

\$~

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**+ **W.P.(C) 6415/2001**

MOHD. SUBAN & ANR. Petitioners
 Through Mr. Anil Grover with Mr. Shivesh Pal
 Singh, Ms. Noopur Singhal and
 Mr. Satish Kapoor, Advocates
 versus

D.D.A. & ANR. Respondents
 Through Mr. Pawan Mathur, Standing Counsel
 for R-1/DDA.
 Mr. Aly Mirza with Mr. Khlish
 Tanwar, Advocates for R-2.

%

Date of Decision : 14th December, 2015

CORAM:
HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J: (Oral)

CM APPL. 12710/2015

Keeping in view the averments in the application, matter is restored to its original position.

Accordingly, the application stands disposed of.

W.P.(C) 6415/2001 & CM APPL. 13285/2013

1. Present writ petition has been filed seeking mutation and possession of property bearing Khasra No. 220/22 and 221/22, Mauza Charagah South, Jheel Khuranja, Delhi.

2. At the outset, learned counsel for respondents have taken a preliminary objection to the maintainability of the present writ petition on the ground of laches. They submit that mutation on the basis of restoration order dated 19th September, 1957 cannot be allowed in a writ petition filed in the year 2001. They emphasize that since 1950, Jheel Khuranja Milk Producers Society has been in possession of the aforesaid property.

3. According to learned counsel for respondents, petitioners are also not successors of the original allottee of the perpetual lease, i.e., Mr. Azim Baksh.

4. On the other hand learned counsel for petitioners submits that no period of limitation is prescribed for filing a writ petition. He states that as the petitioners were continuously making representations, which had been considered by the respondent-DDA, it cannot be said that the present writ petition is barred by laches. In support of his submissions, he relies upon a judgment of the Division Bench of this Court in ***Delhi Development Authority Vs. Shyama Prasad Mukherjee Park Plot Holders Welfare Association and Ors., 75 (1998) DLT 169*** wherein it has been held as under:-

“18.....It thus appears that at least till 1979 the Competent Authority was considering the issue of releasing more land in favour of the respondents in view of the representations filed by the petitioners and therefore, the writ petitions cannot be thrown out on the ground of delay and laches Bar of the Writ Petitions on the Principle of Constructive res judicata.”

5. Learned counsel for petitioners further relies upon a judgment of the Supreme Court in ***P.B. Roy Vs. Union of India (UOI), AIR 1972 SC 908*** wherein it has been held as under:-

“8.But, in view of the decision of the majority of the Full Bench of the Punjab High Court in S. Gurmej Singh v. Election Tribunal, Gurdaspur [1964] P.L.R. 589 the delay in filing the petition was overlooked on the ground that, after the admission of a Writ Petition and hearing of arguments, the rule that delay may defeat the rights of a party is relaxed and need not be applied if his case is “positively good”.

6. Learned counsel for the petitioner also relies upon a judgment of the Supreme Court in ***Ramchandra Shankar, Deodhar and Others Vs. The State of Maharashtra and Others, (1974) 1 SCC 317***, wherein it has been held as under:-

“10. The first preliminary objection raised on behalf of the respondents was that the petitioners were guilty of gross laches and delay in filing the petition. The divisional cadre of Mamlatdars/Tehsildars were created as far back as November 1, 1956 by the Government Resolution of that date, and the procedure for making promotion to the posts of Deputy Collector on the basis of divisional select-list, which was a necessary consequence of the creation of the divisional cadre of Mamlatdars/ Tehsildars, had been in operation for a long number of years, at any rate from April 7, 1961, and the Rules of July 30, 1959 were also given effect to since the date of their enactment and yet the petitioner did not file the petition until July 14, 1969. There was a delay of more than ten or twelve years in filing the petition since the accrual of the cause of complaint, and this delay, contended the respondents, was sufficient to disentitle the petitioners to any relief in a petition under Article 32 of the Constitution. We do not think this contention should prevail with us. In the first place, it must be remembered that the rule which says that the Court may not inquire into belated and stale claims is not a rule of law, but a rule of practice based on sound and proper exercise of discretion, and there is no inviolable rule that whenever there is delay, the Court must necessarily refuse to entertain the petition. Each case must depend on its own facts. The question, as pointed out by Hidayatullah, C.J., in Tilokchand

Motichand v. H.B. Munshi [(1969) 2 SCR 824 : (1969) 1 SCC 110, 116] “is one of discretion for this Court to follow from case to case. There is no lower limit and there is no upper limit It will all depend on what the breach of the fundamental right and the remedy claimed are and how the delay arose”. [SCC para 11] Here the petitioners were informed by the Commissioner, Aurangabad Division, by his letter dated October 18, 1960 and also by the then Secretary of the Revenue Department in January 1961 that the rules of recruitment to the posts of Deputy Collector in the reorganised State of Bombay had not yet been unified, and that the petitioners continued to be governed by the rules of Ex-Hyderabad State and the Rules of July 30, 1959 had no application to them. The petitioners were, therefore, justified in proceeding on the assumption that there were no unified rules of recruitment to the posts of Deputy Collector and the promotions that were being made by the State Government were only provisional to be regularised when unified rules of recruitment were made. It was only when the petition in Kapoor case was decided by the Bombay High Court that the petitioners came to know that it was the case of the State Government in that petition — and that case was accepted by the Bombay High Court — that the Rules of July 30, 1959 were the unified rules of recruitment to the posts of Deputy Collector applicable throughout the reorganised State of Bombay. The petitioners thereafter did not lose any time in filing the present petition. Moreover, what is challenged in the petition is the validity of the procedure for making promotions to the posts of Deputy Collector — whether it is violative of the equal opportunity clause — and since this procedure is not a thing of the past, but is still being followed by the State Government, it is but desirable that its constitutionality should be adjudged when the question has come before the Court at the instance of parties properly aggrieved by it.. It may also be noted that the principle on which the Court proceeds in refusing relief to the petitioner on ground of laches or delay is that the rights which have accrued to others by reason of the delay in filing the petition should not be allowed to be disturbed unless there is reasonable explanation for the delay. This principle was stated in the following terms by

Hidayatullah, C.J. in Tilokchandv. H.B. Munshi (supra):

“The party claiming fundamental rights must move the Court before other rights come into existence. The action of courts cannot harm innocent parties if their rights emerge by reason of delay on the part of the person moving the Court.” [SCC para 7]

Sikri, J., (as he then was), also re-stated the same principle in equally felicitous language when he said in R.N. Bose v. Union of India [(1970) 2 SCR 697 : (1970) 1 SCC 84] : “It would be unjust to deprive the respondents of the rights which have accrued to them. Each person ought to be entitled to sit back and consider that his appointment and promotion affected a long time ago would not be set aside after the lapse of a number of years.” Here, as admitted by the State Government in para 55 of the affidavit in reply, all promotions that have been made by the State Government are provisional and the position has not been crystallised to the prejudice of the petitioners. No rights have, therefore, accrued in favour of others by reason of the delay in filing the petition. The promotions being provisional, they have not conferred any rights on those promoted and they are by their very nature liable to be set at naught, if the correct legal position, as finally determined, so requires. We were also told by the learned counsel for the petitioners, and that was not controverted by the learned counsel appearing on behalf of the State Government, that even if the petition were allowed and the reliefs claimed by the petitioners granted to them, that would not result in the reversion of any Deputy Collector or officiating Deputy Collector to the post of Mamlatdar/Tehsildar; the only effect would be merely to disturb their inter se seniority as officiating Deputy Collectors or as Deputy Collectors. Moreover, it may be noticed that the claim for enforcement of the fundamental right of equal opportunity under Article 16 is itself a fundamental right guaranteed under Article 32 and this Court which has been assigned the role of a sentinel on the qui vive for protection of the fundamental rights cannot easily allow itself to be persuaded to refuse relief solely on the jejune ground of laches, delay or the like.”

7. Learned counsel for petitioners lastly submits that the present writ petition had been filed in the year 2001 and as rule had been issued, present petition at the stage of final hearing should not be dismissed on the ground of laches. In support of his submission, he relies upon a judgment of the Supreme Court in ***Ravindra Nath Vs. State Bank of India and Others, (2008) 15 SCC 256.***

8. It is settled law that one of the several rules of self-imposed restraint evolved by the superior courts is that High Court will not entertain petitions filed after long lapse of time because that may adversely affect the settled rights of the third parties. It has also been held by the Apex Court that if the writ petition is filed beyond the period of limitation prescribed for filing a civil suit, the High Court will normally treat the delay as unreasonable and decline to entertain the grievance of the petitioner on merits. In the opinion of this Court, the test to be applied is whether laches on the part of the petitioner is such as to hold that the petitioner by its act and conduct has given a go-by to his rights.

9. 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.....”

10. 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.*”

11. 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.

xxx

xxx

xxx

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.

xxx

xxx

xxx

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. Anyone 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)

12. This Court is also of the view that judgment in **Ramchandra Shankar Deodhar and Ors.** (supra) relied upon by learned counsel for petitioners offers no assistance to the petitioners inasmuch as in that case third party rights had not come into existence. However, in the present case, “*vide Resolution No. 103 dated 25th May, 1950 vide orders of the Chief Commissioner, the names of 144 Muslims were cancelled and lease had been transferred in the name of Jheel Khuranja Milk Producers Society for 90 years lease.*”

13. Further, this Court is of the view that petitioners’ case is ‘positively not good’ as opined in the case of **P.B. Roy** (supra). Not only the 20 years lease in favour of the petitioners had expired on 24th September, 1958 but the maximum extensions under the petitioners’ lease would have expired in 2008.

14. Also unlike *Ravindra Nath* (supra), the delay in filing the writ petition has not been sufficiently explained. In fact, due to delay an issue as to whether petitioners are successors of the original allottee of the perpetual lease, i.e., Mr. Azim Baksh also arises for consideration—which cannot be determined in the present proceedings.

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

16. This Court may mention that relief of possession cannot be granted because even according to the restoration order dated 19th September, 1957 restoring the evacuee property, it was specifically stipulated that erstwhile allottees shall not evict any allottee/tenant except in accordance with the lease and under the law for the time being in force.

17. With the aforesaid observations, present writ petition and application are dismissed.

MANMOHAN, J

DECEMBER 14, 2015

rn