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

+ **W.P.(C) 4704/2018**

VINKESH KUMAR & ORS

..... Petitioners

Through: Mr. Sushil Kumar Singh, Adv.
versus

UNION OF INDIA & ORS

..... Respondents

Through: Mr. Jagjit Singh, Mr. Preet Singh and
Mr. Narayan Dev, Advs. for
Railways.
Mr. Parvinder Chauhan, Standing
Counsel for DUSIB
Mr. Rakesh Mittal, Standing Counsel
for NDMC
Mr. Dhanesh Relan, Standing
Counsel for DDA with Ms. Gauri
Chaturvedi and Ms. Mrinalini Sen,
Advs. for DDA

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER

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08.05.2018

1. The present petition has been filed by the petitioners with the following prayers:

“In light of the aforesaid facts and submissions, the petitioners herein most respectfully pray that this Hon’ble Court may be pleased to:

- (i) Issue a writ in the nature of a Mandamus directing the respondent No.1 to consider the claim of the petitioners and allot alternate accommodation for petitioners.*
- (ii) Pass such other and any further orders as this Hon’ble Court may deem fit and proper in the facts and circumstances of the present case.”*

2. It is the case of the petitioners that they have been living in Bapu Gandhi cluster Camp since 1983 and the same was registered under the Delhi Government Plan by JJ Department. The Delhi Government conducted the survey according to which 105 families still did not get their slum houses. On October 23, 2009 an application for alternative allotment of plot was sent to Chief Minister of Delhi. It is also their case, they have represented to the National Commission for Safai Karamcharis for the allotment of alternative plot. A reference is also made to a representation sent to the National Commissioner for Scheduled Caste for allotment of alternative plot. The petitioners also averred that representations were sent to different authorities under the Government of India / Government of NCT of Delhi for allotment of alternative plot. It is noted from the representation(s) annexed with writ petition that the jhuggis jhopries have collapsed in the year 2009. It is clarified during hearing by the counsel for the petitioners that they have been demolished in the year 2009.

3. An objection has been taken on behalf of the respondents that the cluster having been demolished in the year 2009 a writ petition in the year 2018 shall be hit by delay and laches and the prayer as sought cannot be

granted.

4. Mr. Parvinder Chauhan, learned Standing Counsel appearing for the DUSIB has relied upon a judgment of this Court in ***W.P (C) 7889/2011*** in the case of ***Dayachand vs. Union of India and Ors.*** decided on September 01, 2015 which judgment was upheld in an Intra Court Appeal being LPA 271/2016.

5. On this submission of Mr. Parvinder Chauhan, the learned counsel for the petitioners submits that the delay has occurred because of the fact that the petitioners were seeking remedy before the National Commission for Scheduled Caste/other authorities.

6. I am unable to agree with the submission of the learned counsel for the petitioners for the simple reason, the prayers of the nature sought in the writ petition under policy contemplates a survey to be carried out when the people are in place in jhuggis. As the demolition has taken place, no survey can be carried out. That apart, I note the Coordinate Bench of this Court in ***Dayachand*** (supra) is in paras 8 to 11 held as under:

“8. However the fact remains that the petitioner did not have any right to Jhuggi Jhopri Cluster at Indra Camp, of which he was in occupation of and had no right against any of the respondents for allotment of any land in lieu thereof, save a right to be considered under the Rehabilitation Scheme and in which consideration the petitioner was found eligible and

made the allotment, subject to verification of documents. The petitioner however slept over the offer made to him by way of his rehabilitation.

9. The petitioner, in the memorandum of parties, has given his address as of B-26, New Block, 31 Trilokpuri, Delhi-110091. On enquiry, the counsel for the petitioner states that the petitioner is a tenant in the said property. On further enquiry, it is informed that Trilokpuri is also a rehabilitation colony.

10. Rehabilitation has a sense and element of urgency attached thereto; the whole purpose thereof being to immediately provide alternative accommodation to persons who are dispossessed from their houses, though unauthorizedly made over public land. If it is to be found that the person so dispossessed has not acted with promptitude and has settled himself elsewhere with his own resources, then that person cannot belatedly attempt to capitalise from the allotment. A distinction has to be carved out between a rehabilitative allotment and an allotment made in pursuance to some housing scheme. The petitioner had not made any investment in any immovable property, for him to say that he is entitled to the benefit thereof at any time. Rather, it may be noticed that even if the petitioner had made such an investment, his right to enforcement thereof would have become barred by time after such long lapse of time.

11. I am therefore of the opinion that the petitioner, for the reason of the delay on his part, has lost the right, if any to be considered for rehabilitation and cannot now seek possession of the plot which was then offered to him, or to any other plot in lieu thereof. The land available for such rehabilitation also is in short supply and far below the number of homeless squatting over public land in the city and cannot be directed to be given to persons who do not appear to be in need thereof.”

7. Even the Division Bench in LPA No. 271/2016 had concurred with the views expressed by the learned Single Judge in the following manner in

paras 14 to 16:

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."

8. That apart, it is also noted and accepted by the learned counsel for the petitioners, that the petitioner No.1 is a resident of a Govt. accommodation in Netaji Nagar, allotted to his wife. That apart, the other petitioners are also

staying elsewhere.

9. In view of the aforesaid conclusion on a similar issue, this Court is of the view that the petitioners herein are not entitled to the prayers, as sought after nine years.

The petition is dismissed.

V. KAMESWAR RAO, J

MAY 08, 2018/aky