

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

+ **Writ Petition (Civil) No.7634/2009**

% **Date of Decision: 27.07.2009**

M/s.Mother Gian Educational Society Petitioner
Through Mr.Rajiv Bajaj, Advocate.

Versus

Delhi Development Authority Respondent
Through Mr.Rajiv Bansal, Advocate.

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.

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The petitioner seeks direction to the respondent to hand over the physical possession of the left over area that is 764.17 sq.meters at Block-D, Pushpanjali, Pitampura.

The petitioner contended that it is a registered educational society and it had applied for allotment of land measuring 5740 sq.meters for running a middle school.

According to the petitioner the request was accepted by letter dated 24th July, 2002 whereby it was confirmed by the respondent to

enter into the perpetual lease for land measuring 5740 sq.meters (2870 sq.meter for a school building and 2870 sq.meter for play field) on payment of Rs.88, 04,073/- which comprised of Rs.85, 80,924/- as ground rent and Rs.2,14,523/- as license fee and Rs.45/- as document charges. The said amount is alleged to have been deposited within the time granted by letter dated 24th July, 2002.

The plea of the petitioner is that on 9th September, 2002 possession of the total land of 4975.83 sq.meters was handed over in place of 5740 sq.meters. It is also asserted that respondent confirmed handing over of the possession of 4975.83 sq.meters and granted no objection certificate for building up the school. The petitioner has contended that he protested for giving of a lesser area than was agreed and that he was assured that within two months the remaining area shall also be handed over to the petitioner who had already made the payment. The petitioner contended that he has been regularly paying the monthly charges, however, the balance land has not been delivered to the petitioner despite repeated request and various representations made to the respondent. A legal notice dated 31st January, 2009 is also alleged to have been given, despite which the possession of land measuring 764.17 sq.meters at Block D, Pushpanjali, Pitampura has not been handed over. In these circumstances, it is stated on behalf of petitioner that the respondent has breached the legal right of the petitioner and the conduct of the

respondent is unreasonable and arbitrary and is causing hardship to the petitioner.

The petition is contested by the respondent contending inter-alia that the petitioner society was allotted 5740 sq.meters of land for construction of a middle school out of which 50% was meant for building and 50% for play field and a demand cum allotment letter dated 25th July, 2002 was issued. The respondent, however, contended that when petitioner had applied for allotment of land no area was specified and it was not disclosed that the petitioner is applying for 5740 sq.meters or any other area.

The respondent, however, denied that the petitioner had raised a grievance regarding the handing over of a lesser area. After taking over the possession of 4975.83 sq.meters, it is asserted that the petitioner sought no objection certificate which was issued to the petitioner on 7th February, 2002. Since the land handed over to the petitioner was 4975.83 sq.meters, at the instance of the petitioner possession plan was accordingly modified by the building department of the respondent which was duly accepted by the petitioner. Thereafter the petitioner got the building plan sanctioned for the land measuring 4975.83 sq.meters and has constructed a school building where the school is running at present.

The respondent categorically asserted that not only the possession plan was modified but the petitioner society by a letter

dated 2nd January, 2003 had made a request for modification of layout plan for sanction of building plan by the MCD which was modified by the building wing of the respondent. In the circumstances, it is contended that the petitioner never requested for remaining land.

Regarding the encroacher Jain temple it is pleaded that it is in occupation of land measuring 970.08 sq.meter out of which 400 sq.meter had been regularized in the year 2000 and for remaining 570 sq.meter a show cause notice has been issued to remove the encroachment.

It is contended that there is no vacant land available at the site which could be handed over to the petitioner since the land measuring 570.08 sq.meter is under unauthorized occupation. In the circumstances, it is contended that the petitioner is not entitled for allotment of 764.17 sq.meter.

The learned counsel for the petitioner categorically contended that the allegations made by the respondent in its counter affidavit are not to be refuted and no rejoinder affidavit is to be filed and the matter should be heard and decided accordingly. Consequently, the matter was taken up for hearing.

This cannot be disputed that the writ petition has been filed only for handing over the alleged remaining area of 764.17 sq.meter at Block D, Pushpanjali, Pitampura. This fact has not been denied

that after getting 4975.83 sq.meter the plan for possession was modified at the instance of the petitioner and even the no objection certificate was issued. Even the lay out plan of the area was modified for the purpose of construction of the building of the petitioner.

Though the petitioner has contended that he had accepted 4975.83 sq.meter without prejudice to rights and contentions of the parties, however, the said fact is not apparent from any of the documents filed by the petitioner or by the respondent. At the time of taking over the possession it was not clarified by the petitioner that he is taking possession of the said area without prejudice to his right to claim the balance area of 764.17 sq.meter at Block D, Pushpanjali, Pitampura. The possession was handed over in 2002 where after the plan for handing over the possession was modified and even the lay out plan was modified, however, petitioner accepted the same without raising any objection till the writ petition was filed on 17th March, 2009. The petitioner is unable to explain the delay in not making the representation or approaching the Court within a reasonable period. In any case from the writ petition it is not apparent as to which balance area is sought by the petitioner as the letter dated 17th September, 2002 categorically stipulates the area which has been handed over and the area which was under encroachment. It has also not been clarified by the petitioner whether the area he is seeking was a part of the area that was to be

given to him on lease or was the part of the area that was to be given to him as licensee. The learned counsel for the petitioner is also unable to show as to how the relief as sought by the petitioner can be claimed after such a long time and consequently the delay and latches in seeking the relief has not been explained by the petitioner.

The land sought by the petitioner in any case is in occupation of Jain temple and the plea of the respondent that no vacant land is available at site which can be handed over to the petitioner has not been denied. Since no vacant land is available and since the petitioner had not agitated this issue for a considerable time, it will not be appropriate now to direct the respondent to hand over 764.17 sq.meter in Block D, Pushpanjali, Pitampura.

For the foregoing reasons, the petitioner is not entitled for the relief claimed and the writ petition is, therefore, dismissed. Considering the facts and circumstances, the parties are however left to bear their own cost.

July 27, 2009

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ANIL KUMAR, J.