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

+ W.P.(C) 1753/2010

% ***Judgment Delivered on: 26.04.2010***

VILAIET JAFRI Petitioner
Through: Mr.Dilip Singh, Advocate.

versus

DELHI DEVELOPMENT AUTHORITY Respondent
Through: Ms.Sobhna Takiar, Advocate

CORAM:
HON'BLE MR. JUSTICE G.S.SISTANI

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

G.S.SISTANI, J. (ORAL)

1. With the consent of counsel for the parties, present petition is set down for final hearing and disposal.
2. The facts which have led to filing of the present petition are that in the year 1981, the petitioner registered himself with the DDA's Rohini Scheme for allotment of an MIG category plot. As per the writ petition, petitioner on 14.08.1985 had sent a registered letter to DDA informing change of his address from E-40, Hauz Khas, New Delhi to Vilayat Jafri c/o.Sh. B.R. Trikha, Q. No.942, Sector -6, R.K. Puram, New Delhi. In the draw held on 27.03.1991 by the DDA petitioner was allotted a plot bearing No.107, Pocket-3, Sector-24, Rohini, Delhi. It is the case of the petitioner that demand/allotment letter sent at the old address of Hauz Khas, Delhi, was not received by him and the same was returned to DDA undelivered. Meanwhile petitioner who was working for Doordarshan Delhi was transferred to Lucknow. On 16.07.1994 petitioner came from Lucknow and visited the office of DDA and came to know about the allotment of plot. Petitioner was asked

by the DDA to give a representation. The petitioner is stated to have given a representation dated 18.07.1994.

3. Counsel for petitioner submits that DDA had issued another letter dated 31.01.1995 to the petitioner, but again at the old address. Although DDA took a decision to send the fresh demand/ allotment letter to the petitioner at the new address, but no letter was sent at the new address at Lucknow. Thereafter DDA initiated the process of cancellation of the plot allotted to the petitioner, although no cancellation order was sent to him neither any show cause notice was sent to him.
4. Ms.Sobhna Takinar, advocate has entered appearance on an advance copy and has produced the original record in court today.
5. At the outset counsel for respondent denies receipt of any communication dated 14.08.1985 sent by the petitioner, informing DDA with regard to change of address. It is submitted that letter dated 18.07.1994 sought to be relied upon by the petitioner is a fabricated document, and on this ground alone the present petition should not be entertained. She submits that it is only when a representation was received on 18.07.1994 that the DDA learnt about the fresh address of Lucknow. She also submits that demand/ allotment letter was first sent at the address of Hauz Khas, Delhi, which was received back undelivered and subsequently as per the file notings of the DDA it was decided to send that demand/ allotment letter at the Lucknow address. The file noting of 20.02.1995, 27.03.1995 and 19.05.1995 reads as under:

“20/02/95

According to Post of P.S. Sh.Vilayat Jafri were staying at Hauz Khas before 7-8 years it is now requested to send the second-cum-allotment letter at the address of Lucknow (UP). Submitted for signature Please.”

“27.03.1995

Send a call letter at Lucknow address.

Signature
27/3”

“In spite of our best efforts the whereabouts of the

registrants are not available and Allotment – Cum – demand letter could not be served. Now there is no alternate but to cancel the allotment. Therefore, Commissioner (LD) accord (sic) his approval to cancel the allotment of the plot in question.”

6. Counsel for petitioner submits that petitioner had learnt about the allotment in the year 1994 which is evident from his letter dated 18.07.1994 which has been placed on record at page 24 of the paper book. She submits that for the period 1994 till the date of filing of the writ petition there is no satisfactory explanation for the delay in approaching this Court by the petitioner.
7. Counsel for the petitioner has strenuously argued before this Court that petitioner was running from pillar to post and he was making efforts to get the matter resolved in the DDA itself for which he had made a representation.
8. Counsel for the petitioner has placed reliance on **Balwant Singh Vs. DDA** WP(C)No.11564/2009, a decision rendered by this Court. Reading of the judgment would show that the facts of the aforesaid case are different from the facts of the present case. In **Balwant Singh (Supra)**, petitioner was not aware of the allotment having been made in his favour, whereas in this case petitioner became aware of the allotment in the year 1994 and thereafter slept over the matter and filed this petition only in the year 2010.
9. The writ petition shows that petitioner had approached the DDA in the year 1994 as also in the year 2000 and 2005, but he did not get any satisfactory answer.
10. Counsel for petitioner has failed to render any satisfactory explanation for the delay in not approaching this court from the year 1994 till 2010 when the present petition was filed. The only explanation sought to be given is that petitioner had been making representation to the DDA and was awaiting their response. In the case of **Karnataka Power Corpn. Ltd. v. K. Thangappan**, (2006) 4 SCC 322, it has been specifically held that if writ jurisdiction is exercised after unreasonable unexplained delay, it may have the effect of inflicting not only hardship and

inconvenience but also injustice on third parties, and has held that:

“6. Delay or laches is one of the factors which is to be borne in mind by the High Court when they exercise their discretionary powers under Article 226 of the Constitution. In an appropriate case the High Court may refuse to invoke its extraordinary powers if there is such negligence or omission on the part of the applicant to assert his right as taken in conjunction with the lapse of time and other circumstances, causes prejudice to the opposite party. Even where fundamental right is involved the matter is still within the discretion of the Court as pointed out in *Durga Prashad v. Chief Controller of Imports and Exports*¹. Of course, the discretion has to be exercised judicially and reasonably.

7. What was stated in this regard by Sir Barnes Peacock in *Lindsay Petroleum Co. v. Prosper Armstrong Hurd*² (PC at p. 239) was approved by this Court in *Moon Mills Ltd. v. M.R. Meher*³ and *Maharashtra SRTC v. Shri Balwant Regular Motor Service*⁴. Sir Barnes had stated:

“Now, the doctrine of laches in courts of equity is not an arbitrary or a technical doctrine. Where it would be practically unjust to give a remedy either because the party has, by his conduct done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted, in either of these cases, lapse of time and delay are most material. But in every case, if an argument against relief, which otherwise would be just, is founded upon mere delay, that delay of course not amounting to a bar by any statute of limitation, the validity of that defence must be tried upon principles substantially equitable. Two circumstances always important in such cases are, the length of the delay and the nature of the acts done during the interval which might affect either party and cause a balance of justice or injustice in taking the one course or the other, so far as it relates to the remedy.”

¹ (1969) 1 SCC 185 : AIR 1970 SC 769.

² 2 (1874) 5 PC 221 : 22 WR 492.

³ AIR 1967 SC 1450.

⁴ (1969) 1 SCR 808 : AIR 1969 SC 329.

8. It would be appropriate to note certain decisions of this Court in which this aspect has been dealt with in relation to Article 32 of the Constitution. It is apparent that what has been stated as regards that article would apply, a fortiori, to Article 226. It was observed in *Rabindranath Bose v. Union of India*⁵ that no relief can be given to the petitioner who without any reasonable explanation approaches this Court under Article 32 after inordinate delay. It was stated that though Article 32 is itself a guaranteed right, it does not follow from this that it was the intention of the Constitution-makers that this Court should disregard all principles and grant relief in petitions filed after inordinate delay.

9. It was stated in *State of M.P. v. Nandlal Jaiswal*⁶ that the High Court in exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic. If there is inordinate delay on the part of the petitioner and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in exercise of its writ jurisdiction. It was stated that this rule is premised on a number of factors. The High Court does not ordinarily permit a belated resort to the extraordinary remedy because it is likely to cause confusion and public inconvenience and bring, in its train new injustices, and if writ jurisdiction is exercised after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. It was pointed out that when writ jurisdiction is invoked, unexplained delay coupled with the creation of third-party rights in the meantime is an important factor which also weighs with the High Court in deciding whether or not to exercise such jurisdiction."

10. It has been pointed out by this Court in a number of cases that representations would not be adequate explanation to take care of delay. This was first stated in *K.V. Raja Lakshmiah v. State of Mysore* (AIR 1967 SC 973). This was re-iterated in *R.N. Bose's case* (supra) by stating that there is a limit to the time which can be considered reasonable for making representations and if the Government had turned down one representation the making of another representation on similar lines will not explain the delay. In *State of Orissa v. P.Samantaraj* (AIR 1976 SC 2617) making of repeated representations was not regarded as

⁵ (1970) 1 SCC 84 : AIR 1970 SC 470.

⁶ (1986) 4 SCC 566 : AIR 1987 SC 251.

satisfactory explanation of the delay. In that case the petition had been dismissed for delay alone.”

11. Taking into consideration that the petitioner gained knowledge of the allotment in his favour in the year 1994 there is no satisfactory explanation, except the submission that when the petitioner approached the DDA he was informed that policy decision is also to be taken in the matter and he would be informed about the same. In the absence of any satisfactory explanation for the delay in approaching this Court, I find no merit in this petition. Dismissed.

G.S. SISTANI, J.

April 26, 2010
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