

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

% Date of decision: 25th February, 2019

+ LPA 219/2017, CM No. 12739/2017

OM PRAKASH CHAUHAN (SINCE DECEASED)

THR LRS

..... Appellant

Through: Mr. Kirti Uppal, Sr. Adv. with Mr. M. Amanullah, Ms. Shabeena Anjum and Mr. M.B. Tariq, Advs.

versus

UNION OF INDIA & ORS

..... Respondents

Through: Mr. Arjun Pant, Adv. for DDA
Mr. Yeeshu Jain, SC for L&B/GNCTD
with Mr. Biraja Mahapatra & Ms. Jyoti Tyagi, Advs.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE V. KAMESWAR RAO

V. KAMESWAR RAO, J. (ORAL)

1. This Intra-Court Appeal has been filed by the appellants, the legal heirs of Om Prakash Chauhan, the writ petitioner before the learned Single Judge. The challenge in the writ petition was to a letter dated 11th October 1998 and subsequent communication dated 22nd April, 2004.

2. Suffice it to state that vide the communication dated 11th October, 1998, the request of the appellant for alternate allotment of plot was rejected and vide the second communication dated 22nd April, 2004, his request for re-opening of his case was also rejected.

3. Some of the facts as noted from the record are the predecessor-in interest of Late Om Prakash Chauhan was the owner of 25 Bigha and 8 Biswas of land falling in the Revenue Estate of Village-Jasola, Delhi. The said land was acquired pursuant to a notification dated 17th December, 1966. The Predecessor-in-Interest of Late Om Prakash Chauhan expired on 25th June, 1986. He left behind Om Prakash Chauhan and his five sisters as his legal heirs. Late Om Prakash Chauhan received compensation for the acquired land of his father on 29th January, 1987. An application seeking allotment of alternate plot was made on 28th September, 1987 which was admittedly within time. Required documents were asked for vide letter dated 10th February, 1997. It is noted by the learned Single Judge that these documents were submitted in the year 2004. Thereafter late Om Prakash Chauhan wrote letters to the Department asking them about the status of his case, but he was never informed about the same. He filed a writ petition being W.P.(C)10802/2005, which was dismissed on 29th October, 2013. An Intra-Court Appeal being LPA 97/2014 was filed by Om Prakash Chauhan. The said LPA was disposed of by the Division Bench giving liberty to late Om Prakash Chauhan to get his case re-opened from the Department, but at the same time noted that the three letters being 17th December, 1991, 30th February, 1991 and 23rd December, 1992 would

be read in favour of the department. It appears that on the basis of the said liberty granted by the Division Bench, late Om Prakash Chauhan filed the writ petition wherein the impugned order has been passed.

4. It was represented before the learned Single Judge that when the Department itself has written a letter to him in the year 1997 asking him to submit the documents qua death of his father and details of legal heirs, which he has submitted, his case could not have been rejected. It is seen from the impugned order that the learned Single Judge has noted that on a specific query to the counsel for the late Om Prakash Chauhan that pursuant to letter dated 10th February, 1997 when did Om Prakash Chauhan submitted the documents, no reply could be given. Thus on the basis of the aforesaid facts, learned Single Judge opined that late Om Prakash Chauhan remained silent and had slumbered over his right and as such his case cannot be sympathetically considered as the policy of the Government was to give alternate plots, but to persons who had become homeless or landless on the acquisition of the entire land.

5. Mr. Kirti Uppal, learned Sr. Counsel appearing for the appellant has contended that the observation of the learned Single Judge that the counsel for late Om Prakash Chauhan on being put a question that when did he submitted the documents asked for vide letter dated 10th

February, 1997, he had not answered is because the counsel could not understand the purport of the question. According to him, in fact late Om Prakash Chauhan had submitted the documents immediately in the year 1997. He has drawn our attention to Pages 60 onwards of the paper book. According to him, if late Om Prakash Chauhan had submitted all the documents as sought for, there was no reason for the respondents to sit over the matter and not to decide the case either way. According to him, noting dated 22nd February, 2004, wherein the case has been closed by stating that “there is no change in the status of the case” is totally misconceived.

6. Mr. Biraja Mahapatra, learned Counsel appearing for the respondent / L&B would state that even otherwise, assuming late Om Prakash Chauhan had submitted the documents in the year 1997, there was no reason for him to file the writ petition in the year 2005. Hence, the writ petition was barred by delay and laches.

7. We are not in agreement with this submission made by Mr. Mahapatra. Suffice it to state, documents as sought for by the respondents vide letter dated 10th February, 1997 have been submitted by late Om Prakash Chauhan immediately thereafter, there was no reason for the respondents to sit over the matter and not decide the

application filed by him and they could not have closed his case by stating that “there is no change in the status of the case”. Further, the writ petition was filed pursuant to the liberty granted by this Court.

8. We accordingly hold that the learned Single Judge could not have dismissed the writ petition only on the ground that late Om Prakash Chauhan had not submitted the documents and he remained silent and had slumbered over his right. The impugned order is accordingly set aside. The appeal is allowed. The matter is remanded back to the learned Single Judge for a decision on merit with regard to the claim of the appellants in the writ petition.

CM No. 12739/2017

Dismissed as infructuous.

V. KAMESWAR RAO, J

CHIEF JUSTICE

FEBRUARY 25, 2019/jg