

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

Reserved on: 22nd August, 2012
Pronounced on: 30th August, 2012

+ **W.P.(C) No.19209-10/2006**

M.S. EDUCATIONAL SOCIETY REGD. & ANR...

Petitioners

Through: Mr. Harish Malhotra, Senior
Advocate with Mr. Tanuj
Khurana, Advocate

Versus

DELHI DEVELOPMENT AUTHORITY & ORS.

....Respondents

Through: Mr. Rajiv Bansal, Advocate and
Ms. Swati, Advocate

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGEMENT

1. By virtue of Lease Deed of 6th March, 1986, petitioner-educational society is running a middle school at Lawrence Road, Delhi. Vide Representation of 13th November, 2002 (Annexure -L) to the Lieutenant Governor/ Chairman of respondent-DDA, regularization of adjoining land measuring about 2 acres located between B-3 & B-4 (*hereinafter referred to as the 'land in question'*), was sought by petitioners which was acceded to in principle vide respondent's Communication of 8th January, 2003 (Annexure-M) to the extent of regularizing 1.67 acres of land at Keshavpuram, Delhi in favour of the petitioner subject to the condition of petitioner obtaining

sponsorship in its favour from Education Department of Government of NCT of Delhi or Central Government with the rider that petitioner- Society had to pay the cost of land at old rate plus zonal variant rate whichever is less.

2. While responding to the aforesaid Communication (Annexure –M) of respondent-DDA, petitioners vide its subsequent Communications (Annexures- N & O) had desired to know as to how much amount was payable towards regularization of the aforesaid land in favour of petitioners. Armed with Essentiality Certificate of 19th November, 2003 from Directorate of Education from the NCT of Delhi, petitioner had applied to respondent- Directorate of Education vide letter of 23rd January, 2004 (Annexure-R) to obtain sponsorship for allotment of land between Pocket- B-3 & B-4 at Keshavpuram, Delhi and reminder of 17th November, 2005 (Annexure-S) was sent by petitioners to Directorate of Education of Government of NCT of Delhi for expediting the sponsorship in respect of allotment of land in question to petitioner. Since there was no response from respondent-Directorate of Education to petitioner's request for sponsorship for allotment of the land in question, therefore, instant writ petition was preferred seeking a direction to respondent - Directorate of Education to forthwith issue requisite Sponsorship Certificate with a consequential direction to respondent-DDA to regularize the allotment of land in question.

3. A direction is also sought to respondent-DDA not to dispossess petitioners from the land in question and to allot the

same to petitioners at pre-determined rates fixed by the Central Government.

4. The stand of respondent-DDA in the counter affidavit is that a Show Cause Notice of 28th November, 2005 (appended as Annexure-B with the counter affidavit) was served upon petitioners as complaints of unauthorized construction and illegal operation of shops and bank in petitioners' school was received along with a complaint of two schools running against allotment in respect of one school and petitioners' reply of 12th December, 2005 to the aforesaid complaints was found to be unsatisfactory and its intimation was given by respondent-DDA to petitioners vide Communication of 24th March, 2006. In the meanwhile, respondent-DDA was compelled by the allegations of favoritism etc., investigated into by the CBI, to review its policy of allotment of institutional lands to school etc. vide Resolution of 19th January, 2006 in order to strike a balance between the transparent mode of allotment and social obligation of free education to the poor, whereby 50% of the available school plots were placed at the disposal of the Government and its remaining 50% were to be put to public auction.

5. The *DDA (Disposal of Developed Nazul Land) Rules, 1981* (hereinafter referred to as the '*Nazul Rules*') were accordingly amended vide Notification of 19th April, 2006, whose validity already stands upheld by a Division Bench of this Court in W.P.(C) No.2459-60/2005, titled as *Bhagwan Mahavir Education Society (Regd.) & Anr. Vs. DDA & Ors.* rendered on 25th March, 2011.

6. However, the contention advanced by learned senior counsel for petitioners is that the decision to allot the proposed additional land in question to the petitioners was taken by the respondents way back in the year 1997 and it stands implemented by respondent-DDA vide its Communication of 8th January, 2003 (Annexure-M) and so, prospective amendment of the *Nazul Rules* cannot take away the allotment of the additional land in question, as the delay was on the part of the respondents, of which they cannot take any advantage. To assert so, learned senior counsel for petitioners placed reliance upon a decision of a Coordinate Bench of this Court in '*Glory Public School & Anr. Vs. Lt. Governor, Govt. of NCT & Ors.*' 107(2003) DLT 662. Thus, it is asserted that petitioners are entitled to allotment of additional land in question, as they are using it as a playground for their school since long.

7. It was vehemently asserted on behalf of respondents that no enforceable right had accrued in favour of petitioners by virtue of respondents principally agreeing to allot the additional land to petitioners, as the offer made by respondent-DDA to allot additional land to petitioners was conditional one. As is evident from respondent's Communication (Annexure-M) it was subject to petitioners obtaining *Sponsorship Certificate* from the Directorate of Education, which they could not obtain and in the meanwhile, *Nazul Rules* were amended to debar allotment of land to the educational institutions at pre-determined rates and since the validity of the amended *Nazul Rules* has been already upheld and the land in question stands allotted to the

Government, as noted in the Order of 13th February, 2008 and so, this petition deserves rejection.

8. The contentions advanced by learned counsel for the parties, the material on record and the decisions cited have been duly considered and thereupon, it transpires that the conditional offer of allotment of additional land to petitioners made by respondent-DDA vide Communication of 8th January, 2003 (Annexure-M) cannot possibly operate as an *estoppel* because neither the *Sponsorship Certificate* could be obtained by petitioners nor it is their case that they had deposited cost of additional land, as demanded by respondents vide its Communication of 8th January, 2003 (Annexure- M).

9. It has been recently succinctly reiterated by my esteemed brother S. Murlidhar, J in '*Ramchander Educational Society & Anr. Vs. DDA & Anr.*' 2011 (122) DRJ 685 that change in the *Nazul Rules* would render any undertaking given prior thereto, to be not binding upon DDA, as there is no *estoppel* against a Statute. The decision in *Glory Public School (Supra)*, is clearly distinguishable, as question of retrospective applicability of the amended *Nazul Rules* was not subject matter of consideration in the afore-cited decision. In any case, question of retrospective applicability of the amended *Nazul Rules* really does not arise for consideration, for the reason that no enforceable right had accrued in favour of petitioners prior to amended *Nazul Rules* coming into force. However, taking note of the ground reality of petitioners being in possession of the additional land in question since long, which of-course does not create any vested right in

favour of petitioners to retain it, but it certainly makes it equitable to put this additional land in question to auction instead of allotting it to the Government for running a school on it.

10. In the aforesaid view of this matter, the relief claimed in this petition no longer survives but it can be moulded to the extent permissible under the amended *Nazul Rules*. On 13th February, 2008, a restraint order was passed prohibiting raising of any construction on the subject land, while noting that it stands allotted to Government of NCT of Delhi. Accordingly, this petition is disposed of with a direction to respondent-DDA to forthwith cancel the allotment of additional land in question to the Government and to put it to auction preferably within a period of eight weeks. Petitioners are also directed to immediately vacate the additional land in question and hand over its physical possession to the respondent-DDA within a week so that it can be put to public auction with wide publicity. Needless to say, petitioners can always participate in the said public auction to obtain the possession of the additional land in question.

11. With observations as aforesaid, this petition stands disposed of with no order as to costs.

(SUNIL GAUR)
JUDGE

AUGUST 30, 2012

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