

+ W.P.(C) 3393/2007

versus

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not ?
3. Whether the judgment should be reported in the Digest ?

ORDER
26.10.2009

1. Land of petitioner's predecessor namely, late Mr. Saiju, situated in village Shadipur, New Delhi, was acquired for plan development of Delhi in 1964. The petitioner and his mother being legal representatives of late Mr. Saiju, applied for allotment of an alternative land on the basis of advertisement published by the respondents inviting applications. The said application was made

by the petitioner on 9th April, 1989. By letter dated 18th May, 1989, the respondent No.1 called upon the concerned Land Acquisition Collector to verify and furnish the necessary details regarding the acquired land. The Land Acquisition Collector by letter dated 30th June, 1989 replied in affirmative confirming the claim.

2. After a gap of about four years, the respondent No.1 wrote to the petitioner and asked the petitioner to submit death certificate of late Mr. Saiju, copy of the revenue document showing the ownership of the said land prior to 13th November, 1959 and a list of legal heirs of late Mr. Saiju. The petitioner has stated that she personally went and submitted that said documents to the dealing assistant. It is stated that on 28th September, 1993, the petitioner again met the dealing assistant and filed the death certificate of late Mr. Saiju along with affidavit disclosing the names of the legal heirs of Mr. Saiju. The petitioner asked for some more time to file the remaining document i.e., the revenue record. The order sheet dated 28th September, 1993 records that the petitioner had requested for more time to file proof of ownership prior to the date of notification under Section 4 of the Land Acquisition Act, 1898. It is a case of the petitioner that on 21st November, 1993, she submitted the revenue record after they were made available by the concerned authorities. It is also the case of the

petitioner that she did not receive any other communication for furnishing of documents from the respondent No.1.

3. The respondent No.1 closed the file vide order dated 9th December, 1993 on the ground that the petitioner had not submitted the relinquishment deed and indemnity bond. The petitioner claims that no such request or demand was made to her in any of the personal hearings. The petitioner also disputes that any letter was served upon her requiring her to furnish the aforesaid two documents.

4. One fact, which is apparent, is that the petitioner was diligently pursuing the matter as she was interested in allotment of an alternative land. She had certainly made repeated visits to the office of the respondents as is clear from the letters written by her and the order sheets. The order sheet dated 28th September, 1993 does not make any reference to the relinquishment deed and indemnity bond. Lastly, on 14th December, 1993, the petitioner got the relinquishment deed and indemnity bond executed and got the same registered with the concerned Sub Registrar and moved an application before the respondents on 22nd December, 1993 enclosing therewith the said two documents. The said request for re-opening of the file was made within a short span of 27 days from the date the file was closed on 9th December, 1993.

5. The respondents in their affidavit filed in this Court on 24th October, 2009

have stated that as per policy decision taken by the Lt. Governor dated 11th October, 1998, it was decided that closed cases shall not be re-opened on the request made by an applicant and on subsequent furnishing of relevant documents, which were earlier demanded and not furnished. In the said additional affidavit, it is, impliedly admitted that cases were being re-opened up to 31st August, 1998, on the applicant furnishing/filing requisite documents. In the present case, the petitioner/applicant had furnished the two documents i.e., the relinquishment deed and indemnity bond on 27th December, 1993 nearly five years before the decision of the Lt. Governor on 11th October, 1998. In normal course, the respondent No.1 should have processed the request for re-opening of the closed case within a month or two, after the request was made vide letter dated 27th December, 1993. Thus, even if, it is presumed that the petitioner had received the letter pointing out deficiencies/closure before closure of the case on 9th December, 1993, the aforesaid stand of the respondent No.1 does not explain their inaction or failure to consider the application of the petitioner filed on 27th December, 1993. It was incumbent upon the respondent No.1 to take suo moto action and process the said case without waiting for any push or effort by the petitioner, at least after the relevant documents were furnished/filed.

6. Counsel for the respondent No.1 submitted that the present writ petition

should not be entertained on the ground of delay and laches. There is delay and laches on the part of the respondents themselves in not deciding the application filed by the petitioner on 27th December, 1993. However, the petitioner has stated that she had visited the office of the respondents on 18th March, 1994 and also made a written request to the respondent No.1. The respondent No.1 do not dispute the written request but have disputed personal appearance of the petitioner before the officer concerned. Obviously, the respondents cannot at this belated stage, state whether the petitioner had personally appeared before the officer concerned. It is accepted that the letter dated 18th March, 1994, asking for allotment of alternative land was received by the respondents on 21st March, 1994. The petitioner has also enclosed noting sheets dated 25th March, 1994, 13th May, 1994 and 12th July, 1994. The petitioner had submitted all documents as demanded by the respondents on 8th August, 1994, when she had personally appeared.

7. It is a case of the petitioner that the respondent No.1 had accepted the petitioner's application for re-opening and a check memo in the prescribed format was prepared on 16th November, 1994, and the concerned officer had certified that she was entitled to a plot measuring 250 sq. yards, as all formalities were completed and satisfied. Surprisingly, on 2nd December, 1994, the following

two queries/questions were raised by the respondents, (i) Whether the petitioner was the recorded owner of the land and (ii) whether the petitioner being the daughter of the recorded owner of the land was entitled to allotment of alternative land. The questions and queries raised by the respondent No.1 are strange as the petitioner had never claimed that she was the recorded owner of the land at the time of the acquisition. Her father was the recorded owner of the land at the time of the acquisition. In any case, pendency of the queries did not mean that the case of the petitioner should not have been processed after answering the queries. It apparent that the file was kept pending on one pretext or the other.

8. The petitioner in 2004 had issued legal notice to which there was no response. The petitioner thereafter procured necessary evidence and documents and has filed the present writ petition. Thus, petitioner has been diligently pursuing the matter and her right, and the respondent No.1 are guilty of not processing the re-opening application of the petitioner, which was filed along with the relevant documents.

9. The respondent No.1 are directed to process the re-opening application of the petitioner without being influenced by the decision of the Lt. Governor dated 11th October, 1998 as the case of the petitioner is governed by the policy

prevailing on 27th December, 1993, when the application for re-opening was filed by the petitioner along with the relevant documents. The application of the petitioner will be disposed of within a period of two months from the date copy of this order is received. No costs.

SANJIV KHANNA, J.

OCTOBER 26, 2009

NA