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

% **Judgment reserved on : 03 May 2024**
**Judgment pronounced on : 22 May 2024**

\+ W.P.(C) 3659/2023

MD. SHAMIM ..... Petitioner

Through: Ms. Surabhi Sanchita & Mr. Pratap Singh, Advs.

versus

DELHI DEVELOPMENT AUTHORITY (DDA) & ORS. ..... Respondents

Through: Mr. Ajay Vikram Singh, Adv. for DUSIB
Mr. Karn Bhardwaj, ASC for GNCTD with Mr. Shubham Singh & Mr. Rajat Gaba, Advs. for R2.
Ms. Kritika Gupta, Adv. for DDA.

**CORAM:**
**HON'BLE MR. JUSTICE DHARMESH SHARMA**

**J U D G M E N T**

1. The petitioner is invoking the extra ordinary jurisdiction of this Court under Article 226 of the Constitution of India for issuance of a writ of *Mandamus* or any other appropriate writ and the following reliefs are being sought:

> "(a) pass a writ of mandamus or any appropriate writ, order or direction the Respondents to resettle the Petitioner by allotment of an alternative piece of land with consequential benefits in lieu of demolished plot Block A 70, Jhuggi No.770, Kanchan Puri, Rajghat Power House, New Delhi-02 and against advance payment of license fee, in the interest of justice.

(b) Any other and further relief as deemed fit and proper may also be granted."

**BRIEF FACTS:**

2. The genesis of the present petition lies in the petitioner's claim that he is a daily wage labourer and had been residing in T-huts at Block A-70, Jhuggi No.770, Kanchan Puri, Rajghat Power House, New Delhi-02 since decades with his family. The petitioner claims that he has been holding a valid ration card, voter id card and a BPL[1] card on the said address issued by the Government of India.

3. Aiming at the Master Plan of Delhi[2] 2021, the Delhi Development Authority[3] was carrying out surveys since 1998 and areas were demarcated and individuals were identified for rehabilitation and resettlement, which process was completed in 2006, involving relocating the residents in exchange for the demolition of their existing dwellings, subject to the payment of a license fee. As part of this effort, the Petitioner was instructed to vacate the above-mentioned T-Huts for redevelopment and rehabilitation purposes.

4. On 15.04.2006, the DDA issued an "Alternative Allotment-cum- Demand Letter"[4] to the petitioner, who claims that subsequent to such offer he demolished his T-huts and submitted the required documents along with an affidavit within the prescribed timeframe as per the letter's directives and made a payment of Rs. 14,000/- to the respondent No. 1, which was duly acknowledged by them. However,

[1] Below Poverty Line
[2] MPD
[3] DDA
[4] Annexure P/2

despite receiving an advance license fee, the DDA/respondent No.1, who is the land-owning agency under Government of National Capital Territory of Delhi[5], failed to fulfil its obligation to rehabilitate and re-settle them by providing alternative housing.

5. Delhi Urban Shelter Improvement Board[6]/respondent No. 2 is the nodal agency for relocation/rehabilitation of Jhuggi Jhopri[7] Bastis in respect of lands belonging to the NCT of Delhi, who is also the respondent No. 3 herein. Before filing the present writ petition, the petitioner claims that he visited the DDA office multiple times, running pillar to post, but to no avail. He also filed an RTI[8] dated 05.02.2015 having office No. RTI/29/LM/EZ/15/91, in reply to which the petitioner received a letter from the DDA, stating that the no plot had been allotted against the said Jhuggi no. and that allotment would be done only to eligible Jhuggi residents by the constituted committee.

6. On 31.03.2015, in response to the RTI application regarding information about the allocation of an alternative plot, the Deputy Director, PIO for Land and Management at DDA declined to provide the information, citing that it falls under the prohibition outlined under Section 11(3) of the RTI Act. It is stated that the petitioner, experiencing housing difficulties, made repeated visits to the respondent's office in the year 2020, 2021, and 2022, yet did not receive any assistance, and therefore, they resorted to avail the legal

[5] NCT of Delhi
[6] DUSIB
[7] JJ
[8] Right to Information

remedy due to the inaction of the respondents through the present petition.

**LEGAL SUBMISSIONS ADVANCED AT THE BAR:-**

7. The learned counsel for the petitioner has relied on the judgement passed in the cases **Olga Tellis v. Bombay Municipal Corporation**[9] and **Chameli Singh Vs State of U.P.**[10] ,where the Apex Court has laid down that right to shelter is a fundamental right under the umbrella of Article 21 of the Constitution of India and the said right to life is not a right of mere animal existence. Further, in the case of **Ahmedabad Municipal Corporation v. Nawab Khan Gulab Khan**[11], Apex Court has held that even poverty-stricken persons on public lands have a fundamental right to housing and laid down that when a slum-dweller has been at a place for some time, it is the duty of the government to make schemes for housing of the jhuggi-dwellers.

8. The learned counsel for the respondent No. 2 has pleaded that though DUSIB has been nominated as the Nodal Agency for the implementation of policy for relocation/ rehabilitation of JJ Basti upon the land belonging to MCD and Delhi Government and its Department/Agencies, as per the Delhi Slum and JJ Rehabilitation and Relocation Policy[12] of 2015 which has now been renamed as 'Mukhya Mantri Awas Yojna', however the current matter is out of its purview.

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[9] 1985 SCC (3) 545
[10] l996(2) SCC 549
[11] 997 (11)SCC 123
[12] In pursuance of the provision of sub-section (1) of Section 10 of the Delhi Urban Shelter Improvement Board (DUSIB) Act, 2010, the Delhi Urban Shelter Improvement Board in its 16th

Further, they have submitted that it is the DDA which is the state level nodal agency for *in-situ* rehabilitation of slum dwellers in respect of land belonging to Central Governments and its agencies under Pradhan Mantri Awas Yojna- Housing for All (Urban) [PMAY-FIFA(U)] in Delhi, as per order issued by urban Development Department, GNCTD dated 20.09.17.

9. The learned counsel for the respondent No.1/ DDA has submitted that the present petition is barred by **delay and latches.** They argued that the petitioner has been evasive about stating the details about the payment of the license fee and that the cause of action in the present matter, if at all, arose in the year 2006, whereas the petition has been filed after an inexplicable delay of 17 years in 2023. Further, it was submitted by them that on a bare reading of the said letter, it would show that it prescribed a limited license to 12.5 square meter plot to the petitioner, for a period of 5 years only, that to subject to payment of the due license fee, therefore, the terms of the license already stands exhausted. They allege that the petitioner has failed to show payment of any license fee on receipt of the said allotment letter.

**ANALYSIS AND DECISION:**

10. I have given my thoughtful consideration to the submissions advanced by the learned counsels for the rival parties. I have also perused the record of the case.

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Meeting on 11.04.2016 approved the Delhi Slum Rehabilitation and Relocation Policy-2015 w.e.f order dated 11.12.17 issued by the government of NCT

11. At the outset, the instant petition is hopelessly barred, so as to disentitle the petitioner of any relief by virtue of having been filed after inordinate delay and latches. Evidently, the hutment of the petitioner was demolished way back in the year 2006 and the ultimate allotment-cum-demand letter issued by the DDA dated 15.04.2006 merely conferred a limited right upon the petitioner to get licence at some demarcated site for a period of five years only, and that period has since lapsed.

12. Assuming for the sake of convenience, that the petitioner after paying the sum of Rs.14,000/- in terms of the aforesaid offer dated 15.04.2006, evidently, he slept over his rights and did not take any action within a reasonable period of time. It appears that he only woke up sometime in the month of January, 2015 when he chose to file an RTI on 05.02.2015. It is well settled that the writ jurisdiction in terms of Article 226 of the Constitution of India, is a discretionary relief that can be denied on account of delay and latches on the part of the petitioner in approaching the Court. Reference can be made to the decision in **State of M.P. v. Bhailal Bhai**[13] , wherein it was held that:

> **"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

[13] 1964 SCC OnLine SC 10

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."

13. Further reference can be invited to decision in **Banda Development Authority v. Moti Lal Agarwal**[14], wherein it was observed that:

> **"16.** In our view, even if the objection of delay and laches had not been raised in the affidavits filed on behalf of BDA and the State Government, the High Court was duty-bound to take cognizance of the long time gap of nine years between the issue of declaration under Section 6(1) and filing of the writ petition, and declined relief to Respondent 1 on the ground that he was guilty of laches because the acquired land had been utilised for implementing the residential scheme and third-party rights had been created. The unexplained delay of about six years between the passing of award and filing of the writ petition was also sufficient for refusing to entertain the prayer made in the writ petition.
> **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.

14. Avoiding the long academic discussion, in a recent decision by the Supreme Court in the case of **Mrinmoy Maity v. Chhanda Koley**[15], it was reiterated that delay defeats equity and if there is laxity

[14] (2011) 5 SCC 394
[15] 2024 SCC OnLine SC 551

on the part of the petitioner to assert his legal rights thereby allowing the cause of action to drift away, the High Court in exercising writ jurisdiction should not rekindle the lapsed cause of action.

15. In view of the foregoing propositions of law, reverting back to the instant matter, at the cost of repetition, the offer made to the petitioner *vide* proposal dated 15.04.2006 lapsed long time back and the present petition deserves to be dismissed on account of delay and latches.

16. Accordingly, the instant Writ Petition is hereby dismissed.

**DHARMESH SHARMA, J.**

**MAY 22, 2024**
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