

(2011) 05 DEL CK 0383

Delhi High Court

Case No: Letters Patent Appeal No. 498 of 2011

Bharat Prakartik Chikitsa Mission
(Regd.)

APPELLANT

Vs

Delhi Development Authority
and Another

RESPONDENT

Date of Decision: May 27, 2011

Hon'ble Judges: Dipak Misra, C.J; Sanjiv Khanna, J

Bench: Division Bench

Advocate: Gurmit Singh Hans and Vishal Soni, for the Appellant; Amit Mehra, Ajay Verma for DDA and A.S. Rao, for DMRC, for the Respondent

Final Decision: Dismissed

Judgement

Sanjiv Khanna, J.

CM No. 10651/2011 (for exemption)

Allowed, subject to all just exceptions.

The application stands disposed of accordingly.

LPA No. 498/2011

1. The Appellant, Bharat Prakritik Chikitsa Mission, by the present letters patent appeal, has assailed the order dated 19th January, 2011 dismissing their Writ Petition No. 551/2009.

2. The learned Counsel for the Appellant has submitted that the Appellant had complied with the terms and conditions of the letter dated 10th November, 1981 and, therefore, they were the allottees and a lessee of the plot admeasuring 1.18 acre in A-1 Block, Janakpuri, Opp. Dholi Piao, Najafgarh Road, New Delhi 110058. It is submitted that the said plot cannot be acquired or taken over by the Delhi Metro Rail Corporation ("DMRC", for short), without taking recourse to Land Acquisition

Act, 1894. It is submitted that the action of the Respondents amounts to trespass and violation of the Rule of law. He has submitted that the Appellants are entitled to relief in view of the observations of the Civil Judge, Delhi in the judgment dated 29th May, 2004.

3. It is not disputed that the civil suit filed by the Appellant was dismissed. Learned single Judge has observed and held that the civil suit pertained to 0.82 acre of land and not 1.18 acres which is the subject matter of the present appeal. This is correct. It may be noted that the said civil suit was filed in the year 1983 and in the said civil suit Appellant had relied upon letter dated 10th November, 1981, written by Delhi Development Authority (DDA) to the Appellant. The said letter has been enclosed as Annexure A-4 to the present appeal and relevant portion of the said letter reads as under:

With reference to your letter dated 23.9.80 addressed to Prime Minister of India on the subject cited above, I am directed to inform you that your allotment can be restored subject to payment of the following dues:

1.	Premium of Addl. Land (0.04 acres) @ Rs. 1 lack per acre	Rs.4,000/-
2.	Interest charges of belated payment	Rs.5,130/-
3.	Restoration charges @ Rs.1/- per Sq. yds. (1.14 acre i.e. 5518 sq. yds)	Rs.5,518/-
4.	Restoration charges additional Charges @ 10% of the premium	Rs. 1,900/-
		Rs.16,548/-

5. The damages for the land occupied by your society without taking possession from the DDA will be communicated to you in due course.

The possession of land which is in occupation of the society beyond the allotted land measuring 1.18 acres be handed over to the D.D.A. by 23.11.81.

The possession of the allotted land will be handed over only after making payment of damages.

4. Learned Counsel for the Appellant appears to be right in his contention that the Appellant had paid Rs. 16,548/- as per challans, which have been enclosed with the

writ petition. However, Clause 5 of the said letter was not complied with. The said clause required the Appellant to pay damages as the Appellant had taken possession of the land in question without permission and consent of DDA. The Appellant was to pay damages and thereafter DDA would give possession of the land to the Appellant. It is admitted case of the Appellant that damages have not been paid. The second requirement of the letter dated 10th November, 1981 was that the Appellant should surrender 0.82 acre of land, beyond the allotted land of 1.18 acres. As noted above, instead of surrendering the land, the Petitioner had filed a civil suit in 1983 claiming right to 0.82 acre of land which had been unauthorisedly occupied by them in addition to 1.18 acre of land. The said civil suit was dismissed by judgment dated 29th May, 2004, which has become final.

5. In view of the aforesaid, it is clear that the Appellant himself did not comply with all the terms and conditions mentioned in the letter dated 10th November, 1981 and, therefore, learned single Judge was right in dismissing the writ petition. Accordingly, we do not find any merit in the appeal and the same is dismissed in limine.