



2024 DHC:4294



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Judgment reserved on : 07 May 2024**
Judgment pronounced on : 27 May 2024
+ **W.P.(C) 1980/2023 & CM APPL. 7554/2023, CM APPL. 26388/2023**

PARAS RAM DANGAL SOCIETYPetitioner
Through: **Ms. Stuti Gupta, Advocate.**

versus

ESTATE OFFICER -IV DDA & ANR. Respondents
Through: **Ms.Shobhana Takiar, Standing Counsel for R-1/DDA with Ms.Kritika Gupta and Mr.Kuljeet Singh, Advocates.**

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA

J U D G M E N T

1. The present writ petition has been filed invoking the extraordinary jurisdiction of this Court under Article 226 read with Article 227 of the Constitution of India, seeking the following reliefs:

- “(a) Set-aside order dated 06.12.2022 passed by Sh. Girish Kathpalia, Ld. DJ, Central, Tis Hazari District Court, Delhi in matter titled as "Paras Ram Dangal Society vs. Estate Officer& Anr." PPA No. 3/17 and allow the Application for condonation of delay in filling the Appeal under Section 9 of the Public Premises (Eviction of unauthorized Occupants) Act, 1971;
- (b) Remand back by the matter titled as "Paras Ram Dangal Society vs. Estate Officer& Anr." PPA No. 3/17 to Ld. Trial Court for adjudication on merits;
- (c) pass such other or further order(s) as this Hon'ble Court may deem fit and proper in the circumstances of the case.”



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**BRIEF FACTS:**

2. The Petitioner Society, established in 1959, is dedicated to the promotion and preservation of the ancient art of wrestling on natural soil. It operates the Akhara 'Paras Ram Dangal/Vyamshala', which was founded around 1932 by the esteemed wrestler, the late Guru Chiranji Lal, located at 13, Kudasiya Ghat, Bela Road, Delhi – 110054¹. Historically significant, the petitioner society has been acclaimed to be instrumental in nurturing several of the nation's celebrated wrestlers.

3. The petitioner society was allotted the land in dispute measuring approximately 1,864 Sq. Yards, by virtue of an Indenture of Lease dated 07.01.1967, duly registered as No. 9077 in additional Book No. 1, Volume No. 1934, on pages 31 to 34, dated 29.11.1967, executed by the President of India through Land and Development Office, New Delhi². The case of the petitioner is that, sometime around 1986, the Government requested the petitioner society to handover certain portion of the land in dispute, i.e., land measuring 1,234 Sq. Yards as the same was required by the Government for construction of ISBT flyover. Subsequently, the petitioner society handed over the portion measuring 1,234 Sq. Yards and the Public Works Department *vide* letter dated 24.02.1988 called upon the petitioner society to collect part compensation cheque in lieu of the acquired land and demolished structure.

¹ Land in dispute.

² L & DO



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4. It is contended by the petitioner society that Deputy Director (Lands), DDA issued a letter dated 03.03.1988 to the Deputy Director (Hort.) II, DDA with respect to temporary allotment of land measuring 1180 Sq. Yds. to the petitioner adjacent to the earlier site of the petitioner society for wrestling activities on payment of a license fee. The petitioner society paid the requisite license fees to the authorities, which was duly acknowledged vide letter dated 03.08.1990.

5. At this juncture, it is pertinent to mention that this Court in W.P.(C) 2112/2002 *vide* orders dated 16.11.2005 and 08.12.2005 had constituted a committee to remove encroachment up to 300 meters from both the sides of the river Yamuna and to clear the Yamuna Bed and its embankment. The committee was convened by Mr. S.M. Aggarwal and on the basis of the report filed on 04.09.2006, the respondents for the first time agitated in the year 2006 that the petitioner society is an *unauthorised occupant*. The petitioner society submits that in the garb of the aforesaid orders, the respondents sought to demolish the structures on the land in dispute. The petitioner society filed an application CM Nos. 10561-18/2016 in W.P.(C) 2112/2002 for impleadment and for interim protection from demolition and dispossession, aggrieved by the actions of the respondents. It is contended on behalf of the petitioner society that pursuant to the order dated 11.10.2006 in W.P.(C) No. 2112/2002, the petitioner society, while expressing its intention to withdraw its application for impleadment, sought equitable treatment akin to other nearby Akharas. Consequently, the Committee appointed by this Hon'ble Court recommended that considering the utilization of land by



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the Akhara, suitable alternative arrangements should be made by the Delhi Development Authority³. This Hon'ble Court directed the DDA to establish a policy for the accommodation of the concerned Akhara, in the absence of which, such a policy must be formulated.

6. Evidently, as the DDA failed to devise any such policy for the accommodation of the petitioner society, in accordance with the order dated 11.10.2006 in W.P.(C) No. 2112/2002, the petitioner society instituted a contempt petition against respondent No.2. During the contempt proceedings, the petitioner society was granted authorization to operate the Akhara on the existing premises, with the proviso that its operations do not adversely affect the ecological balance of the Yamuna River.

7. Meanwhile, the DDA commenced proceedings under Section 7 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971⁴ against the petitioner society. The petitioner society asserts that they actively engaged in the proceedings before the Estate Officer. During a hearing on 28.05.2009, the petitioner society informed the Estate Officer about the orders issued by this Court in the contempt proceedings.

8. The petitioner society has contended that the petitioner society appeared before the Estate Officer on 15.01.2010 and filed its reply to the demand letter. The Estate Officer recorded in his proceedings that the reply has been filed on behalf of petitioner society. However, subsequently when the matter was listed on 21.01.2010, the Estate

³ DDA

⁴ PP Act



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Officer held that since no one had appeared on behalf of the petitioner society, the matter was proceeded *ex parte* and thus decided the case on merits without hearing the petitioner. Resultantly, an order dated 21.01.2010 was passed by the Estate Officer for payment of damages by the petitioner society herein for the period from 15.07.1987 to 31.08.2006, totalling to Rs. 34,90,145/-. The said order further stated that order in Form 'G' be issued, which as per ld. Counsel for the petitioner society pertains to format of *ex parte* proceedings. The petitioner society states that the order dated 21.01.2010 was received only on 18.06.2010 and it submitted a representation to the Estate Officer on 05.07.2010, thereby enquiring about the basis of levy upon the petitioner society. Subsequently, the petitioner society issued a notice to the respondents on 10.07.2010, stating that the order dated 21.01.2010 was passed without the knowledge of the petitioner society and without considering the reply filed on behalf of the petitioner society.

9. The petitioner society avers that the DDA provided the certified copies of the proceedings to the petitioner society on 26.08.2010 and that is when the petitioner society came to know that the Estate Officer had passed an *ex parte* order without considering the reply filed on behalf of them. The petitioner society met with the senior officials of the DDA on 06.12.2010 and they were directed to give a detailed representation, which was supplied by the petitioner society on 08.12.2010. It is asserted that the representation of the petitioner society was considered and they were informed that the recovery proceedings had been stopped and the matter was under review. It is



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further asserted that thereafter, the petitioner did not receive any communication with respect to the status of representation of the petitioner society or with respect to any recovery.

10. The petitioner society contends that despite pursuing the matter with the senior DDA officials and being led to believe that the proceedings had been closed, the petitioner society received subsequent notices from DDA on 14.10.2013 and 02.05.2014. After appearing before DDA and seeking time, the petitioner society made a representation on 01.12.2014, requesting withdrawal of the demand notices. No communication was received from the respondents for almost two years until the petitioner society learned of DDA's intention to demolish their property *via* a letter written by the DDA to the police. Consequently, the petitioner society deposited Rs. 7 Lakhs and submitted an affidavit undertaking to pay the remaining amount in instalments.

11. It appears that the petitioner society moved an application under the Right to Information Act and obtained various documents from DDA. Thereafter, the petitioner society filed a writ petition bearing W.P.(C) 1210/2017 before this Court, which was dismissed as withdrawn *vide* order dated 10.02.2017, thereby granting liberty to the petitioner society to file an appeal under the PP Act before the competent authority.

12. Pursuant to the withdrawal, the petitioner society preferred an appeal under Section 9 of the PP Act challenging the order dated 21.01.2010 passed by the Estate Officer. By way of the impugned order dated 06.12.2022, the appeal filed by the petitioner society was



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dismissed, declining condonation of 2,568 days of delay in filing the said appeal. Hence the present writ has been filed.

SUBMISSIONS MADE BY THE COUNSELS AT THE BAR:

13. The Learned Counsel for the petitioner society has submitted that the petitioner society has assigned justifiable grounds for condonation of delay on merits and otherwise in filing of the appeal under Section 9 of the PP Act, and thus, the appeal should have been decided on its merits, asserting that the issue of limitation involved both factual and legal considerations, which the learned District Court failed to evaluate. The learned counsel refers to paragraph 15 of the impugned order and the same is reproduced below: -

“15. Most importantly, the appellant does not dispute have already partially complied with the impugned order by depositing a sum of Rs. 7,00,000/- with the respondents. Rather, according to original records produced by the respondents, even a letter and an affidavit both dated 22.12.2016 were filed before the respondents by the President of the appellant, thereby undertaking to pay the balance amount in six equal monthly instalments from January 2017 onwards. The appellant concealed those records also and the same were produced only by the respondents. Even if the prescribed period of limitation of 12 days for filing the present appeal is counted from 22.12.2016, the appeal filed on 13.02.2017 is hopelessly time barred and there is no explanation even for this delay.”

14. The learned counsel for the petitioner society submits that the findings rendered by the learned District Court are erroneous as the petitioner society herein had made averments about the payment of the amount of Rs. 7 lakh to the DDA in paragraph (46) of the appeal filed before the learned District Court. It is stated that the affidavit submitted to the DDA in regards to the payment of Rs. 7 lakhs by the



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petitioner society were also duly filed along with the appeal. The petitioner society contends that the Estate Officer issued an *ex parte* order on 21.01.2010, approving a time-barred claim though the petitioner society had been actively participating in the proceedings; and that the learned District Court ought to have appreciated that the case is against the State and the Petitioner Society are merely *Pahlwaans* (wrestlers) who are running the Akhara. Additionally, it is noted that the DDA, while responding to the learned District Court, failed to assert a limitation defence. Furthermore, the petitioner society highlights that DDA has already received a payment of Rs. 10 lakh from the petitioner.

15. Reliance has been placed on **Collector, Land Acquisition, Anantnag v. Katiji**⁵, **Krishan Pal v. The Commissioner, Rohtak Division**⁶, **Ajay Bag @ Roy v. Estate Officer, Calcutta Port Trust**.⁷ The petitioner society submits that it is a well settled proposition that if consideration of an appeal on merits is pitted against the rejection of an appeal on the technical ground for the same being barred by limitation, the Courts in that case would lean in favour of condonation of the delay and hearing the appeal on merits. The petitioner society states that the demand notice/claim of the DDA with respect to damages of Rs. 34,90,145/- for the period of 15.07.1987 to 31.08.2006 raised in the year 2008 for the first time is barred by limitation under Article 52 - Schedule 1 of the Limitation Act, 1963 and not legally recoverable. Reliance in this regard has been placed on **New Delhi**

⁵ Civil Appeal No. 460 of 1987

⁶ Civil Appeal No. 75 of 2019



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Municipal Corporation Committee v. Kalu Ram⁸ passed by the Apex Court and **Bharat Petroleum Corporation Ltd. v. Airport Authority of India**⁹ passed by this Hon'ble Court.

16. The petitioner society argues that there is no categorical finding that the petitioner society is an unauthorized occupant as per Section 7(2) of the PP Act. To support this argument, the petitioner society cites the decision in **Dunlop India Ltd. v. Bank of Baroda**¹⁰, as rendered by this Hon'ble Court. It is further submitted that the occupation of the petitioner society has not been found to be unauthorized as per the report dated 04.09.2006 of the Yamuna Monitoring Committee, and the said report was filed in compliance of the orders in W.P.(C) 2112/2002; and that the petitioner society withdrew their impleadment application in view of the order dated 11.10.2006, as this Hon'ble Court had allowed the petitioner society to continue to enjoy the possession and use the land in dispute for Akhara. It is further contended that the order dated 15.05.2009 in the Contempt Petition¹¹ observed that *"no oral order shall be passed by the convener. All orders of the committee/convener shall be given effect to only with the approval and endorsement by an order of this Court."*

17. The petitioner society lastly submits that the respondent failed to adhere to the procedure outlined under Rule 8 of the Public

⁷ (2011) 4 ICC 535

⁸ Civil Writ No. 988 of 1968

⁹ W.P.(C) No. 379/2016

¹⁰ W.P.(C) No. 2659/2008

¹¹ Cont Cas(C) 65/2008



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Premises (Eviction of Unauthorized Occupants) Rules, 1971¹² for assessing damages, thereby rendering the claimed amount of Rs. 34,90,145/- against the petitioner as *void ab initio*. It is contended that the respondent is obligated to comply with the provisions of the PP Rules, which stipulate the requisite process for such assessments. Accordingly, any evaluation of damages must strictly conform to these rules. Rule 8 of the PP Rules is reproduced below: -

“8. Assessment of Damages – In assessing damages for unauthorized use and occupation of any public premises the estate officer shall take into consideration the following matters, namely:

-

- (a) The purpose and the period for which the public premises were in unauthorized occupation;
- (b) The nature, size and standard of the accommodation available in such premises;
- (c) The rent that would have been realized if the premises had been let on the rent for the period of unauthorized occupation to a private person;
- (d) Any damage done to the premises during the period of unauthorized occupation;
- (e) Any other matter relevant for the purpose of assessing the damages.”

18. *Per Contra*, the learned Counsel for the DDA has urged that on 07.07.1971, the DDA was directed via a communication from the L & DO to initiate appropriate proceedings against the petitioner society. Further, it is submitted that on 25.05.1973, through another communication, the L & DO transferred the land measuring 125.31 acres to the DDA for the purpose of sand possession of land including the land in dispute. Moreover, on 23.01.1985, the Engineer Office of the L & DO, acting on behalf of the President of India, informed that

¹² PP Rules



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the temporary license deed previously granted to the petitioner society for approximately 1234 sq. yds. has been cancelled, as the land in dispute was immediately required for public purpose of building the Yamuna Bridge.

19. The learned counsel for DDA has urged that the petitioner society has inappropriately cited an alleged letter dated 03.02.1986 from the PWD. This letter purportedly claims that the PWD compensated the petitioner society for relinquishing 1234 sq. yds. of land out of 1800 sq. yds., attempting to assert a vested right in the land in dispute in the present matter. It is maintained that the PWD is not the land owing authority herein. Furthermore, it is emphasized that matters concerning the land acquisition and the associated compensation fall strictly under the purview of the Land Acquisition Act, 1894.

20. It is also submitted on behalf of the DDA that the petitioner society has drawn an undue reference to a letter dated 19.07.1987 from DDA to the petitioner society, and to letter dated 02.09.1988 from the petitioner society to the DDA through Deputy Director (Lands) and 03.03.1988 from Deputy Director (Lands), DDA to Deputy Director (Hort) II, DDA and a mere glance of these letters would reveal that the letters are completely sham and fabricated and that only true typed copies has been filed and not the alleged original document.

21. It is stated that by virtue of the order dated 16.11.2005, in W.P.(C) No. 2112 of 2002, this Hon'ble Court established a committee tasked with the removal of encroachments and the



clearance of the Yamuna Bank and its embankments. Subsequently, by an order dated 08.12.2005, this Hon'ble Court directed the aforementioned committee to undertake measures to remove encroachments extending up to 300 meters from both sides of the Yamuna River, and that the petitioner society had admitted in their representation dated 23.02.2016 that the notices for eviction were served upon the Akharas. It is submitted that the DDA's eviction notice was neither stayed nor set aside by any Court.

22. The learned Counsel for the DDA argues that the impugned order warrants no interference, asserting that the PP Act legally allows only 12 days for an aggrieved party to file an appeal against an order issued by the Estate Officer. The impugned order dated 06.04.2010, was received by the petitioner society on 18.06.2010. Instead of filing an appeal, the petitioner society submitted representations to the Estate Officer on 05.07.2010 and 10.07.2010, seeking clarification on the basis of the levy. The petitioner society now challenges the impugned order and the interpretation of "*sufficient cause*" as provided in Section 9(2) of the PP Act, suggesting that a delay of more than seven years could be condoned if the Court finds a *sufficient cause*. The DDA contests this, arguing that the '*sufficient cause*' clause for condonation of delay cannot be interpreted in isolation and must be considered within the context of the statutory timeframe, indicating that any delay in filing an appeal must be reasonable and not extend indefinitely. The petitioner society has not presented any facts to justify the delay's condonation. In this regards, reliance is placed on **Government of Maharashtra (Water Resource**



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Department) v. Borse Brothers Engineers and Contractors Pvt. Ltd.¹³, Basawaraj v. Special Land Acquisitions Officer¹⁴ and Ajay Dabra v. Pyare Ram.¹⁵

23. Lastly, learned counsel for the DDA relies on orders dated 13.01.2015 and 09.02.2023 passed by the Hon'ble National Green Tribunal, wherein DDA has been enjoined upon to clear the Yamuna Floodplains and engage in restoration and aesthetic development of the floodplains. It is averred by DDA that the mere filing Department Officer Noting dated 10.12.2010, confer no right on the petitioner society. Reliance in this regard has been placed upon **Sethi Auto Service Station v. Delhi Development Authority¹⁶, Municipal Committee v. Jai Narayan and Co.¹⁷ and Nareshbhai Bhagubhai v. Union of India¹⁸**, to show that a noting recorded in the file is merely a noting simplicitor and nothing more and it merely represents the opinion by the particular individual, and by no stretch of imagination, such noting cannot be treated as a decision of the concerned department of State.

ANAYLYSIS AND DECISION:

24. I have given my anxious consideration to the detailed submissions advanced by the learned counsels for the rival parties and I have also meticulously gone through the entire record of the case.

¹³ (2021) 6 SCC 460

¹⁴ (2013) 14 SCC 81

¹⁵ (2023) SCC OnLine SC 92

¹⁶ (2009) 1 SCC 180

¹⁷ 2022 SCC OnLine SC 376

¹⁸ (2019) 15 SCC 1



25. First things first, insofar as the issue of condonation of delay in filing the appeal under Section 9 of the PP Act is concerned, it is an admitted fact that the show cause notice under Section 7¹⁹ of the PP Act dated 01.03.2007 was duly served upon the petitioner society and the same was replied, so much so, that an authorized representative of the petitioner society appeared before the Estate Officer on several dates and eventually for non-appearance of its representative, the impugned order dated 21.01.2010 was passed whereby, the petitioner society was called upon to make payment for a sum of Rs. 34,90,145/- for the period 15.07.1987 to 31.08.2006 for unauthorised occupation of the land in question.

26. It is also brought out on the record that a demand letter in terms of Section 7(3) of the PP Act in prescribed Form 'G' dated 06.04.2010 was issued, which was served upon the petitioner society on the same

¹⁹ 7. Power to require payment of rent or damages in respect of public premises.—(1) Where any person is in arrears of rent payable in respect of any public premises, the estate officer may, by order, require that person to pay the same within such time and in such instalments as may be specified in the order.

(2) Where any person is, or has at any time been, in unauthorised occupation of any public premises, the estate officer may, having regard to such principles of assessment of damages as may be prescribed, assess the damages on account of the use and occupation of such premises and may, by order, require that person to pay the damages within such time and in such instalments as may be specified in the order.

[(2A) While making an order under sub-section (1) or sub-section (2), the estate officer may direct that the arrears of rent or, as the case may be, damages shall be payable together with 4 [compound interest] at such rate as may be prescribed, not being a rate exceeding the current rate of interest within the meaning of the Interest Act, 1978 (14 of 1978).]

(3) No order under sub-section (1) or sub-section (2) shall be made against any person until after the issue of a notice in writing to the person calling upon him to show cause 5 [within seven days from the date of issue thereof], why such order should not be made, and until his objections, if any, and any evidence he may produce in support of the same, have been considered by the estate officer.

[(3A) If the person in unauthorised occupation of residential accommodation challenges the eviction order passed by the estate officer under sub-section (2) of section 3B in any court, he shall pay damages for every month for the residential accommodation held by him.]



date. It is also clearly brought out that instead of preferring an appeal under Section 9 of the PP Act, the petitioner society elected to make representation on 05.07.2010 and later on 08.12.2010, in which *inter alia* impugned order imposing damages for unauthorized occupation of premises in question was acknowledged. The petitioner society then filed Writ Petition (Civil) 1210/2017 before this Court, upon which same was dismissed as withdrawn *vide* order dated 23.02.2010 whereby, the petitioner society was given liberty to approach the Appellate Court i.e. the Principal District & Sessions Judge (Headquarters)²⁰, which appeal under Section 9 of the PP Act and dismissed *vide* impugned order dated 06.12.2022 by the learned PD&SJ.

27. In the said backdrop of the sequence of events, there is no denying the fact that there was delay of 2568 days in filing the appeal. At this juncture, it would be pertinent to point out that the main plank of the case of the petitioner society in the appeal was that on representation preferred by the petitioner society, an office note dated 22.11.2011 was passed whereby the petitioner society was given an impression, or rather an assurance by the Collector (Nazul) that the recovery proceedings would stand closed as the matter was under review. It would be apposite to refer to the observations made by the learned PD&SJ while dealing with the aforesaid plea, which read as follows:

[(4) Every order under this section shall be made by the estate officer as expeditiously as possible and all endeavour shall be made by him to issue the order within fifteen days of the date specified in the notice.]

²⁰ PD&SJ



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“11. As described above, crux of the explanation advanced by the appellant for this delay of more than seven years in filing the appeal is that the appellant had filed a representation dated 08.12.2010 for review of the impugned order and by way of noting dated 10.12.2010, copy whereof is Annexure A-22 to the appeal, the recovery proceedings were stopped. On the face of it, the explanation that the appellant remained under an impression that the respondents had agreed to review the impugned order, which led to delay in filing the appeal might sound convincing. But in view of inordinate delay of more than seven years and even the process of the so called review having started more than 10 months after expiry of limitation, the explanation calls for deeper scrutiny.

11.1 A perusal of the original record of the proceedings reflects that Annexure A-22 is only half truth. The appellant has placed on record only one page, which suits its case. It is the reverse side of the relevant noting dated 10.12.2010, which clinches the issue but copy thereof was not filed by the appellant.

11.2 The noting dated 10.12.2010 (*at page 16/N of Volume 8 of the original records*) reflects that the present appellant had moved a representation dated 08.12.2010, challenging the recovery amount and the matter was placed before Collector (Nazul); that during the discussion before the Collector (Nazul), representative of the present appellant was present and the Estate Officer-IV, before whom the matter was pending had *"given in writing to the defaulter that the recovery proceedings be stopped, as the matter was under review"*; that the Collector (Nazul) after seeing all documents instructed for return of the file to the Estate Officer-IV. In other words, the noting in question in itself does not say that the matter was under review. The noting simply records that the Collector (Nazul) was briefed that the Estate Officer had given in writing to the present appellant that recovery proceedings be stopped as the matter was under review.

11.3 Most importantly, the noting dated 22.11.2011 onwards (*on the reverse side of page 16/N*) clearly reflect that the respondents decided to continue with the recovery proceedings, which is the reason that the appellant started sending various representations, as enlisted above, to the respondents.

11.4 Further, on this aspect, the Hon'ble Supreme Court of India clearly held in the case of *M/s Sethi Auto Service* (supra) thus:

"17. From the afore-extracted notings of the Commissioner and the order of the Vice-Chairman, it is manifest that although there were several notings which recommended consideration of the appellant's case for relocation but finally no official communication was addressed to or received by the appellants accepting their



claim. After the recommendation of the Technical Committee, the entire matter was kept pending; in the meanwhile a new policy was formulated and the matter was considered afresh later in the year 2004, when the proposed was rejected by the Vice-Chairman, the final decision making authority in the hierarchy. It is, thus, plain that though the proposals had the recommendations of the State Level Coordinator (Oil Industry) and the Technical Committee but these did not ultimately fructify into an order or decision of the DDA, conferring any legal rights upon the appellants. Mere favourable recommendations at some level of the decision making process, in our view are of no consequence and shall not bind the DDA." (Emphasis supplied)

12. Submission of learned counsel for appellant that the impugned order was never communicated to the appellant as stipulated under Section 9(2)(b) of the Act, so there is no delay in filing this appeal, also is completely contrary to record.

12.1 According to the records produced by the respondents, on 06.04.2010, a copy of the impugned order in form 'G' was sent by speed post to the appellant but the same returned with the remarks that despite repeated visits, the addressee was not found available.

12.2 Thereafter, on the application of the appellant, copy of the impugned order was supplied to the appellant on 26.08.2010. In fact, in the list of dates filed on behalf of appellant also it is clearly admitted that on 26.08.2010, certified copy of the impugned order was supplied to the appellant. Taking even that date into consideration, the limitation period to file the present appeal expired on 07.09.2010, but as mentioned above, the present appeal was filed on 13.02.2017.

13. Further, even according to the appellant, after receipt of certified copy on 26.08.2010, the first step taken by the appellant was only on 06.12.2010 when the appellant met Senior Officers of the respondents. So even that does not help the appellant, as by then limitation to file the present appeal had already expired.

14. According to the appellant's own case, multiple notices were successively issued to the appellant by the respondents and the appellant continued sending representations, but opted not to assail the impugned order by way of due process of law. Appellant is an influential and affluent society and not some illiterate individual, having no access to legal assistance. It cannot be ignored that it is the public money, which is involved in this dispute."



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28. Suffice to state that based on the aforesaid reasoning, it was held that there were no sufficient grounds for the condonation of delay in filing the appeal and the appeal was dismissed *albeit* without considering the merits. Without further ado, this Court could not agree more with the reasoning given by the learned PD&SJ. Even a bare reading of the office noting on 22.11.2012 (reverse side of page 16/N), would rather indicate that there was no assurance given to the petitioner society that recovery proceedings would be put in abeyance; and rather the ‘tone and tenor’ of the entire notings in question would show that the matter was referred to the Estate Officer to continue with the recovery proceedings. Anyhow, even assuming for the sake of convenience that there was some subtle assurance not to proceed with the recovery proceedings, even in that case it was incumbent upon the petitioner society to initiate appropriate legal proceedings or file an appeal to safeguard its legal rights in the absence of any official communication by the DDA to them.

29. This brings us to another aspect of the matter. As to the plea taken by the learned counsel for the petitioner society that the respondent/DDA had not exercised the option of seeking eviction under Section 4 of the PP Act and that there is no finding that petitioner society was ever declared to be unauthorized occupant in terms of Section 2 (g)²¹ of the PP Act, the said plea does not cut any ice. It is well ordained in law that the proceedings under Section 4 and

²¹ (g) “unauthorised occupation”, in relation to any public premises, means the occupation by any person of the public premises without authority for such occupation, and includes the continuance in occupation by any person of the public premises after the authority (whether by way of grant or



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7 of the PP Act are independent remedies. It was not incumbent upon the respondent/DDA to initiate proceedings under Section 4 of the PP Act, since the history of the litigation in the present matter would exemplify that the petitioner society had no vested right in the property in question.

30. In a nutshell, evidently the petitioner society was granted lease of 130 Sq. feet land at Kudasia Ghat from 15.01.1966 to 14.01.1967 at a nominal rent by the L&DO by virtue of temporary lease dated 07.01.1967, which was extended upto 14.01.1971 and admittedly not extended thereafter. It is also brought on the record by way of an affidavit of Mr. Praveen Dwivedi, Deputy Director, Land & Managment of the DDA dated 11.10.2023, that the total land measuring 125.31 Acres had been vested by the L&DO in favour of the DDA in terms of letter dated 25.05.1973 for extraction of sand and possession of land, including the land that was leased out to the petitioner society situated at Kudasia Ghat near Yamuna River, New Delhi.

31. To cut the long story short, a portion of land measuring 1234 Sq. Yards had been acquired for construction of Inter State Bus Terminus (ISBT) in the year 1986. Although, the DDA in the aforesaid affidavit dated 11.10.2023 denies that any letter dated 03.03.1988 had been written by the Deputy Director (Land) addressed to Deputy Director (Horticulture)-II acknowledging permission to the petitioner society to use and possess the land measuring 1180 Sq.

any other mode of transfer) under which he was allowed to occupy the premises has expired or has been determined for any reason whatsoever.



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Yards on license basis, however, such aspect was admitted by the DDA its affidavit dated 20.12.2017 in the proceedings under Section 7 of the PP Act culminating in the impugned order dated 21.01.2010, wherein it was acknowledged that leased portion of land i.e. alternative land measuring 1180 Sq. Yards had been allotted *vide* letter No. TN-2(37)85/34 to the petitioner society.

32. Interestingly, a new twist to the entire story is given by the respondent/DDA in the affidavit dated 11.10.2023 in this Court to the effect that letter dated 03.03.1988 is fabricated and not found in its records. In this regard, learned counsel for the respondent/DDA vehemently urged that DDA never undertook to allot any alternate site to the petitioner society. However, the learned counsel for the DDA was right in his submissions that reliance by the petitioner society on alleged letter dated 03.02.1986 purportedly written by the PWD which *inter alia* creates an impression that some compensation had been awarded to the petitioner society for handing over 1234 Sq. Yards of land out of 1880 Sq. Yards and thereby suggesting an inference that some vested right *qua* the land under dispute was created, is not fathomable. For the simple fact that the PWD was not the land-owning agency.

33. The situation is further confounded by the petitioner society placing reliance on letter Ref. No. TN (33)35/303 dated 19.07.1987 by the Deputy Director (Land) demanding Rs. 45/- towards license deed and ground rent placing reference to an earlier letter dated 28.12.1987. Learned counsel for the petitioner society submits that the said letter is actually dated 19.07.1989 (P-5 and P-46) and much reliance is paid on



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the subsequent letter dated 02.09.1988, written on behalf the petitioner society to the Deputy Director (Land) intimating that a sum of Rs. 45/- had been deposited in the account with State Bank of India of the DDA on 29.05.1989. It does not need divine eyes to observe that if letter dated 19.07.1989 was written by the DDA demanding ground, rent how could payment be made on 02.09.1988 (P-6).

34. Be that as it may, the issue is as to what was the status of the petitioner society with respect to property in question? In view of the affidavit of the DDA dated 20.12.2017, the respondent/DDA is estopped from challenging the letter dated 03.03.1988 (P-8). However, that does not help the petitioner society in any manner. Section 2(g) of the PP Act clearly provides that “unauthorized occupant” is a person who is occupying public premises without authority of such authorization, and it includes any person continuing to occupy any public premises after authority to occupy such premises has expired or has been determined for any reason whatsoever.

35. At this juncture, it would be apposite to refer to the relevant Court orders passed in the long history of litigation between the parties. In WP(C) 2112/2006 this Court opined that in view of the fact that petitioner society is using the land in question for running an *Akhara* and churning out wrestlers, the DDA should frame some policy. No such policy has been framed, but again it is a policy decision to be taken by the respondent. The next is the order in CONT CAS (C) 65/2008 dated 28.05.2009 (P-13), that reads as under:-



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“After having considered the affidavit filed today which is taken on record, we are satisfied that the temporary constructions permitted to be built by the petitioner would during the pendency of the main writ petition be sufficient to protect the interest of the petitioner particularly taking into about the fact that the other constructions in the vicinity are of a more prominent nature. Accordingly, on the terms the petitioner has indicated in the affidavit dated 28th May 2009 the petitioner may carry on the activity indicated therein subject to the final result of the writ petition. This order has to be read in light of the order dated 2nd March 2009 which permitted the running of the Akhaara on the existing land so as not to disturb the ecology of the river Yamuna. It is made clear that the petitioner will not plead any vested rights and interest with regard to the erected structure and the land.

The contempt petition stands disposed of.”

36. The aforesaid order clearly shows that the petitioner society was given a directive not to disturb the ecology while using and occupying the land in question and it was clearly provided by this Court that no vested rights shall be claimed regarding the erected structure and the land. It would not be out of place to indicate that merely because the petitioner society is engaged in some public beneficial activities, such as nurturing young wrestlers, that by itself would not create a vested right in it to continue to use and occupy the public premises in question. If such a plea is allowed, any ingenious person could just seize some public space or property, and commence some activity having an aspect of public welfare or benevolence, and thus, may claim vested possessory rights. Such a plea, if allowed would lead to disastrous consequences and certainly not in public interest.

37. It is pertinent to mention that the committee constituted by this Court comprising of Hon’ble Ms. Justice Usha Mehra, Retired Judge, Hon’ble High Court of Delhi and Shri S.M. Aggarwal, ADJ (Retired),



vide its report dated on 04.09.2006, *inter-alia*, explicitly determined that the occupation by the petitioner society was grossly unauthorized, as observed in the following terms: -

“In view of the aforesaid I am of the considered opinion that the structure on government land in occupation of the applicant society has to be demolished and taken possession of by the DDA for the development of the Yamuna River Water Front as directed by the Hon’ble High Court *vide* various orders passed in WP(C) Nos 211/2002 and 689/2004 and therefore the request of the area MP and the Central Government Minister made to the Hon’ble Chairperson *vide* D.O letter for permitting the society to remain in possession cannot be acceded to, particularly when all buildings and structures raised at adjoining ghats have already been demolished by the DDA on 31.09.2006.”

38. Such factual aspects were not set aside or interfered by this Court in proceedings arising out of WP(C) No. 2112/2002. Even the petitioner did not contest the factual conclusions of the Committee at any juncture. Thus, even on merits, the petitioner has no cause or reason for instituting the proceedings for re-declaration that the petitioner society was not an unauthorized occupant of the public land/encroacher/trespasser. It would not be out of place to indicate that the land in question falls under the Zonal Development Plan for Zone- ‘O’ as approved by the Ministry of Urban Development²². Further, the Master Plan Delhi-2021 also envisages rejuvenation of river Yamuna through number of measures including ensuring adequate flow in river by release of water by riparian states, refurbishment of trunk sewers, treatment of drains, sewerage of

²² The Zonal Development Plan for Zone 'O' has been approved by Ministry of Urban Development, *vide* letter No. K-12011/23/2009- DDIB dated the 8th March, 2010 under Section 9(2) of DD Act, 1957 and notified under section 11 by DDA on 10.08.2010



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unsewered areas, treatment of industrial affluent, recycling of treated effluent and removal of coliforms at Sewage Treatment Plants besides creating ecological balance by planting trees. The land in dispute is meant for larger public interest and the petitioner society cannot claim any vested rights therein to continue to occupy and use the same.

39. In the end, reverting back to the reliefs which are claimed in the present writ petition, unhesitatingly there is no patent illegality, perversity or incorrect approach adopted by the learned PD & SJ in passing the impugned order dated 06.12.2022 thereby dismissing the application for condonation of delay. Once the application for condonation of delay has been dismissed on the ground of laches, this Court is not enjoined upon to discuss the merits of the claim or the legality of the orders passed by the Estate Officer. The cause of action espoused by the petitioner society is hopelessly barred by limitation and this Court in writ proceeding is not enjoined to rekindle a lost cause of action. All said and done, there are no grounds to warrant interference on merits of the claim of the petitioner.

40. In view of the foregoing discussion, the present Writ Petition is dismissed. The parties are left to bear the costs.

41. The pending applications also stand disposed of.

DHARMESH SHARMA, J.

MAY 27, 2024

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