
(1998) 08 DEL CK 0108
In the Delhi High Court
Case No : C.W. No. 4913 of 1993

Guru Teg Bahadur Public School Society APPELLANT
Vs
Delhi Development Authority and Another RESPONDENT

Date of Decision : 21-08-1998

Acts Referred:

Constitution of India, 1950 — Article 226
Delhi Development Act, 1957 — Section 6

Citation : (1998) 75 DLT 507

Hon'ble Judges : K. Ramamoorthy, J;Devinder Gupta, J

Bench : Division Bench

Advocate : Vipin Sanghi, for the Appellant; Jayant Bhushan, for the Respondent

Final Decision : Allowed

Judgement

K. Ramamoorthy, J.—Guru Teg Bahadur Public School Society has filed the above said writ petition challenging the demand made by the DDA in its letter dated 15.4.1993 and prayed for other reliefs.

2. The case of the petitioner could be briefly stated in the following terms. On 2.1.1990 the DDA allotted on perpetual lease hold basis a plot of land measuring 4 acres (2 acres for school building and 2 acres for play ground) for running a higher secondary school at Model Town (Zone C-19), New Delhi. In the letter it is stated that the rate fixed for two acres for building is @ Rs. 19 lakhs per acre and annual ground rent @ 2 1/2% per annum. In the allotment letter it is stated that cost of land demanded is provisional and the petitioner should give an undertaking that any increase in the cost of land as and when decided by the Government of India shall be payable by the petitioner. The petitioner was asked to pay Rs. 38,95,001/- (cost of land Rs. 38,00,000/- + ground rent @ 1/- p.a Rs. 95,000/-). Or. 5.2.1990 the petitioner deposited Rs. 31,00,000/-. On 28.2.1991) the petitioner deposited Rs. 7,00,000/- and on 6.4.1990, the petitioner deposited Rs. 95,001 /-. The petitioner had also deposited Rs. 18,440/-. On 28.2.1990, the petitioner wrote to the Deputy Director (Institutional) DDA, requesting him to

hand over possession of the land. It was also brought to the notice of the DDA that, (1) that the land was water-logged, (2) it was 3-4 feet lower than the adjoining road level and (3) it was totally undeveloped. The petitioner had stated that the rate of land @ Rs. 19 lakhs per acre would apply to the developed land which had been allotted to other institutions in District North. The petitioner requested that necessary instructions should be issued for the earth-filling etc. to make the land a developed one.

3. On 27.3.1990., the DDA wrote to the petitioner to deposit the balance amount of Rs. 95,001 /- together with interest @ Rs. 18% per annum.

4. On 28.3.1990 the petitioner wrote to the DDA that Rs. 95,001/- would be deposited on the date of delivery of the possession of the "arid as is noticed above. On 12.4.1990, the petitioner wrote to the DDA stating that it had deposited a sum of Rs. 95,001/- together with amount of Rs. 18,440/- as interest on the delayed payment and requested the DDA to issue instructions to the concerned authority to hand over possession of the land at the earliest possible time.

5. On 17.4.1990 the petitioner wrote to the Lt. Governor, Who is also the Chairman of the DDA, stating that the petitioner had paid the entire amount as demanded by the DDA and the land is not developed and the necessary instructions should be given to the concerned authority to do the earth- filling so that the construction work could be started by the petitioner. The petitioner wrote to the DDA on 1.5.1990 for delivering possession of the land.

6. On 2.5.1991, the petitioner had again made a request to the DDA. On 1.8.1991 the petitioner wrote to the Lt. Governor, Delhi, stating that pursuant to the request made by the petitioner on 17.4.1990 requesting to issue instructions to the DDA to do the needful. The Commissioner (Land) DDA issued instructions to the Chief Engineer (North Zone) to go the earth-filling done to the extent permissible by a letter dated 30.5.1990. The Deputy Direction (Institution) wrote to the Executive Engineer (North Div.) to expedite the filling of 4 acres of land. The petitioner stated nothing had been done and requested Lt. Governor to issue immediate instructions for implementation of the work.

7. On 13.5.1992, the petitioner again wrote to the DDA requesting the DDA to do the necessary work of filling the land. On 9.6.1992, the petitioner wrote to the DDA for possession of land after filling of the same and DDA should comply with the directions issued by the Lt. Governor. The petitioner did not get any response from the DDA and on 23.9.1992 the petitioner wrote to the Minister of State, Urban Development, Government of India, New Delhi, making the same request. The petitioner received the letter dated 29.9.1992 from the Commissioner (Lands) DDA which reads as under:

I have gone through your file regarding allotment of land to you. The issue has been pending with DDA for a long time. The delay is regretted. The land could not be handed over so far because some of the area was water-logged. If the

area is to be filled up, the necessary amount will have to be paid by you to DDA. This will take a long time and Therefore, it is now proposed to hand over the land to you on "as is where is" basis and requesting the Commissioner (Planning), DDA to give me the site plan for handing over possession to you. On receipt of the site plan the land will be handed over to you immediately.

8. On 1.4.1993 the petitioner wrote to the DDA that necessary instructions may be given to hand over the possession even though six months had passed since issuance of the letter on 29.9-1992, while so, the petitioner received a letter dated 15/ 16.4.1993 in and all which the petitioner was called upon to pay Rs. 14,35,000 / - being the difference payable as the rate of land having been fixed by the Government at Rs. 26 lakhs per acre. The petitioner has filed the writ petition. It is stated that the demand made by the DDA is not at all permissible in law. The increase in the cost of land was never in the contemplation of the party and the petitioner was under the impression that the difference would be only marginal. The respondents cannot rely upon the undertaking given by the petitioner because that was not out of free Will and that was extracted from the petitioner. Under the rules the respondents are not empowered to increase the cost of land.

9. In CM No. 8059/93 the petitioner prayed for the following reliefs:

staying the operation of the impugned demand letter dated 15/16.4.1993 for Rs. 14,35,000/- issued by respondent No. 1;

directing the respondents to forthwith develop, fill it up and carry out necessary activity on the plot measuring 4 acres allotted to the petitions, vide allotment dated 2.1.1990 for the construction of a Higher Secondary School in Model Town (Zone C-19), New Delhi, and to hand over possession thereof soon thereafter, within a time bound schedule;

directing the respondents to issue no objection certificate to enable the petitioners to carry out the construction activity on the plot allotted to them soon after the same is handed over in terms of prayer (ii) above.

10. This Court on 13.9.1994 passed the following orders: CW 4913/93

In spite of grant of various adjournments including last one adjourning the case to be taken up after nearly eight months, the respondents have not filed counter affidavit and reply to the stay application. We are not inclined to grant further time.

Heard. Rule D.B. To be heard Along with CW 3792 of 1991. CM 8059/93

It seems that in the land allotted to the petitioner there are pits at various places and the land is low lying. As an interim measure we direct the DDA to fill up the pits and properly develop the land within a period of four months. On completion of this work the DDA shall inform the petitioner Society and within four weeks thereafter the petitioner shall pay to DDA the additional sum of Rs. 14,35,000/-.

The questions as to whether the petitioner is liable to pay this enhanced/ additional sum or any interest on this amount or the cost for development of land and also whether the petitioner is entitled to the interest on the amount already paid to the DDA, will abide by the result of the writ petition. After the payment as aforesaid is made, the DDA shall forthwith hand-over the possession of the land to the petitioner. A copy of the order be given to Counsel for the parties. C.M. 8059/93 is disposed of accordingly.

11. On 11.1.1995 the DDA filed CM No. 257/95 for extension of time granted by this Court on 13.9.1994 for filling up the land and developing the same by a period of six months. It is stated in para 4 of the petition in the following terms:

That a perusal of the annexures collectively annexed hereto as Annexure -R2 would clearly show that the DDA has taken every effort to pursue the matter of filling up of the pits and developing the land as has been directed by this Hon''ble Court by its order dated 13.9.1994. However, due to circumstances entirely beyond its control, the DDA has not yet been able to comply with the directions given by this Hon''ble Court within the time as has been laid down by this Hon''ble Court.

As soon as the "fly ash" is made available to the DDA by DESU, the process of filling up of the pits would be started immediately and, in the meantime, it is also hoped that the approval of the Vice-Chairman would be received for sanctioning the huge amount required for purchase of "good earth" from the Irrigation & Flood Department. In any case, since the process of filling up of the pits with "flyash" is itself, estimated to taken period of about 21 to 3 months, the DDA would deposit the large amount of money with the Irrigation & Flood Department only towards the end of the said period so that there is minimal loss of interest on public funds.

12. The DDA had filed as Annexure R-1 the letter dated 11.10.1994 by the Deputy Director (Instl) to the Chief Engineer, North Zone, DDA requesting to arrange to fill up the pits and develop the land. There is a note by the Superintending Engineer, Civil Circle -II made on 02.11.1994 (which is annexed to the petition as Annexure R-2) the same reads as under:

Sub: Civil Writ Petition No. 4913/93 -- Guru Teg Bahadur Public School Society v. DDA and Ors.

File for preparing the estimate for filling of the low lying area allotted to Guru Teg Bahadur Public School was received from Commissioner (LD). V.C., DDA has desired on the file that the estimate should be prepared and sent by 27.9.94. E.D. ND-8 was directed to take immediate action and accordingly the estimate was prepared by him and was sent to Commissioner (LD) on 26.9.94 through you. In the meantime Court order was sent to C.E. (NZ) by Dy. Director (Institutional) vide their letter No. F.2(1249)/93/HC/Legal/94 dated 4.10.94 which was received by ND-8 vide his Dairy No. 2600 dated 11.10.94.

Please refer to this office letter No. 15(13) SE/CC-11 5872-73 dated 11.10.94. I have clearly indicated that the estimate has already been sent to the Competent Authority and the work can only be taken up either A/A and E/ 5 is accorded or permission is accorded to take up the work in anticipation of A/A and E/S. As per the directions the file was traced by ND-8 and was received from the Office of Commr.(LD). The file was not processed at all in the Lands Wing. It was again sent to you vide Dy. No. 4825 dated 21.10.1994, in which I have clearly indicated that if the Court orders are to be followed in the right earnest then permission to take up the work in anticipation of A/A 6 E/S may please be accorded. I may point out that even if I am allowed to take up the work in anticipation of A/A & E/S, we require at least about 3 months to complete the formalities for calling of tenders etc. The matter was discussed with you and you have desired that we should contact Flood Department as well as D.E.S.U. E.E. ND-8 has contacted Shri R.K. Garg E.E. (I&F), in charge of Supplementary Drain. He has indicated that they require about 3 months to complete the formalities of calling of tender for the surplus excavated earth to be carted from Supplementary Drain to the site under reference.

Shri DP. Gupta, S.E (Civil) DESU was also contacted to fill up the play ground site by fly ash. He has indicated that they also require about 3 months to arrange the formalities for carrying of fly ash. He has further indicated that if DDA requires the fly ash on priority then they may arrange cartage themselves from Thermal Plant, I.P. Estate to the site under reference. However, if we allow 3 months to DESU then the fly ash will be supplied to our site free of cost.

It is, Therefore, requested that decision may kindly be taken at the earliest.

Sd/- (Suresh Mehta) S.E. Civil Circle-II

C.E (NZ):

N.O.O. Copy to:

Ex. Engineer ND-8, DDA, he is directed to take up the case with C.L.A. indicating the above referred facts to appeal to the Court that the period may be enlarged at least by April, 1995 or so. This date can be a dead line for the filling. He should report back within three days.

13. The Executive Engineer, DDA wrote to the Superintending Engineer (Civil), DESU in the following terms:

Sub: Requirement of Fly-ash by DDA for the work of Development of 9.94 H.A. land in Zone C-19 at North of Model Town.

This is in reference to my personal visit to your office in connection with the supply of fly-ash at the above site, when you were kind enough to direct your AE & JE to visit the site, accordingly AE & JE have visited the site. In this connection, it is intimated that DDA shall be requiring 2,17,500 cum of Fly-ash, 24,000 cum of Fly-ash is urgently required to develop the Land allotted to Guru Teg Bahadur

Public School by DDA in the same scheme. The filling of Fly-ash in the plot allotted to the said school is time bound.

You are requested to direct the concerned officials for immediate supply of 24,400 Cum. fly-ash & thereafter the balance quantity i.e. 1,93,100 m of Fly-ash at the same scheme. You are, further requested to intimate the time required by DESU to supply the 24,000 cum fly-ash and balance qty. of 1,93,100 cum fly-ash on the above mentioned site. However, it is also clarified that nothing shall be payable by the DDA to DESU for supply of Fly-ash at the above said site.

14. On 15.11.1994, the Executive Engineer, ND-8, DDA wrote to the Executive Engineer, Supply, Drainage Division, I & F Department GNCT, New Delhi, in the following terms:

Sub: Requirement of Good earth by DDA for Development of 9.94 Hac. of Land in Zone C-19 at North of Model town.

This is in reference to your personal visit to my office in connection with the supply of good earth at the above site. The above mentioned site has already been visited by your AE & JE Along with my AE concerned. In this connection, it is informed that DDA shall be requiring approximately 75130 Cum. of good earth for the development of Land for above said scheme. Out of total of 75,130 cum of good earth, 21,300 cum of good earth is urgently required to develop the plot of land allotted to Guru Teg Bahadur Public School by DDA in the same scheme. The filling of good earth in the plot allotted to school in time bound.

You are requested to intimate your Terms & Conditions and time you shall be requiring for supply of 21,300 cum. urgently & balance quantity of 53,830 cum. separately at the above said site.

Your early reply in this regard shall be highly appreciated.

15. On 17.11.1994 the Superintending Engineer (Civil) XI, DDA wrote to the Chief Engineer (Civil) DESU in the following terms:

Sub: Requirement of fly-ash by DDA for the work of D/do9.94Hect. land ind. Zone C-19 at North of Model town, Delhi.

DDA shall be requiring 2,17,500 cum, of fly-ash for the dev. of above mentioned site. Out of 2,17,500 cum fly-ash, 24,400 cum of fly-ash is urgently required to develop the land allotted to Guru Tegh Bahadur Public School by DDA and the filling of fly-ash in the said school is time bound. My Ex. Engineer Shri R.N. Mehrotra has personally contacted S.E.(C) and send the requirement of fly-ash vide his letter No, F40(45)AE/IV/ND.8/94/1361 dated 15.11.94. The above site has already been seen by your A.E. & JE. You are requested to direct the concern officers for immediate supply of 24,400 cum fly-ash and thereafter balance qty. of 1,93,100 cum of fly-ash at the same scheme.

You are further requested to intimate the time required by DESU to supply 24,400 cum fly-ash and balance qty. of 1,93,100 cum. Further it is also clarified

that nothing shall be paid by DDA to DESU for supply of fly-ash.

On 21.11.1994, the Executive Engineer, Supplementary Drainage Divn. III, Government of Delhi, wrote to the Executive Engineer, Northern Division No. 8 in the following terms:

Requirement of Good Earth by DDA for Development of 9.94 Hac. of Land in Zone C-19 at North of Model Town-Sir,

Kindly refer to your office letter No. F40(45)/AE-IV/ND-8/94/1362 dated 15th November, 1994 vide which it was desired that the Terms & Conditions and time required for supply of 21,300 cum of good earth be intimated. In this connection, the actual mechanical lead to be involved for the supply of earth for the development of plot of land allotted to Guru Teg Bahadur Public School will be approximately between 15 to 16 kms.

The cost of carriage by mechanical transport for 15 and 16 kms. which will be borne by you shall be approximately Rs. 52.40 per cum and Rs. 54.17 cum respectively. Since this office is not in a position to clarify the exact rate due to non receipt of description of item to be carried out at disposal site. However, the above rate shall be only for the disposal of earth at site in stakes

You are hereby requested to deposit a sum of equivalent to 25% of the total cost of the work at once so that the case is processed and supply of 21,300 cum of earth shall be supplied to your Department within a period of one month after receipt of necessary amount from your department Along with item to be executed at site. The above rate is approximate since this does not reflect the description of item to be got executed.

An early action is requested in the matter.

17. On 8.12.1994 the Executive Engineer, DDA wrote to the Executive Engineer Supplementary Drain Division III, Government of Delhi, Rohini, New Delhi, in the following terms:

Sub: Requirement of good earth by DDA for development of 9.94 Hect. Land in Zone C-19 at North of Model town, Delhi.

Ref: EE/SD.III/DP/54/94-95/2333 dated 21.11.94.

Please refer to above mentioned letter vide which you have intimated the cost of cartage of earth by mechanical transport up to site of disposal. You are requested to intimate the total cost of earth per cum. including cartage of earth at site, earth filling in layers, consolidation and levelling at an early date.

18. On 15.12.1994, the Executive Engineer, SDD-III wrote to the Executive Engineer ND-8, DDA informing him about the cost in the following terms:

Sub: Requirement of good earth by DDA for development of 9.94 Hec. land in Zone C-19 at North of Model Town: Delhi.

Sir,

Please refer to your office letter No. F.40(45)/AE-IV/ND-8/94/1457 dated 8.12.94, on the subject cited above. In this connection, it is informed that the total cost of earth per cum. is worked out to Rs. 50.47, including cartage of earth at site, filling in the pond, and levelling at top but without consolidation. The total cost for 21,300 cum. as intimated is worked out to Rs. 10,75,011 /-.

You are hereby requested to deposit a sum of Rs. equivalent to 25% of the total cost of the work at present so that the case is processed. The balance amount may be deposited at the time of start of the work.

19. On 23.12.1994, Superintending Engineer (Civil) Circle 11, DDA wrote to the Executive Engineer DDA in the following terms:

Sub: Requirement of Good earth by DDA for development of 9.94 Hect. of land in zone C-19, at North of Model Town.

The estimate was prepared and was discussed in detail in EAC meeting held about 10 days back. The EAC has only given us clearance for the area to be filled with fly-ash in 1.60 Hect. of land which has already been allotted to Guru Teg Bahadur Public School. The decision has been taken by EAC to fill up whole of the area by Fly-ash and only in the Building portion the top should be filled by earth to a depth of 0.3 mtrs. The detailed estimate based on EAC decision Along with the agenda item should be sent to the undersigned at the earliest.

You have already been directed that the matter may kindly be taken with the CLA for obtaining extension of time from the Hon"ble Court. You may refer the letter dated 14.12.1994 sent to Shri S.D. Sharma, Dy. CLA. You are once, again directed to obtain extension of time from the Hon"ble Court. You are also directed to be in close touch with CLA branch and to follow the case and detailed report should be sent to the undersigned at the earliest.

20. On 29.12.1994 the Superintending Engineer, Circle XI, DDA, Pitampura, wrote to the Additional Chief Engineer (Civil) DESU, Delhi in the following terms:

The matter regarding getting the above site filled up fly-ash was discussed by Engineer Member, DDA. You were enough to agree to get the above referred site filled fly-ash through existing contract. His requested necessary directions may please be issued to EE/SE.

The qty. of fly-ash which is estimated by us is approx. 41000 Cum. The fly-ash will supplied by DESU at site without any cost.

21. The petitioner filed the reply to this application (CM No. 257/95 stating that the DDA should have taken action and comply with the orders passed by this Court and the DDA was guilty of contempt. The petitioner prayed that the DDA should be directed to complete the work by 15.3.1995.

22. The petitioner filed CM No. 4486/95 on 21.7.1995 praying that the senior

and responsible officers of the respondent (DDA) should be directed to personally supervise and ensure compliance of the orders of the Court and to personally explain their conduct in not complying with the orders passed by this Court till date. CM No. 4486/95 and CM 4913/93 came up for hearing before this Court on 30.4.1996. This Court passed the following order:

"Both the learned Counsel pray for the matter being taken up after three months, so as to secure full compliance with the order dated 13.9.1994.

Allowed. List on 18th September, 1996."

23. On 18.9.1996, in the writ petition this Court passed the following order:

"CW No. 4913/93

The order dated 13/9/94 is yet to be fully complied with, though a period of two years has elapsed. On request made on behalf of DDA, it is given further two months time but as a last opportunity, failing which we may consider the petitioner's request for allowing it to fill the pits and reimburse the expenses from DDA. To come up for directions on 19th November, 1996."

24. On 26.2.1997 this Court passed the following order :

"CW No. 4913/93

Learned Counsel for the respondents states that pursuant to the order passed on 13.9.1994, DDA got the pits filled and delivered possession to the petitioner and presently construction work commenced by the petitioner is in progress.

This petition is to be heard with CW 3792/91, which has not been posted for today. It is also stated that similar matters are posted for hearing on 10th March, 1997.

List for hearing on 10th March, 1997 along with similar matters. CW. 3792/ 91 will also be posted for hearing on that date."

25. In reply to CM No. 4486/95 filed by the writ petitioner, Chief Engineer (North Zone), DDA, Vikas Minar, ITO filed the reply on 17.11.1995. He had annexed documents RA-1 to RA-6. Annexure RA-1 is a letter from the Director (Lands) to the petitioner stating that the filling work was in progress and was likely to be completed within one month's time. RA-2 is a letter dated 4.10.1995 from the Deputy Director (IL) DDA to the petitioner in the following terms:

"This has reference to discussions with the Director (Lands) on 25.9.1995 and our letter No. F.18(25)94-IL/291 dated 25.9.95. As per consensus reached in the meeting and you are requested to give a Bank guarantee of Rs. 14.35 lacs. You are also requested to give an undertaking that the amount shall be deposited within a week time after completion of filling work, on receipt of above two documents possession of the land allotted--4 acres shall be given."

RA-3 is a letter from the Principal of the School to the Deputy Director (IL) DDA,

stating that the necessary undertaking as per the letter dated 4.10.1995 was being sent. The undertaking is in the following terms:

"Whereas Guru Tegh Bahadur Public School has purchased a plot of land from DDA for which, besides the cost of land already paid, additional amount of Rs. 14.35 lacs is to be paid after handing over the possession of the duly filled in and developed, plot to the party, in accordance with the order of the Hon'ble Delhi High Court dated 13.9.1994. And whereas in accordance with DDA letter No. F.18(25)94-IL/1494 dated 4.10.1995, DDA and the party have mutually agreed that the DDA will hand over the entire plot immediately to the party after completion of earth filling of the building portion and will fill up the remaining portion of the plot at the earliest and complete the provisions of the services with interim arrangements within 6-8 months as per DDA letter No. F.18(25)94/IL/291 dated 25.9.1995. The Managing Committee has given a Bank guarantee of Rs. 14.15 lacs in favor of the Vice Chairman, DDA and undertakes to make this payment to the DDA within a week after completion of the said works with full development of plot."

It may be noticed that the payment was to be decided by this Court as stated by this Court in the order dated 13.09.1994. Annexure RA-4 is a letter dated 10.10.1995 from the petitioner to the Deputy Director (IL) DDA requesting the DDA to hand over the possession as per the discussions had on 25.9.1995. Annexure RA-5, shows that the possession was handed over to the petitioner on 19.10.1995. On 19.10.1995 it is stated that the possession was given as provisional and subject to the variation and verification of the demarcation and area finalised by the DDA on the approved dimensional possession plan subsequently. Annexure RA-6 is a letter dated 28.2.1995 from the Superintending Engineer (Civil) Circle-II, DDA to the Superintending Engineer/SDC-I, Delhi Admn. which reads as under:

"Sub : Filling of earth in 1.6 hectares of land allotted to Guru Teg Bahadur Public School in C-19, North Model Town.

The above referred site was jointly inspected by Sh. R.N. Mehrotra, EX. ND-8, DDA and Sh. S.K. Sharma, E.E. (I&F).

About 8,000 cum. of earth is to be filled at the above referred site. As per the latest Judgment of High Court, the work of filling has to be completed on top-most priority. The case was discussed with you personally by the undersigned on telephone on 23.2.1995 and you have agreed that necessary directions are being given to Sh. S.K. Sharma, E.E. to start the work immediately without insisting the advance payment to be made since the release of funds takes about 15 to 20 days. We have already moved the case of release of funds. However, it is to intimate you that earnest efforts will be made to release the funds by 31.3.95. Shri R.N. Mehrotra, E.E. ND-8, DDA will be contacting Shri S.K. Sharma, E.E. (I&F) to frame the programme for starting the work."

26. On 2.3.1995, the Superintending Engineer (Civil) Circle-II, DDA sent the

following instructions to the Executive Engineer ND-8, DDA:

"Sub: Filling of fly-ash in the area allotted to Guru Teg Bahadur School.

You are aware that a Writ Petition No. 4913/93 has already been filed by the management of Guru Teg Bahadur Public School Society against DDA. Earlier the Hon"ble Court has directed DDA to complete the development of the above referred site by 13.4.95. The case was pleaded by our Panel Lawyer Shri Jayant Bhushan. He has been able to get a final extension up to 30.4.95. He has clearly indicated in his noting 01. page Nos. 11- 12/N on file No. F.2(1249)93/ HC/Legal that no further extension in any case will be granted as per the directions given by the Court. As such DDA should ensure that the work should be completed by 30.4.95.

I have contacted personally to Shri R.P. Bhatia, Addl. Chief Engineer, DESU, Shri R.C. Garg, S.E.(C)(and Shri A.K. Bhgumik, E.E. Incharge, DESU on 2.1.95. The urgency of the case was personally explained to Addl. Chief Engineer when E.E. and S.E. DESU was also present. It was assured by them that the filling of fly-ash will be completed with in a month or so. I have been in constant touch with DESU. Authorities and they have been telling me that the proposal will be discussed in the meeting being held on every Wednesday. His to inform you that even after a lapse of 2 months the meeting could not be held. As I could gather from the telephonic conversation, the meeting is not expected to be held in the near future. Even if we presume that the meeting will be held then the proposal to fill up the fly-ash in this area will only be agreed to and the other formalities like calling of tender, approval, award of work etc. will follow. It clearly indicates that in any case the work cannot be completed in a month or so. The area is to be filled up with fly-ash and then the Flood Deptt. is to fill up earth over it.

Please refer to this office letter No. F.4(1)SE/CCII/DDA/127681 dated 24.2.1995 addressed to Shr R.P. Bhatia, Addl. C.E. DESU with copy to you, SE & EE DESU etc.

The formalities are yet to be completed by DESU and it is impossible to complete the work by them up till March or so. To fulfilll the orders of Hon"ble High Court it is necessary that the fly- ash is carted by us top-most priority so as we are able to complete the work of filling by fly-ash within a month so that later the flood-department can fill up earth over it.

The filling of camping site at Burari Road, fly-ash was executed in the year 1990. The fly-ash was carted by us from I.P. Power Station to the site in 1990. We have paid Rs. 51 /- per cum. Since DESU will not be able to complete the work in March or so, it is necessary for us to make bur own arrangements to fill up the area. If we cart the fly-ash from I.P. Power Station to site ourselves it will be about 30% more than what we have paid in the year 1990 i.e. Rs. 51/- + 30% (15.30). The rate offered by Flood Department, for filling up the area is Rs. 50.47 per cum which is cheaper than the rate of fly ash, if it is carted by us. It is, Therefore, requested that we may request the Flood Department to fill up the

whole area by earth, then the cost will be approximately 48,000 cum x 50.47=Rs. 24.22 lacs. It is requested that the above proposal may be accepted and I may be allowed to give clearance to Flood Department to complete the work of filling latest by March otherwise it will be impossible to get the work completed before the final date given by the Hon"ble Court i.e. before 30.4.1995."

27. The DDA and other Authorities had done the work only after directions were issued by this Court. The question is whether the respondent can make the demand as mentioned in letter dated 15.4.1993. The allotment was made in the first instance, on 2.1.1990 and by 6.4.1990 the petitioner had paid Rs. 39,13,441/-. The DDA ought to have allotted a developed plot to the petitioner so that the petitioner could start construction immediately on handing over possession of the property after the payment was made by the petitioner. The DDA had not taken any steps to fill up the pits and develop the land in spite of the direction issued by the Lt. Governor. It had taken a long time to complete the work and that too after the direction issued by this Court on 30.9.1993.

28. If a developed land had been given to the petitioner and after the payment possession was handed over to the petitioner and if the Government had revised the rates the respondents would have been justified in making the demand as per the rate fixed by the Government. The situation in this case is that payment was made by the petitioner as per the demand made by the DDA but the DDA did not act as per the policy of the Government in handing over a developed land to the petitioner and had delayed the entire process and as per the record the petitioner could commence the construction only after October, 1995, five years after the payment was made by the petitioner.

29. It is contended by the learned Counsel for the petitioner Mr. Vipin Sanghi that the respondents were not justified in making the demand in the peculiar circumstances of the case and this case does not resemble the facts in the other cases where fully developed land had been given to the school. The learned Counsel submitted that the respondent had acted in a very unreasonable manner and no person properly instructed in law fully alive to his obligation under law and his duty and responsibility would have acted in the way in which the DDA had acted in this case. The principle is that a public authority vested with discretionary powers should act reasonably with good governance and in the interest of the public. Lord Coke laid down nearly 400 years ago in *Rooke's case* (1598) 5 Co. Rep. 99. as follows:

"For discretion is a science or understanding to discern between falsity and truth, between wrong and right, between shadows and substance, between equity and colourable glosses and pretences, and not to do according to their Wills and private affections; for as one saith tails discretion discretional confundit".

30. The principle is further amplified by Court in England and by the Supreme Court of India that whenever the power is exercised unreasonably that would

amount to abuse of power. In *Roberts v. Hopwood*, (1925) AC 578; the House of Lords observed:

"A person in whom is vested a discretion must exercise his discretion upon reasonable grounds. A discretion does not empower a man to do what he likes merely because he is minded to do so--he must in the exercise of his discretion do not what he likes but what he ought. In other words, he must, by the use of his reason, ascertain and follow the course which reason directs, he must act reasonably."

31. In *Padfield v. Minister of Agriculture, Fisheries and food*, (1968) AC 997 the House of Lords reaffirmed the principle laid down in what is called in *Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation*, (1948) 1 KB 223. In that case the Lord Greene MR expounded the proposition in the following manner:

"It is true that discretion must be exercised reasonably. Now what does that mean? Lawyers familiar with the phraseology used in relation to exercise of statutory discretions often use the word "unreasonable" in a rather comprehensive sense. It has frequently been used and is frequently used as a general description of the tailings that must not be done. For instance, a person entrusted with a discretion must, so to speak, direct himself properly in law. He must call his sown attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to what he has to consider. If he does not obey those rules, he may be something so absurd that no sensible person could ever dream that it lay within the powers of the authority. Warrington, LJ. in *Short v. Poole Corporation* gave the example of the red- haired teacher, dismissed because she had red hair. This is unreasonable in one sense. In another it is taking into consideration extraneous matters. It is so unreasonable that it might almost be described as being done in bad faith; and, in fact, all these things run into one another".

32. Having regard to these principles we are of the view that the respondents had acted in an arbitrary fashion, wholly oblivious to their duties and responsibilities.

33. We are of the view that the petitioner is justified in making the grievance against the respondents in seeking to make a demand without fulfilling its obligation entrusted to it by the Government. The DDA had demanded ground rent at Rs. 95,001 /- with making necessary arrangement for developing the land. The petitioner had prayed in the following reliefs:

(i) a writ, order or direction in the nature of certiorari, quashing the letter bearing No. F.18(25)84/Instl/803 dated 15.4.93/16.4.1993 issued by respondent No. 1 and the revision of land rates effected by respondent No. 2 for the period 1.4.89 to 31.3.91 from Rs. 19 lacs per acre to Rs. 26 lacs per acre in respect of Nazul land falling in the North Zone, and allotable to institutions such as the petitioners;

(ii) a writ, order or direction in the nature of mandamus declaring that the petitioners are not liable to pay any further amount towards the cost of land allotted by respondent No. 1 for the construction of High Secondary School, Model Town (Zone C-19), New Delhi;

(iii) a writ, order or direction in the nature of mandamus directing the respondents to forthwith hand over possession of land measuring 4 acres, 2 acres for school building and 2 acres for play ground) for setting of a Higher Secondary School at Model Town (Zone C-19), New Delhi, after carrying out the development work thereon and by other necessary repairs/filling up activity and to issue no objection certificate to the petitioners to enable them to proceed with the construction activity on the plot without any delay.

(iv) a writ, order or direction in the nature of mandamus directing the respondents to pay to the petitioners interest on the deposit of Rs. 38,95,001/- from the dates of deposits till the handing over the school site to the petitioners by the respondents in a fully developed and proper condition, @ 18% p.a.;

(v) a writ, order or direction in the nature of mandamus directing the respondents to pay to the petitioners a sum of Rs. 40 lacs on account of escalation in the cost of construction of the school building to be constructed by the petitioners on the plot allotted to them;

(vi) a writ, order or direction in the nature of mandamus directing the respondents to execute a lease deed in respect of the plot allotted to them."

34. In the light of the dictum laid down by the Supreme Court on the scope of power of the High Court under Article 226 of the Constitution of India, we are afraid that we cannot grant all the reliefs prayed for by the petitioner. However, in view of the fact that the respondents had not acted in a manner which the law expected of them, we accept the submissions made by the learned Counsel for the petitioner that the impugned demand dated 15.4.1993 should be quashed.

(i) Accordingly, the letter dated 15.4.1993 quashed and the DDA shall not be entitled to make any demand on the basis of any revision of land rates as stated in that letter.

(ii) The petitioner is also not obliged to pay ground rent of Rs.95,001 /-from 1990 up to 1995.

(iii) The ground rentals fixed in the original demand letter dated 2.1.1990 @ Rs. 2.5% p.a. shall be payable by the petitioner only for the year 1996 and that shall be paid by the petitioner within two months from today.

(iv) In future the petitioner shall continue to pay the ground rent as per the original demand.

(v) The Bank guarantee given by the petitioner on 14.10.1995 shall be returned by the DDA to the petitioner.

(vi) The DDA shall issue necessary No Objection Certificate and comply with all formalities to enable the petitioner to obtain the completion certificate.

35. The relief prayed for by the petitioner for payment of interest on the deposit of Rs. 38,95,001/- is rejected.

36. The claim by the petitioner for the payment of Rs. 40 lacs in the escalation in the cost of construction is also rejected.

The writ petition stands allowed in the above terms. There shall be no order as to costs.