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

% **Order reserved on : 05 November 2024**
Order pronounced on: 08 January 2025

\+ W.P.(C) 10299/2023

SHYAM SUNDER SETHI .....Petitioner

Through: Mr. Jatan Singh, Mr. Siddharth Singh, Mr. Tushar Lamba and Ms. Sonia A. Menon, Advs.

versus

DELHI DEVELOPMENT AUTHORITY & ANR.
.....Respondents

Through: Mr. Anish Dhingra and Mr. Nakul Ahuja, Advs. for R-1/ DDA

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA

O R D E R

REVIEW PET. 408/2024 (For review of order dated 09.09.2024)

1. This order shall decide the application moved by the applicant/petitioner Shyam Sunder Sethi (*hereinafter referred as '**the applicant**'*) under Order XLVII Rule 1 read with Section 114 of the Code of Civil Procedure, 1908 ["**CPC**"], thereby seeking review and recall of the Judgment dated 09.09.2024 passed by this Court in W.P.(C) 10299/2023 titled as 'Shyam Sunder Sethi v. Delhi Development Authority & Anr'.

FACTUAL BACKGROUND:

2. Briefly stated, the applicant invoked the writ jurisdiction of this Court under Article 226 of the Constitution of India, 1950 seeking to

set-aside/quash the impugned order dated 19.05.2023 passed by the respondent/DDA[1] (*hereinafter referred as* ***'the DDA'***) on his representation dated 27.05.2022 whereby his application for allotment of Plot bearing No. 1095, Block C-4, Sector-34, Rohini, Delhi (*hereinafter referred as '****the subject plot****'*) was rejected.

3. Shorn of unnecessary details, the applicant applied for allotment of flat under the MIG[2] category in the Housing New Registration Scheme, 1976 and deposited a sum of Rs. 7,500/-. Subsequently, his registration was transferred on 20.04.1981 for allotment of flat in MIG category under Rohini Residential Scheme, 1981 ["**RRS, 1981**"].

4. It is the case of the applicant that irked over the fact that he had been waiting for a decade for allotment of any MIG flat, he submitted a request to cancel the registration in his favour *vide* letter dated 24.06.1991, simultaneously also requesting for refund of the amount of Rs. 7500/- deposited. It is the case of the applicant that he did not receive any response from the DDA, and therefore, on 04.01.2004 he submitted a request for withdrawal of his earlier application for cancellation of registration. There came about an interesting twist to the story when the applicant discovered that his name figured in the draw of lots conducted by the DDA on 12.06.2012, whereby the subject plot of land was allotted to him, and his grievance was that he was not issued any demand-cum-allotment letter.

5. As no response was received by the DDA despite serving legal notice dated 26.03.2022, the petitioner approached this Court in W.P.

[1] Delhi Development Authority
[2] Middle Income Group

(C) 8489/2022, which was disposed of *vide* order dated 27.05.2022, thereby directing the DDA to consider the writ petition as a representation and decide the same. Eventually, the representation was dismissed *vide* impugned order dated 19.05.2023 and the writ petition preferred by the applicant came to be dismissed by this Court *vide* impugned judgment dated 09.09.2024, which is sought to be recalled/revoked.

6. It would be relevant to extract the operative portion of the judgment, which goes as under:

> "**13**. At the outset, this Court unhesitatingly finds that the petitioner cannot claim any vested legal right to seek the allotment of the plot in question based on the draw of lots carried out on 12.06.2012. Once the petitioner had voluntarily sought the cancellation of his registration through application dated 24.06.1991 and had returned the original FDR No. 24931 dated 20.04.1981, the registration did not remain alive, as it had been accepted by the competent authority in terms of letter dated 17.09.1991. The petitioner does not deny receiving the letter dated 17.09.1991. It manifestly appears that he sat over his legal rights for a very long time and did not address any further communication for refund of the amount deposited. It appears that after more than 13 years, he claimed to have sent a letter dated 14.01.2004, requesting to withdraw his earlier cancellation request made via letter dated 24.06.1991. Interestingly, the receipt of the request letter dated 04.01.2004 for withdrawal of his cancellation application has not been acknowledged by the respondent No.1. There is no postal receipt on record to prove that the letter dated 14.01.2004 was dispatched or served upon the respondent. Be that as it may, the petitioner evidently sought to revive his claim after 13 years and then, once again remained inactive until he discovered his name in the draw of lots conducted by the respondent No.1 on 12.06.2012. The mere fact that there was mistake on the part of the respondent No.1, in that they had not updated their records and therefore included the petitioner's name in the draw of lots, does not confer a legal right upon the petitioner to seek the allotment of a plot. The bottom line is that the petitioner was not entitled to be considered for the draw of lots in the first place. The delay and laches on the part of the petitioner speaks for itself. Indeed, the

conduct of the respondent No.1 is also not without blemish, as the refund was not sent but then there is no denial by the petitioner that he had received the letter dated 17.09.1991, calling upon him to submit the documents for the refund.

14. At the cost of repetition, the petitioner sat over his legal rights for a very long time and in such a scenario, it was not incumbent upon the respondent No.1 to entertain any stale claims. The petitioner has opted to come to the Court on his own leisure or pleasure and if such a claim is entertained, it would cause palpable injury to the other rightful claimants who stood by the time and complied with the relevant formalities for allotment of plot with some alacrity. In the end, the draw of lots carried out on 12.06.2012 was subject to the fulfilment of all the primary terms and conditions that the registration was alive, which was not and it is but clear that the petitioner has become wiser with the times and his mere attempt is to indulge in profiteering on account of genuine mistake made by the respondent No.1 for want of updation of their records. The draw of lots was not conducted with due diligence and based on inaccurate data/record. It is manifested that the petitioner has not acted in good faith. It is well settled that estopple is a legal principle that prevents someone from denying or asserting something contrary to what they have previously stated or agreed upon. However, if there is found a fundamental mistake on account error of fact or misconception going to the root of the matter, making it invalid, inequitable or unenforceable, the principle of estoppel does not apply.

15. At this juncture, it would be relevant to refer to a recent decision of the Supreme Court in the case of **Yamuna Expressway Industrial Development Authority vs Shakuntala Education & Welfare Society** [2022 SCC OnLine SC 655]**,** wherein the High Court of Allahabad had ruled in favour of respondent educational society, which had challenged the policy decision of the State government that called upon it to pay the additional amount of premium for allotment of the subject land on account of increased compensation that became payable to the farmers whose land had been acquired by the Authority, which amount demanded was not earlier envisaged as per the terms & conditions of the contract of allotment except "for the clerical error or miscalculation". In the said backdrop, rejecting the plea of promissory estoppel against the Authority, and setting aside the decision by the High Court, *inter alia* it was observed:

> "It has been held by this Court that the doctrine of promissory estoppel cannot be invoked in the abstract and the courts are bound to consider all aspects including the results sought to be achieved and the public good at large.

> It has been held that while considering the applicability of the doctrine, the courts have to do equity and the fundamental principles of equity must for ever be present to the mind of the court, while considering the applicability of the doctrine. It has been held that the doctrine being an equitable doctrine, it must yield when the equity so requires, if it can be shown by the Government or Public Authority that having regard to the facts and circumstances as they have transpired, it would be inequitable to hold the Government or the Public Authority to the promise, assurance or representation made by it."

16. In the case of **Central Airmen Selection Board vs Surender Kumar Dass** [(2003) 1 SCC 152], it was held that promissory estoppel is not applicable where the candidate was though selected was not given employment on account of misrepresentation of facts. However, interestingly, it was also additionally argued on the behalf of the petitioner that even if a candidate had been declared selected or appointed contrary to the Rules of Recruitment, the petitioner could have *suo moto* corrected the mistake and annul the appointment. It was held by way of *obiter dicta* that the principle of promissory estoppel cannot be invoked in a such case.

17. Insofar as the decision in the case of ***Hari Mohan Gupta (supra)*** heavily relied upon by the learned counsel for the petitioner, I am afraid, it does not help the petitioner in any manner. Although, the petitioner had applied for cancellation of his registration in 2001, which was acceded to by the respondent No.1 on 20.12.2001, a month later the petitioner applied for restoration of his registration upon becoming aware that DDA was planning to make allotment to those who had waited for a long period, which request was acceded and the registration was restored on 06.03.2003. It was in the said circumstances that when his name was not included in the draw of lots to be held on 11.07.2003 that the petitioner challenged the decision of DDA in writ petition and his name was ordered to be included in the draw of lots. Eventually, as the name of the petitioner appeared in the draw of lots, but an issue cropped as to the rate or the price that would be payable by the petitioner for allotment of flat, which was held to be payable as on the date when the scheme was floated i.e. 1989 with directions to pay the interest. Likewise, another decision cited by learned counsel for the petitioner was **DDA v. Madhurima Malhotra** [WA No. 294/2004 dated 06.09.2004], decided by this Court, wherein the allotment of a flat was made to the petitioner at Narela in Delhi but there were discrepancies in the

built-up area and on the representations made by the petitioner as also others, the DDA informed that flats were of 'incremental category' and on its own it decided to allot regular flats to those who have been allotted such incremental flats. However, after taking such a decision, the policy was reviewed, which was challenged in the writ, and in the said circumstances the DDA was restrained from rescinding from its policy decision and a direction was issued to allot the regular flat to the petitioner. Such relief granted by the learned Single Judge when challenged in LPA by the DDA, which came to be dismissed *vide* the aforesaid order.

18. In view of the foregoing discussion, the present writ petition is devoid of any merits and the same is accordingly dismissed. However, the petitioner is entitled to recover the amount initially paid by him for the booking/allotment of the plot be refunded to him with interest @ 9% interest from the date he applied for cancellation of his booking i.e., 24.06.1991, till realization forthwith not later than two months from today."

LEGAL SUBMISSIONS:

7. Learned counsel for the applicant has urged that observation made by this Court that the petitioner never denied receiving the cancellation letter dated 17.09.1991 was flawed, for which reference was invited to averments in the rejoinder of the petitioner, whereby such factum of receiving any cancellation letter was denied. Further, it was pointed out that the alleged cancellation letter dated 17.09.1991 by the DDA was addressed/sent to "*Manager, Central Bank, Connaught Circus, New Delhi*" instead of the correct address of the applicant *viz.* "*Central Bank of India, Hanuman Road, X/505, Gali Baharwali, Daryaganj, Delhi*". It was vehemently urged by the learned counsel for the applicant that the DDA placed on the record no proof of service of such communication, for which an adverse inference must be drawn.

ANALYSIS & DECISION:

8. Having heard the learned counsel for the applicant and on perusal of the record, at the outset, this Court finds that the present review is bereft of any merits. **First things first**, the proposition of law on review in terms of section 114 and Order XLVII CPC is available on a limited ground. The correctness or legality of an order cannot be made the subject of an appeal under the garb of a review. To put it plainly, Order XLVII Rule 1 of the CPC provides three grounds for review:

> "(1) discovery of new and important matter or evidence which, after the exercise of due diligence was not within the applicant's knowledge or could not be produced by the applicant at the time when the decree was passed, or order made; or
> (2) mistake or error apparent on the face of the record; or
> (3) for any other sufficient reason, which must be analogous to either of the aforesaid grounds."

9. Avoiding a long academic discussion on the law on review, we may refer to the decisions by the Supreme Court in the cases of **Delhi Administration v. Gurdip Singh Uban**[3] and **Inderchand Jain v. Motilal**[4], on combined reading of which it has been held that:

i) No application for review will be entertained in a civil proceeding except on the grounds mentioned in Order XLVII Rule 1 of the Code of Civil Procedure, 1908;
ii) There is a real distinction between a mere erroneous decision and a decision which could be characterized as vitiated by error apparent;
iii) A review by no means is an appeal in disguise;
iv) Sometimes, applications are filed for 'clarification', 'modification' or 'recall' not because any such clarification, modification is indeed necessary but because the applicant in reality wants a review and also wants a re-hearing – such applications if they are in substance review applications deserve to be rejected straightaway;
v) The limitations on exercise of power of review are well settled;
vi) A re-hearing of the matter is impermissible in law;

[3]2000 (7) SCC 296
[4](2009) 14 SCC 663

vii) The power of review can be exercised for correction of a mistake and not to substitute a view and such power can be exercised within the limits of statute dealing with the exercise of power.

10. In view of the aforesaid proposition of law, reverting to the instant matter, there is an error apparent as regards to the finding recorded by this Court, that there was no denial on the part of the petitioner that he ever received the notice of cancellation of his registration in terms of letter dated 17.09.1991. As it was rightly pointed out that this Court overlooked the averments in the rejoinder, and unhesitatingly this Court finds that the applicant is very cleverly suppressing more facts than what he is actually revealing in the petition.

11. Indeed, no proof of service of notice dated 17.09.1991 has been placed on the record by the DDA. However, there is no averment on an affidavit that the address of the applicant as reflected in the receipt dated 20.04.1981 was the same on the date of the alleged notice of cancellation by the DDA *vide* letter dated 17.09.1991. The applicant is suppressing as to where he was posted, if at all, at Delhi when such notice was purported to be served. From where else the DDA could have found such address unless and until the applicant himself submitted such letter and the applicant very cleverly has not placed on record the letter dated 24.06.1991 that was sent by him to the DDA seeking cancellation of his registration.

12. The applicant cannot take advantage of the non-filing of the said letter by the DDA. It was for him to place on record the said letter and demonstrate as to what address he had given on the said

letter at the time of seeking cancellation of registration as well as seeking a refund. Furthermore, there appears to be a clear attempt on the part of the applicant to throw dust into the eyes of this Court by claiming that he had sent a letter dated 14.01.2004 seeking withdrawal of his application for cancellation of registration and demanding allotment of residential flat under RRS, 1981.

13. For that matter, even the applicant has not annexed any service report so as to suggest that he had sent any such letter. What is clearly discernible is that even as per his own admission, he submitted an application for cancellation of registration on 24.06.1991 and thereby abandoned his legal right to have any legal interest for consideration of his name for allotment of any MIG Flat under RRS, 1981. If his case is believed, he had sought a refund and since the refund had not been processed, by virtue of Article 113 of the Limitation Act he had three years from the assumed date of service of such notice upon the DDA, to seek recovery of the refund amount with interest.

14. It is evident that there was a prolonged period of inaction on the part of the applicant, during which he failed to assert or protect his legal rights. This period of "stark silence" lasted until approximately 04.01.2004, assuming that any correspondence related to this matter was indeed sent and received in the normal course of events. The lack of action by the applicant during this time raises questions about his commitment to pursuing his rights in a timely manner. The applicant wants this Court to believe that he then came to know about the allotment of a residential flat in his name consequent to the draw of lots conducted on 12.06.2012, but he does

not plead as to when he came to know about such allotment and if his case is believed, it was by way of legal notice dated 26.03.2022 i.e. after almost 10 years that he sought to assert his legal rights, if any, in the present imbroglio.

15. In nutshell, the applicant is guilty of gross delay and laches as he evidently kept quiet from 24.06.1991 till 14.01.2004. If we assume that such letter was indeed sent by him, thereafter he remained silent from 12.06.2012 to 22.05.2022, when he filed W.P.(C) 8489/2022. It is notable that the applicant is an educated individual with a background as a seasoned and experienced banker. However, it appears that he has waived his legal rights and, after a significant period of inactivity, is now attempting to capitalize on the increased market value of the plot in question. This move suggests an opportunistic approach, potentially driven by the escalation in market value rather than a genuine concern for his original rights or interests.

16. It goes without saying that the Delhi Development Authority (DDA) had a blemish in this case, as it failed to prove that it had served the notice of cancellation dated 17.09.1991 to the applicant. Nevertheless, the DDA's failure to update its records and its subsequent draw of lots on 12.06.2012 did not create any legal right in favour of the applicant.

17. In light of the above, this Court is unable to find any error apparent on the face of the record. It is unequivocal that the applicant had no vested right to be allotted a residential flat independent of the terms and conditions stipulated in the allotment policy. This Court in

the case of **Rashter Kumar v. DDA**[5] had an occasion to deal with the plea of the petitioner therein for allotment of plot of his choice and it was held as under:

> "19. In fact, the proposition of law laid down in the aforesaid case by the Full Bench of this Court was upheld by the Supreme Court in the case of **Amolak Raj v. Union of India** [JT 2002(10) SC 86]**,** wherein the appellant was allotted plot of land in Rohini Residential Scheme bearing Plot No. 52, Pocket-16, Sector-20, measuring 250 Sq. Yards but he was not satisfied and filed a writ petition before the High Court seeking directions to the DDA for allotment of plat of land measuring 800 Sq. Yards. It was held that the petitioner, whose land had been acquired, had no absolute vested claim for allotment of plot as a matter of right under the *Nazul* Rules. **It was further held that the appellant cannot claim allotment of a particular plot in a particular area of his choice and even if there are any recommendations made in his favour by any other government authority/agency, it could only be subject to availability of plot with the DDA and the said recommendation has no binding legal commitment**."
>
> **{Bold portions emphasized}**

18. In view of the foregoing discussion, this Court hereby dismisses the present Review Petition. Although the applicant has consumed considerable judicial time, considering his status as a senior citizen, this Court exercises leniency and refrains from imposing costs on him.

19. Resultantly, the present review petition is dismissed.

DHARMESH SHARMA, J.

JANUARY 08, 2025
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[5] 2024:DHC:6796