

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

Date of decision: 29th August, 2011

+ **W.P.(C) 6273/2011**

% **OCS/VSNL EMPLOYEES CO-OPERATIVE
HOUSING SOCIETY LTD. (REGD.) & ANR. Petitioners**

Through: Dr. K.S. Chauhan with Mr. Ajit
Kumar Ekka, Mr. Tej Singh Varun &
Mr. Chand Kiran, Advocates

Versus

UOI & ORS. Respondents

Through: Mr. Himanshu Bajaj, Adv. for R-1 to 3.
Mr. Akshay Ringe, Adv. for R-4.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | Not necessary |
| 2. | To be referred to the reporter or not? | Not necessary |
| 3. | Whether the judgment should be reported in the Digest? | Not necessary |

RAJIV SAHAI ENDLAW, J.

1. The petitioner is a Housing Society registered under the Maharashtra Government Co-operative Societies Act, 1961, the members whereof are stated to be ex-employees as well as those still in employment of Videsh

Sanchar Nigam Limited (VSNL), now known as Tata Communications Ltd. (TCL). The present petition has been filed impugning the order dated 21st June, 2011 of the respondent No.1 Ministry of Communications & Information Technology, Government of India (GOI), rejecting the representation of the petitioner Society for allotment of land, out of the surplus land of the VSNL, for construction of a residential building for the members of the petitioner Society. The petitioner also seeks mandamus directing the respondents to allot 50 acres of land out of surplus land of VSNL for the said purpose.

2. VSNL, then a Public Sector Undertaking was in the year 2002 subject matter of disinvestment in pursuance of the policy of the GOI of Disinvestment.

3. The petitioner claims to be entitled to such allotment for the reason that VSNL had, in its Board Meeting held on 26th May, 1993 considered the request of VSNL Employees Co-operative Housing Society, Chennai (hereinafter called the Chennai Society) (members whereof were employees

at Chennai of GOI/VSNL) for allotment of 32.5 acres of surplus land at Chennai and the GOI vide letter dated 19th January, 1995 had given approval to VSNL, then a Public Sector Undertaking, for allotment of the said land to the Chennai Society at market value. However, it appears that notwithstanding the same, the land remained to be allotted to the Chennai Society for the reason of a third party making a claim to the said land. The said claim, in the nature of a suit, was dismissed on 9th February, 2005. By then, the right / share of the GOI in VSNL had been disinvested as aforesaid and the allotment / delivery of possession in pursuance of the decision of 26th May, 1993 and approval thereof of 19th January, 1995 not made. The Chennai Society then filed W.P.(C) No.12002/2006 in this Court; it appears that there was some confusion as to who pursuant to the disinvestment was the owner of the land which had been agreed to be given to the Chennai Society i.e. whether the GOI or the VSNL control whereof had been taken over by Tatas. VSNL filed an affidavit in W.P.(C) No.12002/2006 stating that it had no objection to the land being allotted to the Chennai Society in accordance with the commitment of 26th May, 1993; the GOI also stated that

it had no claim over the said land. This Court vide order dated 17th May, 2007 in the said writ petition directed VSNL to transfer the land to the Chennai Society.

4. However, an appeal being LPA No.1252/2007 was preferred by the UOI against the direction aforesaid in W.P.(C) No.12002/2006 contending that the land was not part of the assets transferred to Tatas and was kept apart for vesting in a separate company and that VSNL was not the owner but only the custodian of the surplus land. The Division Bench of this Court however vide judgment dated 29th April, 2008 dismissed the said appeal holding that there was a binding commitment by VSNL on 26th May, 1993 /19th January, 1995 to transfer the land to the Chennai Society and the transfer could not take place immediately owing to the litigation by a third party and the said commitment to transfer the land to the Chennai Society would not be affected by the disinvestment in the year 2002 of the shareholding of the GOI in VSNL. It was also held that the GOI could not be permitted to change the stand as taken before the Single Judge.

5. The counsel for the petitioner has argued that VSNL having agreed to allot land out of its surplus land to a Housing Society for the benefit of its employees cannot discriminate against other employees who have now formed the petitioner Society and had similarly claimed land out of surplus land of VSNL. The petitioner had in fact made a representation to the respondents in this regard and earlier preferred W.P.(C) No.1868/2011 which was disposed of vide order dated 19th May, 2011 with a direction to the respondents to dispose of the said representation.

6. The GOI vide its letter dated 21st June, 2011 impugned in this petition rejected the said representation on the ground that the claim of the petitioner Society which has come into existence in the year 2009 cannot be treated at par with the claim of the Chennai Society which was allotted land in the year 1993.

7. The counsel for the petitioner inspite of repeated enquiry has not been able to show any basis of the claim / right if any of the petitioner Society to land from VSNL or from the GOI which was earlier holding the entire

shareholding of VSNL. His only argument is of that VSNL having earlier agreed to provide land at Chennai to the Chennai Society cannot discriminate against the petitioner and is required to provide land to the petitioner Society also, out of the surplus land held at Delhi.

8. In my opinion, merely because the VSNL / GOI had earlier, nearly 18 years ago agreed to grant land at market rate out of the surplus land held by VSNL at Chennai to a Society of its employees, cannot be a reason for VSNL / GOI to be bound to provide such land to another Society with its employees / ex-employees as members or for that matter to any other employee. As aforesaid, there has been a sea change during the last 18 years. While then the VSNL was a fully owned Government company and a Public Sector Undertaking, now it is controlled and managed by Tatas with its name also having been changed. Even otherwise, the counsel for the petitioner is unable to show that there is an obligation on an employer to provide land for construction of residences of its employees.

9. The Supreme Court in *UOI Vs. M.K. Sarkar* (2010) 2 SCC 59 has

held that there can be no claim based on negative equality. Thus, in the absence of a right, even if the GOI at one stage granted any benefit to one set of employees, it cannot be held bound to provide the same benefit to other employees.

10. There is thus no merit in the petition, the same is dismissed.

No order as to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

AUGUST 29, 2011
'gsr'