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Present: Mr. Sanjay Poddar with Sanjay pathak, Advocate for the Appellant.
Mr. Sumit Bansal, Advocate for the Respondent No. 1.

+CM No. 12503/2007

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Delay in filing and refilling the appeal is condoned.

Application stands disposed of.

LPA No. 1209/2007

The appellant, Government of NCT of Delhi is aggrieved by the impugned order dated 28.3.2007 passed by learned Single Judge directing that the application filed by the respondent no. 1 for allotment of alternative plot on account of large scale acquisition of land should be considered on merits.

The respondent No. 1 was the owner of land situated in village Sahibabad, Daulatapur, Delhi. The land was acquired under section 4 of the Land Acquisition Act after issuance of notification on 15.4.1985 by the appellant for benefit of DDA, respondent no. 2. The award was made on 19.12.1996 and the respondent no. 1 received the compensation on 6.3.1997.

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Certify that the digital file and physical file have been compared and the digital data is as per the physical file and no page is missing.

The appellant has promulgated the scheme for allotment of alternative plot in case of large scale acquisition of land to benefit the land holders. It is in pursuance to such scheme that the respondent No. 1 preferred an application on 1.7.1998 but the same was rejected on 29.10.1999 on the ground that the application had been made beyond the period of one year from the date of receipt of compensation (delay of about four months).

The respondent No. 1 had earlier filed WP(C) No.6661/2003 alleging that her application was still pending and the same was even allowed on 25.7.2003 directing the appellants to consider application of the respondent No. 1. It appears that such a direction arose on account of a fact that the appellant never brought it to the notice of the court that there was already a decision on the application of respondent No. 1 dated 29.10.1999. Subsequently a review application was filed by the appellant which was allowed on 9.7.2004 giving opportunity to the respondent no. 1 to impugn the decision dated 29.10.1999 in accordance with the Law. It is thereafter that the writ petition was filed which has been allowed as per impugned order.

A perusal of the impugned order of the learned Single Judge shows that delay of about four months was not such as to defeat the rights of the respondent no. 1. Learned counsel for the appellant seeks to contend that there was delay and latches at two

stages. The first stage is that the application was not filed within the time of one year of taking compensation. In this behalf it could not be seriously disputed that delay of about four months is not such a delay as cannot be condoned and we find no reason to interfere in that behalf with the order of the learned Single Judge. The second aspect which is pleaded is that though the order rejecting the application was passed on 29.10.1999 but, the respondent no. 1 chose to file even the first writ petition only in the year 2003.

Learned counsel submits that the order dated 29.10.1999 was sent through ordinary post after making entry in the dispatch register, the particulars of which is given in the counter affidavit but no copy of the said dispatch register was filed. The real apprehension of learned counsel for the appellant is that often such claims of alternative allotment are litigations by parties who may have purchased on speculation the possible allotment.

We see no reason for the respondent no. 1 to have filed the earlier writ petition if they had received the order. The respondent had been pursuing the litigation diligently. Not only that learned counsel for the respondent no. 1 on instructions from the husband of the respondent no. 1 who is present in the court, states that respondent no. 1 has not created any lien or third party right in respect of prospective allotment of the plot and is willing to

give an undertaking not to his transfer or alienate the plot, in the case such a allotment is made, for the period of five years from the date of possession.

In view of the aforesaid the apprehension of the learned counsel for the appellant does not survive and the respondent no. 1 is directed to file an affidavit/undertaking with the appellant in the aforesaid terms within two weeks from today.

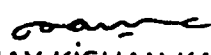
The application of the respondent no. 1 shall be considered in accordance with the law since the only right respondent no. 1 can claim is the consideration for allotment as there is no right of allotment in view of the judgment of Full Bench of this court in Ramanand Vs. Union of India & Ors., AIR 1994 Delhi 29. The appellant to take necessary action within the period of three months from today. Needless to say that the respondent no. 1 will be bound by the affidavit/undertaking given in the court today the document for which will be filed with the appellant.

Appeal stands disposed of.

Dasti to learned counsel for the parties.

CM No. 12501/2007(Application for Stay)

Dismissed as infructuous.


SANJAY KISHAN KAUL, J.

July 28, 2008
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MOOL CHAND GARG, J.