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

+ W.P.(C) 4620/2010

ROHTASH SINGH & ORS.

..... Petitioners

Through: Mr. Ashok Gurgani, Adv.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Ms. Rachna Srivastava with Mr. Sukrit
R. Kapoor, Advs.for R-2 and 3

Mr. Arun Birbal with Mr. Sanjay Singh, Advs. for
DDA

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Date of Decision: 24th August, 2016

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J: (Oral)

1. The present writ petition has been filed seeking allotment of alternative plot in lieu of acquisition of land of father of the petitioners in 1961.
2. In the writ petition, it has been averred that though the land of the petitioner's predecessor-in-interest had been acquired in 1961, yet they have not been allotted any alternate residential accommodation till date.
3. The Land & Building Department in its counter affidavit has stated that the case for allotment of residential plot was processed initially on an application filed by the deceased father of the petitioners. However, the said application was closed due to absence of any response from the original

applicant.

4. Upon a subsequent application being filed, the case was again closed in 1987 due to non-submission of documents after giving final notice on 05th December, 1986. It is pertinent to mention that the petitioners' father had expired in 1984 and thereafter correspondence had been exchanged between the Land & Building Department and the present petitioners who happen to be legal heirs of the deceased owner.

5. Consequently, the present writ petition has been filed nearly after a gap of twenty-three years and that too, without offering any explanation for the delay.

6. Mr. Gurgani, learned counsel for the petitioners seeks to rely upon the Division Bench judgment of this Court in ***Government of NCT of Delhi Through Secretary v. Poonam Gupta & Others, 2016 (154) DRJ 103 (DB)*** wherein it has been held as under:-

“18. In the light of the legal position noticed above, we are of the view that the time limit set in the Public Notice cannot be held to be final and conclusive so as to preclude the persons whose lands are acquired from being considered for allotment of the alternative land under the Scheme. The long delay in making the application under the Scheme, no doubt, is a factor to draw an inference that there is no actual need of the alternative plot, however, it cannot be held that all the applications which are made beyond the period prescribed in the Public Notice shall be rejected as barred by limitation. As pointed out in Simla Devi vs. Secretary and Others (supra), the Scheme did not provide for any limitation as such, but certain time limit has been stipulated only in the Public Notice issued by the concerned department. It appears to us that the object of stipulation of such time limit is not to destroy the rights of the parties but the same is meant to see that the parties are vigilant in enforcing the benefit provided under the Scheme and that they do not resort to dilatory tactics.

Therefore, it is always a question of discretion of the Recommendation Committee which has to be exercised on a consideration of all the relevant facts including the diligence and bona fides of the party making the application for alternative land under the Scheme.”

7. He also relies upon the judgment of the Supreme Court in ***Tukaram Kana Jodhi And Others v. Maharashtra Industrial Development Corporation and Others***, (2013) 1 SCC 353, wherein it has been held as under:-

*“14. No hard-and-fast rule can be laid down as to when the High Court should refuse to exercise its jurisdiction in favour of a party who moves it after considerable delay and is otherwise guilty of laches. Discretion must be exercised judiciously and reasonably. In the event that the claim made by the applicant is legally sustainable, delay should be condoned. In other words, where circumstances justifying the conduct exist, the illegality which is manifest, cannot be sustained on the sole ground of laches. When substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred, for the other side cannot claim to have a vested right in the injustice being done, because of a non-deliberate delay. The court should not harm innocent parties if their rights have in fact emerged by delay on the part of the petitioners. (Vide *Durga Prashad v. Chief Controller of Imports and Exports*, *Collector (LA) v. Katiji, Dehri Rohtas Light Railway Co. Ltd. v. District Board, Bhojpur*, *Dayal Singh v. Union of India and Shankara Coop. Housing Society Ltd. v. M. Prabhakar*)”*

8. In the opinion of this Court, the Division Bench judgment in ***Government of NCT of Delhi Through Secretary v. Poonam Gupta & Others*** (supra) has no application to the facts of the present case inasmuch as the present case does not pertain to delay in applying initially for

alternative allotment. The petitioners have to offer an explanation for laches i.e. delay in approaching this Court after the Land & Building department had closed the petitioners' case.

9. This Court in *Pooja Khemka vs. Delhi Development Authority, WP(C) 4151/2013, decided on 23rd September, 2015* after referring to *Tukaram Kana Jodhi And Others* (supra) has held that the test to be applied is whether laches on the part of the petitioner is such as to hold that the petitioner by its act and conduct has given a go-by to his rights and whether entertaining the petition would prejudice the rights of any other parties or the respondents.

10. This Court takes judicial notice of the fact that now The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 has come into effect and DDA has had to surrender a large portion of its land bank. Moreover, due to delay in approaching this Court, many other third parties whose land had been acquired, would in the meantime have got a right to seek alternative accommodation. In the event, the present writ petition is allowed, the rights of the third parties would be severely prejudiced. Also, no explanation for the delay in approaching this Court has been offered. Consequently, the present writ petition is dismissed on the ground of laches.

MANMOHAN, J

AUGUST 24, 2016
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