

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

Date of decision: 23rd March, 2012

+ LPA 806/2011

% DELHI TAMIL EDUCATION SOCIETY Appellant
Through: Mr. G. Umapathy & Mr. S. Ram
Subramanian, Advs.

Versus

DIRECTORATE OF EDUCATION & ORS. Respondents
Through: Ms. Avnish Ahlawat with Ms.
Latika Chaudhary & Ms. Urvashi
Malhotra, Advs. for R-1/DOE.
Mr. Rajiv Bansal & Ms. Swati
Gupta, Advs. for R-2/DDA.

CORAM :-

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

J U D G M E N T

RAJIV SAHAI ENDLAW, J.

1. This intra-court appeal impugns the judgment dated 26.07.2011 of the learned Single Judge dismissing W.P.(C) No.915/2007 preferred by the appellant. The said writ petition was preferred by the appellant impugning the communications dated 07.09.2005, 22.11.2005 and 03.01.2007 of the respondent No.1 Directorate of Education (DOE) of the Government of

NCT of Delhi (GNCTD) and the show cause notice dated 12.01.2006 of the respondent No.2 DDA. Mandamus was also sought directing the respondent No.2 DDA to deliver possession of school plot in Mayur Vihar Phase-III to the appellant. The learned Single Judge dismissed the writ petition on the ground of delay and laches and also on the ground that the writ petition impugning a show cause notice was not maintainable.

2. Notice of this appeal was issued and vide interim order dated 29.09.2011, *status quo* was directed to be maintained qua the school plot; the respondents were restrained from allotting the said school plot to any other person. The counsels have been heard.

3. The appellant is a registered Society which has established as many as seven educational institutions i.e. Schools, in Delhi. The appellant in or about the year 1982 applied to the respondent No.1 DOE for allotment of land for establishing a school in the trans-yamuna area. The respondent No.1 DOE vide its letter dated 16.05.1984 to the appellant, informed the appellant that the appellant's case regarding allotment of land had been forwarded to the respondent No.2 DDA, duly recommended by the

respondent No.1 DOE.

4. The respondent No.2 DDA vide its letters dated 03.07.2000 and 23.02.2001 called upon the appellant to fulfill numerous formalities; one such formality was that the appellant's case should have been sponsored by the Ministry / Department concerned of Delhi Administration. Though as aforesaid, the respondent No.1 DOE had as far back as on 16.05.1984 recommended the allotment of land to the appellant but it appears that the appellant on receipt of such direction from DDA, again approached the respondent No.1 DOE for revalidation of sponsorship. The respondent No.1 DOE however vide its letter dated 22.05.2001, while confirming that the appellant was vide letter dated 16.05.1984 sponsored for allotment of land "to establish a senior secondary school in Mayur Vihar area", informed the appellant that as per decision duly approved by the Lieutenant Governor, there was no need for re-sponsorship for allotment of land for a Senior Secondary School and only valid Essentiality Certificate was required. It was further stated that as the appellant society was "minority in nature" there was no need for furnishing the Essentiality

Certificate also.

5. The respondent No.2 DDA vide its letter dated 28.08.2002 to the appellant conveyed its decision for allotment on perpetual leasehold basis a plot of land measuring two acres (75% for school building and 25% for play field) to the appellant for running a Senior Secondary School (Government aided) at Mayur Vihar Phase-III and on the terms and conditions contained therein; the terms and conditions were subsequently modified vide letter dated 18.12.2002 of the respondent No.2 DDA. As per the said modified terms and conditions, the appellant was *inter alia* called upon to pay premium amounting to ₹18,15,000/- besides ground rent etc.

6. The appellant complied with the formalities detailed in the said letter of allotment of land and also sought No Objection Certificate (NOC) from the respondent No.2 DDA for pledging the loan to Indian Overseas Bank, Janakpuri to secure the finance for construction of school building on the said land. The respondent No.2 DDA vide its letter dated 17.01.2003 granted NOC to enable the appellant to apply for loan from any

nationalized bank for construction of school building, subject to the condition that the final mortgage permission will be issued only after execution of the lease deed.

7. The appellant in compliance of the demand contained in the allotment letter, on 25.01.2003 deposited the entire demanded amount of ₹19,66,295/- with the respondent No.2 DDA and called upon the respondent No.2 DDA to deliver possession of the land. The respondent No.2 DDA vide its letter dated 19.07.2004 asked the appellant to furnish the resolution in favour of the person to whom the possession of the land was to be delivered. Though the said resolution was furnished by the appellant but the respondent No.2 DDA vide its letter dated 13.04.2005 to the respondent No.1 DOE with reference to the sponsorship letter dated 16.05.1984 (supra) enquired, the name of the aided school proposed to be shifted to Mayur Vihar and if a new school was intended to be opened at Mayur Vihar, as to whether the respondent No.1 DOE was going to grant aid for that school also. In response to the said letter of the respondent No.2 DDA, respondent No.1 DOE vide its letter dated 07.09.2005

(impugned in the writ petition) asked respondent No.2 DDA not to treat the sponsorship letter dated 16.05.1984 (supra) as valid and not to allot any land to the appellant on the basis of the sponsorship dated 16.05.1984. The same stand was reiterated by the respondent No.1 DOE in its another letter dated 22.11.2005 also impugned in the writ petition.

8. It is pursuant to the said letters dated 07.09.2005 and 22.11.2005 of the respondent No.1 DOE that respondent No.2 DDA issued the notice dated 12.01.2006 (also impugned in the writ petition) to the appellant to show cause as to why the allotment of land in its favour be not cancelled on account of withdrawal of sponsorship by the respondent No.1 DOE. The appellant replied to the said show cause notice and also made representations to the respondent No.1 DOE and upon the said representations being rejected vide letter dated 03.01.2007 (also impugned), filed the writ petition (supra).

9. It was the case of the appellant in the said writ petition that the actions of the respondents were arbitrary; that after receipt of the entire demanded amount, the allotment could not be cancelled; that the

respondents were estopped from withdrawing the sponsorship and allotment; principles of legitimate expectation were also invoked. Vide interim order in the writ petition, the respondent No.2 DDA was restrained from allotting the said land to any other person.

10. The respondent No.1 DOE filed a counter affidavit in the writ petition pleading that the allotment of land in favour of the appellant was sponsored in the year 1984 since there was then no aided school in Mayur Vihar area; that after long gap of 20 years, the old sponsorship letter given in 1984 was to be treated as time barred; that the sponsorship letters cannot be open ended and have to be acted upon within a reasonable time and the appellant could not be allotted land by the respondent No.2 DDA on the basis of a stale sponsorship letter. It was further pleaded that in the meeting of the Land Allotment Committee held on 09.06.1999 a decision had been taken that in case of sponsorships which are more than five years old, a fresh sponsorship is required.

11. The respondent No.2 DDA in its counter affidavit to the writ petition pleaded that the writ petition against a show cause notice was premature

inasmuch as respondent No.2 DDA was yet to take a decision in pursuance thereto. Else, the respondent No.2 DDA sought to justify the show cause notice on the letters aforesaid of the respondent No.1 DOE.

12. The learned Single Judge has held the writ petition to be barred by laches on the ground of the appellant having not explained the unreasonable delay in not following up the matter with the respondent No.2 DDA between the years 1984 and 2000. We are unable to fathom as to how the writ petition filed in January, 2007 and challenge wherein was to the letters dated 07.09.2005, 22.11.2005 and 03.01.2007 of the respondent No.1 DOE of calling upon the respondent No.2 DDA to not allot the land to the appellant and further challenge wherein was to the consequent show cause notice dated 12.01.2006 issued by the respondent No.2 DDA, could be said to be suffering from laches / delay. The period from 1984 when the case of the appellant for allotment of land was sponsored and till the year 2000 when DDA called upon the appellant to comply with formalities for allotment in its favour, was immaterial. The fact remains that allotment of land was made by the respondent No.2 DDA

to the appellant on 28.08.2002 / 18.12.2002 notwithstanding the case of the appellant having been sponsored by the respondent No.1 DOE way back in the year 1984. There is also nothing to show that the respondent No.1 DOE at any time prior to 2005 withdrew the sponsorship accorded in 1984. The sponsorship letter dated 16.05.1984 was not time bound and its validity was unlimited. It is admitted by the respondent No.1 DOE also that prior to the decision taken in the meeting on 09.06. 1999, sponsorship letters were open ended without any period of validity. Even though a decision is stated to have been taken on 09.06.1999 to limit the validity of the sponsorship letters to five years from the date of issue but it is not the case of the respondent No.1 DOE that any intimation of such a decision was sent to the appellant or that the sponsorship letter issued in the year 1984 was withdrawn / revoked at any time. There is thus nothing on record to indicate that the appellant at any time prior to 2005 was aware of the sponsorship letter being not valid. On the contrary, when the respondent No.2 DDA in the year 2001 i.e. prior to making the allotment of land in favour of the appellant, sought revalidation of sponsorship from the respondent No.1 DOE, the respondent No.1 DOE vide its letter dated

22.05.2001 took a stand that there was no need of re-sponsorship and that only the Essentiality Certificate was required and which also was not required by the appellant, being a minority institution. The respondent No.1 at that time also did not rely on the decision of 09.06.1999 limiting the life of sponsorship letters to five years only.

13. The reasoning of the learned Single Judge, thus, of the writ petition being barred by delay and laches cannot be upheld and is set aside. What was / is for consideration in the writ petition, was the action of the respondent No.1 DOE of after allotment of land in favour of the appellant asking the respondent No.2 DDA to not allot the land and which question has not been answered by the learned Single Judge. We are however not inclined to remand the matter for decision on merits by the learned Single Judge, having heard the counsels ourselves and also for the reason that considerable delay has already been caused. The counsel for the respondent No.2 DDA on enquiry confirms that the subject plot of land is earmarked for the purpose of a school only. Schools serve the need of the public at large. It is the public at large and particularly the residents of the

nearby localities who are suffering owing to the delay in construction of the school and the plot of land meant for school having remained unutilized for the last nearly seven years. Judicial notice can also be taken of the scarcity of schools in the city. Securing admission of a child in a school is a harrowing experience for the parents. It is for this reason only that we are also not inclined to dismiss the writ petition as premature with direction to the respondent No.2 DDA to decide in pursuance to the show cause notice issued to the appellant. As aforesaid, we have heard the counsels on all aspects and it is deemed appropriate to adjudicate the controversy.

14. We may also take judicial notice of the fact that such delays in allotment of school plots inspite of sponsorship are not unusual. While the school plots are few, the demand is much more. Notice may also be taken of the fact that even the respondent No.2 DDA in its counter affidavit to the writ petition has not blamed the appellant for any delay. Ordinarily, upon the respondent No.1 DOE having recommended the case of the appellant for allotment of land in the year 1984, it was up to the respondent No.2 DDA to allot the land. There is nothing to show that there was any

delay in this regard on the part of the appellant.

15. Neither has the respondent No.1 DOE in its counter affidavit nor has its counsel been able to explain as to why, inspite of the categorical stand taken in the letter dated 22.05.2001 that revalidation of sponsorship was not required and the appellant did not require the Essentiality Certificate also, the stand was changed shortly thereafter in 2005 and for what reason. The only reason given is, the decision of the year 1999 prescribing a life of five years for a sponsorship letter. It is not the case of the respondent No.1 DOE that the sponsorship earlier granted to the appellant is to be revoked for any other reason. The appellant Society continues to be engaged in establishing and operating schools in Delhi, as it was doing in the year 1984. Nothing at all is informed as to why the decisions of the year 1984 and 2001 require any change. Though the counsel for the respondent No.1 DOE has faintly suggested that the need for the school in the area as in the year 1984 no longer exists as other schools have come up in the area but neither any such plea has been taken in the counter affidavit nor have any particulars as to the need for a school in the locality having become extinct

stated. Though the possibility of other schools, since the year 1984, having come up in the area cannot be ruled out but so has the population increased in the last nearly 30 years. The very fact that the respondent No.2 DDA, while making the Zonal Plan, has felt the need to earmark a school plot in the locality and which must have been done on assessment of the need for the school in the locality, belies any such argument (which in any case is unsubstantiated) of the need for school having disappeared.

16. The fact that the appellant as far back as on January, 2003 has deposited the entire demanded amount for the school plot with the respondent No.2 DDA cannot also be ignored. As aforesaid, the allotment by the respondent No.2 DDA in favour of the appellant was made only after the respondent No.2 DDA in the year 2001 having reconfirmed the status of the sponsorship of the appellant and once the allotment has been completed and the appellant has paid the consideration therefor, the respondents cannot be permitted to turn turtle and change their stand. Rule 42(1) of the Delhi Development Authority (Disposal of Developed Nazul Land) Rules, 1981 provides for the 'allottee' of Nazul land, holding the

same from the date of 'allotment', on the terms and conditions prescribed by those Rules and contained in the Lease Deed 'to be executed'. Valuable rights in land thus came into existence upon the allotment and which cannot be defeated in the manner sought to be done. This Court in ***K.K. Birla Academy Vs. DDA*** MANU/DE/1156/2004 has held that once Nazul land is allotted and premium is paid, an indefeasible right to the land is created in favour of allottee. Reliance was placed on ***DDA Vs. Pushpendra Kumar Jain*** (1994) Supp. 3 SCC 494 holding that the right comes into existence when allotment letter is issued. It was further held that such a vested right can be taken away only by law and a statutory authority as the DDA can review its decision only if facts showing fraud, misrepresentation, concealment, mistake exists.

17. We therefore find the action of the respondent No.1 DOE of asking the respondent No.2 DDA after allotment of land in favour of the appellant, to not allot the said land to the appellant to be arbitrary, unreasonable, bad and illegal and strike down the communications dated 07.09.2005, 22.11.2005 and 03.01.2007 of the respondent No.1 DOE. The

respondent No.2 DDA having acted merely on the basis of the letters / communications of the respondent No.1 DOE which have been held to be illegal, the show cause notice dated 12.01.2006 of the respondent No.2 DDA is also quashed.

18. We accordingly allow this appeal and accordingly the writ petition preferred by the appellant and direct the respondent No.2 DDA to, within six weeks hereof and subject to the appellant complying with all the formalities, deliver possession of the land to the appellant and to also thereafter as soon as possible, execute lease deed of the land in favour of the appellant. We refrain from imposing any costs on the respondent No.1 DOE even though the appellant and the public at large is found to have suffered owing to the arbitrary and illegal action of the respondent No.1 DOE.

RAJIV SAHAI ENDLAW, J

ACTING CHIEF JUSTICE

MARCH 23, 2012

‘gsr’