



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

% Judgment reserved on: 11.02.2025
Judgment delivered on: 28.02.2025

+ W.P.(C) 15333/2022 & CM APPLs. 75674/2024, 47612/2022,
56403/2023, 44502/2024 & 72408/2024
FLOURISH HOSPITALS PVT. LTD.Petitioner

versus

DELHI DEVELOPMENT AUTHORITYRespondent

Memo of Appearance

For the Petitioner: Mr. Chinmoy Pradip Sharma, Sr. Advocate with Mr. Kush Sharma, Mr. Nishchaya Nigam, Mr. Vijay Deora, Mr. Irfan Hasied, Mr. Krishnajyoti Deka and Ms. Vagmi, Advocates.

For the Respondent: Ms. Manika Tripathy, Standing Counsel with Mr. Prabhav Ralli, Mr. Asif Iqbal and Mr. Devvrat, Advocates

CORAM:
HON'BLE MR. JUSTICE MANOJ JAIN
JUDGMENT

MANOJ JAIN, J

1. Petitioner seeks direction to respondent to handover '*correct and actual physical possession*' of plot situated at FC-50, Shalimar Bagh. It also seeks execution of lease deed in its favour and to defer the collection of ground rent till further 5 years from the date on which the '*correct and actual and physical possession*' is handed over to them and to also adjust the ground-rent, paid already.

2. The averments made by petitioner can be summed up as under: -

- i) Petitioner participated in an auction conducted by Delhi Development Authority (DDA).
- ii) Such auction took place on 18.03.2009 and petitioner got



the abovesaid plot FC-50, Shalimar Bagh, being successful bidder.

- iii) The plot was for construction of a hospital.
- iv) As per demand-cum-allotment letter dated 29.04.2009 bearing no. F-11(02)09/IL/946, DDA allotted said plot, on leasehold basis.
- v) Admittedly, the plot was admeasuring 9970 sq. meters.
- vi) The entire payment of Rs. 38,73,25,050/- was made by the petitioner with respect to the aforesaid plot. It also paid delayed interest, as demanded.
- vii) *As per allotment terms, the ground rent for first five years was to be charged @ Re.1/- only and thereafter @2.5% per annum on premium.*
- viii) The physical possession was handed over to the petitioner on 05.08.2011.
- ix) Interestingly, as per petitioner, it got excess area.
- x) The plot area handed over to the petitioner included excess area of 2230 sq. meters, over and above the allotted area of 9970 sq. meters.
- xi) DDA failed to clearly 'identify and demarcate' said plot and for the above mistake on the part of DDA, the possession handed over was incorrect and faulty.
- xii) Owing to such erroneous handing over of possession and non-execution of any lease-deed in its favour by DDA, the Petitioner has been unable to finalise the construction work of hospital on the said plot.



- xiii) In addition to the abovementioned discrepancy in the area allotted to the Petitioner, when physical possession was handed over, it was noted by the petitioner that there was encroachment on the plot in the form of temporary sheds and jhuggis erected by the labour/ contractors of the neighbouring plot, which was under construction. While attempting to erect a boundary wall on the site, the petitioner encountered resistance and hindrance from the locals.
- xiv) As soon as the petitioner became aware of said excess area, the petitioner, itself, *vide* letters dated 21.08.2018, 12.11.2018 and 14.11.2018 offered to purchase the same at the same rate as the auction bid so as to enable them to begin construction.
- xv) Since the abovementioned issue of excess area, erroneously handed over to the petitioner, remained unresolved, the petitioner *vide* letter dated 03.09.2019 proposed two solutions i.e. either allot the excess land to them against payment or take away the excess area of 2230 sq. meters.
- xvi) It wrote again apprising that inordinate delay and inaction in this regard by DDA was delaying raising construction of Hospital.
- xvii) In spite of said request made umpteen times, DDA, rather, allotted such excess portion of land measuring 2230 sq. meters to *Directorate General of Health Services, Government of NCT of Delhi*.
- xviii) However, even the same was done without any demarcation.



- xix) On 14.06.2021, the *Screening Committee* of DDA, finally, approved the proposal regarding modification of layout plan with direction to re-work about such surplus area for optimum utilization.
- xx) DDA, however, raised unreasonable demand of charging ground rent on the premise that initial period of five years was already over. Demand letter is dated 03.01.2022 and ground rent was calculated @ 2.5% per annum i.e. Rs. 96,83,125 /- w.e.f. 29.04.2014. Demand was of Rs. 6,28,09,388/- towards outstanding ground-rent and interest thereon.
- xxi) Fact remains that in addition to the premium amount, petitioner had also paid a sum of Rs. 3,46,83,125/- towards ground rent, despite the fact that it was yet to become payable.

3. The grievance of the petitioner is that on account of belated demarcation, non-issuance of any *Revised Letter of possession* and non-execution of any lease deed, it is in no position to use the land or get the construction started. It claims that since there is no demarcation of exact area, it could not have even got any plan sanctioned. Despite the fact the petitioner itself brought the issue of excess land to the knowledge of DDA and despite the fact that the same was even acknowledged, instead of doing any further step, DDA rather raised said demand of ground-rent and interest thereon. It is argued that since the '*correct and actual physical possession*', as per the modified layout plan is yet not handed over and since DDA is yet to execute a lease deed, no ground rent could have been levied.



4. Attention of this Court has been drawn towards 'file noting' of the respondent which indicates that DDA itself knew about the excess area, even on 31.10.2014. Thus, according to petitioner, since there was complete inaction on the part of DDA, levy of ground rent is completely unsustainable.

5. It is in the above said backdrop that the present petition has been filed seeking necessary directions to respondent/DDA, while also challenging the aforesaid demand of ground-rent.

6. *The core issue is to assess the date from which DDA can levy ground rent on the land that was auctioned and allotted to petitioner company, way back in the year 2009.*

7. It is not in dispute that, initially, the physical possession of the plot was handed over to the petitioner on 05.08.2011.

8. However, very apparently, the excess land was also handed over to petitioner Company by DDA, *albeit*, for no fault of the petitioner. Their repeated requests to do the necessary rectification seemed to have fallen on deaf ears.

9. Respondent/DDA, in its counter affidavit, also refers to one letter dated 31.10.2014 and seems to demonstrate that DDA, itself, knew about excess area, being handed over and that such fact was never divulged by the petitioner.

10. One 'file noting' placed on record contains a categorical observation in this regard and the relevant paras read as under: -

"As per report of AE (IL) at P-25/N, during handing over the possession, boundary pillar demarcating the plot in question were correctly fixed and there was no encroachment on the said plot. Further, EE/ND 11 vide its letter dated 31.10.2014 (P.116/C) informed that as per TSS of the land under reference that hospital sites land measuring 12230 Sqm. falls in between Max Hospital and



ESS out of which 9970 Sqm. of land was handed over to the representative of the Flourish Hospital Pvt. Ltd.

It is also submitted that, at the time of preparing LOP, the size of plot was reflected 9970 Sqm. by Planning Wing, DDA. However, subsequently it was found that plot is larger than what has been shown in the LOP.

Further, it is submitted that, even if the excess land is taken back, which has the front end on 03 m service road which is on t on the opposite side of unauthorized colony of Ambedkar Nagar Extension as seen from possession plan (P.113/C). Due to the location and dimension of plot access issues will also arise in future. It has also been noticed that some law & order issues are already being faced due to some Basti located in the vicinity and therefore, selling the stand alone plot directly will pose even more challenges. It is also submitted that, the auction which was held recently for institutional plots, not a single plot was sold, due to reasons such as high reserve price, freeship treatment and as the land is allotted on perpetual lease hold basis and not free hold.”

(emphasis supplied)

11. It indicates that demarcation was rather imperative in the given circumstances moreover, for the reasons best known to DDA, said letter dated 31.10.2014 has not even been placed on record. There are several letters from the side of petitioner and considering those, the fact that the petitioner was the one who divulged about handing over of excess area, cannot be disregarded.

12. Interestingly, in the *letter of possession* dated 05.08.2011, plot dimensions are mentioned to be *as per drawing attached marked as (ABCDEF)*. Fact remains, no such drawing has been placed on record by DDA either to show the dimensions of the plot in question.

13. In fact, surprisingly, till today, nothing has been placed on record to show the actual dimensions of the plot, without including the abovesaid excess area.

14. Learned Counsel for respondent/DDA submitted that the petitioner was obligated to complete the construction of the hospital on the allotted plot



within two years from the date of physical possession of the plot, after obtaining the necessary approvals for the building plans from the competent authority. It is further contended that the petitioner company made no effort to approach the respondent for rectification or to take any remedial step, concerning the excess land until year 2018.

15. While refuting the claim of petitioner Company, respondent-Authority has also relied upon the demand-cum-allotment letter issued by DDA, the relevant portion reads as under:-

“The area of the land/plot is also subject to verification in size, due to requirement of Layout Plan and demarcation at site. Any excess land handed over will subject to payment of cost after handing over the physical possession.”

16. On perusal of the documents placed on record, it is evident that the petitioner had approached the respondent-Authority to get the lease-deed executed in its favour, but there was no response from DDA. Moreover, it was at the instance of petitioner only that in the year 2018, a communication was sent to DDA, intimating that it had received excess land and it further sought to obtain the same as well.

17. Such request, however, was ignored by DDA though, if DDA is to be believed, they knew about excess land in the year 2014.

18. In fact, in one such letter dated 31.12.2020 addressed to DDA, petitioner had sought correct dimensions of the plot in question. In addition, it was also stated that the adjoining plot had already been allotted to *Delhi Government Health Services (DGHS)* on 09.09.2020.

19. It is evident that the petitioner has been chasing the respondent/DDA to resolve the dispute pertaining to such excess land but DDA has failed to act



upon the same. It was only in the year 2021 that there was modification of the Layout Plan by the *Screening Committee*, which was highlighted in the minutes of meeting.

20. Relevant part of such minutes of meeting read as under: -

<i>Item No.</i>	<i>Issues</i>	<i>Discussions/Recommendations</i>	<i>Remarks</i>
37:2021	<i>Modification in the layout plan of 'Facility Centre No. 50 at Shalimar Bagh (Block C&D)' in Planning Zone-H e-File no. PLG/MP/0060/2021/F -3/</i>	<i>The proposal was presented by AC(Plg)IV. After detailed deliberation the proposal for "Hospital" plot measuring 0.997Ha. (already allotted to Flourish Hospital Pvt. Ltd.) was Approved. The proposal for remaining area be reworked for optimum utilisation of land.</i>	<i>ACTION: 1.AC(Plg)IV 2.Engg. Wing 3.LD Branch 4.LM Branch</i>

21. Evidently, thereafter only, the demarcation was conducted.

22. Modified layout plan must have been prepared only after such exercise and thereafter only the petitioner can be said to be in a position to assess the exact length and breadth of said plot and its exact location. Though it had excess area, it was not possible for the petitioner to know, of its own, as to which portion of the entire area would be taken back as excess or surplus area.

23. Interestingly, DDA has, in the interregnum, leased out such excess portion to DGHS. It is pertinent to note that even such allotment was done by DDA before modifying the layout plan, which was done subsequently in the year 2021.

24. While it cannot be denied that respondent/DDA has failed to execute a formal lease-deed in favour of the petitioner Company, despite issuing the *demand-cum-allotment* letter and delivering physical possession, it is also



noteworthy that the *letter of possession* issued by the DDA seems to be inadequate, insufficient and derisory. Since excess area had been handed over to the petitioner, the petitioner despite having physical possession was in no real position to make use of the same.

25. In accordance with the *DDA (Disposal of Developed NAZUL Land) Rules, 1981*, every allottee is required to pay, in addition to the premium, annual ground rent for holding Nazul land. The ground rent is set @ Rupee one per annum per plot for the first five years from the date of allotment. Upon the expiration of such initial period, the annual ground rent increases to 2½% of the premium originally payable.

26. The said Rule reads as under: -

“42. Allottee to be lessee of the Central Government

(1) Save as otherwise provided in rule 44, all Nazul land allotted under these rules, whether at pre-determined rates or at fixed premium under rule 7, or by auction or by tender, shall be held by the allottee as lessee of the President of India on the terms and conditions prescribed by these rules and contained in the lease-deed to be executed by the allottee.

(2) Every such allottee shall be liable to pay, in addition to the premium payable in accordance with these rules, ground rent, for holding the Nazul land allotted to him under these rules, at the rate of Rupee one per annum per plot, for the first five years from the date of allotment:

PROVIDED that in the case of Nazul land allotted to group housing co-operative societies; the ground rent shall be charged at the rate of Rupee one per flat for the first five years from the date of allotment.

(3) The annual ground rent payable after the first five years referred to in sub-rule (2) shall be at the rate of two and half per cent of the premium originally payable.

(4) The rate of ground rent in all cases shall be subject to enhancement after a period of thirty years from the date of allotment.

¹*[Provided that notwithstanding anything contained in this rule, the*



Authority may allot Nazul land on free hold basis either through auction or by tender for residential purpose or commercial purpose:

*Provided further that in the case of allotment on free hold basis, the allottee shall execute a conveyance deed in Form BA.]”
(emphasis supplied)*

27. Furthermore, the rules mandate that the respondent-Authority shall execute a lease-deed in the prescribed Form C, as appended to these rules.

28. In the present case, such crucial step was never carried out.

29. Moreover, it is beyond comprehension as to why when the ground rent had allegedly fallen due in the year 2014, demand was made as late as in the year 2022. Such belated demand of ground rent rather suggests that DDA was also of the view that there was something lacking in the in the handing over and that demarcation was, therefore, required.

30. It is noteworthy that DDA has contended that there has been a failure on the part of petitioner Company to complete the construction within the stipulated period. If that was really so, why DDA did not send any notice cancelling the allotment?

31. In its counter-affidavit, the respondent also, explicitly, acknowledged that the construction was contingent upon the approval of plans and obtaining of sanction by the concerned authority. It is thus perplexing to comprehend as to how the petitioner, or any other individual for that matter, could have initiated construction, without first securing the requisite legal documentation, namely the lease deed, which is essential for such a project. Moreover, as noted, the exact dimensions of actual area were not known as the area handed over was more than the actual entitlement.

32. Furthermore, despite knowing in the year 2014 about handing over excess land, no action was taken by DDA either for correction or



demarcation, which clearly shows sluggishness and indecisiveness on the part of DDA. It was the primary duty of respondent-Authority, who had allotted the plot in question, to ensure that a properly demarcated land was handed over to petitioner or at least, should have been corrected the demarcation without any delay.

33. DDA seems to have slept over the matter for around 7 years.

34. This case thus presents a distinctive and exceptional scenario, wherein the demarcation of the plot in question was not properly carried out at the time of allotment and handing over of possession. Additionally, no formal lease deed was ever executed in favour of the petitioner company, nor was the allotment rescinded or cancelled by DDA, for not adhering to the schedule about raising construction.

35. Had the petitioner company proceeded with construction, without obtaining the requisite approvals, it would have, undoubtedly, resulted in further legal complexities, thereby exacerbating the matter at hand.

36. Despite repeated reminders issued by the petitioner company, there was a discernible lack of action on the part of DDA, which has, in turn, impeded the petitioner company's ability to progress with the project. Such inaction cannot be allowed to adversely affect the rights of petitioner, particularly when the company has consistently made diligent efforts to engage with DDA, in seeking resolution of the matter.

37. Petitioner, while supporting its case has also relied upon *Parmod Kumar & Anr. Vs Lt. Governor of Delhi & Ors. 2008 SCC OnLine Del 1294* wherein it has been observed as under: -

“8. The Nazul Land Rules, in my view postulate that in case of allotment by auction, the DDA would, upon the payment of the bid



amount, execute conveyance in favour of the allottee and, as submitted by Mr. Bansal, contemporaneously place the allottee in possession of the plot. The process of allotment of a plot, the execution of the conveyance in favour of the allottee, and the delivery of possession, it appears, is more or less contemporary, subject to the time that is available to the allottees to make the payment of the amount. In the present case, though the allotment can be said to have been made at the time when the auction was held in the year 2002 wherein the petitioner emerged as the highest bidder, as a matter of fact, on account of the aforesaid circumstances, the petitioner has not been placed in possession of the plot till today. The reasons for this delay are attributable to the respondent, and not to the petitioner.

9. In my view, the endeavour of the respondent to give a literal interpretation to Rule 42 (2) and 42(3) and apply the same strictly in all situations is wholly unjustified. If the interpretation suggested by the respondent DDA is adopted, it would lead to grave injustice to the petitioner. It would amount to putting premium on the respondents own defaults and failures. The said Rule has to be meaningfully and reasonably interpreted. In my view, it can only mean that where the allotment is followed by execution of the conveyance deed and delivery of possession in the normal course, as per the schedule fixed by the respondent for (i) making of payment (ii) execution of the conveyance deed (iii) delivery or possession etc., the respondent would be entitled to charge ground rent from the date of allotment in terms of Rule 42. However, in a case where the date of allotment is separated by a long period from the date when the DDA is in a position to deliver possession of the plot, for reasons attributable to the DDA, the liability to pay the ground rent cannot start from the date of allotment, and must start only from the date when the allottee is placed in possession of the plot under a conveyance. The expression



“date of allotment” used in Rule 42 (2) has to be interpreted in the context in which it has been used, i.e. where the “date of allotment” is more or less contemporaneous with the date of delivery of possession upon execution of the conveyance deed in the normal course. Of course, if allottee and not the DDA is responsible for the delay in execution of the conveyance deed or delivery of possession for any reason, the DDA would be entitled under Rule 42 to demand ground rent from the allottee from the date of allotment, because no person can seek to benefit from or to take advantage of his or her own default.”

38. In *Vivekanand Pratisthan Parishad (Regd) Vs. Delhi Development Authority: 2000 SCC OnLine Del 897*, the formal possession was distinguished from actual possession and it was held that ground rent was rather payable from ‘actual’ and not ‘formal’ possession.

39. Thus, the date of allotment cannot be taken as a ritualistic formula.

40. The court needs to be alive to all the attendant circumstances.

41. It needs to fathom whether any such allottee was, actually, in a position to make use of such land or not.

42. In the present case, it is abundantly clear that the petitioner is aggrieved due to lackadaisical approach of DDA, despite having made several attempts to resolve the issue through multiple communications. The responsibility for the lapse and omission lies with DDA, as it failed to provide the petitioner with a properly demarcated plot and also failed to properly place the petitioner in possession of the plot, in true and real sense. Consequently, the petitioner cannot be held liable as it is admitted case of DDA that excess land was handed over and, therefore, the imposition of ground rent in view of Rule



42 would be wholly unjust.

43. The exact demarcation of the plot came as late as in the year 2021, when the *Screening Committee* had modified the layout and it was thereafter only that the petitioner can be said to be in a position to raise construction. Prior to the above, the ambiguity surrounding the plot's exact boundaries renders any demand of ground rent @ 2.5% p.a. as premature and untenable.

44. The failure on the part of DDA to timely address the issue of excess land and its demarcation and to resolve the discrepancies reflects lacklustre approach of DDA. Such administrative bodies are expected to handle matters with efficiency, transparency, and in a timely manner, especially when public interests are involved. Inaction on the part of DDA has prejudiced the petitioner, and failure to act in a reasonable time-frame clearly goes against DDA. Therefore, the demand of ground rent, before clarifying the actual land area and demarcation, would potentially amount to unjust enrichment, especially when DDA, itself, is largely responsible for generating ambiguity and uncertainty.

45. In view of the peculiar facts and circumstances of the case, it will be in the fitness of things if DDA is directed to treat ground rent @ of Re. 1 per annum until 14.06.2021, taking into account the fact that the exact area of the land was ascertainable only after preparation of the modified layout plan, which could have provided clarity about the exact boundaries and dimensions of the plot.

46. The ground rent @ of 2.5% per annum on the premium of the plot would thus be leviable only w.e.f 15.06.2021.

47. DDA shall accordingly issue fresh demand of ground rent, as per abovesaid directions. Needless to say, it would give necessary adjustment if



any ground rent has already been paid. It shall also provide copy of *modified layout plan* to petitioner within eight weeks, if not already provided.

48. A lease-deed be also executed in favour of the petitioner company, within eight-weeks on completion of requisite formalities. This Court expects the petitioner company to extend full cooperation to the respondent-Authority in completing the necessary formalities and documentation for the above purpose. Not only this, even the petitioner should not cause any further delay in raising construction as it is a hospital which has to come up on the above plot. It is hoped that after complying with the abovesaid directions, DDA, in future, keeps a very strict vigil and does not endure any further delay in construction of hospital.

49. The petition stands disposed of in the aforesaid terms.

(MANOJ JAIN)
JUDGE

FEBRUARY 28, 2025/dr/✍