

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

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Date of decision: 10th December, 2012

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LPA No.757/2012

HARISH BATRA & ORS.

..... Appellants

Through: Mr. Sandeep P. Agarwal with Mr.
Rajesh Patnale & Mr. K.A. Singh,
Advs.

Versus

DELHI DEVELOPMENT AUTHORITY & ORS..... Respondents

Through: Mr. Sushil Dutt Salwan & Ms. Latika
Dutta, Advs. for DDA.
Mr. Sudhir Nandrajog, Sr. Adv. with
Mr. Vaibhav Kalra & Ms. Neha
Bhatnagar, Advs. for R-2.

AND

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LPA No.769/2012

**M/S CHIRAGH COOPERATIVE HOUSE
BUILDING SOCIETY LTD. & ANR.**

..... Appellants

Through: Mr. Amit Khemka with Mr. Rishi
Sehgal & Mr. Sanorita D. Bharali,
Advs.

Versus

DELHI DEVELOPMENT AUTHORITY & ORS..... Respondents

Through: Ms. Anjana Gosain, Adv. for R-2.
Mr. Sudhir Nandrajog, Sr. Adv. with
Mr. Vaibhav Kalra & Ms. Neha
Bhatnagar, Advs. for R-3.

CORAM :-

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J

1. These intra-court appeals impugn the common judgment dated 04.10.2012 of the learned Single Judge dismissing W.P.(C) Nos. 5245/2008 & 1509/2002 preferred by the appellants respectively. The counsels for all the respondents appear on advance notice / caveat.

2. The appellant in LPA No.769/2012, in or about the year 2002 filed the writ petition aforesaid seeking a mandamus to the respondent DDA to execute necessary documents and complete the formalities in respect of allotment of a plot of land admeasuring 1890.60 sq. yds. earmarked for nursery school in the colony of Chirag Enclave, New Delhi to the appellant Chiragh Cooperative House Building Society (CCHBS); the allotment made of the said land by the DDA in favour of the respondent Tagore Education Society (Regd.) (TES) was also impugned and cancellation thereof sought. It was *inter alia* the case of the appellant CCHBS, i) that the DDA had allotted the land ad-measuring 16.7 acres to it for development of a colony which came to be known as Chirag Enclave, New Delhi; ii) that the appellants CCHBS obtained sanction of the Layout Plan of the said colony and

developed a colony thereon comprising of plots of land which were allotted in favour of the members of CCHBS and in whose favour Perpetual Lease Deeds thereof executed; iii) that in the Layout Plan so sanctioned, a plot admeasuring 1890.60 sq. yds. was earmarked for a nursery school; iv) that the appellant CCHBS was in control of the said plot also and was maintaining the same; v) that the DDA however demanded additional amounts from the appellant CCHBS for the said land earmarked for the nursery school as well as for another plot of land in the colony earmarked for a Club; vi) that vide letter dated 21.06.1979, the DDA communicated to the appellant CCHBS the decision to allot the land earmarked for Club and nursery School to the appellant CCHBS and though disclosed the rates for such allotment but assured to separately intimate the terms and conditions for allotment; vii) that the appellant CCHBS immediately protested against the unreasonable demand and asked the DDA vide letter dated 29.06.1979 to reconsider its decision; viii) that though the appellant CCHBS thereafter continuously made representations seeking waiver of the unjustified and unreasonable demand in respect of the nursery school plot but to no avail; ix) that ultimately in the year 1999, the appellant CCHBS approached the Lieutenant Governor also; x) that it was only in response thereto that the

DDA for the first time vide letter dated 08.12.1999 asked the appellant CCHBS to furnish some more documents; xi) that the appellant CCHBS protested contending that the land already stood allotted to the appellant CCHBS in the year 1979 and thus the question of the appellant CCHBS providing any further documents did not arise; xii) that thereafter also though on representations, assurances were meted out but the appellant CCHBS on 04.02.2002 learnt that the said plot had been allotted by the DDA to the respondent TES, and which led to the filing of the writ petition from which this appeal arises.

3. The contention of the appellant CCHBS in W.P.(C) No.1509/2002 was that the nursery school plot not only already vested in it, upon the entire land on which the colony was developed being allotted to it, but had again been allotted to it in June, 1979 as aforesaid and DDA was thus not entitled to allot it to the respondent TES.

4. It appears that vide an interim order in the said writ petition, TES was restrained from constructing over the said land.

5. DDA contested the writ petition pleading that the plot as per the Layout Plan of the colony was earmarked for nursery school and had been

allotted to TES and possession thereof already stood delivered. It was also the plea of the DDA that the land underneath the colony, besides the residential plots, vested in the DDA and DDA was free to allot it to anyone it liked.

6. TES also filed a counter affidavit to the said writ petition in which it was also pleaded, i) that as per the guidelines of the DDA as well as the Directorate of Education, the land for school can be granted only to Societies which are registered for the purpose of imparting education; ii) that the appellant CCHBS does not have imparting education as its purpose in its Memorandum & Articles of Association; iii) that though DDA had vide letter dated 08.12.1999 asked the appellant CCHBS to furnish documents to show its eligibility for allotment of land but the appellant CCHBS had failed to satisfy DDA in that regard and DDA had vide its letter dated 11.04.2001 allotted 800 sq. mtrs. (which we are told translates into approximately 900 sq. yds.) out of the aforesaid plot of land earmarked for nursery school to the TES which had paid the entire demanded amount of ₹35,66,143/- therefor and was put into possession of the land on 25.10.2001. It was thus pleaded that the appellant CCHBS had no right to seek allotment of the said land in its favour.

7. While the aforesaid writ petition was pending, seven persons claiming to be the residents of the colony of Chirag Enclave, filed W.P.(C) No.5245/2008 aforesaid seeking the relief of quashing of allotment of 800 sq. mtrs. out of the aforesaid nursery school plot to TES and to restrain TES from constructing or running a nursery school on the said plot of land. It was their plea in the said writ petition that the DDA was not entitled to bifurcate the plot of 1890.60 sq. yds. and to allot 800 sq. mtrs. out of the same to TES; that the DDA while making the said allotment had not taken into consideration the traffic problems which would arise for the residents of the colony on the setting up of the said nursery school and had also not made any survey about the requirement of setting up of a nursery school; it was pleaded that a large number of nursery schools existed in the area and there was no need for another nursery school.

8. DDA filed a counter affidavit to the second writ petition also, pleading that in the Zonal Development Plan of the area, an area of 0.50 acre was earmarked for nursery school as per Master Plan-2001; that the aforesaid area was divided into two plots out of which one was allotted to TES for nursery school and other area has been earmarked as a park; that the Layout Plan of the colony was also based on the Zonal Development Plan;

that the other nursery schools in other colonies were not relevant; that once the Zonal Development Plan was prepared and approved in terms of the Master Plan, the objections if any thereto stood rejected; that the relief claimed by the said seven residents of the colony was opposite to the relief claimed in the earlier writ petition filed by CCHBS which had developed the colony and which was seeking the plot of land for running of a nursery school itself.

9. Both the writ petitions aforesaid were taken up together for hearing and have been dismissed as aforesaid by the learned Single Judge. It has been held, a) that the land vested in the DDA and the appellant CCHBS had no right thereto; b) that vide communication dated 21.06.1979 of DDA, a conditional allotment of the nursery school plot was made to the appellant CCHBS but it did not accept the terms thereof and protested against the rates demanded for allotment; c) that the appellant CCHBS since 1979 did not assert any right with respect to the said plot save for unilateral, stray representations from time to time; d) that there were thus utter lack of diligence on the part of appellant CCHBS to act upon the conditional allotment of the year 1979; e) that it was only after the 800 sq. mtrs. out of the aforesaid plot had been allotted in favour of TES that the appellant

CCHBS had filed the writ petition; f) that the appellant CCHBS had no subsisting right to allotment when allotment in favour of TES was made; g) there was no question of DDA reallocating the plot to TES; h) that traffic congestion owing to opening of nursery school was not a ground to come in the way of allotment, as traffic could be regulated.

10. We may at the outset clarify that though earlier the Master Plan provided for the size of a nursery school plot to be minimum 0.50 acre (1908.60 sq. yds.) but subsequently the said minimum size was changed to 800 sq. mtrs. – that is why the allotment in favour of TES was of 800 sq. mtrs. only and not of the entire plot of land and the use of the remaining part of the land was changed to that of a park. In this respect, no grievance has been made before us. The arguments before us have been confined to, whether in the year 1979 there was an allotment by the DDA of the said plot of land in favour of the appellant CCHBS and as to whether in the light of other nursery schools having come into existence in the locality, DDA is now not entitled to allow another nursery school to come up on the said plot of land.

11. Though the learned Single Judge has held a conditional allotment of

the plot to have been made by DDA in favour of appellant CCHBS in the year 1979 has declined relief to the appellant CCHBS for having failed to accept the said conditions and having further not taken any action for nearly 20 years to, if aggrieved from the stand of the DDA, secure the allotment in its favour and the writ petition being barred by laches and waiver but we do not find any allotment, albeit conditional, even to have been made in favour of appellant CCHBS. The counsel for the appellant CCHBS also could not dispute before us that under the Delhi Development Authority (Disposal of Developed Nazul Land) Rules, 1981, as the same existed prior to the amendment thereof in the year 2006, the allotment at pre-determined rates of land for schools could be made only in favour of a Society established with the objective of imparting education and that the appellant CCHBS is not a Society and does not have imparting of education as its objective. We have therefore asked the counsel as to how, the appellant CCHBS was even eligible for allotment in its favour and what is the locus of the appellant CCHBS to maintain a petition seeking a direction for allotment in its favour. No reply has been forthcoming. The letter dated 21.06.1979 supra, from its tenor, appears to have been issued merely in response to a query of the appellant CCHBS as to the rates on

which the DDA was intending to allot the said land. The counsel for the appellant has of course argued that DDA has not denied the same to be of allotment. Undoubtedly, there is no express plea in the counter affidavit of the DDA to the said effect but DDA has generally denied the claim in the writ petition. When the case is based on documents, we had rather read the documents than rely on the skill of the counsels engaged by authorities such as DDA whose counter affidavits are often found to be a mere repetition of the comments forwarded by the department. Though the counsel for the appellant CCHBS on our query as to whether the allotment claimed was in accordance with the Nazul Rules had valiantly contended that there is no prescribed form but in ignorance of Rule 8 of the Nazul Rules which provides for allotment to be made on payment of such premium as may be determined by the Rules. Admittedly, no premium was paid. There was thus no allotment even in the year 1979 as claimed by the appellant CCHBS. The learned Single Judge is right in observing that the appellant CCHBS was spurred into action only when the allotment in favour of TES was made. We therefore do not find any right in the appellant CCHBS to the said land.

12. The counsel for the seven residents aforesaid has taken us through the Master Plan for Delhi-2001 and the Master Plan for Delhi-2021 to demonstrate that the norms for the schools have changed. He has contended that the DDA has in MPD-2021 done away with the allotment of plots for nursery schools and nursery schools have been permitted in plots meant for primary and senior secondary schools. He has further contended that considering the population density of the colony, there are sufficient nursery schools in the vicinity. Again, problems of nuisance to the residents of the locality upon coming up of the nursery schools have been cited. On enquiry as to how the view of only seven residents can prevail when the CCHBS, which has established the colony, itself is seeking to run a nursery school, it is stated that CCHBS comprises of original allottees of the residential plots in the locality most of whom have sold out and the CCHBS does not now represent the present residents of the colony which in the Residents Welfare Association meeting resolved against the School.

13. The plot aforesaid, in the Layout Plan, was admittedly earmarked for a nursery school and continues to be so shown. On enquiry as to whether the appellants in LPA No.757/2012, prior to filing the writ petition, had made any representation or taken any steps for modification of the Layout

Plan, the counsel replies that such steps could not have been taken since the writ petition filed by CCHBS was already pending. We are unable to agree. While the issue in the writ petition of CCHBS was as to who should run the nursery school, the issue raised by the seven residents aforesaid is of whether the nursery school should at all come up or not. So long as the Layout Plan continues to show the prescribed user of the land as that for a nursery school, this Court cannot direct the user to be anything else.

14. There is another aspect of the matter. The said seven residents claim to be the subsequent purchasers of the residential plots of land in the colony. They acquired their plots with open eyes, of the said plot being earmarked for a nursery school and of the likelihood of a nursery school coming into existence. In fact the said nursery school would have come into existence but for the interim order obtained by CCHBS in its own writ petition. It is not for this Court to enter into an inquiry as to the requirement of a nursery school. The Newspapers are full of the difficulties in nursery school admissions and certainly convey a dearth of schools vis-à-vis admission seekers thereto. We therefore find it unpalatable that there is no need for a nursery school. There is no basis whatsoever for the said claim made by the said handful of residents of the

colony.

15. As far as the MPD-2021 having done away with the earmarked plots for nursery school is concerned, the allotment in favour of TES is of prior to the coming into force of MPD-2021 and cannot be disturbed on account thereof. The said allotment will be governed by the policies framed by the DDA / Government from time to time with respect to allotments already made.

16. Faced with the aforesaid, while the counsel for the appellant CCHBS confined the relief to clarification of the direction of the learned Single Judge of TES being entitled not only to set up a nursery school on the plot in question but also to put it to mixed use after obtaining requisite clearances and the counsel for the residents aforesaid has confined the relief to granting liberty to them to initiate process for modification of the Layout Plan. While we find merit in the relief claimed by the counsel for the appellant CCHBS, we do not, at this stage, find ourselves inclined to accede to the request of other appellants. We clarify that the observations in the judgment of the learned Single Judge to the effect that TES would be entitled to use the plot for mixed use will not be construed as permitting

TES to use the plot for any purpose other than permitted under the Rules, Regulations and Norms of the DDA. Once the rights in favour of TES have been created in the plot, the residents cannot be permitted to seek alteration in the Layout Plan, for change of user of the plot.

17. Thus save with the clarification aforesaid, we do not find any merit in the appeals which are dismissed. We refrain from imposing any costs.

RAJIV SAHAI ENDLAW, J

CHIEF JUSTICE

DECEMBER 10, 2012

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