

\$~34

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

Date of Decision: 19th March, 2021

+ **W.P.(C) 3609/2021 and CM APPL. 10970/2021**

RAM BHAROSE Petitioner

Through: Dr. M.K. Gahlaut, Advocate.

versus

DELHI URBAN SHELTER IMPROVEMENT
BOARD & ORS.

..... Respondents

Through: Mr. Nitin Jain, Advocate for Mr.
Parvindh Chauhan, Advocate for
DUSIB (M: 9868102274).

Mr. Rishikesh Kumar, ASC with Mr.
Premasagar Pal, Advocate (M:
9643006230).

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J.(Oral)

1. The Petitioner, in the present case, claims to have been in physical and lawful possession of Jhuggi No.25 situated in Jhuggi Cluster C Block, Kirti Nagar, New Delhi. It is stated by him that he was dispossessed in August, 2012. By way of present writ petition, the Petitioner claims that an alternative residential accommodation in lieu of the said Jhuggi may be allotted to the Petitioner. Dr. M.K. Gahlaut, ld. counsel submits that since he was not given an alternative accommodation, the Petitioner's fundamental rights have been affected.

2. On behalf of the Respondents, it is argued that the petition is belated and suffers from laches. Reliance is placed on judgment in *Dayachand v. Union of India [WP.(C) 7889/2011 decided on 1st September, 2015]* dated

1st September, 2015 and the ***LPA 271/2016*** titled ***Dayachand v. Union of India & Ors.*** dated ***22nd February, 2016***. It is submitted that in both these matters, the petition was rejected on the ground of delay and latches.

3. On a query from the Court, Id. Counsel for the Petitioner submits that Petitioner is now living in a tenanted accommodation at WZ-44, Basai Darapur, Moti Nagar, Near Tyagi Dharamshala, New Delhi-110015. The Petitioner as per facts which is pleaded, has also made a representation through speed post for redressal of his grievances to the authorities i.e., Respondents No. 1 to 4.

4. It is not disputed that the Petitioner was dispossessed from his Jhuggi in August, 2012 and the present petition has been filed for the first time on 8th March, 2021, i.e., almost 9 years later. In the opinion of this Court, this would be a very long period for a person to claim for alternative accommodation. The rehabilitation as held in ***Dayachand (supra)*** is basically for providing immediate alternative accommodation, which does not appear to have been sought by the Petitioner. The relevant portion of ***Dayachand (supra)*** is extracted herein below:

“7. I am unable to accept the contention of the counsel for the respondent No.3 DUSIB that the petitioner was not required to produce any document before taking possession of the plot aforesaid allotted to him. In fact, the letter dated 8th February, 2002 of allotment itself bears a stamp that the allotment was subject to verification of documents. Moreover, the respondent No.3 DUSIB has not placed before this Court any document of cancellation of allotment or the grounds on which the allotment was cancelled, inspite of the specific order dated 8th April, 2015 in this petition in this regard.

8. *However the fact remains that the petitioner did not have any right to Jhuggi Jhopri Cluster at Indra Camp, of which he was in occupation of and had no right against any of the respondents for allotment of any land in lieu thereof, save a right to be considered under the Rehabilitation Scheme and in which consideration the petitioner was found eligible and made the allotment, subject to verification of documents. The petitioner however slept over the offer made to him by way of his rehabilitation.*

9. *The petitioner, in the memorandum of parties, has given his address as of B-26, New Block, 31 Trilokpuri, Delhi-110091. On enquiry, the counsel for the petitioner states that the petitioner is a tenant in the said property. On further enquiry, it is informed that Trilokpuri is also a rehabilitation colony.*

10. *Rehabilitation has a sense and element of urgency attached thereto; the whole purpose thereof being to immediately provide alternative accommodation to persons who are dispossessed from their houses, though unauthorizedly made over public land. If it is to be found that the person so dispossessed has not acted with promptitude and has settled himself elsewhere with his own resources, then that person cannot belatedly attempt to capitalise from the allotment.* A distinction has to be carved out between a rehabilitative allotment and an allotment made in pursuance to some housing scheme. The petitioner had not made any investment in any immovable property, for him to say that he is entitled to the benefit thereof at any time. Rather, it may be noticed that even if the petitioner had made such an investment, his right to enforcement thereof would have become barred by time after such long lapse of time.

11. I am therefore of the opinion that the petitioner, for the reason of the delay on his part, has lost the right, if any to be considered for rehabilitation and cannot now seek possession of the plot which was then offered to him, or to any other plot in lieu thereof. The land available for such rehabilitation also is in short supply and far below the number of homeless squatting over public land in the city and cannot be directed to be given to persons who do not appear to be in need thereof.”

5. In the **LPA 271/2016** titled **Dayachand v. Union of India & Ors.** dated **22nd February, 2016**, the Id. Division Bench while upholding the above view has observed as under:

“12. Admittedly, in both the appeals plots were earmarked to the appellants in view of the Rehabilitation Scheme of the Government of NCT of Delhi (GNCTD). In case of the appellant/Dayachand, cancellation of allotment of plot was made as he failed to tender original documents pertaining to his Jhuggi in Indra Camp, Bapu Dham, New Delhi and in the latter case of appellant/Makhni Kaur @ Makhni Bai the cancellation was done on the basis of not occupying the allotted plot within the stipulated time as she was emphasizing for allotment of plot particularly at Nasirpur area.

13. The Learned Single Judge has rightly held that the petitioners therein did not pursue the matter diligently and regularly, whereas in cases of rehabilitation the person so dispossessed has to act with promptitude and cannot belatedly attempt to capitalise from the allotment.

14. In the facts of the above cases, there has been a delay of 9 and 11 years respectively in approaching the court. The repeated representations as contended by the counsel for the appellants did not mean that they

were pursuing the matter continuously rather it is just to keep the stale claim alive. Therefore, in a circumstance of present nature, no plausible explanation has been tendered by the appellants as to why they failed to approach the court sooner especially when the appellants had sufficient knowledge that the cause of action had arisen much earlier.

15. The scheme in question owes for rehabilitation of those citizens who had been dispossessed by the Government and alternate plots were to be provided to them on urgent basis. But at the same time, it was also necessary for those dispossessed to act promptly without delay so that the purpose of the scheme is not frustrated. 16. The law regarding inordinate and unexplained delay in approaching the court is well settled by the Apex Court in catena of judgments. In Civil Appeal Nos. 4099, 4100 and 4101 of 2000 titled as Shankara Co-op Housing Society Ltd. Vs. M. Prabhakar & Ors. decided on 05.05.2011 by the Supreme Court, it has been held that "Delay and laches is one of the factors that requires to be borne in mind by the High Courts when they exercise their discretionary power under Article 226 of the Constitution of India. In an appropriate case, the High Court may refuse to invoke its extraordinary powers if there is such negligence or omission on the part of the applicant to assert his rights taken in conjunction with the lapse of time and other circumstances.""

6. Ld. counsel for the Petitioner vehemently submits that the right to shelter is a basic need and is covered under the Fundamental Right to life and the said violation of the fundamental right is a continuing cause of action on the basis of the judgment of the Supreme Court in ***M/s Shantistar Builders v. Narayan Khimalal Totame, [(1990) 1 SCC 520]***.

7. Admittedly, the Petitioner has made a representation only in

December, 2020. After being dispossessed in 2012, no claim for rehabilitation was made by the Petitioner. At this point, this Court is of the opinion that the orders in *Dayachand (supra)* would be fully applicable. However, considering the fact that the Petitioner has made a representation, as on 27th December, 2020, the authorities, i.e., Respondents No. 1 to 4 are free to consider the same, expeditiously, in accordance with law.

8. With these observations, the present petition, along with all pending applications, is disposed of.

PRATHIBA M. SINGH
JUDGE

MARCH 19, 2021
dj/AP