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

% **Judgment reserved on : 22 October 2024**[1]
Judgment pronounced on:08 January 2025

\+ W.P. (C) 1444/2004

M/S KALSI FINANCE PVT. LTD. ..... Petitioner
Through: Mr. Rajiv Kumar Ghawana, Mr. Ashish Choudhary & Mr. Sachin Choudhary, Advs.

versus

D. D. A. ..... Respondent
Through: Ms. Chand Chopra & Ms. Yogya Sharma, Advs.

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA

<u>J U D G M E N T</u>

1. The petitioner firm is invoking the extra ordinary jurisdiction of this Court under Articles 226 and 227 of the Constitution of India, 1950, seeking the issuance of an appropriate writ or direction for quashing of the impugned order dated 07/13.10.2003, passed by the His Excellency Lieutenant Governor/Director (Lands), and further seeking quashing of the demand of the composition fee amounting to Rs. 39,75,657/- in respect of Plot No. B-96/3, Naraina Industrial Area, Phase-1, New Delhi (*hereinafter referred as 'the plot in question')*. The petitioner firm also seeks a direction requiring the respondent to refund the amount of Rs. 3,54,302.65/-, which was wrongly charged to the petitioner as an unearned increase.

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[1] Clarifications sought on 22.10.2024 and Judgment reserved.

BRIEF FACTS

2. It is the case of the petitioner firm that it was originally conducting its business at premises located at No. 119, Idgah, Motia Khan, Delhi. However, the said premises was declared non-confirming for industrial use as per MPD-1962[2]. In light of this, the DDA[3], under the statutory scheme of Large-Scale Acquisition and Disposal, offered the petitioner the plot in question in a confirming area. At the time of the allotment, the petitioner firm was a part of M/s Matchless Appliances (India), a partnership firm comprising of the petitioner firm along with Sh. Harbans Singh, and Sh. Jaswant Rai Saggi.

3. A demand letter dated 30.04.1969 was issued by the DDA, informing the petitioner of the allotment and requiring payment of half of the total premium for the plot in question. However, the allotment was subsequently cancelled by the DDA through a letter dated 29.09.1970, citing the petitioner firm's failure to make the required payment of the premium. The petitioner firm transitioned into a sole proprietorship on 03.03.1971, and the petitioner firm sought substitution of its status as a sole proprietor with the DDA well in advance of taking possession of the plot in question. The petitioner made the payment on 31.03.1971.

4. On 08.09.1971, the DDA informed the petitioner firm that the request to transfer the allotment to M/s. Kalsi Finance Pvt. Ltd. would be granted upon submission of an Indemnity Bond on a Rs. 10/- non-

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[2] Master Plan of Delhi, 1962
[3] Delhi Development Authority

judicial stamp paper. The petitioner firm promptly submitted the bond, but the DDA unjustifiably delayed the transfer without an explanation.

5. The cancellation of the plot remained effective until 1977, as evidenced by the respondent's letters dated 01.10.1976 and 20.12.1976, wherein it was explicitly stated that the allotment had been restored, subject to the payment of the restoration charges amounting to Rs. 600/-. The petitioner firm duly paid the said restoration charges on 28.02.1977 and the cancellation of the plot remained in force until 28.02.1977, when the restoration charges were paid. It is pertinent to note that the petitioner firm became aware of the cancellation for the first time in 1976, despite having consistently pursued the substitution of the allotment in favour of M/s. Kalsi Finance Pvt. Ltd., as per the agreement dated 03.03.1971.

6. Disputes arose between the partners of the firm, which led to the filing of Suit No. 31-A/1968 before this Court, and by order dated 19.10.1979, the disputes were settled, and the agreement dated 03.03.1971 was duly acknowledged.

7. During the allotment of the plot in question, the Urban Land (Ceiling and Regulation) Act[4] was in force, requiring the petitioner firm to obtain an NOC[5] from the competent authority under the ULCR Act, prior to commencing any construction. Following the restoration of the plot in question, the petitioner approached the authorities on 11.08.1980, seeking the necessary exemption under the law to proceed with construction. The Under Secretary (ULCR), Delhi

[4] ULCR Act

[5] No Objection Certificate

Administration, by letter dated 10.09.1980, directed the petitioner to submit an attested copy of the title document i.e. the lease deed, as the authorities were unable to grant the exemption without it, in accordance with the requirements of the Act.

8. The DDA, despite being aware of the Agreement dated 03.03.1971 and this Court’s order dated 19.10.1979, issued a letter on 26.05.1980 to the Under Secretary, Delhi, recognizing M/s. Kalsi Finance Pvt. Ltd., Shri Harbans Singh and Shri Jaswant Rai Saggi as partners in the firm, in proportion to their previous interests, which was contrary to the Compromise Agreement of 03.03.1971 approved by this Court's order dated 19.10.1979, whereby the petitioner firm had already become the sole proprietor of the firm effective from 03.03.1971.

9. The petitioner firm had been consistently pursuing the execution of the Lease Deed with the DDA, recognizing necessary changes, yet no Lease Deed has been executed till date. Despite the repealing of the ULCR Act in 1999, due to the negligence of the DDA the petitioner firm was forced to seek the lease deed and exemption under the ULCR Act until its repealing. The period from 1980 to 1999 was entirely wasted due to the DDA's inaction, leaving the petitioner firm unable to construct on the plot without the required exemption from the ULCR authorities.

10. The DDA raised a demand of Rs. 3,54,203.65/- for unearned increase and interest based on a change in the firm's constitution. The petitioner firm paid the said amount to the DDA on 15.01.1999. Any

formal recognition of M/s. Kalsi Finance Pvt. Ltd. as sole proprietor should have been effective from 03.03.1971, without charging the unearned increase, as the change occurred before the payment of any premium and prior to the possession of the plot, duly communicated to the DDA in March 1971. Despite this, the DDA only recognized the firm's ownership on 14.03.2001 and subsequently, issued an arbitrary demand of Rs. 39,75,657/- on 31.05.2001 as a composition fee for the delay in constructing on the plot.

11. The petitioner firm requested DDA to execute the Lease Deed in its favour and to grant an extension of time in carrying the construction on the plot in question. On 14.03.2001, the DDA allowed the substitution and recorded the plot in favour of the petitioner firm.

12. Aggrieved by DDA's actions, the petitioner firm filed a writ petition before this Court and *vide* order dated 28.01.2003 the DDA was directed to pass a reasoned order on the petitioner's representation dated 01.04.2002, after considering all points raised in the personal hearing and communicate it to the petitioner. In compliance, the petitioner appeared before the Director (Lands), DDA, and explained that the delay in construction was due to the DDA's inaction in executing the lease deed, and the ULCR authorities' failure to issue the NOC. The absence of the lease deed, a prerequisite for the NOC, prevented the petitioner firm from applying for sanctioning of the plan, as the NOC from the ULCR authorities was mandatory. The representation of the petitioner firm was rejected by the DDA *vide* the order dated 07.10.2003. Hence, this writ.

<u>SUBMISSIONS ADVANCED AT THE BAR: -</u>

13. It is contended by the learned counsel for the petitioner firm that it is not liable to pay the composition charges, as the plot allotment was cancelled on 29.09.1970 due to non-payment of the premium and was restored on 27.02.1977 after payment of the restoration fee. The petitioner firm notified the DDA of the firm's change in constitution via a letter dated 19.03.1971, but the DDA only acted in 1999, demanding Rs. 3,54,203.65/-, which the petitioner firm paid on 15.01.1999. It is further submitted that due to the DDA's failure to execute the lease deed, the petitioner could not obtain the required NOC under the ULCR Act. Although the ULCR Act was repealed in 1999, the change in the firm's constitution was recognized only on 14.03.2001. It is urged that the period from 1970 to 1977 is also to be excluded, as the plot allotment was cancelled during that time, preventing any construction. It is further urged that the delay from 1980 to 1999 cannot be attributed to the petitioner firm, and this period should also be excluded.

14. Reliance has been placed on a decision by this Court in **Hamdard (Wakf) Laboratories (India) v. DDA**[6], wherein it was explicitly held that the period of granted exemptions must be considered for determining the applicable slab year. Additionally, it was held that the entire period consumed due to the proceedings under the ULCR Act should be excluded when calculating any delay. Furthermore, as the petition challenging the demand was pending, the petitioner firm was entitled to an extension of time for completing the building without the imposition of any compensation.

15. It is also submitted that during the pendency of the present matter, the DDA increased the demand for composition charges to Rs. 21,29,82,698/- in 2010, which exceeds the current market value of the plot in question and is in stark contradiction to the decision of this Court in ***Hamdard (Wakf) Laboratories (India) (Supra)***, where it was held that time consumed in litigation cannot be counted for levying composition charges. Furthermore, under the new policy, the demand for composition charges cannot exceed 50% of the market value of the plot.

16. *Per contra*, it is submitted by the learned Counsel for the DDA that it was on 24.07.1980, the petitioner firm for the first time informed the DDA that by way of the order dated 19.10.1979, that the disputes between the partners of the firm was settled. It is further stated at the Bar that on 19.03.2001, a request was made by the petitioner firm for the extension of time for construction till 30.06.2001, wherein the petitioner firm prayed that the date of possession, only for the purpose of belated construction be considered as 26.04.1999.

17. It is submitted that the petitioner firm has suppressed material facts. The petitioner firm intentionally concealed that the DDA had sent multiple communications requesting the submission of essential documents, such as the Clearance Certificate, MCD[7] License, and registered Release Deeds, to process the application and execute the Lease Deed. Despite these requests, the petitioner firm failed to

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[6] W.P. (C) 7372/2002
[7] Municipal Corporation of Delhi

respond. Letters were sent on 13.06.1973, 04.02.1974, 09.09.1974, 05.12.1974, 18.07.1975, and 20.09.1975, with the petitioner firm only providing the required documents in 1977. These communications are relevant for proper adjudication of this petition, yet the petitioner firm has intentionally withheld them in both the petition and oral submissions before the Court. Additionally, the petitioner firm has failed to submit the Terms and Conditions under which the Industrial Plot was allotted.

18. Learned counsel for the DDA also pointed out that via a letter dated 21.06.1981, it requested the petitioner firm to deposit the full premium amount along with the interest accrued due to the delayed payment. However, the petitioner firm responded by expressing willingness to pay the demanded premium with interest, but only based on the 1971-72 rates. It is submitted that determining the applicable premium rates is a policy matter, and the petitioner firm cannot unilaterally decide the rates as per its own preferences.

19. It is argued that the DDA is well within its right to charge Unearned Increase Charges[8] from the petitioner firm. It is submitted that the demand for UEI charges amounting to Rs. 3,54,203.65/- is valid and in accordance with the terms agreed upon by the petitioner firm. These terms clearly state that, in the event of a transfer, 50% of the unearned increase in the plot's value at the time of transfer is payable to the DDA. The UEI charges were imposed due to a change in the constitution of the petitioner firm, in line with the UEI Policy. It is further submitted that the law governing the DDA's authority to

levy UEI charges in cases of transfer, sale, or any other parting with possession is well established. Reliance is placed on the decision in **DDA v. Nalwa Sons**[9]**.** It is submitted that in this case, the initial allotment was made to the partnership firm, M/s Matchless Appliances (I), which had three partners. Several years after the allotment, a change in the firm's constitution occurred, and a transfer was requested in favour of the petitioner firm. Therefore, the DDA was fully entitled to impose UEI charges. Consequently, the DDA is not obligated to refund the UEI charges that were levied and paid by the petitioner.

20. Lastly, it is submitted by the learned counsel for the DDA that the petitioner firm not only failed to pay the required amounts for Composition Charges and UEI but also did not provide the necessary documents to execute the Lease Deed. Despite repeated demands from 1973 to 1977, the petitioner firm failed to submit the requisite documents, only doing so in 1977. In a letter dated 21.06.1981, the DDA requested the petitioner firm to expedite the transfer application by providing a copy of the Partnership Deed dated 23.08.1963 and the Supplementary Agreement dated 14.10.1967, both of which had a reference in the Agreement dated 03.03.1971. However, the petitioner firm took three years to submit these documents, finally doing so between 1984 and 1987. Based on the documents provided, the plot was mutated in the name of M/s Matchless Appliances (I), with M/s Kalsi Finance Pvt. Ltd. recorded as the sole proprietor, as confirmed

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[8] UEI Charges

[9] (2020) 17 SCC 782

in a letter dated 14.03.2001. Until the petitioner clears its dues and submits all required documents, the Lease Deed cannot be executed in its favour.

<u>ANALYSIS & DECISION:</u>

21. I have bestowed my thoughtful consideration to the submissions advanced by learned counsels for the rival parties at the Bar meticulously perused the record.

22. At the outset, while there is no denying the fact that the respondent/DDA, is not free from blame, it is the petitioner firm that is *caught on the wrong foot*, as there have been numerous blemishes in pursuing its legal remedies. This is exemplified by the fact that the plot in question was admittedly allotted on 30.04.1969 in the name of M/s. Matchless Appliances (I), a partnership firm in which the petitioner firm, i.e., M/s. Kalsi Finance Pvt. Ltd., was a partner along with Shri Harbans Singh and Shri Jaswant Rai Saggi. It is also an admitted fact that, since the allottee form failed to make payment of the premium within the stipulated time as per the allotment letter, the allotment was cancelled on 17.08.1970.

23. Although the petitioner firm denies ever receiving any notice of cancellation of the allotment, it is manifest that there were internal wranglings within the allottee firm. The petitioner firm intimated the DDA on 19.04.1971 that a dispute had arisen between its partners, preventing the operation of the allottee firm's account. Simultaneously, it was informed that petitioner firm had become the sole proprietor of the allottee firm pursuant to an agreement dated

03.03.1971, based on which the transfer of the allotment was sought in the name of the petitioner firm.

24. It also appears that, despite the cancellation of the allotment *vide* letter dated 17.08.1970, the possession of the plot in question was admittedly handed over to M/s. Matchless Appliances (I), and a possession letter was issued in favour of the allottee firm on 12.05.1971. Furthermore, even according to the DDA's own admissions, payment of Rs. 7,000/- was made towards the premium of the plot in question on 08.09.1971.Upon such payment, an Indemnity Bond, as demanded by the DDA, was submitted on a non-judicial stamp paper for the substitution of the allotment in the name of the petitioner as proprietor of M/s. Matchless Appliances (I).

25. But that is not the end of the matter, rather, it marks the beginning of the unsavoury narrative of the instant matter. It appears that multiple reminders were sent by the DDA to the allottee firm, requesting the submission of a clearance certificate on 13.06.1973 and, later, an MCD License existing as of 20.12.1965, *vide* letter dated 05.12.1974. If the case of DDA is to be believed, the non-submission of these documents resulted in a delay in the substitution/change of the name of the allottee firm in favour of the petitioner firm. Be that as it may, it is evident, and admitted by the DDA, that restoration charges of Rs. 600/- were paid by the petitioner firm to the DDA on 28.02.1977 towards the allotment of the subject plot.

26. While the petitioner firm blames the DDA entirely for the delay in execution of the lease deed, it conveniently avoids mentioning that the petitioner firm and the erstwhile partners were

engaged in a legal battle.It is borne out from the record that the outgoing partners sent a letter dated 05.03.1977 to the DDA, apprising it that the agreement dated 03.03.1971, submitted by the petitioner firm as the sole proprietor of the allottee firm, was fabricated and requesting that no action be taken on the transfer application. This was followed by another letter dated 07.04.1978, in which the outgoing partners requested that the plot in question not be mutated in favour of the petitioner firm's name and informed the DDA about the order dated 28.02.1978 passed by the High Court, which set aside the Award passed by the Arbitrator in favour of the petitioner firm. The request was reiterated *vide* another letter dated 26.12.1978.

27. In light of the order dated 28.02.1978 passed by this Court, the DDA recognized all three partners as parties in the same proportion as their interests in the allottee firm *qua* the plot in question. It is also then borne out from the record that the petitioner firm informed the DDA about a settlement arrived at between the disputing parties, *vide* order dated 19.10.1978 in Execution Petition No. 56/68 on an application under Order XXIII Rule 3 of the Code of Civil Procedure, 1908 ["**CPC**"], whereby *inter alia* the earlier agreement dated 03.03.1971 executed between the varying parties/partners was recognized. It is also an admitted fact that the registered release deeds by the outgoing partners of the allottee firm were ultimately submitted by the petitioner firm to the DDA only on 31.08.1982 on demand by the DDA.

28. In view of the aforesaid factual narrative, a legal inference can be drawn to the effect that on submission of registered release deeds

on 31.08.1982, a legal right accrued in favour of the petitioner firm, not only to have the allotment letter transferred/modified to acknowledge it as the rightful allottee but also to seek execution of the lease deed by the DDA. It is pleaded by the petitioner firm that the requisite 'NOC' under the ULCR Act was required for the plot size exceeding 500 sq. mts., which could not be obtained due to the lack of an executed registered lease deed, as referenced in the letter from the Under Secretary (ULCR) dated 10.09.1980. However, of the case of the petitioner firm is to be believed, all other relevant documents were submitted between 1984 and 1987 (although the same are not placed on the record), and the DDA did not execute the lease deed in its favour and eventually, the ULCR Act was repealed in the year 1999.

29. What turns the table against the petitioner firm is the stark silence regarding the steps it had taken from 31.08.1982, i.e., the date on which the registered release deeds by the outgoing partners were submitted to the DDA, until the repeal of the ULCR Act. The bottom line is that if the 'no objection' did not materialize due to the non-execution of the lease deed by the DDA in favour of the petitioner firm, why did the petitioner firm remains passive over its legal rights and not resort to any legal action? A bald assertion is made that the petitioner firm kept writing to the DDA to execute the lease deed in its favour without placing any *iota* of documentary evidence in that regard.

30. There is no gain saying that the period from the date of allotment of the plot in question, 30.04.1969, util a decision was made

by the High Court in the pending dispute between the parties *vide* order dated 19.10.1979, was wasted and inconsequential due to the fault of the petitioner and the erstwhile partners, for which no blame or delay could be attributed to the DDA.

31. At the cost of repetition, no worthwhile steps appear to have been taken to seek an 'NOC' under the ULCR Act, except for making bald assertions. Be that as it may, there is a twist in the story, as it appears that the DDA too emerged from its slumber and decided to accede to the request for the transfer and mutation of the plot in question in favour of M/s. Matchless Appliances (I) and the petitioner as the sole proprietor of M/s. Matchless Appliances (I), in terms of letter dated 14..03.2001.

32. It is also borne out from the record that the petitioner firm in terms of a letter dated 19.03.2001, requested permission to continue construction at the site until 30.06.2001 and, *inter alia,* prayed that the date of possession for the purpose of belated construction be considered as 24.06.1993. It would be relevant to reproduce the request letter for grant of extension by the petitioner, which goes as under:

> "Dt. 19.3.2001
>
> The Director (Lands),
> D.D.A. Vikas Sadan,
> New Delhi.
>
> SUB: REQUEST FOR GRANT OF EXTENSION OF TIME TILL 30.6.2001
>
> YOUR REFERENCE:- F6A(369) 67-LSB(I)
>
> Dear Sir,

In continuation with our letter dt. 14.3.2001, you are requested to kindly account for the following facts before arriving at the penalty for the belated construction.

1. The out going partners namely Harbans Singh & Jaswant Rai revoked their agreement dated 3.3.1971 & the same had to be ratified by the High Court in their judgment of October 1979. The DDA accepted the above partners vide their letter dt. 26.5.1980 issued by Mr. B. Chakravarty DD (C). The release deed by these out going partners could eventually materialise on 6.4.1981.

2. Our application under U LCA or ULCR could not bear any fruits for want of Lease Deed for execution of which we prayed on 24.7.80 & the same has been duly recorded in DDA receipt No. 23001 dated 25,7.1980.

3. Mr. Diwan Chand Kalsi the Managing Director of Kalsi Finance (P) Ltd., the sole Prop. pf Matchless Appliances (I), died on 24.12.1982.

4. After the filing of release deed on 26.4.1981, DDA took twelve years to arrive at the Demand Note 1853 dt. 20.4.1993 for Rs.3,54,204,00.

5. As If the above tragedies were not enough; we lost our dear youngest brother Mr. Ashok Kalsi S/o Mr. Diwan Chand Kalsi a share holder with 50 shares of Kalsi Finance (P) Ltd., on 6.1.2000 after a prolonged terminal bone cancer detected in 1998 also reconfirmed by Tata Memorial Cancer Hospital,. Bombay in 1998 itself. Ours is a joint family now in its third generation and we continue to live together till date in H-30, Green Park Extension, New Delhi. You can imagine our grief in the above circumstances.

It is, therefore, prayed that the date of possession only for the purpose of belated construction may be considered as 26.4.1993. This kind of practise has also been adopted in the past for several deserving cases like ours. This benevolent act of yours would not only serve as a fitting tribute to the endless harassments experiences by us but will also meet justice in the end.

Thanking you, we remain,

Yours faithfully,
for Matchless Appliances (I),
Prop. Kalsi Finance (PP) Ltd.,
Sd/-
(BADRI NATH KALSI)
Director

CC:- Deputy Director (Land)
DDA, Vikas Sadan, New Delhi.
CC:- The Receiving Officer,

DDA, Vikas Sadan."

33. A bare perusal of the aforesaid letter would show that the petitioner acknowledged a delay on its part, as it was unable to submit release deeds by the outgoing partners, which could only be materialized on 06.04.1981. It indicates that a request was made for execution of the lease deed on 24.07.1980, and a weak excuse is given that the DDA took 12 years to issue a demand note dated 20.04.1993, whereby a sum of Rs. 3,54,204/- was demanded and was subsequently paid by the petitioner firm.

34. What is clearly unpalatable and not explained is what the petitioner had been doing since 1980 or, for that matter, after the submission of registered release deeds on 31.08.1982, if it truly intended to commence construction on the plot in question and commence its business. It is manifest that there was complete inaction on its part. Even assuming, for the sake of convenience, that the ULCR Act was an impediment to raising construction on the plot in question, there is still no demonstrated sincerity in proceeding with construction after the repeal of the ULCR Act until the submission of letter dated 19.03.2001.

35. The aforesaid discussion fortifies the initial observation of this Court that although the DDA is not free of blemishes, inasmuch as it finally woke up and acceded to the request for the transfer and mutation of the plot in question in favour of the petitioner firm *vide* letter dated 14.03.2001. Anyhow, the plea of the petitioner that the long delay is solely attributable to the DDA, right from the date of the

allotment of the plot in question on 30.04.1969, cannot be sustained. Therefore, the unexplained delay and laches on the part of the petitioner firm in espousing its legal right, if any, *qua* the plot in question, itself nonsuits the petitioner firm in the present writ petition.

36. In arriving at such view, this Court is fortified by the decision of the Supreme Court in the case of **M/s Godrej Sara Lee Ltd. v. Excise and Taxation Officer-cum-Assessing Authority**[10], wherein delving into the issue of exercise of writ jurisdiction conferred under Article 226 of the Constitution of India, 1950, it was held as under:-

> "4. Before answering the questions, we feel the urge to say a few words on the exercise of writ powers conferred by Article 226 of the Constitution having come across certain orders passed by the high courts holding writ petitions as "not maintainable" merely because the alternative remedy provided by the relevant statutes has not been pursued by the parties desirous of invocation of the writ jurisdiction. The power to issue prerogative writs under Article 226 is plenary in nature. Any limitation on the exercise of such power must be traceable in the Constitution itself. Profitable reference in this regard may be made to Article 329 and ordainments of other similarly worded articles in the Constitution. Article 226 does not, in terms, impose any limitation or restraint on the exercise of power to issue writs. While it is true that exercise of writ powers despite availability of a remedy under the very statute which has been invoked and has given rise to the action impugned in the writ petition ought not to be made in a routine manner, yet, the mere fact that the petitioner before the high court, in a given case, has not pursued the alternative remedy available to him/it cannot mechanically be construed as a ground for its dismissal. It is axiomatic that the high courts (bearing in mind the facts of each particular case) have a discretion whether to entertain a writ petition or not. One of the self-imposed restrictions on the exercise of power under Article 226 that has evolved through judicial precedents is that the High Courts should normally not entertain a writ petition, where an effective and efficacious alternative remedy is available. At the same time, it must be remembered that mere availability of an alternative remedy of appeal or revision, which

[10] 2023 SCC OnLine SC 95

> the party invoking the jurisdiction of the high court under Article 226 has not pursued, would not oust the jurisdiction of the high court and render a writ petition "not maintainable". In a long line of decisions, this Court has made it clear that availability of an alternative remedy does not operate as an absolute bar to the "maintainability" of a writ petition and that the rule, which requires a party to pursue the alternative remedy provided by a statute, is a rule of policy, convenience and discretion rather than a rule of law. Though elementary, it needs to be restated that "entertainability" and "maintainability" of a writ petition are distinct concepts. The fine but real distinction between the two ought not to be lost sight of. The objection as to "maintainability" goes to the root of the matter and if such objection were found to be of substance, the courts would be rendered incapable of even receiving the lis for adjudication. On the other hand, the question of "entertainability" is entirely within the realm of discretion of the high courts, writ remedy being discretionary. A writ petition despite being maintainable may not be entertained by a high court for very many reasons or relief could even be refused to the petitioner, despite setting up a sound legal point, if grant of the claimed relief would not further public interest. Hence, dismissal of a writ petition by a high court on the ground that the petitioner has not availed the alternative remedy without, however, examining whether an exceptional case has been made out for such entertainment would not be proper.

37. In another case decided by the Supreme Court titled **Mrinmoy Maity v. Chhanda Koley**[11] on the same subject, it was held as under:-

> "11. For filing of a writ petition, there is no doubt that no fixed period of limitation is prescribed. However, when the extraordinary jurisdiction of the writ court is invoked, it has to be seen as to whether within a reasonable time same has been invoked and even submitting of memorials would not revive the dead cause of action or resurrect the cause of action which has had a natural death. In such circumstances on the ground of delay and latches alone, the appeal ought to be dismissed or the applicant ought to be non-suited. If it is found that the writ petitioner is guilty of delay and latches, the High Court ought to dismiss the petition on that sole ground itself, in as much as the writ courts are not to indulge in permitting such indolent litigant to take advantage of his own wrong. It is true that there cannot be any waiver of fundamental

[11] 2024 SCC OnLine SC 551

right but while exercising discretionary jurisdiction under Article 226, the High Court will have to necessarily take into consideration the delay and latches on the part of the applicant in approaching a writ court. This Court in the case of *Tridip Kumar Dingal* v. *State of W.B.*, (2009) 1 SCC 768 has held to the following effect:

"56. We are unable to uphold the contention. It is no doubt true that there can be no waiver of fundamental right. But while exercising discretionary jurisdiction under Articles 32, 226, 227 or 136 of the Constitution, this Court takes into account certain factors and one of such considerations is delay and laches on the part of the applicant in approaching a writ court. It is well settled that power to issue a writ is discretionary. One of the grounds for refusing reliefs under Article 32 or 226 of the Constitution is that the petitioner is guilty of delay and laches.

57. If the petitioner wants to invoke jurisdiction of a writ court, he should come to the Court at the earliest reasonably possible opportunity. Inordinate delay in making the motion for a writ will indeed be a good ground for refusing to exercise such discretionary jurisdiction. The underlying object of this principle is not to encourage agitation of stale claims and exhume matters which have already been disposed of or settled or where the rights of third parties have accrued in the meantime (vide *State of M.P. v. Bhailal Bhai*, [AIR 1964 SC 1006 : (1964) 6 SCR 261], *Moon Mills Ltd. v. Industrial Court*, [AIR 1967 SC 1450] and *Bhoop Singh v. Union of India*, [(1992) 3 SCC 136 : (1992) 21 ATC 675 : (1992) 2 SCR 969]). This principle applies even in case of an infringement of fundamental right (vide *Tilokchand Motichand v. H.B. Munshi,* [(1969) 1 SCC 110], *Durga Prashad v. Chief Controller of Imports & Exports,* [(1969) 1 SCC 185] and *Rabindranath Bose v. Union of India*, [(1970) 1 SCC 84]).

58. There is no upper limit and there is no lower limit as to when a person can approach a court. The question is one of discretion and has to be decided on the basis of facts before the court depending on and varying from case to case. It will depend upon what the breach of fundamental right and the remedy claimed are and when and how the delay arose."

12. It is apposite to take note of the dicta laid down by this Court in *Karnataka Power Corportion Ltd. v. K. Thangappan*, (2006) 4 SCC 322 whereunder it has been held that the High Court may refuse to exercise extraordinary jurisdiction if there is negligence or omissions on the part of the applicant to assert his right. It has been further held thereunder:

"6. Delay or laches is one of the factors which is to be borne in mind by the High Court when they exercise their discretionary

powers under Article 226 of the Constitution. In an appropriate case the High Court may refuse to invoke its extraordinary powers if there is such negligence or omission on the part of the applicant to assert his right as taken in conjunction with the lapse of time and other circumstances, causes prejudice to the opposite party. Even where fundamental right is involved the matter is still within the discretion of the Court as pointed out in *Durga Prashad v. Chief Controller of Imports and Exports*, [(1969) 1 SCC 185 : AIR 1970 SC 769]. Of course, the discretion has to be exercised judicially and reasonably.

7. What was stated in this regard by Sir Barnes Peacock in *Lindsay Petroleum Co. v. Prosper Armstrong Hurd*, [[L.R.] 5 P.C. 221 : 22 WR 492] (PC at p. 239) was approved by this Court in *Moon Mills Ltd. v. M.R. Meher*, [AIR 1967 SC 1450] and *Maharashtra SRTC v. Shri Balwant Regular Motor Service*, [(1969) 1 SCR 808 : AIR 1969 SC 329]. Sir Barnes had stated:

"Now, the doctrine of laches in courts of equity is not an arbitrary or a technical doctrine. Where it would be practically unjust to give a remedy either because the party has, by his conduct done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted, in either of these cases, lapse of time and delay are most material. But in every case, if an argument against relief, which otherwise would be just, is founded upon mere delay, that delay of course not amounting to a bar by any statute of limitation, the validity of that defence must be tried upon principles substantially equitable. Two circumstances always important in such cases are, the length of the delay and the nature of the acts done during the interval which might affect either party and cause a balance of justice or injustice in taking the one course or the other, so far as it relates to the remedy."

8. It would be appropriate to note certain decisions of this Court in which this aspect has been dealt with in relation to Article 32 of the Constitution. It is apparent that what has been stated as regards that article would apply, a fortiori, to Article 226. It was observed in *Rabindranath Bose v. Union of India*, [(1970) 1 SCC 84 : AIR 1970 SC 470] that no relief can be given to the petitioner who without any reasonable explanation approaches this Court under Article 32 after inordinate delay. It was stated that though Article 32 is itself a guaranteed right, it does not follow from this that it was the intention of the Constitution-makers that this Court should disregard all principles and grant relief in petitions filed after inordinate delay.

9. It was stated in *State of M.P. v. Nandlal Jaiswal*, [(1986) 4 SCC 566 : AIR 1987 SC 251] that the High Court in exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic. If there is inordinate delay on the part of the petitioner and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in exercise of its writ jurisdiction. It was stated that this rule is premised on a number of factors. The High Court does not ordinarily permit a belated resort to the extraordinary remedy because it is likely to cause confusion and public inconvenience and bring, in its train new injustices, and if writ jurisdiction is exercised after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. It was pointed out that when writ jurisdiction is invoked, unexplained delay coupled with the creation of third-party rights in the meantime is an important factor which also weighs with the High Court in deciding whether or not to exercise such jurisdiction."

38. That brings us to the impugned order dated 07/13.10.2003 raising demand of composition fee of Rs. 39,75,657/-. It would be expedient to reproduce the relevant operative portion of the order passed by the Competent Authority, which goes as under:

"DELHI DEVELOPMENT AUTHORITY
OFFICE OF THE DIRECTOR (LANDS)

ORDER

CWP No. 212/2003 was disposed of by the Hon'ble High Court vide its order dated 28.01.03 thereby directing that the case of petitioner considered on the basis of the representation be dt. 01.04.02. The order of the Hon'ble High Court is reproduced below:-

"The petitioner to appear before the Director (Lands) DDA to explain its 01.04.02 representation at 3.00 P.M. and reasoned order dt. shall thereafter be passed by the Competent Authority taken all he points into consideration as set in the representation dt. 01.04.02 and by out elucidated the petitioner in its personal hearing. reasoned petitioner order shall within be communicated period of two to The the months thereafter. Needless to mention in the case petitioner is aggrieved by the said decision, will be open to the petitioner to impugn the the it same in accordance with law.

In pursuance of the above order the petitioner appeared before the Director (Lands), Vikas Sadan, on 03.02.03 and sought further time, which (Lands). was granted upto 25.02.03 by the

Director Again the petitioner sought time on25.02.03 and the same was granted upto 06.03.03. The petitioner appeared on 06.03.03 and submitted the representation.

After the undersigned joined as Director (Lands) the petitioner again appeared in the public hearing of the undersigned and submitted the copy of the representation dt. 06.03.02. On the basis of the said representation the petitioner was called in the office of the undersigned on 18.07.03 vide letter dt. 07.07.03. The petitioner appeared before the undersigned 18.07.03 and explained the case.

The representation of petitioner was thoroughly examined keeping in view the above above order of the Court and the record maintained by the Department and Submitted the file to the Competent Authority for final consideration and the orders.

The Hon'ble L.G. Delhi has re-considered the matter and rejected the claim of the petitioner view of the following observations:-

"The petition dt. 01.04.02 makes the contention that unearned increase is not in his case as DDA had been informed about the change constitution of the firm before the premium of the plot was paid.

The competent Authority has examined the facts of the case and have come to the conclusion that mere intimation to DDA about the change in constitution does not suffice as there was a dispute since 1968 between M/s. Kalsi Finance Pvt. Ltd. and two partners Sh. Harbans Singh and Sh. Jaswant Rai Saggi. The case has been referred to an arbitrator, who gave his award in the year 1975. This award was disputed by Sh. Harbans Singh and Sh. Jaswant Rai Saggi in the High Court. The matter was decided by the High Court on 28.02.78. In view of this the original application given in the year agreement attached with its became invalid. A fresh application for change in constitution was made on 24.07.80. The deed of Sh. Harbans Sing and Sh. Jaswant Rai Saggi, duly registered was received in DDA, on 17.01.81, wherein they released their shares in favour of M/s. Kalsi Finance Ltd. Pvt.

In sum and substance the dispute between the parties was settled only in the year 1978 and the application for change in constitution of the firm shall be deemed to be made only in the year 1980 when the premium of the plot was paid and handed over to the petitioner. In view of this the Competent Authority did not any merit in the pleas of the petitioner for not charging the unearned increased by DDA.

The contention of the petitioner before Director (Lands) for not charging the composition charges for delayed construction of the allottee plot has been examined. M/s. Kalsi Finance Pvt. Ltd.

was a partner of M/s. Matchless Appliance India with tow additional partners. Even after these partners left M/s. Matchless Appliances India, the firm subsisted as and entity and could have constructed on the allotted if it had to desired. The Competent Authority did not see any case for exemption from payment of composition fee. As for granting further extension of time, it can be granted, but the firm will have to make payment of composition fee for the entire period"

Thus the petitioner is liable to make the payment of composition fee for the entire period.

Sd/-
(ASMA MANZAR)
DIRECTOR (LANDS)"

39. In view of the blemishes galore on the part of the petitioner firm, the aforesaid position of the DDA cannot be assailed in any manner. The erstwhile firm, during the allotment of the plot in question was a partnership firm, and as per the decision in the case of **DDA v. Nalwa sons(supra)**, it is categorical that 50% unearned increase will be charged in respect of proportionate shares of the plot parted with by way of addition, deletion or substitution of partner/partners in the case of a single ownership or partnership firm and Director/Directors/Shareholders/Sub scribers in case of a private limited company. This is applicable where the incoming persons do not fall within the definition of family. Unearned increase would be charged on the basis of market rate prevalent on the date of intimation for each and every change in the constitution. This would be applicable in all cases where the lease deed has been executed or not.

40. In view of the foregoing discussion, this Court finds that the petitioner firm cannot be granted any relief in the present writ petition. The petitioner firm is liable to pay composition charges in accordance

with the relevant rules, failing which the respondent/DDA shall be at liberty to proceed in accordance with the law.

41. Resultantly, the present writ petition is dismissed.

DHARMESH SHARMA, J.

JANUARY 08, 2025
Sadiq/Ch