

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

+ W.P.(C) 17621/2006

DALIP KUMAR SAHNI Petitioner
Through Mr. Anand Nandan, Advocate.

versus

UOI & ORS. Respondents
Through Mr. Sanjay Poddar, Advocate for the
respondent.
Mr. Sanjeev Sabharwal, Standing Counsel for MCD.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA

% **ORDER**
24.03.2008

1. By order dated 17th January, 2007, the petitioner was asked to file additional affidavit explaining the delay in approaching the Court against the alleged illegal encroachment. Additional affidavit has been filed and is on record, but does not further the case of the petitioner. The petitioner has not filed on record copy of any representation or reasons and causes explaining the delay as was required by order dated 17th April, 2007.

2. The petitioner has stated that his father was allotted land on compassionate grounds under the Displaced Persons (Compensation and Rehabilitation) Act, 1954 measuring 19 bighas and 14 biswas in village

Khureji Khas. He has also referred to conveyance deed executed in favour of his father in respect of 4 bighas and 16 biswas of land.

3. It is stated in the writ petition that notification under Section 4 of the Land Acquisition Act was issued on 17th February, 1972, which was followed by notification under Section 6 of the Act dated 28th September, 1972. Thereafter, an award dated 16th December, 1978 was passed. The case of the petitioner is that contrary to the award the respondents have acquired and are in possession of excess area of 4161 square yards and, therefore, respondents are in illegal and unauthorized occupation of the same. It may be relevant to state here that petitioner's father expired in 1993 but till then he did not take any steps for recovery of the said alleged excess area of 4161 square yards. The present writ petition has been filed on 25th November, 2006 after nearly 28 years from the date award was passed.

4. Learned counsel for the petitioner submitted that in spite of the said delay, petitioner should not be denied relief. He relies upon two judgments of the Supreme Court in ***H.D. Vora versus State of Maharashtra and Others***, reported in (1984) 2 SCC 337 and ***W. B. Government Employees (Food and Supplies) Co-operative Housing Society Limited and Others versus Sulekha Pal (Dey) and Others***, reported in (2003) 9 SCC

253. H.D. Vora case(supra) relates to requisition of property, which is always for a limited period and after the requisition period is over, the property has to return back to the original owner. This aspect has been noticed and referred to in paragraph 6 of the aforesaid judgment and is clearly distinguishable. W.B. Government Employees case (supra) relates to Land Reforms, which again is a legislation with essentially a different object and purpose behind the same. In paragraph 10 of the said judgment, the Supreme Court noticed that the said authorities had not taken steps to dispossess and take action against persons whose land was vested in the State as a paramount title holder. In that context, the Supreme Court had issued directions to achieve the object and purpose of the Act in question.

5. By filing this writ petition in 2006, the petitioner wants to reopen and challenge the acquisition and award dated 16th December, 1978 and has raised issue of demarcation. The delay is extraordinarily long of nearly 28 years. Delay has not been explained. Petition suffers from laches for which there is no explanation. Stale claims should not normally be entertained by the writ court. Learned counsel for the respondent - Government of NCT of Delhi has drawn my attention to order dated 7th March, 2008 passed by a Division Bench of this Court

in W.P. (C) No. 1839/2008 titled ***Shamo Devi and Others versus Union of India and Others***, wherein it has been observed as under:-

“How a person who alleges against the State of deprivation of his legal right, can get relief of compensation from the State by invoking writ jurisdiction of the High Court under Article 226 of the Constitution even though, he is guilty of laches or undue delay is difficult to comprehend, when it is well settled by decision of this Court that no person, be he a citizen or otherwise, is entitled to obtain the equitable relief under Article 226 of the Constitution if his conduct is blame-worthy because of laches, undue delay, acquiescence, waiver and the like. Moreover, how a citizen claiming discretionary relief under Article 226 of the Constitution against a State, could be relieved of his obligation to establish his unblameworthy conduct for getting such relief, where the State against which relief is sought is a welfare State, is also difficult to comprehend. Where the relief sought under Article 226 of the Constitution by a person against the welfare State is founded on its alleged illegal or wrongful executive action, the need to explain laches or undue delay on his part to obtain such relief, should, if anything, be more stringent than in other cases, for the reason that the State due to laches or undue delay on the part of the person seeking relief, may not be able to show that the executive action complained of was legal or correct for want of records pertaining to the action or for the officers who were responsible for such action not being available later on. Further, where granting of relief is claimed against the State on alleged unwarranted executive action, is bound to result in loss to the public exchequer of the State or in damage to other public interest, the High Court before granting such relief is required to satisfy itself that the delay or laches on the part of a citizen or any other person in approaching for relief under

Article 226 of the Constitution on the alleged violation of his legal right, was wholly justified in the facts and circumstances, instead of ignoring the same or leniently considering it. Thus, in our view, persons seeking relief against the State under Article 226 of the Constitution, be they citizens or otherwise, cannot get discretionary relief obtainable thereunder unless they fully satisfy the High Court that the facts and circumstances of the case clearly justified the laches or undue delay on their part in approaching the Court for grant of such discretionary relief.”

6. The writ petition is, therefore, dismissed on the ground of delay and laches.

SANJIV KHANNA, J.

MARCH 24, 2008

VKR