

\$~36-40.

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

+ **LPA 381/2017**

LAND & BUILDING DEPARTMENT

..... Appellant

versus

SUSHIL KUMAR & ORS

..... Respondents

+ **LPA 382/2017**

LAND & BUILDING DEPARTMENT

..... Appellant

versus

LT BHIM SINGH & ORS

..... Respondent

+ **LPA 383/2017**

LAND & BUILDING DEPARTMENT

..... Appellant

versus

SANJAY KUMAR & ORS

..... Respondents

+ **LPA 384/2017**

LAND & BUILDING DEPARTMENT

..... Appellant

versus

SANDEEP KUMAR & ORS

..... Respondents

+ **LPA 385/2017**

LAND & BUILDING DEPARTMENT

..... Appellant

versus

AJAY SINGH & ORS

..... Respondents

Through: Mr. B. Mahapatra, Advocate for the appellant.
Mr. Prasanta Varma, Senior Central Govt. Counsel and
Ms. Prativarani Varma, Advocate for respondent No.2/
UOI.
Ms. Mrinalini Sen & Ms. Kritika Gupta, Advocates for
respondent No.3/ DDA.

2

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MS. JUSTICE DEEPA SHARMA

ORDER

%

19.05.2017

C.M. Nos. 18905/2017, 18907/2017, 18909/2017, 18947/2017 & 19019/2017

Exemptions allowed, subject to all just exceptions.

The applications stand disposed of.

LPA Nos. 381-385/2017 and C.M. No. 18904/2017, 18906/2017, 18908/2017, 18946/2017 & 19018/2017

The appellant assails the judgment of the learned Single Judge, whereby the learned Single Judge has set aside the rejection of the applications of the respondents made for allotment of alternative plot in lieu of the acquisition of land of the respondents.

The applications of each of the respondents were rejected on the ground that they had not been made within a period of one year of the acquisition of their respective lands. The learned Single Judge has held that the delay was not inordinate, and it was sufficiently explained. Consequently, the writ petitions of the respondents were allowed.

Learned counsel for the appellant fairly states that the issue raised in the present appeals is covered by the decision of a Division Bench of this Court in *Govt. of NCT of Delhi Vs. Renu Aggarwal*, LPA No.156/2016 decided on 19.01.2017. In paragraph 9 & 10 of the said decision, the Division Bench has observed as follows:

"9. The question that arises for our consideration is whether the appellant could have rejected the application of the respondent on the ground that it was filed beyond the period of limitation envisaged in the policy. Relevant portion of the policy dated 30.11.1993 envisaging the period of limitation is reiterated as under:

"...6. As regards future cases i.e. those in which land acquisition proceedings are finalized after the date of this notice, applications for allotment of alternative plot will be considered by the department within a period of one year from the date of finalization of the land acquisition proceedings. This will be a standing arrangement for which no separate public notice, fixing further time limits from time to time as in the past, will be required. The application forms will be supplied free of cost by the Land Acquisition Collector to the persons receiving the compensation at the time of its disbursement.

In addition, copies may be obtained free of charge from the Reception Counter of the Land & Building Department between 10.00 A.M. and 5.00 P.M. on all working days.... "

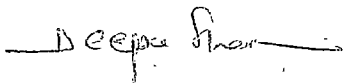
10. Material on record discloses that the appellant has not tendered any document to show that the public notice dated 30.11.1993 was in public domain and easily accessible to the public at large rather it is averred by the appellant that there was no need to have a separate public notice. We are in affirmity with the finding of the learned Single Judge that between the issuance of public notice and notification under Section 4, there was a gap of 10 years and it cannot be expected of an applicant to go through old document of the department for filing the application."

The said decision squarely applies in the facts of the present appeals.

4

Accordingly, the present appeals are dismissed following the decision dated 19.01.2017 in LPA No.156/2016.


VIPIN SANGHI, J


DEEPA SHARMA, J

MAY 19, 2017
B.S. Rohella

\$~

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

% Judgment pronounced on : 17 January, 2017

+ **LPA 156/2016**

GOVERNMENT OF NCT OF DELHI

....Appellant

Through : Mr. Biraja Mahapatra, Advocate.

Versus

RENU AGGARWAL

.....Respondent

Through : Mr. Sanjeev Kumar Tyagi, Advocate.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

SANGITA DHINGRA SEHGAL, J.

C. M. APPL. No. 8835/2016 (Delay in filing)

Heard.

For the reasons stated in the application and in the interest of justice, delay in filing the present appeal is condoned.

Application stands disposed of.

LPA 156/2016

1. The present appeal has been preferred against the impugned order dated 12.08.2015 passed by the learned Single Judge in W.P.(C) No. 5493/2013 whereby the learned Single Judge allowed the writ petition of the respondent. The unsuccessful respondent in the writ petition is the appellant before us.

2. It is the case of the appellant that vide notification dated 21.03.2003 under Section 4 of the Land Acquisition Act, 1894, the land falling in Village Barwala, Delhi was acquired by the Government for public use. Pursuant to the aforesaid notice, Award No. 12/05-06 was announced on 05.08.2005 and the land in question was transferred to the government department on 06.10.2005. Thereafter, on 23.07.2010, compensation was paid to the respondent. Further, on 14.11.2011, respondent applied for allotment of alternative plot but the appellant / GNCTD refused to accept the said application and returned the same with an endorsement "cannot be accepted" as the same was filed beyond the period of one year post from the date of receipt of compensation.

3. Thereafter, the respondent made a representation dated 29.02.2012 to the appellant / GNCTD but there was no action taken and thereby the respondent filed a writ petition being W.P.(C) 2509/2012 in this court which was disposed of on 18.03.2013 directing the appellants to re-consider the application of the respondent. Pursuant to the order dated 18.03.2013 a Recommendation Committee was formed which came to the conclusion that the application of the petitioner was beyond the period of limitation.

4. Aggrieved by the aforesaid order the appellant filed another writ petition bearing W.P.(C) No. 5493/2013 before this Court wherein the Learned Single Judge held that :

"9. For the aforesaid reasons, I am of the view that the conclusion reached in the impugned communication cannot be sustained. Accordingly, the impugned communication is set aside.

9.1. In these circumstances, the recommendation committee will issue the necessary recommendations for allotment of

7

alternate plot to the petitioner unless it is fettered by any other objections with regard to the documents filed by the petitioner. If there are any deficiencies, then the respondent will issue a notice to the petitioner indicating therein the date, venue and time at which she would be required to present herself. The recommendation committee will, accordingly, afford a personal hearing to the petitioner, and thereafter, pass a speaking order in that behalf. A copy of the speaking order will be furnished to the petitioner within two weeks of the same being passed.

9.2. Needless to say, the entire exercise will be completed with due expedition though, not later than two months from today. It is made clear that if the recommendation committee were to agree with the contention of the petitioner then, she would be given the same seniority which she would have had got, had her application been allowed in the first instance.

10. The petition is accordingly, disposed of."

5. Feeling disinclined by the order passed above the appellant herein preferred the present Letters Patent Appeal.

6. Assailing the correctness of the order made in the writ petition and inviting the attention of this court to the policy dated 30.11.1993, Mr. Biraja Mahapatra, learned counsel for the appellant submitted that since the application for allotment of alternative plot was time barred as having been filed beyond the period of one year from the date of receipt of compensation the judgment is liable to be set aside.

7. Contrarily, Mr. Sanjeev Kumar Tyagi, learned counsel for the respondent submitted that the respondent did not come across any advertisement etc. wherein the applications were invited from the owners of land whose land was acquired under the scheme. It was further urged by the

8

counsel that the payment certificate was required to be accompanied with the application form and the same could only be obtained by the respondent on 01.09.2011 and therefore the respondent filed the application well within the stipulated time period.

8. We have heard the learned counsel for the parties, examined the impugned judgment and perused the material record placed before us.

9. The question that arises for our consideration is whether the appellant could have rejected the application of the respondent on the ground that it was filed beyond the period of limitation envisaged in the policy. Relevant portion of the policy dated 30.11.1993 envisaging the period of limitation is reiterated as under:

"...6. As regards future cases i.e. those in which land acquisition proceedings are finalized after the date of this notice, applications for allotment of alternative plot will be considered by the department within a period of one year from the date of finalization of the land acquisition proceedings. This will be a standing arrangement for which no separate public notice fixing further time limits from time to time as in the past, will be required. The application forms will be supplied free of cost by the Land Acquisition Collector to the persons receiving the compensation at the time of its disbursement.

In addition, copies may be obtained free of charge from the Reception Counter of the Land & Building Department between 10.00 A.M. and 5.00 P.M. on all working days...."

10. Material on record discloses that the appellant has not tendered any document to show that the public notice dated 30.11.1993 was in public domain and easily accessible to the public at large rather it is averred by the appellant that there was no need to have a separate public notice. We are in

9

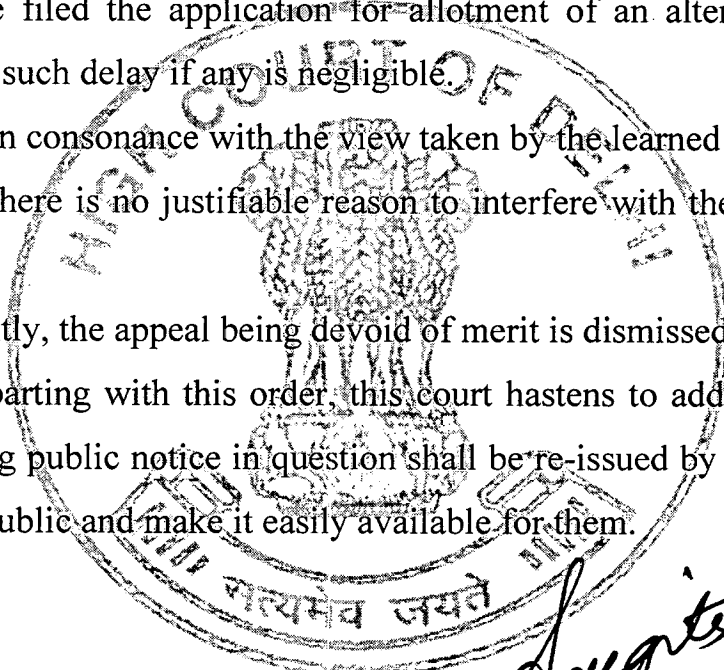
affirmity with the finding of the learned Single Judge that between the issuance of public notice and notification under Section 4, there was a gap of 10 years and it cannot be expected of an applicant to go through old document of the department for filing the application.

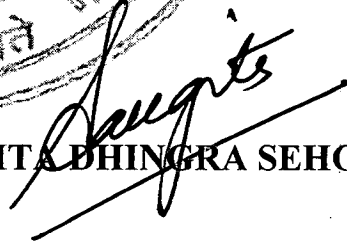
11. Undoubtedly, delay defeats equity if there is negligence attributed by the parties. In the present case, admittedly compensation was received by the appellant on 23.07.2010 and after obtaining payment certificate on 01.09.2011, he filed the application for allotment of an alternate plot on 14.11.2011, as such delay if any is negligible.

12. We are in consonance with the view taken by the learned Single Judge and therefore there is no justifiable reason to interfere with the order under appeal.

13. Resultantly, the appeal being devoid of merit is dismissed.

14. Before parting with this order, this court hastens to add at this stage that the existing public notice in question shall be re-issued by the appellant to inform the public and make it easily available for them.




SANGITA DHINGRA SEHGAL, J.


CHIEF JUSTICE

JANUARY 19th, 2017
gr//