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

Judgment reserved on: 13.12.2023

Judgment pronounced on: 11.03.2024

+ **W.P.(C) 15808/2006, CM APPL. 44155/2022**

KELAWATI

..... Petitioner

Through: Mr Ankit Singh Sinsinwar and Mr
Sarfaraz, Advs.

versus

DDA

..... Respondent

Through: Mr. Ashim Vachher, Standing
counsel with Mr. Vinayak Uniyal,
Adv.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

J U D G M E N T

: **JASMEET SINGH, (J)**

1. The present writ petition prays for the following substantial reliefs:

*“(a) issue a writ of certiorari thereby quashing the communication dated 19-09-2005 / 21-09-2005 and communication-dated 23-12-2005; and
(b) issue a writ declaration declaring the act of the respondent authority in canceling the allotment of the petitioner, as being totally arbitrary, unjust and unreasonable; and
(c) issue a writ of mandamus thereby directing the respondent authority to allot and hand over the possession of plot measuring 60 Sq.Mtrs. to the petitioner; and...”*



2. The brief facts for adjudication of the present writ petition are that -:
- a. The petitioner had applied for allotment of a plot of 90 sq.mtrs. under the Rohini Residential Scheme of DDA/respondent authority on 23.03.1981. The petitioner belongs to the Scheduled Caste category and it is alleged by the petitioner that the respondent authority has failed to consider the application of the petitioner under the said category.
 - b. The petitioner raised the issue of non-consideration before the respondent authority. Since the allotment was not forthcoming, the petitioner in the year of 2002 filed WP(C) 3741/2002 against the respondent authority seeking allotment of an MIG plot under the reserved category at the rates prevailing in the year 1992.
 - c. During the pendency of the said writ petition, plot bearing no. 59, Pocket-8, Block-A, Sector-16, Rohini in Phase II admeasuring 60 sq.mtrs. was allotted to the petitioner through a Mini-Draw held on 27.12.2002.
 - d. The petitioner during the pendency of the matter agitated the issue that the allotment of the plot should be on the rates prevailing in the year 1992 for the petitioner.
 - e. This court vide order dated 08.08.2003 disposed of the writ petition. The operative portion of the order reads as under: -

“20) The plot has since been allotted to the petitioner vide letter dated 05.02.2003. It is, thus, permissible for the petitioner to accept the said allotment within a maximum period of 4 weeks from today on making the necessary payment in terms of the said letter and



submitting the requisite documents. On the petitioner doing the needful, the possession of the plot shall be handed over within a period of 2 weeks thereafter. However, on failure of the petitioner to do the needful within the aforesaid period of time, it will be open to the respondent to proceed and deal with the plot in any manner deemed proper.”

- f. The petitioner preferred an appeal, being LPA no. 620/2003, before the Hon’ble Division Bench of this court against the order dated 08.08.2003 on the ground that the petitioner is entitled to a plot of 90 sq.mtrs at the cost prevailing in the year of 1992. The said appeal was dismissed on 05.09.2003, the operative portion of which reads as under: -

“...On reading para 12 of the said order, it appears that the learned Single Judge was fully satisfied that the application was not made indicating the reserved category. Not only that, when the authorities attention was drawn, after verification, they have changed the category and allotted the plot and the petition is filed in 2001 after delayed period. We find no reason to interfere with the order made by the learned Single Judge. The appeal is dismissed.”

- g. Against the order of the Hon’ble Division Bench, the petitioner preferred SLP No. 2937/2004 before the Hon’ble Supreme Court. The Hon’ble Supreme Court vide order dated 02.04.2004 issued notice and directed that the allotment of the plot shall not be canceled. The same reads as under:-

*“Delay Condoned.
Issue Notice.*



In the meantime the allotment of the plot shall not be cancelled.”

- h. The Hon’ble Supreme Court on 09.05.2005 dismissed the SLP preferred by the petitioner.
- i. The petitioner on dismissal of the said SLP, deposited the amount demanded by the respondent authority for allotment of the earlier plot. Vide letter dated 12.07.2005, the petitioner requested the respondent authority for handing over of the possession of plot and the same was reiterated by the petitioner on 06.10.2005.
- j. However, the respondent authority communicated to the petitioner by way of letter dated 19.09.2005/21.09.2005 that the allotment made in favor of the petitioner stands cancelled.
- k. The petitioner approached the Commissioner, DDA and made a representation before the respondent authority to state that the allotment of the petitioner be restored. However, the request of the petitioner was denied vide letter dated 23.12.2005. It reads as under:-

“Please refer to your letter dated 26/10/05 addressed to Commissioner (LD) and copy to VC, DDA on the subject cited above. In this connection I am directed to you that regard I am directed to inform you that your request has been examined by the competent authority but could not be acceded to.

It briefly stated that after dismissal of LPA, a show cause notice was issued to you on 18/11/03 but you failed to give the reply. Therefore, the allotment was cancelled by CLD on 24/03/04 and



the plot was reallocated in the draw held on 25/03/04 to the next waiting registrant. The SLP filed by you came up for hearing only on 02/04/03 and by that time the allotment stood cancelled and the position was intimated to the Supreme Court. Ultimately the Hon'ble Supreme Court dismissed your SLP on 09/05/05. The payment made by you after 09/05/05 cannot be accepted because the allotment of plot in question was cancelled after due process on the basis of High court Order only.

You are now entitled only for refund of your deposited amount after adjustment as per policy. You are, therefore, requested to apply for refund by furnishing the requisite documents mentioned in the letter dated 19/ 21/09/05."

3. Thereafter, the petitioner made another representation before the Member of the authority on 12.01.2006, however the same was also rejected vide order dated 02.02.2006.
4. The petitioner in the present writ petition is aggrieved by the respondent authority's act of cancellation of the allotment in favor of the petitioner and re-allotment of the said plot in favor of another person.
5. The petitioner submits that the issue in the earlier proceedings preferred before the courts was the non-treatment of the case of the petitioner in the Scheduled Caste category and for allotment of a 90 sq. mtrs. at the prevailing rates of the year of 1992. Since the same was decided against the petitioner, the petitioner deposited the amount with the office of the respondent authority. The petitioner states that the respondent cannot be permitted to cancel allotment made in favor of the petitioner on the ground



of dismissal of the petitioner's writ petition since the right of allotment was not an issue in the earlier proceedings.

6. The petitioner submits that the petitioner filed the earlier writ petition, for redressal of a legal right to obtain an allotment, which was denied to her. It was only during the pendency of the writ petition that the present allotment was made to her. The petitioner states the earlier round of proceedings were regarding the rate on which the petitioner was entitled to the allotment. In this view, the respondent authority ought not to have cancelled the allotment made in petitioner's favor. It is settled principle of law that a person cannot be penalized for pursuing the remedy available to her in the Courts of Law.

7. The petitioner further submits that the respondent authority has changed the policy whereby delay in deposit of demanded amount upto 365 days is condonable subject to payment of interest @15%. The petitioner on dismissal of the appeal on 09.05.2005 deposited the amount, in terms of the allotment letter, with the respondent authority within two months. It is submitted by the petitioner that the respondent authority should have condoned the delay and made the allotment in terms of the old cost with an interest at 15% per annum. Reliance is placed on the judgment of this court in WP(C) No. 12517/2005 dated 21.07.2005 titled *SR Yadav v DDA*. The operative portion reads as under:-

"14. It is not in dispute that as per the policy decision taken by DDA in its meeting dated 5.7.2004, delay beyond 180 days and up to 270 days can be condoned by the Principal Commissioner. This, however, is subject to payment of restoration charges and penal rate of interest @ 15% p.a Further, power is vested in the



Lt. Governor of Delhi to extend time beyond one year but on extreme deserving grounds.”

8. In response, the respondent authority submits that the petitioner did not disclose that she belongs to the Scheduled Caste Community at the time of registration under the Rohini Residential Scheme in 1981. It was only in the year 1993, i.e 12 years later from the date of registration, that the Scheduled Caste Certificate was issued by a competent authority. The respondent authority states that it is the petitioner who failed to correctly fill details in the application form and failed to enclose the certificate to prove her reserved category. In the absence of the Certificate by a competent authority and filling up of the form incorrectly, the petitioner was treated as belonging to the General Category.

9. The counter affidavit of the respondent contains detailed averments as to why the petitioner's case was not considered, but the same is not being adverted to since it is not relevant or germane to the issue in controversy. Suffice to say, as and when the Scheduled Caste Category of the petitioner was verified, the respondent authority conducted a mini draw and allotted a plot admeasuring 60 sq.mtrs in favor of the petitioner.

10. The respondent authority states that the allotment has been denied to the petitioner only due to her own defaults and not due to the lapse of the respondent authority. The plot admeasuring 60 sq.mtrs. was allotted to the petitioner on 05.02.2003. The petitioner failed to make payment within the four weeks of the order dated 08.08.2003 passed by the learned Single Judge. The order of the Single Judge clearly stated that the petitioner is required to make payment within a maximum period of 4 weeks and if the



same is not done, the respondent authority was at liberty to deal with plot as it may deem proper.

11. It is submitted that post the dismissal of the appeal by the Hon'ble Division Bench of this court on 05.09.2003, the respondent authority issued show cause notice dated 18.11.2003 to the petitioner. It is stated that it is due to the failure on part of the petitioner to comply with the mandate of order of the learned Single Judge and lack of response to the show-cause notice dated 18.11.2003 by the petitioner, that the allotment was cancelled on 24.03.2004.

12. The respondent authority further states that the plot was re-allotted in the draw held on 26.03.2004 and the demand-cum-allotment letter was issued to the next registrant to 31.03.2004, i.e. prior to passing of the interim order dated 02.04.2004 by the Hon'ble Supreme Court. The factum of the cancelled plot and reallocation of plot was brought to the notice of the Hon'ble Supreme Court thereafter. Therefore, the respondent submits that since the SLP was dismissed and the petitioner failed to make deposit in the requisite time frame, the present writ petition is liable to be dismissed.

13. The petitioner denies the fact that the petitioner did not disclose that she belongs to the Scheduled Caste category at the time of registration under the Rohini Residential Scheme in 1981. She states that it was on account of an inadvertent error that the column 10(a)(iv) was not ticked. She further states that the respondent authority is a public authority which has a duty to act fairly and cannot deny allotment for exercising her legal right.

14. I have heard the learned counsel for the parties and perused the material on record.

15. With respect to the averment made by the petitioner that she had



disclosed the category in her application in the first instance itself, the order of the learned Single Judge dated 08.08.2023 adequately deals with the same and rejects the said averment. The issues with regard to the non-treatment of the petitioner in the Scheduled Caste category, the entitlement of the petitioner to a 90 sq.mtrs. plot or the rate at which allotment should have been made, is no longer *res integra* and therefore does not need any consideration of the court.

16. From the facts narrated above, it is clear that on 08.08.2023, this court permitted the petitioner to accept the allotment made by the respondent authority of a plot admeasuring 60 sq.mtrs. within four weeks by making the necessary payment. The order specified that upon the petitioner doing the same, the possession of the plot would be handed over within two weeks thereafter. The court further, in the said order of 08.08.2023, made it clear that on the failure of the petitioner to do the needful, it would be open to the respondent to proceed and deal with the plot in any manner deemed proper.

17. The challenge to the said judgment by LPA 620/2003 failed on 05.09.2003.

18. The respondent in performance of its public duty and to comply with the principles of natural justice, issued a show cause notice dated 18.11.2003. The same was not replied to by the petitioner, however the petitioner challenged the order dated 05.09.2003 passed by the Hon'ble Division Bench by filing a SLP before the Hon'ble Supreme Court.

19. The interim order dated 02.04.2004 passed by the Hon'ble Supreme Court, directing that the plot allotted to the petitioner should not be cancelled, was *an ex-parte* order. Prior to the said order, the respondent on 24.03.2004 had cancelled the allotment in favour of the petitioner,



conducted fresh draw of lots on 26.03.2024 and allotted the plot in question to the new allottee on 31.03.2004.

20. In view of the above, I am of the opinion that there is no dereliction of public duty on behalf of the respondent. The petitioner had a vested right for allotment of the plot in terms of the order dated 08.08.2003 for a period of 4 weeks from the said date. Having failed to exercise her vested rights, those rights came to an end after the expiry of the four weeks from 08.08.2003.

21. Though the petitioner was exercising her legal rights but having failed in that exercise, the petitioner today cannot ask the respondent to turn the clock back and allot the plot in question, which has already been allotted to another third party.

22. The Hon'ble Supreme Court in *Province of Bombay v. Khushaldas S. Advani*, 1950 SCC 551 has explained the scope of the writ of certiorari wherein it is observed that for a writ of certiorari. The operative portion of the judgment reads as under:-

“40... The law is now well settled that a writ of certiorari will lie to control a statutory body if it purports to act without jurisdiction or in excess of it or in violation of the principles of natural justice, provided that, on a true construction of the statute creating the body, it can be said to be a quasi-judicial body entrusted with quasi-judicial functions.”

23. In addition, the writ jurisdiction under the Article 226 of the Constitution of India confers wide powers upon the High Courts for enforcement of fundamental rights and other statutory rights and protection from infringement of the said rights. A writ of mandamus is to be granted for performance of a public duty or enforcement of a private/fundamental right falling from public duty. Reliance is placed upon the judgement of the



Hon'ble Supreme Court in *CAG v. K.S. Jagannathan*, (1986) 2 SCC 679, the operative portion reads as under:

“20. There is thus no doubt that the High Courts in India exercising their jurisdiction under Article 226 have the power to issue a writ of mandamus or a writ in the nature of mandamus or to pass orders and give necessary directions where the government or a public authority has failed to exercise or has wrongly exercised the discretion conferred upon it by a statute or a rule or a policy decision of the government or has exercised such discretion mala fide or on irrelevant considerations or by ignoring the relevant considerations and materials or in such a manner as to frustrate the object of conferring such discretion or the policy for implementing which such discretion has been conferred. In all such cases and in any other fit and proper case a High Court can, in the exercise of its jurisdiction under Article 226, issue a writ of mandamus or a writ in the nature of mandamus or pass orders and give directions to compel the performance in a proper and lawful manner of the discretion conferred upon the government or a public authority, and in a proper case, in order to prevent injustice resulting to the concerned parties, the court may itself pass an order or give directions which the government or the public authority should have passed or given had it properly and lawfully exercised its discretion.”

24. Reliance is further placed on *Hero Motocorp Ltd. v. Union of India*, (2023) 1 SCC 386. The operative portion reads as under:-

“74. This Court in Bihar Eastern Gangetic Fishermen Coop. Society had an occasion to consider when a writ of mandamus could be issued. This Court held that :

“15. ... There is abundant authority in favour of the proposition that a writ of mandamus can be granted only in a case where there is a statutory duty imposed upon the



officer concerned and there is a failure on the part of that officer to discharge the statutory obligation. The chief function of a writ is to compel performance of public duties prescribed by statute and to keep subordinate tribunals and officers exercising public functions within the limit of their jurisdiction. It follows, therefore, that in order that mandamus may issue to compel the authorities to do something, it must be shown that there is a statute which imposes a legal duty and the aggrieved party has a legal right under the statute to enforce its performance....”

....

76. It could thus be seen that this Court holds that a writ of mandamus can be issued where the Authority has failed to exercise the discretion vested in it or has exercised such a discretion mala fide or on an irrelevant consideration.

....

25. In view of the above factum, no fault can be found with the actions of the respondent authority and no violation of any rights of the petitioner is observed.

26. For the said reasons, I am of the view that the cancellation of the allotment of the respondent was in accordance with law and the order dated 08.08.2003. Resultantly, the writ petition is without merits and is dismissed.

27. The pending applications, if any, are disposed of.

JASMEET SINGH, J

MARCH 11th, 2024/dj

[Click here to check corrigendum, if any](#)