

24

\$~

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 1985/2013

SHUBIT EDUCATION SOCIETY Petitioner
Through: Mr. Ram Kumar, Advocate.

versus

D.D.A. Respondent
Through: Mr. Arun Birbal, Advocate with
Mr. Sanjay Singh, Advocate.

%

Date of Decision: 03rd March, 2017

CORAM:
HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J: (Oral)

1. Present writ petition has been filed seeking restoration of allotment initially made in Pocket-B, Sector-C, Vasant Kunj, New Delhi, in favour of the petitioner-Society on 28th March, 2003.
2. The admitted facts are that petitioner's initial writ petition being W.P.(C) 2360/2006 seeking the similar relief was dismissed as infructuous vide order dated 08th August, 2012 in view of the amendment in the DDA (Disposal of Developed Nazul Land) Rules, 1981, whereby the mode of allotment of institutional land to educational institutions was changed from allotment to auction mode vide Gazette Notification dated 19th April, 2006

issued by Ministry of Urban Development, Government of India. The relevant portion of the order disposing of the petitioner's writ petition being W.P.(C) 2360/2006 is reproduced hereinbelow:-

“5. Learned counsel for the respondent-DDA vehemently asserts that in view of the amendment in the DDA (Disposal of Developed Nazul Land) Rules, 1981, the prayer made in this petition has become infructuous because now, there is no requirement of obtaining the Essentiality Certificate and land for private schools cannot be allotted by the respondent-DDA as the same has to be auctioned in view of the aforesaid amended DDA (Disposal of Developed Nazul Land) Rules, 1981, whose validity has been upheld by the Division Bench of this Court.

6. Since it is not in dispute that the validity of the amendment made to the DDA (Disposal of Developed Nazul Land) Rules, 1981, to auction the school plots to the education societies etc. has been upheld and therefore, the relief claimed in this petition has apparently become infructuous. Thus, this petition is dismissed as infructuous, while leaving the parties to bear their own costs.

3. The Division Bench also dismissed the petitioner's appeal being LPA No.724/2012. The relevant portion of the Division Bench's order dated 21st February, 2013 is reproduced hereinbelow:-

“7. More importantly, the appellant having withdrawn the earlier application for allotment of land, having submitted a fresh application dated 03.08.2004 seeking grant of sponsorship on the strength of the new Essentiality Certificate dated 12.05.2004, and withdrawing W.P.(C) No.19768/2005 which he had filed challenging withdrawal of the Essentiality Certificate dated 9.7.2001, no legal right survives to the appellant, to seek allotment of land on the strength of the Essentiality Certificate dated 09.07.2001. After withdrawal of W.P.(C) 19768/2005, it

is not open to the appellant, to question the letter dated 2.4.2004, by way of W.P(C) No.2360/2006.

8. *Admittedly, vide communication dated 21.08.2004, the case of the appellant for allotment of land was rejected by DDA and intimation in this regard was given to the appellant society on 22.12.2004. Admittedly, the money which the appellant had deposited with DDA was also taken back by it on 24.05.2005.*

9. *Admittedly, no allotment has been made to the appellant pursuant to the new Essentiality Certificate dated 12.05.2004 and the fresh application submitted by it vide its letter dated 03.08.2004. Hence, it cannot be said that DDA (Disposal of Developed Nazul Land) Rules, 1981, as they stand post amendment, cannot be applied to the case of the appellant."*

4. Mr. Ram Kumar, learned counsel for petitioner states that petitioner has subsequently become aware that respondent-DDA has allotted lands to various societies which were similarly placed as petitioner-society i.e. societies which had made payments beyond the statutory period. He states that the said societies are (i) Rai Bahadur Raghubir Singh Educational Society; (ii) Rahul Dhaka Vikas Society; (iii) High Brow Educational Society and (iv) Strength India Educational Society.

5. On the other hand, Mr. Arun Birbal, learned counsel for respondent-DDA states that petitioner's case is not similarly placed as that of (i) Rai Bahadur Raghubir Singh Educational Society; (ii) High Brow Educational Society; (iii) Strength India Educational Society and (iv) Rahul Dhaka Vikas Society. In support of his contention, he refers to the counter affidavit filed by respondent-DDA. The relevant portion of the counter affidavit is reproduced hereinbelow:-

“23-26Without prejudice to the said contention, it is submitted that the petitioner in its petition has referred to certain cases in which the time for deposit of payment was extended by DDA. In this regard, it is submitted those cases are distinguishable on facts as would be apparent from the facts of the four cases as follows:-

(a) Rai Bahadur Raghbir Education Society:

In this case due to non-payment of demand cost of land, the allotment in favour of the named society was cancelled and communicated to the society vide letter dated 27.06.2001. The proposal was submitted to the competent authority for restoration of allotment on the condition that in such case if the society deposits the demanded cost of land subsequent to the cancellation, the period of default in payment be regularized on payment of interest @ 18% PA and restoration charges @ Rs.300/- per sqm. The proposal was agreed to by the then LG, Delhi. The restoration was prior to the amendment of the nazul land rules.

(b) Highbrow Education Society:

In this case, the named society was allotted a plot measuring 5676 sqm. for a Middle School in 2003 which was also earlier allotted to Directorate of Education. Since it was a case of double allotment, the competent authority vide order dated 20.05.2003 directed that the society be given an alternative plot. However, DDA could not allot any alternative plot. On 27.05.2005 the society deposited the money as per earlier demand-cum-allotment letter dated 28.03.2003. Accordingly, the competent authority/LG while considering the matter vide his observation dated 10.09.2008 ordered for allotment of alternative plot of a similar size for which the payment has already been made, subject to applicable interest on delayed payment.

(c) Strength India Education Society:-

In this case plot measuring 5 acres was allotted to the society vide demand-cum-allotment letter dated 07.02.2002. However, the society did not deposit the demanded amount within the due stipulated period and even within the extended time period i.e. on or before 06.10.2002. Accordingly, the allotment was cancelled vide letter dated 06.05.2003. On 04.07.2003 society represented that land allotted to them is under occupation by an entity AFCONS, due to which they are not able to make the payment. Further the society approached this Hon'ble Court and the cancellation order of DDA was set aside and quashed. It was also ordered by this Hon'ble Court that subject land be demarcated and if land admeasuring 5 Acres is available which is not occupied by or allotted to any other person, it be handed over to the petitioner. Alternative plot be given only if the subject land is not available. The matter was referred for opinion of learned Additional Solicitor General for opinion on the feasibility of appeal against the order of learned Single Judge. Subsequently the proposal was examined by the LG and as per observation dated 17.10.2008 of the Principal Secretary to LG in the file, it was decided by the Hon'ble LG not to file any appeal and the allotment case be processed on merits in the light of the opinion of the learned Additional Solicitor General in the matter.

(d) Rahul Dhaka Vikas Society:-

In this case the named society was allotted a plot ad-measuring 2 acres vide the allotment letter dated 06.12.2001. The society made only a part payment in spite of giving an opportunity. Accordingly, the allotment was cancelled on 04.12.2002. The society requested for restoration, which was rejected by VC, DDA on 13.02.2003. Thereafter, the society filed a writ petition before this Hon'ble Court which was also dismissed. Subsequently, the proposal of restoration of allotment was examined by the then VC, DDA and vide his observation dated 08.12.2002, the restoration of plot of 2 Acres to the Society was

approved by LG, Delhi subject to payment of usual charges along with interest of 18% from date of allotment.

The petitioner cannot take advantage of the above cases in any manner. Moreover, now allotment is governed by the amended statutory provisions as contained in DDA (Disposal of Developed Nazul Land) Rules, 1981. Moreover, it is submitted that in accordance with the interim directions of this Hon'ble Court dated 22.03.2013 in the instant petition, the matter was reconsidered and rejected. The competent authority has not accepted the proposal for restoration of the allotment. Restoration would also be contrary to the rules which have statutory force. It is denied that there was any mala fide against the petitioner in any manner."

6. Having heard learned counsel for parties, this Court is of the opinion that in view of the judgment of the learned Single Judge in W.P.(C) 2360/2006 and that of the Division Bench in LPA 724/2012, it is not open to the petitioner to re-agitate an issue which has attained finality.

7. The only difference between the old writ petition being W.P.(C) 2360/2006 and this petition is that the petitioner has quoted certain instances which according to it are similar to the petitioner. DDA has denied the contention of the petitioner. This argument was not raised in the earlier writ petition or LPA though the same could have been raised in that writ petition. Thus, it is not open to the petitioner to raise this ground in the present writ petition on the grounds of constructive res judicata.

8. In ***N.D. Qureshi Vs. Union of India, 2008 (13) DRJ 547***, a Division Bench of this Court of which the present Bench was a party has observed as under:-

"12. Moreover, from the above narrated facts, it would be apparent that the petitioner has been re-litigating for a

considerable number of years. In our view on the principle of res judicata and re-litigation the petitioner is even barred from raising new pleas for the same old relief. The Hon'ble Supreme Court in K.K.Modi Vs. K.N.Modi and others, reported in (1998) 3 SCC 573 has held that it is an abuse of the process of the court and contrary to justice and public policy for a party to re-litigate the same issue which has already been tried and decided earlier against him. This re-agitation may or may not be barred as res judicata. But if the same issue is sought to be re-agitated, it also amounts to an abuse of the process of the court. The Hon'ble Supreme Court has further held that if a spurious claim is made in a case, it may also amount to an abuse of process of the court. In our view, frivolous or vexatious proceedings amount to an abuse of the process of the court especially where the proceedings are absolutely groundless-like in the present case."

(emphasis supplied)

9. Consequently, in the opinion of this Court, the present writ petition is clearly barred by res judicata/constructive res judicata and amounts to re-litigation.

10. Further, as the petitioner has not filed any rejoinder affidavit, the averments in the counter affidavit have to be treated as uncontroverted. The Supreme Court in **Balkrishna Pandey vs. State of Bihar & Ors., (1996) 2 SCC 282** has held as under:-

xxx

xxx

xxx

"4. The question, therefore, is whether the promotion of the fifth respondent as SSA is valid in law. It is rather unfortunate that despite filing of the counter-affidavit as early as on 13-8-1979, no rejoinder-affidavit was filed nor any unimpeachable documentary evidence has been placed on record to establish the nature of his appointment as SSA in the Directorate of SEP. In the state of things, we are necessarily driven to accept the

uncontroverted averments made by the State in the counter-affidavit.”

(emphasis supplied)

11. Consequently, the respondent’s plea that the cases cited by the petitioner are distinguishable has to be accepted by this Court.

12. In any event, the Supreme Court has repeatedly held that Article 14 is a positive concept and cannot be enforced in a negative manner. It has further held that irregularity and illegality cannot be perpetrated on the ground that illegal benefits have been extended to others.

13. The Supreme Court in ***Union of India & Ors. vs. M.K. Sarkar, (2010) 2 SCC 59*** has held as under:-

“25. There is another angle to the issue. If someone has been wrongly extended a benefit, that cannot be cited as a precedent for claiming similar benefit by others. This Court in a series of decisions has held that guarantee of equality before law under Article 14 is a positive concept and cannot be enforced in a negative manner; and that if any illegality or irregularity is committed in favour of any individual or group of individuals, others cannot invoke the jurisdiction of courts for perpetuating the same irregularity or illegality in their favour also on the reasoning that they have been denied the benefits which have been illegally extended to others. (See Chandigarh Admn. v. Jagjit Singh, Gursharan Singh v. NDMC, Faridabad CT Scan Centre v. D.G. Health Services, State of Haryana v. Ram Kumar Mann, State of Bihar v. Kameshwar Prasad Singh and Union of India v. International Trading Co.

26. A claim on the basis of guarantee of equality, by reference to someone similarly placed, is permissible only when the person similarly placed has been lawfully granted a relief and the person claiming relief is also lawfully entitled for the same. On the other hand, where a benefit was illegally or irregularly extended to someone else, a person who is not extended a similar

illegal benefit cannot approach a court for extension of a similar illegal benefit. If such a request is accepted, it would amount to perpetuating the irregularity. When a person is refused a benefit to which he is not entitled, he cannot approach the court and claim that benefit on the ground that someone else has been illegally extended such benefit. If he wants, he can challenge the benefit illegally granted to others. The fact that someone who may not be entitled to the relief has been given relief illegally, is not a ground to grant relief to a person who is not entitled to the relief.

(emphasis supplied)

14. Accordingly, the present writ petition is dismissed.

MANMOHAN, J

MARCH 03, 2017

js