

# Jai Bhagwan vs Govt Of Nct Of Delhi Land & Building ... on 11 January, 2023

**Author: V. Kameswar Rao**

**Bench: V. Kameswar Rao**

\$~34

\* IN THE HIGH COURT OF DELHI AT NEW DELHI  
+ LPA 623/2018, CM APPLs. 38800/2019, 38801/2019, 38802/2019  
REVIEW PET. 347/2019  
JAI BHAGWAN

Through: Mr. Naresh K. Daksh, Adv.

versus

GOVT OF NCT OF DELHI LAND & BUILDING DEPARTMENT

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE GAURANG KANTH

ORDER

% 11.01.2023 CM APPL. 38800/2019 (for exemption) Exemption allowed subject to all just exceptions.

Application stands disposed of.

1. This review petition has been filed by the appellant seeking review of order dated November 02, 2018, passed by this Court in LPA 623/2018, whereby the applicant had challenged the order dated August 23, 2018 of the learned Single Judge, which was dismissed.

2. At the outset, we may state that the appellant had filed an Special Leave Petition being SLP(C) No.4719/2019, which was listed before the Supreme Court on February 18, 2019 and the said SLP was withdrawn by learned counsel for the appellant and the order reads as under:-

"After some arguments, learned counsel for the petitioner sought permission to withdraw this petition. Permission granted. The Special Leave Petition is, accordingly, dismissed as withdrawn."

3. The case as setup by the appellant is that, Chhotu Ram, the grandfather of the appellant was the recorded owner and was in possession of the agriculture land situated in village Masoodpur, Delhi. Vide an award dated December 22, 1980; the said land was acquired by the respondent for planned development of Delhi. The possession of the land was taken and compensation was paid to Chhotu Ram in 1982. After completion of the acquisition, pursuant to the Rehabilitation Scheme of 1961, the grandfather of the appellant had applied for an alternative plot and submitted an application on

March 25, 1982, due to the pendency of the Shri Bhuri & Ors. v. UOI & Ors., C.W. No.1556/1980, filed by some third party, stay was granted by this Court against the possession.

4. It was the case of the appellant that due to the pendency of the writ petition, neither the application of Chhotu Ram was processed nor any communication was sent by the respondent to Chhotu Ram and/or to his legal heirs. Chhotu Ram expired on August 03, 1984. Shiv Charan, father of the appellant, under the belief that, Chhotu Ram had not applied, submitted application, being F.32 (44)/18/86/L&B/Alt., on October 20, 1986. The respondent considered and processed the said application.

5. However, during the pendency of consideration, Shiv Charan also expired on November 15, 2001. The appellant herein, applied for substitution of his name, as all other legal heirs relinquished their rights in favour of appellant and accordingly, name of appellant was substituted by the respondent. The stay in Shri Bhuri & Ors. (supra), was vacated and the SLP, thereof, was also dismissed and the respondent took over the possession of the land, which according to the appellant was on January 11, 1997.

6. It is contended by the appellant that the respondent had concluded as Chhotu Ram did not apply for alternative plot, his legal heirs have no right to apply, and accordingly, the application submitted by Shiv Charan in 1986, was rejected vide decision dated November 20, 2012, which was challenged by the appellant in Jai Bhagwan vs. Land and Building Department & Anr., W.P.(C) No.137/2013, which petition was dismissed by holding that, since Chhotu Ram did not apply for alternative plot, his legal heirs have no right to apply, vide judgment dated July 21, 2016.

7. After dismissal of writ petition, the appellant learnt from villagers that, his grandfather had applied for alternative plot and accordingly, the appellant made efforts to get details and applied for information under Right to Information Act, and got all the documents and application pending before the respondent. After getting the said documents from respondent, the appellant filed an application for review / modification of the order passed by this Court, pointing out about application submitted by Chhotu Ram. However, this Court declined to review / modify the Judgment / Order dated July 21, 2016. Thereafter the appellant withdrew the review petition. The Court had granted liberty to take appropriate action concerning the application submitted by Chhotu Ram.

8. It was pursuant to the liberty granted by this Court, the appellant submitted a representation dated November 16, 2017, to the respondent for consideration of the said application submitted by Chhotu Ram. The respondent declined to consider the application filed by Chhotu Ram. The said decision of the respondent resulted in appellant filing a writ petition being Shri Jai Bhagwan vs. Govt. of NCT of Delh, W.P.(C) No.8488/2018. The said writ petition was dismissed by the learned Single Judge of this Court vide order dated August 23, 2018, which became the subject matter of an Intra-Court appeal before this Court, that is, this appeal.

9. The submission of Mr. Daksh, learned counsel for the appellant is that the conclusion arrived at by the learned Single Judge that the application submitted by Chhotu Ram was rejected in 1987 and

the writ petition filed in the year 2018, suffers from delay and laches, is a perverse finding.

10. According to him, no document has been placed on record to show that the application of Chhotu Ram was actually rejected in 1987 and this itself is a ground for this Court to review the order passed by this Court on November 02, 2018. In support of his submission, he has referred to the judgment of the Division Bench of this Court in the case of Trilok Chand Tyagi v. Delhi Development Authority and Ors., 68 (1997) DLT 544 (DB), wherein, the Court has held that, when two applications are submitted for alternative plot, the respondent is bound to consider at least one application and cannot reject both. He also stated that the Court had failed to consider the law laid down by this Court in LPA No. 276/2017 titled Shri Jai Bhagwan vs Land & Building Department and LPA No. 317/2017 titled Prem Kala vs Land & Building Department dated November 08, 2017, wherein, it is held that, once the respondent department has kept the applications pending and these are not rejected, respondent is bound to consider the same on merits.

11. We are not convinced with the grounds urged by Mr. Daksh in support of the prayer seeking review of the order dated November 2, 2018, for the reason that a perusal of the order dated August 23, 2018 of the learned Single Judge, it would reveal that the learned Single Judge had concluded that the possession of the subject land relatable to Chhotu Ram was taken in the year 1987 and the application of Shiv Charan, father of the appellant was dismissed because of the entitlement of an alternative plot was of Chhotu Ram.

12. It is stated by Mr. Daksh that, Chhotu Ram's application filed in the year 1982, was in fact not decided, rather, a stand has been taken by the respondent that Chhotu Ram has not submitted any application, which is an incorrect stand.

13. We find, this plea of Mr. Daksh, has no effect on the merit of the conclusion arrived at by the learned Single Judge and also this Court, inasmuch as, the learned Single Judge, in his order dated August 23, 2018, has in paragraphs 2, 3 and 4, held as under:-

"2. Counsel for petitioner submits that review was sought on the ground that from information received under Right to Information Act, 2005, petitioner had learnt that the application (Annexure P-3) by Chhotu Ram for allotment of alternate plot in lieu of acquired land, was filed way back in March, 1982. It is a matter of record that possession of the subject land was taken way back in the year 1987 and application filed by Shiv Charan was dismissed because the entitlement to allotment of alternate plot was of Chhotu Ram. Counsel for petitioner relies upon a Division Bench decision in Trilok Chand Tyagi Vs. Delhi Development Authority & ors. 68 (1997) DLT 544 (DB) to submit that Chhotu Ram's application for allotment of alternate plot ought to be considered. Attention of this Court is drawn to office noting (Annexure P-5) colly to submit that Chhotu Ram's application for allotment of alternate plot was kept pending in the year 1986 to await the outcome of pending litigation, which was not initiated by said Chhotu Ram.

3. The opposition to this application by counsel for respondent is on the ground that this petition is badly hit by delay and laches. It is pointed out that records pertaining to application of Chhotu Ram are not available.

4. Upon hearing and on perusal of impugned order (Annexure P-1) and the material on record, I find that though Chhotu Ram had applied for allotment of alternate plot in the year 1982 and as per office noting, the consideration of his application was deferred on 18th January, 1986 to await the outcome of pending litigation and as per the copy of certificate of 1st October, 2007 on record, the possession of subject land stood transferred to the concerned department. To say the least, Shiv Charan was ill advised to file application for allotment of alternate plot, as the application of the land owner only i.e. Chhotu Ram, whose land stood acquired, was maintainable. By pursuing the application filed by Shiv Charan, the right which was available to Chhotu Ram stands defeated as after an inordinate delay of more than three decades, it is unreasonable to now call upon respondent to consider application of Chhotu Ram for allotment of alternate plot. Supreme Court in *Pepsu Road Transport Co. Patiala vs. S.K. Sharma & Ors.*, (2016) 9 SCC 206 has reiterated that denial of relief on the plea of delay and laches is justified in a case where there is no satisfactory explanation for the delay occasioned. In the instant case, inordinate delay is not explained. Since the records pertaining to the application filed by Chhotu Ram are not available, reliance placed by petitioner's counsel upon Division Bench decision in *Trilok Chand Tyagi (Supra)* is misplaced, as in the said case, two applications were made by same persons, whereas in the instant case, the second application has been filed by son of Chhotu Ram, which was clearly not maintainable."

(Emphasis supplied)

14. Even this Court has rejected the appeal by noting that the writ petition, per-se, filed by the appellant was hit by delay and laches and the justification given by the appellant to explain the delay did not weigh with the learned Single Judge. Even the plea, now urged, is a reiteration of the plea which was already urged before us and the learned Single Judge. The same shall not make the review maintainable, as the same shall amount to challenging the order passed by us on merit. Moreover, the judgment relied upon by Mr. Daksh in the case of *Trilok Chand Tyagi (supra)* was considered by the learned Single Judge. Even the judgments relied upon by Mr. Daksh in the case of *Shri Jai Bhagwan (2018) (supra)* and *Prem Kala (supra)* have no applicability to the facts of this case, as the said judgments have been cited, because of the application purported to have been submitted by Chhotu Ram in the year 1982 has not been considered. Surely, no direction can be issued in the year 2023 for considering the application after 41 years. Moreso, when Chhotu Ram in his lifetime has not approached the Court seeking a direction. The appellant is the grandson of Chhotu Ram and cannot seek a prayer for consideration of the application filed by Chhotu Ram, when appellant's father (son of Chhotu Ram) himself had no right for alternate plot and in fact his application has been rejected. Granting the relief, shall have the effect of directing consideration of the request of the petitioner for grant of alternate plot, which shall be impermissible when Chhotu

Ram has expired long back.

15. That apart, the fact that the appellant had approached the Supreme Court and withdrew the appeal, without seeking liberty of the Court to file a review petition before this Court, is also a reason for us to not entertain the review petition. The same is dismissed. Any pending application(s) is also dismissed as infructuous.

V. KAMESWAR RAO, J GAURANG KANTH, J JANUARY 11, 2023/ak