

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 13th April, 2012

+ **LPA No.287/2012**

% **SUNHILL EDUCATIONAL SOCIETY**
(REGD.) & ANR. Appellants

Through: Mr. R.K. Saini, Adv.

Versus

DELHI DEVELOPMENT AUTHORITY & ANR.... Respondents

Through: Mr. Rajiv Bansal & Ms. Swati
Gupta, Advs. for R-1/DDA.

CORAM :-

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

JUDGMENT

RAJIV SAHAI ENDLAW, J.

1. This intra-court appeal impugns the order dated 04.05.2011 of the learned Single Judge dismissing W.P.(C) No.6825/2008 preferred by the appellants. The appellants had applied for review before the learned Single Judge and the application for review was also dismissed on 28.11.2011. Though the appeal has been preferred with an application for condonation of delay of 88 days in filing the same but since the counsel for the contesting respondent No.1 DDA appears, and considering the nature of the controversy, we have with the consent of the counsels for the parties, heard the appeal finally.

2. The appellant Society had applied to the respondent No.1 DDA and the respondent No.2 Directorate of Education of the Government of NCT of Delhi (GNCTD) for allotment of land for establishing a School. On the said application, the appellant Society in July, 1986, was allotted a piece of land

admeasuring 3.15 acres and the appellant Society deposited a sum of ₹7,75,098/- towards premium thereof. However, the Ministry of Defence disputed the entitlement of the respondent No.1 DDA to allot the said land and claimed that the land was owned by the said Ministry. The appellant Society in the circumstances, filed W.P.(C) No.2761/1986. The said writ petition was dismissed on 11.05.1987 finding that the land in fact belonged to the Ministry of Defence and the respondent No.1 DDA had no right to allot the same. Though the appellant Society preferred a Special Leave Petition to the Supreme Court against the dismissal of the said writ petition but without any success. The amount of ₹7,75,098/- deposited by the appellant Society was refunded.

3. The appellants Society thereafter in the year 2008 filed the writ petition from which the present appeal arises pleading, that upon the earlier land allotted to it being taken back, it applied for alternative site; that it was advised to apply in proper format; that an application dated 15.03.1999 was made by it; that in the meeting of the Land Allotment Committee held on 30.05.2002, a decision was taken for allotment of a piece of land in Dwarka to the appellant Society; that upon the allotment not fructifying, it made several representations; that its case was being considered as one of allotment of alternative land in lieu of land earlier allotted and taken back; that however the Officer on Special Duty (Lands) in the office notings controverted that the case of the appellant was of allotment of alternative land and treated it to be of fresh allotment; that though in view of the said diverse opinions, the file is to be put up before the Lieutenant Governor as Chairman of the respondent No.1 DDA but the same had not been done.

The appellants as such in the writ petition sought the relief of placing the file of appellant Society before the Lieutenant Governor for taking appropriate decision.

4. The learned Single Judge has dismissed the said writ petition finding/ observing/ holding:

- (a) that the Policy for giving of institutional land including for Schools was changed with effect from 19.04.2006, from that of allotment as earlier prevalent to that of auction;
- (b) that the Delhi Development Authority (Disposal of Developed Nazul Land) Rules 1981 were also amended to the said effect;
- (c) that as per the additional affidavit filed by the DDA on 12.11.2010, its Competent Authority had already taken a decision that the appellant Society has to fulfill the existing guidelines and instructions for allotment;
- (d) that since no allotment had been made in favour of the appellant Society prior to 19.04.2006 and its case for allotment had only been considered, the appellant Society's case could only be considered in accordance with the amended Nazul Land Rules;
- (e) that the appellant Society had on 31.08.1987 sought refund of the amount deposited by it with the respondent DDA for earlier

allotment of land; although an application was made by the appellant Society for allotment of alternative land, it was in fact for a fresh allotment since the appellant Society had sought and accepted refund of the sum deposited by it for the initial allotment;

- (f) that the validity of the amended Rules had been upheld by this Court in ***Bhagwan Mahavir Education Society (Regd.) Vs. DDA*** (W.P.(C) No.2459-60 of 2005) decided on 25.03.2011;
- (g) that notings on the file did not create any vested right in the appellant Society to seek allotment of land in terms of un-amended Rules;
- (h) that this Court in ***Ram Chander Educational Society Vs. DDA*** 177 (2011) DLT 653 has held that mere recommendation for allotment made on the file will not create a vested right in the applicant to seek allotment in terms of unamended Nazul Land Rules; consequently little purpose will be served in directing the matter to be placed before the Lieutenant Governor for fresh consideration.

5. The counsel for the appellants has contended that all that the appellants are seeking is for their claim to be considered by the Lieutenant Governor being the Competent Authority and before whom as per the notings on the file also, the file was to be placed and has not been placed. It is further contended that the learned Single Judge had in fact vide order

dated 08.02.2011 directed the counsel for the respondent No.1 DDA to produce the records to verify whether the file had been so placed before the Lieutenant Governor or not; however inspite of file having been produced by the respondent No.1 DDA and though, finding the same to have been not placed before the Lieutenant Governor, still dismissed the writ petition. Though not disputing that the appellants had sought refund of the amount deposited with the respondent DDA for the plot of land earlier allotted, it is contended that the same was, as per the advice of the respondent No.1 DDA only. Attention is invited to the letter dated 05.06.2000 of the respondent No.1 DDA where the respondent No.1 DDA while dealing with the allotment to be made in favour of the appellant Society, referred to the same as of “alternative site”. It is also argued that even while making the application dated 15.03.1999 for allotment after the earlier allotment was cancelled, the appellants had sought allotment “near about old land”.

6. Per contra, the counsel for the respondent No.1 DDA contends that the appellants having taken refund of the amount earlier deposited, and having admittedly made a fresh application for allotment thereafter, cannot claim any right on the basis of the earlier allotment. It is further informed that for this reason only a fresh Essentiality Certificate from the Directorate of Education was sought and submitted by the appellants. It is also contended that no purpose will be served in directing the file to be placed before the Lieutenant Governor inasmuch as even the Lieutenant Governor cannot take a decision contrary to the Policy of Auction in vogue since 19th April, 2006.

7. The counsel for the appellants has not been able to controvert the material reasons given by the learned Single Judge of the appellants having no vested right to allotment of land; that prior to 19.04.2006, no allotment had been made in favour of the appellants; that thus the right if any of the appellants was only for consideration of its application for allotment; that such application for allotment *inter alia* has to be considered in accordance with the Policy prevalent at the time of consideration and not in accordance with the Policy prevalent at the time of making of application.

8. The aforesaid uncontroverted reasoning alone is sufficient to dismiss this appeal.

9. We may notice that the Apex Court, though in the context of applications for mining lease and qua which also, it has been held that there is no vested right, has in ***State of Tamil Nadu v. Hind Stone*** AIR 1981 SC 711 & ***M.P. Ram Mohan Raja v. State of Tamil Nadu*** (2007) 9 SCC 78, held that the applications have to be decided in accordance with law, rules, regulations and policy as in force on the date of decision / consideration and not on the date of making of the application.

10. As far as the claim of the appellants on the basis of the earlier allotment in their favour and which was cancelled, is concerned, we do not find any merit therein also. The appellants while challenging the said cancellation in W.P.(C) No.2761/1986 did not seek the relief of allotment of any alternative land. Not only so, the appellants upon such cancellation attaining finality, sought and received refund of the amount deposited. The consideration of the case of the appellants thereafter by the respondent No.1

DDA was on the basis of a fresh application of the appellants and not on the basis of the application in pursuance to which the allotment which was cancelled, was made. Thus, looked at from whatever angle, it cannot be said that any right to allotment had accrued in favour of the appellant owing to the earlier allotment and cancellation thereof.

11. The respondent No.1 DDA along with its counter affidavit to the writ petition has also annexed copy of the legal notice dated 23.10.1989 got served by the appellant Society on the respondent No.1 DDA for refund on cancellation of the earlier allotment. There is no mention of any alternative allotment therein. We also agree with the contention of the respondent No.1 DDA that the demand by the respondent No.1 DDA on the appellant for a fresh Essentiality Certificate is indicative of the allotment subsequently under consideration being treated as a fresh one and not in lieu of the cancelled allotment and in which case no fresh Essentiality Certificate would have been required.

12. Qua the reliance by the appellants on the notings of the officials of the respondent No.1 DDA in the file of the DDA, reference may be made to ***Bachhittar Singh Vs. State of Punjab*** 1962 (Suppl.) 3 SCR 713, ***State of Bihar Vs. Kripalu Shankar*** (1987) 3 SCC 34, ***Laxminarayan R. Bhattad Vs. State of Maharashtra*** (2003) 5 SCC 413 and ***Bahadursinh Lakhubhai Gohil Vs. Jagdishbhai M. Kamalia*** (2004) 2 SCC 65 where the Apex Court held that such notings do not create any right and are merely a stage in the decision making process and till a formal order is passed by the Competent Authority and communicated to the concerned party, no right accrues.

13. Besides *Ram Chander Educational Society* (supra), the Division Bench of this Court in *Sethi Auto Service Station Vs. DDA* 129 (2006) DLT 139 and a Single Judge of this Court in *Goswami Vidyapitha Society Vs. Lieutenant Governor* 132 (2006) DLT 638 have also held that till the actual allotment letter is issued, the recommendations of the Land Allotment Committee do not vest any right in the applicants for allotment of land.

14. We are even otherwise of the view that the effect of the earlier allotment and cancellation thereof is, as if no allotment had been made to the appellant. If the appellants were to be held entitled to consideration of their application under the old Policy, we fail to see as to how all others who had also applied prior to the change in Policy, can be treated differently.

15. We may notice that the Policy aforesaid was changed pursuant to the observations of the Apex Court in *UOI Vs. Jain Sabha* (1997) 1 SCC 164 deprecating the allotment of land to Schools and other charitable institutions practically free and at throw away prices.

16. We therefore do not find any merit in this appeal and dismiss the same. No order as to costs.

RAJIV SAHAI ENDLAW, J

ACTING CHIEF JUSTICE

APRIL 13, 2012/‘gsr’..