

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

Reserved on: September 05, 2012

Pronounced on: October 04, 2012

+ (i) **W.P.(C) No. 1509/2002**

**M/S. CHIRAGH COOP. H. BLDG. SOCIETY
LTD. AND ANR.**

..... Petitioners

Through: Mr.Inderbir Singh Alag, and
Mr.J.S.Lamba, Advocates

versus

D.D.A. AND ORS.

..... Respondents

Through: Mr.Sushil Dutt Salwan,
Advocate for respondent - DDA
Mr.Sudheer Nandrajog, Senior
Advocate with Mr.Vaibhav
Kalra, Advocate for respondent
No. 3.

+ (ii) **W.P.(C) 5245/2008**

Reserved on: September 12, 2012

Pronounced on: October 04, 2012

RITU MUKERJI AND ORS.

..... Petitioners

Through: Mr. Rahul Gupta, Advocate
along with Mr. Pulkit Sachdeva,
Advocate.

versus

DDA AND ORS.

..... Respondents

Through: Mr.Sushil Dutt Salwan,
Advocate for R-1.

Mr.Vaibhav Kalra, Advocate
for R-2.

Mr.I.S.Alag and Mr.J.S.Lamba,
Advocates for R-3.

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT

1. The subject matter of above captioned two petitions is identical i.e. to challenge allotment of a plot of 800 sq. yards to respondent- *Tagore Education Society* for a nursery school and so, both these petitions are being disposed of by this common judgment.

2. A Mandamus to respondent- DDA to execute necessary documents in respect of allotment made by DDA in favour of petitioner- Society of a plot admeasuring 1890.60 sq. yards earmarked for nursery school in Chirag Enclave, New Delhi is sought in the above captioned first writ petition. Respondent- DDA vide its Communication of 21st June, 1979 (Annexure-C) had decided to allot aforesaid plot of land for nursery school @ ₹3,00,000/- per acre, which is assailed only on the ground that the aforesaid premium demanded is unreasonable, as development on the land in question had been undertaken by petitioner- Society.

3. Alternate relief sought by petitioner- Society is to quash the allotment of land earmarked for nursery school to respondent-*Tagore Education Society*, asserting that it is a case of double allotment i.e. first allotment was made in favour of petitioner- Society in the year 1966 and again in the year 2001, the land in question has been allotted to respondent - *Tagore Educational Society* for nursery school.

4. Seven petitioners of the above captioned second writ petition, filed in the year 2008, are the residents of Chirag Enclave, New Delhi, whose society has already laid challenge to the allotment of plot in question to respondent- *Tagore Education Society*. The need to file the above captioned second writ in the year 2008 for the same cause put forth is that it would lead to traffic congestion and opening of another school exclusively for the nursery children in Chirag Enclave, New Delhi would be contrary to the provisions of Delhi Master Plan – 2021, which permits opening of nursery schools in mixed use areas and also because 200 other odd schools are already there within about five km. radius of Chirag Enclave, New Delhi.

5. For the sake of convenience, petitioners of the above captioned first writ petition would be henceforth referred to as '*petitioner-Society*', as the second petitioner therein is its Secretary and writ petitioners of the above captioned second writ petition, would be referred to as '*second writ petitioners*'. Respondent- *Tagore Education Society* is a common respondent in the above captioned two writ petitions.

6. The grievance of petitioner- Society is that during the years from 1979 upto 2002, several Representations and Reminders were sent to respondent- DDA to intimate the terms and conditions for allotment of land in question to petitioner- Society for nursery school but there was no response and hence, this petition.

7. In the counter to above captioned first writ petition, respondent- DDA discloses that in pursuance to Lease Agreement in the year 1963, Perpetual Lease of August, 1966 (Annexure-B) was

executed in respect of the land in possession of petitioner-Society i.e. for residential plots only and license was given to petitioner-Society to develop the entire land but proposed allotment of land in question for nursery school in favour of petitioner in June, 1979 did not fructify because petitioner-Society had failed to pay the premium demanded and so, allotment of land in question to respondent-*Tagore Education Society* for nursery school in the year 2001 is not a case of double allotment and is valid. Regarding payment of property tax for the vacant land in question, stand of respondent-DDA is that in the absence of proposed allotment of land in question in favour of petitioner-Society fructifying, mere payment of property tax does not create any right in favour of petitioner to claim allotment of land in question in pursuance to the proposed allotment made vide Communication (Annexure-C).

8. Respondent- DDA counters above captioned second writ petition by relying upon *Right of Children To Free And Compulsory Education Act, 2009* to assert that nursery schools in the neighbourhood are good for children of tender age and due to revision of the policy of minimum requirement of land for the purpose of nursery school, the nursery school plot in question was reduced to 800 sq. yards only and remainder of its land was put to use as a park for the residents of petitioner-Society. Regarding the application of Delhi Master Plan i.e. MPD-2021, it is asserted that it does not nullify the allotment of plot for nursery school already made.

9. The stand of respondent-*Tagore Education Society* in the above captioned first writ petition is that since petitioner-Society had failed

to comply with the terms and conditions of proposed allotment (Annexure-C), therefore, it has no right to assail allotment of land in question in favour of the respondent-*Tagore Education Society*, which is *bona fide* one and for valid consideration. In the above captioned second writ petition, stand of respondent- *Tagore Education Society* is that second writ petitioners have no locus to belatedly challenge the allotment of nursery school plot in question and infact the above captioned second writ petition is collusive one and the allotment in question being prior to implementation of MPD-2021, would remain intact and the requirement of a new school is to be examined by the Directorate of Education and not by the second writ petitioners or any other person.

10. At the hearing of this petition, it was urged by learned counsel for petitioner-Society that nursery school plot was an integral part of the land allotted to petitioner-Society in the year 1963 and conveyed to it in the year 1966 and by virtue of allotment of nursery school plot to petitioner-Society in June 1979, respondent-DDA had no right to re-allot it to a third party, especially when petitioner-Society had been regularly and continuously representing to respondent-DDA to settle the rates applicable to nursery school plot and the default was on the part of respondent-DDA to do so. It was strenuously urged on behalf of petitioner-Society that payment of property tax by petitioner-Society in respect of nursery school plot in question, entitles it to seek the relief sought in this petition.

11. On behalf of respondents, it was asserted that as per Zonal Development Plan, out of the ear-marked land for nursery school, 800

sq. yards was carved out and was allotted to respondent-*Tagore Education Society* in April, 2001 for a consideration of ₹80,00,000/- per acre and the rest of it is maintained as a park for the residents of petitioner- society. Regarding payment of property tax in respect of nursery school plot in question, it is asserted that it is meaningless in view of proposed allotment of nursery school plot in question not fructifying in favour of petitioner- Society for a period of one decade or so because petitioner- Society was not willing to pay the reasonable premium @ ₹3,00,000/- per acre. Thus, it is asserted that no enforceable right accrues to petitioner- Society to seek allotment of nursery school plot in question, while relying upon proposed allotment (Annexure-C) and to assail allotment of nursery school plot in question to respondent-*Tagore Education Society* for a valid consideration.

12. The respective contentions advanced by both sides have been duly considered in the light of material on record and thereupon, this Court finds that the Perpetual Lease of 23rd August, 1966 (Annexure-B) was in respect of the residential plots only and as per Clause-VIII of Lease Agreement of the year 1963 relied upon by petitioner-Society, the lessor had the right to deal with the remaining land of Chirag Enclave in any manner and the petitioner-Society had no right to claim any refund on account of development on the land leased out to petitioner-Society. In view thereof, petitioner-Society cannot maintain that right to own nursery school plot in question vests with petitioner-Society by virtue of Lease Agreement of 1963 (Annexure-A). It is so said because vide impugned Communication of 21st June,

1979 (Annexure-C) of respondent-DDA, a conditional allotment of nursery school site / plot in Chirag Enclave was made to petitioner-Society and in response thereto, petitioner-Society vide its letter of 29th June, 1979 had infact asserted that the premium demanded is not reasonable but had not taken the stand that nothing is payable or question of re-allotment of land for nursery school plot does not arise, as this plot of land belongs to petitioner- Society.

13. Infact, one sided correspondence by petitioner-Society with respondent-DDA which is Annexure-E (*colly*), is for period from June, 1992 upto January, 1994, again from November, 1997 till December, 1999 and stray communications in December, 1982 and in January, 1989, would not suffice for the reason that petitioner-Society was not expected to make irregular communication to respondent-DDA and when there was no response from respondent-DDA, then petitioner-Society ought to have availed of legal remedies, which they had failed to do so for unexplained reasons.

14. In the aforesaid view, it would be reasonable to reach to a conclusion that there was utter lack of diligence on the part of petitioner- Society to act upon the proposed allotment of nursery school plot in question (Annexure-C). Only in December, 1998, petitioner-Society had sought intervention of Lieutenant Governor of Delhi vide its letter of 16th December, 1998 seeking permission to set up a nursery school on the plot in question by claiming that allotment for nursery school be made on same basis as was done in the case of Community centre / Club i.e. on a nominal lease money only while pointing out that respondent-DDA's advertisements in news papers in

March, 1992 for sale of two plots of 380 & 500 sq. yards in Chirag Enclave out of the nursery school plot was in violation of the Lease Agreement in question.

15. As already noted above, Lease Agreement of the year 1963 (Annexure-A) had granted to the lessor unfettered right to allot nursery school plot in question to third party in terms of Clause-VIII of aforesaid Agreement (Annexure-A). Still, the above captioned first writ petition has been filed in February, 2002, only after the allotment of nursery school plot in question had been made to respondent-*Tagore Education Society* in April, 2001 for a valid consideration. The obvious conclusion is that petitioner-Society was keen to interject only when third party interest is created in nursery school plot in question and not to promptly obtain its allotment upon payment of premium demanded which was not exorbitant.

16. In a similar matter of '*Chander Mohan & ors. Vs. Delhi Development Authority & ors.*' 104 (2003) DLT 643 , resistance of Panchshila Cooperative House Building Society to construction of an office complex on the society land was negated by my esteemed brother Sanjay Kishan Kaul, J by referring to similar Lease Agreement and Perpetual Lease. The pertinent observations made in *Chander Mohan (Supra)* aptly applies to the instant matter as well, which are as under:-

'17.A bare reading of the license agreement and the perpetual lease deed makes it clear that the land was made available to the society for development purposes on license basis with the stipulated condition mentioned

here-in-above that the lease deed would be executed only in respect of the residential plots. The lease deed itself refers to this fact and also bequeathed the title only in respect of the residential plots. Schedules 'A', 'B', 'C' and 'D' are the khasra Nos. of the land, which is the total land given on license and as is apparent from the recital above wherein it is stated that the land situated in these Schedules was given under the license agreement. Schedules 'E', 'F', 'G' and 'H' only give boundaries for the same and have to be understood in that context. The mere words 'leased out' referred to in Schedule 'H' cannot mean that the common areas have also been granted to the society.

18. The aforesaid is not peculiar to the society and is a normal practice in all such development schemes at least in Delhi. The land is made available on license basis to the society for development purposes and the common areas then revert back to the perpetual Lesser. The consideration paid under the license agreement is for these residential plots which will develop and is not really a consideration for the whole land, which is given for development purposes. The society has to pay certain amounts under the license as costs for the residential plots to be developed and also develop the whole land. Thus, price of the plots is the amounts paid by the society as also the cost of development of the whole land.'

17. As regards payment of property tax by petitioner-Society in respect of nursery school plot in question, all that is required to be said is that in the absence of proposed allotment of nursery school plot in question fructifying in its favour, no enforceable right accrues in favour of petitioner-Society to now belatedly seek allotment of nursery school plot in question at a nominal lease amount. It is

nobody's case that possession of nursery school plot in question was ever handed over to petitioner- Society.

18. It would be indeed a misnomer to label allotment of nursery school plot of 800 sq. yards only to respondent-*Tagore Education Society* as a case of double allotment, especially when it is evident that the proposed allotment of Nursery School in question had not matured due to lapse on the part of petitioner-Society to pay the premium demanded. As petitioner-Society had no subsisting right to allotment of nursery school plot in question, therefore, its allotment to respondent-*Tagore Education Society* is neither arbitrary nor illegal. Question of cancellation of allotment of nursery school plot in question in favour of petitioner-Society does not arise because the proposed allotment of the nursery school plot in question had never fructified in favour of petitioner-Society. So, there is no question of reallocating it to respondent-*Tagore Education Society* unilaterally or malafidely.

19. The final conclusion arrived at is that petitioner-Society has not been diligent enough to seek effective enforcement of proposed allotment of nursery school plot in question made to it in the year 1979 till February, 2002, by resorting to legal remedy within reasonable period of three years or so, from the year 1979 and so, its petition must fail. Even the petitioners of above captioned second writ petition have no legitimate basis to challenge the allotment of nursery school plot in question made to respondent-*Tagore Education Society* in April, 2001 against valid consideration by making a futile effort to deprive the respondent-*Tagore Education Society* to run a nursery

school from the plot in question by referring to Master Plan Delhi – 2021, which has come into effect in the year 2007, providing for mixed use of land in the area in question because bifurcation of nursery school plot in question has taken place prior to coming into force of MPD-2021, due to revision of policy of minimum requirement of land for the purpose of nursery school, as asserted in counter by respondent-DDA, to which there is no worthwhile challenge in the rejoinder filed by second writ petitioners. In view thereof, requirement of alternation / amendment of lay out plan by a Standing Committee of MCD in terms of section 312/313 of Delhi Municipal Act and reliance placed upon decisions in '*Shri Chet Ram Vashisht Vs. Municipal Corporation of Delhi & anr.*' AIR 1981 SC 653 is misplaced. Applying the ratio of a Division Bench decision in '*Dev Raj Gupta Vs. New Delhi Municipal Committee*' 1997 IV AD (Delhi) 608, it is held that the applicable master plan would be MPD-2021 and not MPD-2001. Thus, requirement of seeking amendment/ alteration in the lay out plan for change of use of nursery plot in question to mixed use is not required, as MPD-2021 permits it. Thus, it is open to respondent- *Tagore Education Society* to put the subject land to mixed use while running nursery school therefrom and so, reference to decision in '*Regal Traders Pvt. Ltd. & Anr. Vs. Lt. Governor of Delhi & Ors.*' AIR 1990 Delhi 282 on behalf of second writ petitioners is of no avail. Regarding the aspect of traffic congestion being there due to opening of nursery school by respondent- *Tagore Education Society*, this can be taken care of by regulation of the traffic and the remedy is not to set at naught a valid

allotment of nursery school plot in question to *respondent- Tagore Education Society*. In this regard, reasonable restraint can be put by the traffic police on respondent- *Tagore Education Society* to ensure that traffic congestion does not take place outside the nursery school in question. The paramount consideration is to ensure that in this ever growing capital city, nursery school is there in the neighbourhood to provide elementary education to children of tender age and so, MPD-2021 facilitates putting of the nursery school plot in question to mixed use, which obviously includes running of nursery school from the plot in question. Thus, even the above captioned second writ petition cannot defeat the right of respondent- *Tagore Education Society* from not only setting up a nursery school on the plot in question but also to put it to mixed use after obtaining requisite clearances. So, even above captioned second writ petition must fail.

20. Consequentially, both the above captioned writ petitions fail and are as such dismissed, while leaving the parties to bear their own costs.

(SUNIL GAUR)
JUDGE

October 04, 2012

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