

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

% **Judgment delivered on: 17th May, 2019**

+ **W.P.(C) 824/2018**

BUDDHA TRI-RATNA MISSION

...Petitioner

Through: **Mr. Ambika Ray, Advocate.**

versus

- 1. UNION OF INDIA**
- 2. LAND AND DEVELOPMENT OFFICER**
- 3. DELHI DEVELOPMENT AUTHORITY ...Respondents**

Through: **Mr. Rajesh Gogna, CGSC with
Mr. Upendra Sai, Advocate for R-1,
Mr. Rajiv Bansal, Advocate with
Mr. Namit Suri, Advocate for DDA.**

**CORAM:
HON'BLE MR. JUSTICE I.S.MEHTA**

JUDGMENT

I. S. MEHTA, J.

1. The petitioner has filed the present petition under Article 226 and 227 of The Constitution of India seeking writ in the nature of mandamus or order directing the Respondent No.2 and 3 herein to give possession to the petitioner of the land admeasuring area of half acre at C.R. Park in New Delhi which was allotted to the petitioner on 12.05.1997 by Respondent No.2.

2. Brief facts stated are that the petitioner is a registered society with the object of promoting social and cultural welfare of buddhist and construct temples, prayer halls, dharamshala, pali institutes, orphanage, libraries, etc. or any other institute for purpose relating to the development of culture. The petitioner made an application for allotment of land in the year 1975. In pursuance to said application, the respondent in 1983 agreed to allot the land admeasuring 2023 Sq.m. in Chittranjan Park (EDP Colony), New Delhi for consideration of Rs. 3 Lakhs only. Subsequently, during the process of the allotment, respondent increased price of the land to Rs. 40,99,163/-. The revised allotment amount of Rs. 40,99,163/- was challenged by the petitioner in the writ CW(C) 159/1998 before this court, where the writ was dismissed on the ground that scheme of allotment was made on the category of non-charitable institution. Petitioner being aggrieved, challenged the writ vide LPA 226/2000 before Division Bench, same was dismissed. Aggrieved from Division Bench judgment, petitioner filed SLP No. 14971/2000 before Hon'ble Supreme Court vide Civil Appeal No. 4889/2002, where Hon'ble Supreme Court vide order dated 14.05.2008, on finding, Rs.10,50,000/- has already been deposited as per direction of Delhi High Court and status quo order has already passed in favour of petitioner, petitioner was directed to deposit balance amount within a period of 2 months from date of supply of order. As per direction, petitioner deposited balance amount of Rs. 30,49,000/- by 26.09.2008.
3. Despite petitioner depositing entire amount on 26.09.2008,

Respondent No.2 did not give possession of the aforesaid land to the petitioner, rather started demanding ground rent and interest thereon from 2009 onwards.

4. Respondent No. 2 subsequently, on 18.01.2017 issued a show cause notice with a demand of Rs. 73,33,672/-. Aggrieved from show cause notice and not getting possession of the aforesaid land till 2017, petitioner on 02.03.2017 filed a writ petition before this Court vide W.P.(C) 2508/2017 for issuing writ of mandamus directing Respondent No.2 to give the possession of the land admeasuring area of half acre at C.R. Park to the Petitioner in terms of the allotment dated 12.05.1997. However, on 20.03.2017 the said writ petition was withdrawn in an occasion to approach the Respondent No.2 first with the representation appraising all the facts and grounds.
5. Thereafter, on 11.04.2017 Petitioner made a detailed representation to the Respondent No.2 for the withdrawal of the show cause notice and demand of Rs. 73,33,672/-. The Deputy Land & Development Officer Mr. Rajnish Kumar Jha on behalf of the Respondent No.2 issued a letter to the petitioner to visit the office of one Shri Amit Kataria, Land & Development officer on 30.08.2017 at 3 PM to put forth the views in the matter.
6. On 21.10.2017 the meeting was held among the representatives of petitioner society and Shri Amit Kataria, Land & Development officer. Respondent No.2 stucked to their demand and the detailed

facts were handed over to the Respondent no.2 on 21.10.2017 in addition to the representation made on 11.04.2017.

7. On 09.11.2017 the Respondent No. 2 ignoring all the representation made by the petitioner on 11.04.2017 and also on 21.10.2017 issued show cause notice and demand of Rs. 84,85,183/- by increasing the amount of interest from earlier demand of Rs. 73,33,672/- to be payable within 30 days from the date of receiving or the allotment be cancelled.
8. Petitioner aggrieved with the show cause notice and demand of interest amount issued by the Respondent No.2 and not getting possession of the allotted land by the petitioner till date even after depositing the entire amount preferred to file the present writ petition.
9. In response to the present petition, Respondent No.1 and 2 filed joint Counter Affidavit wherein allotment of land measuring 2023 Sq.m. in C.R. Park (EDP Colony), New Delhi on 12.05.1997 was granted in favour of the Petitioner society subject to deposit of Rs. 40,99,163/- has not been denied.
10. Respondent No.1 and 2 further submitted that on 26.09.2008, mission made payment of Rs. 40,99,163/-, however, it did not pay interest on belated payment of premium and up-to-date ground rent and interest thereon.

11. Petitioner filed its rejoinder and reiterated its contents in the petition and further submitted the allotted land in favour of the petitioner were used by the Respondents as a site for marriages and other functions and revenue earned remained with Respondents only.
12. The Ld. Counsel for the petitioner has submitted that despite directions issued by the Hon'ble Supreme Court vide Judgment dated 14.05.2008, Respondents failed to provide the physical possession of the land admeasuring 2023 Sq.m. in C.R. Park (EDP Colony), New Delhi. The petitioners have already deposited Rs. 40,99,163/- with the Respondent No.2 on 26.09.2008. Respondent No.2 instead of giving possession of land, further started demanding amount of Rs. 84,85,183/- on the ground of interest on belated premium and ground rent. The Ld. Counsel of Petitioner submits that the said demand raised by Respondent No.2 is unjustified as the possession of the allotted land was never handed over to the petitioner. Once possession of the land remained with Respondent No.2, premium, ground rent and interest thereon is unjustified and cannot be sustained in the law. Such demands are not justifiable on any account without any fault on the part of Petitioner society. Counsel for the Petitioner further prays that necessary directions be issued to Respondent No.2 that possession of the land be issued to the Petitioner as per Law.
13. Per contra, Counsel of the Respondent No.2 pointed out that Petitioner failed to deposit the demanded amount timely which resulted into accruing interest on ground rent and belated payment of premium i.e.

Rs. 40,99,163/-. The counsel of the Respondents further submitted that the total amount yet to be deposited by the petitioner society is amounting to Rs. 84,85,183/-. The petitioner society since failed to deposit the outstanding amount, the possession of the land is not handed over to them and present petition is liable to be dismissed.

14. Whole dispute hinges around whether not handing over possession of the land to the petitioner society even after deposit of full premium amount of Rs. 40,99,163/- is bad in law?

The answer is yes.

15. What is emerging on the record is that the Petitioner is a Registered Society in the name and style of "Buddha Tri-Ratna Mission". Petitioner applied for allotment of piece of Land in the year 1975 for construction of "Buddha Vihara". The request for allotment of piece of land was exceeded by the Respondents in the year 1997 and the same was communicated vide Letter No. L-II-1(845)/97/180 dated 12.05.1997 relevant para of the aforesaid letter is reproduced as under:

"I am directed to convey the sanction of (to) the President to(of) allotment of land measuring about 2023 sq. mtrs. As per L&DO's plan no. 3095 at Chittaranjana Park, New Delhi to the Buddha Tri Ratna Mission for construction of their Vihara."

16. The Petitioner on the direction of the Hon'ble Supreme Court in SLP No. 14971/2000 vide Civil Appeal No. 4889/2002 dated 14.05.2008

which is reproduced as under:-

" ... 3. After hearing learned counsel for the parties and after considering the fact that Rs.10,50,000/- had been deposited as per direction of the Delhi High Court and that the status quo order was granted by this Court in the year 2002, we only direct that if the appellant deposits the balance amount, if not already deposited in the High Court, within two months from the date of supply of a copy of this order, the respondents shall not cancel the allotment of the land made in favour of the appellant if cancellation of the allotment of the land in favour of the appellant has not already been done by the Delhi Development Authority and others."

deposited the remaining balance amount on 26.09.2008.

The aforesaid fact is reaffirmed by the Counter Affidavit filed by Respondent No.2, relevant extract is reproduced as under:

"vi. That on 16.09.2008, the Mission made a payment of Rs. 40,99,163/-..."

17. It is an admitted fact emerging on record that possession of the allotted land up till now has not been handed over to the petitioner despite the deposit of the premium amount by the Petitioner society.

18. The premium amount is stated to be Rs. 40,99,163/-, same has been deposited in full by the Petitioner society as shown under:

<u>Date</u>	<u>Payment</u>	<u>Purpose</u>
17.06.1997	Rs. 50,000/-	Allotment of land to petitioner.
15.04.1998	Rs. 10,00,000/-	Direction by Delhi High Court.
17.09.2008	Rs. 20,00,000/-	Balance Payment made after Supreme Court Judgment (Status Quo ordered)
26.09.2008	Rs. 10,49,163/-	
TOTAL	Rs. 40,99,163/-	Full allotment money deposited.
2015	Rs. 10,00,000/-	<i>Additional Amount</i>

19. Admitted fact emerging on the record is that no interest has been credited in favour of the Petitioner society on the deposited amount since 1997. On the contrary, Respondents are claiming interest against the principal of equity.
20. It is an admitted fact emerging on the record that no possession of the sanctioned land has been given to the Petitioner society. The possession of the sanctioned land remains with Respondents till date, whatsoever has been earned from that land remained with the respondents. As such, question of accruing of any ground rent does not arise. Therefore, no liability factually exists against the petitioner society unless the possession of the sanctioned land is handed over to Petitioner society. Reliance is placed on this Court judgment in ***Delhi Development Authority v. M/s Trilok & Co. & Anr.*** 2017 SCC OnLine Del 10254.
21. Looking into the above facts and circumstances, particularly Petitioner

society has already deposited premium amount i.e. Rs. 40,99,163/- on 26.09.2008 with the Respondent No.2, Petitioner society is entitled to get the possession of the allotted land. The claim of ground rent and interest on behalf of the Respondent No.2 subsequent to 26.09.2008 is bad in Law for want of handing over of the possession. Therefore, Respondent No.2, Land and Development Officer, New Delhi is directed to hand over the possession of the said land to the Petitioner society. The excess amount of Rs. 10,00,000/-, deposited by Petitioner with the Respondent No.2 in the year 2015, be refunded back to Petitioner society within a period of three months, failing which Respondent No.2 shall be liable to pay simple interest at rate of 6% p.a. to the Petitioner society.

22. Accordingly, present petition under Article 226 and 227 of The Constitution of India is allowed. One copy of this judgment be sent to Land and Development Officer, New Delhi for necessary compliance. All pending applications are accordingly disposed of. No order as to costs.

I.S.MEHTA
(JUDGE)

MAY 17, 2019