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

+ W.P.(C) 4151/2013

POOJA KHEMKA Petitioner
Through: Mr. Sumit Bansal, Advocate with
Ms. Richa Oberoi, Advocate.

versus

DELHI DEVELOPMENT AUTHORITY Respondent
Through: Mr. Rajiv Bansal, Advocate with
Mr. Siddhant Gupta, Mr. Anukrit Gupta
and Ms. Arpita, Advocates.

With

+ W.P.(C) 4322/2013

RAJ PAL GOEL Petitioner
Through: Mr. Sumit Bansal, Advocate with
Ms. Richa Oberoi, Advocate.

versus

DELHI DEVELOPMENT AUTHORITY Respondent
Through: Mr. Rajiv Bansal, Advocate with
Mr. Siddhant Gupta, Mr. Anukrit Gupta
and Ms. Arpita, Advocates.

With

+ W.P.(C) 4179/2013

RUKMANI DEVI Petitioner
Through: Mr. Sumit Bansal, Advocate with
Ms. Richa Oberoi, Advocate.

versus

DELHI DEVELOPMENT AUTHORITY Respondent
Through: Mr. Rajiv Bansal, Advocate with
Mr. Siddhant Gupta, Mr. Anukrit Gupta
and Ms. Arpita, Advocates.

With

+ W.P.(C) 4321/2013

KRISHAN KUMAR GOEL Petitioner
Through: Mr. Sumit Bansal, Advocate with
Ms. Richa Oberoi, Advocate.

versus

DELHI DEVELOPMENT AUTHORITY Respondent
Through: Mr. Rajiv Bansal, Advocate with
Mr. Siddhant Gupta, Mr. Anukrit Gupta
and Ms. Arpita, Advocates.

And

+ W.P.(C) 4178/2013

RAMESH CHAND BANSAL Petitioner
Through: Mr. Sumit Bansal, Advocate with
Ms. Richa Oberoi, Advocate.

versus

DELHI DEVELOPMENT AUTHORITY Respondent
Through: Mr. Rajiv Bansal, Advocate with
Mr. Siddhant Gupta, Mr. Anukrit Gupta
and Ms. Arpita, Advocates.

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Date of Decision: 23rd September, 2015

CORAM:
HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J: (Oral)

1. Present batch of writ petitions has been filed challenging the demand of unearned increase by the respondent-DDA levied upon the petitioners on some of the commercial plots in PVC Bazar, Tikri Kalan, Delhi.
2. The relevant facts of the present petitions are that in 1996 the respondent-DDA floated a Scheme for allotment of commercial plots for the benefit of units that were to be shifted from Jawala Puri, PVC Market to PVC Bazar Tikri Kalan, Delhi.
3. The original allottees obtained permission to mortgage their plots in favour of Delhi Financial Corporation, even though no lease deeds had been executed in their favour.
4. However, on account of failure of the original allottees to repay the loan, Delhi Financial Corporation repossessed the said plots.
5. In 2005, Delhi Financial Corporation issued notices for auction of the said plots. The present petitioners were declared successful bidders in the auction.
6. Petitioners state that they deposited the entire bid amount and got the transfer deeds executed in their favour from Delhi Financial Corporation. Thereafter, the petitioners applied to DDA for mutation/transfer of lease deed.
7. It is the case of the petitioners that in 2007 respondent-DDA raised illegal and erroneous demands in the range of Rs.7.5 lacs to 8.3 lacs towards

unearned increase on account of transfer of the said plots.

8. A writ petition being W.P.(C) 7646/2008 was filed by a similarly placed auction purchaser in 2008 challenging the demand of unearned increase. The said writ petition was disposed of with a direction to DDA to raise a fresh demand on the basis of difference between the premium received at the time of allotment and the price paid by the petitioners in the auction. The relevant portion of the order passed by the learned Single Judge in the said writ petition is reproduced hereinbelow:-

“2. Though pursuant to the allotment of the plots aforesaid by the respondent DDA, perpetual lease deed were to be executed but were in fact not executed. However the terms and conditions of such allotment inter alia provide as under:-

“(vi) The allottee shall not be entitled to sell, transfer, assign or otherwise part with possession of the whole or part of the plot, before or after the erection of the building on the plot without the previous consent in writing of the lessor. In the event of consent being given, the lessor may impose any condition and also be entitled to claim and recover a portion being 50% of the unearned increase in the value of the land (i.e. difference between the premium paid and the market value of the plot) at the time of sale, transfer assignment or parting with the possession. Provided that the lessor shall have pre-emptive right to purchase the property after deducting 50% of the unearned increase as aforesaid. The pre-emptive right of purchase would be exercise by the lessor as and when the built up space is required in public interest.”

3. It is contention of the counsel for the petitioners that the demand for unearned increase is not as per the aforesaid clause but de hors the same.

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5. It is further the stand of DDA that as per the Unearned Increase Booklet of 1996, the value of plot is worked out on the

basis of the highest rate of the following rates:-

“i) Financial year & Zonal Market rate applicable for calculation of 50% UEI as per average auction rate.”

ii) MOUD’s market rate for residential/commercial properties applicable for calculating 50%.

iii) Delhi Admn. Market rate for residential/commercial/industrial plots.”

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8. The terms and conditions of allotment supra do not provide that the unearned increase would be determined in accordance with the Booklet aforesaid or any other Rule of the DDA. On the contrary, unearned increase was agreed to be taken on the basis of the difference between premium paid for the plot and the market value of the plot. There can be no better indicator of the market value of the plot than the price which the plot fetched in the auction held by the DFC. The respondent DDA in its counter affidavit has not stated any reason whatsoever as to why rate which the plots fetched in the auction is not the market rate or is a suppressed rate. The auction as aforesaid was held by DFC and not by any private person/body.

9. In the circumstances, the demand for unearned increase impugned in these petitions is found to be in violation of the terms and conditions of allotment and is set aside.

10. The counsels for the DDA have neither in their counter affidavits nor otherwise informed the premium paid for each of the aforesaid plots. The counsel for the petitioners states that since the petitioners are not original allottee of the plots, they are also not aware of the same. Accordingly the writ petitions are disposed of with the direction to the DDA to within eight weeks of today raise a fresh demand on the petitioners for unearned increase on the basis of the difference between the premium received at the time of allotment and the price paid by each of the petitioners in the auction held by the DDA. Since the admitted amount has also not been paid, it is clarified that the DDA shall be entitled to claim interest on the unearned increase so found due from the date of the original demand and

till the date of payment of the unearned increase by the petitioner.

The writ petitions are disposed of. No order as to costs.”

9. The said order of the learned Single Judge was upheld by the Division Bench and even Special Leave Petition against the same was dismissed.

10. Mr. Sumit Bansal and Ms. Richa Oberoi, learned counsel for petitioners state that the present matters are fully covered by the judgment of the learned Single Judge in W.P.(C) 7646/2008.

11. They further state that the respondent-DDA has in a totally arbitrary and unjustified manner taken into consideration the average auction rate of commercial plots of local and convenience shopping centre in Narela for the purpose of calculation of unearned increase. According to the petitioners, the unearned increase has to be calculated on the basis of auction rates of plots in Tikri Kalan and not in another locality since the size and use of the plots in local shopping centre and PVC Market Tikri Kalan are entirely different.

12. On the other hand, Mr. Rajiv Bansal, learned counsel for respondent-DDA states that the present batch of writ petitions is barred by gross delay and laches. He contends that the petitioners are fence sitters who have filed writ petitions at a belated stage. He submits that if the present writ petitions are entertained, it would cause confusion, public inconvenience and bring in injustice. In support of his submission, he relies upon the following judgments:-

A. ***Chennai Metropolitan Water Supply and Sewerage Board & Ors. vs. T.T. Murali Babu, (2014) 4 SCC 108***, wherein it has been held as under:-

“14. In State of Maharashtra v. Digambar [(1995) 4 SCC 683] , while dealing with exercise of power of the High Court under Article 226 of the Constitution, the Court observed that: (SCC p. 692, para 19)

“19. Power of the High Court to be exercised under Article 226 of the Constitution, if is discretionary, its exercise must be judicious and reasonable, admits of no controversy. It is for that reason, a person's entitlement for relief from a High Court under Article 226 of the Constitution, be it against the State or anybody else, even if is founded on the allegation of infringement of his legal right, has to necessarily depend upon unblameworthy conduct of the person seeking relief, and the court refuses to grant the discretionary relief to such person in exercise of such power, when he approaches it with unclean hands or blameworthy conduct.”

15. In State of M.P. v. Nandlal Jaiswal [(1986) 4 SCC 566 : AIR 1987 SC 251] the Court observed that: (SCC p. 594, para 24)

“24. ... it is well settled that the power of the High Court to issue an appropriate writ under Article 226 of the Constitution is discretionary and the High Court in the exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic.”

It has been further stated therein that: (Nandlal Jaiswal case [(1986) 4 SCC 566 : AIR 1987 SC 251] , SCC p. 594, para 24)

“24. ... If there is inordinate delay on the part of the petitioner in filing a writ petition and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in the exercise of its writ jurisdiction.”

Emphasis was laid on the principle of delay and laches stating that resort to the extraordinary remedy under the writ

jurisdiction at a belated stage is likely to cause confusion and public inconvenience and bring in injustice.

16. Thus, the doctrine of delay and laches should not be lightly brushed aside. A writ court is required to weigh the explanation offered and the acceptability of the same. The court should bear in mind that it is exercising an extraordinary and equitable jurisdiction. As a constitutional court it has a duty to protect the rights of the citizens but simultaneously it is to keep itself alive to the primary principle that when an aggrieved person, without adequate reason, approaches the court at his own leisure or pleasure, the court would be under legal obligation to scrutinise whether the lis at a belated stage should be entertained or not. Be it noted, delay comes in the way of equity. In certain circumstances delay and laches may not be fatal but in most circumstances inordinate delay would only invite disaster for the litigant who knocks at the doors of the court. Delay reflects inactivity and inaction on the part of a litigant — a litigant who has forgotten the basic norms, namely, “procrastination is the greatest thief of time” and second, law does not permit one to sleep and rise like a phoenix. Delay does bring in hazard and causes injury to the lis.”

B. *Union of India & Ors. vs. Shri Hanuman Industries & Anr., 2015 (6) SCC 600* wherein it has been held as under:-

“22. On a consideration of the totality of the aspects involved, we are thus of the unhesitant view that the respondents herein in view of their deliberate laches, negligence and inaction have disentitled themselves to the benefit of the adjudication in the earlier lis. In the accompanying facts and circumstances in our comprehension, it would be iniquitous and repugnant as well to the public exchequer to entertain the belated claim of the respondents on the basis of the doctrine of promissory estoppel which is even otherwise inapplicable to the case in hand.”

13. Mr. Rajiv Bansal submits that the orders of the learned Single Judge in W.P.(C) 7646/2008 as well as the Division Bench relied upon by the learned counsel for petitioners have no precedential value. He draws this Court's attention to the order passed by the Supreme Court while disposing of the Special Leave petitions filed by the respondent-DDA challenging the order of learned Single Judge and the Division Bench. The order dated 09th April, 2012 passed by the Supreme Court in Special Leave to Appeal (Civil) No.10390/2012 is reproduced hereinbelow:-

“ After having heard learned senior counsel for the petitioner and perusal of the record, we are not inclined to interfere against the impugned order passed by the Division Bench of this High Court. Special Leave petition is accordingly dismissed.

However, in the given facts and precedent and the question of law is left open to be decided in an appropriate case.”

14. Mr. Rajiv Bansal relies upon the judgment of the Supreme Court in ***Nadia Distt. Primary School Council and Another vs. Sristidhar Biswas and Others (2007) 12 SCC 779*** wherein it has been held as under:-

“18.Learned counsel submitted that, in fact, the whole exercise in giving appointment starts from the order dated 30-6-1989 in Sirazul Haque Mallick case and in that case it was clearly mentioned that this will not be treated as a precedent. Despite this, Sirazul Haque Mallick has been used subsequently in Dibakar Pal and Dibakar Pal has been followed in the present Sristidhar Biswas case (impugned order). This clearly goes to show that both the Division Benches did not apply their mind to the clear observation in Sirazul Haque Mallick that that case shall not be treated as a precedent. Sirazul Haque Mallick never examined the validity of the panel. It was only on account of the concession the matter was decided and it was clearly qualified that it shall not be treated as a precedent.”

15. Mr. Rajiv Bansal submits that the present writ petitions involve disputed questions of fact as according to the DDA both Tikri Kalan and Narela are situated in outer Delhi and the average auction rate of Narela is on the lower side.

16. Mr. Rajiv Bansal contends that the learned Single Judge and Division Bench while passing the judgment in W.P.(C) 7646/2008 did not have the benefit of the unearned increase booklet which has now been annexed with the counter affidavit.

17. Mr. Rajiv Bansal further contends that the unearned increase rates prescribed in the booklet have been calculated on average auction rate basis and not on actual auction price. He states that at times even auction prices can be depressed and the Government is bound to follow the rates stipulated in its booklet. He refers to and relies upon the Division Bench judgment of this Court in ***Smt. Madhu Chawla & Anr. vs. Delhi Development Authority & Anr.***, 82 (1999) DLT 7 (DB) wherein it has been held as under:-

“16. We are of the considered view that no final demand towards the un-earned increase having been raised and communicated to the petitioners till date, the new guidelines contained in the booklet issued on 20th February, 1996 are applicable in the instant case and the un-earned increase has to be calculated in accordance with the rates prescribed therein. Having announced a policy for the benefit of the general public, it is not open to the DDA go to back on it.”

18. In rejoinder, Mr. Sumit Bansal and Ms. Richa Oberoi, learned counsel for petitioners state that there has been no delay or laches on the part of the petitioners as the cause of action is a continuing one, especially when fresh demand in terms of the orders passed in W.P.(C) 7646/2008 was raised on

8th January, 2013 only upon those who had filed the initial writ petitions and not upon similarly placed individuals like the petitioners.

19. They state that the judgments relied upon by the respondent-DDA have no relevance to the present cases inasmuch as in ***Chennai Metropolitan Water Supply and Sewerage Board & Ors.*** (supra) there was a delay in challenging dismissal order from service. According to them, the cause of action in the said case was not a continuing one and creation of third party rights would be a relevant factor, contrary to the facts of the present case. They further state that in ***Union of India & Ors. vs. Shri Hanuman Industries & Anr.*** (supra) the authorities had refused to grant financial assistance to the petitioners under the financial assistance scheme for providing incentives to industries. According to them, there was no subsisting right in favour of the petitioners when the challenge to the refusal was allowed in favour of some other persons. However, they contend that demand of unearned increase is still subsisting.

20. Having heard learned counsel for the parties, this Court is of the view that it is only the inaction on the part of the respondent-DDA in not raising fresh demands of unearned increase in terms of the order passed in W.P.(C) 7676/2008 on the petitioners who are identically placed that gave a cause of action to them to file present writ petitions.

21. The respondent-DDA being an instrumentality of the State is also required to act fairly and justly and to treat similarly placed persons equally. It was the duty of the respondent-DDA to raise revised demand of unearned increase upon the petitioners after the similar demands had been quashed by this Court and the same had been confirmed by the Supreme Court. After all, it is settled proposition of law that there can be no disparity between the

same set of persons in identical circumstances.

22. The Division Bench of this Court in *Naresh Kumar and Ors. Vs. Union of India and Ors.*, W.P.(C) 7393/2011, decided on 10th October, 2011 has held that if a general issue of law affecting large number of persons is decided by a Court, it is expected that the officials apply themselves properly and do not foist litigation on others. The relevant portion of the said order is reproduced hereinbelow:-

“8. If a general issue of law affecting large number of persons is decided by a Court and a specific reference is made that the department should consider extending the principle of law declared across the board to all so that others are not forced in litigation, it is expected that the bureaucrat applies himself properly and does not foist litigation on the others.

9. The note extracted herein above says that the Ministry of Finance has agreed to extend the implementation of the Court judgment to only those applicants who approach the Court and not the others.

10. The decision creates an artificial distinction not recognized by law for the reason it would be arbitrary to say that law means A for those who go to the Court, and it means B for those who do not.

11. While disposing of the writ petition and directing the respondents to treat the mandamus issued vide order dated 9.10.2009 passed in WP(C) No.12258/2009 as the mandamus issued in the instant writ petition, we censure Sh.Pritam Lal, Under Secretary, (Pr-V), Government of India, Ministry of Home Affairs.....”

23. Undoubtedly delay and laches is one of the facets to deny exercise of discretion while dealing with a writ petition. It has been held in cases that if

a writ petition is filed beyond the period of limitation prescribed for filing a civil suit for similar cause, the Court should treat the delay as unreasonable and decline to entertain the petition. However, delay and laches is not an absolute impediment. There can be mitigating factors, like continuity of cause of action as pleaded by the petitioners or if the whole thing shocks the judicial conscience. Consequently, the doctrine of delay and laches is not a constitutional limitation on exercise of writ jurisdiction.

24. In fact, this Court while sitting in Division Bench in ***Jaipur Golden Gas Victims Association Vs. UOI & Ors., (2009) 164 DLT 346*** has held that 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.

25. The Supreme Court in ***Tukaram Kana Joshi and Others Vs. Maharashtra Industrial Development Corporation and Others, (2013) 1 SCC 353*** has held as under:-

“13. The question of condonation of delay is one of discretion and has to be decided on the basis of the facts of the case at hand, as the same vary from case to case. It will depend upon what the breach of fundamental right and the remedy claimed are and when and how the delay arose. It is not that there is any period of limitation for the courts to exercise their powers under Article 226, nor is it that there can never be a case where the courts cannot interfere in a matter, after the passage of a certain length of time. There may be a case where the demand for justice is so compelling, that the High Court would be inclined to interfere in spite of delay. Ultimately, it would be a matter within the discretion of the Court and such discretion, must be exercised fairly and justly so as to promote justice and not to defeat it. The validity of the party's defence must be tried upon principles substantially equitable. (Vide P.S. Sadasivaswamy v. State of T.N., State of

M.P. v. Nandlal Jaiswal and Tridip Kumar Dingal v. State of W.B.)

14. No hard-and-fast rule can be laid down as to when the High Court should refuse to exercise its jurisdiction in favour of a party who moves it after considerable delay and is otherwise guilty of laches. Discretion must be exercised judiciously and reasonably. In the event that the claim made by the applicant is legally sustainable, delay should be condoned. In other words, where circumstances justifying the conduct exist, the illegality which is manifest, cannot be sustained on the sole ground of laches. When substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred, for the other side cannot claim to have a vested right in the injustice being done, because of a non-deliberate delay. The court should not harm innocent parties if their rights have in fact emerged by delay on the part of the petitioners. (Vide Durga Prashad v. Chief Controller of Imports and Exports, Collector, Dehri Rohtas Light Railway Co. Ltd. v. District Board, Bhojpur, Dayal Singh v. Union of India and Shankara Coop. Housing Society Ltd. v. M. Prabhakar)

26. Consequently, this Court is of the opinion that in the alternative if present writ petitions are assumed to have been filed at belated stage and are not entertained, it would lead to iniquitous and absurd result as well as cause confusion, inconvenience and bring in injustice inasmuch as owners of adjoining similar properties who had purchased similar plots in the same auction would pay 'X' as unearned increase, whereas petitioners being neighbours of the said properties would pay '4X' as unearned increase.

27. Moreover, respondent-DDA in the present case has not been prejudiced due to any alleged delay in filing the present writ petitions. In fact, this Court while deciding the issue in the initial writ petitions has held

that respondent-DDA shall be entitled to claim interest on the fresh demands of unearned increase.

28. This Court may mention that after learned counsel for respondent-DDA had concluded his arguments, it had summoned the file of LPA 1065/2011 and had found that unearned increase booklet of DDA had been placed on record in the appeal and had been considered by the Division Bench while passing the order. In fact, the Division Bench's judgment extensively deals with the respondent-DDA's argument that the judgment of learned Single Judge was contrary to respondent-DDA's policy as contained in unearned increase booklet. Since the order of the Division Bench is rather short, it is reproduced hereinbelow:-

"1. We see no merit in the appeal which is dismissed in limine.

2. Our reason for so doing.

3. Appellant is the title paramount of Plot No.180, Block-F, PVC Bazar, Tikri Kalan, Delhi. The perpetual lessee under the appellant was one Hazari Lal. After taking permission from the appellant, Hazari Lal mortgaged the property when raising finance from Delhi Financial Corporation.

4. Hazari Lal defaulted in repaying the loan. Delhi Financial Corporation proceeded under the State Financial Corporation Act, and after taking possession of the property, auctioned the same. Respondent is the auction purchaser.

5. As per the perpetual lease deed, if the property was sold, 50% unearned increase had to be paid to DDA i.e. the appellant. 50% unearned increase would be the difference between the original premium paid and the sale price; half of this difference would be the unearned increase.

6. Dispute arose to the manner in which unearned increase had to be determined. The appellant relied upon a booklet

issued by it as per which, land price in the year when the property was auctioned was reflecting a higher value.

7. Learned Single Judge has correctly opined that where a specific plot has been sold by a public auction, this price would be the fair market price of the plot as on said date.

8. It has to be.

9. If the property is put to public auction and everybody is permitted to participate in the auction, price so received would be the best evidence of its market price as of that date.

10. Quashing the demand towards unearned increase raised by DDA, the learned Single Judge has directed DDA to raise the demand with reference to the auction price of the property; which we find to be correct.

11. No costs.”

29. Certainly the question of law does remain open in view of the order passed by the Supreme Court in respondent-DDA's SLP, but this Court cannot decide the present batch of cases on a different basis as that would amount to treating equals unequally!

30. Moreover, there is nothing which prevents this Court from reaching a similar conclusion on law and facts. In fact, this Court is of the view that there can be no better indicator of the market value of plot other than the price which the plot fetched in an auction held by Delhi Financial Corporation. It is pertinent to mention that no specific ground has been averred in the counter-affidavit that the auction price in the present case was not the appropriate indicator of the market value of the plots in question.

31. The judgment of *Nadia Distt. Primary School Council and Another* (supra) also has no application to the facts of the present case as the Supreme Court in the said case only held that a judgment based on concession and clarified not to be treated as the precedent could not be treated as binding.

32. Further, this Court is of the view that despite the question of law remaining open, the respondent-DDA cannot argue that identically placed auction purchasers in the same auction with regard to the same locality can be charged unearned increase on the basis of different market value of the land in question.

33. Consequently, as the petitioners are identically placed to the petitioners who had filed W.P.(C) 7646/2008, present writ petitions are allowed and the demand of unearned increase as intimated to the petitioners are quashed. Respondent-DDA is directed to raise fresh demands on the petitioners for unearned increase on the basis of the difference between the premium received at the time of allotment and the price paid by each of the petitioners in the auction held by Delhi Financial Corporation. It is clarified that respondent-DDA shall be entitled to claim interest on the unearned increase so found due from the date of original demand till payment of unearned increase by the petitioners. With the aforesaid directions, present batch of writ petitions stands disposed of.

MANMOHAN, J

SEPTEMBER 23, 2015

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