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

+ W.P.(C) 3124/2014

DHARAM PAL

..... Appellant

Through: Mr l.c. Rajput, Adv.

versus

THE SECRETARY, GOVT. OF NCT OF DELHI Respondent

Through: Mr Priyabrat Sahu, Adv. for Mr
Siddharth Panda, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

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19.08.2015

1. This is a writ petition directed against communication dated 28.11.2013, issued by the respondent. By virtue of this communication, the petitioner's application dated 31.05.2001 for being considered for allotment of an alternate land has been rejected on the sole ground that it was beyond the prescribed period of limitation.

2. It is pertinent to note, at the very outset, that the petitioner has taken a stand (which is not disputed in the counter affidavit filed on behalf of the respondent), that he was owner of two parcels of land situate in village Nilothe, which were acquired pursuant to proceedings taken out under the Land Acquisition Act, 1894 (in short the Act), for the purpose of construction of a sewage treatment plant of PBD.

2.1 Furthermore, it is stated, a fact which is once again not denied that the award, in respect of the said parcels of land, bore the number 07/96-97, and was pronounced on 12.12.1996.

2.2 The petitioner, it is claimed, received compensation in respect of the first parcel of land on 14.03.1997. The compensation paid was a sum of Rs. 10,89,014/-. In so far as the second parcel of the land was concerned, the petitioner was paid compensation in the sum of Rs. 3,63,004/- with TDS quantified at Rs. 3155/-. These facts are sought to be supported by the petitioner by reference to a payment certificate dated 02.04.2013, issued by the respondent.

3. In so far as the first parcel of land is concerned, an application for alternate allotment of land was submitted on 27.05.1998. As regards the second parcel of land, the application for alternate allotment of land was submitted on 31.05.2001.

4. By virtue of the impugned communication, the petitioner's application qua the second parcel of land, which was submitted on 31.05.2001, was rejected.

4.1 Pertinently, in the impugned communication, there is no reference to the first application which the petitioner claims, he submitted, on 27.05.1998. The counter affidavit filed by the respondent also does not deal with this aspect of the matter.

5. Being aggrieved, by the contents of the impugned communication the petitioner approached this court by way of the instant writ petition. I may only indicate herein that in order to gain knowledge as to the outcome of his application, it is the petitioner's stand that he had to take recourse to the RTI route.

6. In this background, the learned counsel for the petitioner has argued that the rejection of the second application dated 31.05.2001, was erroneous in law, being contrary to various decisions of this court.

7. On the other hand, learned counsel for the respondent, attempted to sustain the action of the respondent by submitting that the purpose of fixing the limitation is that the persons whose lands are acquired, apply at the earliest for alternate allotment, so that their immediate requirement of rehabilitation can be satisfied. In support of his submissions, the learned counsel relied upon the judgement of the Division Bench in the case of *Sunder Singh vs Union of India 2009 (2) AD (Delhi) 809*. The observations of the Division Bench have in fact been extracted in the counter affidavit.

8. I have heard the learned counsel for the parties and perused the record. Clearly as per the stand taken by the petitioner, to which there is no rebuttal by the respondent, two separate applications had been made for allotment of alternate land. The first application was filed on 27.05.1998, while the second application was filed on 31.05.2001. Both applications were beyond the period of one year from the date of receipt of compensation by the petitioner. In the first instance, compensation was received, as indicated above, by the petitioner on 14.03.1997, while in respect of the acquisition of the second parcel of land, compensation was received by him on 01.05.2000. Therefore, in respect of the first application, the petitioner was late by a period of little over two months, whereas in the case of the second application, the delay was of nearly 30 days. However, the impugned communication deals with only the second application dated 31.05.2001.

8.1 In these circumstances, I propose to confine my decision only to the second application.

9. Therefore, the moot question which arises for consideration is :

whether or not the second application dated 31.05.2001 could have been rejected by the respondent on the ground that it was filed beyond the prescribed period of limitation? Though there is no discussion in the counter affidavit filed in this case by the respondent as to the source for such prescription, in similar matters, the respondent has relied upon a public notice dated 30.11.1993. The relevant portion of the said public notice is extracted hereinbelow:

“....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....”

(emphasis is mine)

10. This aspect of the matter was dealt by me, in the judgement dated 12.08.2015, passed in WP(C) No. 5493/2013, titled: ***Renu Aggarwal vs. Govt. of NCT of Delhi***. The relevant observations made in that case are extracted hereinbelow for the sake of convenience.

“..5.1.The core issue, therefore, which arises for consideration in the writ petition is as to whether or not the respondent could have rejected the petitioner’s application on the ground that it was beyond the period of limitation. In support of its stand, the respondent has filed a copy of the

public notice dated 30.11.1993. The portion, relevant for our purposes, is contained in paragraph 6 of the public notice.

“....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....”

(emphasis is mine)

6. It is based on the aforesaid that the respondent claims that the petitioner’s application, for allotment of alternate plot, cannot be considered. As regards the stand taken by the petitioner before the recommendation committee, that she did not come across any newspaper advertisement inviting applications for allotment of alternate land, there appears to be no discussion in the impugned communication.

6.1 I, therefore, queried the learned counsel for the respondent, as to the manner and the point in time when the said public notice (which is otherwise of vintage 1993) was re-published for the consumption of those to whom it was supposed to apply.

6.2 This query had been put to the learned counsel for the respondent as there is no averment in the counter affidavit as to the mode and manner by which the said public notice was put in public domain even in the first instance.

6.3 This query becomes relevant when seen in the light of the

fact that Section 4 notification under the Land Acquisition Act, 1894 (in short the Act) was issued only on 21.03.2003. There was thus between the issuance of the public notice and the Section 4 notification a hiatus of nearly 10 years. To expect an applicant to rummage through old public notices to ascertain the period of limitation, without any scope for obtaining the knowledge, about its fixation in the first instance is to put too heavy a burden for something which is his right, that is, right to be considered for allotment of an alternate plot.

7. That apart, the other aspect which is equally important is as to the basis on which the respondents have proceeded to fix the period of one year as the limitation qua applications to be filed for allotment of an alternate plot. There is nothing stated in the affidavit which would disclose the basis or the rationale for fixation of such a time limit for entertaining applications for allotment of alternate plots. If there is no discernible rationale (which I apprehend appears to be the case) the time limit so fixed should be read to be directory and not mandatory. Ordinarily, if a suit had been filed, the time limit for such an action could only be three years. Therefore, to truncate an applicant's valuable right of consideration for allotment of an alternate plot, in cases, where delay was only a few months over and above the time frame of one year provided in the public notice, would result in harsh consequences, especially given the fact and that respondent has taken couple of years if not more, in the most cases, in deciding such like applications. Having said so, it goes without saying that the respondent could perhaps reject an application on the ground of undue and deliberate delay and/ or even laches. This, however, does not appear to be the situation in the present case.

11. Somewhat similar view has also been taken by another Single Judge of this court in. ***Simla Devi vs Secretary & Ors. 140 (2007) DLT 474.***

11.1 Before I proceed further, I may only deal with the submission of the learned counsel for the respondent made, based on the observations made by

the Division Bench in the case of **Sunder Singh**. A bare perusal of the facts, as set out in paragraph 28 of the judgement would show, that the Division Bench had dismissed the writ petition on the ground of undue delay and laches. The petitioner in that case had applied for an alternate land 27 years after it had been acquired. Based on the fact that there had been a huge elapse of time, the court, came to the conclusion that this aspect itself was indicative of the fact that the petitioner was not in need of an alternate land or otherwise, he would not have applied after so many years. Quite clearly, on facts, the judgement of the Division Bench is not applicable to the instant case. As indicated in **Renu Aggarwal's** case, relief in a particular case can always be declined on the ground of undue and deliberate delay and/or laches.

12. Thus, having regard to the observations made in **Renu Aggarwal's** and **Simla Devi's** case, I am inclined to allow the instant writ petition. It is ordered accordingly. The recommendation committee shall re-consider the application of the petitioner. For this purpose, a notice shall be issued to the petitioner setting out therein the date, time and venue where he is required to present himself. The recommendation committee will accord a personal hearing to the petitioner. In case the petitioner is required to furnish any documents the notice would indicate the same. Needless to say, the aforesaid exercise will be concluded by the recommendation committee with due expedition though, not later than three (3) months from today. The recommendation committee shall give reasons for its orders and communicate the same to the petitioner within two (2) weeks of it being passed. In the event, the decision taken on the petitioner's application is to recommend the petitioner's case for allotment of alternate land, it shall

retain the same seniority which it would have obtained, had it been so recommended, in the first instance.

13. The writ petition is disposed of in the aforesaid terms. There shall be, however, no orders as to costs.

RAJIV SHAKDHER, J

AUGUST 19, 2015

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