



2024 : DHC : 2776



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

% Judgment delivered on: 03.04.2024

+ W.P.(C) 15418/2023

SH.SHISHPAL(DECEASED) THROUGH LRS & ORS.

..... Petitioners

versus

GOVT.OF NCT DELHI THROUGH & ANR. Respondents

Advocates who appeared in this case:

For the Petitioners : Mr. Sehdev Kumar, Advocate.

For the Respondents : Ms. Nancy Shah, Ms. Haridas Medha and Mr. Angad, Advocates for Mr. Prashant Manchanda, ASC for GNCTD/ R-1.

CORAM:**HON'BLE MR. JUSTICE TUSHAR RAO GEDELA****JUDGMENT****TUSHAR RAO GEDELA, J. (ORAL)****[The proceeding has been conducted through Hybrid mode]**

1. By way of the present petition, the petitioner is seeking the following prayers:-

"a) Issue writ, order, direction in the nature of certiorari or any other writ or direction thereby setting aside the order dated 01.08.2023 and 30.09.2023 passed by Financial Commissioner in case no. 52/2023 and 42/2022 & to restore the main petition of its original no. 109/2008.

b) Pass any other or further writ, order, direction which this Hon'ble court may in view of the facts and circumstances of the present case and in the interest of justice deems fit and proper;"

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2. It is the case of the petitioner that the original petition titled as “*Shishpal Singh vs. Consolidation Officer & Anr.*” bearing Case No. 109/2008 was filed on 08.04.2008. On 28.10.2021, the said original petition bearing Case No. 109/2008 was dismissed for non-prosecution.
3. It is also the case of the petitioner that in the year 2019, the petition was at the stage of completion of pleadings and subsequently, on account of COVID-19 pandemic, the proceedings could not be followed up, and as such, on 28.10.2021 the petition bearing Case No. 109/2008 was dismissed for non-prosecution.
4. On 24.03.2022, the application seeking restoration of the said petition i.e. Case No. 109/2008 bearing application No. 42/2022 was filed, the same was dismissed for non-prosecution on 30.09.2022.
5. The second application seeking restoration of the said petition bearing application No.52/2023 was filed on 20.02.2023. The same was dismissed for non-prosecution on 01.08.2023.
6. By way of the impugned order, the Financial Commissioner had dismissed the application seeking restoration, for non-prosecution.
7. Learned counsel submits that the petition has not been considered on merits and has been dismissed for non-prosecution or for default, for which the petitioner ought not to be made to suffer.
8. In any case, he submits that the land has been urbanized and the only opportunity left with the petitioner is now to approach the Civil Court for appropriate remedies. He submits that it would be harsh and onerous to the petitioner, in case such an opportunity is not granted.
9. Ms. Nancy Shah, learned counsel appearing on behalf of Mr. Prashant Manchanda, learned ASC for GNCTD/ R-1 submits that this is



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a case of sheer negligence and lackadaisical attitude of the petitioner and this Court should not entertain any such petition.

10. After having considered the arguments of the learned counsel for the petitioner, it is apparent that the petitioner has been negligent in pursuing his remedies.

11. It is the case of the petitioner that he was represented by a counsel and on account of the COVID-19 pandemic intervening during the relevant period, the petitioner could not follow up and as a result, the original petition was dismissed for the first time on 28.10.2021.

12. It is also the case of the petitioner that at least till February 2022, the pandemic continued and he was unable to follow up with his counsel. The first application though was filed on 24.03.2022, however, was not followed up by the counsel, which resulted in the dismissal on 30.09.2022. In the similar fashion, the second application seeking restoration was also dismissed by the Financial Commissioner.

13. It is, however relevant to note that by way of notification dated 16.05.2017, Village Pooth Khurd was declared as an Urbanized Area, and as such, the provisions of DLR Act, 1954 would cease from that date onwards. The said issue has also been clearly laid down by the Supreme Court in ***Mohinder Singh (Dead) Through LRs and Anr. vs. Narain Singh and Ors*** reported in **2023 SCC OnLine SC 261.**, whereunder it was held that with the issuance of a notification under Section 507(a) of the DMC Act, provisions of DLR Act, 1954 would cease to apply and as a consequence thereto, such proceedings would become *non est*. In that view of the matter, the dismissal of the original petition on 28.10.2021 having been passed subsequent to the date of



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notification, would itself become *non est* in law.

14. Keeping in view the aforesaid, as also relying upon the judgment passed by a Coordinate Bench of this Court in ***Radiance Fincap (P.) Ltd. Vs. State (NCT of Delhi)*** reported in 2023 SCC OnLine Del 3422, this Court is of the considered opinion that the petitioner can be permitted to approach the civil court of competent jurisdiction with its original grievance for appropriate remedies in accordance with law.

15. In that view of the matter and applying the ratio of ***Mohinder Singh (Supra)***, the impugned orders are declared to be *non est* in law. The petitioner is permitted to approach the civil court of competent jurisdiction for redressal of his grievances, as raised in the original petition in the year 2008. The same be done within a period of four weeks from today.

16. In view of the above directions, the present petition along with pending application is disposed of with no order as to costs.

TUSHAR RAO GEDELA, J.

APRIL 03, 2024/nd