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

+ W.P.(C) 10476/2018 & CM APPL. 12760-12761/2019

MR.INDER JEET Petitioner

Through Mr.A.K.Dubey, Adv.

versus

EAST DELHI MUNICIPAL
CORPORATION AND ORS.

..... Respondents

Through Ms.Saroj Bidawat, Standing Counsel
for R-1/ EDMC.

Mr.Nishchaya, Adv. for R-3/Balbir
Singh.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

% **27.02.2020**

1. This writ petition is filed by the petitioner seeking a direction to remove encroachment connecting the public land/street of East Laxmi Market, Delhi between East Angad Nagar, Delhi as per layout plan.

2. A vague status report has been filed by respondent No.1/EDMC on 29.01.2019 where it is stated that the colonies in question, i.e. East Guru Angad Nagar and East Laxmi Market are unauthorised regularised colonies. It is noted that as per the petitioner the public land/street No.4 is encroached and closed by House No.123, Gali No.5. It is also stated that the said House No.123, Gali No.5, East Guru Angad Nagar is old and occupied. It is stated that the present occupier of the said house Sh.Balbir Singh be made a party. In addition, it is prayed that DDA and Govt. of NCT of Delhi may also be made parties to confirm the status of alleged encroached land at the time of preparation of layout plan. The status report also states regarding the possession of Sh.Balbir Singh of the said land as follows:

“5. That moreover, the occupier of H.No. 123, gali No.5 East

Guru Angad Nagar was requested to provide the proof of owner-ship of the property vide letter No. EE(M)-II/SHS/2018-19/1462 dated 10.12.2018. In his reply Sh. Balbir Singh R/o H.No.123, Gali No.5 East Guru Angad Nagar has provided copy of booking of plot No. 123 in his father's name Sh. Arjan Singh S/o Sh. Gurudial Singh by Harmander Colonization Board, Guru Nanak Hospital Building, Bazar Sita Ram Delhi-110006 in the year 1968, General Power Attorney and Gift deed in favour of his wife Smt.Dharam Kaur on 02.12.1987, Will deed by Smt.Dharam Kaur in her son's name Sh. Balbir Singh on 12.09.2013 along with copies of some old property tax receipts, DJB receipts, BSES electricity bill receipt. Ration Card, Passport of Sh. Arjan Singh S/o Sh. Gurdial Singh, passport of Sh. Balbir Singh S/o Sh. Arjan Singh to prove that he is the owner and residing at this property prior to year 1969. A copy of objections/suggestions invited U/s 10(1) of the Delhi Development Act, 1957 (61 of 1957) and under notice F.4 (3)/69-MP dated 17th January, 1969 published in the news papers on 25.01.1969- Draft Zonal Plan of Khureji Khas and Shakarpur- Fazilpur (E-8 & E-12) submitted to DDA, Vikas Bhawan, New Delhi has also been submitted by Sh. Balbir Singh along with a copy of claim statement U/s 9 & 10 of the Land Acquisition Act, 1894 amounting to Rs. 20,435/- against market value of the land premises and compensation for super structure raised in the court of Sh. Bishan Singh, Land Acquisition Collector, Delhi Shahdara Circle, Delhi against the acquisition of land premises bearing Khasra No. 45/2, plot no. 123 measuring 114 Sq yard situated in East Guru Angad Nagar, Patparganj road, Delhi of the village Khureji Khas.”

The status report concludes that the building is old and occupied.

3. Sh.Balbir Singh, the alleged owner of the property bearing House No.123, Gali No.5, East Guru Angad Nagar, has also moved an application for impleadment being CM APPL. 12760/2019. In the said application, he reiterates that the petitioner purchased the property, i.e. House No.100, Gali No.4, East Angad Nagar three years back and there is a dispute between the

applicant and the petitioner on the issue of parking of vehicles and the petitioner with the malafide intention moved the present petition just to harass the applicant. He further states that the property in question where the applicant is residing is a very old construction and house tax is being paid since long. Along with the application, photocopy of the passport of the applicant dated 03.11.1982 showing the same address, namely, 123, East Guru Angad Nagar, Delhi has also been filed. House tax receipt of the Municipal Corporation of Delhi paying municipal tax for the years 2013-14 and 2015-16 has also been filed. An electricity bill for the said property of 2007 issued in the name of Sh.Balbir Singh has also been filed. There is another bill of 2002 issued in the name of the applicant's father late Sh.Arjun Singh that has also been filed.

4. It is manifest from the application filed by Sh.Balbir Singh and the status report filed by respondent No.1/EDMC that the property in question which is said to be occupied unauthorisedly is an old construction existing for atleast more than two decades. Petitioner has now approached for its demolition. It was put to the learned counsel for the petitioner as to when the petitioner moved in the colony. The learned counsel is unable to respond to the said query.

5. Without going into the merit of the controversy as to whether this land is situated in an area marked as public land/street in the layout plan as claimed, it is manifest that present petition suffers from delay and laches.

6. In this context reference may be had to the judgment of the Supreme Court in the case of ***State of M.P. vs. Nand Lal Jaiswal, (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 : AIR 1979 SC 1628 : (1979) 3 SCR 1014] and the other in *Ashok Kumar Mishra v. Collector* [(1980) 1 SCC 180 : AIR 1980 SC 112 : (1980) 1 SCR 491] . 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.”

7. Hence, where there is delay in filing the writ petition, this court has the discretion not to hear the matter. In this case, there is no explanation for the delay. On this ground alone, in my opinion, there is no reason to proceed further in this petition. The petition is dismissed.

JAYANT NATH, J.

FEBRUARY 27, 2020/v