passed, the citizen is not required to keep following up regarding the directions issued by the Court to see that they are complied with.

**11.** In case the respondent Department does not adhere to the time schedules given by the Court, the same would lead to utter confusion as every direction given by the Court would depend on the whims and fancies of the officers.

**12.** As regards serving of the notice is concerned, the receipts as well as the tracking report have been annexed. The page Nos. 454 to 457 in the case file also shows the receipt of the notice by hand. There is also presumption under Section 27 of the General Clauses.

**13.** Mr. Shukla learned standing counsel further states that the order dated 19.05.2023 shows the conduct of the petitioner. He further states that the petitioner is guilty of suppression of facts in the writ petition

**14.** The same is disputed by the learned counsel for the petitioner.

**15.** I am again unable to appreciate the contention. These facts could have very well been mentioned in the order which was directed to be passed within 10 weeks from 27.05.2022. This fact, in no way, condones the act of the respondent of not passing the order in compliance of time limits given by a Court of law.

**16.** In this view of the matter, I direct that the respondent shall conduct an inquiry and identify the person responsible for non-compliance of the timeframe given in the order dated 27.05.2022



and further impose a fine of Rs. 2,000/- which shall be paid to the petitioner within 2 weeks.

17. With these directions and with liberty as aforesaid, the petition is disposed of.”

7. On filing of the present petition, notice was issued to the respondents, and in their counter-affidavit submitted through Ms. Aradhana Gautam Tyagi, Deputy Director (LAB), Rohini, Delhi, dated 10.05.2024, the contents of the impugned order dated 19.05.2023 were reiterated and reaffirmed. Additionally, reliance was placed upon the observations made by the Supreme Court in the case of **State of Jammu & Kashmir v. R.K. Zalpuri**<sup>3</sup>, wherein it was observed as under:

“19. We have referred to the aforesaid authorities as we are of the convinced opinion that in the present case, there was a manifest error by the High Court, for it had really not taken note of the stand and stance that was eloquently put by the State as regards the delay and laches. The averments in the writ petition were absolutely silent and nothing had been spelt out why the delay had occurred. The Single Judge, as stated earlier had chosen not to address the said issue. The Division Bench in the appeal addressed the submission, totally being oblivious of the ground pertaining to delay and laches clearly stated in the memorandum of appeal, and modified the order passed by the learned Single Judge as if that was the sole submission. It needs no special emphasis to state that in the obtaining factual matrix, the application for review did not require delving deep into the factual matrix to find out the error. It was not an exercise of an appellate jurisdiction as is understood in law. It can be stated with certitude that it was a palpable error, for the principal stand of the State was not addressed to and definitely it had immense significance and hence, the same deserved to be addressed to. Therefore, we are compelled to think that the order required review for the purpose of consideration of the impact of delay and laches in preferring the writ petition. Be that as it may, we shall proceed to deal with the repercussions of delay and laches, as we are of the considered opinion that the same deserves to be addressed to in the present case.

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<sup>3</sup> (2015) 15 SCC 602



27. The grievance agitated by the respondent did not deserve to be addressed on merits, for doctrine of delay and laches had already visited his claim like the chill of death which does not spare anyone even the one who fosters the idea and nurtures the attitude that he can sleep to avoid death and eventually proclaim “**deo gratias**”—“**thanks to God**”.

28. Another aspect needs to be stated. A writ court while deciding a writ petition is required to remain alive to the nature of the claim and the unexplained delay on the part of the writ petitioner. Stale claims are not to be adjudicated unless non-interference would cause grave injustice. The present case, needless to emphasise, did not justify adjudication. It deserved to be thrown overboard at the very threshold, for the writ petitioner had accepted the order of dismissal for half a decade and cultivated the feeling that he could freeze time and forever remain in the realm of constant present.”

### **LEGAL SUBMISSIONS:**

8. The learned counsel for petitioner submits that the impugned order dated 19.05.2023 is legally flawed, lacking essential material particulars. The respondents claim that the subject plot cannot be allotted to the petitioner as he had allegedly applied for the cancellation, which was purportedly accepted. However, the respondents have failed to specify the date of such acceptance or the manner of communication thereof. Notably, the petitioner never received the order regarding the alleged cancellation. Furthermore, the impugned order contains an incorrect address for the petitioner, misrepresenting "GG I 86 C, Vikas Puri, New Delhi" as "G.G. 186-C, Vikaspuri, New Delhi," thereby preventing any proper communication to the petitioner.

9. It is submitted that the impugned order, which records the rejection of the petitioner's request for restoration made on 10.10.2003, lacks critical details, such as the date of the alleged decision and its communication to the petitioner. The respondents



failed to recognize that the original cancellation was not due to technicality or non-payment but stemmed from the petitioner's frustration over the delayed allotment. Moreover, the respondents erroneously claimed that the petitioner's details were not deleted from the Rohini Residential Scheme list "due to some error," leading to the allotment of Plot No. 1095 in the draw held on 12.06.2012. As the refund had not been issued to the petitioner, the plot was never effectively cancelled, entitling the petitioner to the allotment. The respondents, being State instrumentalities, are bound to act within the confines of the law and with transparency. The impugned order's failure to issue the demand-cum-allotment letter, despite the petitioner's success in the draw, is legally untenable.

10. The learned counsel for the petitioner places reliance upon **Hari Mohan Gupta v. DDA**<sup>4</sup>, wherein this Court had directed the restoration of a "cancelled" flat, and the Division Bench of this Court in the matter of **DDA vs. Madhurima Malhotra**<sup>5</sup>, held that even if a person has withdrawn their application or sought cancellation, the applicant remains entitled to the allotment.

11. *Per contra*, learned counsel for the respondent/DDA urged that once the petitioner voluntarily chose to surrender his registration, he was no longer eligible for any allotment under either of the schemes and when the registration was cancelled way back on 17.09.1991, the petitioner approached this Court on a misconceived and incorrect premise that, since his registration money was not refunded, the

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<sup>4</sup> 2005 (80) DRJ 5

<sup>5</sup> WA No. 294/2004



registration remained active, thereby entitling him for allotment of a flat/ plot. It was also urged that the petitioner is guilty of filing the present writ petition with an inordinate delay and reliance has been placed on decision in the case of and **Chennai Metropolitan Water Supply and Sewerage Board v. T.T. Murali Babu**<sup>6</sup> wherein it was held as under:-

"16. Thus, the doctrine of delay and laches should not be lightly brushed aside. A writ court is required to weigh the explanation offered and the acceptability of the same. The court should bear in mind that it is exercising an extraordinary and equitable jurisdiction. As a constitutional court it has a duty to protect the rights of the citizens but simultaneously it is to keep itself alive to the primary principle that when an aggrieved person, without adequate reason approaches the court at his own leisure or pleasure, the court would be under legal obligation to scrutinize whether the lis at a belated stage should be entertained or not. Be it noted, delay comes in the way of equity. In certain circumstances delay and laches may not be fatal but in most circumstances inordinate delay would only invite disaster for the litigant who knocks at the doors of the court. Delay reflects inactivity and inaction on the part of a litigant who has forgotten the basic norms, namely "procrastination is the greatest thief of time" and second, law does not permit one to sleep and rise like a phoenix. **Delay does bring in hazard and causes injury to the lis.**"

### **ANALYSIS AND DECISION:**

12. I have given my thoughtful consideration to the submissions advanced by the learned counsels for the parties at the Bar. I have gone through the relevant record of the case.

13. At the outset, this Court unhesitatingly finds that the petitioner cannot claim any vested legal right to seek the allotment of the plot in question based on the draw of lots carried out on 12.06.2012. Once the petitioner had voluntarily sought the cancellation of his registration

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<sup>6</sup> (2014) 4 SCC 108



through application dated 24.06.1991 and had returned the original FDR No. 24931 dated 20.04.1981, the registration did not remain alive, as it had been accepted by the competent authority in terms of letter dated 17.09.1991. The petitioner does not deny receiving the letter dated 17.09.1991. It manifestly appears that he sat over his legal rights for a very long time and did not address any further communication for refund of the amount deposited. It appears that after more than 13 years, he claimed to have sent a letter dated 14.01.2004, requesting to withdraw his earlier cancellation request made via letter dated 24.06.1991. Interestingly, the receipt of the request letter dated 04.01.2004 for withdrawal of his cancellation application has not been acknowledged by the respondent No.1. There is no postal receipt on record to prove that the letter dated 14.01.2004 was dispatched or served upon the respondent. Be that as it may, the petitioner evidently sought to revive his claim after 13 years and then, once again remained inactive until he discovered his name in the draw of lots conducted by the respondent No.1 on 12.06.2012. The mere fact that there was mistake on the part of the respondent No.1, in that they had not updated their records and therefore included the petitioner's name in the draw of lots, does not confer a legal right upon the petitioner to seek the allotment of a plot. The bottom line is that the petitioner was not entitled to be considered for the draw of lots in the first place. The delay and laches on the part of the petitioner speaks for itself. Indeed, the conduct of the respondent No.1 is also not without blemish, as the refund was not sent but then there is no denial by the petitioner that he had received the letter dated



17.09.1991, calling upon him to submit the documents for the refund.

14. At the cost of repetition, the petitioner sat over his legal rights for a very long time and in such a scenario, it was not incumbent upon the respondent No.1 to entertain any stale claims. The petitioner has opted to come to the Court on his own leisure or pleasure and if such a claim is entertained, it would cause palpable injury to the other rightful claimants who stood by the time and complied with the relevant formalities for allotment of plot with some alacrity. In the end, the draw of lots carried out on 12.06.2012 was subject to the fulfilment of all the primary terms and conditions that the registration was alive, which was not and it is but clear that the petitioner has become wiser with the times and his mere attempt is to indulge in profiteering on account of genuine mistake made by the respondent No.1 for want of updation of their records. The draw of lots was not conducted with due diligence and based on inaccurate data/record. It is manifested that the petitioner has not acted in good faith. It is well settled that estoppel is a legal principle that prevents someone from denying or asserting something contrary to what they have previously stated or agreed upon. However, if there is found a fundamental mistake on account error of fact or misconception going to the root of the matter, making it invalid, inequitable or unenforceable, the principle of estoppel does not apply.

15. At this juncture, it would be relevant to refer to a recent decision of the Supreme Court in the case of **Yamuna Expressway Industrial Development Authority vs Shakuntala Education &**



**Welfare Society**<sup>7</sup>, wherein the High Court of Allahabad had ruled in favour of respondent educational society, which had challenged the policy decision of the State government that called upon it to pay the additional amount of premium for allotment of the subject land on account of increased compensation that became payable to the farmers whose land had been acquired by the Authority, which amount demanded was not earlier envisaged as per the terms & conditions of the contract of allotment except “for the clerical error or miscalculation”. In the said backdrop, rejecting the plea of promissory estoppel against the Authority, and setting aside the decision by the High Court, *inter alia* it was observed:

“It has been held by this Court that the doctrine of promissory estoppel cannot be invoked in the abstract and the courts are bound to consider all aspects including the results sought to be achieved and the public good at large. It has been held that while considering the applicability of the doctrine, the courts have to do equity and the fundamental principles of equity must for ever be present to the mind of the court, while considering the applicability of the doctrine. It has been held that the doctrine being an equitable doctrine, it must yield when the equity so requires, if it can be shown by the Government or Public Authority that having regard to the facts and circumstances as they have transpired, it would be inequitable to hold the Government or the Public Authority to the promise, assurance or representation made by it.”

16. In the case of **Central Airmen Selection Board vs Surender Kumar Dass**<sup>8</sup>, it was held that promissory estoppel is not applicable where the candidate was though selected was not given employment on account of misrepresentation of facts. However, interestingly, it was also additionally argued on the behalf of the petitioner that even if

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<sup>7</sup> 2022 SCC OnLine SC 655

<sup>8</sup> (2003) 1 SCC 152



a candidate had been declared selected or appointed contrary to the Rules of Recruitment, the petitioner could have *suo moto* corrected the mistake and annul the appointment. It was held by way of *obiter dicta* that the principle of promissory estoppel cannot be invoked in a such case.

17. Insofar as the decision in the case of ***Hari Mohan Gupta (supra)*** heavily relied upon by the learned counsel for the petitioner, I am afraid, it does not help the petitioner in any manner. Although, the petitioner had applied for cancellation of his registration in 2001, which was acceded to by the respondent No.1 on 20.12.2001, a month later the petitioner applied for restoration of his registration upon becoming aware that DDA was planning to make allotment to those who had waited for a long period, which request was acceded and the registration was restored on 06.03.2003. It was in the said circumstances that when his name was not included in the draw of lots to be held on 11.07.2003 that the petitioner challenged the decision of DDA in writ petition and his name was ordered to be included in the draw of lots. Eventually, as the name of the petitioner appeared in the draw of lots, but an issue cropped as to the rate or the price that would be payable by the petitioner for allotment of flat, which was held to be payable as on the date when the scheme was floated i.e. 1989 with directions to pay the interest. Likewise, another decision cited by learned counsel for the petitioner was **DDA v. Madhurima Malhotra**<sup>9</sup>, decided by this Court, wherein the allotment of a flat was made to the petitioner at Narela in Delhi but there were discrepancies



in the built-up area and on the representations made by the petitioner as also others, the DDA informed that flats were of ‘incremental category’ and on its own it decided to allot regular flats to those who have been allotted such incremental flats. However, after taking such a decision, the policy was reviewed, which was challenged in the writ, and in the said circumstances the DDA was restrained from rescinding from its policy decision and a direction was issued to allot the regular flat to the petitioner. Such relief granted by the learned Single Judge when challenged in LPA<sup>10</sup> by the DDA, which came to be dismissed *vide* the aforesaid order.

18. In view of the foregoing discussion, the present writ petition is devoid of any merits and the same is accordingly dismissed. However, the petitioner is entitled to recover the amount initially paid by him for the booking/allotment of the plot be refunded to him with interest @ 9% interest from the date he applied for cancellation of his booking i.e., 24.06.1991, till realization forthwith not later than two months from today.

19. The pending application also stands disposed of.

**DHARMESH SHARMA, J.**

**SEPTEMBER 09, 2024**

*Sadiq*

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<sup>9</sup> WA No. 294/2004 dated 06.09.2004

<sup>10</sup> Letters Patent Appeal