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

+ **LPA 15/2019 & CM APPL.955-958/2019**

RADHEY SHYAM

..... Appellant

Through: Mr. S.R. Padhy, Adv.

versus

DELHI DEVELOPMENT AUTHORITY & ANR Respondents

Through: Mr. Dhanesh Relan, SC for DDA

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER

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11.01.2019

CM No.957/2019 (exemption)

Allowed, subject to all just exceptions.

CM No. 955/2019 (delay in filing)

For the reasons stated in the application, delay of 80 days in filing the appeal is condoned.

The application is disposed of.

LPA 15/2019 & CM No. 956/2019 (stay)

1. Seeking exception to order dated 09.08.2018 passed by the Writ Court dismissing the writ petition filed by the petitioner, this appeal has been filed under Clause 10 of the Letters Patent.

2. The petitioner filed the writ petition and claimed his right to the land

in question primarily on the ground that he was settled in the land by the British army. With the efflux of time, they were cultivating fodder initially for the military horses and thereafter for themselves and claimed his right to title over the land on adverse possession. The learned Writ Court examined the issue in detail and found that the petitioner was brought into the said land by the British army for cultivating the land but it was found that in the case of various other petitioners identically situated, on the basis of undertaking given, they were permitted some time and thereafter they were evicted from the land. The matter went to the Supreme Court and the Supreme Court also, vide order passed in the matters on 10.08.2018, refused to interfere into the matter and all petitions have been disposed of and in cases where undertaking, as granted in earlier writ petitions, were not granted, the Supreme Court has refused to interfere into the matter. The learned Writ Court has found that the petitioner is also identically situated like the set of petitioners who had given the undertaking and when eviction orders against similarly situated petitioners have been affirmed till the Supreme Court disposes of the matter and granted time to vacate the premises, the petitioner is also entitled to similar treatment.

3. Keeping in view the fact that the petitioner has no right to the property in question as on date, no indulgence into the matter is called for. The question of adverse possession is a mixed question of law and fact and if the petitioner thinks that he has any right to claim his right of possession or title on the basis of adverse possession, he should resort to the remedy of filing a suit and seeking the aforesaid benefit. For the present, once we find

that the land belongs to the Delhi Development Authority and appellant merely by paying land revenue cannot claim ownership or title of the land, indulgence into the matter in a manner which is not permissible under law cannot be made. Accordingly, we find no error in the order passed by the learned Writ Court warranting re-consideration.

4. In view of the aforesaid observations, the appeal is dismissed.

CHIEF JUSTICE

V. KAMESWAR RAO, J

JANUARY 11, 2019

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