



2024:DHC:8356-DB



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

+ **LPA 1075/2024 & CM APPL. Nos. 63274-76/2024**

RAKESH KUMAR SHARMA Appellant

Through: Mr. R.K. Saini, Advocate.

versus

DELHI DEVELOPMENT AUTHORITYRespondent

Through: None.

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Date of Decision: 25th October, 2024

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

MANMOHAN, CJ : (ORAL)

1. Present appeal has been filed under Clause 10 of the Letters Patent Act, 1866 assailing the order dated 19th July, 2024 passed by the learned Single Judge in W.P.(C) 2328/2020 titled "*Sh. Rajesh Kumar Sharma vs. Delhi Development Authority*", whereby the learned Single Judge has dismissed the writ petition on the principles of constructive *res judicata*, as the predecessor-in-interest of the appellant had already exhausted its remedy by filing a suit and a writ petition, on the same cause of action.

2. Mr. R.K. Saini, learned counsel appearing for the appellant, at the outset, states that the appellant's aunt Smt. Amba Rani, was allotted an MIG flat *vide* Demand Letter dated 17th March, 1993, at a total cost of Rs.3,55,000/- on a cash down basis and the said amount was to be paid on or before 15th June, 1993. He further states that as the demand raised in the

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letter was in excess of the amount initially advertised in the brochure, Smt. Amba Rani filed a suit for permanent injunction and the Civil Judge granted a stay of cancellation of the allotment, pending disposal of the suit. During the pendency of the aforesaid suit, on 9th September, 1997, Smt. Amba Rani, on her own, deposited the full amount. He states that on depositing the full demanded amount, Smt. Amba Rani requested the respondent/DDA to give her possession of the flat. He states that in the meanwhile, the suit filed by Smt. Amba Rani was dismissed in default on 8th September, 1997. He further states that on filing an application, the suit was restored to its original number and the Civil Judge had directed the respondent/DDA to issue a demand notice regarding interest and other charges, as Smt. Amba Rani had already deposited the full amount.

3. He states that Smt. Amba Rani was invited for a meeting by the respondent/DDA. As she did not attend the meeting on that day, many a time, she tried appearing before the officials of the respondent/DDA and submitted representations for allotment of land between the years 2000 and 2004. Since there was no reply from the respondent/DDA, Smt. Amba Rani filed a writ petition before this Court, which was dismissed as withdrawn on 7th October, 2005, with the liberty to move an appropriate application in the suit filed by her. He states that Smt. Amba Rani lastly visited Delhi in the year 2015 and met the Vice Chairman of the respondent/DDA and she came to know that the flat allotted in her favour, had already been cancelled. Thus, she requested the respondent to allot her another vacant flat. He further states that in the year 2015, the civil suit filed by Smt. Amba Rani was dismissed for non-prosecution.

4. He further submits that Smt. Amba Rani expired on 16th July, 2017,

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leaving behind a Will dated 17th April, 2016 in favour of the appellant. The appellant claims to have filed a probate case and consequently, probate was granted on 15th January, 2020 by the competent Court. Thus, the appellant filed the underlying writ petition challenging the cancellation of the allotted flat in favour of Smt. Amba Rani, despite full payment having been deposited by her.

5. Mr. R.K. Saini, states that this is a case of a widow lady who had taken all due diligent steps to uphold her entitlement to the flat which was allotted to her by the respondent/DDA. He states that merely because the appellant had not deposited the entire demanded amount stipulated in the Demand Letter dated 17th March, 1993 on or before 15th June 1993 would not disentitle the appellant from making such deposit even subsequently. He states that the said timeline is not statutory and thus, even if it is violated, the respondent/DDA would not have any right, title or authority to cancel such allotment.

6. He further states that the predecessor-in-interest of the appellant had in fact, filed a suit wherein an interim order restraining the respondent/DDA from cancelling the allotment in favour of Smt. Amba Rani was already passed on 5th November, 1993. He states that once the stay from cancellation by a judicial order was in place, the deposit of the balance amount as demanded by the respondent/DDA *vide* a letter dated 17th March, 1993, having been made on 9th September, 1997 by Smt. Amba Rani would not entitle the respondent/DDA to cancel the allotment in her favour. He states that the delay in deposit, though not admitted, could not be construed against the appellant.

7. He also states that *vide* the order dated 6th March, 2000, directions

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had been issued by the learned Civil Judge to the respondent/DDA to issue a demand notice regarding interest and other charges to Smt. Amba Rani. He states that this order was never challenged and thus, is in the nature of a final direction to the respondent/DDA. Premised thereon, he states that the delay in deposit, if any, is deemed to be condoned.

8. He states that the learned Single Judge has dismissed the writ petition purely on the technical grounds of delay and laches and constructive *res judicata* which should not come in the way of passing an order in equity and fairplay.

9. This Court has heard the arguments of the learned counsel for the appellant and perused the records.

10. This Court has perused the impugned judgment passed by the learned Single Judge. This Court finds that the learned Single Judge has examined the entire issue in great detail and has appreciated the facts minutely. It is pertinent to note that the learned Single Judge has rightly observed that the Demand Letter was issued by the respondent/DDA on 17th March, 1993 stipulating therein that the said demand ought to be made by Smt. Amba Rani on or before 15th June, 1993, which, admittedly, was breached. The consequence of such breach, entailed automatic cancellation of allotment as stipulated in the Demand Letter dated 17th March, 1993. This Court also notes that the interim order that was passed by the learned Civil Judge on 21st September, 1993 (incorrectly noted as 5th November 1993 in the impugned judgement) was only directing “*status quo be maintained in respect of suit premises*”. If that is so, then by the time the interim status quo order was passed, the breach as noted above, had already occurred entailing cancellation of such allotment. Learned counsel for the

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appellant would make us believe that the stay order would have the effect of “*status quo ante*” order. This submission is not palatable for the reason that the interim stay order dated 21st September, 1993 does not reflect or indicate any such impression that the stay amounts to a “*status quo ante*” order. In such circumstances, this Court does not agree with the submission and the same is rejected. Consequently, the observation of the learned Single Judge to the extent that the cancellation was not interdicted by the stay order, is legally and factually correct.

11. From the closer examination of the impugned judgment, it is clear that Smt. Amba Rani had filed a suit bearing Suit No.105/2006 for permanent injunction challenging the amount demanded by the respondent/DDA, which was dismissed *vide* the judgment 15th March, 2007, on the failure of the plaintiff to lead any evidence. It is also clear from the record that Smt. Amba Rani had challenged the said suit in the appeal bearing RCA No. 24/2014, which was dismissed in default on 26th October, 2015 noticing therein that none had been appearing on behalf of the appellant (Smt. Amba Rani) for the last many dates. No material has been placed on record to demonstrate that the appellant had undertaken any action to restore the above appeal dismissed in default. Thus, the judgement passed by the Civil Court dated 15th March, 2007 became final and binding between the parties. It is this judgement which propelled the learned Single Judge to conclude as *res judicata* to the underlying writ petition. This Court approves and agrees with the said observation. Once a subject matter has been considered and disposed of, particularly after a full-fledged trial, it becomes final and binding between the parties to the *lis*. Unless, the said judgement is modified or reversed, the binding nature of the opinion

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rendered therein remains intact. Keeping in view the aforesaid rule, the challenge in the underlying writ petition would be barred under the principles of *res judicata*.

12. It is submitted by the learned counsel for the appellant that *vide* the order dated 6th March, 2000, the Civil Court restored the suit which was dismissed in default and simultaneously directed the respondent/DDA to issue a demand letter indicating the interest and other charges, was never challenged by the respondent/DDA, and should be considered to be in the nature of the final order. This submission is fallacious for the reason that ultimately, the said suit was dismissed on merits against the predecessor-in-interest of the appellant which was never overturned or reversed by any Appellate Court. The order referred to does not adjudicate any fact or issue finally and does not render any opinion settling an issue either. Clearly, the same is an interlocutory order and not final. Thus, this argument is rejected.

13. Thus, being devoid of any merits, the appeal alongwith pending applications is dismissed with no order as to costs.

MANMOHAN, CJ

TUSHAR RAO GEDELA, J

OCTOBER 25, 2024/*rl*

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