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

Date of Decision-15.01.2018.

+ **W.P.(C) 3437/2017**

HANIF AND ANR

..... Petitioner

Through Mr.V.P. Rana, Advocate.

versus

GOVT OF NCT OF DELHI AND ANR Respondent

Through Mr.Siddhartha Shankar Ray,
Advocate.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI,J (ORAL)

1. The Petitioners have approached this Court under Article 226 of the Constitution of India seeking issuance of a writ of mandamus to the Respondents to handover actual physical possession of the land allotted to their predecessor on 25.11.1975, during the consolidation proceeding held in the village. The Petitioners have also prayed for an alternate prayer that in case the land already allotted to them in 1975 is not found available or fit to be handed over, the Respondents may be directed to handover the physical possession of some other land with equivalent area and potentiality.

2. The facts as set out in the petition are that the predecessors-in-interest of the Petitioners were allotted certain pieces of land in Village Buraru, Delhi on 25.11.1975, during consolidation of land from the land of Gaon Sabha. It is claimed that Mr.Nasibu, father of Petitioner no.1, was allotted 2 Biswas and 8 Biswansi equivalent to 120 sq. yards out of Khasra No.527/20; Mr.Hakimu-grandfather of Petitioner no.2 was allotted 2 Biswas and 8 Biswansi equivalent to 120 sq. yards out of Khasra 527/19; and Mr. Janga, father of Petitioner no.2, was allotted 3 Biswas equivalent to 150 sq yards out of Khasra 527/17. It is claimed by the Petitioners that though the names of the allottees i.e. predecessors in interest were duly recorded in the record of rights i.e.Khatauni at the time of allotment, but the physical possession of the land was not handed over to them since it was submerged under water and they were informed that the physical possession of the site will be handed over to them, once the water dries-up.

3. The learned counsel for the petitioners submit that they are landless, poor and illiterate persons and after waiting for over 40 years they moved an application dated 17.03.2016 to the Tehsildar-

consolidation officer/respondent no.2 to handover physical possession of the allotted site to them. He further contends that their application for grant of physical possession of the allotted site has been erroneously rejected by the Tehsildar vide order dated 12.04.2016 without redressing their grievances.

4. The learned counsel for the petitioners submit that in view of the fact position that the land allotted to them was at the time of allotment under water, the respondents were bound to grant them alternative sites. He further submits that the petitioners, for the last 40 odd years have been requesting the respondents to handover the physical possession of the allotted sites to them.

5. However, on a query by the Court, the learned counsel for the petitioner is unable to point out any representation made by the petitioners during the long period of 40 years from the date of consolidation i.e.25.11.1975 to 17.03.2016 when the petitioner had submitted an application to respondent no.2 in this regard.

6. Upon notice, the learned counsel for the respondents has filed a status report pointing out that the consolidation proceedings in Village Burari were completed in the year 1981 and at the time of allotment,

possession of the respective Khasra numbers had been duly handed over to all concerned and entries in respect thereof had been duly made in the revenue record.

7. Though vide order dated 13.10.2017, a direction was issued to the Respondents to file a counter affidavit. Mr.S.S. Ray, Learned Counsel appearing for the Respondents submits that the status report filed by him on 13.07.2017 may be treated as a counter affidavit. He further submits that even otherwise the present petition is highly belated and liable to be dismissed on the ground of delay and laches.

8. Having heard the learned counsels for the parties, I find that there is nothing on record filed by the Petitioners to show as to what action they or their predecessors had taken for over 40 years if, as claimed by them, they had not been handed over the actual physical possession of the allotted sites for these 40 years. I find it difficult to comprehend as to why an allottee would wait for 40 years to seek physical possession of the allotted sites and no explanation worthwhile has been given either in the petition or by the learned counsel for the petitioner during arguments.

9. It is settled law that one of the several rules of self-imposed restraint evolved by the superior courts is that High Court will not entertain petitions filed after long lapse of time because that may adversely affect the settled rights of third parties. In the opinion of this Court, the test to be applied is whether laches on the part of the petitioner is such as to hold that the petitioner by its act and conduct has given a go-by to his rights. Reference may be made to *State of Uttaranchal and Anr. vs. Sri Shiv Charan Singh Bhandari and Ors.*, 2013 (11) SCALE 56 where the Supreme court, with regard to delay and laches, has held as under:-

"15. From the aforesaid authorities it is clear as crystal that even if the court or tribunal directs for consideration of representations relating to a stale claim or dead grievance it does not give rise to a fresh cause of action. The dead cause of action cannot rise like a phoenix. Similarly, a mere submission of representation to the competent authority does not arrest time. In Karnataka Power Corporation Ltd. through its Chairman and Managing Director v. K. Thangappan and Anr. (2006) 4 SCC 322, the Court took note of the factual position and laid down that when nearly for two decades the Respondent-workmen therein had remained silent mere making of representations could not justify a belated approach.

16. In State of Orissa v. Pyarimohan Samantaray (1977) 3 SCC 396 it has been opined that making of repeated representations is not a satisfactory explanation of delay. The said principle was reiterated in State of Orissa v. Arun Kumar Patnaik (1976) 3 SCC 579."

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18. In State of T.N. v. Seshachalam (2007) 10 SCC 137, this Court, testing the equality clause on the bedrock of delay and laches

pertaining to grant of service benefit, has ruled thus: ...filing of representations alone would not save the period of limitation. Delay or laches is a relevant factor for a court of law to determine the question as to whether the claim made by an applicant deserves consideration. Delay and/or laches on the part of a government servant may deprive him of the benefit which had been given to others. Article 14 of the Constitution of India would not, in a situation of that nature, be attracted as it is well known that law leans in favour of those who are alert and vigilant.

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22. We are absolutely conscious that in the case at hand the seniority has not been disturbed in the promotional cadre and no promotions may be unsettled. There may not be unsettlement of the settled position but, a pregnant one, the Respondents chose to sleep like Rip Van Winkle and got up from their slumber at their own leisure, for some reason which is fathomable to them only. But such fathoming of reasons by oneself is not countenanced in law. Anyone who sleeps over his right is bound to suffer. As we perceive neither the tribunal nor the High Court has appreciated these aspects in proper perspective and proceeded on the base that a junior was promoted and, therefore, the seniors cannot be denied the promotion. Remaining oblivious to the factum of delay and laches and granting relief is contrary to all settled principles and even would not remotely attract the concept of discretion. We may hasten to add that the same may not be applicable in all circumstances where certain categories of fundamental rights are infringed. But, a stale claim of getting promotional benefits definitely should not have been entertained by the tribunal and accepted by the High Court. True it is, notional promotional benefits have been granted but the same is likely to affect the State exchequer regard being had to the fixation of pay and the pension. These aspects have not been taken into consideration. What is urged before us by the learned Counsel for the Respondents is that they should have been equally treated with Madhav Singh Tadagi. But equality has to be claimed at the right juncture and not after expiry of two decades. Not for nothing, it has been said that everything may stop but not the time, for all are in a way slaves of time. There may not be any provision providing for limitation but a grievance relating to promotion cannot be given a new lease of life at any point of time.

10. The consolidation, admittedly, having been completed in the year 1981, it would be highly unjust to interfere with the settled position at this stage or to direct the Gaon Sabha or the consolidation officer to allot any alternative land to the petitioners. I am, therefore, of the considered opinion that the present petition is grossly barred by delay and laches and there is no merit in the present petition and the present petition is dismissed as meritless, without any order as to cost.

(REKHA PALLI)
JUDGE

JANUARY 15, 2018
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