



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

% **Judgment reserved on : 23 July 2024**
Judgment pronounced on : 28 August 2024

+ **W.P.(C) 7596/2016& CM APPL. 34136/2020, CM APPL. 4942/2021**

INDERJEET SINGH TOSARIA Petitioner
Through: **Mr. R.K. Saini, Mr. Ravi Kumar and Ms. Tannu Kumari,**
Advs.

versus

DELHI DEVELOPMENT AUTHORITY Respondent
Through: **None.**

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA

J U D G M E N T

1. The petitioner is invoking extra ordinary jurisdiction of this Court under Article 226 of the Constitution of India seeking issuance of appropriate writ, order or directions against the arbitrary actions of respondent/Delhi Development Authority [**“DDA”**]in not converting the mode of payment from hire purchase to cash down and quashing the new demand-cum-allotment letter dated 16.03.2017 imposing interest charges to the tune of Rs. 4,50,000/-.

FACTUAL BACKGROUND:

2. The background of the present petition is that the petitioner duly registered under the DDA's New Pattern Registration Scheme, 1979¹, for the allotment of an MIG flat, furnishing his residential address as House No. C-1/32, East of Kailash, New Delhi, where he resided as a

¹NPRS



tenant, and his official address as the office of the Executive Engineer (E&M), North Nigam Bodh Pumping Station, Delhi.

3. It is stated that he did not receive any intimation or allotment letter from the DDA till August 1999 but in the meanwhile he had shifted his residence to D-8, Hauz Khas, New Delhi, without notifying the DDA of this change. It transpired that on 6.08.1999, the petitioner's name was included in a draw of lots, resulting in the allotment of MIG Flat No. 157, Pocket D, Sector-18, Rohini, New Delhi but the corresponding allotment-cum-demand letter was dispatched to the petitioner's previously registered residential address, but due to the petitioner's relocation, the letter was returned undelivered. Despite the availability of the petitioner's occupational address on record, where the petitioner remained employed until his retirement in October 2008, the DDA did not attempt to reissue the allotment letter to the petitioner's occupational address. Instead, the DDA proceeded to cancel the allotment without issuing a show-cause notice.

4. It is the case of the petitioner that in March 2011, he became aware that all registrants under the NPRS had been allotted flats. Consequently, on 10.03.2011, the petitioner visited the office of the DDA, where he was informed about the aforesaid demand letter and cancellation of allotment due to lack of response. The petitioner promptly submitted a representation to the Commissioner (Housing), DDA, on 14.03.2011, requesting for allotment of an alternative flat in the same area, asserting that the cancellation was due to the DDA's failure to re-send the allotment letter to his occupational address,



which was on the record. Receiving no response up until June 2011, the petitioner submitted a further representation on 28.06.2011, referencing similar cases, including that of Mrs. Sudesh Kapoor², where alternative allotments had been made, and reiterated his request for an alternative flat.

5. Despite such representations, the petitioner received no response from the DDA and since it failed to allot an alternative MIG flat by 14.07.2012, the petitioner filed a writ petition on 14.07.2011 bearing W.P(C) No. 5189/2011 *inter alia* praying for: -

“b) A Writ of Certiorari quashing the action of the Respondent/DDA in cancelling the allotment of MIG Flat No. 157, Pocket D, Sector-18, Rohini, New Delhi made in favour of the petitioner under NPRS 1979, after non-delivery of the allotment letter sent at the residential address given at the time of registration, despite the fact that the occupational address of the petitioner was also given by the petitioner at the time of registration and was available on record and then declining to restore the allotment, being illegal, arbitrary, discriminatory, unjust and in violation of the Rules, Regulations and policy and the principles of equity, natural justice and good conscience;

c) A Writ of Mandamus directing the Respondent to allot an alternative MIG FLAT IN Rohini in the same area/ Sector by holding a mini draw and issue a demand letter to the petitioner in respect thereof, charging him for the same at the old cost.”

6. The petitioner points out that after notice to show cause, completion of pleadings, and hearing arguments, this Court *vide* order dated 22.11.2012, allowed the writ petition, holding that the case was covered by the precedent established in Frontier Avas Sakar Cooperative Group Housing Society and Ors. v. DDA. The relevant portion of the order is reproduced below:

²Sudesh Kapoor v. DDA, W.P.(C)8174/2006



“14. A consistent view, in this regard, has been taken by the High Court in various judgments including *Sudesh Kapoor v. DDA*, W.P.(C)8174/2006; *Hirdayapai Singh v. DDA*, W.P.(C) 15002/2006; and *Prem Bhatnagar v. Delhi Development Authority* W.P.(C) 592/2011. I am informed the judgments rendered by this Court in *Mohinder Singh v. Delhi Development Authority*, W.P.(C) 1096/2011, and *Prem Bhatnagar v. Delhi Development Authority* W.P.(C) 592/2011 have been upheld by Division Bench.

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17. Accordingly, present petition is allowed. Rule is made absolute. To balance the equities the petitioner will be allotted a flat preferably in the same area, if available, at the cost of which prevailed in the year 2011, subject to the petitioner completing all the formalities within two months from today.”

7. That subsequently, DDA filed an appeal against the order dated 22.11.2012 before the Division Bench of this Hon’ble Court, bearing LPA No. 343 of 2013, which was dismissed by the Division Bench in *vide* order dated 28.11.2013. The relevant portion of the order is reproduced below:

“17. The DDA admits that the occupational address of all the writ petitioners was available on its file (with two exceptions, i.e. LPA 346/2013 and 369/2013). This being the case, it is clear that an obligation lay on the DDA to attempt to inform the writ petitioners at all available addresses, rather than substitute this obligation for a press notice. Indeed, neither the decisions of the Supreme Court in *Wazir Chand* (supra) and *Banda Development Authority, Banda* (supra) nor the various judgments of this Court relied upon by the DDA displace this principle, on which the learned Single Judge rightly based his decision. Indeed, as regards the two appeals mentioned above wherein there was only one address, it is admitted by the DDA that the letters were sent to the wrong addresses through mistakes of the DDA's clerks, and crucially, for no fault of the writ petitioners. After those letters came back undelivered, the DDA did not, at any point, try to go into the matter to determine whether indeed the letters were sent to the wrong addresses. In such a case, it does not lie in the DDA's mouth to claim that the writ petitioners are liable to suffer, and their allotments be cancelled, on account of a mistake committed by the DDA itself.

18. Equally, the holdings in the various decisions on the appeal present that that the payment for the plot will be made as per the



price on the date of filing the writ, and not as per the Circular dated 13.10.2011, cannot be faulted, given the established principle to the effect that the clock in terms of the price to be paid stops at the time of approaching the Court for the appropriate remedy, and the matter at that point rests with the Court and not in the hands of the writ petitioners.

19. Accordingly, for the above reasons, we find no reason to interfere with the impugned judgments and orders. All the appeals are accordingly dismissed along with pending applications, but with no order as to costs.”

8. The DDA filed a Special Leave Petition against the Division Bench's order in the Hon'ble Supreme Court, which was dismissed *in limine* on 13.08.2014 without notice to the petitioner, leaving him unaware of the outcome. Following the dismissal, the DDA was obligated to comply with the directions of the learned Single Judge *vide* order dated 22.11.2012 within two months. Meanwhile, the petitioner actively pursued the allotment of a flat in accordance with the court order by submitting representations to the Vice Chairman and Commissioner (Housing) of the DDA on 08.07.2014 and 21.10.2014. In response to the petitioner's representations, the DDA summoned him on 20.11.2015 for verification which is a procedural step towards allotment. The petitioner duly appeared before the Deputy Director (Housing) on the specified date and provided the necessary documents, which were verified and recorded by the officer. Subsequently, by intimation letter dated 05.11.2015, the petitioner was informed that he has been allotted Flat No. 95 (Third Floor), Pocket-6, Sector 23, Rohini, Delhi.

9. The petitioner contends that the allotment of Flat No. 95 in Sector 23, Rohini, was not in accordance with the order of this Court



dated 22.11.2012, which directed that the petitioner be allotted a flat preferably in the same area, i.e. Sector 18, Rohini, where his original allotment was located. Despite numerous vacant flats available in Sector 18, the DDA allotted the petitioner a flat in Sector 23, prompting him to protest through letters dated 07.12.2015 and 18.01.2016, requesting an allotment in Sector 18 Rohini as per the court's order. Receiving no response, the petitioner filed a contempt petition bearing CONT. CAS (C) No. 135 of 2016 on 11.02.2016 and this Court listed the matter for preliminary hearing on 04.04.2016 and directed that a status report and relevant official records be made available for the hearing.

10. That on 17.02.2016 the petitioner received an allotment-cum-demand letter dated 7.02.2016 allotting the petitioner Flat No. 95, Group-2, Pocket-6, Sector-23, Rohini, on Hire-Purchase basis. Relevant portion of the letter is reproduced below:

“ A. You have been successful for allotment of a flat in the draw as per the details given below. The allotment is subject to terms and conditions given in brochure of the scheme and DDA (Management and Disposal of Housing Estate) Regulation, 1968.
Date of Draw: 19/10/2015
Mode of Payment: Hire Purchase”

11. That on 25.07.2016, the DDA contended that it had complied with the order dated 22.11.2012, by allotting a flat in Rohini, albeit in a different sector. The Court, finding no grounds for contempt, allowed the petitioner to withdraw the contempt petition with liberty to pursue other legal remedies. Subsequently, on 04.08.2016, the petitioner filed a Review Petition bearing No. 344/2016 seeking modification of the order dated 22.11.2012, specifically requesting the



substitution of the words "same area" with "same sector" in paragraph 17 of the said order³.

12. That the learned Single Judge dismissed the petition *vide* order dated 05.08.2016. Relevant portion of the order is reproduced below:

“The review petitioner prays that this order be modified to the extent that the words ‘same area’ may be substituted by ‘same sector’ in para 17 of the order. It was not the intent of this court to bind DDA to provide a flat to the petitioner in the same sector. The court had consciously while allowing the writ petition granted concession of providing a flat to the petitioner in the same area. Accordingly, the review petition is dismissed”

13. The petitioner claims that during the pendency of the proceedings, the last date for making payment in respect of the allotted flat expired on 05.08.2016. Petitioner also claims that the last date for making such payment should expire on 16.08.2016 as the petitioner had received the allotment letter on 17.02.2016.

14. That the petitioner submitted an application bearing CM APPL. No. 30229 of 2016 before this Court on 16.08.2016 requesting the revival and disposal of the contempt petition with a direction to the DDA to grant one month's time for payment in accordance with the allotment-cum-demand letter dated 7.02.2016, and to convert the payment mode from ‘Hire Purchase’ to ‘Cash Down.’ On 23.08.2016, this Hon'ble Court observed that the relief sought could only be granted through a writ petition. Consequently, the petitioner withdrew the application with liberty to file a writ petition, leading to the filing of the present writ petition on 24.08.2016.

³Reproduced in para 6



15. The respondent/DDA has filed a counter affidavit, wherein it has stated primarily as under:

- That after the dismissal of SLP, matter was placed before the Competent Authority and with the approval of Competent Authority the flat No. 95, third floor Pocket-6, sector-23, Rohini was allotted to him in the mini draw held on 19.10.2015 in the same area. After getting the computation of cost of flat as on 2011. The demand-cum-allotment letter was issued to him on 07.02.2016 with request to deposit the cost of flat as per scheduled therein.
- That the allotment was made as per order dated 22.11.2012 passed by this Hon'ble Court in WPC NO. 5189/2011. It is pertinent to mention that while allowing the WPC NO. 5189/2011 the Hon'ble Court directed to the respondent DDA that to balance the equities the petitioner will be allotted a flat at the cost of 2011 preferably in the same area if available subject to petitioner completing all the formalities within two months from receipt of the order.
- That against the allotment of MIG flat No. 95, third floor, Pocket-6, Sector-23, Rohini, New Delhi, Sh. Inderjeet Singh Tosaria filed contempt petition No. 135/2016 before this Hon'ble Court on the ground that the allotment was not as per order dated 22.11.2012. After hearing the arguments of both the parties Hon'ble Court permitted to the petitioner to withdraw the Contempt Petition because as per the Hon'ble Court's order DDA had complied the order dated 22.11.2012 where in compliance of the said order the respondent -authority allotted the flat in the same area to the petitioner.
- That the present writ petition is liable to be dismissed and not maintainable because in WPC 5189/2011 there was no averments in the petition for allotting to flat on cash down basis. The answering respondent-authority allotted the flat as per direction of the Hon'ble Court after getting the computation of cost of flat as on 2011. The demand-cum-allotment letter was issued to him on 7.02.2016 with request to deposit the cost of flat as per scheduled. But till date petitioner intentionally did not make the payment as per the schedule prescribed in the demand-cum-allotment letter and has now approached this Hon'ble Court with intent to delay the matter.

16. It is claimed that after issuing a notice to show cause on 29.08.2016, this Court was informed by the learned counsel for the DDA on 10.03.2017, that a decision had been made in principle to



accept the cash down payment from the petitioner. The Court directed that a formal demand be communicated to the petitioner's counsel within one week, and the matter was adjourned to 30.03.2017. On that date, the petitioner's counsel informed the Court that an additional sum of Rs. 4,50,000/- had been charged as interest in the construction cost communicated. The Court directed the DDA's counsel to explain the discrepancy between the construction costs in the old demand letter dated 07.02.2016, and the new letter dated 16.07.2017. The petitioner was also directed to deposit Rs. 31 lakhs with the DDA within one month, and the matter was adjourned to 11.05.2017. On that day the Court was informed that the petitioner had deposited the Rs. 31 lakhs, and the DDA's counsel was directed to comply with the previous order through an affidavit within four weeks.

17. The DDA filed the aforesaid Affidavit on 28.10.2017 stating:

“.....The file was referred to housing financing wing and it calculated 15% compound interest amounting to Rs. 4,49,678/- on the cost applicable for the period 2011 as per the terms and conditions mentioned in the demand cum allotment letter, the interest was added with the construction cost which comes to Rs. 20,53,963/- and land cost of Rs. 13,93,570/-”

GROUND IN THE WRIT PETITION:

18. The petitioner submits that the actions of the respondent/DDA in refusing to convert the mode of payment from hire purchase to cash down, and in denying an extension of the time for payment in connection with the allotment of the MIG flat as per the allotment-cum-demand letter dated 07.02.2016, are illegal, arbitrary, discriminatory, and unjust. These actions, which disregarded the



petitioner's inability to make payment by the deadline of 5.08.2016, due to ongoing litigation, are in direct violation of the relevant rules, regulations, and policies⁴. Furthermore, they contravene the principles of equity, justice, and good conscience, thereby infringing upon the petitioner's legal and fundamental rights, including those enshrined under Articles 14 and 21 of the Constitution of India.

ANALYSIS AND DECISION:

19. I have given my anxious thought to the submissions made by the learned counsel for the petitioner at the Bar. I have also carefully perused the relevant record of the writ petition.

20. At the outset, there is merit in the plea canvassed by the learned counsel for the petitioner that the initial allotment-cum-demand letter dated 07.02.2016 for Rs. 20,39,091.12/-, which was later raised *vide* allotment-cum-demand letter dated 16.03.2017 to Rs. 34,74,740/- provided an option to the allottee / petitioner to make payment by cash down or make payment by hire-purchase. The petitioner during the relevant time kept on approaching the concerned officials of the DDA insisting for payment of the entire amount consideration by cash, which during the pendency of this case came to be accepted by the DDA, as recorded in the order of this Court dated 21.02.2017

21. Thus, evidently the subsequent allotment-cum-demand letter dated 16.03.2017 came to be issued. It is recorded that during the present proceedings *vide* order dated 01.11.2019 of this Court that a sum of Rs. 31 Lacs had already been remitted to the DDA on 24.04.2017 but the petitioner was called upon to pay an additional

⁴The DDA Act, Rules and Regulations



amount of Rs. 3,87,358/-, which was paid by the petitioner without prejudice and the possession was delivered to him 05.12.2020. At present, the Conveyance Deed has been executed in favour of the petitioner.

22. Unhesitatingly, the delay in making the payment of amount towards allotment of the flat is clearly attributable to the DDA, which *dillydallied* its decision in accepting the entire sale consideration by cash. Hence, the claim by the DDA for payment of interest cannot be legally justified and it should refund the same to the petitioner.

23. In view of the foregoing discussion, the present writ petition is allowed. A writ of *mandamus* is issued thereby directing the respondent/DDA to refund the amount of interest paid by the petitioner totalling Rs. 3,87,358/- along with interest @ 8% from the date of payment within a month from today, failing which the respondent/DDA shall be liable to pay the said amount with interest to be calculated @ 12% on expiry of one month till realization. It is provided that additional amount towards interest in case of non-compliance after a month shall be recoverable from the salary of the erring officials in the concerned department.

24. The present writ petition along with pending applications stands disposed of accordingly.

DHARMESH SHARMA, J.

AUGUST 28, 2024

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