

14.

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

+ W.P.(C) 23464/2005

% Judgment Delivered on: 09.02.2010

KALKA EDUCATIONAL SOCIETY REGD Petitioner
Through : Mr. R.K. Saini, Adv.

versus

D.D.A. Respondent
Through : Ms. Sangeeta Chandra, Adv. for the
DDA.
Mr. Ayusha Kumar, Adv. for
respondent no.2 and 3.

**CORAM:
HON'BLE MR. JUSTICE G.S.SISTANI**

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

G.S.SISTANI, J. (ORAL)

1. Rule. Petition heard for disposal.
2. Brief facts, which have led to the filing of the present petition, are that petitioner is stated to be a registered educational society, running a school as Kalka Public School from a building constructed by it on a land allotted by the DDA at Alaknanda, Kalkaji, New Delhi, measuring 3.59 acres, which was allotted to the petitioner society by the DDA vide allotment letter dated 02.01.1986 and physical possession of which was handed over to the petitioner on 02.05.1991.
3. Grievance of the petitioner society is that despite handing over possession of the land, in question, the DDA has failed to execute a lease deed in its favour.
4. Petitioner society is stated to have made a representation to the DDA on 20.07.1992 and on various other dates. The

petitioner was directed to deposit a sum of Rs.1,79,293/- as ground rent by a letter dated 16.01.1995 and also directed to file form under Section 37-I duly signed and issued from the income tax authority to enable the DDA to execute a lease deed in favour of the petitioner society. Ground rents and other payments are stated to have been deposited on 06.05.2004. Petitioner is also stated to have approached the Permanent Lok Adalat as well, however, having received no satisfactory response from the DDA, petitioner has filed the present writ petition.

5. Learned counsel for the petitioner submits that upon handing over possession of the land, the DDA was duty bound to execute a lease deed in favour of the petitioner. Counsel further submits that there is no reasonable explanation or cogent reason has been given by the DDA as to why the lease deed has not been executed in favour of the petitioner.
6. Per contra, learned counsel for the respondent/DDA has opposed this petition primarily on the ground that the petitioner society is running a B.Ed course in addition to running a senior secondary school in the same premises. Counsel further submits that despite a show cause notice dated 18.10.2005 having been issued by the DDA to the petitioner, the petitioner has failed to discontinue running of a professional course from the same premises without prior permission. Counsel for DDA also submits that as per MPD 2021, there is a provision for running vocational classes in a school premises after school hours, subject to fulfillment of certain conditions but no degree/diploma course can be run in such premises, thus, for

the breach of the terms of allotment the allotment is liable to be cancelled.

7. Learned counsel for the respondent/DDA has relied upon the relevant provisions of MPD 2021, which are reproduced below:-

“Coaching Centres / vocational training centres would be permissible in school classes after school hours with (a) prior approval of Competent Authority in the case of schools run by GNCTD or local body and (b) with prior intimation to lessor and payment of fee to be prescribed in the case of schools run privately on leased land. Structured courses leading directly to degree / diploma shall however not be permitted.”

8. Learned counsel for the respondent/DDA submits that DDA is contemplating to cancel the allotment of the petitioner in view of the continued breach of the terms of the allotment letter as well as the terms of the MPD 2021 and, thus, no purpose will be achieved in executed lease deed in favour of the petitioner at the first instance and thereafter cancelling the allotment of the petitioner.

9. Learned counsel for the petitioner relies upon W.P.(C)No.11457-58/2004 wherein a Single Judge of this Court has dealt with a similar issue and while relying upon a Circular dated 08.07.1996, held as under:-

“23. Admitted position is that when DDA allotted land to the societies to establish a school thereon, allotment had a negative covenant. The covenant mandates that site shall be used for running a school and there shall be no sub-letting or transfer without prior permission of DDA obtained in writing.

24. On 08.07.1996, DDA issued a circular as under:

**DELHI DEVELOPMENT AUTHORITY
DIRECTOR (LANDS) OFFICE**

No.F.4(41)/98/IL

Dated 08.07.96

Subject: Subletting of the institutional premises.

Delhi Development Authority has decided to allow permission for subletting of the institutional premises with immediate effect subject to following conditions:

- 1. The allottee institutions should put up building by fully utilizing the permissible FAR.*
 - 2. The institution can let out a portion of the built up area to institutions of similar nature after obtaining prior permission of DDA by furnishing a copy of the certificate of registration and a copy of the memorandum and articles of association of the licensee institutions.*
 - 3. The institution may also be allowed to sublet a portion of the premises having built with prior approval of the DDA for service organizations like banks, on payment of 25% of the licensee fee received.*
 - 4. The institutions can also utilize a portion of the premises for the purpose of residence of the functionaries of the organization subject to the condition that the area so used does not exceed 15% of the built up space subject to a maximum of 150 sq. mtr.*
 - 5. The total area sublet under the above categories and the area used for residential purposes should, however, not exceed 40% of the built up area.*
 - 6. In case of subletting of the premises to institutions to similar nature covered under para (2), without prior approval of the DDA. The lesser shall be required to pay 15% of the rent so penalized for the leased premises and 30% for the service organizations like banks etc. who use the place for commercial purposes.*
- Sd/-
(ASMA MANZAR)
DIRECTOR (LANDS)*
- 25. Circular permits use of school building by institutes of similar nature. Of course, after obtaining permission from DDA. Default in obtaining permission is condonable under Clause 6 similar nature would mean a purpose*

similar to that for which the building can be used. Education is the genus in the present case. Primary, Middle, Higher and College level education are all specie thereof. Thus use of a school building for imparting college level education is use of similar nature. I may not that the word is "similar" and not "same".

10. Learned counsel for the petitioner while relying on the Circular dated 08.07.1996 submits that in case of any breach the DDA can only take action against the petitioner in terms of Clause 6 of Circular dated 08.07.2006, which reads as under:

6. *In case of subletting of the premises to institutions to similar nature covered under para (2), without prior approval of the DDA. The lesser shall be required to pay 15% of the rent so penalized for the leased premises and 30% for the service organizations like banks etc. who use the place for commercial purposes.*

11. Counsel for the petitioner submits that in any case despite the show cause notice, which was issued to the petitioner as far back as on 18.10.2005, DDA has failed to take any action against the petitioner. Counsel further submits that the petitioner had sent a reply to the Show Cause Notice on 27.10.2005 along with a copy of the judgment of the Single Judge, bringing to their notice the legal position. Counsel also submits that, in fact, DDA was completely satisfied by reply submitted by the petitioner and as no action has been taken by the DDA in effect the DDA has withdrawn its show cause notice.

12. Counsel for the respondent/DDA, however, submits that DDA is contemplating action but no action was taken in view of the fact that present writ petition was filed in the year 2005. Counsel further submits that by not taking any action in any case would

not amount to condonation of breach of terms of allotment letter by the petitioner.

13. I have heard learned counsel for the parties and given my thoughtful consideration to the matter. The basic facts are not in dispute. The allotment of plot at Alaknanda, Kalkaji, New Delhi, measuring 3.59 acres, was made in favour of the petitioner on 02.01.1986 and physical possession of which was handed over to the petitioner on 02.05.1991. I find no force in the submission of counsel for the petitioner that the lease deed should have been executed by the DDA after handing over of possession. I find force in the submission of learned counsel for the respondent/DDA that lease deed could not have been executed in favour of the petitioner till the entire dues and payments were cleared. Admittedly, all payments were made to the respondent/DDA in the year 2004. Further, in the year 2004, request of the petitioner for grant of lease was declined by the DDA on the ground that the petitioner was running B.Ed course after school hours at the premises allotted by the DDA and for which DDA issued a show cause notice to the petitioner on 18.10.2005. From October, 2005, till date the DDA has failed to take any action against the petitioner for breach of terms of allotment letter. The petitioner has also relied on the minutes of the meeting held in the Chamber of V.C., DDA, on 10.01.2006, which was fixed to discuss the matters relating to B.Ed courses in schools and colleges. The minutes of the meeting reads as under:-

*"DELHI DEVELOPMENT AUTHORITY
OFFICE OF THE DIRECTOR (INSTITUTIONAL LAND)*

MINUTES OF THE MEETING HELD ON 10.01.2006.

Minutes of the meeting held in the chamber of VC, DDA on 10.01.2006 to discuss the matters relating to B.Ed Courses in the attached schools/colleges.

The following officers were present in the meeting:

- 1. Shri Dinesh Rai, Vice-Chairman, DDA in Chair;*
- 2. Shri R.K. Singh, Commissioner (LD);*
- 3. Shri Thakur, VC, NCTE;*
- 4. Shri M.C. Mathur, Dir.-SCERT;*
- 5. Shri V.K. Jain, Registrar, G.G.I.P. University;*
- 6. Shri Ashok Kumar, AC (Plg.), DDA;*
- 7. Shri Prahlad Singh Director (Land Costing);*
- 8. Shri S.N. Bonsal, Dy. CAO – LC;*
- 9. Shri T.K. Jain, AO – Higher Education, GNCTD;*
- 10. Shri Y.V.J. Rajasekhar, Dy. Dir. (Inst. Land);*
- 11. Ms. Manju Paul, Dy. Dir. (Plg.)*

At the outset, it was mentioned that some of the schools were earlier given permission to run B.Ed. courses in the existing schools, however, the same have been withdrawn after it was felt that B.Ed courses being professional courses should not be allowed in the premises which are meant for the schools. Accordingly, such permission has been withdrawn.

In the above background, views have been obtained from officers present in the meeting. According to Department of Education, GNCTD, no other course is to be allowed other than the purpose for which it is allotted. However, Shri Thakur, VC, National Council of Teacher Education has expressed the views that NCTE being apex body of B.Ed courses recommends existence of B.Ed. courses in the attached schools/colleges, since the exiting children and other facilities like labs will serve as a conducive material for teacher education training and accordingly NCTE recommends the continuation of B.Ed. courses in the attached schools/colleges.

The representative of Guru Gobind Singh Indraprastha University also endorsed the views of NCTE but however, mentioned that the school should earmark at least 1400 sq. mtrs. for hundred students as per the norms.

The officers from Planning Wing of DDA have mentioned that the draft MPD -2021 allows other educational activities after the school hours subject to NOC/clearance from concerned organization and department.

Finally, it was mentioned that DDA may not have any objection in allowing such B.Ed courses only; if GNCTD gives NOC in this respect and also subject to charging of certain fees as may be fixed by DDA. The meeting ended with vote of thanks to chair.

*(Y.V.V.J. Rajasekhar)
Dy. Dir. (Instl. Lands)*

To –

1. OSD to VC, DDA;
2. PS to CLD;
3. Shri Thakur, VC, NCTE;
4. Shri M.C. Mathur, Dir – SCERT;
5. Shri V.K. Jain, Registrar, GCIP University;
6. Shri Ashok Kumar, AC (Plg.), DDA;
7. Shri Prahlad Singh, Dir (Land Costing);
8. Shri S.N. Bansal, Dy. CAO-LO;
9. Shri T.K. Jain, AO, Higher Education, GNCTD;
10. Ms. Manju Paul, Dy. Dir. (Plg.)”

14. Learned counsel for the petitioner has also relied upon on a note signed by the Private Secretary to the Chief Minister dated 27.06.2007, which reads as under:-

OFFICE OF THE CHIEF MINISTER
GOVERNMENT OF NCT OF DELHI.

May please find enclosed a representation received from Association of Self Finance Institutions regarding permission to run B.Ed. Course already approved by the NCTE and affiliated to GGSIP University in the school premises.

The issue was discussed before the Union Minister of Urban Development in the presence of VC (DDA) and other officers of the Ministry of Urban Development. While the officers of Ministry of Urban Development persisted in supporting the stipulation made in Master Plan restricting the use of school premises for running coaching classes and not permitting them for structured degree, diploma courses, VC (DDA) agreed that the restriction did not apply to B.Ed. courses. Director (Higher

Education) should, therefore, issue No Objection Certificate for running B.Ed. courses in school premises, provided the same has been approved by the NCTE and fulfils the laid down requirements of the space, etc., ascertained through inspection.

(P.K. TRIPATHI)
Pr. Secretary to C.M.
June 27, 2007

Director (Higher Education)

15. To canvass his argument that DDA in fact has no objection in running B.Ed courses, subject to charging of certain fees, as may be fixed by the DDA, counsel for the petitioner relies upon a reply received by the petitioner to an RTI application wherein the following answer has been given to question no.1:

S.No.	Question	Answer
1.	Whether running of B.Ed. course is allowed in the school hours. If not, Name and address of the School where B.Ed. courses affiliated to GGSIPU University are being run and why action has been taken against these schools / copies of the correspondent / action taken thereof, be provided	As per MPD 2021 and Policy, B.Ed. can be allowed, if NOC is given by Delhi Govt. School wise information being a voluminous task could not be complied.

16. Taking into consideration that running of B.Ed. course in the school premises is not a question, which is to be decided by this Court, at this stage, the only question, which is to be decided is whether in the absence of any action taken by the respondent for an alleged breach committed by the petitioner with regard to the terms of allotment letter, can the DDA withhold execution of lease deed with respect to the allotment made in favour of the petitioner. The answer is to be in the negative in view of the fact that despite the show cause notice dated 18.08.2005, the

DDA has failed to take any action against the petitioner. Accordingly, since the petitioner has made all the payments and also taking into consideration the minutes of the meeting dated 10.01.2006, letter of the Private Secretary to C.M. dated 27.06.2007, reply to the Right to Information query and the fact that the DDA has also not been able to render a satisfactory explanation as to why no action has been taken against the petitioner after the show cause notice was issued as far back as on 18.10.2005, DDA is directed to execute a lease deed in favour of the petitioner within a period of ten weeks from today. It is, however, made clear that execution of the lease deed will not be construed as breaches if having been condoned by the DDA. It is also clarified that this Order will not come in the way of the DDA to initiate such action as may be available to DDA in accordance with law for the breach committed by the petitioner including cancellation of the allotment.

17. Petition stands disposed of in above terms.

G.S. SISTANI, J.

February 09, 2010
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