

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

% **Date of decision: 19th August, 2010**

+ **LPA 589/2010**

SANJAY PLASTIC INDUSTRIES

..... Appellant

Through : Mr. Sunil Satyarthi and
Mr. Raman Gandhi, Advs.

versus

DSIDC & ANR

..... Respondents

Through : Ms. Anusuya Salwan with
Ms. Renuka Arora, Advs. for DSIDC
Mr. Tariq Sami, proxy Adv. for Mr. A.
Javed for R-2

AND

+ **LPA 590/2010**

DUA POLYMERS PVT LTD

..... Appellant

Through : Mr. Sunil Satyarthi and
Mr. Raman Gandhi, Advs.

versus

DSIDC & ANR

..... Respondents

Through : Ms. Anusuya Salwan with
Ms. Renuka Arora, Advs. for DSIDC
Mr. Tariq Sami, proxy Adv. for Mr. A.
Javed for R-2

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE MANMOHAN

1. Whether reporters of the local papers 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

DIPAK MISRA, CJ

Regard being had to the commonality of the controversy involved in both the appeals, they were heard analogously and are being disposed of by a common order.

2. The resume' of facts which are necessary to be stated are that the appellants-writ petitioners (hereinafter referred to as 'the appellants') invoked the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India for issuance of mandamus to the respondent-Delhi State Industrial Development Corporation (for short 'DSIDC') as well as the Commissioner of Industries to give possession of industrial plots measuring 100 sq. metres allotted in favour of the appellants by the first respondent. A further prayer was also made for issuance of a writ of certiorari for cancellation of the order dated 10th July, 2002.

3. The factual exposition as discernible is that both the appellants had applied for the plot of the industrial land measuring 400 sq. metres in December 1996 under the re-allocation scheme and had deposited the earnest money. They were extended the benefit of allotment and in pursuance of the same, a letter of demand was sent by the DSIDC requiring them to deposit 30% of the revised estimated cost of the plot @ Rs.4,200/- per sq. metre after adjustment of the earnest money that had already been deposited. The first installment was required to be paid by 31st October, 2000. The appellant, M/s Dua Polymers (Pvt.) Limited, did not comply with the same on the ground that the earnest money had already been deposited with DSIDC. Similar letter was issued by the appellant, namely, M/s Sanjay Plastic Industries. After writing such letter, as is evident from the order impugned, the appellants waited till 18th November, 2008 to approach this Court for redressal of their grievance. The learned Single Judge did not entertain the writ petition basically on the ground that the order of

cancellation was passed against the appellants on 10th July, 2002 and they had approached the writ Court on 18th November, 2008 and, hence, the doctrine of delay and laches is squarely attracted to the case at hand. Additionally, the learned Single Judge referred to the decision of the Supreme Court in *M.C. Mehta v. Union of India* rendered on 12th September, 2000 directing that if payment is not made by any of the allottees on a demand being raised, their allotment shall stand cancelled and they shall have to close down the unit immediately.

4. Questioning the soundness of the aforesaid order, Mr. Gandhi, learned counsel for the appellants, urged that the learned Single Judge has fallen into error by throwing the writ petition overboard on the ground of delay and laches without adverting to the merits of the case despite the fact that a stand was taken in the writ petitions that a series of representations and complaints were made to the DSIDC and, therefore, the cause of action remained alive. It is contended by him that when such a substantial right is affected, it was not apposite on the part of the learned Single Judge not to adjudicate the lis on merits but to accept the stand put forth by the DSIDC that the allotment stood cancelled because of non-compliance of the conditions incorporated in the order of allotment and further erroneously placing reliance on the observations of the Apex Court. The learned counsel, to buttress his submissions, has invited our attention to the decisions rendered in *M/s Dehri Rohtas Light Railway Company Limited v. District Board, Bhojpur and others*, AIR 1992 SC 802 and *Allahabad Bank v. State of West Bengal* AIR 2007 SC (Supp) 519.

5. Resisting the aforesaid submissions, Ms. Anusuya Salwan, learned counsel for the respondent-DSIDC, submitted that continuous representation in a matter of this nature does not keep a lis or right alive as the same was done in pursuance of the directions issued by the Supreme Court and initially a list was prepared giving priority and in the priority list, the names of the appellants were included but when they failed to comply with the conditions incorporated in the letter of allotment, they cannot lie in slumber for such a long period and make an endeavour to get the right alive which had become extinct. The learned counsel further submitted that the controversy has been put to rest by this Court in LPA No. 101/2009 ***Sunil Dua v. Government of NCT of Delhi and Others*** decided on 12.05.2009 and in LPA No. 48/2008 ***Dinesh Lalwani v. DSIDC***.

6. To appreciate the rival submissions raised at the Bar, we have carefully perused the order passed by the learned Single Judge. The submission of Mr. Gandhi, learned counsel for the appellants, is that the direction issued by the Supreme Court not being mandatory and in the realm of discretion, the DSIDC should have condoned the delay and considered the application. On a perusal of the order passed in ***Sunil Dua*** (supra), it is evincible that a Division Bench of this Court had held as under:

“3. There is no dispute that the Supreme Court’s order dated 12th September, 2000, desired that allotment of those who did not make substantial payment should be cancelled. As per the DSIDC, according to the directions of the Supreme Court, the draw of plots was held on 3rd October, 2000 and eligible allottees held successful in the draw were issued allotment letter. Under the allotment letters, 50% of the demand was to be made immediately on issuance of the allotment letters. The last date

for payment of 50% was extended upto 31st March, 2001 by press notification. It was also stated on behalf of the DSIDC that by a public notice dated 21st January, 2001, published in 'Times of India', allottees were informed that the Supreme Court of India in its hearing dated 24th January, 2001, had extended time for receipt of 100% payment in the case of allottees at Narela, Badli, Jhilmil and Patparganj as well as 50% payment in case of Bawana upto 31st March, 2001. A number of allottees did not deposit 50% payment within the stipulated time, however, keeping in view the hardship faced by the allottees, it was decided by the DSIDC that all those allottees who did not make the first 50% payment on time would be given an option to withdraw their amounts deposited and keep only the security deposit amounts with the Corporation and DSIDC would maintain a separate list of these allottees and their cases may be considered after new land was acquired and developed and after complying with the Supreme Court's order for exhausting the pending allottees. A copy of the notice dated 26th August, 2001 is annexed at page 109 of the paper book, a copy of the public notice dated 26th January, 2001 published in the newspaper is annexed at page 121 of the paper book and a copy of the order dated 12th January, 2000 passed by the Supreme Court is annexed at page 101 of the paper book."

7. In view of the aforesaid, it is evincible that a cut off date had been fixed. We do not intend to advert to the facet whether after the cut off date the application could have been entertained or not, inasmuch as that may be determined on the anvil of numerous facts. Keeping the said issue open, we are inclined to proceed whether in the obtaining factual matrix, the DSIDC has committed any illegality by cancelling the letter of allotment issued in favour of the appellants. It is urged by Mr. Gandhi that the only ground on which the learned Single Judge has actually dismissed the writ petition is delay and laches. He has drawn immense inspiration from the decision in *M/s Dehri Rohtas Light Railway Company Limited* (supra). In the said case, the Apex Court has opined that the dismissal of belated and stale claim under Article 226 of the Constitution of India is not a rule of law but a rule

of practice. Their Lordships have observed that where the illegality is manifest in the order and the reason for not challenging the order is appositely explained, the delay in filing the writ petition should not be taken into consideration.

8. Be it noted, the factual matrix in the said case was absolutely different as is evident from paragraph 12 of the order. For the sake of convenience, we think it apt to reproduce paragraph 12:

“12. The question thus for consideration is whether the appellant should be deprived of the relief on account of the laches and delay. It is true that the appellant could have even when instituting the suit agitated the question of legality of the demands and claimed relief in respect of the earlier years while challenging the demand for the subsequent years in the writ petition. But the failure to do so by itself in the circumstances of the case, in our opinion, does not disentitle the appellant from the remedies open under the law. The demand is per se not based on the net profits of the immovable property, but on the income of the business and is, therefore, without authority. The appellant has offered explanation for not raising the question of legality in the earlier proceedings. It appears that the authorities proceeded under a mistake of law as to the nature of the claim. The appellant did not include the earlier demand in the writ petition because the suit to enforce the agreement limiting the liability was pending in appeal, but the appellant did attempt to raise the question in the appeal itself. However, the Court declined to entertain the additional ground as it was beyond the scope of the suit. Thereafter, the present writ petition was filed explaining all the circumstances. The High Court considered the delay as inordinate. In our view, the High Court failed to appreciate all material facts particularly the fact that the demand is illegal as already declared by it in the earlier case.”

9. In our considered opinion, the said case is distinguishable on facts. The learned counsel for the appellants has also placed heavy reliance on the decision in *Allahabad Bank v. State of West Bengal* AIR 2007 SC (Supp)

519 wherein the Apex Court took note of the fact that the delay itself in the said case, when the representations were made, would not have resulted in the dismissal of the writ petition in limine. On a scrutiny of the facts in the said case, it is perceivable that the High Court of Calcutta had issued the direction permitting the petitioners to submit several representations and when no decision was taken, the writ petition was filed, the same being imperative. We think it appropriate to reproduce paragraph 5 in entirety:

“5. Mr. K.K. Venugopal, learned senior counsel appealing for the appellant submitted that the High Court has erroneously concluded that there was inaction on the part of the appellants or that there was any delay. In fact in terms of the earlier directions of the High Court, several representations were made to the Competent Authority. Since no action was taken, filing of the writ petition became imperative.”

10. On a scrutiny of the said decision, we notice that the said decision was rendered in a different factual backdrop and is distinguishable.

11. In this regard, we think it condign to refer to certain citations in the field. In *C. Jacob v. Director of Geology & Mining*, (2008) 10 SCC 115, the Apex Court has held as follows:

“10. Every representation to the government for relief, may not be replied on merits. Representations relating to matters which have become stale or barred by limitation, can be rejected on that ground alone, without examining the merits of the claim. In regard to representations unrelated to the Department, the reply may be only to inform that the matter did not concern the Department or to inform the appropriate Department. Representations with incomplete particulars may be replied by seeking relevant particulars. The replies to such representations, cannot furnish a fresh cause of action or revive a stale or dead claim.

11. When a direction is issued by a court/tribunal to consider or deal with the representation, usually the directee (person directed) examines the matter on merits, being under the

impression that failure to do so may amount to disobedience. When an order is passed considering and rejecting the claim or representation, in compliance with directions of the court or tribunal, such an order does not revive the stale claim, nor amount to some kind of “acknowledgment of a jural relationship” to give rise to a fresh cause of action.”

12. In *Union of India & Ors. V. M.K. Sarkar*, (2010) 2 SCC 59, it has been held thus:

“14. The order of the Tribunal allowing the first application of respondent without examining the merits, and directing appellants to consider his representation has given rise to unnecessary litigation and avoidable complications. The ill-effects of such directions have been considered by this Court in *C. Jacob v. Director of Geology and Mining*: (2008) 10 SCC 115:

“9. The courts/tribunals proceed on the assumption, that every citizen deserves a reply to his representation. Secondly, they assume that a mere direction to consider and dispose of the representation does not involve any 'decision' on rights and obligations of parties. Little do they realize the consequences of such a direction to 'consider'. If the representation is considered and accepted, the ex-employee gets a relief, which he would not have got on account of the long delay, all by reason of the direction to 'consider'. If the representation is considered and rejected, the ex-employee files an application/writ petition, not with reference to the original cause of action of 1982, but by treating the rejection of the representation given in 2000, as the cause of action. A prayer is made for quashing the rejection of representation and for grant of the relief claimed in the representation. The Tribunals/High Courts routinely entertain such applications/petitions ignoring the huge delay preceding the representation, and proceed to examine the claim on merits and grant relief. In this manner, the bar of limitation or the laches gets obliterated or ignored.”

15. When a belated representation in regard to a 'stale' or 'dead' issue/dispute is considered and decided, in compliance with a direction by the Court/Tribunal to do so, the date of such

decision cannot be considered as furnishing a fresh cause of action for reviving the “dead” issue or time-barred dispute. The issue of limitation or delay and laches should be considered with reference to the original cause of action and not with reference to the date on which an order is passed in compliance with a court's direction. Neither a court's direction to consider a representation issued without examining the merits, nor a decision given in compliance with such direction, will extend the limitation, or erase the delay and laches.

16. A court or tribunal, before directing “consideration” of a claim or representation should examine whether the claim or representation is with reference to a “live” issue or whether it is with reference to a “dead” or “stale” issue. If it is with reference to a “dead” or “stale” issue or dispute, the court/tribunal should put an end to the matter and should not direct consideration or reconsideration. If the court or tribunal deciding to direct “consideration” without itself examining the merits, it should make it clear that such consideration will be without prejudice to any contention relating to limitation or delay and laches. Even if the court does not expressly say so, that would be the legal position and effect.”

13. In *Naresh Kumar v. Department of Atomic Energy & Ors*, Civil Appeal No. 3138/2008 decided on 08.07.2010, the Apex Court has held thus:

“If an employee keeps making representation after representation which are consistently rejected then the appellant cannot claim any relief on that ground.”

14. From the aforesaid enunciation of law, it is luculent that stale claims do not get a new lease of life because the affected person has been representing to the authorities. It is also luminescent that the directions by the courts to dispose of the claim or representation without deliberation on merits do not extend the period of limitation or extinguish the facet of delay and laches. It also does not create a new cause of action. To put it differently, the stale claims remain stale and the dead claims do not rise like

a phoenix. A direction to deal or consider a representation is not a ‘Mahamantra’ on which a litigant can build an edifice to canvass that the cause of action or his grievance remains alive to be addressed on merits. The doctrine of delay and laches visits like the chill of death and does not spare anyone, even the one who fosters the idea and nurtures the notion that he can sleep to avoid death and eventually proclaim “Deo gratias” – ‘thanks to God’.

15. In the case at hand, the appellants were very much aware that the allotment stood cancelled on 10th July, 2002. No acceptable reason has been given as to why they waited till November, 2008. As has been urged before us, they approached the authorities making complaints and representations. Particularly, in a case of this nature, one cannot lie in slumber and wake up at his own pleasure and approach the writ Court. The writ Court may have the immense power to entertain the writ petition ignoring the facet of delay but that would depend upon the facts of the case. However, in the case at hand, the appellants were allotted particular land in lieu of sealing of the industry on the basis of a policy and though they were put in a priority category, yet they did not avail the benefit. Thereafter, they have been placed in the waiting list. Others who are not put in the priority category have already been brought to priority category and they should have a chance and, therefore, extending the benefit of equity which is also a facet of equitable jurisdiction under Article 226 of the Constitution of India to the appellants would be inequitable to others. The same, we are disposed to think, is unwarranted.

16. In view of our preceding analysis, we do not perceive any merit in these appeals and, accordingly, the same are dismissed without any order as to costs.

CHIEF JUSTICE

MANMOHAN, J

AUGUST 19, 2010

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