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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 3390/2013

RAMESH MALIK

..... Petitioner

Through: Mr. Rajiv Tyagi, Adv. with Mr. Rohit
Gupta, Adv.

versus

THE UNION OF INDIA AND ORS

..... Respondents

Through: Mr. Sanjay Kumar Pathak, Mr.
Kushal Raj Tater & Mr. M.S. Akhtar,
Advs. for LAC/L&B/GNCTD

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER

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04.07.2018

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

“It is therefore, most respectfully prayed that this Hon’ble Court may be graciously be pleased to:-

a. Issue a writ in the nature of Mandamus or any other appropriate writ(s), order(s) or direction(s), to the Respondents to put the Petitioner in the vacant and physical possession of the agricultural land bearing Killa No.3 and 8 out of Khasra No.22 and Killa No. 6, 15 and 16 out of Khasra No.23, admeasuring 25 bighas in aggregate, situated at village Jhorada, Majra Burari, Delih-110009; or provide any other alternate land or compensation in lieu thereof; and

b. Award compensation, damages and costs in favour of the Petitioner and against the Respondents; and

c. Pass such other or further orders as this Hon'ble Court may deem just, necessary, expedient and proper in the facts and circumstances of the case."

2. The brief facts are, the Government of India, Ministry of Rehabilitation, under the Scheme for rehabilitation of displaced persons from Pakistan and in terms of the Displaced Persons (Compensation & Rehabilitation) Act, 1954 allotted vide allotment letter dated September 30, 1959, the agricultural land measuring 25 bighas at village Jharoda, Majra Burari, Delhi to and in favour of Sh. Inderbhan, predecessor in interest of the petitioner. On October 08, 1959, Sh. Inderbhan, the original allottee executed a Will in favour of his nephew Sh. Ram Lal, who was the son of his brother Sh. Vishan Das. The original allottee died after a few days after the allotment of the said land.

3. On January 12, 1961, Sh. Ramlal filed an application before the Settlement Officer, Jaisalmer House, New Delhi for transfer of the allotment in his favour on the basis of the abovementioned Will. The Settlement Officer accepted the Will and recorded the name of Sh. Ramlal as the sole successor to the said land. Thereafter on August 21, 1984, the Sanad/Allotment letter was issued by the respondent in the name of Sh.

Ramlal. On February 02, 1987, Sh. Ramlal filed an application requesting for the mutation of the said land in his favour and was thereupon called by the Tehsildar to produce the original Sanad issued in favour of the original allottee for the purpose of recording the mutation in his name. On June 13, 1989, Patwari issued a copy of the Khasra Girdawari in the name of original allottee, who was shown as the cultivator alongside certain other cultivators, although neither original allottee nor his successors were in actual possession thereof.

4. It is averred, during 1995-96, the Patwari issued a copy of the Jamabandi in the name of Sh. Ramlal as the owner of subject land alongside certain other cultivators though neither the original allottee nor his successors were in actual possession thereof. It transpired that in 2002 Sh. Ramlal filed a representation with the Tehsildar for delivering the possession of the land in question. It is averred, on September 22, 2006, Sh. Ramlal executed a registered Will in favour of the petitioner duly registered with the Sub-Registrar, Meerut. The petitioner on behalf of Sh. Ramlal on October 09, 2006 made an application before the Regional Settlement Officer for providing the physical possession or alternate possession if the original land could not be allotted but in vain. A reference is made to an

RTI application filed by the petitioner on October 09, 2006, to provide a certified copy of Sanad as well as letter of delivery of possession of the land in question. In response to the said application, it was informed that the records have been transferred to Delhi Administration. A reference is also made to the application made by the petitioner on behalf of Sh. Ramlal to the Secretary, Land & Building Department, Vikas Bhawan, ITO and also to a legal notice dated April 26, 2007 got issued on behalf of Sh. Ramlal. On July 11, 2007, Sh. Ramlal died of old age. A reference is also made to certain RTI applications made by the petitioner. It is averred in 2010, the petitioner met with an accident and suffered amongst others head injuries and remained admitted in the hospital. The petitioner has not recovered yet from the resultant neurological problems. A reference is made to various applications/representations made to different authorities under the Government of NCT of Delhi.

5. Mr. Rajiv Tyagi, learned counsel for the petitioner would submit that the respondents have tried to frustrate the provisions of the Displaced Persons Act, 1954, which provides for allotment of alternate lands to refugees, who had fled and came to India from Pakistan after partition in lieu of their original agricultural land holding in Pakistan. Despite the repeal

of the said Act, the rights of the petitioner have accrued under The Administration of Evacuee Property Act, 1950 and The Evacuee Interest (Separation) Act, 1951 and the respondents have frustrated the provisions of aforementioned Acts by not providing the possession of the aforesaid land to the petitioner. On the issue of delay and laches taken by the respondents, Mr. Tyagi would submit that there is no denial to the allotment and issuance of Sanad of the said land in the name of predecessor in interest of the petitioner. There is no reply of the respondents with regard to long delay and inaction on their part in putting the petitioner in possession of the land and compensate him in lieu thereof. He submits, it is not a case where Sh. Ramlal or for that matter, the petitioner has been sitting idle and not pursuing the matter with the authorities. He refers to various representations / applications made by Sh. Ramlal as well as by the petitioner over a period of time.

6. Mr. Tyagi states that under the provisions of Section 185 of the Delhi Land Reforms Act, there is no limitation for seeking possession of the land, which has been allotted. According to him, Sh. Ramlal did approach the Tehsildar in the year 2002 for delivery of the possession of the aforesaid land. Unfortunately, the Tehsildar had failed to discharge his obligation. He

would rely upon the judgments in the cases *(2013) 1 SCC 353 Tukaram Kana Joshi & Ors v. M.I.D.C & Ors; AIR 1992 SC 2009 Patel Naranbhai Margabhai & Ors. v. Deceased Dhulabhai Galbabbhai & Ors.; AIR 1995 SC 142 Jilubhai Nanbhai Khachar etc v. State of Gujarat & Anr;* and *AIR 1962 Madhya Pradesh 311 State v. Umashankar Laxminarayan Jaiswal and another* in support of his submissions that right to property is a constitutional right and cannot be denied on the ground of delay and laches.

7. On the other hand, Mr. Sanjay Kumar Pathak would submit that the petitioner is guilty of concealment of relevant facts, inasmuch as the son of Sh. Ramlal had earlier filed a writ petition, which was dismissed on the ground of delay and laches. In this regard, he has drawn my attention to page 64 of the paper book, which is an order dated February 23, 2010 in W.P.(C) No. 9485/2007. That apart, it is his submission that no person, be he a citizen or otherwise is entitled to obtain an equitable relief under Article 226 of the Constitution, if his conduct is blameworthy because of laches, undue delay, acquiescence, waiver and alike. A citizen claiming discretionary relief under Article 226 of the Constitution against a State cannot be relieved of his obligation to establish his unblameworthy conduct for getting such relief. He states, the cause of action, if any to seek

possession of land arose in the year 1959 when it was allotted to Sh. Inderbhan. Even otherwise, secondly it arose in the year 1962 when Sh. Ramlal was recorded as successor in interest of Sh. Inderbhan. If at all, the cause of action can be stretched, it may be stretched only upto 1984 when Sanad was issued in favour of Sh. Ramlal, the predecessor in interest of the petitioner. According to him, even taking the case of the petitioner on the face of it, Sh. Ramlal did nothing except making representations. Even the petitioner did not approach this Court immediately after the death of Sh. Ramlal, his predecessor in interest in the year 2007. From 2007 till 2010, when petitioner claims to have met with an accident, petitioner has failed to show any action on his part. There is no action from 2010 till early 2013 when petitioner claims to have made an application to the Secretary, L&B and in April, 2013 when he made a representation to the Chief Minister / GNCTD. In substance his submission is no steps whatsoever were taken by his predecessor in interest or by him initiating legal action.

8. He further states, information obtained under the Right to Information Act does not create any fresh cause of action in favour of the petitioner. That apart, it is his case that the writ petition involves disputed question of

fact and as such, should be dismissed. He relies upon the judgment of the Supreme Court in the cases reported as *AIR 1964 SC 1006 State of M.P. v. Bhailal Bhai*, (1995) 4 SCC 683 *State of Maharashtra v. Digambar*, (2011) 5 SCC 394 *Banda Development Authority, Banda v. Moti Lal Agarwal & Ors* and (1998) 2 SCC 682 *Union of India v. S.S. Kothiyal* in support of his contention.

9. Having heard the learned counsel for the parties, I agree with the submission made by Mr. Pathak that the present petition filed by the petitioner is hit by delay and laches. It is noted, as per petitioner's own case, the land was initially allotted to Sh. Inderbhan on September 30, 1959. Sh. Inderbhan could have made a claim for possession of the land. It appears, the same was not done. Even otherwise, on January 12, 1961 the Settlement Officer accepted the Will in favour of Sh. Ramlal and recorded the name of Sh. Ramlal as the sole successor of the said land. Sh. Ramlal could have claimed the possession of the land thereafter. It appears that no steps were taken by Sh. Ramlal in that regard. That apart, Sanad was issued on August 21, 1984. Pursuant to which Sh. Ramlal applied for mutation of land in his favour only in the year 1987. In fact, during 1995-1996, Patwari had issued a copy of Jamabandi in the name of Sh. Ramlal. Sh. Ramlal did not take any

action, seeking possession of land. It was only in the year 2002 that Sh. Ramlal filed a representation for delivering the possession of the aforesaid land. The reasons for the delay are not forthcoming. Even thereafter, Sh. Ramlal has not sought any judicial remedy seeking possession of the land. Sh. Ramlal died in the year 2007. So there was a delay of 20 years, from 1984. Even though, the inaction of Shri Ramlal shall have a bearing on the case of the petitioner, he also did not seek any judicial remedy for possession of land till the filing of the writ petition in the year 2013. The continuous representations made by the petitioner shall not answer the delay. In any case the petitioner cannot be better placed on the strength of a Will executed in his favour in the year 2006. The cause of action initially accrued in favour of the original allottee shall keep running against all his successors. The son of Sh. Ramlal having approached this Court for a similar relief and this Court in its judgment in W.P.(C) No. 9485/2007 decided on February 23, 2010, has rejected the same on the ground of delay and laches, the said conclusion shall stand against the petitioner also.

10. Insofar as the judgments relied upon by Mr. Tyagi are concerned, in *Tukaram Kana Joshi & Ors (supra)* the Supreme Court was concerned with the case where the land stood notified under Section 4 of the Land

Acquisition Act, 1894 on June 06, 1964. However, no subsequent proceedings were taken up thereafter, and the acquisition proceedings lapsed. The predecessors-in-interest of the appellants were not merely illiterate farmers, but were also absolutely unaware of their rights and hence too inarticulate to claim them. Thus, they could be persuaded by the officers of the respondent authorities to hand over possession of the said land. Actual physical possession of the said land was taken by the State authorities and handed over to the Maharashtra Industrial Development Corporation. The respondent authorities realised in 1981 that grave injustice had been done to the appellants. Thus, in respect of the land in dispute, a fresh notification under Section 4 of the Land Acquisition Act was issued. However, no further proceedings under the Act were initiated. The appellants in the said case had been pursuing with the authorities to complete the deemed acquisition proceedings, but despite their efforts, even a declaration under Section 6 of the Act was not issued and therefore, the proceedings also died a natural death. In the year 1988, the Development Corporation, under the instructions of the Government of Maharashtra handed over the possession of the said land to the City Industrial Development Corporation of Maharashtra. The appellants were unable to

get any compensation for the said land or even for that matter, any land in lieu of the lands so taken, in spite of their best efforts made in this regard. A writ petition was filed, which was dismissed on the ground of delay and non availability of certain documents. The Supreme Court in paras 11, 12, 13, 16 and 17, held as under:-

“11. The question of condonation of delay is one of discretion and has to be decided on the basis of the facts of the case at hand, as the same vary from case to case. It will depend upon what the breach of fundamental right and the remedy claimed are and when and how the delay arose. It is not that there is any period of limitation for the Courts to exercise their powers under Article 226, nor is it that there can never be a case where the Courts cannot interfere in a matter, after the passage of a certain length of time. There may be a case where the demand for justice is so compelling, that the High Court would be inclined to interfere in spite of delay. Ultimately, it would be a matter within the discretion of the Court and such discretion, must be exercised fairly and justly so as to promote justice and not to defeat it. The validity of the party’s defence must be tried upon principles substantially equitable. (Vide: P.S. Sadasivaswamy v. State of T.N. AIR 1974 SC 2271; State of M.P. & Ors. v. Nandlal Jaiswal & Ors., AIR 1987 SC 251; and Tridip Kumar Dingal & Ors. v. State of West Bengal & Ors., (2009) 1 SCC 768;)

12. No hard and fast rule can be laid down as to when the High Court should refuse to exercise its jurisdiction in favour of a party who moves it after considerable delay and is otherwise guilty of laches. Discretion must be exercised judiciously and reasonably. In the event that the claim made by the applicant is legally sustainable, delay should be condoned. In other words, where circumstances justifying the conduct exist, the illegality which is manifest, cannot be sustained on the sole ground of

laches. When substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred, for the other side cannot claim to have a vested right in the injustice being done, because of a non-deliberate delay. The court should not harm innocent parties if their rights have infact emerged, by delay on the part of the Petitioners. (Vide: Durga Prasad v. Chief Controller of Imports and Exports & Ors., AIR 1970 SC 769; Collector, Land Acquisition, Anantnag & Anr. v. Mst. Katiji & Ors., AIR 1987 SC 1353; Dehri Rohtas Light Railway Company Ltd. v. District Board, Bhojpur & Ors., AIR 1993 SC 802; Dayal Singh & Ors. v. Union of India & Ors., AIR 2003 SC 1140; and Shankara Co-op Housing Society Ltd. v. M. Prabhakar & Ors., AIR 2011 SC 2161)

13. In the case of H.D Vora v. State of Maharashtra & Ors., AIR 1984 SC 866, this Court condoned a 30 year delay in approaching the court where it found violation of substantive legal rights of the applicant. In that case, the requisition of premises made by the State was assailed.

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16. The appellants have been deprived of their legitimate dues for about half a century. In such a fact-situation, we fail to understand for which class of citizens, the Constitution provides guarantees and rights in this regard and what is the exact percentage of the citizens of this country, to whom Constitutional/statutory benefits are accorded, in accordance with the law.

17. The appellants have been seriously discriminated against qua other persons, whose land was also acquired. Some of them were given the benefits of acquisition, including compensation in the year 1966. This kind of discrimination not only breeds corruption, but also dis-respect for governance, as it leads to frustration and to a certain extent, forces persons to take the law into their own hands. The findings of the High Court, that

requisite records were not available, or that the appellants approached the authorities at a belated stage are contrary to the evidence available on record and thus, cannot be accepted and excused as it remains a slur on the system of governance and justice alike, and an anathema to the doctrine of equality, which is the soul of our Constitution. Even under valid acquisition proceedings, there is a legal obligation on the part of the authorities to complete such acquisition proceedings at the earliest, and to make payment of requisite compensation. The appeals etc. are required to be decided expeditiously, for the sole reason that, if a person is not paid compensation in time, he will be unable to purchase any land or other immovable property, for the amount of compensation that is likely to be paid to him at a belated stage.”

11. But the said judgment is distinguishable inasmuch as, in the case in hand, there is already a conclusion of this Court in a writ petition filed by son of Sh. Ramlal whereby this Court has dismissed the writ petition on the ground of delay and laches. The said conclusion is primarily against Sh. Ramlal. The petitioner herein cannot be better placed. The said conclusion shall be applicable in the case in hand as the petitioner herein is claiming his rights in terms of the Will executed by Sh. Ramlal. As it has already been held in the writ petition that the claim of son of Sh. Ramlal for possession itself was barred by delay and laches, this Court holds this case is also hit by delay and laches. The said judgment shall not help the case of the petitioner.

12. Insofar as ***Patel Naranbhai Margabhai & Ors. (supra)***, in the said case, a land was mortgaged, the debt was discharged, yet the mortgagee

continued to be in possession of the land. It appears that an Award was given in favour of the mortgagor. The mortgagor laid execution for recovery of possession of the land. The mortgagee had during the execution for recovery of the possession of the land, taken an objection with regard to the limitation. The said plea was rejected by the Civil Court, which was the executing Court. The Supreme Court on the aspect of limitation held that the legislature did not prescribe any period of limitation for recovery of possession under the Act, which is a beneficial legislation. The said judgment shall not be applicable to the facts of this case, in view of the fact that the petitioner herein has not invoked the remedy under the Delhi Land Reforms Act wherein, according to Mr. Tyagi there is no period of limitation prescribed for seeking possession of the land. The petitioner has invoked writ jurisdiction and it has to be seen whether the petitioner has approached the Court in right earnest from the date when the cause of action has accrued. Entertaining a writ petition with delay is discretionary. In the present case, this Court refuses to exercise the discretion in favour of the petitioner for the reasons already stated.

13. Insofar as *Jilubhai Nanbhai Khachar etc (supra)* is concerned, the Supreme Court was concerned with the provisions of Article 300(A), which

states that no person shall be deprived of his property save by authority of law. The said judgment is not relevant for the purpose of the issue, which arises for consideration in this case.

14. Insofar as the reliance placed by Mr. Tyagi in the case of *Umashankar Laxminarayan Jaiswal and another (supra)* is concerned, in view of my aforesaid conclusion in the facts of this case, the said judgment has no applicability.

15. I do not see any merit in the petition. The same is dismissed. No costs.

V. KAMESWAR RAO, J

JULY 04, 2018/ak