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

Decided on: 29.10.2013

+ **LPA 53/2013, C.M. APPL. 1148/2013 & 1150/2013**

DIRECTORATE OF HEALTH SERVICES

THROUGH: ITS SECRETARY AND ANR..... Appellants

Through: Ms. Ruchi Sindhwani with Ms.
Megha Bharara, Advocates.

versus

MS. EDUCATIONAL SOCIETY AND ORS..... Respondents

Through: Mr. Tanuj Khurana with Mr.
Gaurav Malik, Advocates, for R-1 & 2.
Mr. Rajiv Bansal, Advocate, for DDA.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE NAJMI WAZIRI

MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)

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1. The Government of NCT of Delhi is aggrieved by the directions contained in the judgment and order of the learned Single Judge passed in W.P. (C) 19209/2006 made on 30.08.2012.

2. The respondent (hereafter referred to as 'the Society') had preferred a writ petition claiming certain reliefs which included a direction to the concerned authority, i.e., Government of NCT of Delhi to issue a sponsorship certificate in respect of its proposal to expand an existing school in respect of an adjacent plot. The Society

claimed that it was issued an essentiality certificate on 19.11.2003; it applied to the Directorate of Education on 23.01.2004 for sponsorship for the allotment of land between pocket B-3 and B-4 at Keshav Puram, Delhi. Complaining of deliberate inaction, the Society preferred a writ petition impleading the Delhi Development Authority (hereafter referred to as 'DDA') and the Education Department of Government of NCT of Delhi. In the meanwhile, the policy of the DDA, the land owning agency, apparently changed on account of the amendment to the DDA (Disposal of Developed Nazul Land), Act, 1981 w.e.f. 19.04.2006. As a result of this, the procedure of allotment was entirely changed. The concerned or affected parties such as Societies and Charitable Trusts entitled to set up the schools had to - with certain exceptions - participate in an open bidding auction. It was in these circumstances that the Society preferred its writ petition in December, 2006 claiming reliefs that were sought. During the intervening period - when the writ proceedings were pending - the changed policy, i.e., the amended Nazul Rules were pronounced upon in Division Bench ruling (*Bhagwan Mahaveer Educational Society v. DDA & Ors.*). The Division Bench upheld the DDA's changed policy. Taking note of this and the subsequent rulings in *Ram Chander Educational Society v. DDA*, 2011 122 DRJ, the learned Single Judge directed that the allotment of the plot in question should be cancelled and that the Society should hand over the additional land to the DDA which should then proceed to auction the plot.

3. The Government of NCT of Delhi argues that the direction to

put the Keshavpuram plot to auction overlooks the previous allotment made in its favour for setting up of a hospital. Learned counsel relies upon an allotment letter dated 10.11.2006 and also alludes to other supporting documents and materials such as the payment of Rs.89,51,307/- made to the DDA on 20.06.2007 and the subsequent possession letter issued by the latter on 17.08.2007. It is argued that all these developments were brought to the notice of the Court and yet were erroneously overlooked by the learned Single Judge. Learned counsel submitted that having regard to these circumstances, such land stood excluded from the land bank of the DDA and could not have been made a subject matter of the impugned directions.

4. Counsel for the DDA supported the stand and argument made on the appellant's behalf.

5. Counsel for the Society argues that the impugned directions ought not to be interfered with. He relies upon the order of another Division Bench of this Court, dated 01.10.2012 passed in LPA 668/2012, whereby the Society's appeal was disposed off. Counsel pointedly referred to certain passages in that order to state that the Court consciously refrained from making any observations with respect to the directions to allot the plot through an open auction. It was submitted that at the stage when the writ petition was filed, neither the Government of NCT of Delhi nor the DDA brought to the notice of the Court that the allotment of the plot had been made as alleged for the purpose of setting up of the hospital.

6. From the forgoing narrative, it is apparent that the Government of NCT of Delhi claims to be aggrieved by the directions contained in the order to the extent that it requires the land in question, i.e., 1.67 acres to be put to auction in terms of the amended Nazul Land Rules amended w.e.f. 19.04.2006. The validity of those rules has been upheld by the Division Bench of this Court in *Bhagwan Mahaveer Educational Society's* matter (supra); the Supreme Court in appeal by special leave has affirmed the directions in *Bhagwan Mahaveer Educational Society's* matter.

7. So far as the rights of the Society to claim that 1.67 acres of land and to be put to auction is concerned, this Court notices that no right was set up apart from the existence of an essentiality certificate issued in its favour in the year 2003. By the time it preferred the writ petition, this amended policy had come into existence. *Sethi Auto Service Station v. Delhi Development Authority*, 2009 (1) SCC 180 and *Delhi Development Authority v. Pushpendra Kumar Jain*, AIR 1995 SC 1, are authorities to the proposition that till allotment of land is made, there is no vested or enforceable right that inheres in the applicant. The facts of the present case established that as on the date when Society approached this Court, no such right had crystallized in its favour. By that time - unfortunately for the Society - the said land itself stood allotted by the DDA to the Government of NCT of Delhi on 10.11.2006. That these facts were not alluded to and apparently not argued at the stage of final hearing is a matter of detail. The material on record in the form of Government of NCT of Delhi's

affidavit makes it clear that these facts were brought on the record. The order of the Single Judge vacating the stay on 15.04.2009 is also the testimony to the fact that the Court was alive to the existence of such allotment - which apparently had been overlooked when the initial interim order restraining the construction was made. The Court, therefore, holds insubstantial the Society's argument that the allotment could not have been made except in accordance with the amended Nazul Land Rules. Once the land was not available for allotment by reasons of its being given to the Government of NCT of Delhi for another public purpose, i.e., construction of setting up of hospital, whatever rights available to the Society to claim that it ought to be put for auction vanished. The Court would now deal with the last submission with respect to the effect of the order made on 01.10.2012 in LPA 668/2012. It is evident from the reading of paragraph 12 and 13 of that order that the Division Bench was aware about the Government of NCT of Delhi's rights, yet the Court refrained from dealing with it - necessarily - and expressed rightly, because the grievance articulated by the Government of NCT of Delhi was not the subject matter of the challenge by the Society. So viewed, the Division Bench's ruling is unexceptionable in that it upheld the order which was based upon the prevailing policy. The Court had no option to deal with whether the allotment had been made to Government of NCT of Delhi and, therefore, the land itself not being available for auction.

8. In view of the above conclusion, the Court is of the opinion that

the directions impugned by the appellant contained in the impugned order requiring the subject plot to be auctioned cannot be sustained. They are accordingly set aside. The appeal is allowed in the above terms.

9. Consequently, the directions cancelling the allotment in favour of the Government of NCT of Delhi is hereby set aside.

**S. RAVINDRA BHAT
(JUDGE)**

**NAJMI WAZIRI
(JUDGE)**

**OCTOBER 29, 2013
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