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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ LPA 520/2018

**DELHI URBAN SHELTER IMPROVEMENT
BOARD**

..... Appellant

Through: Mr. Parvinder Chauhan, Adv.

versus

PAPPU

..... Respondent

Through:

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE V. KAMESWAR RAO

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20.09.2018

CM Nos. 36588/2018 and 36589/2018 (for exemptions)

Exemptions allowed subject to all just exceptions.

Application stands disposed of.

CM. No. 36591/2018 (for delay)

This is an application filed by the applicant / appellant seeking condonation of 52 days delay in filing the appeal. For the reasons stated in the application, delay of 52 days in filing the appeal is condoned.

Application stands disposed of.

LPA 520/2018

1. The challenge in this appeal is to the order dated April 19, 2018 of the learned Single Judge in W.P. (C) 2148/2017 and W.P. (C) 2192/2017. We may state here that by the said order, the learned Single Judge had decided two writ petitions being W.P.(C) No. 2148/2017 filed by Pappu, respondent herein and W.P.(C)2192/2017 filed by Delhi Urban Shelter Improvement

Board, appellant herein, whereby Pappu and DUSIB had sought implementation (by Pappu) and setting aside (by DUSIB) of the order dated 27th January, 2016 passed by the Lt. Governor in Appeal filed by the Pappu under Section 45 of Delhi Urban Shelter Improvement Board Act, 2010.

2. It is the case of the appellant DUSIB that Jhuggi No. N108/402, AE Block, Near Gauri Shankar Mandir, Shalimar Bagh, New Delhi belonging to Pappu was demolished on 17th April, 2002. On July 04, 2012, after ten years Pappu for the first time made a representation seeking allotment of plot in lieu of his demolished Jhuggi. On 22nd October, 2012, in response to an RTI query dated 24th September, 2012, Pappu was informed that his name did not figure in the list of dwellers eligible for rehabilitation. Pappu approached this court by filing writ petition being W.P.(C) 2018/2014, which was decided by this court vide order dated 22nd August, 2014 directing Pappu to seek remedy of appeal before the Lt. Governor. Accordingly, Pappu approached Lt. Governor by way of an Appeal under Section 45 of the DUSIB Act. The Lt. Governor allowed the claim of Pappu vide order dated 27th January, 2016. It may be necessary to state here that the conclusion of the Lt. Governor in the order is as under:

“I have considered the submissions made by both the sides and have also gone through the case file. I find that

the appellant has contended in the appeal that he is a holder of a ration card since 1994 at 108/402 AE, Gauri Shanker Mandir, Shalimar Bagh, New Delhi, but the same was cancelled as he had shifted from the place after demolition of his jhuggi in 2002. The DUSIB has rejected the appellant's case for allotment of a alternative plot only on the ground that the appellant is not in possession of a valid ration card as the same had been cancelled as per report of the FSO (Circle 19), although the respondent department had admitted in the impugned order that the name of the appellant exists at S. No. 168 as per the joint survey report of JJ Cluster, AE Block, Gauri Shankar Mandir, Shalimar Bagh, New Delhi. In view of the above discussion and taking a lenient view, I set aside the impugned order and direct the CEO, DUSIB to take steps for allotment of an alternative plot in lieu of the demolished jhuggi of the appellant."

3. The order of the Lt. Governor resulted in filing of two writ petitions one by Pappu and another by respondent DUSIB, a reference of which has already been made above.
4. The plea of Pappu before the Learned Single Judge was that he was issued a demolition slip dated 17th April, 2002 and Token No. 108/402. The demolition slip and the token number were issued in his favour by the Slum and JJ Department of MCD, whose work has been taken over by DUSIB. It was his case that he being a daily wager did not had the necessary wherewithal and that he ran from pillar to post to have an alternative plot allotted to him in lieu of the demolished hutment.

5. The case of the DUSIB before the learned Single Judge was that the order of the Lt. Governor is contrary to the DUSIB Policy as Pappu was not eligible for allotment of alternative plot inasmuch as Pappu should have been in possession of valid ration card and his name should have been included in the voters list. The plea of delay and laches was also taken by DUSIB before the learned Single Judge inasmuch as Pappu had not taken any steps for a period of 10 years for redressal of his grievance of non-allotment of alternative plot.

6. On the aspect of delay and laches, the learned Single Judge was of the view of that DUSIB neither before this court in the earlier writ petition nor before the Lt. Governor took any objection with regard to laches. Learned Single Judge was also of the view that DUSIB opposed the writ petition only on one ground, which was availability of alternative remedy to the petitioner. He also inter alia noted the observation of the Court in earlier writ petition while relegating Pappu to the remedy of appeal to be decided expeditiously preferably within three months uninfluenced by any delay. DUSIB did not assail the order of this court. Therefore, the learned Single Judge held, DUSIB cannot be allowed to contend that because there are laches, the petitioner should be denied relief. The learned Single Judge

accordingly rejected the plea. In so far as the plea of non-eligibility of Pappu as he did not possess the Ration Card and his name was not found mentioned in voters list is concerned, the learned Single Judge was of the following view:

“10.1 But before I deal with the first objection, let’s get out of the way, the second objection in the first instance. Insofar as this objection is concerned, according to me, this court cannot consider the same as it neither found mention in the communication dated 14.11.2012 nor in the reply filed before the LG. Therefore, this aspect cannot now be taken, to my mind, as a ground for denying the petitioner the relief for grant of alternative plot.

10.2. DUSIB, to my mind, cannot enlarge the scope of the challenge by introducing this ground for the first time in the instant proceedings.

10.3. Insofar as the first objection is concerned, in my view, the LG has rightly appreciated the circumstances at hand. The fact that the subject hutment was demolished is established if one has regard to the contents of the Joint Survey Report.

10.4. It is not disputed before me that in the Joint Survey Repot, prepared at the time when the demolition took place, the petitioner’s name finds mention at serial no. 168. Therefore, on the cut-off date, the petitioner’s hutment was, physically, available at the subject site.

10.5. The fact that the ration card was cancelled is not of much significance, in this case, as the factum of cancellation would also demonstrate that the petitioner, in the first instance, possessed the ration card.

10.6. Mr. Chauhan, in that behalf submitted that, since, the petitioner contended before the LG that the ration card was cancelled because he had moved out of subject area, would show, that the on cut-off date, the petitioner

was not residing in the subject area.

10.7. According to me, this is a mere speculation as the reason why the ration card was cancelled is not known, while the factum of cancellation of the ration card cannot be denied. The report of the Food Supply Officer (FSO) has not been seen, admittedly, by DUSIB's officers. This report was also not placed before the LG. It is quite possible that the ration card obtained by the petitioner, when, he was in the subject area was cancelled because of lack of use. Either way the ration card, which was a material document, should have been placed before the LG or at least before this court.

7. Mr. Parvinder Chauhan, learned counsel appearing for the appellant / DUSIB has in support of appeal made similar pleas as were urged before the learned Single Judge. According to him, the claim of Pappu was hit by delay and laches and also Pappu was not eligible for being allotted an alternative plot, as he did not possess the ration card nor his name was in the voters list. In so far as the first plea of Mr. Chauhan is concerned, the same is without merit. We are in agreement with the learned Single Judge inasmuch as the earlier writ petition filed by Pappu was disposed of by the learned Single Judge granting liberty to Pappu to approach Lt. Governor by way of an appeal with a further direction that the same be disposed of expeditiously and preferably within a period of three months from that date *uninfluenced by any delay*. If that be so, the Lt. Governor was required to consider the issue on merit, which he did, which resulted in the order dated

27th January, 2016. If the appellant had any grievance against the order of the learned Single Judge in the earlier writ petition being W.P.(C) 2018/2014 dated 22nd August, 2014, the appellant should have challenged the same. Having not challenged the said order, the same has become final and there being an adjudication by the Lt. Governor in favour of Pappu on merit, the delay aspect was rightly rejected by the learned Single Judge.

8. In so far as the plea of Mr. Chauhan that Pappu did not meet the eligibility condition as he did not have the ration card and his name was not found in voters list is concerned, we agree with the conclusion of the learned Single Judge as reproduced in para 2 above. That apart, the very fact, the learned Single Judge has concluded that on the date of demolition, i.e., on 17th April, 2002, Pappu's hutment was in existence and he was given a demolition slip and token number, would sufficiently prove the existence of his hutment which was demolished, shall surely result in the allotment of alternative plot. The appeal is without any merit. The same is dismissed.

CM. No. 36590/2018 (for interim direction)

Dismissed as infructuous.

CHIEF JUSTICE

V. KAMESWAR RAO, J

SEPTEMBER 20, 2018/jg