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

% ***Date of Decision: 12th November, 2024***

+ **W.P.(C) 6323/2016**

JAI GOPAL GULATI

.....Petitioner

Through: **Ms. Supriya Juneja with Mr. Gaurav Saini and Mr. Raghav Bakshi, Advocates.**

versus

UNION OF INDIA AND ORS

.....Respondents

Through: **Mr. Chiranjiv Kumar with Mr. Mukesh Sachdeva, Ms. Neelima Advocates for respondent No.1 Ms. Mehak Nakra, ASC for GNCTD with Ms. Bhavya Nakra, Advocate for GNCTD. Ms. Niharika Ahluwalia with Ms. Sonakshi Chaturvedi, Advocates for DDA. Mr. Sunik Kumar Jha with Ms. Mussarrat B. Hashmi and Mr. Sami Sameer Siddiqui, Advocates for respondent Nos.3 & 4. Ms. Mehak Nakra, ASC, GNCTD with Ms. Gunjan Suyal and Mr. Aditya Goyal, Advocates.**

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T (oral)

1. Petitioner seeks issuance of writ to respondents to either pay compensation or, in alternate, a plot of equal size and also to pay damages for illegally encroaching upon his property.



2. In short, the case of the petitioner is that his father had purchased a piece of land *vide* Registered Sale Deed on 12.02.1955. Such piece of land is plot No.70, comprised in Khasra no. 482/2, Village Tihar, Guru Nanak Pura Colony, Opposite Fateh Nagar, Jail Road, Delhi-18. The father of the petitioner had purchased the same for settling down after his retirement.

3. One adjacent plot i.e., plot No.69 situated in same Khasra was also purchased by one of his distant relatives.

4. In the year 1973, when petitioner Sh. Jai Gopal Gulati visited the above said plot, he was shocked to know that the above said plot had been illegally encroached upon and put to use and occupation by DDA (respondent No.2 herein) towards their residential scheme. According to the petitioner, the above said plot had been merged with the adjoining plots and fresh demarcated plots of various sizes had come up there.

5. Admittedly, after the above said plot was purchased by the father of the petitioner in the year 1955, the petitioner came to know about the above said alleged encroachment by DDA only in the year 1973. There is no averment as to what happened all these 18 years. There is nothing to indicate that physical possession was ever taken or some construction was ever carried out there, and if yes, when. There is also nothing to indicate whether such purchase was ever got recorded in any revenue record after such purchase.

6. The father of the petitioner i.e., Sh. Behari Lal Gulati,



unfortunately expired on 19.10.1974.

7. After the demise of the parents of the petitioner, according to the petitioner, eventually, the above said property was mutated in his name as the other legal representatives executed Relinquishment Deed in his favour in the year 1975.

8. The petitioner sent a communication in writing to DDA for the first time on 20.02.1976, highlighting the alleged illegal encroachment of such plot.

9. Admittedly, the above said communication was responded by DDA and he was even advised to visit the office and to mark his plot in the detailed layout plan.

10. Fact remains that there were communications, one after the other, for number of years. If one goes through the averments made in the present writ petition, it would become evident that these were sent by the petitioner to various authorities in the year 1977, 1978, 1979, 1981, 1982, 1984, 1986, 1992, 1994 and 1997.

11. The petitioner also contends that his distant relative, who was occupant of adjacent plot No.69 and which was of equal size, was also encroached upon in the similar manner and in lieu, he was offered an alternative plot in Janak Puri, New Delhi by DDA in 1973 itself and, therefore, he also raised a demand in this regard. A communication in this regard was also sent to DDA and to various other authorities.



12. According to the petitioner, his plot had been illegally encroached upon by DDA and there was never any acquisition in terms of the provisions contained in Land Acquisition Act, 1894 and, therefore, it was a clear-cut case where either he should have been adequately compensated or, for that matter, an alternative plot should have been provided to him but despite his sending communication time and again, there was no concrete response.

13. It is also clear that after sending the communication in the year 1997, there was, again, a lull as the next communication sent by him was in the year 2006. Thereafter, the communications were sent by him in the year 2007, 2008, 2010, 2011 and 2012.

14. However, when nothing moved further, the petitioner was compelled to file the present writ petition in the year 2016 with the following prayers:

“i. Issue of an appropriate writ, order or directions to the Respondents to pay compensation to the petitioner against deprivation of right, title, interest in only property under his ownership in Delhi i.e. plot bearing no. 70, Khasra no 482/2, Village Tihar, Gurunanak Pura, Opposite Fateh Nagar, Jail Road, Delhi, along with applicable interest & penalties thereon, since the day said plot was illegally occupied (prior to 1973), and further

ii Issue / Pass an appropriate writ, order or directions in the nature of Mandamus directing the respondents, specifically to respondent no.2 i.e. DDA, to allot an alternative plot of equal size i.e. 160 sq yds. on priority basis to petitioner in lieu of plot bearing no. 70, Khasra no 482/2, Village Tihar, Gurunanakpura. Opposite Fateh Nagar, Jail Road, Delhi, under use & occupation of DDA since prior to 1973, in similar developed location / area, in parity with as allotted / executed to similarly situated person late sh J.R.Chandna, and further



iii *Pass an appropriate writ, order or direction in the nature of Mandamus directing the respondent no.1 to pay to the petitioner a compensatory damages quantified as Rs. 1,00,00,000/- (Rupees One Crore only) for violation of the fundamental right by non-delivery of an alternate plot till date despite having illegally occupied the subject plot since prior to 1973, and having subjected petitioner to discrimination vis-a- vis a similarly situated person since 1973, and for having caused harassment, agony, injury, trauma, loss to the estate of petitioner and having made petitioner to run from pillar to post in need of his legitimate right during all these years since 1973.*

15. Learned counsel for the petitioner submits that there is no dispute that the land in question is being used by DDA and, therefore, even if the petitioner had approached this Court at a very belated stage, he should not be non-suited merely on the ground of delay and limitation, particularly, when DDA itself admits that such land was being used by them. In this regard, learned counsel for the petitioner has strongly relied upon the observations recorded in order dated 13.02.2017.

16. To demonstrate that the delay is not fatal, the petitioner has relied upon *Dharmidhar Mishra (D) and Another vs. State of Bihar and Others*:2024 SCC OnLine SC 932; *State of West Bengal & Ors. vs. Asit Baran Sarkar & Ors.*: 2023 SCC OnLine Cal 2055 and *Vidya Devi vs. State of Himachal Pradesh and Others*: (2020) 2 SCC 569. It is contended that in the aforementioned judgments, the relief was granted despite there being inordinate delay and, therefore, delay alone cannot be assumed to be lethal.

17. The facts of the cited cases do show that, despite the presence of inordinate delay, the petitions were entertained and relief was



granted but, it was primarily due to there being complete clarity of vital and crucial facts. In *Dharmidhar Mishra (supra)*, the State conceded to the fact that the land of the appellant had been acquired and was put to use for the purpose the same was acquired. In *State of West Bengal & Ors. vs. Asit Baran Sarkar & Ors (supra)*, the land of the writ petitioners was requisitioned but the project for which the land was requisitioned never took off and was abandoned. Although the land was formally de-requisitioned prior thereto, a public road was constructed on the land. It was in the above peculiar admitted facts that the delay was disregarded. In *Vidya Devi v. The State of Himachal Pradesh & Ors. (supra)* also, it is observed that delay and laches cannot be raised in a case of a continuing cause of action or if the circumstances shock the judicial conscience of the court. Though, there is no doubt that State must comply with the procedure for acquisition, but, at the same time, the writ court cannot come to someone's rescue if there is dispute about entitlement as such and, therefore, in such a situation, delay and laches cannot be sidelined causally.

18. The condonation of delay is a matter of judicial discretion, which must be exercised judiciously and reasonably in the facts and circumstances of the case. Thus, though, there would be no fixed period of limitation prescribed for the courts to exercise their constitutional jurisdiction to do substantial justice, writ courts cannot be used for deciding title either.

19. Here, the situation is not very clear as there are certain crucial



disputed questions of facts.

20. It also needs to be observed that respondent- DDA has also relied upon *Mohd. Suleman vs. NDMC and Others*: 2022 SCC Online Del 179; *Chunnu vs. Delhi Urban Shelter Improvement Board*: 2014 SCC OnLine Del 2396; *Surjeet Singh Sahni vs. State of Uttar Pradesh and Others*: 2022 15 SCC 536 and *Badley Ram vs. Delhi Development Authority & Ors.*: 2001 SCC OnLine Del 972 and it is submitted that while the legislature has prescribed a maximum period within which relief is typically to be sought, the more critical consideration is whether a petition filed after a significant delay should be entertained at all. This is particularly pertinent where such delay may, potentially, affect the crystallization of the rights of the parties. Therefore, where the delay exceeds the prescribed limitation period and there is not enough clarity of facts, the delay cannot be disregarded.

21. In the present case, although the delay is substantial and has not been satisfactorily explained and mere representations would not keep on giving petitioner a fresh cause of action, even assuming the delay was to be overlooked, the facts herein are, somewhat, imperfect and incomplete. The petitioner has failed to establish a clear case that would warrant either a direction for compensation from the DDA or of an alternative plot. Furthermore, there is no conclusive evidence demonstrating that the petitioner ever became the rightful or lawful owner or took possession of the plot in question. It is difficult to assume ownership in petitioner's favour on mere oral averments and



for want of supporting material, being presented to substantiate his claim.

22. According to learned counsel for DDA also, there are serious disputed questions of facts and the petitioner is not armed with any title document which may clearly indicate that he is the owner of Plot No.70. It is stated that the alleged Sale Deed has not even seen the light of the day as it has not been made part of the writ petition.

23. According to learned counsel for DDA, the petitioner is merely relying upon one *Relinquishment Deed* and on the strength of such *Relinquishment Deed*, he is projecting himself to be the owner of above said plot No.70. Though, it is admitted that the part of the land comprising in above said Khasra No. 482/2 is with DDA but according to her, if the petitioner felt that he was the rightful owner of the above said land and if his land had been illegally possessed by DDA, he should have immediately rushed to the Court by filing appropriate suit. His mere sending representations, one after the other to various agencies, would not extend the period of limitation either for the purpose of filing a suit or, for that matter, filing a writ petition and, therefore, irrespective of the fact that the writ petition has been filed belatedly, there is no definite material of impeccable nature which may clearly indicate that the petitioner is the owner of the land in question.

24. Needless to say, it is for the petitioner to stand on his legs.

25. DDA never admitted his ownership and it merely claimed that



DDA had started utilizing the above said piece of land when the same was vacant and when there was no boundary identification and demarcation in the year 1968 and part of the land situated over Khasra No. 482/2, Village Tihar was being utilized by DDA since 03.01.1968 when several lands in the area were acquired. For the reasons best known to the petitioner, he merely kept on sending communications to various agencies including DDA but never ever filed any suit and, in such a peculiar scenario, when the above said area has already been redeveloped, it is, even otherwise, difficult to identify any piece of land which is allegedly claimed by the petitioner to be owned by him way back in 1955.

26. As already noticed above, except for the Relinquishment Deed, the petitioner has not come up with any document to show that he is owner of the above said piece of land or that he ever got the physical possession the above said piece of land. There is nothing to indicate that even his father, during his lifetime, got the actual physical possession of the above said piece of land as there is no documentary proof of any nature whatsoever placed on record along with the present writ petition. Though, there is one document placed on record by the petitioner which is stated to be copy of the *revenue record* and reflects that the plot in question is '*under ownership*' and is registered in the name of Sh. Behari Lal Gulati, i.e. the father of the petitioner but it is not elucidated that how when the sale deed was allegedly executed on 12.02.1955, such revenue record dates much later. Moreover, it is also astonishing to comprehend as to how such fact



was recorded when the petitioner does not even possess sale deed or even its copy. Therefore, the veracity of such document remains under cloud, particularly in the absence of sale deed.

27. It is also important to mention that in one of the letter sent by the petitioner to the Lieutenant Governor of Delhi on 14.10.1997, it has been mentioned by the petitioner himself that *“My father late Shri Behari Lal Gulati purchased the above said plot vide Regd. Deed no. 614 dated 12.12.1955 duly registered by Sub Registrar on dated 16.07.1955.”* which shows that there is no clarity *vis-à-vis* the date of the registration of the sale deed.

28. In one of the letters dated 26.11.1976, the petitioner himself requested a copy of a *“regularised layout plan”*, which contradicts his earlier claims made in the letters sent to DDA. It may also be noted that in letter dated 06.01.1984, DDA clearly stated that *“You are also informed that your case would be covered by the policy followed by this department for allotment of an alternate plot only if you have been adjudged the rightful owner of the acquired land by the Land Acquisition Collector/Addl. District Judge and compensation amount is paid to you.”* Despite such explicit clarification, the petitioner failed to approach any Civil Court, for reasons best known to him. In fact, in the present petition, he has provided no plausible explanation as to why he did not pursue legal remedy before a Civil Court, especially when the DDA had clearly informed him of the applicable policy and its requirements.



29. Interestingly, as per the stand taken by respondent No.3 and 4, there was never any acquisition with respect to the Khasra no. 482/2, Village Tihar. In its affidavit filed by the concerned Land Acquisition Collector (West), GNCTD, it has been claimed that the petition is liable to be dismissed as the land measuring 160 sq. yards out of Khasra no. 482/2, Village Tihar was never acquired by the answering respondent.

30. It is noticed that the petitioner herein had submitted an application form with Land and Building Department way back in the year 1978 in which he claimed himself to be the owner of the above said plot and had even enclosed the copy of Sale Deed along with his application form but it is not made clear as to what prevented the petitioner from moving the Court immediately if there was no response or concrete reply from the concerned civic agencies including DDA.

31. As already noticed above, the petitioner herein has solely relied upon the *Relinquishment Deed* in his favour and as rightly pointed out by the learned counsel for DDA, even the copy of *Sale Deed* has not been annexed with the present petition.

32. Undoubtedly, as per the stand taken by the respondent DDA, part of the land comprising Khasra no. 482/2, Village Tihar is in the occupation of DDA. But fact remains that the picture which emerges out is not crystal clear and there are certain disputed facts which cannot be gone into by a writ court. The only possible and effective



remedy which was available to the petitioner was to knock the doors of a Civil Court by filing appropriate suit seeking appropriate relief, instead of coming to this Court that too after such an inordinate delay.

33. Furthermore, it is not within the purview of this Court in its writ jurisdiction to resolve disputed questions of fact or to engage in the demarcation of boundaries.

34. As already noticed, the above said piece of land was allegedly purchased by the father of the petitioner in the year 1955 and as far as the petitioner is concerned, he came to know about the alleged illegal encroachment only in the year 1976. There is no explanation as to why, in between, there is no action, particularly, when as per the averments made in the petition that DDA had been using his land since the year 1968.

35. Even thereafter, except for sending communication, one after the other, the petitioner never approached any civil Court seeking appropriate relief. He could have easily reclaimed his land from DDA if he was of the view that his land had been illegally occupied by DDA. Of course, DDA had compensated adjacent plot owners by providing them with alternate plots in Janak Puri, but for that, they must have completed the requisite formalities. Here, we do not know as to what prevented the petitioner from approaching the Court for seeking the above said relief.

36. Upon a thorough analysis of the material on record and the factual matrix of the case, it becomes evident that several critical



aspects remain ambiguous and unresolved. These are as follows:-

- a) Whether the petitioner's father had, in fact, become the owner of the plot in question when no sale deed has even been shown to substantiate such claim;
- b) There is no evidence to indicate that the petitioner's father ever took physical possession of the plot and such fact cannot be left nonchalantly as generally, no one would leave the plot, as it is, for around 18 years;
- c) There is no answer as to why no effort was ever made to get the property mutated in civic record immediately;
- d) There is also absence of chain of title documents *qua* the plot in question;
- e) The correct and complete registrations details have not been provided. Nobody knows the seller or the consideration amount and also where such sale deed was registered and the details of book or volume number;
- f) No document has been provided to show any communication between the petitioner's father and DDA concerning the plot in question.

37. Therefore, due to the above said lack of definite material and in the absence of documentary proof regarding the ownership, possession, mutation, and chain of title, coupled with the failure to



provide details of the alleged sale transaction, the claim of petitioner becomes hazy and unsubstantiated. Without adequate material to establish the veracity of the assertions, this court is constrained to conclude that the petitioner has not succeeded in discharging the requisite onus.

38. Consequently, though the delay may not be determinative in matters of this nature, this Court, while invoking its powers under Article 226 of the Constitution of India cannot come to the rescue of the petitioner who has failed to present his case with sufficient clarity, and, by his own actions, has contributed to his own miseries. The petitioner had clear option to seek redressal of his grievances through a civil suit, rather than engaging with the DDA and other agencies. As noted, the petitioner has failed to produce substantive documents to substantiate and corroborate his averments, rendering his case to be the one without adequate factual foundation.

39. In view of the above, the present petition is, hereby, dismissed.

(MANOJ JAIN)
JUDGE

NOVEMBER 12, 2024
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