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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 7950/2012

JOGINDER KUMAR BHASIN

..... Petitioner

Through: Mr. Amit Bhatia, Advocate with
Ms. Sonia Malhotra, Advocate.

versus

GOVT.OF NCT OF DELHI AND ORS

..... Respondents

Through: Mr. Jayendra, Advocate for
respondent No.3.

Date of Decision: 3rd March, 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 with the following prayers:-

“A) Issue a Writ in the nature of Mandamus directing the respondents to allot an alternative plot to the petitioner in lieu of the plot no.2 at Kalyan Puri Shopping Complex, which was illegally given by the respondent no.2 to the respondent no.3.”

Any other relief which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case may

kindly be passed in favour of the petitioner and against the respondents.”

2. Learned counsel for petitioner states that in a similar matter concerning an adjoining plot, this Court has granted an alternative plot in W.P.(C) 5465/2000. The relevant portion of the order dated 5th August, 2002 relied upon by the learned counsel for petitioner is reproduced hereinbelow:-

“There are admissions on behalf of the respondents that Plot No.3, Kalyan Puri, Shopping Complex, was purchased by the petitioner from D.D.A. in an auction held on 13th February, 1976 on deposit of full amount. The issuance of ‘No Objection Certificate’ is also admitted. The respondent/DDA further acknowledged that the petitioner’s request for allotment was made and would be examined as and when the revised lay out plan was received from the Architect, Slum & J.J. Department, D.D.A. The petitioner was also asked to contact the Architect, Slum & J.J. Department, D.D.A. in this regard. This is confirmed by the letter dated 3rd December, 1990. The fact that in 1982 possession of the site was given to the Slum & J.J. Department by the D.D.A. is also acknowledged by the respondents. Several representations were made by the petitioner to the respondent D.D.A. which have evoked no response. The representations and reminders of the petitioner to the D.D.A. for the redressal of his grievance went unheeded. The respondents are expected to be fair and just and redress other grievance of the petitioner within a reasonable time. Rights of the petitioner cannot be trampled upon in an arbitrary and discriminatory

manner. Petitioner's entitlement cannot be denied or ignored.

In light of the aforesaid facts and circumstances, the writ petition is allowed with costs. The respondents shall allot an alternative plot to the petitioner in lieu of Plot No.3, Kalyan Puri, Shopping Complex, within a period of four weeks from today."

3. Learned counsel for petitioner further states that petitioner had filed the present writ petition in 2012 as the petitioner was corresponding all this time with the statutory authorities.

4. In any event, he submits that a petition under Article 226 of the Constitution has not to be filed within any fixed period of limitation. In support of his submission, he relies upon a judgment of the Supreme Court in ***K.B. Ramachandra Raje URS (Dead) By LRs Vs. State of Karnataka & Ors. ETC., 2015 (13) SCALE 665*** wherein it has been held as under:-

"21.....Time and again it has been said that while exercising the jurisdiction under Article 226 of the Constitution of India the High Court is not bound by any strict rule of limitation. If substantial issues of public importance touching upon the fairness of governmental action do arise the delayed approach to reach the Court will not stand in the way of the exercise of jurisdiction by the Court....."

5. The admitted facts of the present case are that the petitioner had purchased the Plot No.2, Kalyan Puri Shopping Complex, Delhi, in a

public auction held on 13th February, 1976. It is the case of the petitioner that he had furnished requisite documents on 27th December, 1976 for execution of lease deed and even deposited the ground rent on 29th July, 1980.

6. However, in 1982, respondent No.1 handed over the plot in issue to the MCD for constructing a water tank.

7. Ever since then, the petitioner claims to have made various representations to different statutory authorities.

8. In the petition, it is averred that on coming to know of an alternative plot being allotted to his neighbourer i.e. owner of the adjoining Plot No.3, Kalyan Puri Shopping Complex, Delhi, petitioner filed the present writ petition.

9. Respondents in their counter-affidavit have stated that petitioner's records are not traceable. DDA in its counter-affidavit pointed out that its Slum and JJ wing had been transferred to MCD and thereafter an independent Board known as Delhi Urban Shelter Improvement Board [DUSIB] has been constituted.

10. DUSIB in its counter-affidavit has stated that due to passage of time, no records are available in their office in respect of alleged allotment to the petitioner.

11. In the opinion of this Court, present writ petition is barred by delay and laches as admittedly the respondent No.1 had handed over the

plot in issue to MCD in 1982. Consequently, the cause of action for claiming an alternative plot arose in 1982.

12. Even if it is presumed that the grant of relief by this Court in W.P.(C) 5465/2000 which was decided on 05th August, 2002 constituted a fresh cause of action in favour of the petitioner, then also the present writ petition would be barred by delay and laches as it had been filed ten years after the disposal of the neighbourer's writ petition.

13. In the case of ***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.....”

14. 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)

15. This Court is also of the view that the petitioner by not filing a writ petition at the initial stage, has by his conduct, given a go-by to his rights. Now when records are not available with the respondents due to passage of thirty four years, petitioner cannot claim any relief. Consequently, present writ petition is dismissed on the ground of delay and laches.

MARCH 03, 2016

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MANMOHAN, J