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

+ **W.P.(C) 7909/2014**

SANTOSH KHURANA Petitioner
Through: Mr V.P. Dabas, Adv.

versus

**SECRETARY, LAND & BUILDING
DEPARTMENT** Respondent
Through: Ms Deepika, Adv.

**CORAM:
HON'BLE MR. JUSTICE RAJIV SHAKDHER**

**ORDER
27.08.2015**

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1. This is a writ petition filed seeking a direction qua the respondent for setting aside the communication dated 27.05.2014. There is a supplementary prayer made, which is for issuance of a direction to the respondent to accept the indemnity bond and the surviving member certificate sought to be presented by the petitioner. The indemnity bond, now sought to be furnished, is dated 11.07.2014, whereas the surviving member certificate is dated 23.08.2014.

2. There is no dispute about the fact that the petitioner's husband Late Mr. Avinash Khurana had made an application for allotment of an alternate plot in lieu of acquired land on 30.04.1997. This application triggered a process of exchange of correspondence with the respondent herein.

2.1 The respondent, vide letter dated 12.03.2013, had asked for certain documents to process the application, for allotment of an alternate plot.

Fifteen (15) days' time, was given, to supply the documents. This letter was, though, addressed to the applicant, Mr Avinash Khurana, was directed to the wrong mailing address, which is, A-17, Majlis Park, Adrash Nagar, Delhi. Unfortunately, the applicant, Mr Avinash Khurana, had by then expired on 05.06.2011. Even according to the respondent, the address of the applicant was : A-171, Majlis Park, Adrash Nagar, Delhi.

2.2 Since, the legal representatives of the applicant, which includes the petitioner herein, who, as indicated above, is the wife of the original applicant, Mr Avinash Khurana, did not receive the letter dated 12.03.2013, there could, obviously be no compliance of the directions contained therein.

2.3 Unaware of the aforesaid situation, the respondent issued another letter dated 25.04.2013, calling upon the original applicant, Mr Avinash Khurana, to submit the requisite documents sought for vide its earlier letter dated 12.03.2013, within a period of 30 days.

2.4 It appears that somehow this letter, which was again directed to the wrong address i.e. A-17, Majlis Park, Adrash Nagar, Delhi, was secured by the petitioner, who responded to the same vide letter dated 22.05.2013. In the said letter, the petitioner indicated that the original applicant, Mr Avinash Khurana, her husband, had expired on 05.06.2011, and that, the letters of the respondent which had been addressed to him were not sent at the correct address. Furthermore, vide this letter i.e. letter dated 22.05.2013, the petitioner gave reasons as to why she would require further time to collect the documents requisitioned by the respondent.

2.5 The respondent, thereafter, strangely, once again, mailed, yet another letter dated 01.11.2013, to the original applicant i.e. Mr Avinash Khurana, at the wrong address i.e. A-17, Majlis Park, Adrash Nagar, Delhi. The

petitioner, however, appears to have got hold of this letter as well, and responded to the same vide communication dated 11.11.2013. This time around, the petitioner supplied a majority of the documents sought, including an indemnity bond. By way of the said communication, though the petitioner, reiterated that her correct address was A-171, Majlis Park, Adrash Nagar, Delhi- 110 033.

2.6 In response to the aforesaid, the respondent informed the petitioner vide letter dated 09.12.2013, that her case had been put up before the recommendation committee at its meeting held on 14.11.2013, and that, the committee, after examination of her case, had sought the following documents:

- (i) Surviving Member Certificate.
- (ii) Proper indemnity bond duly registered with the Sub-Registrar's office, favouring the President of India, via the Secretary, Land & Building Department, Govt. of NCT of Delhi.

2.7 The petitioner was requested to supply the aforementioned documents by 12.12.2013.

2.8 Since, the petitioner, did not, apparently, respond to the said communication, her case appears to have been put up before the recommendation committee, on 04.04.2014. At the said meeting, a decision was taken by the recommendation committee to reject the petitioner's case on account of non-supply of documents sought vide letter dated 09.12.2013.

3. With the writ petition, the petitioner (as indicated right at the beginning of my narration), has submitted, an indemnity bond dated 11.07.2014, duly executed in favour of the President of India, via the Land & Building Department, Govt. of NCT of Delhi. The Surviving Member

Certificate, as indicated above, which is, dated 23.08.2014, has also been submitted with the writ petition.

3.1 Pertinently, notice in this writ petition was issued on 17.11.2014. The notice was made returnable on 23.02.2015. On 23.02.2015, the notice was accepted by Mr Yeeshu Jain, Advocate. Despite, time being granted, no counter affidavit has been filed to date. In these circumstances, the assertions made in the writ petition have gone untraversed.

4. Ms Deepika, who appears on behalf of the respondent, based on the record argues that several opportunities were given to the petitioner to fulfil the deficiencies noticed, and since, no curative action was taken, the petitioner's case, was rightly rejected by the recommendation committee.

5. On the other hand, learned counsel for the petitioner says that the application for allotment of alternate land, which was acquired in 1996, was made, as far back as on 30.04.1997 and, therefore, given the fact that nearly 18 years have been spent by the respondent in processing the petitioner's case, surely further time could be given to present the deficient documents.

6. I have heard the learned counsels for the parties. I have also perused the documents brought on record. As noted above, clearly, the respondent commenced the process of scrutinising the petitioner's case, only in March, 2013. The first two communications dated 12.03.2013 and 25.04.2013 were, admittedly, directed to the wrong address. As a matter of fact, even after the petitioner had brought this fact to the notice of the respondent, vide a letter dated 22.05.2013, the letter issued thereafter, on 01.11.2013, was once again, dispatched to the wrong address. Fortunately, the petitioner was lucky in securing the letters addressed by the respondent to the wrong address and, consequent thereto, did supply most of the information vide

letter dated 11.11.2013. Amongst the documents supplied by the petitioner, was also an indemnity bond.

7. The recommendation committee upon perusal of the petitioner's case on 14.11.2013, came to the conclusion that the indemnity bond was not properly framed. Furthermore, it also came to the conclusion that the petitioner would be required to supply a Surviving Member Certificate.

7.1 Pertinently, the petitioner was given time only till 12.12.2013 by the respondent vide letter dated 09.12.2013. Therefore, effectively, only three days were given to the petitioner. Even if it is assumed that the letter dated 09.12.2013 was dispatched on the same day, it would have reached the petitioner in the usual course only on 11.12.2013, which practically left one day at the petitioner's disposal to fulfil the deficiency.

7.2 Concededly, the petitioner was unaware of the fact that the recommendation committee would convene on 04.04.2014. While the Surviving Member Certificate was asked for, and was perhaps necessary, substantial information in that regard, was supplied with letter dated 11.11.2013, which amongst other documents, had enclosed with it, the Death Certificate of Late Mr. Avinash Khurana, and the relinquishment deed in-original.

8. Furthermore, there is merit in the petitioner's submission that, having regard to the fact that the respondent took nearly 16 years to pick up the file to process the matter and therefore, her application for allotment of an alternate plot could not have been rejected only because there was some amount of delay in supplying the deficient documents.

8.1 Learned counsel for the petitioner says that the delay of nearly 7 to 8 months has occurred on account of the fact that the petitioner, who is a

widow, was made to run from one office to the other for obtaining the Surviving Member Certificate. He submits, in the first instance, the petitioner had approached the Deputy Commissioner's office at Sham Nath Marg, Delhi, whereupon she was told that she would have to approach the office of the Deputy Commissioner, North District, Delhi, located at Model Town, Delhi. It is thus, contended, that the delay, was on account of absence of knowledge and lack of necessary wherewithal.

9. Therefore, having regard to the entirety of circumstances, I am of the view that the respondent ought to reconsider the case of the petitioner, now that the deficient documents have been brought on record. The submission of the counsel for the respondent that the impugned communication dated 27.05.2014 should be sustained, to my mind, cannot be accepted. The delay in this case is not such that it cannot be condoned or, that, its condonation would cause prejudice to the respondent.

10. Accordingly, the writ petition is allowed. The impugned communication dated 27.05.2014, is set aside. The recommendation committee is directed to reconsider the case of the petitioner. For this purpose, the recommendation committee will issue a notice to the petitioner indicating therein the date, time and venue at which she would be required to present herself. The recommendation committee will take into account the indemnity bond dated 11.07.2014, and the surviving member certificate dated 23.08.2014, which has been brought on record, while considering the petitioner's case. The notice will also indicate any other document(s), which the petitioner is required to place before the recommendation committee. For this purpose, sufficient time will be given to the petitioner.

11. The recommendation committee will, also, accord a personal hearing

to the petitioner and, thereafter, pass a speaking order. The petitioner, will be furnished a copy of the speaking order within two weeks of the same being passed.

12. Needless to say, the aforesaid exercise will be completed with due expedition, though not later than three (3) months from today. In case the application of the petitioner is allowed by the recommendation committee, the petitioner, will retain the same seniority as she would have had got, had her application been allowed in the first instance.

13. The writ petition is, accordingly, disposed of.

RAJIV SHAKDHER, J

AUGUST 27, 2015

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