

HIGH COURT OF MADHYA PRADESH, JABALPUR**W.A. No.655/2020**

Jabalpur Development Authority and another

-Versus-

Deepak Sharma and others

CORAM:-

Hon'ble Shri Justice Mohammad. Rafiq, Chief Justice.

Hon'ble Shri Justice Vijay Kumar Shukla, Judge.

Whether approved for reporting ? Yes/Not.

Shri Siddharth Sharma, Advocate for the appellants.

Shri Ashish Shrotri, Advocate for the respondent No.1

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| Whether approved for reporting? | Yes. |
| Law laid down | <i>Even if the court or Tribunal direct for consideration of representations relating to a stale claim or dead grievance , it does not give rise to a fresh cause of action. Similarly, a mere submission of representation to the competent authority does not arrest time.</i> |
| Significant paragraph Nos. | 10, 11 & 12. |

JUDGMENT**(Jabalpur: 08-02-2021)****Per: V.K.Shukla, J.**

The present intra court appeal is filed under Section 2(1) of M.P. Uchcha Nyayalaya (Khand Nyaya Peeth Ko Appeal) Adhiniyam, 2005, being aggrieved by the judgment dated 22-01-2020 passed in W.P. No.9909/2018 (*Deepak Sharma Vs. Jabalpur Development Authority and*

another) passed by the learned Single Judge, whereby the impugned orders dated 04-08-2012 and 31-03-2018 have been quashed. It has been further directed that the allotment order of plot in question shall be made in favour of the writ petitioner and the possession of the said plot be also handed over to him after completing all requisite formalities and also taking difference amount from him as per the rate quoted by him at the time of submitting his offer.

2. The facts adumbrated in nutshell are that respondent no.1 Deepak Sharma filed a writ petition under Article 226 of the Constitution of India praying for quashment of orders dated 04-08-2012 and 31-03-2018 withdrawing the earlier resolution, by which the plot was decided to be allotted to the petitioner therein, as well as the order rejecting the representation of the petitioner. The facts further reveal that an advertisement was issued on 01-03-2012 inviting offers in respect of Plot No.936-B, area 4675 sq.ft. situated at Scheme No.6, Sanjeevni Nagar, Jabalpur. The respondent no.1 submitted his offer at the rate of Rs.827/- per sq.ft. Two other applicants also submitted offers at a lower rate i.e.Rs.818/- and 821/- per sq.ft. In pursuance to the offer made by the respondent no.1, the matter was taken up in the meeting of Board of Directors on 15-06-2012 and it was resolved to reserve the plot for allotment in favour of the respondent no.1. Large number of complaints were received in respect of financial irregularities in allotting the plot to the respondent no.1 at a throwaway price without giving wide

publicity to the notice inviting offer. It is stated that the notice inviting tender was not published in widely circulated news paper i.e. Dainik Bhaskar and Nai Duniya etc. The complaints were scrutinized and it was decided that the earlier resolution dated 15-06-2012 made in favour of the respondent no.1 be recalled and the matter be placed before the Allotment Committee afresh. After taking the decision recalling the reservation made in favour of the petitioner, the security amount deposited by the respondent no.1 was returned on 04-08-2012. The respondent no.1 thereafter filed a writ petition i.e. W.P. No.15148/2012. However, the said writ petition was withdrawn on 10-05-2013 with a liberty to file a fresh writ petition. According to the appellant for almost 4 years, no writ petition was preferred and the appellant-Jabalpur Development Authority issued a fresh advertisement for the plot in question in the year 2018. The respondent no.1 in the year, 2018 preferred another writ petition i.e. W.P. No.5095/2018 and the same was disposed of by an order dated 07-03-2018 with a direction to the respondents to decide the petitioner's representation within a period of 60 days. The petitioner's representation was rejected and thereafter the third petition was preferred i.e. W.P. No.9909/2018, which has been allowed by the impugned order.

3. Learned counsel for the appellant submitted that no right in favour of the respondent no.1 had accrued because no letter of allotment was issued in favour of the respondent no.1 at any point of

time. Merely because a decision was taken to allot the plot in favour of the respondent no.1, it would not mean that right was created in favour of the respondent no.1. It is further urged that the Board of Directors, being the final authority is certainly free to take final decision in the matter. Since no right was crystallized in favour of the respondent no.1, therefore, in the year 2012 itself, the security deposit was returned to the respondent no.1. It has also been submitted that the amount offered by the respondent no.1 was about Rs.38,00,000/- whereas pursuant to the subsequent advertisement issued in the year 2018, the amount offered in respect of the same plot was about Rs.1.00 crore. The plot was allotted to Poonam Soni and Kapil Soni vide allotment letter dated 10-04-2018, however the subsequent allottees were not made parties in the writ petition.

4. Learned counsel for the appellant argued that there was a delay in filing the petition and, therefore, no relief could have been granted by the learned Single Judge. The question which has cropped up for consideration is whether there was a delay in filing the instant writ petition.

5. Learned counsel for the respondent-writ petitioner submitted that the Board cancelled the allotment of the plot on 04-08-2012. The petitioner immediately filed a writ petition i.e. W.P.No.15148/2012. An order of status quo was passed by the learned Single Judge on 12-09-2012. The petitioner has simultaneously approached the State

Government . He was assured that necessary directions would be given to the JDA in the matter and therefore, the petition was withdrawn by filing an application for withdrawal of the petition on 30-04-2013. The petition was dismissed as withdrawn granting liberty to the petitioner to file a fresh writ petition on 10-05-2013. On 31-07-2015, the Government directed the JDA to consider the matter. The petitioner made representations to the JDA on 09-12-2015, 09-12-2016 and 05-06-2017. According to him, no reply was given one way or the other and on the contrary, the JDA re-advertised the auction of the plot. The petitioner filed second petition W.P. No.5095/2018 on 27-04-2018. The said petition was disposed of to reconsider the matter, as the JDA also agreed to reconsider the matter and therefore, now the appellant-JDA is stopped from raising the objection of the delay.

6. It is submitted that when the Government had directed the authority to consider the case by order dated 31-07-2015, the authority of its own should have considered the matter and passed appropriate orders. Even though, the representation was made soon after the Government passed the order, followed by successive representations, but the appellant authority did not pass any order one way or the other. The petitioner then filed the writ petition as submitted above. It is urged that there is no such delay to dis-entitle him from the relief sought. Secondly, it is the inaction on the part of the appellant-JDA, which is responsible for the delay, if any. In support of his submissions, he

placed reliance on the judgment passed in the case of **Raghubir Singh Vs. Union of India, 2003(5) M.P.L.J. 469.**

7. In rebuttal to the aforesaid submissions, learned counsel for the appellant submitted that there was no assurance given by the appellant or the State Government for reconsideration of the case of the petitioner and the reasons best known to the petitioner, he withdrew the writ petition on 10-05-2013 with a liberty to file a fresh petition. For almost 4 years, no writ petition was preferred and the appellant-JDA issued a fresh advertisement for the plot in question in the year 2018. Only when the fresh advertisement for the plot in question was issued in the year 2018, then the petitioner preferred another writ petition W.P. No.5095/2018 and the same was disposed of by an order dated 07-03-2018 with a direction to the respondents to decide the petitioner's representation within a period of 60 days. Thereafter, the petitioner's representation was rejected and the third petition W.P. No.9909/2018 was preferred.

8. Upon perusal of the records, we do not find that there was any assurance given to the petitioner for reconsideration of his allotment after having been cancelled by the Board of Directors. In the present case, no letter of allotment was issued in favour of the respondent no.1 at any point of time. Merely because a decision was taken to allot the plot in favour of the respondent no.1, it would not mean that right was created in favour of the respondent no.1, the Board of Directors,

being the final authority has taken a final decision in the matter not to allot the plot to the writ petitioner considering the complaints that wide publicity was not given to the previous auction and the same was decided to settle the same in favour of writ petitioner on throwaway price. Further no right was crystallized in favour of the respondent no.1, therefore, in the year 2012 itself, the security deposit was returned to the respondent no.1. The first petition was filed in the year 2012 challenging the order dated 04-08-2012 which was registered as W.P. No. 15148/2012, however, the said writ petition was withdrawn by the respondent no.1 on 10-05-2013 and thereafter the petitioner did not take any step in the matter for a period of almost 4 years. Mere submission of the representations would not grant any benefit to the respondent no.1 specially when his rights were not crystallized and no right of allotment had accrued in his favour. Further, no assurance was given for allotment by the appellant. In the year 2018 by filing second writ petition W.P. No.5095/2018, challenged the action of the respondents of issuance of the fresh tender and the said petition was disposed of directing the appellant to decide the representation of the respondents. This itself, would not condone the delay and laches on the part of the petitioner as for a period of 4 years, the petitioner did not file any fresh writ petition after withdrawal of the first petition on 10-05-2013.

9. The plot in question has been subjected to disposal by issuing fresh NIT. The petitioner did not participate in the fresh tender in

pursuant to the subsequent advertisement issued in the year 2018. The amount offered in respect of the same plot is about Rs. 1.00 crore as against the offer of the respondent no.1 about Rs. 38,00,000/-. The plot has already been allotted to one Poonam Soni and Kapil Soni, the intervenors vide allotment letter dated 10-04-2018. Merely because the petitioner had participated in respect of NIT of the year 2012 and decision was taken to allot the plot in question to him would not confer any right to him specially when the Board of Directors had taken a decision to cancel the said decision in the year 2012 itself for the reasons stated earlier. The security amount deposited by the respondent no.1 was also returned to him in the year 2012 itself. The appellant has received subsequent offer more than three times than the offer of the petitioner. The petitioner has been in slumber for a period of five years from the year 2013 to the year 2018. The allotment has already been made to the subsequent allottees and the rights have accrued in their favour. The offer of the subsequent allottees is about Rs. 1.00 crore in comparison to the offer of the respondent no.1 of about Rs. 38,00,000/-. Merely because some representations were given, the representations itself would not constitute the reason for condoning the delay and laches. From the facts, it has been established that no letter of allotment was issued in favour of the respondent no.1 at any point of time. Merely because a decision was taken to allot the plot in favour of the respondent no.1 which has been subsequently withdrawn by the Board of

Directors would not mean that any right was created in favour of the respondent no.1. The Board of Directors being the final authority was free to take final decision in the matter and no right was crystallized in favour of the respondent no.1 and therefore, we do not find any illegality in the order/decision of the respondent dated 04-08-2012 and rejecting the representation dated 31-03-2018. Apparently, the petition suffers from delay and laches as the decision to cancel the offer of the petitioner was taken on 04-08-2012. Because of the delay and laches on the part of the respondent, the price of the plot has already gone up three times than the offer made by the respondent no.1. The subsequent offers have been accepted and the plots have been allotted to the intervenors.

10. In the case of **NDMC Vs. Pan Singh 2007 9 SCC 278**, the Apex Court has opined that though there is no period of limitation providing for filing a writ petition under Article 226 of the Constitution of India, yet ordinarily a writ petition should be filed within a reasonable time.

11. In **C. Jacob Vs. Director of Geology and Mining (2008) 10 SCC 115**, the Apex Court while dealing with the concept of representations and the directions issued by the Court or Tribunal to consider the representations and the challenge to the said rejection thereafter. In that context, the court has expressed thus: -

“Every representation to the Government for relief, may not be replied on merits. Representations relating to matters which have become stale or barred by limitation, can be rejected on that ground alone, without

examining the merits of the claim. In regard to representations unrelated to the Department, the reply may be only to inform that the matter did not concern the Department or to inform the appropriate Department. Representations with incomplete particulars may be replied by seeking relevant particulars. The replies to such representations, cannot furnish a fresh cause of action or revive a stale or dead claim.”

12. In the case of Union of India Vs. M.K.Sarkar (2010)2 SCC 59 this Court after referring to C. Jacob (supra) has ruled that :-

“When a belated representation in regard to a “stale” or “dead” issue/dispute is considered and decided, in compliance with a direction by the court/tribunal to do so, the date of such decision cannot be considered as furnishing a fresh cause of action for reviving the “dead” issue or time-barred dispute. The issue of limitation or delay and laches should be considered with reference to the original cause of action and not with reference to the date on which an order is passed in compliance with a court’s direction. Neither a court’s direction to consider a representation issued without examining the merits, nor a decision given in compliance with such direction, will extend the limitation, or erase the delay and laches.”

13. In Karnataka Power Corpn. Ltd. through its Chairman & Managing Director v. K. Thangappan and another (2006) 4 SCC 322, the Court took note of the factual position and laid down that when nearly for two decades the respondent-workmen therein had remained silent mere making of representations could not justify a belated approach.

14. In State of Orissa v. Pyarimohan Samantaray (1977) 3 SCC 396 it has been opined that making of repeated representations is not a satisfactory explanation of delay. The said principle was reiterated in **State of Orissa v. Arun Kumar Patnaik (1976) 3 SCC 579.**

15. From the aforesaid authorities it is clear as crystal that even if the court or Tribunal directs for consideration of representations relating to a stale claim or dead grievance, it does not give rise to a fresh cause of action. Similarly, a mere submission of representation to the competent authority does not arrest time.

16. The judgments relied by the learned counsel for the respondent would not render any assistance to the facts of the present case as in the present case no right had accrued in favour of the petitioner.

17. In view of the aforesaid, we find that the learned Single Judge has erred while setting aside the decision of the appellant and the allotment made in favour of the subsequent allottees and directing for handing over the possession of the plot in question after completing all requisite formalities to the writ petitioner.

18. Accordingly the writ appeal is allowed and the writ petition is dismissed.

**(MOHAMMAD RAFIQ)
CHIEF JUSTICE**

**(VIJAY KUMAR SHUKLA)
JUDGE**

hsp.

