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

+ **W.P.(C) 8993/2011**

RADHEY SHYAM AGGARWAL Petitioner
Through **Dr. Shyamlha Pappu, Senior**
Advocate with Mr. R. Krishnamorthi,
Advocate

versus

MUNICIPAL CORPORATION OF DELHI Respondent
Through **Mr. Ajay Arora, Standing Counsel**
with Mr. Kapil Dutta, Advocate

% Reserved on : 19th September, 2014
Date of Decision : 03rd November, 2014

CORAM:
HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J:

1. Present writ petition has been filed seeking a direction to the respondent to convert property No.A-22, Vishal Enclave, Rajouri Garden, New Delhi (hereinafter referred to as 'the said property') into freehold without charging any restoration charges. Petitioner also challenges cancellation of Lease Deed dated 11th September, 1979 on account of misuse and seeks its restoration.
2. Dr. Shyamlha Pappu, learned senior counsel for the petitioner submitted that cancellation of the lease was bad in law as it had been done

without issuing any show cause notice to the petitioner. She contended that the petitioner came to know of cancellation of the lease deed only on 09th June, 2011 in reply to a query under the Right to Information Act given by respondent-Corporation which stated that the lease of the petitioner's property had been cancelled on 11th September, 1979.

3. Dr. Pappu further submitted that the action of the respondent in not converting the property into freehold and demanding restoration charges was illegal since the cancellation of lease on account of misuse was bad in law.

4. According to her, the respondent without re-entering the said property could not have levied any restoration charges. In this connection, she relied upon the Circular dated 02nd August, 1996 issued by Delhi Development Authority. The relevant portion of the said Circular reads as under:-

"6. In the cases where the property has been re-entered, the re-entry orders will be got revoked from the Competent Authority on payment of restoration charges of Rs.1007/- per day or Rs.3000/- per annum from the date of determination of the lease deed to the date of restoration. No damages in such cases would be recoverable."

5. Dr. Pappu contended that the Estate Officer vide order dated 17th January, 1985 had regularised the misuse and consequently, there was no question of demanding restoration charges. The relevant portion of the order dated 17th January, 1985 passed by the Estate Officer is reproduced hereinbelow:-

" Above facts, statements & documents prove and the respondent has also agreed that he has misused the premises by running the Nursing Home and contravened the agreement. But as the misuse charges for the Nursing Home are paid upto March 81 to the petitioner, this misuse should be taken as regularized. Therefore, I am sending back this matter to the petitioner, so that

he may get deposited the misuse charges for which the respondent has agreed."

6. Dr. Pappu also contended that the Public Grievance Commission by its order dated 10th November, 2006 had held that the respondent-Corporation had no justification to claim restoration charges in the absence of documents leading to cancellation of the lease. The relevant portion of the order passed by the Public Grievance Commission dated 10th November, 2006 is reproduced hereinbelow:-

".....The Land & Estate has once again requested the complainant to deposit an amount of Rs.1,15,699.50/- and stated that the original file of the said property has not been traced despite the best efforts made by the Deptt.

It is apparent that the Deptt. has no justification to claim restoration charges in the absence of documents leading to cancellation of lease.

It is recommended that the case with regard to restoration charges be reviewed and justice is granted to the complainant.

The case is closed."

7. Dr. Pappu lastly contended that the petitioner is an honest citizen who is being unnecessarily harassed by the respondent-Corporation.

8. On the other hand, Mr. Ajay Arora, learned counsel for the respondent-MCD submitted that present petition was a gross misuse of law as the same was barred on the ground of delay and laches inasmuch as the lease had been cancelled way-back in 1979. He pointed out that the perpetual lease deed dated 21st September, 1971 in respect of the said property had been cancelled in pursuance to a Notice dated 01st September, 1973 under Sections 343 and 347 of the Delhi Municipal Corporation Act, 1957 for putting the property to commercial use.

9. Mr. Arora further stated that in the proceedings initiated under Sections 4 and 5 of the Public Premises Act, 1971, the petitioner had been directed to deposit the misuse charges upto March, 1985. He submitted that firstly, not having disputed the factum of the service of misuse notice in 1979 itself and subsequently having contested the proceedings before the Estate Officer, the petitioner today can neither plead ignorance about the factum of misuse proceedings having been initiated against him, nor can he plead ignorance about the fact that the lease stood cancelled.

10. Mr. Arora submitted that the issue whether or not the premises was re-entered followed by cancellation of lease would not be of much relevance because despite having notice of the respondent's stand, it was never challenged by the petitioner before any forum, nor was the ground of physical re-entry taken by the petitioner anywhere since 1973, including in the present writ petition!

11. Mr. Arora pointed out that petitioner had admitted his liability to pay vide his own letter dated 05th February, 2010 and therefore, was today estopped from raising the plea that he was not liable to pay anything on account of cancellation of lease.

12. As far as the proceedings before the Public Grievance Commission were concerned, Mr. Arora submitted that the Commission was purely an administrative advisory committee constituted by the Government of Delhi to hear grievances of the people who allege corruption and harassment at the hands of any public officer. In any event, he stated, the order of the Public Grievance Commission stood complied with by the answering respondent and was duly communicated to the petitioner vide letter dated 19th April, 2007.

13. In rejoinder, Dr. Pappu, learned senior counsel for the petitioner denied that the present writ petition was barred by delay and laches. She stated that since in the present case the petitioner had been making repeated representations which had in fact been replied to by the respondent, it cannot be said that the present petition was barred by laches. In support of her submission, she relied upon a judgment of the Apex Court in ***Haryana State Electricity Board vs. State of Punjab and Others, (1974) 3 SCC 91*** wherein it has been held as under:-

"5. On the question of laches, various representations and petitions which B.K. Puri had been making consistently were referred to by the High Court and it was considered that it was not a case where relief could be declined on the ground of laches or delay....."

6. It appears to us that the judgment of the High Court in this case does not call for any interference. The main stress that was laid by the learned counsel for the State was on the laches and delay on the part of B.K. Puri in filing the petition in the High Court. From the resume of the various dates which has already been given it is apparent that he kept on making representations and moving the appropriate authorities at all stages....."

14. Having heard the learned counsel for the parties, this Court is of the view that the petitioner's contention that he came to know of the cancellation of lease only on 09th June, 2011 in a reply received under Right to Information Act, is not correct.

15. A perusal of the Estate Officer's order dated 17th January, 1985 reveals that the petitioner in the said proceedings did not dispute the factum of service of misuse notice in 1979. Further, the Estate Officer's order proves that the petitioner became aware of cancellation of lease at least in 1985, if not earlier.

16. Since the petitioner was aware of the cancellation of lease at least in 1985, this Court is of the view that the present writ petition filed in 2011 is barred by delay and laches. The Supreme Court with regard to delay and laches in ***State of Madhya Pradesh and another vs. Bhailal Bhai & Anr., AIR 1964 SC 1006*** has held, “.....*Learned Counsel is right in his submission that the provisions of the Limitation Act do not as such apply to the granting of relief under Art.226. It appears to us however that the maximum period fixed by the legislature as the time within which the relief by a suit in a civil court must be brought may ordinarily be taken to be a reasonable standard by which delay in seeking remedy under Art. 226 can be measured. This Court may consider the delay unreasonable even if it is less than the period of limitation prescribed for a civil action for the remedy but where the delay is more than this period, it will almost always be proper for the Court to hold that it is unreasonable.....*”

17. Moreover, the Supreme Court in ***Banda Development Authority, Banda Vs. Moti Lal Agarwal & Ors., (2011) 5 SCC 394*** has held “*It is true that no limitation has been prescribed for filing a petition under Article 226 of the Constitution but one of the several rules of self-imposed restraint evolved by the superior courts is that the High Court will not entertain petitions filed after long lapse of time because that may adversely affect the settled/crystallised rights of the parties. If the writ petition is filed beyond the period of limitation prescribed for filing a civil suit for similar cause, the High Court will treat the delay unreasonable and decline to entertain the grievance of the petitioner on merits.*”

18. This Court is further of the view that filing of repeated representations does not extend the period to file the writ petition. The Supreme Court in

Naresh Kumar vs. Department of Atomic Energy and Others, (2010) 7

SCC 525 has held as under:-

“15. Merely because the case of the appellant was forwarded by the Department vide its Letter dated 27-1-2007 for favourable consideration, would not vest any right in the petitioner and can hardly be of any material consequence. If an employee keeps making representation after representation which are consistently rejected then the appellant cannot claim any relief on that ground. We are unable to find any merit in the contention raised before us and we are also of the view that the High Court was not in error while dismissing the writ petition even on the ground of unexplained delay and laches. The representation of the appellant was rejected as back in the year 1999 and for the reasons best known to the appellant he did not challenge the same before the court of competent jurisdiction.”

19. Furthermore, the Supreme Court in ***State of Uttaranchal and Anr. vs. Sri Shiv Charan Singh Bhandari and Ors., 2013 (11) SCALE 56*** has held as under:-

“15. From the aforesaid authorities it is clear as crystal that even if the court or tribunal directs for consideration of representations relating to a stale claim or dead grievance it does not give rise to a fresh cause of action. The dead cause of action cannot rise like a phoenix. Similarly, a mere submission of representation to the competent authority does not arrest time. In *Karnataka Power Corporation Ltd. through its Chairman and Managing Director v. K. Thangappan and Anr. (2006) 4 SCC 322*, the Court took note of the factual position and laid down that when nearly for two decades the Respondent-workmen therein had remained silent mere making of representations could not justify a belated approach.

16. In *State of Orissa v. Pyarimohan Samantaray (1977) 3 SCC 396* it has been opined that making of repeated representations is not a satisfactory explanation of delay. The said principle

was reiterated in State of Orissa v. Arun Kumar Patnaik (1976) 3 SCC 579.

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18. In State of T.N. v. Seshachalam (2007) 10 SCC 137, this Court, testing the equality clause on the bedrock of delay and laches pertaining to grant of service benefit, has ruled thus:

...filing of representations alone would not save the period of limitation. Delay or laches is a relevant factor for a court of law to determine the question as to whether the claim made by an applicant deserves consideration. Delay and/or laches on the part of a government servant may deprive him of the benefit which had been given to others. Article 14 of the Constitution of India would not, in a situation of that nature, be attracted as it is well known that law leans in favour of those who are alert and vigilant.

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22. We are absolutely conscious that in the case at hand the seniority has not been disturbed in the promotional cadre and no promotions may be unsettled. There may not be unsettlement of the settled position but, a pregnant one, the Respondents chose to sleep like Rip Van Winkle and got up from their slumber at their own leisure, for some reason which is fathomable to them only. But such fathoming of reasons by oneself is not countenanced in law. Any one who sleeps over his right is bound to suffer. As we perceive neither the tribunal nor the High Court has appreciated these aspects in proper perspective and proceeded on the base that a junior was promoted and, therefore, the seniors cannot be denied the promotion. Remaining oblivious to the factum of delay and laches and granting relief is contrary to all settled principles and even would not remotely attract the concept of discretion. We may hasten to add that the same may not be applicable in all circumstances where certain categories of fundamental rights are infringed. But, a stale claim of getting promotional

benefits definitely should not have been entertained by the tribunal and accepted by the High Court. True it is, notional promotional benefits have been granted but the same is likely to affect the State exchequer regard being had to the fixation of pay and the pension. These aspects have not been taken into consideration. What is urged before us by the learned Counsel for the Respondents is that they should have been equally treated with Madhav Singh Tadagi. But equality has to be claimed at the right juncture and not after expiry of two decades. Not for nothing, it has been said that everything may stop but not the time, for all are in a way slaves of time. There may not be any provision providing for limitation but a grievance relating to promotion cannot be given a new lease of life at any point of time.

(emphasis supplied)

20. Consequently, this Court is of the view that the present writ petition is barred by laches and repeated representations by the petitioner would not extend the period for filing the writ petition.

21. This Court upon perusal of the paper book also finds that in pursuance to the recommendation of the Public Grievance Commission's order dated 17th November, 2006, respondent-Corporation had intimated to the petitioner vide letter dated 19th April, 2007 that an amount of Rs.1,15,699.50/- was payable as restoration charges prior to consideration of petitioner's request for conversion of property to freehold.

22. In fact, the petitioner vide his letters dated 05th February, 2010 and 18th November, 2010 seeking conversion of his lease hold property to freehold had agreed to pay all the charges. The relevant portion of the letters dated 05th February, 2010 and 18th November, 2010 are reproduced hereinbelow:-

A. Letter dated 05th February, 2010

“ In reference to your letter No. ADC/AO/MISC/L&E.2007/D-5378 dated 19.04.2007 I wish to bring to your kind notice that I am ready to pay all restoration Charges whatsoever it is and other outstanding charges, if any raised by the department.

Further I request you to restore lease of Plot No.A-22, Vishal Enclave, New Delhi-110 027 as early as possible.”

B. Letter dated 18th November, 2010

“I applied on 5th Feb.2010 for the conversion of lease hold to free hold of my plot No.A-22, Vishal Enclave, New Delhi-27. an action is not taken so far by you.

I have stopped all activities of Nursing Home. I have also informed the Directorate of Health, they have given me permission to close the Nursing Home.

On 1.6.2005 an inspection by your staff was carried in my premises. It was declared that only a small clinic is running from this house.

I am ready to pay all your charges.”

(emphasis supplied)

23. Consequently, this Court is of the view that petitioner is also estopped from filing the present writ petition. Accordingly, the present writ petition is dismissed on ground of laches and estoppel, but without any orders as to costs.

MANMOHAN, J

NOVEMBER 03, 2014

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