

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

+ **RSA No.126/2007**

% **28th July, 2017**

HOLY HEALTH & EDUCATION SOCIETY (REGD.)

..... Appellant

Through: Mr. Vikram Nandrajog,
Advocate with Mr. Sheetesh
Khanna, Advocate.

versus

DELHI DEVELOPMENT AUTHORITY **..... Respondent**

Through: Mr. Shlok Chandra, Advocate.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This Regular Second Appeal under Section 100 of the Code of Civil Procedure, 1908 (CPC) is filed by the plaintiff in the suit impugning the judgment of the First Appellate Court dated 31.1.2007 accepting the first appeal filed by the present respondent by setting aside the judgment of the Trial Court dated 11.3.2005. The trial court by its judgment had decreed the suit of the appellant/plaintiff and ordered that the entitlement of the

respondent/defendant would be to claim price of land at Rs.9.50 lacs per acre and not at Rs.28.50 lacs per acre in terms of the allotment letter of the respondent/defendant dated 4.5.1989. Since the appellant/plaintiff had paid the amount in terms of the allotment letter dated 4.5.1989 at Rs.28.50 lacs per acre, hence, the decree for recovery of Rs.2,89,688/- along with interest at 18% per annum was passed by the trial court in favour of the appellant/plaintiff and against the respondent/defendant.

2. When this appeal was admitted for hearing, the following substantial questions of law were framed vide order dated 29.2.2008:-

“A. Whether the respondent/DDA, which holds monopoly power and status qua allotment of land in Delhi, is entitled to discriminate between similarly placed societies/persons as regards issuance of letter of allotment of land?

B. Whether the respondent/DDA can charge a different/higher rate qua allotment of land to a society/person when similarly placed societies/persons cleared for allotment of land in a meeting of the Institutional Allotment Committee of DDA held on the same date have been allotted land at a lower rate?

C. Whether the respondent/DDA can arbitrarily delay the issuance of letter of allotment to a society/person after the society/person has been cleared for allotment of land by the Institutional Allotment Committee of DDA?

D. Whether the reversal by the first appellant court of the judgment and decree passed by the trial court is legal and valid?

E. Whether in the teeth of the pleadings and evidence on record, the finding and judgment of the first appellate court is sustainable?”

3. It is seen that effectively there are three issues which arise for determination in the present second appeal. The first is whether challenge by the appellant/plaintiff to the claim of rate of Rs.28.50 lacs per acre by the respondent/defendant in terms of its allotment letter dated 4.5.1989 is time barred or not inasmuch as the suit was filed by the appellant/plaintiff on 29.9.1992 i.e after a period of three years of the allotment letter dated 4.5.1989 by which the respondent/defendant had fixed and claimed the rate of Rs.28.50 lacs per acre. The second issue required to be addressed is as to whether the appellant/plaintiff is estopped from challenging the rate of Rs.28.50 lacs in view of its undertakings dated 2.8.1989 and 24.6.1991 executed by the appellant/plaintiff in favour of the respondent/defendant agreeing to pay in fact even a higher cost if it was subsequently fixed by the respondent/defendant. The third issue which is required to be addressed and decided is as to whether there is any arbitrariness in the action of the respondent/defendant inasmuch as the appellant/plaintiff had completed the requisite formalities for grant of allotment of the land as on 27.3.1988 but (it is argued by the appellant/plaintiff) there was unnecessary delay in allotment and

which took place around one year and one and half months later of completion of formalities by the appellant/plaintiff and by when the new rate of Rs.28.50 lacs per acre became applicable whereas during the period of 1.4.1987 to 31.3.1989, the rate of land fixed per acre by the respondent/defendant was only Rs.9.50 lacs per acre. The new rate was effective from 1.4.1989 @ Rs.28.50 lacs per acre.

4. On the aspect of limitation, both the courts below have held in favour of the appellant/plaintiff, however in my opinion both the courts below have committed a gross illegality and so rightly argued on behalf of the respondent/defendant before this Court. In my opinion, the courts below have erred in taking the period of limitation as three years as beginning from the date of the last payment by the appellant/plaintiff to the respondent/defendant on 18.10.1989, inasmuch as a challenge to a rate which is fixed by the respondent/defendant is not from when the last payment is made by the appellant/plaintiff in terms of the enhanced rate on 18.10.1989, but challenge has to be made on arising of the cause of action claiming the enhanced rate in terms of the allotment letter dated 4.5.1989 Ex.PW1/12. Admittedly, as per this allotment letter, and which is the

only allotment letter of land to the appellant/plaintiff, the respondent/defendant categorically in para 1 stated that rate of land for allotment to the appellant/plaintiff was at Rs. 28.50 lacs per acre. The appellant/plaintiff was therefore clearly put to notice and if the appellant/plaintiff wanted to challenge this rate as being illegal and arbitrary, suit had necessarily to be filed by 4.5.1992. Suit however was filed only on 29.9.1992 i.e after 4.5.1992 and accordingly in my opinion the suit is clearly and *ex facie* barred by time. The issue of last date of payment has no co-relation to the challenge of the rate, and which was fixed in terms of the letter dated 4.5.1989 issued by the respondent/defendant, and it is when on 4.5.1989 that the cause of action had arisen in favour of the appellant/plaintiff to challenge the rate fixed by the allotment letter dated 4.5.1989. In fact the issue of commencement of limitation on 4.5.1989 would also become further clear when we discuss in the later part of this judgment the issue of estoppel against the appellant/plaintiff because the appellant/plaintiff had executed not one but two undertakings after 4.5.1989 to pay in fact even a higher rate if the same was fixed by the respondent/defendant. I therefore hold that the suit filed by the

appellant/plaintiff was clearly time barred and was liable to be and is accordingly dismissed as such.

5. On the issue of estoppel, in my opinion, the first appellate court is justified in holding that the appellant/plaintiff is estopped from questioning the rate in view of its two undertakings Ex.PW3/D (dated 2.8.1989) and Ex.DW1/1 (dated 24.6.1991) admittedly executed in favour of the respondent/defendant to pay in fact even a higher rate if it is claimed by the respondent/defendant. The relevant observations of the first appellate court are contained in paras 9 to 11 of the impugned judgment and which paras read as under:-

“9. Ld. Counsel for appellant/DDA has vehemently argued that respondent/plaintiff society was stopped from agitating this issue in view of the undertaking executed by it. On the other hand, it has been argued by Ld. Counsel for the respondent/plaintiff that no doubt it executed an undertaking, but only when they had no other option as it was under the threat of cancellation of allotment. If respondent/plaintiff had not executed this undertaking of making payment, the allotment would have been cancelled.

10. If the findings of the Trial court on this issue are examined/looked into, the Trial court has based its decision that the respondent/plaintiff had no option i.e. furnishing undertaking to make the payment demanded in the letter to save allotment and thus, the rule of estoppel cannot be invoked under such circumstances. If a further look is made to Ex.PW3/D, it is noticed that this is an undertaking executed by General Secretary of the society that they will pay the difference in the cost of land at the rate which may be decided by the Government. To quote from his undertaking, **“I do hereby undertake that the difference in cost of land at the rate as may be decided by the Govt. of India/DDA will be paid by us on demand.”**

This undertaking has been got exhibited in the testimony of PW 3. Shri V.K.Saluja, General Secretary of plaintiff society. Further, another

undertaking has been given by General Secretary which has been got exhibited in the testimony of Shri D.N.Sharma DW.1, Asstt. Director as Ex.DW1/1. If the same is looked into, para 2 of this undertaking states, **“Plot for Nursery School situated in Sector-C, Pocket-3, Vasant Kunj, New Delhi has been allotted to Holy Health and Educational Society on provisional premium of Rs.28.50 lacs, per acre because the revision rates of land is under consideration of the Central Government. It further, states, “The allotment of land is to be made on such rates of land as determined by the Central Government from time to time.” It further states that they will pay balance premium revised by DDA on the basis of the rates to be determined by Central Govt. which shall be binding upon. Further, it states that they shall not be called in question in any proceedings.”**

11. A bare reading of this undertaking Ex.DW1/1 brings out two things viz (i) that allotment has been made on the provisional premium of Rs.28.5 lacs, (ii) the difference of amount on revision has to be paid by the allottees on demand. The fact that the allotment was made on provisional premium of Rs.28.5 lacs and further allottee accepted/undertook to pay the difference of premium on revision of price of land by DDA or Central Govt, I do not think that respondent/plaintiff society could escape such undertaking. The said undertaking is binding upon the respondent/plaintiff society until or unless it has been shown that said undertaking has not been executed voluntarily. There is nothing on record to show that respondent/plaintiff society executed the said undertaking under any pressure. The mere fact that there has been clause 5-A contained in letter Ex.PW1/12 which is the allotment letter asking execution of such undertaking and the payment to be made within 30 days and if no such payment would be made, the allotment would be automatically cancelled. This condition of making the payment within 30 days, no fulfillment of which entails cancellation cannot be said to be a threat. When the allotment has been made, certainly, the parties have to put certain restrictions with regard to the payment to be made within a stipulated period and such clauses cannot be termed as threats. If the allotment letter asks for execution of documents and the same document is executed, it cannot be said that the document has been executed under threat or pressure merely on the basis of having a clause or an outer limit has been put if the payment is not made within stipulated time. The allottee also undertakes not to question the payment of balance amount of premium on revision of land price by DDA or Central Govt. Therefore, I am of the opinion that in view of the undertaking executed by respondent/plaintiff society, they were stopped from filing the present suit. Thus, the principle of estoppel is attracted to the facts. Thus, this issue is decided in favour of appellant/DDA and against plaintiff/society.”

6. I completely agree with and adopt the aforesaid reasoning by the first appellate court as regards estoppel against the appellant/plaintiff. As already stated above, the effect of the undertakings is that the appellant/plaintiff agreed to pay even a higher cost than the rate of Rs.28.50 lacs per acre as fixed by the respondent/defendant. These undertakings dated 2.8.1989 (Ex.PW3/D) and 24.6.1991 (Ex.DW1/1) have been executed much after the allotment in May 1989. In fact the second undertaking is executed more than two years one month after the allotment letter dated 4.5.1989 (Ex.PW1/12). Therefore not only because the appellant/plaintiff has not challenged even till June 1991 the terms of allotment of the rate of Rs.28.50 lacs per acre fixed in terms of the letter of allotment dated 4.5.1984 of the respondent/defendant and that in fact the appellant/plaintiff on the other hand had agreed vide its undertakings dated 2.8.1989 and 24.6.1991 even to pay a higher rate, and once that is so, the appellant/plaintiff is estopped from claiming that it will not be liable to pay even the rate which is fixed by the letter dated 4.5.1989 of allotment at Rs. 28.50 lacs per acre.

7(i). The third issue of existence or otherwise of arbitrariness in the actions of the respondent/defendant has to be held in favour of the respondent/defendant not only because of the reasoning of the first appellate court but also because of the additional reasoning which this Court is giving under Order XLI Rule 24 CPC. The first appellate court has rightly held that there is no arbitrariness because all persons who have been given allotment after 1.4.1989 have been given allotment not at the rate of land of Rs.9.50 lacs per acre but Rs.28.50 lacs per acre. Therefore all persons who have been allotted land after 1.4.1989 have been charged the same rate and therefore the appellant/plaintiff cannot complain of arbitrariness.

(ii) The second and additional reason is that the appellant/plaintiff cannot claim arbitrariness allegedly on account of no steps having been taken by the respondent/defendant from 27.3.1988 till 4.5.1989 when the allotment letter was issued inasmuch as the appellant/plaintiff has failed to lead any evidence that in the serial number of applications of the societies, the appellant/plaintiff is at the serial number in the applications of a particular number although later applications in the serial list and who would not have completed

formalities by 27.3.1988, have been granted allotment at a lesser rate of Rs. 9.50 lacs per acre. The additional reasoning in my opinion is an independent reasoning and which does not distract from the fact that there is no arbitrariness even assuming that there is some delay on account of the respondent/defendant taking time to make the allotment.

(iii) There is no statutory time fixed for grant of allotment and therefore it cannot be argued by the appellant/plaintiff that there is a fixed time in which the applications filed by the various applicants for allotment should have been allotted the land.

(iv) A Division Bench of this Court in the case of ***Bhagwan Mahavir Education Society (Regd) and Anr. Vs. DDA and Ors.*** in W.P.(C) Nos. 2459 and 2460 of 2005 decided on 25.3.2011 has held that mere recommendation of allotment by the Land Allotment Committee of the respondent/defendant creates no enforceable rights of allotment i.e the Division Bench has held that unless there is actual allotment which is communicated to the allottee, the allottee cannot claim an entitlement to allotment. The relevant para of the judgment

of the Division Bench of this Court in the case of ***Bhagwan Mahavir***

Education Society (supra) is para 25 and this para reads as under:-

“25. Before we come to the interpretation of the Rules, we must notice that undoubtedly in order to prevent multifarious authorities dealing with the matter of allotment of land, the Office Order dated 27.09.2001, was passed. This Office Order, issued by the Joint Director of Education, only provided that the decision of the Land Allotment Committee regarding allotment of land to private educational institutions would be followed. Such a decision, however, in our view, cannot in any manner dilute the ultimate authority of the LG to take a decision whether to allot or not. The Resolution dated 15.12.2003, and the file notings placed on record, show that a conscious decision was taken to initially keep the matter in abeyance without issuance of any allotment letter and thereafter it was resolved that such allotment should only take place by way of auction. The reason appears to be that there were various complaints about the institutions to whom land was allotted in such a manner and it was felt that transparency would be best served through the auction mode despite the land being utilized for educational purposes. To serve that purpose, it was decided to make necessary amendments to the said Rules. There can really be no doubt that the mere recommendations of the IAC would not confer any right whatsoever unless a decision taken on the file is approved by the competent authority and thereafter communicated to the beneficiary. The decision in Sethi Auto Service Station and Anr.v. Delhi Development Authority and Ors.’s case (supra) which also relies upon the earlier pronouncements including in the case of Bachhittar Singh v. The State of Punjab; AIR 1963 SC 395, leaves no manner of doubt in this behalf.”

8. Therefore, in my opinion, even the issue of arbitrariness cannot be argued by the appellant/plaintiff firstly because all persons who get allotment after 1.4.1989 have been treated equally and secondly because there is no statutory time limit fixed for granting of allotment by the respondent/defendant and thirdly because a mere recommendation for allotment by the Land Allotment Committee of

the respondent/defendant does not create an indefeasible right of allotment and right of allotment only arises if the allotment is actually communicated to the applicant for allotment of the land and fourthly because there is no evidence led by the appellant/plaintiff that a society which is later in the list of societies who had completed formalities after 27.3.1988 has been allotted land at Rs.9.5 lacs per acre.

9. In view of the above discussion, all the substantial questions of law are answered in favour of the respondent/defendant and against the appellant/plaintiff, and therefore this regular second appeal is accordingly dismissed, leaving the parties to bear their own costs.

JULY 28, 2017
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VALMIKI J. MEHTA, J