

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

+ **LPA No.101/2010 and LPA No.461/2010 & CM Appl.
Nos.11988-11989/2010**

% Date of Hearing: 27.02.2012
Date of Decision: 07.03.2012

1) **LPA No.101/2010**

GOVERNMENT OF NCT OF DELHI Appellant

Through: Mr.Sanjay Kumar Pathak
with Mrs.K.K.K. Pathak

Versus

SMT. VEERWATI Respondent

Through: Mr. B.S. Mann and
Ms.Smita Mann

2)**LPA No.461/2010 and CM Appl. Nos.11988-11989/2010**

GOVERNMENT OF NCT OF DELHI Appellant

Through: Mr.Sanjay Kumar Pathak
with Mrs.K.K.K. Pathak

Versus

NARAIN SINGH Respondent

Through: Mr. B.S. Mann and
Ms.Smita Mann

**CORAM :-
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW**

A.K. SIKRI, ACTING CHIEF JUSTICE

1. In both these appeals the question of law is common and the judgments of the learned Single Judge, which are assailed, have been rendered in almost similar factual background. We may record the facts of LPA No.101/2010 in some detail and thereafter point out the similarity in the two appeals.

2. **LPA No.101/2010**

A Notification under Section 4 of the Land Acquisition Act (hereinafter referred to as 'the Act') was issued on 13th November, 1959 for acquisition of large tracts of land, which included the land of the predecessor of the respondent herein, namely, Sh. Saiju, situated in village Shadipur, New Delhi. Award in respect of this land was passed sometime in the year 1964 and possession of the land was taken from the respondent.

3. In the year 1961 the Government formulated the scheme for allotment of alternate plots to those land owners whose land is acquired for planned development of Delhi and the land so acquired is placed at the disposal of the DDA. The allotment of alternate plot under this policy was subject to his satisfying, beside others, following conditions:-

- a) The application must have been filed within a period of one year from the date of receipt of the compensation.
- b) He should be recorded owner of the acquired land prior to the date of issuance of the Notification under Section 4 of the Act.

- c) He must have received the compensation for the said land as a rightful owner and the possession of the acquired land has been taken by the Government.
- d) Neither he nor his spouse nor any of his dependent children own any residential property in Delhi.

4. The Delhi Administration issued public notice(s) on 21st, 22nd and 23rd November, 1963 and invited applications by 10th December, 1963 for allotment of alternative plots, from those persons whose land was acquired up to 15th December, 1963 for the purpose of Planned Development of Delhi. On such applications being received the Delhi Administration made recommendations for allotment of alternative land in favour of the persons whose land was acquired for Planned Development of Delhi and were found eligible for such allotment as per the scheme.

5. As mentioned above, the lands of Sh. Saiju were acquired vide Award No.1714 dated 10th September, 1964. He died on 15th March, 1976. Thereafter, on 21st April, 1989 the respondent applied for allotment of alternate plot in lieu of the acquisition of the aforesaid land belonging to Sh. Saiju claiming herself to be the legal representative of Sh. Saiju. On this application, on 18th May, 1989 the appellant called for the report of the Land Acquisition Collector (LAC) in respect of the aforesaid application of the respondent. On 6th July, 1989 the report was received vide letter dated 30th June, 1989 of the LAC wherein it was informed that in terms of the Award No.1714 of Shadipur, the aforesaid land bearing Nos.61 (1-11) and 62 (1-00) had been acquired from Sh.

Saiju s/o Sh. Hari Singh and the amount of compensation for the same was paid to him on 10th September, 1964. As regards Khasra No.73 (2-1), it was informed that the amount of compensation had been sent to the Court of the learned Additional District Judge, Delhi on 31st March, 1965 for adjudication. It was further informed that as per the revenue records, the respondent – Smt. Veerwati w/o Sh. Rajbir was not the recorded owner of any of the khasra numbers mentioned above.

6. It is, thus, clear that as on the date of issuance of the notification under Section 4 of the Act, the respondent was not the recorded owner of the aforesaid acquired land. Further, the respondent had not received the compensation in respect of the aforesaid acquired land. The compensation had been paid to the recorded owner – Sh. Saiju s/o Sh. Hari Singh as stated above. Vide letters dated 6th July, 1993, 22nd July 1993 and 13th September, 1993 the respondent was asked to produce requisite documents/information, namely, the revenue record prior to 13th November, 1959, i.e., the date of notification under Section 4 of the Act, original copy of the death certificate, list of legal heirs, relinquishment deed duly registered by the Sub-Registrar, registered indemnity bond, application in joint name by all legal heirs etc., in support of her application for allotment of alternative land. On 28th September, 1993 the respondent filed the death certificate of her father Sh. Sahaj Ram along with an affidavit regarding list of legal heirs of her father. As regards proof of ownership, she requested for time for filing copy of the revenue record prior to 13th November, 1959, i.e., the date of notification under Section 4 of the Act and accordingly, she was granted time up to 8th October, 1993. Admittedly, the respondent neither did file

any revenue record on 8th October, 1993 nor did she appear before the appellant. On 21st October, 1993 the respondent submitted revenue records (Jamabandi of the year 1981-82), affidavit and death certificate. As per the appellant, the respondent, however, failed to submit the requisite documents/information, namely, legal heir certificate, relinquishment deed, indemnity bonds, joint application etc. demanded vide letters dated 6th July, 1993, 22nd July, 1993 and 13th September, 1993 and therefore, her case was closed for want of the requisite documents/information on 7th December, 1993. The respondent was informed about the closure of her case vide letter dated 9th December, 1993. Though the respondent has disputed receipt of this letter, she, however, stated in her writ petition that when she visited the office of the DDA on 10th December, 1993 to find out the progress of her case she was informed about the closure of the case file due to non-submission of relinquishment deed and indemnity bond of her mother. The respondent submitted these documents vide letter dated 27th December, 1993 and requested to process her case and to allot her alternate plot. This was followed by another letter of 21st March, 1994 of the respondent wherein she requested for re-opening of the case. Though no order was passed on this request of the respondent, it seems that the case was under process. In the meantime, on 11th October, 1998 a policy decision was taken by the Lt. Governor of Delhi not to re-open the closed cases. The exact language of this decision was as follows:-

“The scheme for providing developed residential plots to farmers whose lands are acquired for planned development of Delhi is a “rehabilitation” measure. The necessity for rehabilitation is not

open ended in time. There is sound logic, therefore, in the stipulation laid down by the previous LG's that applications for allotment of plots must be within a certain period from the completion of the acquisition process. If an application is not made by a farmer within such period, it has to be assumed that he has no need for a residential plot. The entitlement of a plot is not a right accruing at any time of his choice. The facility of plot, as I have stated above, is only in response to the requirement of the farmers to settle down in an urban setting after his agricultural asset of land has been acquired. The facility cannot be stretched to cater to his wishes of acquiring urban plots of land at later times of his choice.

I do not find it possible to agree for the proposal contained in the note of Secretary Land on pages 213-214."

7. Thereafter, on 6th September, 1999 the Assistant Housing Commissioner (ALT) once again put up the matter for consideration as to whether closed cases are to be considered for re-opening where applicants have already submitted the requisite documents. It seems that the appellant wanted to take a decision as to whether such cases would also be covered by policy decision dated 11th October, 1998 or not and no final decision was taken. After waiting, the respondent again made request for re-opening of the case in May 2000 followed by legal notice dated 16th September, 2004. Further to ascertain the status of her request in October 2006 she obtained copy of her file under the Right to Information Act, which was supplied to her on 16th November, 2006. Thereafter, she made another request to the appellant to re-open and consider her case. This request was considered and rejected by the

appellant on 15th January, 2007. On 22nd January, 2007 the appellant informed the respondent about the aforesaid decision stating that her case had already been closed in the year 1993 and further that her representation was examined by the Department and since there was no change in the status of the case, the same was rejected. The respondent made another request on 6th February, 2007, which was also rejected on 26th February, 2007. At this juncture, she approached this Court by means of writ petition under Article 226 of the Constitution seeking quashing of letters dated 22nd January, 2007 and 9th December, 1993. She also sought a direction that her case be recommended for allotment of alternate plot measuring 250 sq. yds. The appellant contested this writ petition. Its first defence was that the writ petition was barred by delay and laches. On merits, stand was taken that in view of policy decision dated 11th October, 1998, a closed case could not be re-opened.

8. The learned Single Judge after hearing both the parties passed impugned orders dated 26th October, 2009 whereby the appellant is directed to process the re-opening application of the respondent without being influenced by the decision of the Lt. Governor dated 11th October, 1998 on the ground that the case of the respondent is governed by the policy prevailing on 27th December, 1993 when the application for re-opening was filed along with the relevant documents and therefore, subsequent policy of October, 1998 would not apply to her case. It is this order of the learned Single Judge which is under challenge in this intra-court appeal.

9. **LPA No.461/2010**

In this case also the lands of the predecessor of the respondent situated in village Masoodpur, New Delhi, were acquired vide Notifications dated 24th October, 1961 and 23rd January, 1965 in respect of which Award No.90/1980-81 passed on 22nd December, 1980. Compensation was paid to the respondent on 6th March, 1981. The respondent applied for allotment of alternate plot. Application of the respondent was processed. He was asked to produce certain documents, namely, duly executed/registered relinquishment deed, original copy of legal heir certificate, application in joint name by all the legal heirs and the copy of the judgment of Additional District Judge along with certificate from the bank in respect of the compensation received. According to the appellant, since no reply was received, case was closed on 1st November, 1991. The respondent sought re-opening of his case vide his application dated 25th August, 1994. This application also has been rejected on similar ground, namely, after the policy decision dated 11th October, 1998 the closed cases were not to be opened. The request for re-opening was rejected on 5th June, 2006 and challenging this order the respondent filed Writ Petition (C) No.18068/2006. In this Writ Petition, orders dated 17th January, 2007 were passed directing the appellant to take a decision within a period of one month (according to the appellant, the Court could not be informed at that time that his case has already been rejected in June, 2006). Be as it may, pursuant to the aforesaid directions, case of the respondent was reconsidered and rejected on 20th March, 1997, which decision was communicated to the respondent on 15th April, 2007. The respondent approached the Court and this judgment dated 6th November, 2009 has been rendered giving

identical directions as given in the other case. It would, thus, show that both the decisions have been given in almost similar circumstances.

10. We have heard the counsel for the parties.

11. The first issue pertains to the alleged delay and laches in filing the writ petitions by the respondents. The facts narrated above, however, would disclose that there are no unexplained delays and laches and the learned Single Judge rightly entertained the writ petitions. In so far as the respondent in LPA No.101/2010 is concerned, it is clear that she was diligently pursuing the matter. The case was closed on 7th December, 1993. She submitted that the requisite documents and request for allotment of plot vide her letter dated 27th December, 1993 and thereafter moved formal application dated 21st March, 1994 for re-opening of the case. It is the appellant which sat over this request and did not decide the same. Policy decision dated 11th October, 1998 was taken not to re-open the closed cases and it is the appellant's own case that matter was put up for consideration on 6th September, 1999 as to whether the closed cases are to be considered for re-opening where applicants had submitted the requisite documents. Decision on this was kept pending and was not taken. The respondent has along with her writ petition filed the noting of the file which were obtained under the RTI. Noting dated 13th May, 1999 reads as under:-

“May kindly see, the file has not been processed after 2.12.94 by the ex-dealing assistant. The documents have been completed by the applicant before re-opening the closed case and the closed cases are pending for the policy decision. If

approved, the file may be kept pending till the decision.

Submitted please.”

12. Thus, the Department itself decided to keep the case pending till the decision was taken on the aforesaid issue. File further discloses that such a decision was not taken. The respondent had made categorical averment that she kept on visiting the office of the DDA to find out the decision but was informed that it was awaited. What is more important is that when the respondent made request on 4th December, 2006 to re-open and consider the case, this request for reconsideration was acceded to. Her case was considered and rejected on 15th January, 2007 and 26th February, 2007. She filed the writ petition immediately thereafter in May, 2007. Therefore, such a writ petition would not suffer from any delays and laches which can be said to be unexplained.

13. In so far as the respondent in LPA No.461/2010 is concerned, position in his favour is still better. He had made a request for re-opening of the case on 25th August, 1994, which again was kept pending because of the same reason, namely, decision was to be taken whether to re-open the cases where the documents have been submitted in view of policy decision dated 11th October, 1998. Not only this, as per the appellants themselves, case of the respondent was considered and rejected on 5th June, 2006. Immediately thereafter, the respondent had filed the writ petition. Therefore, objection of the appellants that the belated writ petitions filed does not carry any merit.

14. On merits, the moot question is as to whether the cases of the respondents would be governed by policy decision dated 11th October, 1998. The learned Single Judge held that these cases would not be covered by the policy decision dated 11th October, 1998. In the case of the respondent in LPA No.101/2010, the reasons assigned are as under:-

“7. It is a case of the petitioner that the respondent No.1 had accepted the petitioner’s application for re-opening and a check memo in the prescribed format was prepared on 16th November, 1994, and the concerned officer had certified that she was entitled to a plot measuring 250 sq. yards, as all formalities were completed and satisfied. Surprisingly, on 2nd December, 1994, the following two queries/questions were raised by the respondents, (i) Whether the petitioner was the recorded owner of the land and (ii) whether the petitioner being the daughter of the recorded owner of the land was entitled to allotment of alternative land. The questions and queries raised by the respondent No.1 are strange as the petitioner had never claimed that she was the recorded owner of the land at the time of the acquisition. Her father was the recorded owner of the land at the time of the acquisition. In any case, pendency of the queries did not mean that the case of the petitioner should not have been processed after answering the queries. It is apparent that the file was kept pending on one pretext or the other.

8. The petitioner in 2004 had issued legal notice to which there was no response. The petitioner thereafter procured necessary evidence and documents and has filed the present writ petition. Thus, petitioner has been diligently pursuing the matter and her right, and the respondent No.1 are guilty of not processing the re-opening application of the petitioner, which was filed along with the relevant documents.”

15. What is clear from the above is that the applications for re-opening the cases were entertained prior to 1998; on the application of the respondent for re-opening a check memo in the prescribed format was prepared and it was found that not only the respondent is entitled to a plot measuring 250 sq. yards, even all formalities were completed and satisfied. In spite thereof, on 2nd December, 1994 certain queries were raised which were totally irrelevant as the respondent had never claimed that she was a recorded owner. Her case was that her father was the recorded owner. In any case, it was the appellant who was at fault in keeping the file pending all these years and therefore, could not take the pretext of policy decision dated 11th October, 1998. Almost identical position is found in respect of the respondent in the other appeal.

16. Learned counsel for the appellant had relied upon the Division Bench judgment of this Court in ***Raj Karan & Others v. Land & Building Department and Another***, 148 (2008) DLT 460 (DB) wherein it was held that as per the policy of the respondents a closed case cannot be re-opened. However, on going through this judgment one would notice that the applicant in that case had not been diligent in pursuing their case for alternate plot and even the documents called by the Department were not supplied within the reasonable time. The Court, in that case, further found that when the case was closed for non-furnishing of the documents, in the year 1993, on an application filed by the appellant Raj Karan, thereafter another application was filed in September, 2002 by his brother Om Prakash suppressing the fact of

earlier application and its closure in the year 1993. Thus, even second application, which was rejected, was not for re-opening earlier case closed in 1993, but fresh application for allotment, which was rightly considered to be barred in view of the policy decision.

17. We, thus, are of the opinion that impugned orders passed by the learned Single Judge do not suffer from any infirmity. Finding no merit in these appeals, the same are dismissed with costs quantified at Rs.10,000/- each.

ACTING CHIEF JUSTICE

March 07, 2012
hp.

**(RAJIV SAHAI ENDLAW)
JUDGE**