

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

% *Date of Judgment: 26.07.2011*

+ **W.P.(C) No.915/2007**

DELHI TAMIL EDUCATION SOCIETY Petitioner
Through: Mr. G. Umapathy and
Ms. Sudha Umapathy,
Advocates.

Versus

DIRECTORATE OF EDUCATION & OTHERS Respondents
Through: Ms. Avnish Ahlawat, Advocate
for respondent No. 1
Mr. Rajiv Bansal, Advocate for
respondent No. 2.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

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

INDERMEET KAUR, J. (Oral)

1 The petitioner Delhi Tamil Education Society is a registered society; it is a linguistic minority.

(i) The petitioner society had applied to respondent No. 1 (Directorate of Education, Government of NCT of Delhi) for allotment of land for the establishment of a minority school in

Mayur Vihar.

(ii) Respondent No. 1 vide letter dated 12.11.1982 directed the petitioner to submit its application on prescribed form; essentiality certificate (EC) under Rule 44 of the Delhi Education Rules, 1973 was also sought.

(iii) Vide letter dated 18.11.1982 the plaintiff society applied in the prescribed format.

(iv) On 19.01.1984, respondent No. 1 requested the petitioner to furnish its application in a triplicate form.

(v) On 17.02.1984, the prescribed application in triplicate was furnished to respondent No. 1.

(vi) On 16.05.1984, respondent No. 1 informed the petitioner that their case for allotment has been forwarded to respondent No. 2 (Delhi Development Authority/DDA).

(vii) Thereafter communications dated 29.04.1992 and 18.06.1992 have been mentioned in the body of the petition but admittedly these letters have not been placed on record. Record thus emanating is that after 16.05.1984 up to 03.07.2000, there was no correspondence between the petitioner and either respondent No. 1 or respondent No. 2.

(viii) Thereafter vide letter dated 03.07.2000, respondent No. 2 informed the petitioner that his case for allotment of land would

be considered subject to the following formalities; details of which have been mentioned in this letter dated 03.07.2000. This was in response to the letter of the petitioner dated 15.04.2000.

(ix) On 23.02.2001, respondent No. 1 requested the petitioner to complete all formalities; relevant would it be to state that this letter dated 23.02.2001 makes reference for allotment of land for an open school at Rohini. It is not related to the allotment of land at Mayur Vihar; this letter is out of context. Document appears to have been filed only to mislead the Court.

(x) On 22.05.2001, respondent No. 1 through the Assistant Director of Education wrote to the DDA informing him that there is no need for a re-sponsorship of allotment of land and since the society is a minority, there is also no need to lay emphasis for the furnishing of an EC. This letter has been written by the Assistant Director of Education on behalf of respondent No. 1.

(xi) On 04.03.2002, respondent No. 2 requested the petitioner society to furnish its Memorandum and the Aims and Objectives of its Society.

(xii) On 28.08.2002, respondent No. 2 wrote to the petitioner society detailing the terms and conditions for allotment of land to the petitioner on the terms and conditions contained therein asking them to make payments.

(xiii) On 18.12.2002, respondent No. 2 in supersession of its earlier letter dated 28.08.2002 issued a letter of allotment to the petitioner demanding a sum of Rs.19,66,295/- with the condition that the land will be used for the construction of building within two years from the date of its possession.

(xiv) On 20.10.2002, the petitioner wrote to the DDA acknowledging the allotment of land in their favour.

(xv) On 13.01.2003, the petitioner society sought a 'No objection certificate' from respondent No. 2 for the grant of a loan.

(xvi) On 27.01.2003, the petitioner society paid a sum of Rs.19,66,295/- seeking allotment of the plot in their favour with a request to pursue the construction thereupon.

(xvii) On 17.04.2003, the petitioner requested respondent No. 2 for the handing over the possession of land.

(xviii) On 03.09.2003, a reminder was sent by the petitioner to respondent No. 2.

(xix) On 07.01.2004, the petitioner society sought the intervention of the Lt. Governor seeking a direction to respondent No. 2 to deliver the possession of the plot to the petitioner.

(xx) On 19.07.2004, respondent No. 2 directed the petitioner society to furnish the resolution of the society authorizing the person who would be taking possession of the plot.

(xxi) On 12.10.2004, respondent No. 2 requested the petitioner to furnish the attested photographs of the person who would take possession of the plot.

(xxii) On 13.04.2005, respondent No. 2 wrote to respondent No. 1 raising an issue as to whether an existing school is to be shifted at Mayur Vihar or as to whether a new school is to be opened at Mayur Vihar.

(xxiii) On 07.09.2005, respondent No. 1 informed respondent No. 2 not to treat the sponsorship of the petitioner dated 16.05.1984 as valid and not to allot any land to the petitioner.

(xxiv) On 12.01.2006, a show cause notice was issued by respondent No. 2 to the petitioner as to why the allotment of land of two acres made in favour of the petitioner society be not cancelled.

2 Present petition had been filed challenging the show cause notice issued by respondent No. 2 dated 12.01.2006 as also the communication dated 07.09.2005, 22.11.2005 and 03.01.2007 issued by respondent No. 1 wherein in the first communication respondent No. 1 had written to respondent No. 2 informing them not to treat sponsorship letter dated 16.05.1984 granted to the petitioner society as valid; the subsequent communication of

22.11.2005 is a letter written by respondent No. 1 to respondent
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No.2; in the communication dated 03.01.2007 it has been reiterated by respondent No. 1 that the request of the petitioner seeking allotment of land for establishing a school at Mayur Vihar had been rejected.

3 These aforementioned three letters dated 07.09.2005, 22.11.2005 and 03.01.2007 sent by respondent No. 1 are the subject matter of challenge in this petition as also the show cause notice dated 12.01.2006 issued by respondent No. 2.

4 Learned counsel for the petitioner has pointed out that the sponsorship having first been granted in favour of the petitioner society and thereafter several communications having been addressed by the petitioner to both respondent No. 1 and respondent No. 2; respondent No. 2 even having been accepted the amount of Rs.19,66,295/-, it does not now lie in their mouth to cancel the allotment which was made in favour of the petitioner society in 1984.

5 In the reply affidavit filed on behalf of respondent No. 1, it has been contended that the petitioner has woken up very late in the day. The present writ petition has been filed in the year 2007 challenging the sponsorship which has been granted in his favour in 1984; it is pointed out that as per the available record there was no aided school at the relevant time in Mayur Vihar and nor

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was there any case of shifting of that school in that area; after this long gap of 20 years, the prayer made by the petitioner has become time barred; it is pointed out that the minutes of Land Allotment Committee dated 09.06.1994 clearly show that the sponsorship letters for allotment of land for educational societies are valid only for a period of three years with a further direction that the DDA must also ensure that the society has a valid EC in their favour; none of these conditions had been adhered to; allotment letter dated 09.06.1984 stood cancelled after a lapse of three years; petition is not maintainable.

6 On behalf of respondent No. 2, it is submitted that the show cause notice issued by the DDA dated 12.01.2006 is the subject matter of challenge; this is premature. Reliance has been placed upon a judgment of the Apex Court reported in (2004) 3 SCC 440 Special Director and Another Vs. Mohd. Ghulam Ghouse and Another to support his submission that a show cause notice should not be entertained in a writ petition; petitioner should be directed to respond to the notice; scope of judicial review on a show cause notice is limited. It is submitted that on this ground alone, the writ petition is liable to be dismissed. Even otherwise, the Director of Education vide their letter dated 22.11.2005 had informed the DDA not to treat the sponsorship letter dated 16.05.1984 of the

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society as valid; in these circumstances, there is little option left with the DDA but to issue a show cause notice to the petitioner asking him to show cause as to why the allotment be not cancelled.

7 Record shows that the petitioner has actually slept over his right for more than 16 years. Admittedly the first letter issued by respondent No. 1 to the petitioner society was dated 16.05.1984 sponsoring the case of the petitioner for allotment of a plot for a senior secondary school in Mayur Vihar. Thereafter the petition its shows that right up to 03.07.2000, there was not a single communication exchanged between the petitioner and the respondents i.e. either respondent No. 1 or respondent No. 2 for the allotment of this land. There is no explanation for the same. The petitioner has mentioned two letters dated 29.04.1992 and 18.06.1992 in his petition but these letters are not on record; the contention of the petitioner that he had on 14.10.1992 submitted his application in the prescribed format is not borne out. For the first time on 03.07.2000, the petitioner was informed by respondent No. 2 that his case will be considered after the initial formalities have been complied with. This letter of respondent No. 2 dated 03.07.2000 makes a reference to the letter of the petitioner dated 15.04.2000; admittedly prior to 15.04.2000, the

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petitioner had never pursued this case after the initial proposed allotment in his favour on 16.05.1984. This letter of 15.04.2000 (not on record) is also allegedly issued by the petitioner to respondent No. 2; petitioner has not corresponded with respondent No. 1 at all although the sponsorship letter of 16.05.1984 had been addressed by respondent No. 1 to the petitioner. In fact the process appears to have been re-started only on this letter of 03.07.2000 sent by respondent No. 2 to the petitioner. This conduct of the petitioner is clearly negligent and lackadaisical; there is no explanation for this long intervening gap when he slept over the rights which if any he had accrued in his favour; this gap of 16 years remains unexplained.

8 The minutes dated 09.06.1999 of the Government of NCT of Delhi of Land Allotment Committee (LAC) relate to the allotment of land for educational societies. These minutes clearly state that recommendations of the LAC cannot be open ended; it was decided that all the sponsorship letters must clearly mention that the sponsorship is valid only for three years and the DDA must ensure that the society has a valid EC at the time of possession. Admittedly the communication dated 03.07.2000 issued by respondent No. 2 was with reference to the letter of the petitioner dated 15.04.2000 when he for the first time corresponded with

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respondent No. 2 on his allotment of 16.05.1984. The sponsorship letter of the petitioner dated 16.05.1984 had lapsed after the period of three years i.e. by 1987; this is clear from the minutes of the LAC dated 09.06.1999; the petitioner had woken up from his slumber only in April, 2000 which is clear from the letter of respondent No. 2 dated 03.07.2000. There is no doubt that respondent No. 2 in this intervening period had asked the petitioner to furnish documents and had also made a demand of Rs.19,66,295/- upon the petitioner in terms of its letter dated 18.12.2002 which amount has since been deposited but this was because of the communication gap between respondent No. 1 and respondent No. 2; on 07.09.2005, respondent No. 1 informed respondent No. 2 not to treat the sponsorship letter of 16.05.1984 as valid and no allotment of land be granted to the petitioner on the basis of the said letter. Admittedly the petitioner society also did not have any EC on the relevant date.

9 A party who comes to the Court seeking a discretionary relief by way of a writ jurisdiction must establish that there has been no lapse on the part of the litigating party. The long delay of 16 years in exchanging the first correspondence with the respondent after the first sponsorship letter dated 16.05.1984 and the writ petition having been preferred even thereafter i.e. in the W.P.(C)No.915/2007

year 2007 i.e. after more than two decades remains unexplained; no correspondence admittedly ensued between the parties from 1984 to 15.04.2000 when for the first time the petitioner wrote to respondent No. 2.

10 In fact all correspondences of the petitioner were addressed to respondent No. 2. He has never corresponded with respondent No. 1 although the sponsorship letter of 16.05.1984 was addressed by respondent No. 1 to the petitioner. There is only one solitary communication of 22.05.2001 inter-se respondent No. 1 & respondent No. 2; this was admittedly after a period of 17 years from the date of the sponsorship letter of 16.05.1984; case of the petitioner was admittedly sponsored in 1984; this letter cannot be treated as open for all years to follow.

11 The demand-cum-allotment letter dated 18.12.2002 issued to the petitioner society demanding a sum of Rs.19,66,295/- (which amount has since been deposited) was on a wrong premise. The sponsorship letter dated 16.05.1984 not being an open ended for all times; respondent No. 1 had informed respondent No. 2 vide its communication dated 07.09.2005 not to treat the sponsorship letter of the petitioner as valid; pursuant thereto the show cause notice dated 12.01.2006 was sent to the petitioner asking him to show cause as to why his allotment be not

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cancelled.

12 In 86 (2000) DLT 505 Smt. Sundari Bala Vs. Lt. Governor and others, a Bench of this Court had held that where the writ petitioner was guilty of laches or undue delay in approaching the High Court, the principle of laches or undue delay disentitled the writ petitioner for discretionary relief under Article 226 of the Constitution. This was also reiterated in the case of Jaswant Kaur Vs. Ltd. Governor 1997 (40) DRJ 703. The Apex Court in Star Wire (India) Ltd. VS. State of Haryana (1996) II SCC 698 has held that laches close the gates of the courts for a person who approaches the Court belatedly; such a petitioner is disentitled for any discretionary hearing or relief.

13 Admittedly no reply has been sent to this show cause notice. The petitioner has straightway rushed to the Court. The Apex Court in the case of Mohd. Ghulam Ghouse (Supra) has condemned such an act; the Apex Court has held that a writ petition assailing a show cause notice should not be entertained easily as a matter of routine; instead of responding to the show cause notice where the petitioner directly approaches the Court, such proceedings should be condemned and nipped in the bud.

14 In this background, the petitioner having not explained the unreasonable delay in not having followed up on the sponsorship

letter dated 16.05.1984 right up to the year 2000 which was the first communication addressed by him to respondent No. 2 and thereafter the present writ petition having been filed in 2007, such a litigant who has slumbered over his right deserves no discretionary relief in his favour.

15 Dismissed.

JULY 26, 2011

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INDERMEET KAUR, J.