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

+ **W.P.(C) 7456/2016 & C.M.No.30654/2016**

M/S SHREEYANS EDUCATIONAL SOCIETY Petitioner

Through **Mr.Saurabh Kirpal with Mr.Karan
Bharhoke, Mr.Ashish Baka and
Mr.Wattan Sharma, Advocates.**

versus

DELHI DEVELOPMENT AUTHORITY & ORS Respondents

Through **Ms.Mrinalini Sen, Advocate for R-1.
Ms.Meenakshi Midha, Advocate for
R-2 & 3.**

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Date of Decision : 24th August, 2016

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J: (Oral)

1. Present writ petition has been filed with the following prayers:-

a) an appropriate writ of Mandamus or any other writ/order or directions praying for issuance of appropriate writ in the nature thereof to restrain the respondent DDA, from interfering with and obstructing, the administration of justice and to comply with the directions contained in the orders passed by this Hon'ble Court, 04.05.2006 in WP(C) No.15196/2004 and dated 15.01.2014 in LPA No.1670-1671/2006; and

b) an appropriate writ/order or directions praying for issuance of appropriate writ in the nature of Mandamus, directing the Respondents to restore the sponsorship of the Petitioner for setting

up the school in Vasant Kunj, with all consequential relief;

c) issue a writ of prohibition restraining the Respondent No.2 and 3 from cancelling/withdrawing the extension of the Essentiality Certificate granted to the petitioner vide order of the respondents dated 10.06.2004 and for quashing of the order, if any, passed for withdrawing/cancellation of the extension of the Essentiality Certificate;

d) A writ of mandamus commanding the respondent, DDA to allot the land to the petitioner to set up a middle school in Zone 20;

e) Any other writ, order or direction as this Hon'ble Court may deem fit in the nature and circumstances of the case and in the interest of justice.

2. Petitioner's initial writ petition being W.P.(C) No.15169/2004 was disposed of with a mandamus issued to the respondent/DDA to process the petitioner's application for allotment of land.

3. While the respondent/DDA accepted the judgment of the learned Single Judge, the Govt. of NCT of Delhi filed an LPA No.1670-71/2006, which was disposed of on 15th January, 2014 wherein it was clarified that in case the direction given by the learned Single Judge has not been complied with, in view of the pendency of the appeal, the appellants shall comply with the same within eight weeks.

4. In fact during the pendency of the appeal, the Deputy Director (IL), DDA had disposed of the petitioner's application for allotment of land vide order dated 23rd August, 2006. In the said order, the respondent/DDA had observed that no right in favour of the petitioner had ever crystallized as no demand letter had been issued to it.

5. It was also pointed out that as the mode of allotment of land has since been changed to auction, the petitioner's application could not be allowed.

6. Petitioner challenged the said rejection by way of separate writ petition being W.P.(C) No.18530/2006, which was dismissed as withdrawn on 15th September, 2014. The order disposing of the petitioner's W.P.(C) No.18530/2006 is reproduced hereinbelow:-

"1. After brief submissions, the learned senior counsel for the petitioner states that she may be permitted to withdraw the writ petition. The learned counsel for the respondent does not have any objection to the same.

2. In view of the statement made by the learned senior counsel, the writ is dismissed as withdrawn.

3. Dasti".

7. Today, Mr. Saurabh Kirpal, learned counsel for the petitioner submits that in view of the statement of learned counsel for DDA recorded by the learned Single Judge, the petitioner is eligible for allotment of *Nazul* land. In support of his contention, he relies upon para 22 of the judgment of the learned Single Judge in W.P.(C) No.15169/2004.

8. At this stage, learned counsel for the respondent/DDA submits that the present writ petition is not maintainable in view of the withdrawal of W.P.(C) No.18530/2006. Learned counsel for the respondent/DDA points out that in the said writ petition, the order dated 23rd August, 2006 had been impugned, by virtue of which petitioner's application for allotment of land, had been rejected in pursuance to the directions given by the learned Single Judge in

W.P.(C) No.15169/2004.

9. In rejoinder, learned counsel for the petitioner states that in view of the subsequent disposal of LPA No.1670-71/2006 vide judgment and order dated 15th January, 2014, it was obligatory on the respondent/DDA to have passed a fresh order.

10. Mr.Kirpal also states that the order dated 23rd August, 2006 passed by DDA is not in consonance with the directions given by the learned Single Judge vide judgment and order dated 4th May, 2006.

11. Having heard learned counsel for the parties, this Court is of the opinion that the respondent/DDA had accepted the judgment of the learned Single Judge in W.P.(C) No.15169/2004 and had thereafter processed the petitioner's application for allotment of land in accordance with the mandate given in the order dated 4th May, 2006.

12. Only GNCTD had filed an appeal challenging the order of the learned Single Judge. Even the Division Bench vide its judgment and order dated 15th January, 2014 had clarified that in case the directions of the learned Single Judge had not been complied with, in view of the pendency of the appeal, the appellants shall comply with the same within eight weeks.

13. Since in the present case, the order of the learned Single Judge had already been complied with by the respondent/DDA by passing an order dated 23rd August, 2006 and the challenge to the said order was withdrawn by withdrawing W.P.(C) No.18530/2006, this Court is of the view that the present petition is barred by the principle of *constructive res judicata*. The Supreme Court in ***Sarguja Transport Services Vs. State Transport Appellate Tribunal, Gwalior and others***,

(1987) 1 SCC 5 has held as under:-

“9. The point for consideration is whether a petitioner after withdrawing a writ petition filed by him in the High Court under Art. 226 of the Constitution of India without the permission to institute a fresh petition can file a fresh writ petition in the High Court under that Article. On this point the decision in Daryao’s case (supra) is of no assistance. But we are of the view that the principle underlying R. 1 of O. XXIII of the Code should be extended in the interests of administration of justice to cases of withdrawal of writ petition also, not on the ground of res judicata but on the ground of public policy as explained above. It would also discourage the litigant from indulging in bench-hunting tactics. In any event there is no justifiable reason in such a case to permit a petitioner to invoke the extraordinary jurisdiction of the High Court under Art. 226 of the Constitution once again. While the withdrawal of a writ petition filed in High Court without permission to file a fresh writ petition may not bar other remedies like a suit or a petition under Art. 32 of the Constitution since such withdrawal does not amount to res judicata, the remedy under Art. 226 of the Constitution should be deemed to have been abandoned by the petitioner in respect of the cause of action relied on in the writ petition when he withdraws it without such permission. In the instant case the High Court was right in holding that a fresh writ petition was not maintainable before it in respect of the same subject-matter since the earlier writ petition had been withdrawn without permission to file a fresh petition.....”

14. In view thereof, present writ petition and application are dismissed as barred by *constructive res judicata*.

MANMOHAN, J

AUGUST 24, 2016

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