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

+ LPA 674/2010 & CM 16871/2010

MANGE RAM

Through

..... Appellant

Mr. Janender Kumar Chumbak,
Advocate

versus

DELHI DEVELOPMENT
AUTHORITIES & ORS

Through

..... Respondents

Ms. Renuka Arora, Advocate
for R-1.
Mr. Sanjay Poddar, Advocate
for R-2.

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Date of Decision: 20th September, 2010**CORAM:****HON'BLE THE CHIEF JUSTICE****HON'BLE MR. JUSTICE MANMOHAN**

1. Whether the 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.

J U D G M E N T**DIPAK MISRA, CJ:**

Questioning the legal sustainability of the order dated 13th July, 2010 passed by the learned Single Judge in W.P.(C) 2819/2006, the present intra-court appeal has been preferred by the appellant-petitioner (hereinafter referred to as 'the appellant').

2. The brief resume` of facts which are essential for adjudication of this appeal are that certain land belonging to the father of the appellant

was acquired by the respondent no. 2, the State Government, in the year 1958 vide Award No. 1938/39, for the benefit of the Delhi Development Authority, the first respondent herein. At the time of acquisition of the land, there was a scheme for allotment of an alternative plot in lieu of compulsory acquisition of land of private persons by the Government. The father of the appellant applied for alternative plot and a recommendation for allotment of alternative residential plot admeasuring 300 sq. yd. at East of Kailash was made by the concerned department in the year 1967.

3. As the factual matrix would further exposit, the father of the appellant breathed his last on 13th July, 1986. After the death of the father, the appellant approached the writ court in the year 2006 to issue a command to the first respondent to allot him an alternative plot in lieu of the plot that was acquired in 1958-59. It was contended before the learned Single Judge that though there was a recommendation for grant of plot at East of Kailash, yet the same was not given effect to and the father of the appellant never received any communication. It was contended that the appellant approached the authorities but no fruitful result ensued.

4. The submission raised by the appellant was combatted by the respondent nos. 1 and 2 mainly on the ground that there has been enormous delay in approaching the writ court for the relief in question.

5. The learned Single Judge took note of the fact that the writ

petition did not deserve consideration because of enormous delay and further that the appellant has woken up to take undue advantage after the death of his father. Being of this view, the learned Single Judge dismissed the writ petition and imposed costs of Rs. 1,00,000/-.

6. Mr. Janender Kumar Chumbak, learned counsel for the appellant, questioning the legal acceptability of the order, has submitted that the learned Single Judge has fallen into error by dismissing the writ petition on the ground of delay and laches though the appellant had been representing and approaching the authorities who have been giving assurance from time to time. It is urged by him that in all cases the writ court ought not to dismiss the writ petition on the ground of delay and laches, for it would depend upon the facts and circumstances of the case. It was canvassed by him that when the land of the father of the appellant was acquired under the compulsory acquisition scheme and there was a provision to allot a plot in lieu of the acquired land, it was obligatory on the part of the respondent no. 2 to allot the land and when the said obligation has not been satisfied, the learned Single Judge should have been well advised to direct the respondent no. 1, Delhi Development Authority, to allocate an alternative plot.

7. To bolster his submission, Mr. Chumbak has placed reliance upon *S.B. Kishore Vs. Union of India & Ors.*, AIR 1991 SC 90, *M/s. Dehri Rohtas Light Railway Company Limited Vs. District Board, Bhojpur and Ors.*, AIR 1993 SC 802, *K. Thimmappa & Ors. Vs.*

Chairman, Central Board of Directors, SBI & Ors., AIR 2001 SC 467.

8. Per contra, Mr. Sanjay Poddar, learned counsel for Government of NCT of Delhi, and Ms. Renuka Arora, learned counsel for Delhi Development Authority, submitted that the doctrine of delay and laches is squarely applicable to the case at hand. The learned counsel for the respondent no. 2 has relied upon ***Sunder Singh (since deceased) Thr. his Legal Heir Vs. Union of India & Ors, (2009) 108 DRJ 96 (DB).***

9. To appreciate the rivalised submissions raised at the bar, we have carefully scrutinised the material brought on record and the order passed by the learned Single Judge. On a careful scrutiny of the order passed by the learned Single Judge, it is manifest that there was acquisition of the land in question belonging to the father of the appellant in the year 1958. There was a recommendation, as set forth, in the year 1967. A contention was raised before the learned Single Judge that the father of the appellant had never received the recommendation letter. The inference, thus, would arise, when the father of the appellant did not receive the letter of recommendation, and his life spark got extinguished on 13th July, 1986, he had accepted the said position from 1958 to 1986, that means for a span of 28 years. Even if we otherwise assume that the appellant's father received the letter of recommendation sometime in the year 1967, as pleaded at

some places, then also he did not do anything till his death. After the death of his father, as is evincible, the appellant did nothing in the matter except making representations as claimed, and eventually approached this Court in the year 2006, that is, after expiration of 20 years. If the factum of delay is construed in a proper perspective, an effort has been made to establish a right and get the relief after lapse of almost 50 years.

10. In ***Chandra Bose Vs. Union of India & Ors., 2003 (107) DLT 604***, this Court has held as follows:-

“13. In the present case, there is initially a delay from 1961 to 1986 of about 25 years in making the application. No reasons have been disclosed for the same. Similarly there is a further delay from the rejection of the application on 10.06.1988 to filing of the writ petition in 1999 of 11 years. This delay is also unexplained. The only averment made is that the petitioner was unaware of the policy. This can hardly be a ground made out for the condensation of delay in either of the two situations.

14. It is not as if in all cases of delay the application must be rejected. It is always open to an applicant to explain the delay and if the said delay is satisfactorily explained, it will not preclude the case of the petitioner from being considered for allotment. In fact this view has been taken by this Court in C.W.P. No. 4834/1999 Smt. Vidyawati Vs. DDA & Another decided on 1.9.2003. However, in the present case there is no valid reason given for the delay in making the application.”

11. In ***Smt. Sundari Bala Vs. Lt. Governor & Ors., 86 (2000)***

DLT 505, it has been held as under :-

“4. Before appreciating the rival contentions of the parties it would be necessary to put on record certain admitted facts in the present writ petition. The land of the petitioner measuring 9 bids was situated in Village Kilokari was acquired by the respondent pursuant to which an award was passed on 16.5.1961. The respondent adopted a scheme in 1961. Under clause 8 of the said scheme anyone whose land has been

acquired as a result of the notification mentioned in clause 8 of the scheme was entitled to apply for allotment of a plot. After the aforesaid acquisition the construction of the petitioner standing on the acquired land was also demolish by the respondent sometime in March, 1969 and that she received the compensation sometime in April, 1969. The application for allotment of alternative land in lieu of acquired land was filed by the petitioner in the year 1982. Public notice was also issued by the respondents in which applications from persons whose lands were acquired between the period from 1.1.1961 and 15.11.1963 were called for consideration of allotment of alternative land. It was made clear in the said notification that Delhi Administration would not take any responsibility for allotment of alternative plot of land if applications in the aforesaid regard were not received on or before 15.12.1963. ”

6. *In the present case the application of the petitioner was not rejected on the ground that she is not entitled to be considered for allotment of an alternative plot in lieu of her acquired land. The ground for rejection of her application was that her case was time barred as she was to submit her application before 15.12.1963 whereas she submitted an application in 1982, for the land acquired by award dated 20.10.1961.*

Thus there was no Explanation at all worth the name for the delay in filing the application. therefore, there is was inordinate delay and laches in petitioner approaching the Competent Authority for allotment of the alternative plot in lieu of her acquired land. In this connection reference may be made to a Division Bench decision of this Court in Jaswant Kaur (Supra) wherein this court dismissed a similar petition on the ground of gross delay and laches. In the said case the petitioner claimed to have made an application for allotment of an alternative plot of land on 17.4.1965, but the respondent DDA denied having received any such application. The writ petition was filed on the basis of the impugned decision communicated by letter dated 3.12.1990 which was taken on the application of the petitioner dated 19.7.1989, which was held to be highly belated. In my considered opinion the facts of the said case are similar to the case in hand and therefore, the ratio of the aforesaid decision is squarely applicable to the facts of the present case.

7. *In Star Wire (India) Ltd. Vs . State of Haryana, (1996) 11 SCC 698 the Supreme Court after referring to the ratio laid down in various earlier decisions of the Supreme Court held that laches close the gates of the courts for a person who approaches the court belatedly. While coming to the aforesaid conclusion the Supreme Court relied upon an earlier decision of the Apex Court in Municipal Corporation of Greater*

Bombay Vs . Industrial Development & Investment Co. (P) Ltd., AIR 1997 SC 482. In State of Maharashtra Vs. Digambar, AIR 1995 SC 1991, it was held by the Supreme Court that when the writ petitioner was guilty of laches or undue delay in approaching the High Court, the principle of laches or undue delay disentitled the writ petitioner for discretionary relief under Article 226. Although the aforesaid two decisions were rendered in the context of delay and laches of the petitioner in approaching the High Court under Article 226, I do not see any reason why similar consideration should not be made applicable to a matter where a time limit was fixed for approaching the authority and doing the needful and the same was done after expiry of period of 13 years.”

12. In *Sunder Singh (since deceased) Through his Legal Heir*

(supra), this Court has opined thus:

“25. We are of the view that where the petitioner is so unconcerned or unwary of his case pending for compensation, he was not entitled to alternative plot of land as the scheme is introduced by the government for the benefit of those people who are in need of the land and if there is actual need existing of the petitioners, he would not have waited for such a long time to make an application for allotment and should have been vigilant.

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27. No doubt, the scheme of allotment of alternative plots in lieu of acquired land under "Large Scale Acquisition Development and Disposal of Land In Delhi" announced by Govt. of India, Ministry of Home Affairs vide their letter No. 37/16/60-Delhi(i) dated 2nd May, 1961 is in force with effect from 2nd May, 1961 but it is not an open ended scheme where a person whose land has been acquired vide Award passed in 1962 can apply for alternative plots any time he wishes. Though in the scheme the date for application for allotment of alternative plot was not mentioned but Delhi Administration has issued public notices from time to time where it was specifically made clear that persons whose lands were acquired between the period from 1st January, 1961 and 15th November, 1963 has to apply for alternative plot before 15th December, 1963. But in the present case Notification under Section 4 was issued on 13th November, 1958 and the Award was passed on 14th March, 1962.”

13. At this juncture, we may advert to the decisions referred to by the

learned counsel for the appellant. In ***S.B. Kishore*** (supra), the Apex Court directed that the owner of the land was entitled to allotment of a plot of land under the scheme though he had approached the High Court after 19 years. Be it noted, in paragraph 6 of the said decision, their Lordships opined thus :-

“6. This order is confined to the facts of the present case and shall not be taken as a precedent. No claim shall be entertained in regard to preferences.”

14. In view of the aforesaid, the said decision cannot be treated as a precedent for absolution of the principle of delay and laches.

15. In ***M/s. Dehri Rohtas Light Railway Company Limited*** (supra), the Apex Court distinguished the decision rendered in ***Tilokchand and Motichand and Ors. v. H.B. Munshi and Anr., AIR 1970 SC 898*** and held as under :-

*“13. The rule which says that the Court may not inquire into belated and stale claim is not a rule of law but a rule of practice based on sound and proper exercise of discretion. Each case must depend upon its own facts. It will all depend on what the breach of the fundamental right and the remedy claimed are and how the delay arose. The principle on which the relief to the party on the grounds of laches or delay is denied is that the rights which have accrued to others by reason of the delay in filing the petition should not be allowed to be disturbed unless there is reasonable explanation for the delay. The real test to determine delay in such cases is that the petitioner should come to the writ court before a parallel right is created and that the lapse of time is not attributable to any laches or negligence. The test is not to physical running of time. Where the circumstances justifying the conduct exists, the illegality which is manifest cannot be sustained on the sole ground of laches. The decision in *Trilok Chand* (supra) relied on is distinguishable on the facts of the present case. The levy if based on the net profits of the railway undertaking was beyond the authority and the illegal nature of the same has*

been questioned though belatedly in the pending proceedings after the pronouncement of the High Court in the matter relating to the subsequent years. That being the case, the claim of the appellant cannot be turned down on the sole ground of delay. We are of the opinion that the High Court was wrong in dismissing the writ petition in limine and refusing to grant the relief sought for. We however agree that the suit has been rightly dismissed.”

16. On a perusal of the aforesaid decision, it is perceptible that the decision is distinguishable on the facts inasmuch as in that case, circumstances did not exist justifying the conduct and illegality was so manifest that it could not be sustained on the sole ground of laches.

17. In ***K. Thimmappa & Ors.*** (supra), the Apex Court, while dealing with the doctrine of delay and laches, in paragraph 9, has held as under:-

“9. On consideration of the aforesaid legal position, though, we are inclined to agree with Mr. P.P.Rao that these cases should not be thrown out on the ground of laches alone, inasmuch as the placement made on 1.10.1979 was assailed in the year 1988 at the earliest and 1998 at the latest, yet the same may not be brushed aside, particularly, when we have not been able to find out any infraction of any Fundamental Right of these petitioners, guaranteed under the Constitution.”

18. Be it noted, in the said case, the question that arose for consideration was totally different inasmuch as the matter was related to confirmation of the State Bank employees and the fact whether classification or the determination invited the frown of Article 14 of the Constitution of India. In view of the aforesaid factual basis, we are disposed to think that the said decision is also distinguishable.

19. Having adverted to the citations which have been placed before us, we are inclined to think that the decisions rendered in *Sunder Singh (since deceased) Thr. his Legal Heir* (supra), *Chandra Bose* (supra) and *Smt. Sundari Bala* (supra) and *Star Wire (India) Ltd.* (supra) are applicable to the case at hand.

20. In view of our aforesaid analysis, we have no doubt that the writ petition has rightly been dismissed by the learned Single Judge as we perceive that the factum of delay relates back to 1958. We can only say that the appellant possibility harboured an ambition to avail the benefit which his father, during his lifetime, could not achieve. His claim for the right can possibly be in the realm of speculation but it cannot be in the sphere of reality. To elaborate, he cannot get the stale claim alive after five decades.

21. In the result, the appeal and application, being devoid of merit, are dismissed. There shall be no order as to costs in this appeal. However, regard being had to the anxiety nurtured by the appellant, the costs imposed by the learned Single Judge is made easy.

CHIEF JUSTICE

MANMOHAN, J

SEPTEMBER 20, 2010

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