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

% ***Judgment pronounced on: 19th January, 2017***

+ **LPA 37/2015 & C. M. APPL. Nos. 1344-45/2016**

GOVERNMENT OF NCT OF DELHI THR SECRETARY (LAND &
BUILDING DEPARTMENT) Appellant

Through : Mr. Yeeshu Jain, Standing Counsel for
Land & Building Department.

Versus

AFTAB AHMED & ANR. Respondents

Through : Mr. Sandeep Bajaj, Advocate for R-1.
Mr. Dhanesh Relan, Sanding Counsel with
Ms. Isha Garg and Mr. Harshit Manaktala,
Advocates for DDA.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

SANGITA DHINGRA SEHGAL, J.

C. M. APPL. No. 1344/2016 (*Delay in filing*)

Heard.

For the reasons stated in the application and in the interest of justice,
delay of 89 days in the filing the present appeal is condoned.

Application stands disposed of.

LPA 37/2015

1. The present appeal has been preferred against the impugned order dated 14.08.2014 passed by the Learned Single Judge in W.P.(C) No. 417/2013 whereby the learned Single Judge allowed the writ petition of respondent no. 1 i.e. Aftab Ahmed. The unsuccessful respondent in the writ petition is the appellant before us.

2. It is the case of the appellant that vide notification dated 13.11.1959 under Section 4 of the Land Acquisition Act, 1894 for lands falling in Village Karkardooma, Delhi were acquired by the Government for the public use . At the time of the issuance of the notification the recorded owner of the abovementioned land was namely Mr. Mohd. Ismail. On 19.09.1986, Award No. 53-A/81-82 was passed in pursuance of the said notification and on 06.02.1987 compensation was paid to the respondent No.1 i.e. Mr. Aftab Ahmed on the basis of oral gift given by the recorded owner which was confirmed by the learned Sub Judge vide Award dated 08.07.1975. Thereafter, on 17.11.1988 respondent no. 1 applied for allotment of an alternative plot after a period of one year from the date of receipt of compensation i.e 06.02.1987 and his application was rejected by the appellants / Recommendation Committee on the ground that he was not the recorded owner of the abovementioned land at the time of issuance of the notification and also on another ground that the said application was time barred.

3. Adversely affected by the above rejection order, respondent No. 1 filed a writ petition bearing W.P.(C) No. 417/2013 before this Court seeking

a relief of allotment of an alternative plot. The learned Single Judge in the above writ petition held as under :

"10. I note, the compensation was received on 06.02.1987 but the application was filed on 17.11.1988, that is after one year. Since I have condoned the delay, if any, the respondent nos. 1 and 2 are directed to decide the claim of the petitioner.

11. In view of the above facts and the settled law, order dated 04.12.2012 is hereby set aside and the respondent nos. 1 and 2 are directed to re-consider the application of the petitioner and pass a fresh order within two months from today. Decision taken by the respondents shall be communicated to the petitioner within two weeks thereafter. If the petitioner is still aggrieved with the order passed by the respondent nos. 1 and 2, liberty is granted to the petitioner to approach the Court.

12. In view of the above, the present petition is allowed. No order as to costs."

4. Feeling aggrieved, the appellants/GNCTD filed the present Letter Patent Appeal.

5. Learned counsel for the appellants/GNCTD contended that the learned Single Judge has not given any cogent reason, whatsoever, while arriving at a conclusion to condone the delay in moving the application beyond the period of one year. Further, the counsel submitted that the learned Single Judge failed to appreciate that the respondent was not a recorded owner at the time of the issuance of Notification rather it was one Mr. Mohd. Ismail

and therefore the respondent was not entitled to the allotment of alternative plot.

6. Per Contra, learned counsel for the respondent no. 1 refuted the arguments of the appellants and submitted that being the only legal heir after the death of Mr. Mohd. Ismail the respondent applied for allotment of an alternative plot on 17.11.1988. It was vehemently urged that a subsequent public notice was also issued dated 28.03.1989 extending the time for applying for the alternative plot till 30.04.1989. Further it was contended by the counsel that the respondent followed up with the authorities continuously, however he was always informed that his request was pending and after a delay of 24 years the application was rejected which was communicated to the respondent only on 04.12.2012.

7. The learned counsel for the respondent No.2 submitted that no relief has been claimed against the respondent No.2 and thus no order is required to be passed against this respondent.

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

9. At the very outset it is relevant to reproduce the guidelines for eligibility for allotment of alternate plots. Clause C under the category of eligibility para 1 is stated as under:

“When the recorded owner of the Land acquired dies before Notification U/s 4 of LA Act allotment is to be made separately to all the Legal Heirs of the deceased accordingly to their shares recognized by the LAC but if he dies after the Notification U/s 4 of the LA Act all Legal heirs are entitled to

one plot of the size to which the deceased would have been entitled."

10. The issue pertaining to whether the respondent No. 1 was a legally valid owner of the land in question is concerned, a suit for declaration was filed in the court of Sub-Judge, Delhi. The Sole Arbitrator pursuant to the order dated 07.02.1975 and in his award dated 08.07.1975 observed that :

"4. That I heard the parties. According to Muslim personal law, property can be gifted orally. Mriging is not necessary. According to the said law, the donor has to declare the gift, the donee is to accept the gift and possession of the property is to be delivered by the donor to the donee. It is not denied by the parties that the gift was declared by the donor, the donee accepted it, and that possession of the property was also delivered to the donee. Gift was thus complete and irrevocable. It cannot be impeached on the ground that it was orally made.

5. I thus find that the oral gift made by the defendant to the plaintiff was legally valid.

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Gift was valid and the title passed to the plaintiff. The plaintiff is owner of the suit property. He is entitled to declaration as prayed for by him."

11. Admittedly, in terms of the award dated 08.07.1975 passed by the Sub-Judge, Delhi, Aftab Ahmed i.e. respondent no. 1 is the valid owner of the land in question as all formal requirements of making a gift were completed i.e. an offer was made by the donor and simultaneously accepted by the donee, it was made voluntarily without consideration and thereby the gift was complete and irrevocable making the respondent a legally valid owner.

12. It is true to state that the recorded owner was Mohd. Ismail at the time of the issuance of the notification issued on 13.11.59. Simultaneously, it is significant to reiterate and appreciate that the policy framed is a beneficial one, to meet the residential requirement of the person whose land is acquired. The liberal construction of the object of the policy as also the perusal of Clause C para 1 of the guidelines make it abundantly clear that all legal heirs are entitled to the allotment if the recorded owner dies after the notification.

13. Material on record discloses that the compensation was paid to the respondent no. 1 on 06.02.1987 and he applied for allotment of alternative plot on 17.11.1988 i.e beyond a period of one year from the date of receipt of compensation. Having already stated the object of the policy we are of the considered view that this period of approximately 9 months demonstrates that this delay was not a result of any neglect and the same is negligible. Also, it has to be kept in mind that the appellant who is emphasizing on this delay of approximately 9 months has failed to act promptly itself by communicating the order to the respondent rejecting the allotment. In this background, we are in consonance with the view taken by the Learned Single Judge.

14. There is no justifiable reason to interfere with the finding of the Learned Single Judge. Resultantly, the appeal being without any merit is dismissed.

C. M. APPL. No. 1345/2016

In view of the above order, this application is rendered infructuous.

SANGITA DHINGRA SEHGAL, J.

CHIEF JUSTICE

JANUARY 19, 2017

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