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**(2014) 09 DEL CK 0068**

**In the Delhi High Court**

**Case No : Writ Petition (Civil) No. 5105 of 2013**

Jangli Ram

APPELLANT

Vs

GNCT of Delhi

RESPONDENT

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**Date of Decision : 03-09-2014**

**Acts Referred:**

Land Acquisition Act, 1894 — Section 18, 4

**Citation : (2014) 4 JCC 2319**

**Hon'ble Judges : Suresh Kait, J**

**Bench : Single Bench**

**Advocate : Sudhanshu Tomar, Advocate for the Appellant; Biraja Mahapatra, Advocate for the Respondent**

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## **Judgement**

Suresh Kait, J.—Vide the present petition, petitioner seeks direction thereby directing the respondent No. 1 to allot an alternative residential plot to the petitioner as per his eligibility. Mr. Sudhanshu Tomar, Ld. Counsel appearing on behalf of the petitioner submits that wife of the petitioner namely Smt. Chandri was a Bhoomidar in respect of the agricultural land situated in the Revenue Estate of Village Amherhai, Delhi and said land was acquired for the Planned Development of Delhi vide award bearing No. 48/86-87.

2. Late Smt. Chandri was dissatisfied with the quantum of compensation awarded by the Government, accordingly filed reference under Section 18 of the Land Acquisition Act, 1894. Simultaneously, she also applied for allotment of alternative residential plot by filing application along with all necessary documents, as per the policy of the Government, vide file bearing No. F-31/(3)-Alt/L & B/33/87.

3. It is further submitted that during her life time, she executed a Registered Will dated 28.05.1996 in favour of the petitioner before the Sub-Registrar Office, Janak Puri, Delhi. She also executed Relinquish Deed dated 12.06.1996 in favour of the petitioner in order to avoid any confusion among the legal heirs. However, Smt. Chandri expired on 08.10.1996. Thereafter, petitioner filed an application

for bringing him on record in Execution Petition No. 854/1996 in LAC No. 193/93 on the basis of "Will" and "No Objection Certificate" obtained from other legal heirs. Accordingly, the Ld. Trial Court impleaded the petitioner as the only legal heir in the said Execution Petition.

4. The petitioner also filed an application on 05.02.1997 for intimation to the respondents along with a copy of Payment Certificate, the copy of Will made by Smt. Chandri along with ration card etc. so that the petitioner may be brought on record by respondent No. 1 in place of his wife for allotment of alternative residential plot. Thereafter, the petitioner moved various applications and representations for the aforesaid purposes, however, there was no response from the respondent's side.

5. On 06.02.2012, the petitioner moved an RTI application before respondent No. 1 and same was replied vide reply dated 30.03.2012 whereby stated that the information sought could not be provided as the related file was missing. It was further intimated that as soon as the file is traced, further course of action will be taken by the Branch immediately.

6. Mr. Tomar further submits that since there was no response from the respondent side, petitioner was compelled to file the present petition.

7. Respondent No. 1 in its counter-affidavit stated that petitioner was aware that the closed case are not re-opened. As per the records maintained, land of Smt. Chandri was acquired vide award No. 48/86-87 for planned development of Delhi in Village Amverhai. Notification under Section 4 in this respect was issued on 27.01.1984, possession of the land was handed over to the Government on 22.09.1986 and compensation was accordingly paid to Smt. Chandri. The application for allotment of alternative residential plot was submitted on 12.11.1997.

8. The then Joint Secretary, Land and Building Department examined the matter and from the note dated 20.01.1992 it is reflected that the respondent No. 1 was writing to the applicant since 1987. However, there was no reply from her. Accordingly, the said file for allotment of alternative plot was closed.

9. It is admitted that petitioner vide letter dated 05.02.1997 wrote to respondent No. 1 that he came to know that his file for allotment of alternative plot submitted by Smt. Chandri had been closed.

10. Mr. Biraja Mahapatra, Ld. Counsel appearing on behalf of the respondents submits that once the file is closed on any ground, then it cannot be re-opened. To strengthen his arguments, Ld. Counsel has relied upon a case of Govt. of NCT of Delhi v. Smt. Veerwati, LPA No. 101/2010 and Govt. of NCT of Delhi v. Narain Singh, LPA 461/2010, whereby in Para 16, the Division Bench of this Court observed as under:

"16. Learned counsel for the appellant had relied upon the Division Bench judgment of this Court in Raj Karan and Others Vs. Land and Building

Department and Another, wherein it was held that as per the policy of the respondents a closed case cannot be re-opened. However, on going through this judgment one would notice that the applicant in that case had not been diligent in pursuing their case for alternate plot and even the documents called by the Department were not supplied within the reasonable time. The Court, in that case, further found that when the case was closed for non-furnishing of the documents, in the year 1993, on an application filed by the appellant Raj Karan, thereafter another application was filed in September, 2002 by his brother Om Prakash suppressing the fact of earlier application and its closure in the year 1993. Thus, even second application, which was rejected, was not for re-opening earlier case closed in 1993, but fresh application for allotment, which was rightly considered to be barred in view of the policy decision."

11. Ld. Counsel has also relied upon a case of Raj Karan and Others Vs. Land and Building Department and Another, , the Division Bench of this court observed as under:

"7. As per policy of the respondents, a closed matter cannot be re-opened.

8. On 5th September, 2002, one Mr. Om Prakash stated to be the son of Sh. Jai Lal claiming to be the co-owner of the acquired land, had applied for the alternative plot suppressing the fact that on earlier occasion, his brother Sh. Raj Karan had applied for the alternative plot and that the case was closed in the year 1993. However, despite the said fact the application filed by Sh. Om Prakash dated 05.9.2002, was considered and rejected by the Land Allotment Committee on the ground that the application was time barred being filed after prescribed last date 1st May, 1989. The scheme of the respondents for allotment of alternative plot also envisages that a closed case should not be re-opened and the same does not vest any right for allotment of an alternative plot. The appellants could have been allotted alternative plots, if they fulfilled eligibility conditions and had complied with the prescribed terms and conditions as per the policy. The appellants have failed to fulfill the conditions stipulated in the policy. We find no reason to interfere with the order passed" by the learned Single Judge."

12. Ld. Counsel has also produced the record whereby it is established that the Department had sent a communication to Smt. Chandri and since, there was no reply from her side, the file was closed.

13. The question is to be determined by this court is that, if a file for allotment of alternative plot is closed whether that can be re-opened or not.

14. Similar issue came before this Court in the case of Narain Singh v. Govt. of NCT of Delhi in W.P.(C) 3587/2007 decided on 06.11.2009, wherein this court observed as under:

"4. The respondents then, for which there is no explanation, kept quiet about 3 years and in April, 1997 the petitioner was called for clarification. The petitioner

appeared before the respondents on 30th April, 1997 and furnished relevant documents. The petitioner wrote a request letter/application dated 21st September, 1998 with the request that the application for alternative allotment should be processed expeditiously.

5. On 25th January, 2000, the respondents issued notice to the petitioner to furnish documents, which the petitioner had already furnished. The petitioner responded to this letter on 10th March, 2000 stating that all documents mentioned in the said letter had already been furnished. A reminder dated 4th April, 2000 was also sent.

6. The petitioner, however, did not hear any response from the respondents and in February, 2006 the petitioner's son moved an application under the Right to Information Act, 2005 regarding the status of the petitioner's file. On 3rd May, 2006, the petitioner's son was informed that the request of the petitioner for re-opening of the case was still pending consideration and no documents were required to be filed by the petitioner.

9. As noticed above, the petitioner had made an application for re-opening of the closed case in 1994, four years before the policy decision was taken on 11th October, 1998. In normal course, the respondents should have disposed of and decided the application for re-opening within a reasonable time much before 11th October, 1998. As noted, the respondents had adopted policy dated 11th October, 1998 as claims for allotment, alternative plot cannot be stretched and delayed. Inaction and delay by the respondents in acting upon and considering the application for re-opening from 25th August, 1994 till 11th October, 1998 is not justified. All along, the petitioner has been writing and corresponding with the respondents from 1994 onwards under the hope that his application is still being processed. I do not think in, 2007 the respondents can now turn around and say that the entire exercise undertaken by the petitioner right from 1994 onwards is rendered fruitless because four years after the petitioner had made an application for re-opening, a policy decision was taken not to re-open the closed cases. The delay, therefore, in disposal of the application for re-opening after it was filed in August, 1994 till October, 1998 was due to the fault of the respondents and the petitioner cannot be penalized and punished for the same.

10. In view of the aforesaid, the writ petition is allowed and the respondents are directed to consider the application for allotment of alternative land/plot on merits in accordance with law without being influenced by the policy decision dated 11th October, 1998. The application of the petitioner will be disposed of within a period of two months from the date copy of this order is received."

15. In the case of Raj Karan (Supra) as relied upon by the Ld. Counsel for the respondent No. 1, application was dismissed on the ground of time barred as well as for not furnishing the relevant documents. In the case of Veenavati (Supra), while relying upon the dictum of Raj Karan (Supra) it is held that as per the policy of the respondent No. 1, closed case cannot be reopened.

16. Admittedly, the application of Late Smt. Chandri for allotment of alternative residential plot was closed on 20.01.1992 as is verified from the report produced by respondent No. 1. The petitioner being the legal heir of Smt. Chandri made an application on 05.02.1997 for re-opening of the case.

17. It is admitted fact that from the date of decision taken by respondents on 11.10.1998 that up to 2000 cases, the closed cases were re-opened and since 2000 respondent No. 1 has stopped to reopen the cases, whereas the petitioner made an application for re-opening of the case on 05.02.1997, prior to year 2000 but denied to re-open.

18. The facts of the present case are similar to the case of Narain Singh (Supra) as narrated in Para 8 of the said Judgment.

19. Therefore, keeping in view the parity and in the interest of justice, I direct the respondent No. 1 to decide the application of the petitioner for allotment of alternative of residential plot as per his eligibility within two months from today. The decision taken by the respondent No. 1 shall be communicated to the petitioner within one week thereafter.

20. Needless to state that if the petitioner is still aggrieved with the decision taken by the respondent No. 1, he shall be at liberty to approach the appropriate forum. Accordingly, instant petition is allowed with no order as to costs.