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

+ LPA 154/2011

Date of order: 9th August, 2011

GOVT OF NCT OF DELHI Appellant
Through Mr. Sanjay Poddar, Sr.
Advocate with Mr. Sanjay Kumar Pathak,
Advocate.

versus

DHANPATI Respondent
Through Ms. Geeta Mehrotra & Mr.
Deepak Vashistha, Advocates.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SANJIV KHANNA

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

DIPAK MISRA, CJ:

The present intra-Court appeal is directed against the order dated 5th July, 2010 passed by the learned single Judge in W.P. (C) No. 12961/2005.

At the very outset, we may note with profit that on earlier occasion the writ petition was allowed by the learned single Judge, which was assailed in LPA No. 1215/2006. A Division Bench of this Court in paragraphs 6 to 8 had opined thus:

“6. The writ petition was filed in 2005.
When Writ Petition was taken up for

consideration, learned counsel for the appellant was not present. Arguments were addressed by the learned counsel for the respondent and thereafter, when order was being dictated in the Court, learned counsel for the appellant appeared in the Court and his presence was recorded.

7. On going through the records, we also find that a plea was taken that the writ petition was liable to be dismissed on the ground of delay and laches as order of rejection of the prayer of the respondent was passed in 1991, whereas the writ petition was filed after expiry of about 14 years. We find that the said question is not dealt with and answered by the learned single Judge. The aforesaid issue was a very relevant issue and was required to be considered by the learned single Judge. The other question whether direction for allotment of alternative land could be issued when a person is not recorded as Bhumidar of the acquired land till the date of the award, also requires re-consideration by the learned single Judge.

8. In these circumstances, we set aside the impugned judgment and order and remit back the matter to the learned single Judge for fresh consideration in accordance with law all the issues.”

3. After the remit, before the learned single Judge, the present appellant raised two contentions that the writ petition is hit by the doctrine of delay and laches and further the respondent-writ petitioner is not entitled to an alternative site. As far as the delay is concerned, it is apt to note a direction was

issued in the earlier order passed by the Division Bench in the intra-Court appeal that it is obligatory on the part of the respondent to show that the order of rejection was communicated to the petitioner. In compliance with the aforesaid order, the respondent filed the photocopies of the dispatch register qua dispatch letter dated 22nd January, 1991. The learned single Judge also took note of the fact that there is an admission by the writ petitioner with regard to the receipt of the rejection order of the year 1991. In paragraphs 15 and 16 of the order impugned, the learned single Judge has opined as follows:

“15. That brings me to the aspect of limitation. The petitioner has in the writ petition itself admitted the receipt of the communication dated 22nd January, 1991 (supra) and has further stated that even thereafter she kept on requesting the respondent to allot the alternative plot. The facts are thus not in dispute. The petitioner did file this petition fourteen years after the rejection of her request for alternative plot and the first representation thereafter was also after six years. The second representation was again after a gap of four years. The petitioner waited for another one year before making another representation and for approximately another two years before making the last representation preceding the filing of this writ petition. The question which arises is whether owing to such delays, the petitioner should be deprived of her right to be considered for

allotment of an alternative plot under the welfare Policy aforesaid.

16. The aspect of delay has to be seen in the factual context in each case. The petitioner in the present case made application for alternative plot in the year 1987. The respondent itself took about four years to reject the said request. The delay by the petitioner in approaching this Court has not affected the respondent in any manner whatsoever. The delay if at all is to the detriment of the petitioner. If the petitioner had approached this Court immediately, she would have got the plot at the rates then applicable. However, the petitioner is now found entitled to a plot would be required to pay the rates of today, the delay being attributable to her only. It is not as if the respondent would suffer in any manner or has changed its position and the petitioner is barred on grounds of estoppel.”

4. The first issue that emerges for consideration is whether the writ petition preferred after expiry of 14 years should have been entertained and the land which has been acquired in lieu of that should have been granted. Needless to say, the scheme stipulates for grant of land to a Bhumidar and the said aspect is also under assail in the appeal. In our considered opinion, if the writ petition is defeated by the principle of delay and laches, there is no justification to enter into the merits of the case.

5. On a perusal of the order passed by the learned single Judge, specially paragraph 17, it is perceivable that he has

expressed the view that the writ petitioner is a widow and illiterate and hence, a liberal approach is to be adopted. The land under the scheme is not to be granted solely on the basis of sympathy. It is worth noting that compensation was paid sometime in the year 1987. A representation was made for grant of land under the scheme in the said year. The same stood rejected in 1991 which has been admitted by the writ petitioner. After the remit in the intra-Court appeal, the documents have been brought on record in support of the same. Hence, there remains no doubt that the writ petition was preferred after expiry of 14 years.

5. This Court in LPA No. 674/2010 after placing reliance on ***Mange Ram versus Delhi Development Authority & Others***, 2010 DRJ (120) 45, had dealt with the matter relating to delay and laches and opined that in certain cases the delay may not be a factor but in certain cases it would be an impediment for entertaining the writ petition. The said view has been laid down in ***Municipal Corporation of Delhi versus Mohd Ismail***, (LPA No. 548/2010 decided on 25th July, 2011) when the Division Bench taking note of ***Dehri Rohtas Light Rly. Co. Ltd. versus District Board, Bhojpur***, (1992) 2 SCC 598, ***State of Maharashtra versus Digambar***, (1995) 4 SCC 683 **and**

Karnataka Power Corporation Ltd. versus K. Thangappan,
(2006) 4 SCC 322 has opined that when a litigant is not vigilant and approaches the Court quite belatedly, the benefit cannot be conferred. It is enshrined therein that laches in certain circumstances encourages dubious claims and prevents fair and just adjudication in courts. Similar view has been expressed in LPA No. 247/2011 by placing reliance on ***Basanti Prasad versus Chairman, Bihar School Examination and Others,*** (2009) 6 SCC 791 wherein it has been held thus:

“ In our considered opinion, the claim of the appellant before the Apex Court was absolutely different and their Lordships have observed that circumstances were peculiar inasmuch as unless the order of conviction passed by the Magistrate is set aside by the superior forum, the appellant's husband or the appellant could not have questioned order that affected the service condition. That apart, the decision is distinguishable as the wife of the deceased-employee, on being reinstated, could get certain service benefits, which is statutory in nature. Appreciated from that angle, in our view, the said decision is distinguishable. In the present case, the appellant did not approach the court at the appropriate time when the representation was rejected in 1987 for the first time and in 1994 for the second time and also maintained silence from 1997 to 2005 for a period of eight years and tried thereafter to get an allotment. When nothing affirmative ensued, he approached this Court for grant of allotment. Thus, the real delay goes

upto 19 years.

That apart, in the case of Basanti Prasad (supra), it was a statutory right in respect of the service benefit whereas here the right is not absolute. The same has been held by the Full Bench of this Court in Ramanand v. Union of India and others, AIR 1994 Delhi 29.”

6. On a perusal of the present factual matrix, it is clear as day that the appellant had received the order of rejection in 1991. She chose to sleep over it. A non-vigilant litigant does not have an embedded or inflexible right to rise like a phoenix and knock at the doors of the court seeking justice. Learned counsel for the respondent would submit with immense anxiety and vehemence that the respondent is an old illiterate widow and, therefore, the delay has occurred. Learned counsel also would submit that there has been constant representations. In our considered opinion, the scheme with regard to alternative land though is a beneficial one, cannot be pressed into service after such a long lapse of time. With the efflux of time, the State does not retain such lands for grant of alternative plots. That apart, prices do keep rising and one cannot be oblivious of the same. Regard being had to the cumulative effect of the circumstances, we are of the considered opinion that the writ petition deserved to be thrown overboard on the ground of delay

and laches and there was no warrant to advert to the merits of the case.

7. Resultantly, the appeal is allowed and the order passed by the learned single Judge is set aside and as a sequitur the writ petition stands dismissed. The parties shall bear their respective costs.

CHIEF JUSTICE

SANJIV KHANNA, J.

**AUGUST 09, 2011
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