

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

Date of decision: 9th December, 2010.

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W.P.(C) No.4516/2000

HARI KISHAN SHARMA

..... PETITIONER

Through: Mr. B.P. Gupta, Adv.

Versus

GOVT. OF NCT OF DELHI

..... RESPONDENT

Through: Mr. Sanjay Poddar, Adv.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to the reporter or not? | YES |
| 3. | Whether the judgment should be reported in the Digest? | YES |

RAJIV SAHAI ENDLAW, J.

1. The petition impugns the order of the respondent rejecting the application of the petitioner for allotment of alternative plot in lieu of acquired land and seeks a direction for consideration of the said application. The application of the petitioner was rejected by the respondent as time barred. Notice of the writ petition was issued on the contention of the counsel for the petitioner that the application for alternative plot was required to be made within one year of the date of compensation; that part of the compensation due to him had been released to him even after the date of the application and on the basis of *R.K. Jain Vs. Delhi Administration* 2000

VI A.D. (Delhi) 229. Rule was issued on 31st October, 2001. Pleadings were completed and the counsels have been heard.

2. The notification under Section 4 of the Land Acquisition Act, 1894 with respect to the land of the petitioner was made on 22nd June, 1989; declaration under Section 6 was issued and an award announced on 19th June, 1992; the possession of the land was taken on 27th December, 1990. The compensation having not been paid after making of the award, another land owner in or about the year 1992 filed a writ petition seeking direction to the Land Acquisition Collector for payment of interest. In the said writ petition direction was made for payment of compensation amount along with interest at 18% per annum. Compensation was still not paid to the petitioner and it is only on 26th July, 1994 that compensation was released to the petitioner but without interest. The petitioner then filed W.P.(C) No.818/1997 in this regard and which was allowed and in pursuance to orders wherein, a further payment of ₹80,932/- was released to the petitioner on 25th July, 1997.

3. The petitioner on 17th October, 1996 applied for alternative plot in lieu of acquired land under the then policy. The petitioner was however directed to give reasons for late submission of the application. The petitioner vide his letter dated 13th December, 1996 stated that the prescribed form for the application was not available in the Land Acquisition Collector's (LAC) office inspite of his contacting several times; that in the meanwhile the LAC had retired and there was nobody to sign the form and

that there was general confusion on account of LAC office shifting to Mehrauli, Badarpur Road.

4. The respondent vide letter dated 7th January, 1997, not finding the reasons given by the petitioner satisfactory rejected the application of the petitioner as time barred. The petitioner on 28th January, 1997 represented to the respondent that no cut-off date for submission of the application had been prescribed and thus his application could not have been rejected as time barred. Another representation was made on 5th April, 1997. After receipt of ₹80,932/- as aforesaid, another representation was made on 1st September, 1997 mentioning that since the interest amount of compensation had been paid after the date of the application for alternative plot, the application for alternative plot should be considered. The petitioner was however vide letter dated 14th August, 1998 informed that the Committee constituted for recommendation of alternative plot in its meeting held on 18th December, 1997 had kept in abeyance all time barred cases till orders from Hon'ble the Lt. Governor, Delhi in such cases are received and which was then under consideration. The petitioner was finally vide communication dated 5th March, 1999 informed that as per public notice dated 30th November, 1993 published in newspapers, he was required to submit his application by 31st January, 1994 or within one year from the completion of acquisition proceedings whichever was later; that compensation had been received by the petitioner on 26th July, 1994, 27th July, 1994 and 9th September, 1994 and hence the application for allotment

of alternative plot should have been submitted latest by 8th September, 1995, while it was submitted on 13th November, 1996 and hence the same was rejected as time barred. No mention was made in the said letter of the decision if any taken by the Lt. Governor as earlier stated to be pending. Rather, it appears that the letter dated 5th March, 1999 was issued owing to the petitioner having filed a complaint with the Prime Minister's Office.

5. The petitioner in or about August, 2000 preferred the present writ petition.

6. The stand of the respondent in its affidavit is two fold: firstly, that the application though required to be filed on 8th September, 1995 was filed on 17th October/1st November, 1996 and was thus correctly rejected as time barred and secondly, that the rejection having been communicated to the petitioner first on 7th January, 1997, the present writ petition preferred after three years in August, 2000 also was highly belated and suffers from laches, waiver and acquiescence.

7. The counsel for the petitioner bases his case on *Simla Devi Vs. Secretary* 2007 (140) DLT 474. It is contended that the application for allotment of alternative plot in that case also was filed beyond one year of the date of receipt of compensation and the writ petition was filed after five years of the rejection of the said application; nevertheless the writ petition was allowed and the respondent directed to consider the application. The counsel for the petitioner clarifies that he is merely seeking consideration of his application and not seeking a direction for allotment of alternative plot.

It is also contended that under Section 23(1A) of the Land Acquisition Act, interest is part of compensation. Reliance in this regard is also placed on ***Sunder Vs. Union of India*** AIR 2001 SC 3516. It is thus contended that once interest which was on compensation was paid to the petitioner on 25th July, 1997, the application for alternative plot made prior thereto could not be rejected as time barred.

8. The counsel for the respondent bases his case on judgment dated 22nd December, 2005 of the Division Bench of this Court in Writ Appeal No.154/2004 titled ***GNCTD Vs. Smt. Vidyawati*** and has also referred to:-

(i) Judgment dated 4th September, 2002 of this Court in W.P.(C) No.4160/2000 titled ***Shri Charat Singh Vs. Govt. of NCT of Delhi***.

(ii) Order dated 5th December, 2003 of this Court in LPA No.866/2003 titled ***Chander Bose Vs. Union of India***.

(iii) Judgment dated 19th December, 2008 of this Court in W.P.(C) No.16/1991 in ***Sunder Singh Vs. Union of India*** 2009 (2) AD (Delhi) 809.

(iv) Order dated 4th February, 2009 of this Court in W.P.(C) No.708/2009 titled ***Ved Prakash Vs. Lt. Governor NCT of Delhi***.

(v) Judgment dated 20th October, 2010 of this Court in W.P.(C) No.16722/2006 titled ***Lt. Col. Nafe Singh Bhardwaj Vs. Lt. Governor of Delhi***.

9. The argument of the counsel for the respondent is that repeated representations would not extend the period of limitation for filing the writ

petition. **Charat Singh** (supra) has been cited on the proposition of making of repeated representations not giving fresh cause of action.

10. Undoubtedly, the Division Bench of this Court in **Vidyawati** (supra) held the application for alternate plot in that case to be barred by time but the delay in filing the application in that case was found to be of more than seven years. The delay in the present case according to the respondent also is of a little over a year. Another Division Bench of this Court in **Sunder Singh** (supra) also held that where the petitioner is so unconcerned or unwary of his case, he was not entitled to alternative plot of land as the scheme was introduced by the government for benefit of those people who are in need of the land and had there been actual need of the petitioner in that case, he would not have waited for such a long time to make an application for allotment; delay in the said case was of 18 years in comparison to the delay of about a little over one year in the present case. Similarly, in **Lt. Col. Nafe Singh Bhardwaj** (supra) also, finding the delay of 12 years, the writ petition was dismissed. In **Chander Bose** (supra) also the delay was of 30 years in making the application and 11 years in filing the writ petition.

11. It would thus be seen that the judgments cited turned on their own facts and the facts thereof are not comparable to the facts of the present case.

12. Though the counsel for the petitioner from the judgment in **Simla Devi** (supra) has contended that the public notice stated to have been published in the year 1993 pleaded in that case as also in this case was not

proved but in my view, the same is really irrelevant once the respondent itself is counting the time from the date of payment of compensation and not from the date of the public notice. I am however adding that no proof of publication in the newspaper of the said public notice has been placed in the present case also. This Court in *Simla Devi* also held that the time limit of one year stipulated by the respondent itself was not sacrosanct and in deserving cases where injustice was caused, was relaxable.

13. The respondent in law was liable to compensate the petitioner with interest for delay in payment of compensation. The respondent was reminded so vide order in the writ petition filed by another land owner. Notwithstanding the same, the respondent while paying the compensation to the petitioner still did not pay interest to the petitioner compelling the petitioner to prefer his own writ petition and pursuant to order wherein finally interest was paid. There is no doubt that interest is part of compensation. The Supreme Court in *Ram Chand Vs. UOI* (1994) 1 SCC 44 held that the delay in invoking the writ jurisdiction has to be considered along with the inaction on the part of the authorities who had to perform their statutory duties. It was held that a statutory authority cannot take a plea that although it has not performed its duties within a reasonable time but it is of no consequence because the person who has been wronged or deprived of his right has also not invoked the jurisdiction of the Court for a direction to grant the relief. It was also held that the authorities are enjoined by the statute concerned to perform their duties within a reasonable time.

Once the said interest was paid after the date of the application for alternative allotment of plot, the respondent could not contend that the application was beyond one year from the payment of the compensation.

14. The same would also validate the representations by the petitioner after the initial rejection. As aforesaid, the payment of interest was after the date of initial rejection. The petitioner in view of the said subsequent event was fully justified in representing to the respondent rather than rushing to the Court. Moreover, according to the respondent itself, the matter was pending before the Lt. Governor. There is no explanation whatsoever as to what decision was taken by the Lt. Governor but finally communication dated 5th March, 1999, was in view of the complaints of the petitioner to the Prime Minister's Office and the petitioner approached this Court within one and a half years thereof.

15. The counsel for the respondent urges that this Court in *Vidyawati* has held that part payment of compensation is irrelevant. He was however unable to show any such finding in the judgment. Though in the factual narrative it is definitely recorded that compensation for part of the land was applied for at one stage and compensation for remaining part of the land was applied for subsequently and the application for alternative plot in that case was made before the grant of compensation subsequently applied for, however there is no finding of the Division Bench on the said facts. It is not known as to whether the application for alternative plot in that case was in lieu of part land of which compensation was earlier received or for entire

land. Even otherwise, once the respondent itself has provided for time of one year from the date of payment of compensation, the same would mean the entire compensation and not payments in part. If the respondent intended so, they ought to have provided that the application had to be made within one year of the payment of first installment of compensation. If the respondent is permitted to indulge in such practice, it can defeat the rights created under the Policy. Here it is not as if the additional compensation was on account of any enhancement. As aforesaid, it was interest on the amount which was due to the petitioner along with compensation and which the respondent had failed to pay.

16. The writ petition therefore succeeds; the Rule is made absolute. Respondent is directed to consider the application of the petitioner for alternative plot in lieu of acquired land. Since considerable time has elapsed, the respondent is now directed to take a decision on the said application on or before 31st March, 2011.

The writ petition is disposed of. No order as to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

9th December, 2010

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(Corrected and released on 20th December, 2010)