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IN THE HIGH COURT OF DELHI AT NEW DELHI

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C.R.P. 43/2014

DELHI DEVELOPMENT AUTHORITY

..... Petitioner

Through Ms.Shobhana Takiar, Advocate.

versus

VASANT SURGICO MEDICAL CENTRE PVT LTD & ORS

..... Respondents

Through Mr.Ravinder Sethi, Sr. Adv. with
Mr.Naresh Thanai and Mr.Puneet
Sharma, Advocates.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

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25.02.2016

Petitioner/DDA is aggrieved by the order dated 27.4.2010 wherein the Trial Court had dismissed the application filed by the petitioner (under Order XLVII read with Section 5 of the Limitation Act) seeking a review of the earlier order dated 17.10.2008.

Record shows that the present suit is a suit for declaration, permanent injunction which has been filed by the plaintiff namely M/s Vasant Surgico Medical Centre Pvt. Ltd. and Ors. against the DDA. Prayer was that a decree of permanent injunction be granted in favour of the plaintiff and against the defendants restraining them from dispossessing the plaintiff from the suit property and a decree of

declaration was also sought declaring the lease deed 15.01.1986 to be ultra vires and the same be treated as cancelled. The Trial Court had decreed the suit. Before the Appellate Court parties were negotiating. This is clear from the order dated 17.10.2008 passed by ARC in RCA No.19/2007. Extract of the order is reproduced herein as under:

“Matter has been fixed for conciliation. The officers of the appellant and the Director for the respondent company are present in the Court. They have made their respective statements. In view of the judgment of Delhi High Court in the case of DDA vs. Aditya Kumar Jajodia, 2005 IV (Delhi) 329 and J.K. Bhartiya & Ors. vs. UOI & Anr., 2006 I AD (Delhi) 408 the respondent has agreed to pay the Ground Rent, Restoration Charges, Conversion Charges (without interest) in terms of the abovesaid rulings and Circular dated 23.6.1995 to which the appellant has no objection. The officer of the appellant and the Director of the respondent company are present in the Court and they agreed that after making adjustments of the amount already deposited by the respondent only a sum of Rs.23,91,238/- which is inclusive of the interest @ 10% per annum from the date of application is required to be paid which the respondent is agreed to pay on or before 31.10.2008. I am satisfied by the statements of the parties and counsels by which they are bound.

In terms of the aforesaid the impugned judgment of the learned trial Court dated 26.4.2007 holding clause (aa) of lease deed to be

null and void is hereby set aside. Appeal stands disposed off. Trial Court record be sent back along with copy of this order. Parties to bear their own costs. Appeal file be consigned to record room.”

Statement of Jaswant Singh, Senior Account Officer, DDA, Vikas Sadan was recorded on the same date; which reads hereinafter as under:

“Statement of Sh.Jaswant Singh, Senior Accounts Officer, DDA, Vikas Sadan, I.N.A., New Delhi.

On S.A.

I am the Sr.Account Officer of DDA duly competent to make a statement on their behalf. The respondent (Plaintiff) is required to make a payment of Rs.23,91,238/- as Restoration charges, ground rent and conversion charges which has been worked out as under.

- (i) Restoration charges : Rs.1,31,103.00*
- (ii) Ground Rent w.e.f. 21.6.1977 to 14.12.2008 after adjustment of Rs.1,51,300/- and interest of Rs.38,156/- (subject to verification) comes to Rs.1,20,150/- and interest up to 14.1.2009 comes to Rs.3,79,294/-.*
- (iii) Conversion Charges applicable on the date of application i.e. February 2004 comes to Rs.23,95,490.00 after deducting amount of Rs.11,98,419/-. A sum of Rs.11,97,071/- is payable by the respondent.*
- (iv) Interest @10% as per the direction of the Hon’ble Court for the*

(v) *period February 2004 when the application was made till 31.10.2008 comes to Rs.5,63,620/-.*

(vi) *The total figure is Rs.23,91,238/-."*

The sum of Rs.23,91,238/- calculated by the DDA was accordingly paid by the plaintiff to the DDA. The Department was, however, not happy with the order. They preferred to file a review petition. This review petition was filed on 28.10.2009. This was accompanied by an application seeking condonation of delay. Contention in this review petition was that the earlier order dated 17.10.2008 is liable to be reviewed for the reason that the official who had made this statement on behalf of the Department was not authorized to do so. The Review Court had noted that it was not the case of the petitioner that any action had been taken against the concerned official who as per them had made this unauthorized statement on behalf of the Department. The delay of one year in filing the review petition was unexplained. This was not answered in terms of the averments made in the application. The application seeking condonation of delay was accordingly dismissed on 27.4.2010.

Against the order dated 27.4.2010 a Regular Second Appeal (RSA) was filed; this was also after a delay of almost 1049 days. This RSA continued for some time till an order was passed on 13.3.2014 wherein a Bench of this Court was of the view that an RSA was not the remedy against the order (dated 27.4.2010) dismissing the review

petition; accordingly this RSA was converted into a revision petition.

Even if it be treated as a revision petition, the petitioner has not been able to cross the hurdle of limitation. This petition (initially RSA) was accompanied with an application seeking condonation of delay. The averments contained in the application have been perused. These are only narrations of facts and do not justify any ground the delay in filing this petition belatedly. In this accompanying application it was stated that the delay is of 441 days. If the delay is counted from the date of the dismissal of the review petition on 27.4.2010; it was otherwise 1049 days. The explanation furnished qua this submission is contained in para 5 of the said application. It is reproduced herein as under:

“That the Appellant DDA is a statutory body and due to petty lapses on the part of its functionary officials resulting into delay in filing this appeal which may please be admitted by condoning the same as the DDA a public institution/organisation be not rendered to suffer. The appellant is Government functionary and part of the State having obligation and responsibility of wide areas and issues and due to this the present appeal could not be filled by the Appellant DDA earlier and though unduly delayed, the graceful condonation of delay in view of not letting the State to suffer on account of petty lapses on the part of the individual functionaries deserves to be kindly considered and allowed.”

It is hardly a justifiable cause for condoning the delay and

merely because the DDA is a Government Department it is not permitted to be lax to the point of negligence.

In this context, the observations of the Apex Court in the case of Postmaster General and Ors. Vs. Living Media India Ltd. and Anr. reported as (2012) 3 SCC 563 are relevant and it would be useful to extract a portion of the same which reads herein as under:

“29.It needs no restatement at our hands that the object for fixing time-limit for litigation is based on public policy fixing a life span for legal remedy for the purpose of general welfare. They are meant to see that the parties do not resort to dilatory tactics but avail their legal remedies promptly. Slamond in his Jurisprudence states that the laws come to the assistance of the vigilant and not of the sleepy.

30. Public interest undoubtedly is a paramount consideration in exercising the court’s discretion wherever conferred upon it by the relevant statutes. Pursuing stale claims and multiplicity of proceedings in no manner subserves public interest. Prompt and timely payment of compensation to the landloers facilitating their rehabilitation/resettlement is equally an integral part of public policy. Public interest demands that the State or the beneficiary of acquisition, as the case may be, should not be allowed to indulge in any act to unsettle the settled legal rights accrued in law by resorting to avoidable litigation unless the claimants are guilty of deriving benefit to which they are otherwise not entitled, in any fraudulent

manner. One should not forget the basis fact that what is acquired is not the land but the livelihood of the landlosers. These public interest parameters ought to be kept in mind by the courts while exercising the discretion dealing with the application filed under Section 5 of the Limitation Act. Dragging the landlosers to courts of law years after the termination of legal proceedings would not serve any public interest. Settled rights cannot be highly interfered with by condoning inordinate delay without there being any proper explanation of such delay on the ground of involvement of public revenue. It serves no public interest.”

This petition is hopelessly barred by time. Even on merits this Court is of the view that once a consent order had been passed on 17.10.2008 and the statement of the officer of the DDA had been recorded and the order sheet also noted the presence of the Director of the Department (on that date); the Department having calculated a sum of Rs.23,91,238/- which amount as per them was payable by the non-applicant to the Department and the appeal also stood disposed of on that day; review petition against that order was rightly dismissed. Not only was there an inordinate delay in filing the review petition, even otherwise the Review Court had correctly noted that it was not that any action has been taken against the so-called erring official who had made this statement without any authority. In these circumstances, it could not be said that any ground for review was made out.

Even before this Court (at the cost of repetition) not only is there an abnormal delay in preferring this petition (1049 days) even otherwise it was a consent order inter se the parties. DDA has agreed to receive a sum of Rs. Rs.23,91,238/-; it does not now lie in their mouth to assail this order. Relevant would it be to state that a prima finding to the same effect has also been recorded by the coordinate Bench of this Court vide its order dated 19.8.2013 which had penned down and noted that the Department was not entitled to charge unearned increase on account of the change in the share holding of the company. On this count the Department had sought time to take instructions but none were forthcoming. Today arguments have been addressed on merits.

In this background, this Court is of the view that the matter has come to a close. It cannot be agitated and re-agitated again and again. This petition is without any merit. It is dismissed.

INDERMEET KAUR, J

FEBRUARY 25, 2016/ndn