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

% *Date of Judgment: 4th October, 2018*

+ RFA(OS) 33/2018 & CM Nos.21511-21512/2018, 37751/2018
BALWAN SINGH Appellant
Through: Israel Ali, Advocate.

versus

INTERNATIONAL AIRPORT AUTHORITY OF INDIA & ORS

..... Respondents

Through: Mr.Digvijay Rai and Mr.Kustubh Singh,
Advocates for R-1/AAI.
Mr.Akshay Chandra, Advocate for R-
2/DDA.
Mr.Yeeshu Jain, Standing Counsel with
Ms.Jyoti Tyagi, Advocate for R-3.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J. (ORAL)

1. The present appeal is directed against the order dated 27.04.2018 passed by the learned Single Judge by which a chamber appeal filed by the appellant herein against the order dated 09.07.2015 in OA No.156/2017 along with an application IA No.14047/2017 seeking condonation of delay of two and half years were dismissed as no sufficient cause was found for the delay. This order is in continuation of the earlier orders dated 28.11.2017, 29.11.2017 and 30.11.2017. The appellant herein had filed the suit for declaration, mandatory and permanent injunction against the respondents before the Court of Senior Civil Judge of Delhi. We are informed that the order passed in CM(M) 564/2007, all matters pertaining to Village Nangal

Dewat seeking alternate plots were transferred to the Delhi High Court to be registered as an original Civil Suit. A written statement was filed by the respondents herein and thereafter, issues were framed on 02.02.2015.

2. Learned counsel appearing for the appellant submits that the learned Single Judge has completely lost track of the fact that the appellant was diligently pursuing the matter and he had appointed the counsel to look after his interest and also paid his fees. He also submits that vide order of Joint Registrar, the cost of Rs.25,000/- was imposed and this cost was also paid through a cheque by the appellant through his counsel and the counsel had not apprised the appellant as to why the cost had been imposed. In short, the submissions of learned counsel for the appellant is that the appellant had reposed his faith and confidence in the counsel whom he had appointed, paid his fees and hence, the appellant should not be made to suffer on account of the negligence of the counsel for non-appearance on behalf of the appellant. He submits that the counsel had informed the appellant again of cost having been imposed for a sum of Rs.25,000/- which was also deposited with the Prime Minister Relief Fund.

3. Counsel for the respondents has opposed the prayer made in the appeal on the ground that the appellant and his counsel had been negligent in pursuing the matter. He further submits that the cost was imposed on two occasions and right to lead evidence was closed. The suit was dismissed for non-prosecution after repeated opportunities were granted. The appellant and his counsel did not choose to pursue the matter. At this stage, the relief so prayed cannot be granted.

4. We have heard the learned counsel for the parties.

5. Post framing of issues on 02.02.2015, time was granted to the appellant to file the list of witnesses and their affidavits by way of the evidence. The matter was listed on 23.03.2015. However, no steps were taken by the appellant to file the list of witnesses. Further time was granted subject to cost of Rs.25,000/- and the case was adjourned to 09.07.2015, but on the said date neither the counsel nor the plaintiff (appellant herein) had appeared. None had appeared even on the next date of hearing i.e. on 05.10.2015.

6. The plaintiff's right to file evidence was closed and the matter was listed before the Court for evidence of the defendant. However, the Court dismissed the suit for non prosecution on 16.09.2016. The appellant herein thereafter filed an application for restoration of the suit on 17.10.2016. While restoring the suit to its original number, the learned Single Judge observed that "the plaintiff claims that he was in regular touch with his counsel who had informed him about the next date of hearing but did not inform as to what proceedings took place. In the meantime, his affidavits were also taken on record but no accompanying application was shown to him and thus, he was kept uninformed". Learned Single Judge also observed that the very fact that as soon as the suit was dismissed for non-prosecution, the plaintiff filed an application which shows that the plaintiff was in regular touch with his counsel and it appeared that there was miscommunication between the appellant and the counsel and the appellant remained uninformed. Resultantly, the suit was restored to its original number. While concluding the order, the learned Single Judge also observed that while the suit has been restored the plaintiff had sought liberty to file an appeal against the order of the Joint Registrar by which his evidence was closed on 09.07.2015.

Thereafter, a Chamber appeal OA No.156/2017 along with an application seeking condonation of delay was filed which is the subject matter of the present appeal. Learned Single Judge in the order of 28.11.2017 observed that the Chamber appeal was filed after a gap of two and half years. The learned Single Judge also observed that after passing of the order of Joint Registrar dated 09.07.2015, the suit was listed on 05.10.2015, 21.01.2016, 12.02.2016, 22.04.2016, 08.07.2016, 19.07.2016 and 16.09.2016 when the suit was dismissed for non prosecution. Learned Single Judge declined the prayer not only on the ground of delay but was also not convinced when the blame was shifted to the earlier counsel.

7. Learned Single Judge was also not impressed by the fact that the complaint was filed with the Bar Council of Delhi against the earlier counsel on 18.11.2016 for the reasons that there was no acknowledgment of the Bar Council on the said complaint which is stated to be filed and there was nothing on record to show that the complaint has actually been filed.

8. On 30.11.2017 a detailed order was passed by learned Single Judge, we deem it appropriate to reproduce the same:-

- “1. This order is in continuation of the earlier orders dated 28th November, 2017 and 29th November, 2017.
2. The counsel for the plaintiff and the counsel for the defendant no.1 International Airport Authority of India (IAAI) have been heard.
3. The position which emerges is as under:
 - (i) On 28th April, 1972, Notification under the Land Acquisition Act, 1894 for acquisition of land at village Nangal Devat, for purposes of expansion of Indira Gandhi International Airport, was issued;
 - (ii) Writ petitions were filed in this Court challenging the said acquisition;
 - (iii) Vide a consent order in the said writ petitions, apart from compensation to be paid for acquired lands,

those who would be uprooted from their homes were agreed to be provided alternative land for their residence;

(iv) This court in the aforesaid litigation, with the consent of the parties, devised a scheme for allotment of alternative land and a Nodal Officer was appointed for preparing the list of persons eligible for allotment of alternate land and for deciding the objections to the list of eligible persons so drawn up and guidelines framed for determining the eligibility;

(v) Objections to the list so prepared by the Nodal Officer, including by filing fresh writ petitions, were preferred by a large number of persons;

(vi) Finally, vide judgment dated 30th May, 2007 reported as *Airports Authority of India Vs. Karan Singh* 141 (2007) DLT 277, while disposing of the matters, it was inter alia:

(a) Clarified that no further petitions challenging the orders of the Nodal Officer or by persons who never filed their claims before the Nodal Officer should hereafter be entertained, either by this Court or by the Civil Court; it was reasoned that all these claimant belong to the same village Nangal Devat and the litigation had been on since 1982 and it is inconceivable that any resident of the village would have been unaware of the pendency of the proceedings and the claims filed by the residents of that village; and, that time limit had been set in the guidelines for the Nodal officer to entertain claims and it had been made clear that no further claims beyond the time set in the order dated 26th August, 2004 would be entertained; however, even thereafter the Court had permitted some claims to be filed before the Nodal officer; however all claims must come to an end at some stage and the time limit cannot be open ended to enable the fence sitter to take a chance, after watching the outcome of the petitions filed by the others;

(b) Recording that this Court did not want to encourage this;

(c) Further recording that this was necessary to allay the apprehensions that if the Court continues to interfere with the orders of the Nodal Officer, others

similarly situated who had not approached the Court may want similar relief;

(d) Clarifying that the relief being granted in some of the petitions was confined to the petitions covered by that judgment and would not result in re-opening the claims of others who had not challenged the order of the Nodal Officer till then;

(e) Recording that some of the petitions decided by the said judgment were filed belatedly and no attempt had been made to show why those petitioners could not approach the writ Court earlier; the award of acquisition was made in 1986 and till August, 2001, the petitions were pending in the Court and the petitions which were decided were being heard from December, 2006 onwards and that in these circumstances, it was impossible to believe that other residents of the village were not aware of the pendency of the cases before the writ Court and the writ Court was thus not prepared to entertain those petitions which had been filed at a very late stage;

(f) Also making it clear that no further petitions challenging the order of the Nodal officer would be entertained and that this approach is necessary keeping in view the time bound directions the Court had made earlier;

(vii) The plaintiff herein claims to have filed objection before the Nodal Officer for the first time on 31st May, 2005 and which objection was dismissed vide order dated 10th November, 2006 of the Nodal Officer inter alia reasoning that the objection had been filed after the objections / representations were heard and decided on merits and the final list submitted before the High Court and that the plaintiff was not entitled to a separate plot claimed by him, as his father had been allotted a plot;

(viii) The plaintiff filed this suit before the Court of the Senior Civil Judge on 5th December, 2006 seeking declaration that he is entitled to independent and separate plot and permanent injunction restraining IAAI, Delhi Development Authority (DDA) and Nodal officer from dispossessing the plaintiff from his land in

village Nangal Devat and for mandatory injunction directing the defendants to allot a plot to the plaintiff;

(ix) The counsel for IAAI informs that besides the suit filed by the plaintiff, some other persons had also filed similar suits before the Senior Civil Judge (SCJ) and in some of which interim orders were also passed; that Delhi International Airport Authority Ltd. (DIAL), to whom Airport Authority of India (AAI) leased out the airport, being affected by the said interim orders, filed CM(M) No.564/2007 in this Court and vide order dated 24th April, 2007 all the said suits including the suit filed by the plaintiff were directed to be requisitioned in this Court;

(x) Vide subsequent order dated 31st July, 2017 in CM(M) No.564/2007, all the requisitioned suits were ordered to be listed before the Hon'ble Judge who had passed the judgment reported in 141 (2007) DLT 277;

(xi) However owing to change of Roster, the Judge who had passed the judgment reported in 141 (2007) DLT 277 supra was not presiding over the writ Court and the Judge who was then presiding the writ Court, vide order dated 1st December, 2008 in CM(M) No.1066/2007, directed all the requisitioned suits to be registered as Original Civil Suits before this Court; and,

(xii) This is how this suit was numbered as CS(OS) No.130/2009.

4. On the basis of the aforesaid history, the counsel for the defendant no.1 IAAI has argued that the present suit does not lie in terms of observations set out herein above in the judgment reported in 141 (2007) DLT 277.

5. Per contra, it is the contention of the counsel for the plaintiff that the observations aforesaid bar a challenge after 30th May, 2007 while the plaintiff herein had filed his suit on 5th December, 2006.

6. Though I was of the opinion that a suit would still not lie inasmuch as the entire scheme of allotment of alternate plot having been devised by this Court in writ jurisdiction and the Nodal officer also having been appointed by this Court in writ jurisdiction and the Nodal officer having acted as per the guidelines laid

down by this Court was in the position of a Commissioner appointed by the Court and against the orders of the Commissioner no suit lies and the remedy if any is to approach in the proceeding in which the Commissioner is appointed but the counsel for the defendant no.1 IAAI has fairly also drawn attention to the orders dated 15th July, 2013 in W.P.(C) No.340/2013 and dated 26th August, 2013 in LPA No.613/2013 preferred there against and in which case the parties were relegated to the suit remedy against the orders of the Nodal Officer.

7. Though issues have been framed in the suit and it was posted for evidence but it appears that since other orders of the Nodal Officer have been decided by this Court in writ jurisdiction, there is no need for any evidence in this matter also.

8. To enable me to satisfy myself as to the merits of the claim of the plaintiff, for the purpose of this Chamber Appeal, list for hearing on 7th December, 2017.

9. The counsel for the defendant no.3 Nodal Officer to also bring all the relevant records on that date.”

9. On 27.04.2018 following order was passed. Same is reproduced below:

“OA No.156/2017 (of the plaintiff against the order dated 9th July, 2015) & IA No.14047/2017 (of the plaintiff for condonation of 2½ years delay in filing OA)”

1. This order is in continuation of the earlier orders dated 28th November, 2017, 29th November, 2017 and 30th November, 2017.

2. The counsel for the defendant no.3 Nodal Officer has brought the record requisitioned from him today and the counsel for the defendant no.1 International Airport Authority of India states, on the basis of the said records, no entitlement of the plaintiff is found.

3. Needless to state, the counsel for the plaintiff controverts and states that the holding of the plaintiff was in the old lal dora and of which there were no

revenue records and the entitlement of the plaintiff to the land is independent from that of his father. It is contended that the plaintiff has received separate compensation for his holding.

4. The counsel for the defendant no.1 states that the compensation received by the plaintiff was only for the super-structure and not for the land.

5. The counsel for the plaintiff draws attention to the land acquisition award No.16/86-87 at page no.39 of the Part-III file and particularly to pages 54, 61 and 69 thereof to show that the plaintiff has received compensation separately from the father.

6. The counsel for the defendant no.1 states that the said compensation, as evident from page no.54, is only for super-structures and is not for holding.

7. The counsel for the plaintiff states that as per the aforesaid land acquisition award, the entitlement of the father of the plaintiff was not to alternate land ad-measuring 650 sq. mtrs. and the said allotment must have been made for some other land belonging to the father of the plaintiff. It is stated that the other land is evident from documents which are sought to be handed across in the Court.

8. The stage for filing documents is long since gone and no documents can be received in this fashion.

9. The counsel for the plaintiff also draws attention to page 8 of Part-III file to contend that the holding of the plaintiff was separate.

10. The aforesaid exercise was undertaken just to satisfy the judicial conscience of this Court.

11. Else, neither is there any ground for condonation of long delay in preferring this Chamber Appeal nor is there any ground for the plaintiff having not led any evidence in the suit.

12. The need to replicate in this order the detailed facts mentioned in the orders dated 28th November, 2017, 29th November, 2017 and 30th November, 2017 in continuation of which this order is being made, is not felt.

13. Thus the judicial conscience of this Court also does not require any opportunity to be granted to the plaintiff.

14. The IA No.14047/2017 for condonation of delay of 2½ years is thus dismissed as no sufficient cause is found for the delay and axiomatically the Chamber Appeal is also dismissed.

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15. The onus of the issues being on the plaintiff and the plaintiff having not led any evidence, the suit has to be dismissed and is dismissed.

16. However, I am refraining from imposing any costs.

17. Decree sheet be drawn up.”

10. We have reproduced the order of 30.11.2017 and 27.04.2018 with the objective that the learned Single Judge has carefully taken note of various opportunities provided to the appellant. Learned Single Judge in a most diligent manner also carried out the exercise to satisfy his conscious on the merits of the matter and reasons are very well given to the aforesaid two orders. We find no infirmity in the impugned orders.

11. For the detailed reasons in the orders of 30.11.2017 and 27.04.2018 and having regard to the fact that the appellant did not act in a diligent manner even after repeated opportunities having been granted to lead evidence, the appellant for the reasons best known to him, did not choose to pursue the matter.

12. Resultantly, the appeal is dismissed and all the applications are also dismissed.

G.S.SISTANI, J

SANGITA DHINGRA SEHGAL, J

OCTOBER 04, 2018

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