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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 15th September, 2023

+ W.P.(C) 89/2016

PREM BABU

..... Petitioner

Through: Mr. Sharvan Dev, Advocate with
petitioner in-person.

versus

UNION OF INDIA & ORS

..... Respondents

Through: Ms. Shahana Farah and Ms. Komal
Sorout, Advocates for DDA/R-2 *via*
video-conferencing.

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

J U D G M E N T

ANUP JAIRAM BHAMBHANI J.

By way of the present petition filed under Articles 226 and 227 of the Constitution of India, the petitioner prays for a direction in the nature of mandamus directing respondent No. 2/Delhi Development Authority ('DDA') to allot an alternative plot/flat to the petitioner *in-lieu* of his tenement, being a *jhuggi* bearing No. T-2187C, Faiz Road, Ashoka Pahari, Karol Bagh, New Delhi, which was demolished by respondent No. 2 sometime in 2001, as detailed hereinafter.

2. Notice on this petition was issued on 14.09.2016; consequent whereupon DDA filed its counter-affidavit dated 31.05.2017. Rejoinder dated 10.01.2018 was also filed by the petitioner to that counter-affidavit.



3. Mr. Sharvan Dev, learned counsel appearing for the petitioner and Ms. Shahana Farah, learned counsel for the DDA have been heard in the matter. Written submissions have also been filed on behalf of the petitioner as well as the DDA.

Petitioner's Submissions

4. Mr. Dev has drawn attention to communication dated 16.08.2001 issued by the DDA to the petitioner, offering to allot to him a plot/flat as part of the Rehabilitation Policy of the DDA, a copy of which is Annexure-P3 to the petition.
5. Counsel submits that the petitioner's name, as one of the persons who was occupying the tenements on Faiz Road, Ashoka Pahari, Karol Bagh, New Delhi also stands confirmed by Survey Report dated 04.06.2002, a copy of which has been placed on record by DDA *vide* Annexure R-2/2 along with its counter-affidavit. It is pointed-out that the petitioner's name appears at serial No. 247 of the said survey report. It is also pointed-out that the persons whose names appear at serial Nos. 246 to 249 are in fact all family members of the petitioner, namely his real brothers and the father; but none of them have been granted any alternate plot or flat by the DDA.
6. Counsel submits that pursuant to communication dated 16.08.2001 referred to above, *vide* demand draft/pay order bearing No. 028403 dated 27.11.2001 drawn in favour of DDA, the petitioner sought to tender the sum of Rs.7,000/- being the aggregate sum for allotment of the land alongwith advance license fee for 10 years, as was indicated in the said communication; however, the DDA refused to accept the money.



7. He further points-out that by way of the decision as recorded in Minutes of Meetings dated 05.06.2002 and 10.06.2002 in the context of the re-development scheme for Ashoka Pahari, a decision was again taken for allotment of an alternate tenement *in-lieu* of the petitioner's tenement that was demolished.
8. Counsel further submits that by reason of inaction on the part of DDA, the petitioner filed a representation dated 17.01.2005 before the DDA, a copy of which is Annexure-P6; followed by multiple visits to the offices of the DDA, as evidenced by the visitor's slips annexed with the petition; however, to no avail. In brief, it is the petitioner's contention that he followed-up on the issue of allotment with the DDA by making representations and personal visits, but got no relief.
9. It is emphasised that since the petitioner is a poor person and is not literate, his capacity and resources for chasing-up his rights was limited.
10. Upon being queried, as to whether the petitioner ever made a *formal application* to the DDA, making his claim for allotment, and setting-out the requisite particulars, proof of ID, etc., Mr. Dev draws attention to Affidavit dated 03.11.2001 executed by the petitioner, which he says was filed by him before the DDA. However, counsel is unable to cite any document, that may be construed as an application made to the DDA for the purpose.
11. Counsel for the petitioner submits however, that the DDA has been remiss in not allotting to the petitioner an alternate plot/flat, in breach of their own policy.



Respondent's Submissions

12. On the other hand, opposing the relief prayed for, Ms. Farah submits that though it is not disputed that the petitioner's name appeared at serial No. 247 of Survey Report dated 04.06.2002, counsel argues that that report only reflects the names of persons who were found present in the locality at the time when the survey was conducted.
13. Counsel submits however, that no document was furnished by the petitioner to evidence that he was indeed a *resident* of any tenement in Ashoka Pahari at the relevant time.
14. Furthermore, it is argued that, as narrated in para 4 of the Preliminary Submissions made in the counter-affidavit, only those persons whose names appeared in the survey list *and* who complied with the conditions for allotment of alternate plot/flat were considered for rehabilitation under the J.J. Rehabilitation Policy.
15. It is urged that the petitioner never even approached the DDA for such allotment, since he neither made any application for the purpose, nor did he pay any money as required *vide* communication dated 16.08.2001. It is pointed-out that communication dated 16.08.2001 clearly mentions that non-compliance with the stipulated conditions, within the 10 day period provided therein, would result in cancellation of any entitlement.
16. It is argued that on the petitioner's own admission, he first attempted to pay the charges towards rehabilitation only *vide* Pay Order/Demand Draft *dated 27.11.2001* in response to communication dated *16.08.2001*, which (latter) communication had mandated that payment of the requisite money was to be made within 10 days of issuance of the communication. It is the respondent's submission that the



petitioner was therefore clearly out of time when he attempted to tender money towards allotment of an alternate plot/flat.

17. It is also argued that the petitioner did not file with the DDA requisite documents, such as proof of residence and ID, that were required for processing his application; not to mention that he admittedly did not pay any fee or charges for availing allotment under the policy.
18. Besides, it is submitted that Minutes of Meetings dated 05.06.2002 and 10.06.2002 in fact belie the petitioner's claim, for the reason that, as recorded in those minutes, the initial plan made by the DDA could not be implemented since certain affected persons approached court and obtained a stay order against demolition of their tenements; and therefore the DDA subsequently came-up with an alternate plan, the important point being that the petitioner's claimed tenement did not find mention in the subsequent action plan. Attention in this regard is drawn to the following portions of the minutes referred to above :

*"1. Under the Re-development Scheme of Ashoka Pahari, encroachments have been removed, but certain encroachments still remains there. Accordingly an action plan was (illegible). **However, the affected persons went to the Court and obtained stay order against the demolition of their premises/units, so further action could not be taken.** As per the initial action plan the block of properties between No.T-2323 to T-2068 would be removed completely and the persons occupying the premises would be settled at same place after carving out regular size plots as per the requirement and after providing basic facilities as provided in the lay out plan.*

* * * * *

(emphasis supplied)

19. In addition to the above, it is also submitted that the authenticity of the ration card and the demolition slip filed by the petitioner as



Annexure-P2 to the petition is also suspect *inter-alia* since the demolition slip pertains to a Hanuman Mandir and not to the petitioner's alleged tenement. Counsel has drawn attention to the fact that as per Annexure-P10 to the petition, which is a letter dated 25.10.2004 sent by the petitioner to the Vice Chairman-DDA, the petitioner says that there was a temple existing on plot No. T-2187, and the petitioner also claims that he was residing in tenement No. T-2187C. Since the demolition slip shows that what was demolished was the temple on plot No. T-2187, even assuming that the petitioner was living in the temple premises, that would not entitle the petitioner for an alternate plot/flat.

20. Upon being queried, counsel submits that as per her instructions, all allotments under the then applicable rehabilitation policy have now been made; and the DDA would not be able to offer any alternate flat/plot to the petitioner. It is emphasised that the offer for rehabilitation dates back to 2001.

Discussion & Conclusions

21. At this point, it would be beneficial to refer to the law on delay and laches as enunciated by the Supreme Court. The following verdict very succinctly summarises the position :

State of M.P. vs. Nandlal Jaiswal¹

*“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***

¹ (1986) 4 SCC 566



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."

(emphasis supplied)

22. Upon a conspectus of the averments contained in the pleadings and the submissions made at the Bar, the following inferences clearly arise:
- 22.1. The petitioner claims allotment of an alternate plot/flat *in-lieu* of demolition of *jhuggi* bearing No. T-2187C in Ashoka Pahadi, Karol Bagh, New Delhi. The DDA contends that what was demolished was tenement No. T-2187, which was a temple and not a residential tenement, and that *in-lieu* of such demolition, the petitioner is not entitled to allotment of a residential tenement;
- 22.2. The DDA also disputes the authenticity of the ration card and other documents cited by the petitioner to show that he was residing in tenement No. T-2187C.
- 22.3. The aforesaid factual disputes apart, admittedly, the petitioner bases his claim for allotment on communication dated 16.08.2001 issued by the DDA and Survey Report dated 04.06.2002, to urge that since the petitioner's name appears at serial No. 247 of the survey report, he was entitled to alternate allotment. However, communication dated 16.08.2001 clearly



stipulated that an applicant for allotment must pay the requisite charges within 10 days of the issuance of that communication. On the petitioner's own reckoning, he first *attempted* to pay the requisite charges of Rs.7,000/- *vide* Demand Draft dated 27.11.2001, evidently much after the expiry of the 10-day time-frame stipulated in communication dated 16.08.2001. Here again, on the petitioner's own admission, *he did not actually pay the charges*, since he says the DDA refused to accept the money. In fact, the charges were *never ever paid* even thereafter and the same position obtains today;

- 22.4. The petitioner is also unable to show that he ever filed a *formal application* with the DDA seeking allotment of an alternate tenement. He cites a certain affidavit and other documents that he filed with the DDA, but he never made any *formal application* for the purpose;
- 22.5. Furthermore, the petitioner relies upon Minutes of Meeting dated 05.06.2002 and 10.06.2002, which he says show that the DDA had approved the allotment of an alternate tenement *in-lieu* of removing properties Nos. T-2323 to T-2068 – which the petitioner says includes property No. T-2187C – and he asserts his claim based on those minutes. The petitioner however fails to notice that the same minutes also say that the DDA's plan for allotment *in-lieu* of tenement Nos. T-2323 to T-2068 was part of the *initial action plan*, which however could not be implemented since some affected persons went to court and obtained a stay order against demolition of their tenements. The



petitioner offers no clarity as to what happened to that action plan thereafter; and

22.6. For an allotment that was supposed to have been made in or about 2001, the petitioner filed the present petition on 05.01.2016 *i.e.* about 15 years later, asserting his claim. The petitioner offers no justification or cogent explanation for the inordinate delay in filing the present petition.

23. In view of the above discussion, this court is of the view that *firstly*, there is inordinate and unexplained delay in the petitioner invoking the extraordinary writ jurisdiction of this court, which delay appears to have been by reason of tardiness and indolence on the petitioner's part. The writ petition accordingly suffers from delay and laches². *Secondly*, it appears that the petitioner never made a *formal application* to the DDA seeking allotment of an alternate tenement under their policy; and most importantly, *nor did he ever pay* the requisite charges as required by communication dated 16.08.2001 within the time stipulated therein *or even thereafter*. *Thirdly*, it also remains a matter of factual dispute as to whether the petitioner was at all residing in tenement No. T-2187C, or whether that tenement was at all demolished. Needless to add that such factual matters, which have been seriously contested, are not amenable to adjudication in the writ jurisdiction of this court.³

² cf. *State of M.P. vs. Nandlal Jaiswal* (supra)

³ *Dwarka Prasad Agarwal vs. B.D. Agarwal*, (2003) 6 SCC 230 at para 28; *State of Rajasthan vs. Bhawani Singh*, 1993 Supp (1) SCC 306 at para 7; *Kamaljeet Bajwa & Ors. vs. Government of NCT of Delhi & Ors.*, 2023 SCC OnLine Del 4192 at para 56



24. For all the above reasons, this court is not inclined to exercise its extraordinary jurisdiction under Article 226 of the Constitution of India in the petitioner's favour in the present case.
25. The writ petition is accordingly dismissed.
26. Pending applications, if any, also stand disposed-of.

ANUP JAIRAM BHAMBHANI, J

SEPTEMBER15, 2023/uj