



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

Judgment reserved on: 31.07.2023

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Judgment delivered on: 18.08.2023

+ **LPA 28/2023**

BIMLA DEVI CHURIWAL

..... Appellant

Through: Ms. Richa Kapoor, Ms. Eesha Sharma
and Ms. Tusharika Sharma,
Advocates.

versus

DELHI DEVELOPMENT AUTHORITY

..... Respondent

Through: Mr. Arjun Pant, Standing Counsel
with Ms. Latika Malhotra, Advocate.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SANJEEV NARULA

J U D G M E N T

SATISH CHANDRA SHARMA, C.J.

1. The instant LPA has been preferred by the appellant, challenging the Judgment dated 17.11.2022 passed in W.P.(C) 3624/2013 titled as *Bimla Devi Churiwal v. Delhi Development Authority* (“**Impugned Judgment**”), wherein the learned Single Judge dismissed the writ petition on the ground that the same is barred by delay and laches.

2. The facts of the case reveal, that the Respondent/Delhi Development Authority (“**DDA**”) in 1981 had launched the Rohini Residential Scheme for EWS/Janta, LIG and MIG category plots of land (“**the Scheme**”). The Appellant had applied under the scheme *vide* application No. 45461 dated 26.03.1981 to book an LIG plot admeasuring 32 square meters after



depositing Rs. 2,000 /- towards registration charges *vide* receipt No. 15202 dated 26.03.1981. Due to a large number of applicants, the DDA decided to allot priority numbers to pending registrants by a computerised draw and the Appellant was assigned priority no. 15452.

3. The DDA states that upon scrutinizing the application of the Appellant, it was found that the appellant had not submitted her income proof for the assessment year 1980-81. Therefore, the DDA *vide* letter dated 17.12.1982 requested her to deposit the same along with an affidavit undertaking as required in Brochure. It is stated that though the Appellant submitted her income proof for the assessment year 1981-1982, the said information was incomplete and the DDA *vide* letter dated 21.08.1984 requested her to furnish the income proof of the assessment year 1980-81 with full details of the Appellant and her spouse along with the income tax assessment for the assessment year 1981-82. This letter dated 21.08.1984 however was returned as undelivered with the postal authority's remark 'not known' and the DDA cancelled the Registration No. 45461 and Priority No. 15452 assigned to the Appellant *vide* letter dated 14.04.1986 and the Appellant was requested to submit the FDR duly discharged so that action for refund of earnest money deposited by her could be initiated. As the appellant did not furnish the FDR, the DDA on 02.04.2008 again requested the Appellant to furnish the original FDR and other requisite documents to expedite refund of earnest money deposited. However, even this letter was returned as undelivered.

4. The Appellant states that she had changed her residential address and was residing in Kolkata at this point and had intimated this to DDA *vide*



letter dated 09.12.2004 along with a copy of her ration card and FDR. The Appellant visited the office of DDA in Delhi in 2012 and was informed that the persons with priority number immediately before and after her had been allotted a plot however she was not. The appellant filed an RTI Application dated 01.10.2012 bearing ID No. 5476 seeking a copy of the file of the Appellant maintained by Respondent DDA. In response to the RTI, DDA informed that the registration of the appellant had been cancelled.

5. It is in this backdrop that the Appellant preferred the underlying writ petition. The Learned Single Judge in the Impugned Judgment, after hearing both the parties and taking into account the facts, submissions made and the documents on record rejected the submissions made by the Petitioner and dismissed writ petition on the ground that the same is barred by inexplicable and unexplained delay. The Learned Single Judge however directed that the Respondent refund of the earnest money deposited by the Appellant within a period of four weeks from the date of the judgment.

6. At this juncture, it becomes apposite to summarise the law on delay and laches in respect of a writ petition filed under Article 226 of the Constitution of India. A Constitution Bench of the Hon'ble Supreme Court in the case of *State of M.P. v. Bhailal Bhail*, 1964 SCC OnLine SC 10, has held as under:

“17. At the same time we cannot lose sight of the fact that the special remedy provided in Article 226 is not intended to supersede completely the modes of obtaining relief by an action in a Civil Court or to deny defences legitimately open in such actions. It has been made clear more than once that the power to give relief under Article 226 is a discretionary power. This is specially true in the case of power to issue writs in the



*nature of mandamus. Among the several matters which the High Courts rightly take into consideration in the exercise of that discretion is the delay made by the aggrieved party in seeking this special remedy and what excuse there is for it. Another is the nature of controversy of facts and law that may have to be decided as regards the availability of consequential relief. Thus, where, as in these cases, a person comes to the court for relief under Article 226 on the allegation that he has been assessed to tax under a void legislation and having paid it under a mistake is entitled to get it back, the court, if it finds that the assessment was void, being made under a void provision of law, and the payment was made by mistake, is still not bound to exercise its discretion directing repayment. Whether repayment should be ordered in the exercise of this discretion will depend in each case on its own facts and circumstances. It is not easy nor is it desirable to lay down any Rule for universal application. **It may however be stated as a general Rule that if there has been unreasonable delay the court ought not ordinarily to lend its aid to a party by this extraordinary remedy of mandamus.** Again, where even if there is no such delay the Government or the statutory authority against whom the consequential relief is prayed for raises a prima facie triable issue as regards the availability of such relief on the merits on the grounds like limitation the court should ordinarily refuse to issue the writ of mandamus for such payment. In both these kinds of cases it will be sound use of discretion to leave the party to seek his remedy by the ordinary mode of action in a Civil Court and to refuse to exercise in his favour the extraordinary remedy under Article 226 of the Constitution.*

21. The learned Judges appear to have failed to notice that the delay in these petitions was more than the delay in the petition made in Bhailal Bhai case out of which Civil Appeal No. 362 of 62 has arisen. On behalf of the respondents-petitioners in these appeals (CAs Nos. 861 to 867 of 1962) Mr Andley has argued that the delay in these cases even is not such as would justify refusal of the order for refund. We argued that assuming that



*the remedy of recovery by action in a Civil Court stood barred on the date these applications were made that would be no reason to refuse relief under Article 226 of the Constitution. Learned counsel is right in his submission that the provisions of the Limitation Act do not as such apply to the granting of relief under Art 226. It appears to us however that **the maximum period fixed by the legislature as the time within which the relief by a suit in a Civil Court must be brought may ordinarily be taken to be a reasonable standard by which delay in seeking remedy under Article 226 can be measured. The court may consider the delay unreasonable even if it is less than the period of limitation prescribed for a civil action for the remedy but where the delay is more than this period, it will almost always be proper for the court to hold that it is unreasonable.** The period of limitation prescribed for recovery of money paid by mistake under the Limitation Act is three years from the date when the mistake is known. If the mistake was known in these cases on or shortly after January 17, 1956 the delay in making these applications should be considered unreasonable. If, on the other hand, as Mr Andley seems to argue, that the mistake discovered much later this would be a controversial fact which cannot conveniently be decided in proceedings. In either view of the matter we are of opinion the orders for refund made by the High Court in these seven cases cannot be sustained.”*

(emphasis supplied)

7. Following the aforesaid judgment, the Apex Court in ***Banda Development Authority v. Moti Lal Agarwal***, (2011) 5 SCC 394, has observed as under:

“17. It is true that no limitation has been prescribed for filing a petition under Article 226 of the Constitution but one of the several rules of self-imposed restraint evolved by the superior courts is that the High Court will not entertain petitions filed after long lapse of time because that may adversely affect the settled/crystallised rights of the parties. If the writ petition is



filed beyond the period of limitation prescribed for filing a civil suit for similar cause, the High Court will treat the delay unreasonable and decline to entertain the grievance of the petitioner on merits.”

8. From a perusal of the documents on record and the submissions made by the parties, it is clear that the writ petition preferred by the Appellant herein is hopelessly barred by delay. The Appellant had made an application under the Scheme in 1981 and thereafter the DDA requested the Appellant multiple times to furnish complete details, however the Appellant failed to do so. The DDA therefore cancelled the registration of the Appellant in 1986 and intimated the same to the Appellant however all communications made were undelivered. It was only in 2004, after almost 18 years that the Appellant informed DDA about the change in address, and only in 2012 did the Appellant approach the DDA office to get information regarding the status of her application. Such unexplained delay on the part of the Appellant is unreasonable and cannot be condoned. In this view, this Court finds no infirmity in the Impugned Judgment whereby the writ petition of the appellant has been dismissed on the ground of delay and laches.

9. With these observations, the appeal is dismissed, along with pending application(s), if any.

(SATISH CHANDRA SHARMA)
CHIEF JUSTICE

(SANJEEV NARULA)
JUDGE

AUGUST 18, 2023