

\$~27

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

+ **W.P.(C) 10777/2016 & C.M.Nos.42179-42180/2016**

KAMLESHWAR NATH SHARMA

..... Petitioner

Through Mr.Varun Mohan with Mr.Mayank
Sapra, Advocates.

versus

DELHI DEVELOPMENT AUTHORITY

..... Respondent

Through Mr.Mrinalini Sen with Ms.Kritika
Gupta, Advocates.

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

ORDER

%

11.11.2016

1. Present writ petition has been filed seeking a direction to respondent-DDA to allot an alternative LIG Flat in Dwarka or a similar area and for issuance of a demand-cum-allotment letter (hereinafter referred to as 'DAL'). Petitioner also challenges letter dated 18th March, 2002 vide which respondent-DDA cancelled the petitioner's allotment of LIG Flat No.339, Sector 14, Dwarka, Delhi.

2. It has been averred in the petition that the petitioner applied under the NPRS Scheme 1979 and in 2001 came to know of allotment of the aforesaid LIG flat through newspapers. He states that the petitioner made both oral and written representations to the respondent-DDA, but it was only in 2015 through an RTI application, the petitioner came to know that the DAL had been sent at the incorrect address, i.e., 72 B/2, Motia Khan, Railway Colony, Delhi instead of 72, B/2, Motia Bagh, Railway Colony, Delhi.

3. Learned counsel for the petitioner states respondent-DDA had sent the DAL at the incorrect address of the petitioner for which petitioner cannot be made to suffer.

4. On the other hand, learned counsel for the respondent-DDA who appears on advance notice states that the present petition is barred by laches inasmuch as despite having knowledge of allotment of the LIG flat in 2001, the petitioner has approached the Court after a lapse of period of 15 years. She states that though initially the DAL had been sent to the petitioner's incorrect address, it was later sent at the correct address, which was received back undelivered with the remarks '*addressee has left*'.

5. In rejoinder, learned counsel for the petitioner relies upon the judgment of a Coordinate Bench of this Court in ***Usha Saikia Vs. Delhi Development Authority, W.P.(C) No.266/2007***, wherein it has been held as under:-

“Registrants cannot be denied their right of allotment, for which they have been waiting since 1979, for a period of more than 25 years, because they fail to respond to public notice, when the scheme itself never envisaged issue of public notice.

xxx xxx xxx

These are small advertisements, which can be easily missed”

6. Having heard the learned counsel for the parties, this Court is of the view that the present writ petition filed after a gap of approximately 15 years from the date of allotment of the LIG flat is barred by delay and laches.

7. The Supreme Court with regard to delay and laches in ***State of***

Madhya Pradesh and another vs. Bhailal Bhai & Anr., AIR 1964 SC 1006 has held, “.....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.....”

8. Moreover, the Supreme Court in ***Banda Development Authority, Banda Vs. Moti Lal Agarwal & Ors., (2011) 5 SCC 394*** has held “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.”

9. This Court is further of the view that filing of repeated representations does not extend the period to file the writ petition. The Supreme Court in ***Naresh Kumar vs. Department of Atomic***

Energy and Others, (2010) 7 SCC 525 has held as under:-

“15. Merely because the case of the appellant was forwarded by the Department vide its Letter dated 27-1-2007 for favourable consideration, would not vest any right in the petitioner and can hardly be of any material consequence. If an employee keeps making representation after representation which are consistently rejected then the appellant cannot claim any relief on that ground. We are unable to find any merit in the contention raised before us and we are also of the view that the High Court was not in error while dismissing the writ petition even on the ground of unexplained delay and laches. The representation of the appellant was rejected as back in the year 1999 and for the reasons best known to the appellant he did not challenge the same before the court of competent jurisdiction.”

10. Furthermore, the Supreme Court in ***State of Uttarakhand and Anr. vs. Sri Shiv Charan Singh Bhandari and Ors., 2013 (11) SCALE 56*** has held as under:-

“15. From the aforesaid authorities it is clear as crystal that even if the court or tribunal directs for consideration of representations relating to a stale claim or dead grievance it does not give rise to a fresh cause of action. The dead cause of action cannot rise like a phoenix. Similarly, a mere submission of representation to the competent authority does not arrest time. In *Karnataka Power Corporation Ltd. through its Chairman and Managing Director v. K. Thangappan and Anr. (2006) 4 SCC 322*, the Court took note of the factual position and laid down that when nearly for two decades the Respondent-workmen therein had remained silent mere making of representations could not justify a belated approach.

16. In *State of Orissa v. Pyarimohan Samantaray (1977) 3 SCC 396* it has been opined that making of repeated representations is not a satisfactory explanation of delay.

The said principle was reiterated in State of Orissa v. Arun Kumar Patnaik (1976) 3 SCC 579.

xxx

xxx

xxx

18. In State of T.N. v. Seshachalam (2007) 10 SCC 137, this Court, testing the equality clause on the bedrock of delay and laches pertaining to grant of service benefit, has ruled thus:

...filing of representations alone would not save the period of limitation. Delay or laches is a relevant factor for a court of law to determine the question as to whether the claim made by an applicant deserves consideration. Delay and/or laches on the part of a government servant may deprive him of the benefit which had been given to others. Article 14 of the Constitution of India would not, in a situation of that nature, be attracted as it is well known that law leans in favour of those who are alert and vigilant.

xxx

xxx

xxx

22. We are absolutely conscious that in the case at hand the seniority has not been disturbed in the promotional cadre and no promotions may be unsettled. There may not be unsettlement of the settled position but, a pregnant one, the Respondents chose to sleep like Rip Van Winkle and got up from their slumber at their own leisure, for some reason which is fathomable to them only. But such fathoming of reasons by oneself is not countenanced in law. Any one who sleeps over his right is bound to suffer. As we perceive neither the tribunal nor the High Court has appreciated these aspects in proper perspective and proceeded on the base that a junior was promoted and, therefore, the seniors cannot be denied the promotion. Remaining oblivious to the factum of delay and laches and granting relief is contrary to all settled principles and even would not remotely attract the concept of discretion. We may hasten to add that the same may not be applicable in all circumstances where certain categories of fundamental rights are infringed. But,

a stale claim of getting promotional benefits definitely should not have been entertained by the tribunal and accepted by the High Court. True it is, notional promotional benefits have been granted but the same is likely to affect the State exchequer regard being had to the fixation of pay and the pension. These aspects have not been taken into consideration. What is urged before us by the learned Counsel for the Respondents is that they should have been equally treated with Madhav Singh Tadagi. But equality has to be claimed at the right juncture and not after expiry of two decades. Not for nothing, it has been said that everything may stop but not the time, for all are in a way slaves of time. There may not be any provision providing for limitation but a grievance relating to promotion cannot be given a new lease of life at any point of time.

(emphasis supplied)

11. This Court is also of the opinion that the judgment in ***Usha Saikia*** (supra) offers no assistance to the petitioner inasmuch as in the said case the petitioner was not aware either of the allotment or the cancellation of the flat till a year prior to filing of the writ petition.

12. Consequently, this Court is of the view that the present writ petition is barred by delay and laches. This Court is also of the view that if the present writ petition is entertained, it would, of course, cause serious prejudice to the respondent-DDA inasmuch as the officials who dealt with the file would not be available.

13. Accordingly, the present writ petition and the applications are dismissed.

MANMOHAN, J

NOVEMBER 11, 2016/KA