

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

Date of decision: 7th March, 2012

+ LPA No.681/2011

% DELHI DEVELOPMENT AUTHORITY Appellant
Through: Ms. Shobhana Takiar, Adv.

Versus

MANAV SHIKSHA SAMITI (REGD.) Respondent
Through: Mr. Sandeep Sethi, Sr. Adv. with Mr.
Pramod Gupta, Adv.

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 4th August, 2010 of the Learned Single Judge of this Court disposing of W.P.(C) No. 17387/2004 preferred by the respondent Society, with a direction of the appellant DDA to execute the conveyance deed with respect to the school plot ad measuring approximately 2.5 acres in the colony of Bhera Enclave, Paschim Vihar, New Delhi in favour of the respondent Society. Notice of the appeal was issued. We have heard the counsels for the parties. The counsel for the appellant DDA has also produced before us the records relating to the aforesaid plot of land.

2. The aforesaid school plot was in the year 1971 allotted and leased to Bhirochi Cooperative Housing Building Society Ltd. (BCHBSL). However

the said Society though delivered the possession of the said plot of land, did not take any steps for setting up of the school thereon.

3. The respondent Society was incorporated in the year 1976. The respondent Society in the year 1989 entered into 'licence agreement' with the BCHBSL whereunder BCHBSL handed over possession of the school plot to the respondent Society and allowed the respondent Society to set-up, construct and run a school on the said plot of land. Though under the terms of allotment/perpetual lease on which such school plots are generally allotted and it can be presumed that the subject school plot must have been allotted to BCHBSL also on the same terms and conditions, the allottee/lessee is not entitled to, without consent of the DDA, sublet or part with the possession of the plot but neither any intimation given nor consent of the appellant DDA obtained by BCHBSL before so putting the respondent Society into possession of the said land. The respondent Society since the year 1989 is in possession of the school plot and claims to be operating its school thereon.

4. The respondent Society claims to have thereafter applied to the DDA for allotment of a school plot for itself also. It is the case of the respondent Society that in response to its said application, the appellant DDA vide its letter dated 5th December, 1989 asked the respondent Society 'to augment its funds to the tune of ₹47,50,000/- at the credit of the Society and furnish Bank Certificate to enable DDA to process its case further'. The respondent Society further claims to have in or about the year 1992 asked the DDA for "formal allotment" of the subject school plot (of which it had already come

into possession of) and to regularize the allotment thereof in its favour.

5. The appellant DDA first issued a notice dated 5th July, 1993 to the respondent Society to show cause as to why the unauthorized construction on the subject school plot be not sealed. The respondent Society claims to have replied to the said show cause notice contending that its own application for land was also pending with the appellant DDA and since on the one hand land had not been allotted to it and on the other hand BCHBSL which had been allotted the land was not utilizing the same, the respondent Society had set up a school on the land allotted to BCHBSL and no violations of sanctioned plan and/or of Master Plan had been committed to invite the action of sealing.

6. The respondent Society further claims that the appellant DDA after receiving the reply aforesaid on 15th July, 1993 passed orders for accepting payment from the respondent Society and the respondent Society was orally advised to deposit ₹47 lacs towards premium of the subject school plot and which was deposited on 24th July, 1993. The respondent Society claims to have thereafter in December, 1993 applied to the appellant DDA for regularization of the subject school plot earlier allotted to BCHBSL in its favour.

7. The appellant DDA however in the year 1994 commenced proceedings under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971, for eviction of the respondent Society from the subject school plot and also for recovery of ₹ 25,44,988/- towards charges

for unauthorized use and occupation. The respondent Society in its reply to the said proceedings, again sought regularization of the plot in its favour.

8. The respondent Society claims to have thereafter continued representing to the appellant DDA for regularization of the subject school plot in its favour. The said correspondence *inter alia* shows that according to the respondent Society the charges for use and occupation due from it should not have been more than ₹5 lacs instead of ₹25,44,988/- claimed by the appellant DDA; that the appellant DDA vide its letter dated 20th October, 1998 informed the respondent Society that the formal approval of the Chairman, DDA for allotment of land in favour of the respondent Society was still awaited; that the appellant DDA vide its letters dated 13th August, 1999, 3rd February, 2000 & 14th January, 2002 informed the respondent Society that for allotment of land, fresh sponsorship from the Directorate of Education in favour of the respondent Society was required.

9. The appellant DDA vide letter dated 23rd March, 2004 informed the respondent Society that a decision had been taken to allot on perpetual lease basis the subject school plot to the respondent Society on the terms and conditions contained therein. One of the said terms and conditions was that the respondent Society pays premium of ₹1,93,46,553/-, Ground Rent of ₹4,83,664/-, etc. i.e. total ₹1,98,36,711/- within 60 days of the issuance of the letter. It was further informed that if the payments aforesaid were not made within 60 days as aforesaid or within further period of 180 days with interest at 18% per annum, the offer of allotment shall stand cancelled.

10. The respondent Society in response to the aforesaid letter *inter alia* informed the appellant DDA that it had already paid ₹47 lacs in the year 1993 as per the then prevailing rates and thus was not liable to pay anything further. Upon not receiving any favourable response from the appellant DDA, W.P.(C) No.17387/2004 wherefrom this appeal arises, was filed. Notice of the said writ petition was issued. The appellant DDA in its reply to the writ petition *inter alia* pleaded that the respondent Society had since 13th April, 1989 unauthorizedly occupied the school site allotted to BCHBSL and had carried out unauthorized construction thereon and in which regard proceedings under the PP Act had been initiated and which were withdrawn on 8th July, 2004 in view of issuance of the allotment letter dated 23rd March, 2004 (*supra*); that the amount of ₹47 lacs which the respondent Society claimed to have deposited was deposited by it *suo motu*; that the appellant DDA had not raised any demand therefor; that the request of the respondent Society for regularization of the subject school plot in its favour was recommended for the first time in the meeting held on 18th March, 1998; that in 2003-04 when the decision for regularization was taken, in the first instance calculation of premium at the old rates + damages + interest was worked out and which came to ₹4,31,04,675; however instead of demanding the same, since the current zonal rate was of ₹1,98,36,666/- only, the same was demanded from the respondent Society. It was thus pleaded that the respondent Society was not entitled to the relief claimed in the writ petition.

11. Vide interim order dated 9th December, 2004 in the writ petition aforesaid the appellant DDA was restrained from cancelling the allotment

vide letter dated 23rd March, 2004 in favour of the respondent Society. When the writ petition was listed on 19th December, 2007, the counsel for the respondent Society stated that since against the demand of ₹1,98,36,711/- in letter dated 23rd March, 2004, it had already paid ₹47 lacs in the year 1993, the respondent Society without prejudice to its rights and contentions was willing to deposit the remaining amount (and liability wherefor also was disputed in the petition). The appellant DDA was directed to examine the said proposal and give its report to the Court.

12. On 10th March, 2008 the counsel for the appellant DDA informed the Learned Single Judge that the said proposal of the respondent Society was not acceptable to the appellant DDA. The appellant DDA was directed to file an additional affidavit explaining whether the allotment vide letter dated 23rd March, 2004 stood cancelled or withdrawn and whether any order of cancellation/withdrawal was passed before the interim order dated 9th December, 2004 of stay. The writ petition was thereafter adjourned from time to time. On 19th January, 2009 the counsel for the respondent Society stated that the respondent Society without prejudice to its rights and contentions be permitted to deposit the demanded amount of ₹1,98,36,711/- with the appellant DDA. While permitting the respondent Society to do so, it was clarified that the said deposit would be subject to further orders in the writ petition and not create any equities in favour of the respondent Society.

13. The writ petition aforesaid was listed before the Learned Single Judge on 4th August, 2010. The counsel for the respondent Society informed that the respondent Society had not only paid the entire amount of

₹1,98,36,711/- demanded from it vide letter dated 23rd March, 2004 but will also not ask for refund of ₹47 lacs paid by it on 24th July, 1993. The Learned Single Judge finding the said “offer” of the respondent Society to be reasonable, accepted the same and disposed of the writ petition as aforesaid with a direction to the appellant DDA to execute the conveyance deed of the subject plot of land in favour of the respondent Society.

14. Aggrieved therefrom the present appeal has been filed.

15. Not only is it apparent but has also not been controverted by the senior counsel for the respondent Society that the impugned order of the Learned Single Judge does not decide the lis. The claim of the respondent Society for adjudication in the writ petition was for allotment of the subject school plot and which claim was acceded to by the appellant DDA vide its letter dated 23rd March, 2004, without however paying the sum of ₹1,98,36,711/- demanded by the appellant DDA therefor. The same was controverted by the appellant DDA. What was required to be adjudicated was, as to how the sum of ₹47 lac which the respondent Society claims to have deposited with the appellant DDA (and which fact is not controverted by the appellant DDA) without any demand from the appellant DDA was to be treated i.e. whether by making the said deposit the respondent Society was entitled to peg the price of land even before a decision for allotment thereof in its favour had been taken. As aforesaid, no such decision has been rendered. Rather the Learned Single Judge has allowed the writ petition on the offer/proposal of the respondent Society without acceptance thereof by the appellant DDA. Though, undoubtedly the powers in exercise of

jurisdiction under Article 226 of the Constitution of India are wide but not unguided and arbitrary. The Learned Single Judge appears to have been swayed by the respondent Society having agreed to the demand of ₹ 1,98,36,711/- which it was earlier disputing and assumed therefrom that nothing further remained for decision. However it was not considered that the demand for ₹1,98,36,711/- was made in the year 2004 with payment to be made within 60 days or with interest within 180 days and with stated consequences of non-payment within the time stipulated. Upon the respondent Society not paying the said amount, the offer contained in the letter dated 23rd March, 2004 was to stand cancelled/withdrawn automatically and without anything further. The payment of the said amount demanded in the year 2004, after five years in the year 2009 could not *ipso facto* entitle the respondent Society to the benefits of the offer in the letter dated 23rd March, 2004, without a finding being returned of the demand in the year 2004 being bad. No such finding has been returned by the Learned Single Judge. If the said demand contained in the letter dated 23rd March, 2004 was justified (as the respondent Society appears to have accepted by complying therewith in the year 2009), the Learned Single Judge has not considered as to why the respondent Society even if were to be held to be entitled to retain the land, should not be made to pay the rates of land as in the year 2009/2010 or interest for the period from 2004 to 2009/2010. For all these reasons, the order of the Learned Single Judge impugned in this petition cannot be sustained.

16. Though in view of the aforesaid the appeal is entitled to be allowed and the writ petition remanded to the Learned Single Judge for adjudication

afresh on merits but since the counsels have addressed arguments on merits also and for further reasons stated hereinafter, it is deemed expedient to consider the matter.

17. The senior counsel for the respondent Society has invited our attention to the noting dated 15th July, 1993 of the Asstt. Director (Institutional Lands) of the appellant DDA to the following effect:-

“PUC placed opposite may kindly be seen. The Secretary, Manav Shiksha Samiti has submitted their reply as per detailed note at page-11/N. Commissioner (LD) has passed the following orders on placed opposite PUC:-

“Accept payment after calculating whatever is due from the school”

The school Society has submitted a cheque bearing No.067537 dated 15.7.93 amounting to ₹5 lacs. Total amount on account of premium of land & G.R. & license fee of play ground comes to ₹47,42,038/-. After deducting the amount of ₹5 lacs balance comes to ₹42,42,038/-.

Case is submitted for consideration and order whether we may send the cheque to A.O. (Cash) for encashment.

Submitted Pl.

Sd/-
(15.7.93)
Asstt. Dir. IL

Commissioner (LD)

The question of taking part payment of ₹ 5 lacs does not arise. Tell the society to make the full payment. Meanwhile sealing is to be ensured immediately.”

18. Our attention is also invited to the noting dated 16th January, 2004 of the Principal Commissioner, copy whereof was also filed by the respondent Society before the Learned Single Judge which acknowledges the deposit of ₹47,42,038/- by the respondent Society in the year 1993 being the then prevalent cost of land.

19. Perusal of the original records of the appellant DDA produced before us do bear out the correctness of the office notings aforesaid. However what is clear is that there was no finality even on 15th July, 1993. The respondent Society however jumped the gun and without waiting for any demand being raised on it, only after decision in accordance with law to regularize the allotment of the subject school plot in favour of the respondent Society would have been taken, of its own deposited the said amount. The decision for regularization of the allotment of the subject school plot in favour of the respondent Society however remained pending since 1993 till the year 2004. It is not as if in 2004 the amount of ₹47 lacs deposited by the respondent Society in 1993 was not in contemplation. As aforesaid demand on the respondent Society was initially mooted at the price of 1993 which the respondent Society had paid, together with damages for use and occupation, interest etc. However the amount so due was coming to ₹4,31,04,675/- and thus decision was taken to claim the then current price of ₹1,98,36,666/- from the respondent Society.

20. As far as delay from 1993 till 2004 in taking the decision is concerned, even if the same were to be held to be attributable to the appellant DDA alone, the respondent Society cannot be given any benefit

thereof. It cannot be lost sight of that the very occupation and possession of the respondent Society of the subject plot of land was steeped in illegality. The respondent Society thus cannot be heard to complain of the delay. It may also be mentioned that the delay cannot be said to be attributable in entirety to the appellant DDA in as much as considerable part thereof was owing to the sponsorship letter from the Directorate of Education required for such allotment and issued in favour of the respondent Society being stale.

21. It cannot also be lost sight of that the appellant DDA had in the year 1993 claimed a sum of over ₹25 lacs from the respondent Society towards damages for unauthorized use and occupation since 1989 i.e. approximately for four years. The appellant DDA upon taking decision in the year 2004 to regularize the allotment of plot in favour of the respondent Society at the then prevailing rates, not only gave up the said claim for charges for unauthorized use and occupation from 1989 to 1993 but also did not claim any such charges for the period 1993 to 2004.

22. We are in the circumstances unable to find any merit in the challenge made by the respondent Society in the writ petition to the demand in the letter dated 23rd March, 2004 for ₹1,98,36,711/-. Even though the respondent Society had undoubtedly paid ₹47 lacs for the said land in the year 1993 but the said deposit was on its own and without any demand or even the decision by the appellant DDA to allot the subject land in favour of the respondent Society and thus could not enure any benefit to the respondent Society. It has been consistently held that the view(s) expressed during the course of movement of a file do not bind the authorities empowered to take the

decision to follow the same view(s). The Apex Court in ***Sethi Auto Service Station v. DDA*** (2009) 1 SCC 180 held that internal notings are not meant for outside exposure and notings in the file culminate into an executable order affecting the rights of the parties only when it reaches the final decision making authority in the department, gets his approval and the final order is communicated to the person concerned. Similarly, in ***Jasbir Singh Chhabra v. State of Punjab*** (2010) 4 SCC 192, it was held that issues and policy matters which are required to be decided by the Government are dealt with by several functionaries some of whom may record notings on the files favouring a particular person, someone may suggest a particular line of action; however, the final decision is required to be taken by the designated authority keeping in view the larger public interest. The said views were recently approved in ***UOI v. Vartak Labour Union*** JT 2011 (3) SC 110.

23. Though the counsel for the appellant DDA has argued before us that the said amount of ₹47 lacs was paid by the respondent Society towards damages for use and occupation and not towards price but neither was any such plea taken in the counter affidavit nor is it borne out from the records produced by the appellant DDA. There was no determination also by the estate officers of the said damages at any stage.

24. We had during the hearing, considering that the respondent Society has in fact been running a school on the subject plot of land since the year 1989 i.e. now for the last nearly 22 years albeit illegally and in the facts aforesaid, enquired as to whether the subject plot of land could be regularized in favour of the respondent Society at the current costs. We were

informed that owing to amendment in the DDA (Disposal of Nazul Land) Rules, the Policy earlier in force of such allotment is no longer in force and all such allotments now are by way of auction/tender.

25. We are however of the view that the normal course of action of remand of the writ petition to the Learned Single Judge for decision or of dismissal of the writ petition by us would not subserve the ends of justice. It would enure neither for the benefit of the appellant DDA nor for the benefit of the respondent Society and would rather be prejudicial to the public at large for whose benefit the school on the subject plot is intended to be. Even if we were to dismiss the writ petition, the proceedings for eviction of the respondent Society from the land are likely to take considerable time and during the said time the respondent Society is unlikely to run or operate the school to the maximum potential of the subject plot. The sufferers as aforesaid would be the residents of the locality who would be deprived of an efficiently managed school.

26. The powers of this Court while exercising jurisdiction under Article 226 of the Constitution are wide. This Court, to do substantial justice between the parties, can decline relief even where entitlement in law is made out (see *Chandra Singh Vs. State of Rajasthan* (2003) 6 SCC 545 and *ONGC Ltd. Vs. Sendhabhai Vastram Patel* (2005) 6 SCC 454) and similarly grant relief inspite of technical violation as aforesaid. Similarly, in *Taherakhatoon Vs. Salambin Mohammad* (1999) 2 SCC 635 even at the time of dealing with the appeal after grant of special leave, it was held that the Court was not bound to go into the merits and even if entering into the

merits and finding an error, was not bound to interfere if the justice of the case on facts does not require interference or if the relief could be moulded in a different fashion. This Court has echoed the same views in *Filmistan Exhibitors Ltd. v. N.C.T., thr. Secy. Labour* 131 (2006) DLT 648 by holding that even if there is a violation of law, this Court is not bound to exercise discretionary jurisdiction and in *Babu Ram Sagar Vs. Presiding Officer, Labour Court* MANU/DE/9235/2006 by refusing to interfere in exercise of discretionary powers inspite of holding the reasons given by the Labour Court to be not convincing. The present appears to be a fit case for exercise of such discretionary powers under Article 226 of the Constitution of India rather than following a usual course of action.

27. After giving our anxious thought to the matter we are of the view that the sum of ₹47 lacs deposited by the respondent Society with the appellant DDA be appropriated towards the damages for unauthorized use and occupation of the land by the respondent Society since 1989 till the decision in the year 2004 for regularization of the allotment of the subject school plot in its favour. The respondent Society was liable to pay the demanded amount of ₹1,98,36,711/- in terms of letter dated 23rd March, 2004. Though upon non-payment, the respondent Society lost the right to such allotment, however in exercise of our powers aforesaid, we extend the time for making such payment till the time the amount was so deposited by the respondent Society in or about the year 2009 but in terms of the said letter i.e. subject to payment of interest as provided therein.

28. Accordingly this appeal is disposed of with the following directions:-

- A. Subject to the respondent Society within eight weeks hereof depositing an amount towards interest @ 18% per annum on the sum of ₹1,98,36,711/- w.e.f. the expiry of 60 days from the letter dated 23rd March, 2004 and till the date of deposit thereof by the respondent Society with the appellant DDA, the appellant DDA shall in terms of letter dated 23rd March, 2004 allot the subject school plot and execute documents thereof in favour of the respondent Society;
- B. Upon the failure of the respondent Society to pay the interest amount within the time aforesaid, the respondent Society shall be left with no rights whatsoever in the subject school plot and in which case the appellant DDA shall immediately take action, not only for sealing/demolition of unauthorized construction if any on the subject school plot but also for recovery of possession thereof. The appellant DDA shall then also be entitled to recover from the respondent Society damages for unauthorized use and occupation of the said land and be entitled to appropriate the amount of ₹47 lacs and ₹1,98,36,711/- already paid by the respondent Society to the said account and to recover further amounts if any due in the said account.

- C. The respondent Society having been found to be in fault and having forced the appellant DDA to litigate, is also burdened with costs of these proceedings of ₹1 lac payable by the respondent Society to the appellant DDA within eight weeks of today.

The appeal is disposed of.

RAJIV SAHAI ENDLAW, J

ACTING CHIEF JUSTICE

MARCH 7, 2012

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