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

+ W.P.(C) 1519/2003

AMRIT KUMARI

..... Petitioner

Through Ms.Amita Malhotra, Advocate.

versus

ASST. HOUSING COMMISSIONER & ORS. Respondents

Through Mr.Dev P.Bhardwaj, CGSC with
Ms.Ranjana, Advocate for UOI.
Mr.M.K.Singh, Advocate for R-5.

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Date of Decision: 14th March, 2016

CORAM:
HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J: (Oral)

1. Learned counsel appearing for the petitioner prays for an adjournment on the ground that the main arguing counsel is out of station. No adjournment slip had been filed in the present case. On an earlier occasion, the present case had been dismissed in default. Moreover, as the present case relates to the year 2003, this Court in the first call made it clear that it would not adjourn the matter and the counsel for the petitioner was directed to prepare the case. She was informed that the matter would be taken up after a passover. However, even at pass over stage, learned counsel for the petitioner again prays for an adjournment on the ground that the main arguing counsel is not available. The request for adjournment is once again

declined.

2. It is pertinent to mention that the present writ petition has been filed for allotment of an alternative plot or payment of compensation in lieu of the petitioner's acquired plot.

3. In the writ petition, it has been averred that the plot admeasuring 41 bighas and 8 biswas in khasra no.923 of village Mandawali, Fazalpur, Sudama Nagar, Ilaka Shahdara, Delhi, of which the petitioner was the owner was acquired by the respondent in the year 1975, during emergency. It is stated that no compensation was paid to the petitioner. It is also averred that when the petitioner represented against acquisition of her land, respondent vide letter dated 7th July, 1979 agreed to give to the petitioner an alternative plot or compensation subject to fulfilment of certain formalities.

4. It is the case of the petitioner that though she completed all formalities, neither any compensation has been paid to her till date nor has she been allotted any alternative plot.

5. In the counter-affidavit, the respondent nos. 1 & 6 have stated that the plot in question was notified for acquisition for public purpose namely Planned Development of Delhi vide notification No.F.15 (117)/60/LSG dated 3rd March, 1964 of the Land Acquisition Act. The Declaration in respect of the said land under Section 6 of the Land Acquisition Act was issued vide notification No.F.4(19)/65-L&H dated 12th July, 1966. It is stated that the petitioner had purchased the aforesaid plot on 10th June, 1974 through the General Power of Attorney i.e much after the Declaration under Section 6 had been issued.

6. In the counter-affidavit, it is also stated that the purchase by the petitioner being subsequent to acquisition of the land is clearly barred by the

express mandate of Section 4 of the Delhi Lands (Restriction on Transfer) Act, 1972 (for short 'the Act'), which regulates the transfer of lands in respect of which acquisition proceedings had been initiated.

7. It is further stated in the counter-affidavit that a scheme for allotment of alternative plots is purely a welfare scheme formulated to rehabilitate the agriculturists whose land had been acquired. Under the scheme, a person whose land had been acquired was entitled to apply for an alternative plot subject to fulfilling the following conditions:-

“(a) He must have been recorded owner of the land at the time of issuance of preliminary Notification under Section 4 of the Land Acquisition Act.

(b) He must have received compensation.

(c) He should not own a house residential plot in village Abadi in his name or in the name of his spouse or dependents.”

8. Having perused the paper book and having heard the learned counsel for the respondents, this Court is of the view that the petitioner had purchased the land after the declaration under Section 6 of the Land Acquisition Act in violation of Section 4 of the Act, which regulates the transfer of lands in respect of which acquisition proceedings had been initiated. Section 4 of the Act reads as under:-

“4. Regulation on transfer of lands in relation to which acquisition proceedings have been initiated.

No person shall, except with the previous permission in writing of the competent authority, transfer or purport to transfer by sale, mortgage, gift, lease or otherwise any land or part thereof situated in the Union territory of Delhi, which is proposed to be acquired in connection with the Scheme and in relation to which a declaration to the effect that such land or part thereof is needed for a public purpose having been made by the Central

Government under section 6 of the Land Acquisition Act, 1894, the Central Government has not withdrawn from the acquisition under section 48 of that Act.”

9. Consequently, the purchase of land by the petitioner being in violation of Section 4 of the Act was illegal.

10. Further, as petitioner was neither the recorded owner of the land at the time of issuance of preliminary notification under Section 4 of the Land Acquisition Act nor she had received the compensation as the rightful owner, the petitioner is not entitled to the benefit of allotment of an alternative plot under the beneficial scheme.

11. This Court is also of the view that, in the event, the petitioner has not been paid the compensation, then her remedy, if any, lies under Section 24(2) of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

12. This Court is of the view that the letters relied upon by the petitioner in her writ petition do not amount to any admission on the part of the respondent. They only ask the petitioner to apply for an alternative plot in a prescribed format or state that the petitioner's representation would be considered.

13. This Court is further of the opinion that the present petition is barred by delay and laches as the petitioner had admittedly been dispossessed in 1975 and the letters relied upon by the petitioner relate back to the year 1979, whereas the present petition had been filed in the year 2003. In the case of ***State of Madhya Pradesh and another Vs. Bhailal Bhai & Anr., AIR 1964 SC 1006***, the Supreme Court has held as under:-

“.....Learned Counsel is right in his submission that the provisions of the Limitation act do not as such apply to the

granting of relief under Art.226. It appears to us however that the maximum period fixed by the legislature as the time within which the relief by a suit in a civil court must be brought may ordinarily be taken to be a reasonable standard by which delay in seeking remedy under Art.226 can be measured. This Court may consider the delay unreasonable even if it is less than the period of limitation prescribed for a civil action for the remedy but where the delay is more than this period, it will almost always be proper for the Court to hold that it is unreasonable.....”

14. The Supreme Court in ***Banda Development Authority, Banda Vs. Moti Lal Agarwal & Ors., (2011) 5 SCC 394*** has held as under:-

“ 17. It is true that no limitation has been prescribed for filing a petition under Article 226 of the Constitution but one of the several rules of self-imposed restraint evolved by the superior courts is that the High court will not entertain petitions filed after long lapse of time because that may adversely affect the settled/crystallised rights of the parties. If the writ petition is filed beyond the period of limitation prescribed for filing a civil suit for similar cause, the High Court will treat the delay unreasonable and decline to entertain the grievance of the petitioner on merits.”

(emphasis supplied)

15. Consequently, the present writ petition, being bereft of merits and being barred by laches, is dismissed.

MANMOHAN, J

MARCH 14, 2016

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