

\$~8

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

+ **LPA 585/2015 & CMs.17734-17735/2015**

GOVERNMENT OF NCT OF DELHI

..... Appellant

Through **Mr.Yeeshu Jain & Mr.Siddharth
Panda, Advocates**

versus

D K AGARWAL & ANR

..... Respondent

Through **Ms.Rashmi Jain, Advocate for R1
Mr.Sushil Dutt Salwan & Ms.Al
Moohnina Muzzammil, Advocates for
R2**

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE JAYANT NATH

O R D E R

%

08.03.2016

Ms. G. ROHINI, CHIEF JUSTICE (ORAL)

CM No.17734/2015 (condonation of delay)

Heard the learned counsel for both the parties. In the facts and circumstances explained in the application, the delay in filing the appeal is condoned and the application is disposed of.

LPA 585/2015

1. This appeal is preferred against the order of the learned Single Judge dated 12th March, 2015 passed in W.P.(C) No.6989/2012. The Government of NCT of Delhi/Respondent in the writ petition, is the Appellant before us.
2. The Respondent No.1 herein/writ petitioner filed the said writ petition aggrieved by the rejection of his application for allotment of alternative plot

by the Assistant Housing Commissioner, Land and Building Department, Government of NCT of Delhi.

3. It is not in dispute that the land of the writ petitioner was acquired and an award was passed fixing the compensation under the provisions of the Land Acquisition Act. The compensation so awarded was also received by the writ petitioner on 06.03.1998. As per the scheme of Large Scale Acquisition, Development and Disposal of Land in Delhi, 1961, the writ petitioner claims allotment of an alternative plot and accordingly he made an application on 21.05.1999. The said application was rejected as time barred on the ground that the application was made beyond the period of one year from the date of payment of compensation. The learned Single Judge held that the said rejection is illegal since the TDS certificates were issued to the writ petitioner only in May, 1999. The learned Single Judge further held that the deposit of tax on behalf of the writ petitioner and consequent issuance of the TDS certificate would complete the process of payment of compensation and, therefore, the time limit of one year would start only from 21st May, 1999. Thus, the learned Single Judge allowed the writ petition and directed the Appellant herein to consider the application of the writ petitioner on merits for allotment of an alternative plot.

4. The said order has been assailed in the present appeal preferred by the Government of NCT of Delhi contending inter alia that the assumption of the learned Single Judge that the TDS was deposited on the date of issuance of payment certificate was erroneous. It is also contended that the order under appeal would make the scheme for allotment of alternative land as open ended enabling the persons whose lands are acquired to apply for

alternative plots at any time of their choice.

5. We have heard the learned counsel for both the parties. Even assuming that the writ petitioner ought to have made the application for allotment of alternative plot within one year from the date of 6th March, 1998 whereas the application was made on 21st May, 1999, the delay in making the application is only about two months.

6. The question whether the rejection of the applications for allotment of alternative plots merely on the ground of delay in making the applications is sustainable under law was considered by this Court in LPA No. 190/2015 titled ***Govt. of NCT of Delhi Through Secretary v. Poonam Gutpa***, decided on 8th December, 2015, and it was held:

“18. In the light of the legal position noticed above, we are of the view that the time limit set in the Public Notice cannot be held to be final and conclusive so as to preclude the persons whose lands are acquired from being considered for allotment of the alternative land under the Scheme. The long delay in making the application under the Scheme, no doubt, is a factor to draw an inference that there is no actual need of the alternative plot, however, it cannot be held that all the applications which are made beyond the period prescribed in the Public Notice shall be rejected as barred by limitation. As pointed out in Simla Devi vs. Secretary and Others (supra), the Scheme did not provide for any limitation as such, but certain time limit has been stipulated only in the Public Notice issued by the concerned department. It appears to us that the object of stipulation of such time limit is not to destroy the rights of the parties but the same is meant to see that the parties are vigilant in

enforcing the benefit provided under the Scheme and that they do not resort to dilatory tactics. Therefore, it is always a question of discretion of the Recommendation Committee which has to be exercised on a consideration of all the relevant facts including the diligence and bona fides of the party making the application for alternative land under the Scheme.

19. Hence, in our considered opinion, it is essential for the Recommendation Committee to consider the applications for alternative land even if they are made beyond the period specified in the public notice and the applications can be rejected as time barred only where it is found that the delay is not satisfactorily explained.”

7. As noticed above, even if the appellant’s contention that the period of one year should be computed from 6th March, 1998, i.e. the date of receipt of compensation is accepted, the delay in making the application on the part of the writ petitioner is only about two months which cannot be held to be inordinate delay so as to defeat the right of the writ petitioner under the scheme. As held in ***Government of NCT of Delhi v. Poonam Gutpa*** (supra), though the delay in making the application under the scheme is a factor to draw an inference that there is no actual need of the alternative plot, it cannot be held that all the applications which are made beyond the period prescribed in the Public Notice shall be rejected as barred by limitation.

8. In the facts and circumstances of the present case, it appears to us that the Appellant is not justified in rejecting the application of the writ petitioner as time barred without application of mind to the relevant facts.

9. Therefore, though for different reasons, we agree with the conclusion of the learned Single Judge that the order of rejection is liable to be set aside and the application of the writ petitioner needs consideration on merits.

10. Hence, the order under appeal warrants no interference and accordingly the appeal is dismissed. There shall be no order as to costs.

CHIEF JUSTICE

JAYANT NATH, J

MARCH 08, 2016
v/pk