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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 6333/2010 & CM Appl. 9097/2015

PRIYA RAWAT

..... Petitioner

Through: Mr. Ganshyam Thakur, Adv.

versus

DSIDC & ORS

..... Respondents

Through: Ms. Renuka Arora, Adv. for DSIIDC

Mr. Sanjeev Narula, CGSC for UOI

Mr. C. Adhikesavan, Adv. for R-40

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Date of Decision: 26th February, 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 for quashing of allotment of industrial plots in the product group 'plastic' by respondent No. 1-DSIIDC in the Narela Industrial Complex through draw of lots held on 18th /19th December, 1990 on the ground that the allotments have been carried out without adhering to any fair and reasonable policy and to further direct respondent No. 1 to hold fresh draw of lots with regard to allotment of plots in the product group 'plastic' for persons falling under Scheduled Castes/Scheduled Tribes categories.

2. At the outset, learned counsel for the respondent-DSI IDC raises preliminary objections to the maintainability of the present writ petition on the ground that it is barred by delay and laches as well as it amounts to relitigation as the petitioner had earlier filed a writ petition being WP(C) 2560/1993 which was disposed of by a coordinate Bench of this Court on 10th July, 2009. The order of coordinate Bench dated 10th July, 2009 is reproduced hereinbelow:-

“1. This writ petition, which is filed in the year 1993, challenges allotment of industrial plots made by Delhi State Industrial Development Corporation (DSIDC) in draw of lot by clubbing Scheduled Caste and Scheduled Tribe categories. The petitioner states that clubbing of Scheduled Caste and Scheduled Tribe categories into one category for allotment of reserved plots violates Article 14 of the Constitution. Scheduled Castes and Scheduled Tribes form separate categories and 15% of the plots should have been reserved for Scheduled Castes and 7.5% plots should have been reserved for Scheduled Tribes.

2. The said allotments were made pursuant to scheme floated by DSIDC and as per advertisement dated 22nd December, 1990 for Narela industrial complex, New Delhi.

3. The aforesaid controversy today is of academic interest as admittedly allotments were made in 1990, 19 years back. It will not be in the interest of justice to disturb the said allotments or direct fresh draw of lots by segregating Schedule Caste and Scheduled Tribe applications. It is also not possible to direct that an industrial plot would be allotted to the petitioner as the only right claimed by him is to participate in the draw of lots with other Scheduled Tribe candidates. The said process cannot be resorted to now in respect of the

scheme where the draw of lots was held in 1990. A learned single Judge of this Court in W.P. (C) 3587/1990 titled All India Scheduled Tribe Sewa Sangh versus DDA and Another has already issued directions to DDA to ensure that while framing a scheme, Scheduled Caste and Schedule Tribe candidates should be separately dealt with. The said directions will equally apply to DSIDC.

4. The petitioner had deposited Rs.22,000/- for participating in the draw of lots. The said amount has been retained and is with DSIDC. DSIDC will refund the said amount along with 8% interest per annum to the petitioner within a period of four weeks from today, failing which they shall be liable to pay interest @ 10% per annum with effect from the date of this order till payment. Further, DSIDC is directed to include the name of the petitioner in the draw of lots, if and when any new scheme is introduced for allotment of industrial plots for Scheduled Tribe persons. The petitioner's name will be included without any requirement to deposit participation fee, if any, required by the said scheme. Of course and in case the petitioner is successful in the draw of lots, he will be liable to pay price of the plot as per the terms of the scheme and he will not be entitled to any concession.

With the aforesaid observations, the writ petition is disposed of."

3. However, learned counsel for the petitioner states that the present writ petition is not barred by delay and/or laches as the petitioner's initial writ petition had been disposed of on 10th July, 2009 and it was only thereafter that she filed a query under the Right to Information Act and upon receipt of the information she filed the present writ petition. He further states that as the action of respondent No. 1-DSI IDC is vitiated by fraud, the petitioner is at liberty to re-

agitate the issues also raised in the earlier writ petition being WP(C) 2560/1993.

4. Having heard learned counsel for the parties, this Court is of the view that the present writ petition is barred by delay and laches as admittedly the draw of lots for allotment of industrial plots in question had taken place on 18th /19th December, 1990, i.e., more than twenty years before the present writ petition was filed. In ***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.....”

5. 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)

6. Further in the present case, third party rights had been created in 1990 and consequently, the petitioner by not filing a writ petition at the initial stage, has, by her act and conduct, given a go-by to her rights.

7. It is also not understood as to why the petitioner filed her RTI application in 2010 and not in 1990.

8. This Court is of the view that the petitioner has not been able to substantiate her case on the ground of fraud.

9. This Court is further of the opinion that the present writ petition is barred on the principle of re-litigation as the petitioner, in the earlier writ petition, should have raised all her pleas. The Supreme Court in ***K.K.Modi Vs. K.N.Modi and others, reported in (1998) 3 SCC 573*** has held that it is an abuse of the process of the court and contrary to justice and public policy for a party to re-litigate the same issue which has already been tried and decided earlier against him. This re-agitation may or may not be barred as res judicata. But if the same issue is sought to be re-agitated, it also amounts to an abuse of the process of the court.

10. Consequently, the present writ petition and pending application are dismissed both on the ground of delay and laches as well as on the ground that it amounts re-litigation. The petitioner is saddled with costs of Rs.10,000/- to be paid to the respondent-DSIIDC within a period of two weeks.

MANMOHAN, J

FEBRUARY 26, 2016
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