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

+ **LPA 523/2018 & C.M.Appln. 36756/2018**

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Reserved on: 24.07.2019
Date of decision: 03.09.2019

HIRENDRA GUPTA

..... Appellant

Through: Mr. Ravinder Sethi, Senior Advocate
with Mr. Gaurav Puri, Mr. Aditya
Bali, Advocates

versus

LAND & BUILDING DEPARTMENT & ORS.Respondents

Through: Ms. Ruchika Rathi, Ms. Sanya Dua
and Ms. Subhalazmi Sen, Advocates
for R-1 & R-2
Mr. Sanjay Sagar, SC with Ms. Nazia
Parveen, Advocate for R-3/DDA

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE ASHA MENON

ASHA MENON, J.

1. This appeal has been preferred by the appellant/petitioner against the order dated 14.08.2018, passed by the learned Single Judge dismissing his writ petition wherein he had prayed for issuance of a writ of mandamus to the respondent No. 1/Land and Building Department, the respondent No. 2/Additional District Magistrate/LAC, Northwest Delhi and the respondent No.3/DDA to consider his application for allotment of an alternate plot in lieu of land acquired under "Large Scale Acquisition, Development Disposal

of Land in Delhi” (hereinafter referred to as ‘the Scheme’), declared by the Union of India vide letter dated 02.05.1961.

2. The averments made by the appellant/petitioner in the writ petition were that ancestral land belonging to his father was acquired by the respondents in 1980, to the extent of 874 bighas and 4 biswas situated in Village Chowkri Mubarkbad, Delhi for which compensation to the tune of Rs.46,13,531/- was awarded on 25.01.1982. Out of the said compensation, the share of the appellant/ petitioner’s father came to a sum of Rs.4,15,217/-. Under the Scheme, the respondents proposed to allot an alternative land in lieu of the acquired land. Father of the appellant/petitioner also applied for an alternative plot vide application dated 15.10.1983, but no land was allotted to him during his lifetime. Through a registered Will dated 10.07.2012, the appellant/ petitioner’s father bequeathed all his rights qua the alternative plot to him. When repeated representations made by the appellant/petitioner to the respondents/authorities for allotment of an alternative plot did not elicit a favourable response, he filed W.P.(C) 1460/2017 for relief.

3. Vide impugned order dated 14.08.2018, the learned Single Judge dismissed the captioned writ petition on the ground of delay and laches by noting that the application for allotment of an alternative plot was made by the father of the appellant/petitioner way back in the year 1983 and another similar application was submitted by him in August, 2011, i.e. after more than two decades, with no explanation offered by him for this inordinate delay. The writ petition was opposed by the respondent No.3/DDA on the ground that the death certificate of the father of the appellant/petitioner had not been filed and further, in the Will dated 13.07.2012, there was no

description of the subject property and also on the ground that the writ petition was hit by delay and laches. The learned Single Judge accepted the submissions made by the respondent No.3/DDA that there being no explanation whatsoever for the delay of two decades in moving the application for alternative allotment/revival of the old application filed by the father of the appellant/petitioner in the year 1983, his petition was hit by delay and laches and consequently, the same was dismissed.

4. Aggrieved by the said order, the present appeal has been preferred by the appellant/petitioner. It was contended by Mr. Ravinder Sethi, Senior Advocate appearing for the appellant that there was no dispute regarding the demise of the father of the appellant/petitioner and the existence of the Will, which included the right to seek an alternative allotment of a plot of land in lieu of the land acquired by the respondents as well as land rights bequeathed in his favour. It was submitted that the learned Single Judge had failed to appreciate that there was only one application for seeking alternative allotment, which had been filed by the father of the appellant/petitioner in the year 1983 and the letter submitted by the appellant/petitioner in August, 2011, was only a reply to the letter issued by the respondent No.3/DDA and the same cannot be treated as a fresh application. It was further contended that there was no delay or laches on the part of the appellant in seeking legal recourse as the late father of the appellant/petitioner had been following up the matter with the respondents particularly on 11.02.1989, 18.07.1991, 29.08.2011, 19.09.2013 and 18.05.2015 and during the said period both, father of the appellant/petitioner and the appellant/petitioner himself had made several personal visits to the offices of the respondents. It was pleaded that the learned Single Judge

failed to appreciate its own order dated 26.04.2018 wherein the respondent No.1 and respondent No.2 had acknowledged having received the application of appellant/petitioner's father for an alternative plot and the Will bequeathing all his rights to the appellant/petitioner, but had failed to provide any reason for their inability to process the said application. Further, it was urged that the respondents had not only failed to file their counter affidavit in the writ proceedings, they had also failed to produce any postal receipt in respect of the letter dated 22.03.1983, informing the applicant that his application had been closed/rejected and nor was any office order to the same effect produced by them. Learned counsel for the appellant/petitioner relied on the judgment in the case of **Tukaram Kana Joshi and Ors. thr. Power of Attorney Holder vs. M.I.D.C. and Ors.**, reported as (2013) 1 SCC 353 to substantiate the claim of the appellant/petitioner that alternative allotment was a matter of right since his father's land had been acquired by the State and the right to an immovable property is an enforceable constitutional and statutory right.

5. To explain the delay on the part of the appellant/petitioner in seeking legal recourse, it was submitted by learned counsel for the appellant/petitioner that on the acquisition of land for the planned development of Delhi, the respondent No.3/DDA had formulated a Scheme for allotment of alternative plots to the land holders whose land had been acquired on 31.10.2017. For this purpose, the respondents had drawn up a list of seniority and the allotment was to be made as per the said seniority. The names of 425 persons were included in this list and the said list was also publically notified on 31.01.2018. In these circumstances, it was sought to be urged that the petition was not stale and there was really no issue of delay

and laches. Thus, it was prayed on behalf of the appellant/petitioner that the respondents be directed to consider the application submitted by the appellant/petitioner's father and the appellant/petitioner himself on an urgent basis as per their seniority, reckoned from the date the application was submitted under the Scheme.

6. On the other hand, learned counsel for the respondents submitted that vide letter dated 29.05.1988, father of the appellant/petitioner had been duly notified that his case had been closed/ rejected as he had failed to supply the required documents/information on 15.04.1985, as was requested by the office of the respondent No.2/Land and Building Department, vide registered letter dated 22.03.1985. Therefore, publication of the list of seniority in the year 2017, would not have any bearing on this case, for explaining the delay.

7. We have heard the arguments advanced by learned counsel for the parties, perused the impugned judgment and examined the documents placed on record.

8. It was sought to be argued on behalf of the appellant/petitioner that the letter dated 22.03.1985 issued by the respondent No. 2/Additional District Magistrate/LAC, Northwest Delhi, had not been delivered to the appellant's father. But there is no denial to the fact that the postal address mentioned on the said letter, whereunder the respondent No.2/Land and Building Department had sought various documents from the appellant/petitioner's father, was his correct address. Given the said position, the claim that the said letter did not reach the appellant/petitioner's father, does not hold any water. Admittedly, the father of the appellant/petitioner did not submit the relevant documents to the

respondents within the specified time. That was why his case was closed/rejected by the respondent No.1 on 29.05.1988. The letter dated 29.05.1988 issued by the respondent No. 1 reads as under :-

*“DELHI ADMINISTRATION : DELHI
LAND & BUILDING DEPARTMENT
VIKASH BHAWAN : NEW DELHI*

Regd A.D

No. F. 33 (4)/1/84-L & B/Alt/15058

Dt-29.05.88

*To Shri/Smt B.K. Gupta
S/o Sh. Parmeshwari Pd Gupta
R/o H. No. 383, Kucha Bulaqi Begum
Esplanade Road Delhi-110006*

Sub- Allotment of Alternative Plot.

Sir,

With reference to your application for allotment of alternative plot, I am directed to inform you that your case has been closed/rejected as you failed to supply required documents/information's on 15.04.1985 as requested in this office registered letter dated 27.03.85.

Sd/-

Your faithfully”

9. Admittedly, no representation was made by the father of the appellant/petitioner against the captioned letter till as late as in the year 1991. Though a copy of the letter dated 11.02.1989 addressed by the father of the appellant/petitioner is on record, it is clear that the said letter makes no reference to the rejection of his application. For purposes of ready

reference, the letter dated 11.02.1989 is reproduced below:-

“Ref: BKG/Pers/DDA/89

Date: 11.2.1989

From:

B.K. Prasad Gupta
555, Esplanade Road,
Delhi-6

To

The Under Secretary,
Delhi Development Authority,
Land and Building Department,
New Delhi.

Sub: Allotment of alternative plot in lieu of land acquired.

Dear Sir,

I beg to remind you my application on the above subject No. BKG/Pers/DDA/83 dated 2nd December, 1983. Inspite of my repeated reminders and requests, I did not receive any response from you. I once again request you to please do the needful in the matter without further delay.

Thanking you in advance for your early action in the matter.

Yours faithfully

(B.K. Prasad Gupta)”

10. The first letter that was sent by the father of the appellant/petitioner referring to the letter dated 22.03.1985, is itself dated 18.07.1991/ 13.09.1991 (Annexure H), claiming *inter alia* that no such letter dated 22.03.1985 had been received by him, with a further request that his case “be re-opened”. It is rather strange that a request was made for re-opening

of a case, without making a reference to the letter dated 29.05.1988, whereunder the application for allotment of an alternative plot was closed/rejected, while claiming that the letter dated 22.03.1985 addressed by the respondents calling for documents in support of the application had not been received by him. It is also noteworthy that the father of the appellant/petitioner nowhere stated that the address on the letter dated 22.03.1985 issued by the respondent No.2, was incorrect. Thus, there is a clear delay on the part of the appellant/petitioner's father, who did not take any steps till the year 1991. The reminder sent by the appellant to the respondents after two decades, in the year 2011, would hardly be of any consequence. Even in the course of hearing, the learned Single Judge had afforded an opportunity to the appellant/petitioner to explain this long delay and has recorded in the impugned order that the said delay remained unexplained. No explanation worth the while is forthcoming even before us.

11. As for the other submission made on behalf of the appellant/petitioner that he was entitled to an alternative plot on the basis of his father's Will, it may be noted that merely because the appellant's father had bequeathed his rights premised on a pending application for allotment of an alternative plot in favour of the appellant/petitioner, it would not render him eligible for an allotment of alternative plot as his father was not left with any right to make a bequest after his application stood rejected by the respondents and his case was closed way back in the year 1988.

12. Coming lastly to the decision cited on behalf of the appellant/petitioner to urge that the law assures a vested interest in seeking alternative allotment for acquired land in the case of **Tukaram Kana Joshi** (supra). In the said case, land belonging to the appellants stood notified

under Section 4 of the Land Acquisition Act, 1894 for industrial development. However, no subsequent proceedings were taken thereafter and the acquisition proceedings lapsed. The predecessors-in-interest of the appellants who were illiterate were prevailed upon by the officers of the State to hand over possession of the land to them. The actual physical possession was thus taken over by the State Authorities and handed over to the MIDC in the year 1964 itself. However, no compensation for the said land was paid nor was any land given in lieu of the lands so taken by the State Government. The writ petition filed by them before the High Court of Bombay was dismissed on grounds of delay and laches. It was in the said context that the Supreme Court observed that the right to property is now considered to be not only a constitutional or a statutory right, but also a human right. It was held that though delay and laches extinguish the right to put forth a claim, in view of the fact that the act of the State, amounted to encroachment in exercise of its absolute powers, the petition was not hit by delay and laches as the cause of action was a continuing one in favour of the applicants therein.

13. The aforesaid observations were made by the Supreme Court in the fact situation of that case. However, the fact situation in the present case is entirely different. The father of the appellant/petitioner was not an illiterate or helpless person. Further, compensation had already been received by him for the acquired land. It was for seeking allotment of an alternative plot of land as per the Government Scheme that the appellant/petitioner's father had moved an application. It is also vital to note here that such an alternative allotment of land was subject to availability for which reason, a seniority list was drawn-up by the respondents. The application of the father of the

appellant/petitioner was closed/rejected by the respondents way back on 29.05.1988, as he failed to produce the documents called for vide letter dated 22.03.1985. It is apparent from the above facts that land was acquired in the instant case, in accordance with law for which due compensation was also paid to the father of the appellant/petitioner.

14. The learned Single Judge has taken into consideration, the conduct of the appellant/petitioner and his father and rightly concluded that there was absolutely no explanation for their tardiness.

15. For the aforesaid reasons, we do not find any merit in the present appeal, which is accordingly dismissed alongwith the pending application. No orders as to costs.

(ASHA MENON)
JUDGE

(HIMA KOHLI)
JUDGE

SEPTEMBER 03, 2019
s/MK/s