

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

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Date of decision: 28th October, 2015

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W.P.(C) NO. 5320/2012

JAGPAL SINGH

..... Petitioner

Through: Mr. R.K. Saini, Adv.

versus

GOVERNMENT OF NCT OF DELHI & ANR..... Respondents

Through: Mr. Utkarsh Sharma, Adv. for Ms.
Rachana Srivastava, Adv. for R-1&2.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J.

1. The petition impugns the closure by the respondents of the application made by the father of the petitioner for allotment of alternative land in lieu of acquired land as well as the refusal of the respondents to re-open the said case. Axiomatically, mandamus is sought to the respondents to include the name of the petitioner in the list of pending applications / cases for allotment of alternative plot of land and for consideration thereof.

2. The petition was entertained and a counter affidavit has been filed by the respondents Government of NCT of Delhi (GNCTD) and its Land & Building Department (L&B) and to which a rejoinder has been filed by the petitioner. The counsels have been heard.

3. The land of the father of the petitioner was acquired vide Land Acquisition Award dated 19th September, 1986 and possession thereof taken on 22nd September, 1986. An application for allotment of alternative land in lieu of acquired land in accordance with the Scheme in this regard framed by the Delhi Administration was filed by the father of the petitioner on 16th February, 1987.

4. The father of the petitioner died on 9th May, 1992. Admittedly, neither any intimation thereof was given to the respondents, nor did the petitioner or any of the other heirs of his father took any steps for substituting themselves in place of the father of the petitioner vis-a-vis the application dated 16th February, 1987.

5. It is the case of the respondents in their counter affidavit that the said application dated 16th February, 1987 of the father of the petitioner came up for consideration in the year 1993 and a letter dated 6th September, 1993 was sent to the father of the petitioner seeking certain information / documents to enable his application to be processed further; however no reply / response was received thereto. It is further the case of the respondents that upon not receiving any response another reminder dated 24th September, 1993 was sent to the father of the petitioner seeking the particulars / documents and by

the said communication the father of the petitioner was also informed that it was a final opportunity and that upon his failure to present himself along with particulars / documents on 8th October, 1983, the case would be closed without any further notice; that no response was received thereto also.

6. The respondents accordingly vide their letter dated 22nd November, 1993 to the father of the petitioner informed him of closure of the case.

7. In response to the said communication dated 22nd November, 1993, the petitioner vide his letter dated 10th January, 1994 informed of the demise of his father and furnished the particulars of the legal heirs and requested for re-opening of the case.

8. It is the case of the respondents in the counter affidavit that the request contained in the letter dated 10th January, 1994 of the petitioner was acceded to and the respondents vide letter dated 28th February, 1994 called upon the petitioner to appear on 14th March, 1994 along with the documents mentioned therein; the petitioner was also informed that if he did not so appear, the case shall be closed. It is the case of the respondents that the petitioner did not appear on 14th March, 1994 also.

9. The petitioner of course denies the receipt of the letters dated 6th September, 1993, 24th September, 1993 as well as the 28th February, 1994

though sent at the same address at which the letter dated 22nd November, 1993 of which receipt is admitted was sent.

10. The petitioner, after writing the letter dated 10th January, 1994 again did not do anything further. The petitioner in Para 10 of the petition has pleaded that the petitioner between the years 1994 to 2006 was visiting the office of the respondents but was told that the file is not traceable and hence did not take any action. However, there is no proof of any such visits.

11. The petitioner, after 12 years, on 27th November, 2006 made a representation to the respondents in this regard and even though no response was received thereto, has waited for another four years i.e. till 2010 to make another representation and which was rejected vide order dated 23rd November, 2010 of the respondents. It is thereafter that this petition was filed which came up before this Court first on 28th August, 2012.

12. In the aforesaid facts, the contention of the counsel for the respondents is that the petition suffers from delay and laches. Attention is also drawn to a decision taken by the Lieutenant Governor in or about 1998 not to reopen the earlier closed cases.

13. Per contra, the counsel for the petitioner has contended that once the petitioner has denied receipt of the communications aforesaid particularly

the communication dated 28th February, 1994, the onus is on the respondents to show receipt / dispatch thereof. Reliance in this regard is placed on *V.N. Bharat Vs. Delhi Development Authority* (2008) 17 SCC 321 as well as on the judgment dated 25th April, 2013 in W.P.(C) No.6897/2011 titled *Rajbal Singh Rathie Vs. Delhi Development Authority*.

14. It is further his contention that the petitioner had made enquiries under the Right to Information Act, 2005 and has been told that the respondents have no proof of discharge / delivery of the said communications. It is contended that when the communications of private persons which are claimed to have been sent and of which there is no proof of sending are not believed by the Courts, the same principle should also apply to the government departments. It is further contended that in the list dated 16th October, 2009 of the pending applications disclosed by the respondents in pursuance to the directions in another writ petition before this Court, the application filed by the father of the petitioner was shown to be “Live”.

15. To meet the contention of delay and laches, it is contended that when alternative plots of land are allotted by the respondents themselves after long delays and when the applications filed even before and at the same time as

the application filed by the father of petitioner were shown to be pending till 2009, no prejudice has been caused to the respondents by the delay even if any on the part of the petitioner. It is further contended that the price of allotment whenever made is to be paid as per the prevalent rates and not as per the rates prevailing on the date of the application.

16. I have considered the rival contentions and find merit in the contention of the respondents of the petition being not maintainable on the grounds of laches, acquiescence and waiver on the part of the petitioner.

17. I do not find any merit in the contention of the counsel for the petitioner that the denial of the petitioner of receipt of letters dated 6th September, 1993, 24th September, 1993 and 28th February, 1994 and the respondent having no proof of dispatch/delivery thereof alone is enough to negate the delay, laches, acquiescence and waiver on the part of the petitioner. The petitioner, if not at any earlier point of time, at least on 10th January, 1994 was aware of the application filed by his father for alternative plot and also of the closure thereof by the respondents vide order dated 22nd November, 1993 for the failure, of the father of the petitioner to furnish the requisite documents/particulars/clarifications, and of the petitioner in intimating the death of his father. Even if it were to be believed that the

petitioner did not receive the letter dated 28th February, 1994 of the respondents asking him to appear on 14th March, 1994 along with the requisite documents, the fact remains that the petitioner inspite of being aware of the closure of the case on 22nd November, 1993 did not after 10th January, 1994 pursue the matter till 27th November, 2006 i.e. for a period of 13 years. The petitioner, at least after knowing from the letter dated 22nd November, 1993 that the case had been closed and after applying for re-opening thereof should have pursued the matter and ought not to have lapsed into a slumber as he did. If this does not qualify as laches, acquiescence and waiver, nothing else would. The version of the petitioner, of having visited the office of the respondents between the years 1994 and 2006 and being told that the file is not traceable, is not believable. Even if the file was not traceable, the petitioner ought to have taken his remedies thereagainst expeditiously and there was no reason for him to wait for a period of 12 years. Just like repeated representations do not extend the period of limitation, similarly visits even if any of the petitioner and which were not resulting in any relief to the petitioner would not entitle the petitioner to as and when he chooses invoke remedy thereagainst.

18. Not only so, after writing the letter dated 27th November, 2006 also

the petitioner waited for another four years i.e. till the year 2010 to make another representation.

19. In this view of the matter, the reliance placed by the counsel for the petitioner on **V.N. Bharat** and **Rajbal Singh Rathi** supra is misconceived.

20. I am also of the opinion that the factum of the respondents in the list dated 16th October, 2009 showing the application made by the father of the petitioner to be “Live” is of no avail in this regard. That does not explain the inaction of the petitioner from 1994 to 2006 or from 2006 till 2010. It is not even the case of the petitioner that he was earlier aware of the same or acted on the basis thereof.

21. Similarly no merit is found in the contention of the petitioner, of the aspect of delay, laches, acquiescence and waiver on the part of the petitioner not coming in the way of the petitioner owing to the delays in allotment of alternative plot of land. In this context it may be noticed that a person whose land is acquired is not entitled to alternative plot of land as a matter of right and is only entitled to be considered therefor (see **Ramanand Vs. Union of India** AIR 1994 Delhi 29 (FB)). The allotment of such alternative plot of land is out of the lands developed by the Delhi Development Authority (DDA) and DDA cannot be expected to allot the entire land developed by it

to the applicants for alternative plot of land in lieu of acquired land and to the detriment of the registrants under the other schemes of DDA. Thus, from each development of the DDA, only some land can be carved out/reserved for allotment under the scheme of ‘allotment of alternative plot of land in lieu of acquired land’.

22. The reliance placed by the counsel for the respondents on the judgment dated 22nd July, 2013 of this Court in W.P.(C) No.4724/2010 titled ***Leelu Vs. Union of India*** is apposite. That case was concerned with delay from 1982 till 2008 in applying for an alternative plot of land. Relying on the dicta of the Division Bench of this Court in ***Sunder Singh Vs. Union of India*** 2009 II AD (Delhi) 809 and other judgments the petition was held to be barred by delay and laches.

23. The matter is placed beyond any pale of controversy by the dicta of the Division Bench of this Court in ***GNCTD Vs. Jangli Ram*** MANU/DE/1927/2015, SLP(C) No.30252/2015 preferred whereagainst was dismissed on 2nd November, 2015. The Division Bench relied on the judgment of ***Ramwati Vs. GNCTD*** MANU/DE/2387/2014 wherein it was held that there is an element of urgency and rehabilitation in the scheme for allotment of alternative plot in lieu of acquired land and the delay of 13

years in filing the petition was held to be fatal. It was further held that 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. It was observed that the scheme of allotment of alternative residential plot in lieu of acquired land is rehabilitative in nature and 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.

24. There is thus no merit in the petition.

Dismissed.

No costs.

RAJIV SAHAI ENDLAW, J

OCTOBER 28, 2015

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(corrected and released on 30th January, 2016)