

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

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Date of decision: 3rd July, 2015

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LPA 112/2015

GOVERNMENT OF NCT OF DELHI

..... Appellant

Through: Mr. Biraja Mahapatra, Adv.

Versus

JANGLI RAM & ORS

..... Respondents

Through: Mr. Sudhanshu Tomar, Adv.

CORAM :-

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J

1. This intra-court appeal impugns the judgment dated 3rd September, 2014 of the learned Single Judge allowing W.P.(C) No.5105/2013 preferred by the respondent No.1 (respondent No.2 is the Delhi Development Authority) by directing the appellant to decide the application of the respondent No.1 / writ petitioner for allotment of alternative residential plot in lieu of acquired land as per his eligibility within two months thereof and to communicate decision thereof to the respondent No.1 / writ petitioner.

2. Notice of the appeal was issued. We heard the counsel for the appellant and the counsel for the respondent No.1 / writ petitioner on 24th

April, 2015 and reserved judgment. The counsel for the respondent No.1 / writ petitioner, as directed, has thereafter filed a copy of the writ petition from which this appeal arises, counter affidavit filed thereto by the appellant and the rejoinder of the respondent No.1 / writ petitioner thereto.

3. The respondent No.1 / writ petitioner filed the writ petition from which this appeal arises contending, i) that he is the husband of late Smt. Chandri who was the bhumidar of agricultural land acquired in the year 1986-87; ii) that the wife of the respondent No.1 / writ petitioner was not satisfied with the compensation awarded for acquisition and made a reference under Section 18 of the Land Acquisition Act, 1894 as well as an application for alternative residential plot as per the policy of the government; iii) that the wife of the respondent No.1 / writ petitioner vide registered Will dated 28th May, 1996 bequeathed all her properties including the alternative plot in lieu of acquired land applied for by her to her husband i.e. the respondent No.1 / writ petitioner; iv) that the wife of the respondent No.1 / writ petitioner died on 8th October, 1996 and under her Will aforesaid the respondent No.1 / writ petitioner became entitled to the alternative plot applied for in lieu of acquired land; v) that the respondent No.1 / writ petitioner vide letter dated 6th August, 1999 informed the appellant of the

demise of his wife and the Will aforesaid and called upon them to allot alternative plot in lieu of acquired land in his name instead of in the name of his deceased wife; vi) that however the alternative plot in lieu of acquired land was not allotted inspite of repeated enquiries and reminders of the respondent No.1 / writ petitioner; vii) that the respondent No.1 / writ petitioner in the year 2012 learnt that some other villagers had already been allotted alternative plot in lieu of acquired land; viii) that the respondent No.1 / writ petitioner thereafter also made enquiries including under the Right to Information Act, 2005 but without any avail.

Accordingly, in or about July-August, 2013 writ petition from which this appeal arises was filed seeking a direction to the appellant to allot alternative plot in lieu of acquired land.

4. The appellant contested the writ petition by filing a counter affidavit pleading, i) that the case of the respondent No.1 / writ petitioner was a “closed one” and as per policy could not be re-opened; ii) that the land of the wife of the respondent No.1 / writ petitioner was acquired vide Notification dated 27th January, 1984 and compensation paid and possession of the land taken on 27th September, 1986; iii) that though the wife of the respondent

No.1 / writ petitioner on 12th November, 1987 made an application for alternative plot in lieu of acquired land but thereafter failed to either pursue the same or respond to the queries made and accordingly it was presumed that she was not interested and her case was closed on 20th January, 1992; iv) that the respondent No.1 / writ petitioner vide his letter dated 5th February, 1997 stated that he had come to know that the file of allotment of alternative flat had been closed and requesting to reopen the said file; v) that the respondent No.1 / writ petitioner had however concealed the said letter dated 5th February, 1997 from the writ petition and had not approached the Court with clean hands and the writ petition was liable to be dismissed on this ground alone; vi) that thus the plea of the respondent No.1 / writ petitioner that he learnt from the villagers in 2012 that allotments of alternative plots against acquired land were being made, was false.

5. The respondent No.1 / writ petitioner filed a rejoinder to the aforesaid counter affidavit not disputing that he had written the letter dated 5th February, 1997 but pleading, i) that his wife had neither received any enquiries from the appellant pursuant to which her file was closed nor any intimation of closure of the file; ii) that he had learnt of the said closure after visiting the office of the appellant and had accordingly written the letter

dated 5th February, 1997; iii) that he was thereafter continuously following up the matter but to no avail.

6. The learned Single Judge vide the impugned judgment has allowed the writ petition as aforesaid, reasoning:

- a) that though the counsel for the appellant had relied on judgment dated 7th March, 2012 in LPA No.101/2010 titled ***Government of NCT of Delhi Vs. Smt. Veerwati*** and in LPA No.461/2010 titled ***Government of NCT of Delhi Vs. Narain Singh*** and on ***Raj Karan Vs. Land and Building Department*** 148 (2008) DLT 460 (DB) to contend that closed cases cannot be re-opened but from a reading of the judgment dated 6th November, 2009 of the Single Judge in W.P.(C) No.3587/2007 titled ***Narain Singh Vs. Government of NCT of Delhi*** it was evident that “from the date of decision taken by respondents on 11th October, 1998 that up to 2000 cases, the closed cases were reopened and since 2000 respondent No.1 had stopped to reopen the cases”;

- b) that the respondent No.1 / writ petitioner had however applied for reopening of the case on 5th February, 1997, prior to the year 2000;
- c) that the appellant still refused to re-open the closed case of the respondent No.1 / writ petitioner;
- d) therefore, keeping in view the parity and in the interest of justice, the appellant was directed to decide the application of the respondent No.1 / writ petitioner for allotment of alternative plot in lieu of acquired land as per his eligibility, within two months thereof and to communicate the decision to the respondent No.1 / writ petitioner.

7. The counsel for the respondent no.1 / writ petitioner after the hearing has also handed over copies of the judgment of the Division Bench in *Narain Singh* and *Raj Karan* (supra).

8. We are afraid, the aspect of laches and acquiescence seems to have totally escaped the learned Single Judge.

9. What becomes apparent from the aforesaid narrative is:

- i) that the wife of the respondent No.1 / writ petitioner applied for alternative plot in lieu of acquired land as far back as in the year 1987; during her lifetime till 8th October, 1996, inspite of no allotment of alternative plot in lieu of acquired land having been made to her or even a recommendation for allotment having been made in her favour, she did not take any action whatsoever and slept on her right to be considered for such allotment;
- ii) that ordinarily as per the culture, customs prevalent in the society to which the petitioner belongs, it is rarely the lady of the house who pursues such matters relating to immovable properties and it is generally their husbands or other male members of the house who lookafter such affairs; it is also not the case of the respondent No.1 / writ petitioner that in their household, it was his wife who was independently pursuing the application for alternative plot in lieu of acquired land and that he was oblivious of the same till her demise; the respondent No.1 / writ petitioner cannot thus claim that he became involved in the matter only after the demise of his wife on 8th

October, 1996; he is to be equally blamed for sleeping over the matter till then;

- iii) that the respondent No.1 / writ petitioner though in the writ petition did not disclose that he was as on 5th February, 1997 aware of the closure of the file, upon being confronted with the letter in the counter affidavit has now admitted to the same; it is a disputed question of fact whether he learnt of the same on making enquiries in the office of the appellant after the demise of his wife or was aware of the same since prior thereto;
- iv) the respondent No.1 / writ petitioner however after 5th February, 1997 also, when he was admittedly aware of the file having been closed, did not take any remedy thereagainst till July-August, 2013 i.e. for nearly 16 years, when he filed the writ petition from which the appeal arises;
- v) though the respondent No.1 / writ petitioner generally claims that he was thereafter pursuing the matter with the appellant but along with the writ petition has filed copies only of letters dated

6th August, 1999, 30th December, 1999, 29th August, 2006 claimed to have been written in this regard;

- vi) the same also shows that the respondent No.1 / writ petitioner, inspite of knowledge at least on 5th February, 1997 of the matter of the application for alternative land in lieu of acquired land having attained finality i.e. having been closed, did not show any urgency and wrote a only few letters, that too with long gaps in between and inspite of receiving no response thereto or assurance of any kind, still did not chose to take any remedy against the closure;
- vii) the last of the aforesaid letter is dated 29th August, 2006; the respondent No.1 / writ petitioner again thereafter also slept till he made the RTI query aforesaid in 2012 and thereafter filed this petition in July-August, 2013 as aforesaid.

10. We have wondered that if not in the aforesaid situation, where else would the principles of laches, acquiescence, waiver would be attracted.

11. We have recently in ***Ramwati Vs. Government of NCT of Delhi*** MANU/DE/2387/2014 held that there is an element of urgency and

rehabilitation in the scheme for allotment of alternative plots and finding the petitioner therein to have filed the writ petition after a delay of thirteen years, upheld the order of dismissal of writ petition. An applicant for alternative land in lieu of acquired land, who sleeps over his / her right cannot wake up as and when he / she desires and claim allotment of alternative land. The Scheme of allotment of alternative residential plot in lieu of acquired land is rehabilitative in nature and considering that such allotment of alternative land is in lieu of acquired land, there is an element of urgency therein. Once an applicant is found to have not been diligent in pursuing such an application and / or is found to have slept over the matter, it has but to be presumed that he / she is not interested and not in need of any welfare rehabilitative measure. It cannot be lost sight of that the full bench of this Court in ***Ramanand Vs. Union of India*** AIR 1994 Delhi 29 has held that the Scheme does not vest any right in anyone to alternative land and that the only right under the Scheme is a right to be considered; it is for the applicant to take steps for his / her case to be considered and if does not take such steps, cannot claim that any right has been violated.

12. In our view the claim of the respondent No.1/ writ petitioner in the writ petition filed in July-August, 2013 for alternative land in lieu of land

which was acquired in 1986 i.e. nearly 27 years prior to the filing of the writ petition and application for which was closed in the year 1992 i.e. 21 years prior to the filing of the writ petition, was clearly barred and ought not to have been ordered to be considered.

13. As far as the reasoning given by the learned Single Judge is concerned, though in the light of the above, need is not felt to deal therewith but we may observe that in ***Raj Karan*** (supra) the Division Bench of this Court finding the applicant to have, after closure of his case, to have remained quiet and to have gone into deep slumber and having been not diligent in pursuing his case for allotment of alternative land and further finding the scheme to be not permitting reopening of a closed matter, held the applicant to be not entitled to any relief. In ***Smt. Veerwati and Narain Singh*** (supra) to which one of us i.e. Justice Rajiv Sahai Endlaw was a party, the application for reopening of the closed case had been entertained and in spite of being diligently pursued, no decision thereon had been taken and immediately whereafter the applicants had approached the Courts; in the said facts, ***Raj Karan*** (supra) was distinguished by holding that while the applicant in ***Raj Karan*** had not pursued the matter, the applicant in ***Smt. Veerwati and Narain Singh*** had been pursuing the matter. The facts of the

present case are akin to that of *Raj Karan* rather than of *Veerawati* and/or *Narain Singh*. The learned Single Judge, we respectfully state, did not notice the said distinction. The reasoning in the impugned judgment thus cannot be upheld.

14. There is another aspect. The respondent No.1 / writ petitioner in the present case, is clearly guilty of not approaching the writ court for equitable relief with clean hands. The respondent No.1 / writ petitioner filed the writ petition portraying that the application of his wife for alternative land in lieu of acquired land was pending consideration and he filed the writ petition only when other villagers whose land had also been acquired vide the same award were allotted alternative plot in lieu of acquired land. However what has transpired is that the respondent No.1 / writ petitioner at least 21 years prior to the filing of the writ petition, if not earlier, was aware of the application having been rejected by closing the file. It is obvious that the respondent No.1 / writ petitioner was aware that if he disclosed about the letter dated 5th February, 1997 in the writ petition, his writ petition may not even be entertained. The respondent No.1 / writ petitioner clearly tried to take advantage of the records of the appellant being ill kept and often untraceable and suppressed material fact. He is not entitled to any relief on

this ground as well. It is settled position that such conduct of the respondent no.1/writ petitioner itself disentitled him from any relief.

15. The appeal therefore deserves to be allowed and is allowed. The impugned judgment is set aside and axiomatically the writ petition filed by the respondent No.1 / writ petitioner is dismissed. The respondent No.1 / writ petitioner having indulged in suppression of material fact and misrepresentation, is also burdened with costs of these proceedings of Rs.20,000/- payable to the appellant within one month hereof.

RAJIV SAHAI ENDLAW, J

CHIEF JUSTICE

JULY 03, 2015
'gsr'