

**(2004) 11 DEL CK 0099**  
**In the Delhi High Court**  
**Case No : WP (C) No. 2646 of 2004**

K.K. Birla Academy and Another

APPELLANT

Vs

D.D.A.

RESPONDENT

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**Date of Decision :** 18-11-2004

**Acts Referred:**

Delhi Development Act, 1957 — Section 22(3), 56(2)  
Delhi Development Authority (Disposal of Developed Nazul Land) Rules, 1931 — Rule 20, 3, 4, 42, 43

**Citation :** (2004) 115 DLT 361

**Hon'ble Judges :** Pradeep Nandrajog, J

**Bench :** Single Bench

**Advocate :** A.M. Singhvi, R.S. Endlwa, A.T. Patra and Nipun Malhotra, for the Appellant; J.M. Sabharwal and Sangeeta Chandra, for the Respondent

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## Judgement

Pradeep Nandrajog, J.—Birla Academy a society registered under the Societies Registration Act, 1860 intended to set up an institute on the lines of the British Museum London with the object of highlighting facets of History, Culture and Scientific development in India. On 28.2.1985 it submitted an application to Delhi Development Authority seeking allotment of 15 to 20 acres of land in South Delhi. Along with the application, the academy submitted a statement of case to DDA.

2. In the statement of case submitted, the academy outlined the object for which it intended to set up the institute. Facilities to be made available were highlighted. Extent of and nature of buildings required were stated. Extent of land requirement was justified.

3. Considering the application submitted by the academy, DDA after appraisal of the statement of case submitted by the academy, informed the academy that in principle, DDA had decided to allot about 10 acres of land to it. The academy was asked to deposit Rs.10 lacs per acre subject to adjustment. Thus, a sum of Rs.1 crore was required to be deposited by the academy.

4. Academy deposited a sum of Rs.50 lacs under cover of its letter dated 1.7.1985. It was recorded in the letter that half the sum demanded was being paid on the basis of a verbal agreement with Shri Prem Kumar, Vice Chairman, DDA.

5. DDA received the cheque and encased the same.

6. In response to a query from the academy as to where land would be allotted to it, vide letter dated 11.9.1985 DDA informed that a comprehensive scheme for River Front Development has been prepared and was under finalisation. Demarcation of the plot could be done only after the scheme was approved.

7. There was a lull thereafter. As lull as became a bit too long, and DDA did not finalize the location of the land to be allotted to the academy, the academy addressed a communication to the Lt.Governor Delhi, who, responded vide letter dated 18.6.1992 informing that it would be hearing soon from DDA.

8. It took another 3 years before DDA could centre on the land. On 23.1.1985, officer on special duty to the Lt.Governor, Delhi intimated the academy as under:-

"Dear Sh.Aggarwal,

Kindly refer to his letter dtd. 22.7.94 addressed to P.S. to L.G. regarding land for K.K.Birla Academy.

In this case, I am desired to say that a plot measuring approximately 7 acres in Vasant Kund, Ph-II, has been identified. The case is being submitted to the Ministry of Urban Development for inviting objections and final notification.

The allotment of land to Birla Academy can be processed after the above action is completed."

9. Allotment finally matured on 14.12.1995. On said date DDA issued a demand cum allotment letter to the academy.

10. As per the demand cum allotment letter, 3.17 hectares at Vasant Kunj, Phase-II was allotted to the academy, at a premium of Rs.80 lacs per acre with annual ground rent @ 2.5% P.A. of the total premium. Total premium came to Rs.6,26,56,000/-. One year ground rent came to Rs.15,66,400/-. Total demand came to Rs.6,42,22,400/-, Giving benefit of interest at the rate of Rs.7% P.A. on the sum of Rs.50 lacs deposited by the society, sum demanded was Rs.5,55,70,094/-. This was to be paid within 90 days.

11. It was indicated in the allotment letter that the premium was provisional and the allottee would give an undertaking that it will pay the balance premium as demanded by DDA on rates being finally determined by Central Government.

12. Condition No.4 which was put in the letter of allotment required the academy to give an undertaking to the effect that it would not claim any interest from DDA for the period intervening between the issue of demand cum allotment letter and actual possession of the plot after development.

13. On 9.2.1996 the academy paid the sum of Rs.5,55,70,094/- as demanded.

14. Name of Birla Academy was changed to K.K.Birla Academy and certificate evidencing change of name was obtained by the petitioner society. Intimation thereof was given to DDA so as to make necessary entry in its record. DDA did the needful. On 5.11.1998, possession of the plot was offered to the petitioner. Petitioner wrote back on 17.2.1999 that it had inspected the site and found no infrastructure like roads etc. Petitioner intimated that it would like to wait for some time before taking possession of the land.

15. On 30.7.2002, petitioner wrote a letter to DDA informing that since development work to be carried out by DDA in the area was nearing completion, petitioner was desirous of taking over possession of the plot. Request was made to hand over possession.

16. Numerous letters by way of reminder were sent by the petitioner. Possession was not handed over and instead, on 6.8.2003 DDA wrote to the petitioner as under:-

"Sir,

With reference to your letter dated 7.4.2003 on the subject cited above, I am directed to inform you that the case has been examined by the competent authority and you are directed to submit a fresh project report giving details as to how you plan to utilize such a large piece of land."

17. On 26.8.2003, petitioner protested against a reappraisal. Petitioner pointed out that it had submitted a complete statement of case detailing its activities, the proposed project and land requirement. On appraisal, DDA not only found that the petitioner was entitled to land but even satisfied itself on the extent of land required and thereafter proceeded to make allotment. As demanded, petitioner had paid a sum of Rs.6,42,22,400/- as far back as 1995. Petitioner protested to the reappraisal of the allotment.

18. Since DDA insisted on reappraisal and did not hand over possession of the site, present petition was filed praying that mandamus be issued to DDA to deliver possession of 3.17 hectares of land at Vasant Kunj, Phase-II. Prayer has also been made in the petition that respondent be directed to pay interest to the petitioner @ 18% P.A. on the premium paid from date of payment till date of possession of the allotted land.

19. Facts aforesaid reveal that a 3.17 hectare plot of identified land stood allotted to the petitioner and it paid the full premium demanded from it. It is not the case of DDA that the allotment was procured by fraud, concealment, suppression or mistake. It is not the case of DDA that it overlooked a relevant fact. Issue arises whether DDA can review the allotment made by it after receiving full premium. Issue arises whether a vested right has accrued to the petitioner.

20. The land in question is Nazul land. D.D.A. (Disposal of Developed Nazul Land) Rules 1981 stipulate the manner in which D.D.A. can deal with Nazul Land. The rules are statutory, being enacted by the Central Government in exercise of its power conferred by Section 56(2)(j) read with Section 22(3) of the Delhi Development Act, 1957.

21. Rule 3 of the Nazul Land Rules empowers DDA to allot Nazul land. Rule 4 stipulates that Nazul land can be allotted to, amongst others, public and private institutions. Rule 5 regulate the premium to be charged for allotment of Nazul land to, amongst others, public and private institutions. Rule 20 restricts the ambit of Rule 5 relating to public institutions and subjects rule 5 as entitling only such public institutions to obtain Nazul land, the aims and objects of which conform to rule 20 and other conditions of Rule 20 being satisfied.

22. Rule 42 and 43 of the Nazul Land Rules read 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 predetermined 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 cooperative 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.

43. Lease to be executed by the allottee - Every allottee of Nazul land shall execute a lease-deed in accordance with Form "C" appended to these rules. In addition, a lease deed may contain such other covenants, clauses or conditions nor inconsistent with the provisions of Form "C" as may be considered necessary in the circumstances of each case."

23. Rules aforesaid make it abundantly clear that once Nazul land is allotted to a body or person and premium is paid, an indefeasible right to the land is created in its favor. The allottee is entitled to execution of a lease in its favor.

24. In the decision Delhi Development Authority Vs. Pushpendra Kumr Jain, the Supreme Court held that the right of a party comes into existence when an allotment letter is issued.

25. A vested right can be taken away only by law. A statutory authority can review its decision only if facts exist showing fraud, misrepresentation, concealment, mistake etc.

26. Reason why DDA required petitioner to submit a fresh project report as pleaded in the counter affidavit are as under:-

"6) That the contention of the Society was duly examined. It was felt that firstly the Society had delayed taking over of possession, secondly many developments had taken place in the area from the time when the allotment was made - viz - Restrictions have been put on land use under the orders of the court most of the area in Vasant Kunj to be kept green, there is limited availability of land for various uses etc. In such a situation, it was decided that a careful assessment of the plot size to be given to society be made, keeping in view, the requirements of the project submitted by the Organization and relative needs of the land for different uses. The present day norms, development controls and permissible uses in the area were to be kept in mind while doing the assessment.

7) That accordingly, the matter was examined and it was found that as per the Project Report submitted the Birla Academy, the total built up area is 3,80,000 sq. ft., out of which 25,000 sq. ft. is proposed to be utilized for the residential accommodation. In this context, the following facts were submitted for consideration:-

(i) In MPD-2001, no Specific Size and norms for such type of activities planned by the Academy, have been specified. The Academy has proposed to locate the museum of History and Science along with related activity for the research, conference etches indicated in their letter and the memorandum.

(ii) Such activities may be considered as per P S P / Institutional. Master Plan provided the development Control Norms for PSP facilities having ground coverage of 25%, FAR 100 and maximum height 26 mtrs.

(iii) In PSP facilities, residential component is generally not allowed, except in the large scale development campuses etc.

(iv) Excluding the residential component, the total built up area required as per Project Report is 3,35,000 sq. ft. (approx.35,000 sq.mtr.). However, the site proposed to Birla Academy is of 31,700 sq.mtr. only. As MPD 2001 permits 100% FAR only, it may be seen that the project contemplated by the Birla Academy cannot be accommodated in land earmarked for them.

In view of these developments, it was rightly desired by the Competent authority to call for a fresh project report, but the society has not submitted the same and instead filed this present writ petition."

27. In a nutshell DDA states that as per project report which was submitted by the petitioner, which report formed the basis on which DDA allotted to the petitioner 3.17 hectares of land, petitioner required 35,000/- sq. mts. covered area. As per MPD-2001 since only 100% FAR was permitted on the allotted land, only 31700 sq. mt. area could be constructed upon, thus as per DDA, petitioner cannot accommodate the project on the allotted land.

28. As per DDA, the petitioner would have about 9% less covered area to be utilized in view of revised building norms.

29. How petitioner readjusts its requirements would be the concern of the petitioner. One could have appreciated the concern of DDA if shortfall was so steep that one could have reasonably presumed that it would be impossible for the allottee to use the land for the purpose for which it was allotted.

30. I may note that as against stand taken in the counter affidavit that as per MPD-2001 less coverage is permissible and D.D.A wants to satisfy how petitioner would accommodate the project on less land, cause stated in letter dated 6.8.2003 is that D.D.A wished to satisfy itself as to how petitioner planned to utilize such a large piece of land.

31. DDA has obtained full payment of over 5.5 crores since February, 1996. Petitioner is entitled to the possession of the land and execution of the perpetual lease deed without any delay.

32. Petitioner would not be entitled to any interest on the premium paid for the reason that the allotment prohibits grant of interest for delay in handing over possession. DDA had offered possession on 5.11.1998 but the petitioner refused on the ground that area was not developed.

33. Mandamus is issued to DDA to forthwith hand over possession of the land allotted to the petitioner and on petitioner completing procedural formalities, to execute the perpetual lease-deed.

34. No costs.