

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% *Date of Judgment: 31.05.2011*

+ **RSA NO. 358/2005 & CM No. 18291/2005**

Delhi Development Authority Appellant
Through: Ms.Shobhana Takiar, Advocate.

Versus

Kanta Mittal & Anr. Respondents
Through: Mr. Vivek Singh and Mr. Manish
Kaushik, Advocates.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

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

INDERMEET KAUR, J.(Oral)

1. This appeal has impugned the judgment and decree dated 07.03.2003 which had dismissed the appeal of the appellant/Delhi Development Authority (DDA) on the ground of limitation. The application under Section 5 of the Limitation Act seeking condonation of 523 days had been rejected; the result was that the

judgment of the trial court dated 22.04.1995 decreeing the suit of the plaintiff stood endorsed.

2. The plaintiff had filed the present suit claiming himself to be owner of various portions of property falling in Khasra Nos.445, 447, 374, 508, 668, 520, 525, 530, 534, 568, 543, 446 and 541 situated in the Revenue Estate of Village Tehkhand, Tehsil Mehrauli, Delhi having purchased it from one Khacheru. The facts need not be further detailed for the disposal of this appeal. It is however noted that the land comprising of about 34,070 acres qua one Award and 18,008 acres qua the second Award are the subject matter of the present suit. The trial judge has passed a decree for permanent injunction in favour of the plaintiff, restraining the defendants i.e. Delhi Development Authority and Union of India (Respondent No.1 and 2 respectively) from interfering with or dispossessing the plaintiff from the suit property.

3. The impugned judgment had dismissed the appeal of the department on the ground of delay alone. Merits had not been adverted to; the right of being heard on merits has thus been lost to the department. Counsel for the appellant has pointed out that in (2004) 12 Supreme Court Cases 555 *Gaon Sabha and Another Vs. Nathi and Ors.* the Apex court had held that under Section 7 of

the Delhi Land Reforms Act, 1954 (DLRA) '*gair mumkin pahar*' is land which can vest with the Gaon Sabha and the finding by the trial judge that the '*gair mumkin pahar*' being a waste land cannot vest into the Gaon Sabha is a perversity. Reliance has also been placed upon the judgment reported in (2009) 13 Supreme Court Cases 192 *State of Karnataka Vs. Y. Moideen Kunhi and Ors.* to support the submission that where even if the delay is large, keeping in view the larger interest of the public involved, delay may be condoned; it is pointed out that in this case delay of 6500 days had been condoned. Reliance has also been placed on AIR 1998 Supreme Court 3222 *N. Balakrishnan Vs. M. Krishnamurthy* wherein a delay of 833 days had been condoned.

4. The prayer made in the present application has been vehemently opposed by the counsel for respondent. It is pointed out that the impugned judgment had noted that in the first affidavit filed by the department (dated 06.01.97) and their supplementary affidavit (dated January, 1999) contrary stands had been taken; in the first affidavit, it had been stated that the file has been tagged and mixed with the other files; in the second affidavit it was stated that the file was in movement; these conflicting stands amount to a fraud being played upon this court.

5. In this context in the judgment of *N. Balakrishnan Vs. M. Krishnamurthy (supra)* the Apex court had noted:

"It is axiomatic that condonation of delay is a matter of discretion of the Court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to want of acceptable explanation whereas in certain other cases delay of very long range can be condoned as the explanation thereof is satisfactory. One the Court accepts the explanation as sufficient it is the result of positive exercise of discretion and normally the superior Court should not disturb such finding, much less in revisional jurisdiction, unless the exercise of discretion was on wholly untenable grounds of arbitrary or perverse. But it is a different matter when the first Court refuses to condone the delay. In such cases, the superior court would be free to consider the cause shown for the delay afresh and it is open to such superior Court to come to its own finding even untrammelled by the conclusion of the lower Court.

10. The reason for such a different stance is thus: The primary function of a court is to adjudicate the dispute between the parties and to advance substantial justice. Time limit fixed for approaching the Court in different situations is not because on the expiry of such time a bad cause would transform into a good cause.

11. Rules of limitation are not meant to destroy the right of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. Law of limitation fixes a life span for such legal remedy for the redress of the legal injury so suffered. Time is precious and the wasted time would never revisit. During efflux of time newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a life span must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. Law of limitation is thus founded on public policy. It is enshrined in the maxim interest reipublicae up sit finis litium (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the right of the parties."

6. This court is of the view that a valuable right has been lost to the appellant to be heard on the merits of the controversy. Delay is of 523 days but while dealing with an application under Section 5

of the Limitation Act it is not the expanse of the delay but the reasons for the delay which are to be considered. Facts of each case are different and discretion has to be exercised by the court on the factual matrix relevant to the context of that case. In this case it is not in dispute that as per the defendant large chunks of government land (as afore noted) are in the illegal and unauthorized possession of the plaintiff; trial judge had decreed the claim of the plaintiff holding that 'gair mumkin pahar' is wasteland under Section 7 of the DLRA which cannot vest with Gaon Sabha.

7. This court is not adverting to the merits of the case. However, in view of the averments made in the affidavit of the Department i.e. the file not being traceable in the Department as it had been tagged and bundled with other files, 'sufficient cause' has been explained by the Department for not filing the appeal in time. The larger interest of the public; i.e. land contended to be government land has also been kept in mind. It is also not a case where the department had adopted dilatory tactics and intentionally and deliberately not perused its remedy.

8. This is thus a fit case for remand.

9. Appeal is allowed. Matter is remanded back to the District & Sessions Judge who shall assign the case to the concerned appellate court to decide it on merits. Parties are directed to appear before the learned District & Sessions, Judge on 5th July, 2011 at 10:30 a.m. for the said purpose. Appeal is disposed of in the above terms.

(INDERMEET KAUR)
JUDGE

MAY 31, 2011
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