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

% ***Date of Decision: 23rd January, 2025***

+ W.P.(C) 3690/2011

FARIDA JAIN

.....Petitioner

Through: Mr. Devanand Ray, Advocate

versus

DELHI DEVELOPMENT AUTHORITY

.....Respondent

Through: Ms. Shobhana Takiar, Standing
Counsel for DDA with Mr. Kuljeet
Singh, Advocate

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T (oral)

1. The petitioner contends that a flat bearing No. 50, Sector-A6, Pocket-1, Group-2, Narela, Delhi was, initially, allotted in the name of her mother Mrs. Shahjehan Khan.
2. The entire payment, as sought by DDA with respect to the aforesaid allotment, had been made to DDA by her mother.
3. Her mother, during her lifetime, executed a registered *Will* on 11.10.1999 in favour of her daughter i.e. petitioner herein.
4. Mrs. Shahjehan Khan, unfortunately, expired on 16.10.2005 and after her death, petitioner applied for mutation of the flat in her name.
5. According to petitioner, the flat was, thereafter required to be mutated in her favour and that there was no impediment in mutating the aforesaid flat in her favour.
6. Her grievance is that such mutation has yet not been done and also



that the possession of the flat in question has not been handed over to her.

7. Unfortunately, this happens to be a third round of litigation, for the petitioner.

8. Petitioner had, earlier, filed writ petitions on two previous occasions.

9. First writ petition was registered as W.P. (C) No. 3406/2010 and the second writ petition was registered as W.P. (C) No. 5337/2010.

10. First writ petition i.e. W.P. (C) No. 3406/2010 was disposed of by this Court way back on 04.06.2010. The petitioner, in said writ petition also, was seeking a direction to the respondent to mutate property bearing Flat No. 50, Sector-A6, Pocket-1, Group-2, Narela, Delhi, in her name. It is interesting to note that when the aforesaid writ petition was heard, learned counsel for respondent-DDA appeared before the Court and submitted, on instructions, that DDA had considered the application made by the petitioner for mutation and that a mutation letter would be issued to her at the address mentioned in the writ petition within a period of three weeks. Curiously, learned counsel for respondent-DDA had also informed that *such mutation had been carried out only for the purpose of refund*.

11. Be that as it may, in view of aforesaid statement made by learned counsel for DDA, writ petition was disposed of while observing that no further orders were required to be passed. However, liberty was granted to petitioner to seek such other remedy as may be available to her.

12. Admittedly, DDA did inform to the petitioner that on the basis of *Will* submitted by her, allotment of the flat had been transferred in her name i.e. in the name of Smt. Farida Jain but it was only “for refund purpose”.

13. Feeling aggrieved, the second writ petition was filed by the petitioner whereby she challenged the aforesaid mutation which was merely for the



purpose of refund. When the arguments with respect to the aforesaid writ petition were also heard, both the sides had agreed for final disposal of the writ with further direction to DDA to treat the aforesaid writ petition as representation and then pass a fresh order within four weeks regarding the right of the petitioner with respect to the flat in question on the basis of the aforesaid *Will* after the death of her mother i.e. original allottee.

14. Aforesaid second writ petition was, eventually, disposed of *vide* order dated 09.08.2010 with the aforesaid direction.

15. Liberty was also granted to the petitioner to challenge any such fresh decision of DDA if need so arose. She was also permitted to take all grounds as may be available to her, including the ground taken by her in the aforesaid writ petition.

16. Aforesaid writ petition was, eventually, considered as a representation by DDA and was rejected while holding that since the allotment of the flat had been cancelled, petitioner was merely entitled to seek refund of the deposited amount and it was also reiterated that mutation was only for refund purpose. It was also observed that there was delay in payment on several occasions and since allottee was a habitual defaulter and was irregular in making payment(s), her request could not be acceded to at her convenience and, resultantly, it was held by DDA that the allotment of flat could not be accepted and, therefore, the request of applicant seeking mutation was regretted.

17. In view of the aforesaid decision taken by DDA which was communicated to the petitioner by sending a letter on 03.02.2011, the present writ petition has been filed praying therein that such order be quashed and DDA be directed to handover the possession of flat to the



petitioner.

18. As already noticed above, entire consideration amount of the flat in question has already been, reportedly, paid by the original allottee.

19. It will be useful to extract the decision taken by DDA which is in question before this Court: -

**“DELHI DEVELOPMENT AUTHORITY
(HOUSING DEPARTMENT)”**

Court case No. 5337/2010

Titled: Mrs. Farida Jain Vs. DDA

As per the directions of the Hon'ble High Court vide orders dated 9.8.2010, the representation of the petitioner has been examined.

1. *Smt. Shahjeehan Khan W/o late Abdul Gaffar Khan vide application No. 057211 dated 3.10.1996 applied for allotment of a flat under Expandable Housing Scheme 1996. Accordingly, she was declared successful for the EHS flat No. 50, Sector A-6, Pkt. 1, Group 2, in Narela and the demand cum allotment letter dated 30.5.97-16.06.1997 was issued to her to deposit the cost of flat as required documents within the stipulated period.*

2. *The allottee vide letter dated 15.7.1997 submitted a challan No. 31722 dated 15.7.97 for Rs. 15000/- towards confirmation money in time. Thereafter, Ms. Shahnaz Yusufzai/allottee's daughter vide letter dated 3.11.1997 requested for grant of extension of one month to deposit the instalment due on 13.1.1997 owing to reasons that her mother was out of India and had extended her stay upto the end of November, 1996. The extension was considered and conveyed vide letter dated 22.12.1997.*

3. *Since no further payment was received, this office had issued a show cause notice dated 4.6.1998 to the allottee to deposit the demanded amount and furnish the required documents within stipulated period. Since, no response was received, the allotment of flat was cancelled the allotment.*

4. *Ms. Shahnaz Yusufzai vide letter dated 18.2.1999 submitted third copy of bank challans of Rs. 31510.59 and Rs. 276257.83.*

5. *The Restoration Committee in its meeting held on 20.5.1999 regularized the delay period of 288 days.*



6. A notice was sent on 26.11.99 to the petitioner for payment of demanded amount along with required documents by 10.12.1999(sic). In response thereto, the allottee submitted a challan for Rs. 31510.59. A letter dated 10.1.2000 was sent to the allottee to submit all the relevant documents as per clause 4(4) of the demand cum allotment letter. Since no reply was received, another notice was sent to her on 18.1.2005. The payment towards instalments amounting to Rs. 157552.95 was again deposited by applicant vide challan No. 106202 dated 6.4.05. A letter dated 15.6.2007 was sent for submitting relevant documents.

7. The petitioner/Smt. Farida Jain wife of Anand Jain & D/o Late Shri Abdul Gaffar and Smt. Shahjahan Khan vide letter dated 27.3.2009 requested for mutation in her favour consequent upon the death of her mother Smt. Shahjahan Khan on 16.10.2005 and furnished a registered WILL executed in her favour.

8. As per policy guidelines dated 15.6.2004 on mutation of registration/ allotment in the name of legal heirs after the death of original registrant/ allottee of DDA, where the allotment letter stands issued in the name of original registrant before the request is received for mutation of registration/ allotment. A time of two years will be given for submission of documents by the legal heirs of deceased registrant/allottee.

9. In the present case, neither the allottee nor her legal heir had submitted the relevant documents as per demand cum allotment letter dated 30.5.97-16.06.1997 despite repeated requests for seeking mutation within a period of two years as provided under the policy guidelines mentioned in forgoing para.

10. The maximum delay towards the demanded 10 instalments was of 5 years 4 months and 3 days from the stipulated period and since no justification has been made by the petitioner regarding regularising the delay, the competent authority has rejected the case of the petitioner.

11. After cancellation of the allotment of flat in question, the petitioner is entitled only for refund of her deposited amount as per policy, by furnishing requisite documents and challans.

12. The mutation was approved only for refund purposes and there is delay in payment on several occasions. Firstly, the initial amount was paid after the delay of 288 days, secondly after issue of notice dated 26.11.99 the amount was deposited after more than period of 5 years while whole payment should have been deposited on or before 21.5.2002.

The initial delay of 288 days was condoned by the Committee while the



delay of more than 5 years cannot be condoned even by the Hon'ble VC, DDA.

In these circumstances, it seems that the allottee/mutatee is habitual irregular in making the payment and her request cannot be acceded to at her convenience.

Considering the facts and circumstances of the matter, the request of allotment of flat cannot be accepted and hence the request of applicant/mutatee is regretted.

(Asma Manzar)
Commissioner (Housing)

20. It would be very obvious from the aforesaid decision that Mrs. Shahjehan Khan was allotted the aforesaid flat under *Expandable Housing Scheme, 1996* and a demand-cum-allotment letter was issued to her to deposit the cost of the flat.
21. She, initially, deposited a sum of Rs. 15,000/- on 15.07.1997.
22. Thereafter, there was request for grant of extension of one month's time and such request was considered and extended to by DDA.
23. However, since despite extension, payment was not forwarded by the allottee, a *show cause notice* was issued to her and according to respondent-DDA, since no response was received to the aforesaid show cause notice, allotment of the flat was cancelled.
24. Such cancellation was done on 23.09.1998.
25. Fact remains that thereafter also, on the basis of communication received from the allottee, decision was taken by *Restoration Committee* of DDA in its meeting held on 20.05.1999 and the delayed period was further regularized.
26. Meaning thereby, the cancellation was no longer on record.



27. Thereafter also, following payments were made: -

- (i) Rs. 2,76,257.83 on 03.02.1998
- (ii) Rs. 31,510.59 on 17.02.1999
- (iii) Rs. 31,510.59 on 08.06.1999
- (iv) Rs. 31,510.59 on 13.12.1999
- (v) Rs. 1,57,552.95 on 06.04.2005

28. Aforesaid amounts were deposited with DDA through bank challans. Copies of such challans have been placed on record.

29. Thus, it is not in dispute that a total sum of Rs. 5,43,342.55 was deposited with DDA upto 06.04.2005. Whereas, as per the allotment letter, the total cost was of Rs. 3,63,761.25/-

30. The order, which is sought to be quashed, has already been extracted above.

31. It records that letter dated 10.01.2000 was sent to the allottee to submit all the relevant documents and when no reply was received, another notice was sent to her on 18.01.2005 and thereafter, the aforesaid payment was made by the petitioner on 06.04.2005.

32. Be that as it may, fact remains that final payment of Rs. 1,57,552.95 was received by DDA on 06.04.2005.

33. Respondent-DDA accepted the same without any reservation and murmur.

34. If DDA was of the view that the flat had already been cancelled, even if by implication, it should not have accepted the above payment. It should have rather returned the same. Nothing of that sort was even contemplated.

35. Moreover, after such last payment, the petitioner was merely asked to submit documents which also goes on to suggest that there was no grievance



with payment as such.

36. Further, the stand taken by the DDA is totally absurd as in one of its letter dated 24.06.2010, it had stated that the *mutation was only for the purpose of refund* which does not mean anything substantial.

37. Upon careful consideration of the facts and the order extracted above, it is evident that the respondent DDA itself, through its inaction, kept the allotment of the flat alive. The petitioner had made the final payment on 06.04.2005, as evidenced by Challan No. 106202. Following said payment, there was no remaining outstanding, and it is noteworthy that even according to own admission of DDA, a letter dated 15.06.2007 was issued to the petitioner, merely requesting submission of relevant documents. Interestingly, for the reasons best known to DDA, copy of such letter has not even been placed on record.

38. It is pertinent to highlight that pursuant to the letter dated 18.01.2005 sent by DDA, petitioner had made a request for rescheduling of payments and such request was kept for hearing by DDA on 07.02.2005. It is not even elucidated as to what was the fate of such request of the petitioner.

39. There is no dispute regarding the receipt of payments by the DDA, nor has the respondent provided any evidence of the flat's explicit cancellation. Instead, continued acceptance of payments by DDA over an extended period is inconsistent with any notion of a cancellation. It is well-established that there cannot be a case of implied cancellation where the respondent has continued to accept payments, issue letters for document submission, and take no definitive action to terminate the allotment.

40. The respondent has failed to establish any legal ground for the cancellation of the flat, and such continued acceptance of payments by the



DDA creates a clear inference that the allotment was kept alive, all along. In the absence of any formal notice of cancellation or clear action by the DDA to annul the allotment, the entitlement to mutation and consequent possession of the flat remains intact and unscathed.

41. Upon a thorough examination of the documents placed on record, it is clear that the petitioner herein applied for mutation *vide* a letter dated 27.03.2009. As per office order dated 15.06.2007 of DDA, *as soon as information about the death of original registrant/allottee is given to this office by the legal heirs, a letter shall be sent to the legal heirs of the allottee by the concerned joint Director/Deputy Director of Residential Land Branch indicating all the documents which are required for transfer of the registration/allotment in favour of the legal heirs.*

42. However, DDA, *vide* letter dated 16.07.2009 rejected the above request of mutation holding that the case was *not covered under the Death policy.*

43. The above stance taken by DDA seems contrary to its own policy.

44. In light of the foregoing facts and circumstances, the order dated 03.02.2011 is set aside. Merely because of the fact that she had, on earlier occasions, not made the payment in time, she should not have labelled as 'habitual defaulter', more so when such earlier delay had even been condoned.

45. Consequently, the present writ petition is allowed.

46. As a necessary corollary, respondent-DDA is directed to carry out the mutation in favour of petitioner within six weeks from today and to handover the physical possession of the flat in question to the petitioner within two weeks thereafter.



47. It is also ordered that in case the aforesaid flat has already been allotted to someone else, some other flat of similar size and specifications, preferably within the same locality, be given to the petitioner.
48. The writ petition stands disposed of in aforesaid terms.

(MANOJ JAIN)
JUDGE

JANUARY 23, 2025/dr