

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

Date of decision: 1st October, 2012

+ **LPA No.668/2012**

% **M.S. EDUCATIONAL SOCIETY REGD. ANR Appellants**

Through: Mr. Anil Sapra, Sr. Adv. with Mr.
Tanuj Khurana and Mr. Ishaan
Madaan, Advs.

Versus

DELHI DEVELOPMENT AUTHORITY & ANR.... Respondents

Through: Ms. Ruchi Sindhwani & Ms. Megha
Bharara, Advs for GNCTD.
Mr. Rahul Bhandari, Adv. for DDA.
Counsel for DOE.

CORAM :-

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

JUDGMENT

RAJIV SAHAI ENDLAW, J.

1. This intra court appeal impugns the judgment dated 30th August, 2012 of the learned Single Judge dismissing WP(C) Nos. 19209-10/2006 preferred by the appellants and also issuing directions to the respondent no.1 DDA to cancel the allotment made of the subject land in favour of the Government of National Capital Territory of Delhi (Directorate of Health Services) and to put the subject land to auction within a period of eight weeks; the appellants have also been directed to immediately vacate the land

and hand over its physical possession to the respondent no.1 DDA; liberty has also been given to the appellants to participate in the public auction so directed.

2. The counsel for the respondent no.1 DDA and the respondent no.2 Directorate of Education, GNCTD appear on advance notice. Ms. Ruchi Sindhwani, Advocate for Directorate of Health Services, GNCTD states that vide order dated 8th February, 2007 of the learned Single Judge in the writ proceedings, the Directorate of Health Services of GNCTD was impleaded as respondent no.3 in the writ petition but has not been so impleaded in this appeal and this appeal is defective for the said reason. The senior counsel for the appellants on instructions states that the Directorate of Health Services of GNCTD erroneously remained to be impleaded as a respondent in this appeal and makes an oral prayer for impleadment of the Directorate of Health Services of GNCTD as respondent no.3. Impleadment is so allowed.

3. We have heard the counsels finally at the stage of admission itself.

4. The appellant no.1 Society and of which the appellant no.2 is the Chairman, claims to be the allottee of land, admeasuring 2.08 acres in the colony of Keshav Puram at New Delhi, for the purposes of establishment of a Middle School. They further claim to have established a Middle School on the said plot of land. The said school is stated to have been, with the permission of the Directorate of Education, upgraded to a Senior Secondary School.

5. The subject land admeasuring approximately 1.67 acres is located adjacent to 2.08 acres of land allotted for the school of the appellants. The said 1.67 acres of land is described in the records as land located between B3 and B4 Pockets of Keshav Puram. The appellants, since the year 1984 have been approaching the DDA for allotment of the said 1.67 acres of land also to the appellants for the purposes of the school. The respondent no.1 DDA finally, vide its letter dated 8th September, 1997, responded as under to the said request of the appellants:

“From

dated: 8/9/97

Amar Chatarjee,
Dy. Director (IL)

To

The Chairman,
Tri Nagar Education Society
(M.S. Education Society (Regd.)
1978 Tri Nagar
Delhi - 110035

Sub: Allotment of DDA plot lying adjacent to Manender
Shakti Vidyalaya between Block B-3 and B-4, Keshav
Puram, Delhi.

Sir,

This has reference to your letter No. TPP/LA/97-98/30/
dated 4.6.97 addressed to Hon'ble L.G. Delhi on the subject
noted above, I am directed to inform you that the request of
the society can be considered on completion of following
conditions:

1. The premium of earlier allotted plot will have to paid
and settled as per policy.
2. On completion of all basic formalities viz. submission of
prescribed application form, sponsorship from Dte. Of
Education etc.
3. The land use of the plot i.e. whether a plot earmarked for
Primary School can be allotted for Hr. School will have
to be ascertained from Planning Deptt. Of D.D.A.

Yours faithfully,

(Amar Chatarjee)
Dy. Director (IL)”

6. The appellants claim to have complied with the conditions aforesaid
in the letter dated 8th September, 1997. However though no further action
was taken by the DDA for allotment of the said 1.67 acres of land to the

appellants but it appears that the appellants nevertheless occupied the said land and also raised some construction therein. A show cause notice dated 25th June, 2002 was issued by the DDA to the appellants in this regard. Upon receipt of the said show cause notice, the appellants, instead of seeking allotment of the said 1.67 acres of land in their favour, as they were seeking earlier, sought regularization of the said 1.67 acres of land in their favour and also cited instances of such regularization having been done qua others. In response thereto, the DDA vide its letter dated 8th January, 2003 to the appellants intimated as under:

“The Chairman
M.S. Education Society
1962, Trinagar,
Delhi – 110035

Sub: Regularization of land to M.S. Education Society for
Middle School at Keshav Puram.

Sir,

With reference to your letter dated 13.11.2002 for regularization of school land measuring 1.67 acres located at Keshav Puram. I am directed to convey that the Hon’ble L.G., Delhi has agreed in principle for regularization of land measuring 1.67 acres at Keshav Puram in favour of M.S. Education Society subject to the following conditions:

1. The case of the society should be sponsored by Education Department, Government of NCT of Delhi or the Central Government.

2. The society should be willing to pay the cost of the land at old rate damages or current zonal variant rate whichever is less.

It is therefore, requested to give the consent for the same so that your case can be processed further.”

7. The appellants vide their letter dated 15th January, 2003 to the DDA gave their consent for payment and further informed that they were taking up the matter with the Directorate of Education of GNCTD for sponsoring its case qua the said 1.67 acres of land. The Directorate of Education of GNCTD, vide its letter dated 19th November, 2003 to the appellants, in response to the application dated 22nd March, 2003 of the appellants to establish a new school from class Ist to VIIIth, issued an Essentiality Certificate under Rule 44 of the Delhi School Education Rules, 1973. The said Certificate was forwarded by the appellants to the DDA.

8. Notwithstanding the aforesaid, no allotment was made by the DDA in favour of the appellants of the said 1.67 acres of land. The appellants in the circumstances, in or about December, 2006 filed the writ petition from which this appeal arises, seeking direction to the Directorate of Education to forthwith issue the requisite sponsorship in favour of the appellant No.1 Society for facilitating the respondent DDA to forthwith allot the aforesaid land to the appellants and also sought mandamus against the DDA to allot

the said land to the appellants; restraint was also sought against the DDA from dispossessing the appellants from the said land.

9. The aforesaid writ petition was entertained. The respondent DDA filed the counter affidavit pleading that the appellant Society had been indulging in illegality since the beginning; though they had made a request for allotment of land in the name of Tri Nagar Educational Society in the year 1973 but till 1980 no allotment was made because the said Society did not fulfill the requisite formalities; however the Society encroached upon the land earmarked for school in Pocket B-3, Lawrence Road and raised a school structure and in January, 1981 approached the Sub Judge's Court and obtained stay against dispossession; however upon a recommendation being made by the Education Department for allotment of land, on 25th December, 1982 approval was given for allotment of land admeasuring 2.08 acres in favour of Tri Nagar Educational Society; a Lease Deed with respect to the said land was executed on 6th March, 1986; Tri Nagar Educational Society subsequently merged with the appellant no.1 M.S. Educational Society and which made request, first for allotment and subsequently for regularization of 1.67 acres of the subject land; various complaints have been received of unauthorized construction and

unauthorized running of a bank and shops on the allotted 2.08 acres of land; in fact instead of one school, two schools are being run on the land; that the DDA reviewed the allotment policy regarding schools vide Resolution dated 19th January, 2006 and formulated a policy whereby 50% of the available school plots are at the disposal of the Government and balance 50% are to be put to public auction; by a Gazette Notification dated 19th April, 2006, the DDA (Disposal of Developed Nazul Land) Rules, 1981 were also amended to provide for the mode of disposal of land for schools through auction only; that the changed mode of disposal of land was informed to the appellants on 10th July, 2006 and the appellant no.2 being the Chairman of the appellant no.1 Society had in fact vide letter dated 3rd April, 2006 requested the DDA to include the subject plot admeasuring 1.67 acres for auction and expressed interest in acquiring the same by auction; that the appellants had no right of the allotment till actual allotment letter is issued and IAC recommendation does not give any right; reliance is placed on *Sethi Auto Service Station v. Delhi Development Authority* (2009) 1 SCC 180 and on *Goswami Vidyapitha Society Vs. Lieutenant Governor* 132 (2006) DLT 638; that there is no vested right in the appellants for allotment.

10. The appellants filed a rejoinder pleading to be entitled to allotment under the unamended Nazul Rules.

11. The learned Single Judge, vide the impugned judgment has held that the conditional offer of allotment of subject land admeasuring 1.67 acres vide communication dated 8th January, 2003 cannot possibly operate as an estoppel because neither the Sponsorship Certificate could be obtained by the appellants nor had they deposited the cost of land as demanded in the said letter. Relying on *Ram Chander Educational Society vs. Delhi Development Authority* 177 (2011) DLT 653 laying down 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, it has been held that no enforceable right had accrued in favour of the appellants prior to amendment to the Nazul Rules coming into force. Accordingly, while dismissing the petition, direction has been given for putting the land to auction.

12. We may at this stage take into consideration the contention of the counsel for the Directorate of Health Services of GNCTD. It is contended that the subject land admeasuring 1.67 acres since then has been allotted by the DDA to the Directorate of Health Services and which is aggrieved by

the direction given by the learned Single Judge for cancellation of the allotment in its favour and of putting the land to auction. The counsel for Directorate of Health Services states that the Directorate of Health Services would also be appealing against the order, to the said extent.

13. We have not deemed it necessary to defer the consideration of the present appeal along with the appeal, if any preferred by the Directorate of Health Services since the rights asserted by the appellants in the writ petition to the land are to be adjudicated independently of the claim, if any, of the Directorate of Health Services to the land. Needless to state that if the appellants are to succeed, the allotment in favour of the Directorate of Health Services will have to go. Further needless to state that if the appellants fail, whether the allotment in favour of the Directorate of Health Services subsists or is cancelled will be of no concern to the appellants.

14. The only argument urged by the senior counsel for the appellants before us is on the basis of the letter dated 8th January, 2003 (supra). It is argued that the said letter intimates to the appellants the decision of the Lt. Governor for regularization of the said 1.67 acres of land in favour of the appellants; that the Lt. Governor has the authority to take the decision and once he has taken a decision, it is final; that the two conditions aforesaid

contained in the letter dated 8th January, 2003 have been wrongly construed by the learned Single Judge as a case of conditional allotment; the same were not conditions to be complied with by the appellants and the regularization of the land in favour of the appellants was not dependent upon the compliance of the said conditions; the appellants were only to give their consent to the two conditions and which the appellants had given; thus notwithstanding the sponsorship having not happened, the allotment / regularization in favour of the appellants matured on 8th January, 2003 and vested a right in favour of the appellants to the said land and which remains unaffected by the subsequent amendment of the year 2006 to the Nazul Rules. It is further contended that the judgment of the Apex Court in *Sethi Auto Service Station* supra is in favour of the appellants rather than against the appellants.

15. We are unable to agree. The letter dated 8th January, 2003 only conveyed to the appellants “that the Hon’ble Lt. Governor, Delhi has agreed in principle for regularization of land admeasuring 1.67 acres at Keshav Puram in favour of M.S. Education Society” and sought consent of the appellants to the conditions mentioned therein “so that your case can be processed further”. The language of the said letter unequivocally shows that

no final decision had been taken and the claim of the appellants for allotment/regularization of the said 1.67 acres of land was 'under process'. The Apex Court in ***Sethi Auto Service Station*** supra itself has taken notice of the fact that mere recommendation during the movement of the file does not confer any legal right till a final decision is taken. It is apparent from the language of the letter dated 8th January, 2003 in the present case that till the amendment of the Nazul Rules in the year 2006, no final decision of allotment /regularization of land in favour of the appellants had been taken and the matter was merely being processed further. We are further of the view that even 'in principle consent' of the Lt. Governor who is the Chairman of the DDA, for regularization in favour of the appellants cannot vest any right in the appellants. The said 'in principle consent' is distinct from the specific approval for allotment/regularization and which admittedly had not been given.

16. This Court in ***Ram Chander Educational Society*** and in ***Goswami Vidyapitha Society*** supra, has already held that till actual allotment letter is issued, no right is vested in the applicants for allotment of land, even if the Land Allotment Committee has made a recommendation in favour of the applicant. Similarly, Supreme Court in ***Bachhittar Singh Vs. State of***

Punjab AIR 1963 SC 395, *State of Bihar Vs. Kripalu Shankar* (1987) 3 SCC 34, *Laxminarayan R. Bhattad Vs. State of Maharashtra* (2003) 5 SCC 413 and in *Bahadursinh Lakhubhai Gohil Vs. Jagdishbhai M. Kamalia* (2004) 2 SCC 65, has held that till a formal order is passed by a Competent Authority and communicated to the concerned party, no right accrues from notings on the file.

17. Admittedly, no allotment was made in favour of appellants till the amendment of the Nazul Rules or even till the filing of the writ petition. It is for this reason only, that the appellants in the writ petition sought the relief of, mandamus to DoE to sponsor their case for allotment (thereby admitting that till then there was no sponsorship even and without which there could be no allotment) and mandamus to DDA to make allotment in their favour. Once that is found to be the position, the appellants cannot claim for their case to be considered as per the Nazul Rules as they stood prior to amendment. The appellants had / have no right of allotment. Supreme Court, though in the context of mining leases, and qua which also there is no vested right, in *State of Tamil Nadu Vs. Hind Stone* (1981) 2 SCC 205 and in *M.P. Ram Mohan Raja Vs. State of Tamil Nadu* (2007) 9 SCC 78 has 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 the application.

18. Notice may also be taken of ***Bhagwan Mahavir Education Society (Regd.) Vs. DDA*** MANU/DE/0968/2011 where a Division Bench of this Court held that where a right to allotment had not matured in favour of Educational Societies prior to amendment of the Nazul Rules, the entitlement has to be considered in the light of the Rules as amended in the year 2006.

19. We are further of the view that the appellants have no equities in their favour. The appellants / their predecessor are found to have got 2.08 acres of land also by first illegally occupying the same and then having its illegal possession regularized and appear to have been attempting to do the same qua the said 1.67 acres of land. It has been repeatedly held that the Courts will not come, specially in the exercise of equity jurisdiction, to the rescue of persons indulging in illegalities and who are encroachers over land. The appellants, as per their own averment even, though not having any title to the land, have occupied the said 1.67 acres of land and for which reason a direction has been given by the learned Single Judge and rightly so, to the appellants to vacate the said land. The appellants for the last over ten years

have been enjoying the land without making any payment whatsoever therefor. Such conduct of the appellants, to say the least, is reprehensible and disentitles them from any relief whatsoever. A Division Bench of this Court, as far back as in ***Rawat Mal Jain Vs. Delhi Development Authority*** 55 (1994) DLT 726 held that the Court, while exercising the discretion will not extend a helping hand to the person invoking its equity jurisdiction for grant of an injunction when he approaches for preserving what he has gained by violating the law.

20. Though the counsel for the DDA has not argued but recently counsel for DDA in another matter i.e. LPA No.130/2006 titled ***St.Sophia's Christian Education Society Vs. D.D.A.*** decided on 13th September, 2012 had informed us that as per the changed norms, a Secondary School is entitled to get land admeasuring 2 acres only; in that case the allotment earlier made of 4 acres was cancelled and only 2 acres was offered. The appellants herein are already allottees in possession of 2.08 acres of land and thus the question of their being entitled to any additional land does not arise for this reason also.

21. We therefore do not find any merit in this appeal and dismiss the same. However, we clarify that this order will not come in the way of

consideration on merits of the appeal, if any, preferred by the Department of Health Services of the GNCTD.

No costs.

RAJIV SAHAI ENDLAW, J

CHIEF JUSTICE

OCTOBER 1st, 2012
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