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

+ **W.P.(C) 5493/2013**

RENU AGGARWAL

..... Petitioner

Through: Mr. Hari and Mr. Sanjeev Kumar Tyagi,
Advocates

versus

GOVT. OF NCT OF DELHI

..... Respondent

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

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

% **12.08.2015**

1. This is a second round of litigation, which the petitioner has undertaken. In the earlier round, the petitioner had assailed the action of the respondent whereby, her application, for allotment of alternate plot was rejected on the ground of limitation.
2. Being aggrieved, the petitioner had filed a writ petition in this court which was numbered as : WP(C) 2509/2012. The said writ petition was allowed vide judgement dated 18.03.2013. The operative directions contained in the judgement dated 18.03.2013 were to the effect, that the, respondent was required to reconsider the application of the petitioner.
3. It is not in dispute that the respondent did give an opportunity to the petitioner to represent her case. However, the respondent has, as it appears, (on perusal of the impugned decision dated 01.08.2013), come to the same conclusion which it did in the first round, which is, that the petitioner's

application as filed, is beyond limitation.

4. Therefore, in order to adjudicate upon the contentions raised in the present writ petition, the following brief facts are required to be noticed.

4.1 The petitioner, who is admittedly the recorded owner of the acquired land, received compensation qua the said land on 23.07.2010. The payment certificate, however, could be obtained by the petitioner, only on, 01.09.2011.

4.2 The petitioner, thereafter, filed an application for allotment of an alternate plot on 14.11.2011. The respondent, for reasons best known to it, refused to accept the application form and returned the same with an endorsement “cannot be accepted”. The reason for the same, apparently, was that the application was filed beyond the period of one year, post the receipt of compensation.

4.3 Undeterred, the petitioner made a representation dated 29.02.2012 to the respondent and, had the said representation, dispatched vide registered post on 01.03.2012. Since, the application was not actioned, the petitioner, as indicated above, approached this court by way of a writ petition, which was, numbered as : WP(C) No. 2509/2012. That writ petition, as stated above, was disposed of on 18.03.2013.

4.4 It is, thereafter, that the impugned order came to be passed based on notice issued by the respondent to the petitioner. This notice is dated 16.06.2013. Pursuant to the notice, the petitioner filed a detailed representation dated 05.07.2013.

4.5 The recommendation committee, it appears, facially considered the representation of the petitioner, and thereafter, came to a conclusion, which it had reached in the earlier round, which is that, the petitioner’s, application

was beyond the period of limitation.

5. The petitioner, being aggrieved, consequently filed the instant writ petition.

5.1 Notice in this writ petition was issued on 03.09.2013. Since then, the counter affidavit has been filed on behalf of the respondent. 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 latches. This, however, does not appear to be the situation in the present case.

7.1 In this context, it must be stated, in this particular case, what the recommendation committee has failed to consider is the fact that the payments certificate was issued to the petitioner, by the competent authority, only on 01.09.2011. This document, to my mind, was one of the basic documents which the petitioner was required to place before the concerned authority, for it, to even entertain the application for allotment of an alternate plot. In fact, there is a specific provision in the policy that the application form, inter alia, is required to be accompanied by a payment certificate issued by the LAC/ SDM.

8. Having regard to the above, if one were to assume, for the moment, that the respondent had the necessary power to prescribe limitation for entertaining application for allotment of an alternate plot, the application filed by the petitioner in this case would be within time as, admittedly, the application was filed on 14.11.2011, which was approximately two (2) months from the date when the petitioner had obtained the payment

certificate.

9. For the aforesaid reasons, I am of the view that the conclusion reached in the impugned communication cannot be sustained. Accordingly, the impugned communication is set aside.

9.1 In these circumstances, the recommendation committee will issue the necessary recommendations for allotment of alternate plot to the petitioner unless it is fettered by any other objections with regard to the documents filed by the petitioner. If there are any deficiencies, then the respondent will issue a notice to the petitioner indicating therein the date, venue and time at which she would be required to present herself. The recommendation committee will, accordingly, afford a personal hearing to the petitioner, and thereafter, pass a speaking order in that behalf. A copy of the speaking order will be furnished to the petitioner within two (2) weeks of the same being passed.

9.2 Needless to say, the entire exercise will be completed with due expedition though, not later than two months from today. It is made clear, that if the recommendation committee were to agree with the contention of the petitioner then, she would be given the same seniority which she would have had got, had her application been allowed in the first instance.

10. The petition is, accordingly, disposed of.

RAJIV SHAKDHER, J

AUGUST 12, 2015

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