

\$~

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

+ **LPA 722/2016**

GNCT OF DELHI

..... Appellant

Through : Mr. B. Mahapatra, Advocate.

versus

PREM KAUR AND ORS.

..... Respondents

Through : Mr. Nitin Gaur with Mr. Anshuman Ashok,
Advocates for R-1 to 7.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

ORDER

%

08.02.2017

CM No. 47925/2016 (*delay of 87 days*)

Heard.

In the facts and circumstances explained in the application, delay of 87 days in filing the appeal is condoned.

CM stands disposed of.

LPA No. 722/2016

1. Govt. of NCT of Delhi/the respondent in W.P. (C) No. 1096/2016 is the appellant before us.
2. We have heard the learned counsel for the parties and perused the impugned judgment.
3. The material available on record shows that the land owned by late Sh. Bhagat Singh in village Jaitpur, Delhi was acquired by the Government vide award No. 2/90-91. He had received compensation in respect of the award on 15.10.1991. On 30.03.1992, he had moved an application for

allotment of alternative plot which was rejected by the Recommendation Committee on 11.09.2013 and communicated vide letter dated 29.10.2013 on the ground that the application was filed beyond the stipulated period of limitation i.e. three months from the date of compensation. The legal heirs of Late Shri Bhagat Singh challenged the letter dated 29.10.2013 issued by the appellant and sought direction to the respondent to allot an alternate plot by filing W.P.(C) No. 1096/2016 whereby the learned Single Judge while accepting the plea of the respondent disposed of the petition.

4. The relevant paras of the order of the learned Single Judge whereby the WP.(C). No. 1096/2016 was disposed of is reproduced as under:

" A Division Bench of this Court in LPA No. 190/2015 titled as Government of NCT of Delhi Vs. Poonam Gupta decided on 08.12.2015 had rejected the appeal of the Department and upheld the decision of the Single Judge condoning the delay ranging between 21 days to 4 months in preferring application for allotment of alternate plot.

Thus in view of the ratio of Poonam Gupta (supra), the case of the petitioner be considered on merits."

5. Adversely affected by the order of the learned Single Judge the appellant herein preferred the present appeal.

6. Mr. B. Mahapatra, the learned counsel for the appellant submitted that the respondent does not have any right to the alternative allotment as the application filed for the allotment was time barred i.e. beyond the stipulated period of limitation and thus the impugned judgment is liable to be set aside. He further contended that the policy i.e administrative direction declaring a limitation period of three months for filing the application for alternate allotment cannot be ignored and the same requires to be followed strictly.

7. The contention of Mr. Nitin Gaur, learned counsel for the respondent is that the delay of three months can in no imagination be attributed on the respondent as the respondent after the acquisition filed an objection for the enhancement of compensation which was consequently enhanced on 22.01.1992 and immediately thereafter the respondent applied for the alternate plot i.e. on 30.03.1992.

8. The core issue that arises for our consideration is whether in the present case, the respondent is entitled to the alternate allotment of plot.

9. At this stage, we deem it appropriate to rummage through the public notice issued on 14.09.1987 by the Delhi Administration : Delhi Land & Building Department, Vikas Bhawan, New Delhi, which reads as under:

“For the early disposal of the application for allotment of alternative plot, it has been decided that those persons whose land has been acquired, they may apply their application form within three months from the date of receipt of compensation. This time limit shall be strictly followed by the department and the application received after the expiry of date from receipt of compensation shall not be entertained. The Secretary (L&B) has discretion to extend the period of three months in special circumstances therefore those agriculturists whose land has been acquired by the Administration shall apply in the prescribed time limit.

Secretary (Land & Building)”

10. Perusal of the abovementioned public notice shows that the application for allotment of alternative plot has to be filed within three months from the date of receipt of compensation. The aforesaid public notice has been challenged in an earlier occasion and the Division Bench of this Court in the case of *Government of NCT of Delhi Thru Secretary Vs.*

Poonam Gupta & Ors. reported in 2016 (154) DRJ 103 (DB) has decided the issue on 08.12.2015. Relevant paras of the said judgment are recapitulated as under:

“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.

20. Coming to the facts of the case on hand, the Public Notice dated 14.09.1987 itself states that the Secretary (L&B) has discretion to extend the period of three months in special circumstances. It is no doubt true that the writ petitioners/respondents herein could not make the applications within the stipulated period of three months from the date of receipt of compensation, however, as could be seen from the dates mentioned in Para 8 (supra) the delay in the cases on hand ranges between 21 days to four months which cannot be held to be inordinate delay so as to defeat the rights of the petitioners. Moreover, the applications of the petitioners have been kept pending for a long time of more than 20 years and finally it was decided by the Recommendation Committee to reject the applications as time barred without even considering the facts and circumstances explained by the applicants for such delay. Be it noted that all the writ petitioners were asked to explain the delay and they had explained the same furnishing the supporting documents to substantiate their plea. Since the Recommendation Committee failed to consider the same, the learned Single Judge had rightly found fault with the approach adopted by the Committee and to avoid any further delay thought it fit to direct consideration of the applications of the writ petitioners on merits. We do not, therefore, find any justifiable reason to interfere with the relief granted by the learned Single Judge in exercise of the discretionary powers vested under Article 226 of the Constitution of India.”

11. Applying the ratio laid by the Division Bench of this Court, we do not find any merit in the contention raised by the appellant as the material available on record goes to show that the writ petitioner/respondent herein did not make the applications within the stipulated period of three months from the date of receipt of compensation, however, the delay in this case of

about two and half months cannot be held to be an inordinate delay so as to defeat the rights of the respondent.

12. Moreover, it is well settled that he who seeks equity must do equity. The fact that the application of the respondent was submitted on 30.03.1992 and the final order of rejection was passed on 29.10.2013 i.e after more than 20 years cannot be lost sight of.

13. Even otherwise, we are of the considered opinion that there was no delay on the part of the respondent as he did not accept the award because of inadequate compensation and instead approached the appropriate forum for the enhancement of compensation, the order of which was passed only on 22.01.1992. Computation of the prescribed period from 22.01.1992, the respondent was well within time to have filed the application on 30.03.1992 for allotment of an alternate plot.

14. We are in consonance with the view taken by the learned Single Judge and resultantly, the appeal being devoid of merit is dismissed.

CHIEF JUSTICE

SANGITA DHINGRA SEHGAL, J

FEBRUARY 08, 2017

gr/