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

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Date of Decision: 03.12.2019

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W.P.(C) 12712/2019 & CM APPL. 51943/2019

SOMVEER

..... Petitioner

Through Mr.S.K.Bhattacharya, Ms.Seema
Sharma and Mr.Sharanya Mukherjee,
Advs.

versus

UNION OF INDIA AND ORS.

..... Respondents

Through Mr.Avnish Singh, Sr.Panel Counsel
for R-1/UOI
Mr.Yeeshu Jain, Standing Counsel
with Ms.Jyoti Tyagi, Adv. for R-2.
Mr.Sanjay Singh, Adv. for R-3/DDA.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J.(Oral)

1. This writ petition is filed seeking to declare the non-allotment of land to the petitioner is against the preferred policy of the Government. A writ of mandamus is also sought to direct respondents No.2 and 3 to allot an alternative plot to the petitioner.

2. The case of the petitioner is that on 06.06.1991 vast tracts of land in Village Kakrola were notified under section 4 of the Land Acquisition Act. The share of the petitioner's father Sh.Chhotey Lal was acquired in 1994. On 31.01.1994, the petitioner's father Sh.Chhotey Lal, as per policy of the government, applied for allotment of an alternative plot. Sh.Chhotey Lal

died on 31.03.1994. Other co-owners of the land, namely, Sh.Anand Singh, Sh.Suraj Bhan and Sh.Chander Bhan were said to have been allotted alternative plots by the respondents in 2000.

3. In 2004, the petitioner moved an application before the court of learned Additional District Judge where a petition under section 18 of the Land Acquisition Act was pending. The court substituted the petitioner along with other sons and daughters as the LR's of late Sh.Chhotey Lal vide order dated 02.12.2004. On the basis of the aforesaid order, the petitioner obtained LR Certificate from the concerned SDM. Thereafter on 09.03.2005, the petitioner submitted all the required documents in the office of respondent No.2. However, on 13.09.2005 respondent No.2/Assistant Housing Commissioner, Land & Building Department informed the petitioner that the application for allotment of an alternative plot has already been rejected being time barred.

4. The petitioner thereafter filed a suit for mandatory injunction seeking allotment of an alternative plot before the court of Civil Judge on 10.11.2005. The suit was dismissed on 31.07.2015. Now, in 2019 the petitioner has filed the present petition.

5. I have heard the learned counsel for the parties.

6. Learned counsel for the petitioner has urged that there was no delay on the part of the petitioner in approaching the court inasmuch as the petitioner received LR Certificate from the concerned officer in 2005 and immediately thereafter approached the concerned respondent.

7. As pointed out by learned counsel for the respondents the facts are however quite different. The petitioner's father had applied for alternative plot on 31.01.1994. The respondent on account of non-compliance of the various requirements closed the case of the petitioner on 23.02.1999. Thereafter, in 2005 the petitioner has filed a suit for mandatory injunction for directing the respondent to allot an alternative plot to the petitioner in terms of the policy of the government. The said suit was dismissed on merit on 31.07.2015. After four years of the dismissal of the suit, now in 2019 the petitioner has approached this court by filing the present writ petition.

8. I may note that the trial court has clearly noted that after the death of Sh.Chhotey Lal on 31.03.1994, the petitioner never took up the matter before respondent No.2 till 2005 and kept mum for more than ten years after the death of Sh.Chhotey Lal. Respondent No.2 was never informed about the factum of death of Sh.Chhotey Lal prior to 2005. Hence, the trial court concluded that the case of the plaintiff/petitioner was time barred. Relevant portion of the judgment of the trial court reads as follows:

“It is a matter of great wonder that after the death of Sh.Chhotey Lal the plaintiff never took up the matter with defendant No.2 till 2005 and almost kept mum for more than ten years after the death of Sh. Chhotey Lal who died In July, 1994. It appears that defendant No. 2 was not informed about the factum of death of Sh. Chhotey Lal by the plaintiff prior to 2005. It is also admitted by the plaintiff that he has received letter dated 25.04.2005 and 13.09.2005 from defendant No. 2 issued on the same address. Especially after admitting the given address to be complete and correct, I have no hesitation in accepting the testimony of defendants that they have sent letter in due course about the proceedings of his case. As far as the case of the plaintiff being time barred, It Is admitted by the

plaintiff himself that he had not written any letter between 1999 to 2005 to the Land & Building Department with respect to the allotment of alternative plot. It is also a matter of record that his father Sh. Chhotey Lal expired in the year 1994 and since then the plaintiff took no steps to pursue his case for allotment of the plot. This shows that the claim of the plaintiff is not only stale but hopelessly time barred. After the series of admissions on the

part of the plaintiff during his cross-examination, defendants are required nothing to prove on these aspects.

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The plaintiff by way of mandatory injunction sought the indulgence of the court to direct the defendant to issue a letter of allotment of alternative plot in lieu of the land acquired by defendant No. 1 in the name of Sh. Budh Ram. It is established that the application of Sh. Chhotey Lal, father of the plaintiff and brother of Sh. Budh Ram for allotment of the plot in lieu of the acquired land was closed in January, 1999 by the defendant No. 2 and letters in this regard were issued to him time to time on his given (admitted address by the plaintiff) addresses. Due to non-submission of the requisite documents, as per policy once a case is closed, cannot be reopened. The apt legal recourse for the plaintiff would have been to move to Hon'ble High Court/Apex Court competent to exercise the writ jurisdiction to declare the policy null & void or to pray for reconsideration of his claim for reopening of his case. By clever drafting the plaintiff attempted to bypass the procedure of law. The relief claimed by implication, seeks declaration of the policy as null & void, which is beyond the jurisdiction of this court.”

9. The learned counsel for the petitioner however has urged that the findings recorded in the suit by the trial court are erroneous as there is no delay on the part of the petitioner and the petitioner has been vigilant in follow up of the case.

10. In my opinion, once the plaintiff has approached the civil court and a decree has been passed on merit against the plaintiff, the remedy of the plaintiff was to challenge the said decree in a higher court.

11. The petitioner cannot side step the dismissal of his suit by filing this writ petition. The petition would be liable to be dismissed on principles akin to *res judicata*. Reference in this context may be had to the judgment of a Division Bench of this court in ***Hukum chand & Ors. v. DDA & Ors., (2008) 105 DRJ 271 (DB)***. The Division Bench held as follows:

“7. In order to determine the question posed hereinabove, a brief exposition of the doctrine of *res judicata* is essential. The doctrine of *res judicata* literally means matter in which judgment has been pronounced. The test of *res judicata*, *inter alia*, is whether both the proceedings have been filed based on the same cause of action. The doctrine of *res judicata* is based on the maxim ‘Interest reipublicae ut sit finis litium’ or in other words ‘it concerns the state that there be an end to law suits’ and partly on the maxim ‘Nemo debet bis vexari pro una at eadam causa’ or in other words ‘no man should be vexed twice over for the same cause’.

8. The rule of *res judicata* contains the principle of conclusiveness of the judgment and is an inhibition against the Court from trying the subsequent proceeding. The principle ousts the jurisdiction of the Court from deciding a ‘lis’ which has been disposed of on merits by a speaking order. In *Daryao v. State of Uttar Pradesh* reported as AIR 1961 SC 1457, the Supreme Court observed that the principle underlying Section 11 are that there should be finality in litigation and that a person should not be vexed twice over in respect of the same matter and that these principles are applicable even when the case does not fall within the strict terms of Section 11.

9. In *B Dass v. State of Punjab*, AIR 1965 Punj 342, the Punjab High Court held that in view of *Daryao v. State of Uttar*

Pradesh (Supra), the general principle of res judicata would be attracted where a decision in a writ petition is pleaded as a bar against a subsequent suit if the other conditions are satisfied. In *R.C. Tiwari v. MP State Co-operative Marketing Federation Ltd.*, (1997) 5 SCC 125, the question before the Supreme Court was whether the dispute relating to dismissal of an employee decided by the Deputy Registrar of Madhya Pradesh, Co-operative Societies could be re-agitated before a labour court under the Industrial Disputes Act, 1947. It was held, that no doubt Section 11 CPC does not in terms apply to Deputy Registrar of Madhya Pradesh, Co-operative Societies Act because it is not a court, but a tribunal constituted under the Societies Act is given special jurisdiction. So the principles laid down therein mutatis mutandis squarely apply to the procedure provided under the Act, and operate as res judicata.

10. In *Gulab Chand v. State of Gujrat* reported as AIR 1965 SC 1153, the Supreme Court observed that there was no 'good reason to preclude such decision on matters of controversy in writ proceedings under Articles 226 or 32 of Constitution from operating as res judicata in subsequent regular suits on the same matters in controversy between the same parties'."

12. Reference may also be had to the judgment of a Division Bench of this court in *A.K.Wadhwa v. Central Bank of India & Ors.*, 2017 (1) SLR 680. The Division Bench held as follows:

"11. We do not think that the appellant can, by way of the second writ petition, raise the plea again as his claims and prayers were rejected when the civil suit filed by him was dismissed vide the judgment and decree dated 04.12.2002. This decision on merits in the Civil Suit dated 04.12.2002 would operate as *res judicata*. The decision dated 04.12.2002 is binding and forecloses the right of the appellant to agitate the same cause of action. We would not examine and consider the correctness or merits of the said judgment in these proceedings arising in an appeal on the dismissal of W.P. (C) No. 7414/2014. As noticed above, the appellant had filed W.P. (C)

No. 1502/2003, after the judgment dated 04.12.2002, which was dismissed for several reasons including the dismissal of the civil suit.”

13. Reference in this regard may also be had to the judgment of the Punjab and Haryana High Court in the case of ***Manjit Singh vs. State of Haryana, 2003 SCC OnLine P&H 546*** in which the court held as follows:-

“14. The learned counsel for the petitioners further submitted that in the instant case, the question of title was involved and both the authorities under the Act passed the order of eviction against them without deciding the question of title. In my opinion, there is no force in the aforesaid contention also. In view of the judgment and decree dated 24.1.1990 passed by the Additional Civil Judge (Senior Division), Safidon, the suit filed by the petitioners for declaration has been dismissed and the claim of the petitioners regarding ownership and authorised possession of the suit property on the same plea has been rejected. The pleadings of the petitioners in the instant writ petition and in the civil suit are exactly similar. The claim of the petitioners has been determined by the civil Court at it has been held that the petitioners are not the owners of the land in question. The said decision shall be binding on the petitioners and it will operate as res-judicata against them.”

14. Further, this writ petition is also filed after a gap of four years after the suit was dismissed. Hence, even otherwise this petition is liable to be dismissed on the ground of delay and laches. In this context reference may be had to the judgment of the Supreme Court in the case of ***State of M.P. & Ors. v. Nandlal Jaiswal & Ors., (1986) 4 SCC 566***. The court held as follows:

“24. Now, it is well settled that the power of the High Court to issue an appropriate writ under Article 226 of the Constitution is discretionary and the High Court in the exercise of its discretion

does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic. If there is inordinate delay on the part of the petitioner in filing a writ petition and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in the exercise of its writ jurisdiction. The evolution of this rule of laches or delay is premised upon a number of factors. The High Court does not ordinarily permit a belated resort to the extraordinary remedy under the writ jurisdiction because it is likely to cause confusion and public inconvenience and bring in its train new injustices. The rights of third parties may intervene and if the writ jurisdiction is exercised on a writ petition filed after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. When the writ jurisdiction of the High Court is invoked, unexplained delay coupled with the creation of third party rights in the meanwhile is an important factor which always weighs with the High Court in deciding whether or not to exercise such jurisdiction. We do not think it necessary to burden this judgment with reference to various decisions of this Court where it has been emphasised time and again that where there is inordinate and unexplained delay and third party rights are created in the intervening period, the High Court would decline to interfere, even if the State action complained of is unconstitutional or illegal. We may only mention in the passing two decisions of this Court one in *Ramana Dayaram Shetty v. International Airport Authority of India*: (1979) 3 SCC 489 and the other in *Ashok Kumar Mishra v. Collector*: (1980) 1 SCC 180. We may point out that in *R.D. Shetty case*, even though the State action was held to be unconstitutional as being violative of Article 14 of the Constitution, this Court refused to grant relief to the petitioner on the ground that the writ petition had been filed by the petitioner more than five months after the acceptance of the tender of the fourth respondent and during that period, the fourth respondent had incurred considerable expenditure, aggregating to about Rs 1.25 lakhs, in making arrangements for putting up the restaurant and the snack bar. Of course, this rule of laches or delay is not a rigid rule which can be cast in a strait jacket formula, for there

may be cases where despite delay and creation of third party rights the High Court may still in the exercise of its discretion interfere and grant relief to the petitioner. But, such cases where the demand of justice is so compelling that the High Court would be inclined to interfere in spite of delay or creation of third party rights would by their very nature be few and far between. Ultimately it would be a matter within the discretion of the court; ex hypothesi every discretion must be exercised fairly and justly so as to promote justice and not to defeat it.”

15. There is no merit in the petition. The same is dismissed.

DECEMBER 03, 2019/v
Corrected & released on 23.12.2019

JAYANT NATH, J.



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