

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

+ **Writ Petition (Civil) No.7546/2007**

% **Date of Decision: 30.07.2009**

Om Prakash and Anr. Petitioners
Through Mr.Jivesh Tiwari, Advocate.

Versus

Delhi Development Authority Respondents
Through Ms.Sangeeta Chandra.

CORAM:
HON'BLE MR. JUSTICE ANIL KUMAR

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to the reporter or not? | NO |
| 3. | Whether the judgment should be reported in the Digest? | NO |

ANIL KUMAR, J. (ORAL)

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CM No.9637/2009

This is an application under Order VI Rule 17 of the Code of Civil Procedure by the petitioners seeking amendment to the petition.

The plea of the petitioners is that they have sought directions against the respondent to provide the statement of total dues against them and to withdraw the cancellation of allotment of kiosk/shop/stall/shed No.15 & 17 situated at Chotti Subzi Mandi at Tilak Nagar, New Delhi.

The contention of the petitioners is that they were issued possession letters dated 13th September, 2004 but possession slips were given on 24th February, 2005 and even the workable possession has not been given to the petitioners till date.

The plea of the petitioners is that pursuant to the directions by the Court, the entire amount demanded by the respondent has been paid. However the condition of the stalls allotted to the petitioners is stated to be bad and unhygienic and the respondent is allegedly not doing anything to improve the condition. According to the petitioners it is not possible and feasible to sit there and the stalls cannot be used for doing any kind of business. In the circumstances, petitioners have contended that the respondent has no right to remove or stop the petitioners from hawking in the Nehru Place. According to the petitioners, the respondents are also to create 64 locations for hawkers space at District Center, Nehru Place.

In the circumstances, the petitioners want to take additional grounds in support of their pleas and contentions, inter-alia that the petitioners have a fundamental right to earn their livelihood as granted under Article 21 of the Constitution of India; handing over of actual physical possession of the alternative shop was the pre condition for demanding the balance amount; the shops are lying in the unworkable condition and is surrounded by garbage and waste all around; that the

respondent is trying to remove petitioners forcibly from Nehru Place though they are not in a position to give physical possession of alternative shops; the status quo has to be maintained as per the National Capital Territory of Delhi Laws (Special Provision) Act 2007 and because respondent is liable to create 64 locations of hawkers space at District Center, Nehru Place, New Delhi.

The petitioners have contended that the amendments sought by them are necessary for determination of real controversies between the parties and no prejudice shall be caused to the respondent, if the amendments sought by the petitioners are allowed.

The application is contested by the respondent contending inter-alia that the amendments sought are an afterthought and is an attempt to tide over the material facts which has been suppressed by the petitioners and which had been pointed out in the counter affidavit already filed by the respondent. It is contended that the plea regarding unworkable condition or not having reasonable infrastructure has not been taken in the writ petition and in the circumstances the ground regarding the facts not alleged in the writ petition cannot be allowed to be taken by the petitioners. It is contended that no averment has been made regarding the alternative stalls allotted, not being in a workable condition. In the circumstances, it is contended that the application is not maintainable at this stage. The respondent has also contended that

the area is lying clean and the stalls are in usable conditions and some photographs of the stalls are also produced along with the reply. It is further contended that since the area is lying vacant, it is bound to get dirty and unhygienic especially in a vegetable market. The unhygienic condition is also imputed on account of the same being occupied by the neighbours in absence of the stalls being occupied by the allottees. This is also contended that the services of the area in question have been transferred to the MCD and the work of maintenance of the area is to be looked after by the said agency. Regarding the removal of the petitioners, it is asserted that the vendors including the petitioners have been removed from Nehru Place in 1996 and thereafter the alternative stalls were given to the petitioners. It is also contended that Nehru Place District Center has been declared as a Zero Tolerance Zone by the Lieutenant Governor after Nehru Place complex was transferred to DDA for upgradation, rejuvenation and maintenance. In the circumstances, it is contended that no hawker can be permitted at Nehru Place and, therefore, the additional grounds I to N are not maintainable and the petitioners are not entitled for any relief on the basis of same.

Regarding ground I it is contended that the possession of the stall had already been handed over to the petitioners way back on 24th February, 2005. Regarding the proposed ground J it is contended that it is not maintainable in view of the categorical stand of the DDA in para 4 of its counter affidavit. It is contended that the third ground K does not

survive. Regarding ground L it is contended that the same cannot be entertained in view of the order dated 10th September, 2008. Regarding ground M it is contended that it also does not survive in view of the lapse of the Act relied on by the petitioners and regarding creation of additional hawking spaces it is contended that no hawking spaces are to be created by the respondent.

The jurisdiction of the court to allow amendment of pleading is wide enough to permit amendments even in cases where there has been a substantial delay in filing the amendment application. The Supreme Court has held in numerous cases that the dominant purpose of allowing the amendment is to minimize litigation. Therefore, if the facts of the case so permit, it is always open to the Court to allow applications in spite of delay and laches in moving such application for amendment. Even in cases where the delay has apparently extinguished the right of the party, there is no absolute rule that the amendment should not be allowed. Discretion in such cases depends on the facts and circumstances of the case. In *Pankaja v. Yelappa*, (2004) 6 SCC 415, it was held by the Supreme Court that if the granting of an amendment really sub serve the ultimate cause of justice and avoids further litigation the same should be allowed. It was held that there cannot be any straight jacket formula for allowing or disallowing an amendment of

pleadings. Each case depends on the factual background of that case.

The Supreme Court in *Pankaja* (supra) at page 419 had held as under:

12. So far as the court's jurisdiction to allow an amendment of pleadings is concerned, there can be no two opinions that the same is wide enough to permit amendments even in cases where there has been substantial delay in filing such amendment applications. This Court in numerous cases has held that the dominant purpose of allowing the amendment is to minimize the litigation, therefore, if the facts of the case so permit, it is always open to the court to allow applications in spite of the delay and laches in moving such amendment application.

13. But the question for our consideration is whether in cases where the delay has extinguished the right of the party by virtue of expiry of the period of limitation prescribed in law, can the court in the exercise of its discretion take away the right accrued to another party by allowing such belated amendments.

14. The law in this regard is also quite clear and consistent that there is no absolute rule that in every case where a relief is barred because of limitation an amendment should not be allowed. Discretion in such cases depends on the facts and circumstances of the case. The jurisdiction to allow or not allow an amendment being discretionary, the same will have to be exercised on a judicious evaluation of the facts and circumstances in which the amendment is sought. If the granting of an amendment really subserves the ultimate cause of justice and avoids further litigation the same should be allowed. There can be no straitjacket formula for allowing or disallowing an amendment of pleadings. Each case depends on the factual background of that case.

This also cannot be disputed that the question of delay in moving an application for amendment should be decided not by calculating the period from the date of institution of the suit alone but by reference to the stage to which the legal proceedings has proceeded. In *M/s.Estralla Rubber v. Dass Estate (P) Ltd.*, (2001) 8 SCC 97 it was held by the Apex

Court that the amendment of pleadings under Order VI Rule 17 is to be allowed if such amendment is required for proper and effective adjudication of controversies between the parties and to avoid multiplicity of judicial proceedings. The Apex Court in a judgment *B.K.Narayana Pillai v. Parmeswaran Pillai & Anr*, (2000) 1 SCC 712 after referring to a number of decisions in para 3 has thus stated:-

“3. The purpose and object of Order 6 Rule 17 CPC is to allow either party to alter or amend his pleadings in such manner and on such terms as may be just. The power to allow the amendment is wide and can be exercised at any stage of the proceedings in the interests of justice on the basis of guidelines laid down by various High Courts and this Court. It is true that the amendment cannot be claimed as a matter of right and under all circumstances. But it is equally true that the courts while deciding such prayers should not adopt a hypertechnical approach. Liberal approach should be the general rule particularly in cases where the other side can be compensated with the costs. Technicalities of law should not be permitted to hamper the courts in the administration of justice between the parties. Amendments are allowed in the pleadings to avoid uncalled-for multiplicity of litigation.”

In para 4 of the same judgment the Apex Court has quoted the following passage from the judgment in *A.K. Gupta and Sons Ltd. v. Damodar Valley Corpn* (1966) 1 SCR 796 (AIR pp.97-98, para 7)

“The general rule, no doubt, is that a party is not allowed by amendment to set up a new case or a new cause of action particularly when a suit on new case or cause of action is barred: *Weldon v. Neal*⁶. But it is also well recognized that where the amendment does not constitute the addition of a new cause of action or raise a different case, but amounts to no more than a different or additional approach to the same facts, the amendment will be allowed

even after the expiry of the statutory period of limitation: See *Charan Das v. Amir Khan (AIR 1921 pc 50)* and *L.J. Leach and Co. Ltd. v. Jardine Skinner and Co.(AIR 1957 SC 357)*”

It is also true that in order to consider whether the amendments are to be allowed or not the veracity or correctness of the grounds is not to be adjudicated at the time of consideration of the application for proposed amendment. What is to be considered is whether the amendments proposed is necessary for adjudication of the disputes between the parties or not. The petitioners want to raise certain grounds; whether they are entitled for any relief on the basis of the grounds now sought to be incorporated is not to be decided at this juncture. Taking into consideration the facts alleged by the petitioners, it is apparent that they are relevant for the disputes raised by them.

Considering the facts and circumstances, the proposed amendments are necessary for determination of real controversies between the parties. For the delay caused on account of the grounds now taken which were within the knowledge of the petitioners, the respondent can be compensated by imposing cost on the petitioner.

Consequently, the application for amendment is allowed subject to a cost of Rs.10,000/- payable by the petitioners to the respondent. Cost be paid within four weeks. Amended petition be filed.

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Amended writ petition be filed within four weeks. Additional counter affidavit to the amended petition, if any, be filed within four weeks thereafter. Rejoinder, if any, before the next date of hearing.

List on 8th September, 2009.

CM No.6956/2009

The learned counsel for the petitioners accepts notice and states that the reply to the application has already been filed on 28th July, 2009. The reply is not on record. Counsel to take steps to have it placed on record. The learned counsel for the respondent DDA states that the response to the reply filed to the application of DDA for vacation of stay is not to be filed.

List on 8th September, 2009.

July 30, 2009
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ANIL KUMAR, J.