



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

% **Judgment reserved on : 06 August 2024**
Judgment pronounced on : 27 September 2024

+ **W.P.(C) 3001/2016 and CM APPL. 3536/2022, CM APPL. 20735/2022**

SUDHIR KUMAR DHINGRAPetitioner
Through: **Dr. Meenakshi Kalra, Mr. S.N. Kalra, Mr. Kamal and Mr. Ashish Chopra, Adv.**

versus

DELHI DEVELOPMENT AUTHORITYRespondent
Through: **Ms. Meghna, Adv.**

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 *Mandamus* or any other appropriate writ, order or direction, thereby directing the respondent to restore/re-allot the flat belonging to the petitioner and seeking the following reliefs:

- i. Issue of an appropriate writ, order or directions by quashing the cancellation of allotment letter dated 10.09.2004 passed by the respondent with respect to allotment of Flat No.38, SF, Pocket-5, Phase-I, Sector-12, Dwarka.
- ii. Issue a writ in the nature of mandamus directing the respondent authority to allot a similar flat to the petitioner on the same terms and conditions as it existed in the year 2002.
- iii. Pass any further order/s that this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.



2. The genesis of the instant writ petition can be traced back to the year 1979 when on 28.09.1979, the petitioner i.e., Sudhir Kumar Dhingra S/o Shri Banarsi Dass Dhingra, registered himself with the respondent/Delhi Development Authority ['DDA'] for allotment of a Middle Income Group (MIG) flat *vide* application No.120641 under the New Pattern Registration Scheme, 1979 (*hereinafter referred to as the 'Scheme'*). It is pertinent to mention herein that in the year 1999, the petitioner had changed his residential address but he had been working at the same address as provided by him to the respondent/DDA at the time of registration.

3. It is stated that a draw of lots was held by the respondent/DDA on 31.05.2002, wherein the petitioner was declared successful and eligible for the allotment of MIG Flat No. 38, PH-1, Second Floor, Pocket-5, Scetor-12, Dwarka, Delhi¹ and the same was duly published on the website of the respondent/DDA. After such result, the respondent/DDA requested the petitioner to make the payment within the stipulated period i.e., up to 03.10.2002, failure of which would result in automatic cancellation of the allotment of the Subject Plot. Evidently, a Show Cause Notice ['SCN'] dated 25.11.2002 was issued by the respondent/DDA to the petitioner as the latter failed to pay the said amount. Resultantly, the allotment of the Subject Plot to the petitioner was cancelled by the respondent/DDA *vide* letter dated 10.02.2009 which is annexed as **Annexure-I**.

4. The petitioner states that being oblivious of the situation, preferred an application under the Right to Information Act, 2005



[‘RTI’] dated 28.02.2012 before the Public Information Officer [‘PIO’] for obtaining information with respect to the allotment of the Subject Plot. Axiomatically, a letter dated 03.04.2012 was also sent by the petitioner to the PIO seeking the present status of the allotment and when no response was received, the petitioner preferred a First Appeal under the RTI Act on 24.04.2012.

5. It is stated that the respondent/DDA *vide* letter dated 03.07.2012, conveyed to the petitioner that the file bearing No. 312 (4237) 2002/NP/DW (*hereinafter referred to as the ‘deemed file’*) was not readily traceable in the office records. However, later on *vide* letter dated 24.09.2012, the respondent/DDA replied to the RTI query of the petitioner and conveyed that the deemed file was available with them. Thereafter, various letters were exchanged between the two.

6. As per the record, the Central Information Commission [‘CIC’] passed an order dated 20.06.2013, which is annexed as **Annexure P-11**, wherein the respondent/DDA was directed to furnish the relevant deemed file to the petitioner within 30 days. Intriguingly, when the said order was not complied with, the petitioner preferred another letter dated 13.08.2013 addressing his grievances, to which, the Appellate Authority (Housing)-1, DDA reverted back *vide* letter dated 29.08.2013, wherein it again directed the respondent/DDA to furnish the details of the deemed file as per the RTI Act, 2005.

7. The respondent/DDA then replied to the petitioner *vide* letter dated 21.08.2013, wherein it reiterated that the information sought by the petitioner has already been supplied to him *vide* office letter No.

¹ Subject Plot



F312(4237)02/DW/NP/1321 dated 23.07.2013. Aggrieved, the petitioner has preferred this writ petition instituted on 02.04.2016.

SUBMISSIONS ADVANCED AT THE BAR:

8. Learned counsel for the respondent/DDA averred that no alternative address was ever provided by the petitioner and the occupational address was only for verification of the salary certificate submitted by the registrant. Consequently, the allotment stood cancelled and the same was duly communicated to the petitioner *vide* letter dated 10.02.2004. Further, it was asserted that the petitioner changed his address in 1999, which was not intimated to the DDA. Lastly, it was urged that the Scheme has already been closed, and thus, the petitioner is not entitled for any allotment. In this regard, reliance has been placed on the decision of this Court in **Satnam Dass Narang v. DDA**² and to support the arguments, various documents have been placed on record.

9. *Per Contra*, learned counsel for the petitioner contested that despite the orders passed by the CIC as well as the Appellate Authority, DDA, as also several letters written to the respondent/DDA, the respondent/DDA has not furnished any details and the petitioner has not been allotted any plot till date. Thus, referring to the decision of **Dev Raj v. Delhi Development Authority**³, it was stated that there is a considerable delay on the part of the respondent/DDA in allotting a suitable plot to the petitioner. Further, it was averred that the demand-cum-allotment letter was not

² LPA-16/2013

³ 2014 (208) DLT 386



issued at the occupational address supplied by him. In this regard, reliance has been placed on the decisions in **Prashant Kumar Verma v. DDA**⁴ and **DDA v. Mahinder Pal Sikri**⁵.

ANALYSIS AND DECISION:

10. I have given my thoughtful consideration to the submissions advanced by the learned counsels for the parties at the Bar. I have also perused the relevant record of the case.

11. At the outset, the contention of the respondent/DDA to the present petition that the petitioner had changed his residential address without intimating such change and the SCN dated 25.11.2002 was rightly sent at his last known address, cannot be sustained in law for the simple reason that evidently, the petitioner in the application form for registration under the Scheme had also intimated his occupational address viz., Shop No. 668, Old Lajpat Rai Market, Opposite Red Fort, Delhi-110006 from which address he has been running his business till date. The plea in the counter-affidavit by the respondent/DDA that the alternate address was only for verification of the salary certificate submitted by the petitioner, does not cut ice.

12. It is borne out from the record that the petitioner on his part did all that he could within his command so much so that on not receiving demand-cum-allotment letter, he sought appropriate information under RTI; and despite taking up the matter with the CIC, he never received any satisfactory reply. It goes without saying that except for making a bald assertion that the SCN dated 25.11.2002 was

⁴ 2013 (200) DLT (CN B) 9

⁵ 2013 SCC OnLine Del 4803



served upon the petitioner, no proof of service has been placed on the record either.

13. The plea by the learned counsel for the respondent/DDA that the Scheme was closed in the year 2009 and the petitioner is guilty of laches cannot be sustained. The decision in the case of ***Dev Raj (supra)*** by this Court is squarely applicable to the facts and circumstances of the present case. It is a case where a scheme was launched in the year 1989 and after 14 years, the DDA was directed to allot a similar flat to the respondent. Insofar as the delay or laches is concerned, reference can be invited to the decision in the case of ***Prashant Kumar Verma (supra)*** wherein it was held that the DDA was enjoined upon to serve the demand-cum-allotment letter at the occupational address available in the record and the delay in preferring the legal remedy was held to be not fatal due to the continuous act of omission and commission on the part of the DDA.

14. It would be expedient to refer to the decision of the Division Bench of this Court titled ***DDA v. Mahinder Pal Sikri (Supra)*** wherein, on the issue of delay and laches, the decision of the Supreme Court in ***Shankara Co-op Housing Society Ltd. v. M. Prabhakar & Ors.***⁶ was relied upon and the relevant portion of the judgment of the apex court is reproduced hereinunder:-

"53.....(1) there is no inviolable rule of law that whenever there is a delay, the court must necessarily refuse to entertain the petition; it is a rule of practice based on sound and proper exercise of discretion, and each case must be dealt with on its own facts. (2) The principle on which the court refuses relief on the ground of laches or delay is that the rights accrued

⁶ AIR 2011 SC 2161



to others by the delay in filing the petition should not be disturbed, unless there is a reasonable explanation for the delay, because court should not harm innocent parties if their rights had emerged by the delay on the part of the petitioners. (3) The satisfactory way of explaining delay in making an application under Article 226 is for the petitioner to show that he had been seeking relief elsewhere in a manner provided by law. If he runs after a remedy not provided in the Statute or the statutory rules, it is not desirable for the High Court to condone the delay. It is immaterial what the petitioner chooses to believe in regard to the remedy. (4) No hard and fast rule, can be laid down in this regard. Every case shall have to be decided on its own facts.

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15. In view of the aforesaid observations made by the Supreme Court, in the case of **DDA v. Mahinder Pal Sikri (Supra)** wherein similar issues were raised about non-service of notices at the alternative address provided by the various applicants as also on the issue of there being delay and laches, it was observed by this Court as under:-

“13. Considering the facts of the present cases, it is claimed, and the DDA does not contest, that all writ petitions, with one exception, were filed in well under a year from the date of knowledge of the allotment letter, and even in LPA 302/2013, the period was 1 year and 5 months. Such periods do not amount to such inordinate delay as to bar the petitioner's legal remedy under Article 226. In fact, all the applicants had applied under the NPRS, 1979, and all allotment-cum-demand letters were issued at least after a period of one decade (as in LPA 302/2013), or as is the norm, after approximately two decades in the other matters presently in appeal. Given such a delay in processing the applications, and subsequently, either sending the letter to the wrong address, or not to all available addresses, the equities do not demand that the petitioner's valuable rights to the allotted plots can be defeated, especially when the time lag between the knowledge of allotment and the filing of the writ petitions is not so long as to state that the petitioners were being indolent. Rather, each petitioner



discovered the fact of the allotment letter through his/her own accord, and subsequently, within a reasonable period, approached this Court for relief under Article 226. In such cases, this Court is of the opinion that its discretion to bar the claim on account of delay or laches, i.e. to say that the petitioners' were negligent in pursuing their legal remedies, is not merited, and thus, the orders of the learned Single Judges on this aspect are not liable to be interfered with. This court is conscious of the fact that given the span of over two decades, - sometimes even more than three decades for an application to "mature" into an allotment, it would be unreasonable for the Court to impute negligence or deliberate inaction, since the registrants cannot be expected to have a constant or permanent address. These registrants were not possessing flats or residential accommodation, which impelled them to apply DDA; it is too much to expect them to live more than 20-30 years in one place."

16. At the cost of repetition, the mere fact that the petitioner had shifted his address is not fatal because his occupational address was available in the records of the respondent/DDA and every effort should have been made by the respondent/DDA to serve the demand-cum-allotment letter and/or SCN at the occupational address of the petitioner.

17. In view of the foregoing discussion, the present writ petition is allowed and the impugned cancellation letter is hereby quashed and the allotment letter dated 10.09.2004 in respect of Flat No.38, SF, Pocket-5, Phase-I, Sector-12, Dwarka is hereby restored.

18. Since the aforesaid flat has already been allotted to some third person, the respondent/DDA is directed to allot a similar flat to the petitioner, subject to payment of the cost of the flat at the rate prevalent on the date of filing of the present writ petition i.e. 02.04.2016 without claiming any interest.



19. Let the petitioner be intimated about the payment to be made towards allotment of the flat on such basis within four weeks from today and thereafter, allotment be made within four weeks.

20. The writ petition along with pending application(s) stands disposed of.

DHARMESH SHARMA, J.

SEPTEMBER 27, 2024

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