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

+ **W.P.(C) 2954/2016**

DINESH ELHENCE

..... Petitioner

Through **Ms.Sumi Anand, Advocate.**

versus

DELHI DEVELOPMENT AUTHORITY

..... Respondent

Through **Ms.Pallavi Shali, Advocate.**

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Date of Decision : 28th November, 2016

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J: (Oral)

1. Present writ petition has been filed seeking a direction to the respondent-DDA to refund the amount of Rs. 1,07,000/- along with interest @12% p.a. from 1984 till date of payment.
2. It has been averred in the petition that petitioner was registered for allotment of MIG flat in general category in 1972.
3. On 14th December, 1983, petitioner was allotted a Flat No. 45A in Seikh Sarai and the petitioner deposited Rs. 99,097/-.
4. On 9th August, 1984, the petitioner was informed that his allotment had been cancelled. In 1985, the petitioner filed a writ petition being W.P.(C) No.767/1985 which was ultimately dismissed for non-prosecution vide order dated 1st September, 2002.

5. In 2010, for the first time, the petitioner made a representation seeking refund of the amount deposited by him with DDA.
6. Learned counsel for the petitioner states that as no response was received despite making several representations to DDA for refund of the amount deposited, the petitioner filed the present writ petition in 2016.
7. On the other hand, learned counsel for the respondent-DDA states that the present writ petition is barred by delay and laches, inasmuch as the cause of action for seeking refund of the amount arose in the year 1985 or at least when the petitioner's writ petition was dismissed i.e. 1st September, 2002.
8. In rejoinder, learned counsel for the petitioner states that petitioner came to know of dismissal of W.P.(C) 767/1985 only in 2005. She also relies upon the judgment of the Supreme Court in ***Tukaram Kana Joshi & Ors. Vs. Maharashtra Industrial Development Corporation & Ors.; (2013) 1 SCC 353***, wherein it has been held as under:-

“12. The State, especially a welfare State which is governed by the rule of law, cannot arrogate itself to a status beyond one that is provided by the Constitution. Our Constitution is an organic and flexible one. Delay and laches is adopted as a mode of discretion to decline exercise of jurisdiction to grant relief. There is another facet. The Court is required to exercise judicial discretion. The said discretion is dependent on facts and circumstances of the cases. Delay and laches is one of the facets to deny exercise of discretion. It is not an absolute impediment. There can be mitigating factors, continuity of cause action, etc. That apart, if the whole thing shocks the judicial conscience, then the Court should exercise the discretion more so, when no third-party interest is

involved. Thus analysed, the petition is not hit by the doctrine of delay and laches as the same is not a constitutional limitation, the cause of action is continuous and further the situation certainly shocks judicial conscience.

13. The question of condonation of delay is one of discretion and has to be decided on the basis of the facts of the case at hand, as the same vary from case to case. It will depend upon what the breach of fundamental right and the remedy claimed are and when and how the delay arose. It is not that there is any period of limitation for the courts to exercise their powers under Article 226, nor is it that there can never be a case where the courts cannot interfere in a matter, after the passage of a certain length of time. There may be a case where the demand for justice is so compelling, that the High Court would be inclined to interfere in spite of delay. Ultimately, it would be a matter within the discretion of the Court and such discretion, must be exercised fairly and justly so as to promote justice and not to defeat it. The validity of the party's defence must be tried upon principles substantially equitable. (Vide P.S. Sadasivaswamy v. State of T.N. [(1975) 1 SCC 152 : 1975 SCC (L&S) 22 : AIR 1974 SC 2271] , State of M.P. v. Nandlal Jaiswal [(1986) 4 SCC 566 : AIR 1987 SC 251] and Tridip Kumar Dingal v. State of W.B. [(2009) 1 SCC 768 : (2009) 2 SCC (L&S) 119])

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 [(1969) 1 SCC 185 : AIR 1970 SC 769], Collector (LA) v. Katiji [(1987) 2 SCC 107 : 1989 SCC (Tax) 172 : AIR 1987 SC 1353] , Dehri Rohtas Light Railway Co. Ltd. v. District Board, Bhojpur [(1992) 2 SCC 598 : AIR 1993 SC 802] , Dayal Singh v. Union of India [(2003) 2 SCC 593 : AIR 2003 SC 1140] and Shankara Coop. Housing Society Ltd. v. M. Prabhakar [(2011) 5 SCC 607 : (2011) 3 SCC (Civ) 56 : AIR 2011 SC 2161] .)

15. In H.D. Vora v. State of Maharashtra [(1984) 2 SCC 337: AIR 1984 SC 866] this Court condoned a 30-year delay in approaching the court where it found violation of substantive legal rights of the applicant. In that case, the requisition of premises made by the State was assailed.

16. The High Court committed an error in holding the appellants non-suited on the ground of delay and non-availability of records, as the Court failed to appreciate that the appellants had been pursuing their case persistently. Accepting their claim, the statutory authorities had even initiated the acquisition proceedings in 1981, which subsequently lapsed for want of further action on the part of those authorities. The claimants are illiterate and inarticulate persons, who have been deprived of their fundamental rights by the State, without it resorting to any procedure prescribed by law, without the Court realising that the enrichment of a welfare State, or of its instrumentalities, at the cost of poor farmers is not permissible, particularly when done at the behest of the State itself. The appellants belonged to a class which did not have any other vocation or any business/calling to fall back upon, for the purpose of earning their livelihood.

17. Depriving the appellants of their immovable properties

was a clear violation of Article 21 of the Constitution. In a welfare State, statutory authorities are bound, not only to pay adequate compensation, but there is also a legal obligation upon them to rehabilitate such persons. The non-fulfilment of their obligations would tantamount to forcing the said uprooted persons to become vagabonds or to indulge in anti-national activities as such sentiments would be born in them on account of such ill-treatment. Therefore, it is not permissible for any welfare State to uproot a person and deprive him of his fundamental/constitutional/human rights, under the garb of industrial development.

18. The appellants have been deprived of their legitimate dues for about half a century. In such a fact situation, we fail to understand for which class of citizens the Constitution provides guarantees and rights in this regard and what is the exact percentage of the citizens of this country, to whom constitutional/statutory benefits are accorded, in accordance with the law.”

9. This Court in ***Pooja Khemka Vs. Delhi Development Authority, W.P.(C) No.4151/2013*** after analysing the law on delay and laches including ***Tukaram Kana Joshi and Others Vs. Maharashtra Industrial Development Corporation and Others, (2013) 1 SCC 353*** 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 had given a go-by to his rights.
10. It has also been held by this Court in ***Chunnu Vs. Delhi Urban Shelter Improvement Board, W.P.(C) 9026/2011***, decided on **11th November, 2014** following the judgments of the Supreme Court in ***Naresh Kumar Vs. Department of Atomic Energy and Others, (2010) 7 SCC 525*** and ***State of Uttranchal and Anr. Vs. Sri Shiv***

Charan Singh Bhandari and Ors., 2013 (11) SCALE 56 that repeated representations by the petitioner would not extend the period to file the writ petition.

11. In the present case, the cause of action for seeking refund of the amount deposited by the petitioner arose in the year 1985.
12. By virtue of the principle laid down under Order 2, Rule 2, CPC, the petitioner should have sought the relief for refund of the amount in his initial writ petition being W.P.(C) No.767/1985.
13. In any event, after the dismissal of the aforesaid writ petition in 2002, the petitioner should have sought the relief for refund at least in 2005 when he, admittedly, came to know about the dismissal of the writ petition.
14. Consequently, the petitioner by not agitating his relief for refund in the initial writ petition being W.P.(C) 767/1985 and by not filing a writ petition within reasonable time even after the dismissal of the said writ petition in 2002, had clearly by his own act and conduct given a go-by to his right to claim refund.
15. Accordingly, this Court is of the view that the present writ petition filed in 2016 is barred by delay and laches. The same is dismissed but with no order as to costs.

MANMOHAN, J

**NOVEMBER 28, 2016
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