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

+ LPA 271/2016

DAYACHAND

.....Appellant

versus

UNION OF INDIA

.....Respondent

+ LPA 393/2016 & C.M.Nos 24001/2016(*stay*), 24002/2016(*addl. docs*)

MAKHNI KAUR @MAKHNI BAI

.....Appellant

Versus

THE DELHI URBAN SHELTER IMPROVEMENT  
BOARD (DUSIB)

.....Respondent

**Present:-** Mr.Jai Bansal, Adv. for the appellant in LPA No.271/2016.  
Mr.Srivats Kaushal, Adv. with Ms.Gayatri Aryan, Adv. for the appellant in  
LPA No.393/2016.  
Mr.Parvinder Chauhan, Adv. with Mr.Nitin Jain, Adv. for DUSIB.  
Mr.Bhagwan Swarup Shukla, CGSC for UOI.  
Ms.Shobhana Takiar, Adv. for DDA.

**CORAM:**

**HON'BLE THE CHIEF JUSTICE**

**HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL**

**ORDER**

**22.12.2016**

**MS. SANGITA DHINGRA SEHGAL, JUDGE (ORAL)**

1. The present two appeals have been filed assailing the orders of the learned Single Judge dated 01/09/2015 passed in W.P.(C)7889/2011 and

LPA 271/2016 & 393/2016

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order dated 23/11/2015 passed in W.P.(C) 10796/2015, whereby both the writ petitions were dismissed.

2. As an identical issue arises for consideration in these appeals the same are being disposed of by this common order.

3. The brief facts as alleged by the appellant in LPA No. 271/2016 are that the appellant was dispossessed on 21.01.2002 from his Jhuggi at Indra Camp, Bapu Dham, New Delhi as the same was required for the public use in accordance with Rehabilitation Scheme of the Government. Vide letter dated 8<sup>th</sup> February 2002, he was allotted Plot No. A-1180, Holamby Kalan Phase-1, Delhi. In response to the allotment letter, appellant deposited a sum of Rs. 7000/- towards license fee for 10 years. The possession of the plot was not delivered to him as he failed to produce the original documents and thus the allotment of the plot stood cancelled. Being aggrieved he filed the writ petition, the order of which is impugned before us.

4. The brief facts of LPA 393/2016 are that the appellant was the resident of Jhuggi No.J -212, Tilak Vihar, New Delhi and the same was demolished by the MCD under the relocation/rehabilitation policy. Vide letter dated 22.01.1998, the appellant was intimated of the proposal for allotment of a plot at Nasirpur, Delhi and was asked to deposit a sum of Rs.7,000/- for the same. Later, the appellant vide letter dated 8<sup>th</sup> May, 1998 was allotted plot No. B-62, Sector 23, Rohini, Delhi and asked to take possession within seven working days but the appellant did not take the possession as he was dissatisfied with the change. The appellant failed to make any representation immediately and approached the authorities by way

of representation dated 04.10.2004 to the Department. Since he was not getting any response to his representations he filed a writ petition, order of which is impugned before us.

5. Mr. Jai Bansal, the learned counsel for the appellant submitted that the learned Single Judge failed to appreciate that except for the identity card all the other documents were duly submitted.

6. Mr. Srivats Kaushal, the learned counsel appearing for the appellant submitted that the learned Single Judge failed to appreciate that the respondent was allotted a plot in Rohini instead of allotting the same in Nasirpur which was clearly in breach of contract entered into between the parties under the Rehabilitation Scheme.

7. To substantiate their arguments, learned counsel for the appellants relied upon the judgment of the Apex Court in *Madras Port Trust Vs. Hymanshu International by its Proprietor V.Venkatadri (Dead) By L.Rs : AIR 1979 SC 1144, Dehri Rohtas Light Rly. Co. Ltd. vs District Board, Bhojpur : 1992 2 SCC 598, Trilok Chand Vs H.b. Munshi :1969 2 SCR 824, Ram Chand Vs. Union of India :1994 1 SCC 44 and Dhani Ram Kapoor Vs Delhi Development Authority: 1997 (1) AD (Delhi) 578* decided by this Court.

8. Per Contra, learned counsel for the respondents contended that the appellants failed to take the possession of the plots and therefore there was deemed cancellation of their allotment. It was further contended that the appeal is liable to be dismissed at its threshold, inasmuch as the same is suffering from inordinate and unexplained delay and laches.

9. It was urged by the counsel for the respondents that the representations made by the appellant/Makhni Kaur @ Makhni Bai showed that she persisted on getting the plot of her own choice which is not permissible as allotment of plot depends upon several factors such as availability of plots.

10. Counsel for the respondents placed reliance upon the judgment of the Apex Court titled as *S.S Rathore Vs. State of Madhya Pradesh :AIR 1990 SC 10, Ratan Chandra Sammanta & Ors. Vs. Union of India & Ors. AIR 1993 SC 2276, Vasantakumar Radhakishan Vora Vs. The Board of Trustees of the Port of Bombay : AIR 1991 SC 14.*

11. We have heard the learned counsel for the both parties and perused the material available on record.

12. Admittedly, in both the appeals plots were earmarked to the appellants in view of the Rehabilitation Scheme of the Government of NCT of Delhi (GNCTD). In case of the appellant/Dayachand, cancellation of allotment of plot was made as he failed to tender original documents pertaining to his Jhuggi in Indra Camp, Bapu Dham, New Delhi and in the latter case of appellant/Makhni Kaur @ Makhni Bai the cancellation was done on the basis of not occupying the allotted plot within the stipulated time as she was emphasizing for allotment of plot particularly at Nasirpur area.

13. The Learned Single Judge has rightly held that the petitioners therein did not pursue the matter diligently and regularly, whereas in cases of rehabilitation the person so dispossessed has to act with promptitude and cannot belatedly attempt to capitalise from the allotment.

14. In the facts of the above cases, there has been a delay of 9 and 11 years respectively in approaching the court. The repeated representations as contended by the counsel for the appellants did not mean that they were pursuing the matter continuously rather it is just to keep the stale claim alive. Therefore, in a circumstance of present nature, no plausible explanation has been tendered by the appellants as to why they failed to approach the court sooner especially when the appellants had sufficient knowledge that the cause of action had arisen much earlier.

15. The scheme in question owes for rehabilitation of those citizens who had been dispossessed by the Government and alternate plots were to be provided to them on urgent basis. But at the same time, it was also necessary for those dispossessed to act promptly without delay so that the purpose of the scheme is not frustrated.

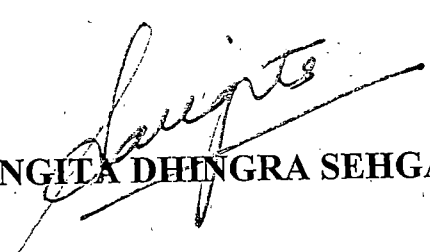
16. The law regarding inordinate and unexplained delay in approaching the court is well settled by the Apex Court in catena of judgments. In Civil Appeal Nos. 4099, 4100 and 4101 of 2000 titled as ***Shankara Co-op Housing Society Ltd. Vs. M. Prabhakar & Ors.*** decided on 05.05.2011 by the Supreme Court, it has been held that "*Delay and laches is one of the factors that requires to be borne in mind by the High Courts when they exercise their discretionary power under Article 226 of the Constitution of India. In an appropriate case, the High Court may refuse to invoke its extraordinary powers if there is such negligence or omission on the part of the applicant to assert his rights taken in conjunction with the lapse of time and other circumstances.*"

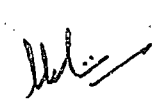
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17. We, therefore, find no reason to interfere with the orders under appeal and the appeals are accordingly dismissed.

**C.M.Nos 24001/2016 (stay) and 24002/2016 (Addl. Documents)**

18. In view of the order passed in the above appeals, the present applications are rendered infructuous.

  
SANGITA DHINGRA SEHGAL, J

  
CHIEF JUSTICE

DECEMBER 22, 2016

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