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HIGH COURT OF DELHI AT NEW DELHI

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W.P. (C) No.4394/2014

Decided on : 8th January, 2015

SHREE BHAGIRATHI GANGA EDUCATIONAL & CULTURAL
SOCIETY (REGD.) Petitioner

Through: Ms. Richa Kapoor & Mr. Hemant Singh,
Advocates.

Versus

DELHI DEVELOPMENT AUTHORITY Respondent

Through: Mr. Dhanesh Relan & Mr. Arush
Bhandari, Advocates for the DDA.

CORAM:

HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI, J.

1. This is a writ petition filed by the petitioner society for issuing demand-cum-allotment letter of a plot measuring 800 square meters in Block E, Sector 16, Rohini, for setting up of a nursery school.

2. Briefly stated the facts leading to filing of the present writ petition are that the petitioner society is stated to have applied for allotment of a land for nursery school vide application No.3497 on 19.3.2001. On 12.4.2001, the Directorate of Education is purported to have sent a letter to the respondent/DDA recommending the case of the petitioner society

for establishment of a nursery school. On 30.5.2002, the DDA considered the request of the petitioner through Institutional Allotment Committee. A proposal for allocation of a plot of land measuring 800 square meters in Block E, Sector 16, Rohini for establishment of a nursery school was allocated subject to verification of the financial status of the society. On 3.1.2003, the respondent DDA sent a letter to the petitioner society requesting for submitting a bank certificate showing financial status of the petitioner society. Consequent to this, on 18.1.2003, the bank certificate is purported to have been submitted by the petitioner society. On 8.8.2003, the respondent/DDA sent a letter to the bank seeking verification of the authenticity of the certificate purported to have been issued by the bank. Since the bank had verified the authenticity of the certificate, a letter was issued to the petitioner society on 25.6.2004 seeking certain clarification. In the meantime, as the policy for allotment of nursery school on pre-determined rates was under review, therefore, no action seems to have been taken in this regard and the petitioner society was not issued any demand-cum-allotment letter by the DDA. The petitioner society sent letters to the Government of India who, in turn, sought necessary information from the respondent/DDA

with regard to the allotment of the plot of land for setting up of a nursery school. These letters were duly replied by the DDA to the concerned officer in Government in India in the month of September-October, 2004 intimating that the policy regarding allotment of institutional land for setting up of schools was under review and once the process is finalized, the case of the petitioner would be examined accordingly.

3. It is the case of the petitioner society that it had been continuously representing the respondent/DDA till March, 2008, through public hearings for allotment of land for school. It had also kept an amount of Rs.20 lacs available with its bank to be paid to the DDA as the price of the land; however, as nothing was heard, the petitioner society made representation on 23.12.2013. A letter was received from the office of the Secretary to the Lt. Governor that favourable order for allotment of a school land has not been passed which has necessitated filing of the present writ petition.

4. The writ petition came up for hearing for the first time on 18.7.2014 when this court took note of the fact that the grievance of the petitioner is seeking issuance of a demand-cum-allotment letter in respect of a plot of land in question, is *prima facie* hit by inordinate delay and

latches yet before passing any order on the writ petition, the court directed the respondent to produce the record as one of the prayer of the petitioner society was for production of the record so as to enable it to decide as to whether the matter needs to be examined further or not.

5. The main contention of the learned counsel for the petitioner is that as it had fulfilled all the requisite parameters of obtaining an essentiality certificate from the Directorate of Education, the financial viability certificate from its banker and the Institutional Allotment Committee had earmarked a particular parcel of land measuring 800 square meters in Block E, Sector 16, Rohini, therefore, the petitioner was entitled to demand-cum-allotment letter to be issued by the respondent which was being denied arbitrarily and illegally.

6. It has also been contended by the learned counsel that a similarly placed school for blinds has been issued demand-cum-allotment letter and this action on the part of the respondent has resulted in adopting pick and choose policy for the purpose of allotment of land. It has also been contended by the learned counsel that the cancellation of the demand-cum-allotment letter or rather non-issuance of the same, without giving

an opportunity of being heard, is in violation of principles of natural justice which has been frowned upon by the Division Bench of this court.

7. The learned counsel for the petitioner has also referred to the three judgments of this court in order to substantiate his contention. These judgments are *Government of NCT of Delhi vs. Veerwati*; 189 (2012) DLT 674, *Pragati Educational and Welfare Society vs. Delhi Development Authority*; 149 (2008) DLT 225 and *Government of NCT of Delhi & Anr. vs. Shreeyans Educational Society & Anr.*; 207 (2014) DLT 562.

8. I have carefully considered the submissions of the learned counsel for the petitioner and have also gone through the record. I am of the considered opinion that the writ petition is not only barred by inordinate delay and laches but also the same is not maintainable as no fundamental right of the petitioner society has been violated.

9. Even if the case of the petitioner for allotment is accepted to be correct, there was no allotment of land made in favour of the petitioner. It was only at best an allocation done by the Committee. *Prima facie* the right of the petitioner for allotment of a parcel of a land would arise only when a formal letter of allotment is issued in its favour by the DDA that

its legal right can be deemed to have been affected in case the letter of allotment is not followed up by a demand-cum-allotment letter. In the instant case, what has been relied upon by the petitioner is only the notings obtained by the petitioner in pursuance to the RTI query to contend that the Institutional Allotment Authority had considered the case of the petitioner for allotment of a parcel of land measuring 800 square meters in a particular area for setting up of a nursery school and, therefore, it is entitled to issuance of demand-cum-allotment letter.

10. I am afraid, this cannot be permitted to be done because the locus to get the demand-cum-allotment letter would arise in favour of the petitioner only when a formal allotment of land is made in its favour. So long as the formal communication of allotment is made to the petitioner society, it at best remains a proposal and cannot be said to be fructifying into a legal right so far as the allottee or a proposed allottee is concerned. Therefore, in the instant case, in my considered opinion, the petitioner cannot base its claim on the mere proposal on the part of the DDA in processing the claim of the petitioner for allotment of a land as the same having been approved by the Institutional Allotment Committee. The Supreme Court in *Delhi Development Authority vs. Pushpendra Kumar*

Jain; 1994 Supp (3) Supreme Court Cases 494 case also, though in a different context with regard to assailing of the cost of a flat, has observed that the right to challenge the cost of a flat accrues to the allottee only once the demand-cum-allotment letter is formally issued in its favour. Therefore prior to the issuance of demand-cum-allotment letter, the petitioner society will have no *locus standi* to challenge the same. Therefore, on this score, I feel that no legal right of the petitioner has been affected by not allotting it a plot of land pursuant to its representation to the respondent/DDA and, therefore, no writ petition under Article 226 of the Constitution of India would lie against the respondent/DDA.

11. Even if it is assumed that a writ petition would lie on the basis of a proposal even then, it is not in dispute that allocation of a plot of land in favour of the petitioner was made way back in the year 2001-2002 and that the petitioner corresponded with the DDA for issuance of demand-cum-allotment letter till 2004 when it learnt that the policy with regard to the allotment of institutional land was being changed by the respondent/DDA. It is at that point of time that the petitioner ought to have come to the court for getting a writ of mandamus against the

respondent/DDA that so long as the policy of the respondent is not reviewed or changed, the petitioner has a right to get demand-cum-allotment letter on the basis of recommendation of the Institutional Allotment Committee. The petitioner, in the instant case, preferred to wait till the policy for allotment of institutional land was reviewed and a fresh policy was formulated under which the institutional land was directed to be auctioned rather than being allotted for various institutional purposes on pre-determined rates. This new policy was also assailed by various parties feeling aggrieved by the same and the validity of the new policy has already been upheld by the Division Bench of this court in the case of *Bhagwan Mahavir Education Society (Regd.) & Anr. Vs. DDA & Ors*; MANU/DE/0968/2011. Having done so, it is not open to the petitioner now today to revert back to the old policy and contend that notwithstanding the fact that validity of the new policy has been upheld, according to which the institutional land is to be allotted on the basis of an open auction, that it should be allotted the institutional land for setting up of a school at a pre-determined rate on the basis of an old policy. This cannot be permitted to be done. The petitioner's grievance that there was a delay on the part of the DDA in processing the case of the petitioner

and it should not be made to penalize for the same has no merit. Merely because the respondent has allegedly caused delay did not foreclose the option of the petitioner society to come to the court and gets its grievance redressed at the earliest possible opportunity.

12. It may also be pertinent here to refer to the judgments which have been relied upon by the petitioner society briefly. The first judgment which has been relied upon by the petitioner in support of its case is *Pragati Educational and Welfare Society's case (supra)*. I have gone through the said judgment. The judgment is not applicable to the facts of the present case as the issue in the said case was totally different from the facts of the present case. In that case, final allocation was made and demand-cum-allotment letter was issued and the petitioner had also paid a part of the amount to the respondent/DDA. Therefore, issuance of demand-cum-allotment letter and payment of part payment makes the difference with the facts of the present case where there is no demand-cum-allotment letter issued in favour of the petitioner with regard to the land in question. In *Pragati's case (supra)*, withdrawal of the demand-cum-allotment letters was sought to be quashed.

13. The second judgment which has been relied upon by the petitioner is *Veerwati's* case (*supra*). This case deals with the question of allotment of alternative plots of land owners, whose land has been acquired in Delhi and, therefore, the facts of this case are totally different than the facts of the case in hand and has no applicability to the present case.

14. So far as *Shreeyans's* case (*supra*) is concerned, the issue in the said case was with regard to sponsorship certificate having been issued to the respondent society zone wise rather than area wise. In the instant case, the question as to whether the certificate of essentiality which was issued by the Directorate of Education in favour of the petitioner society was zone wise or area wise is not at all in question and, therefore, the facts of the said case or the law laid down therein is also not helpful to the petitioner.

15. For the reasons mentioned above, I feel that the present writ petition is not only hopelessly barred by inordinate delay and laches but also on merits as no legal right of the petitioner society has been invaded by the respondent/DDA on account of non-allotment of a parcel of land as claimed by the petitioner because of the implementation of the new

policy of institutional land adopted in the year 2005. Accordingly, the writ petition is dismissed. No order as to costs.

V.K. SHALI, J.

JANUARY 08, 2015
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