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

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LPA 202/2017 & CM No.11354/2017

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Date of decision : 19th April, 2017

RAJDHANI PUBLIC SCHOOL & ANR Appellant

Through: Mr. Swastik Singh, Adv.

versus

DIRECTOR OF EDUCATION & ANR Respondent

**Through: Mr. Peeyoosh Kalra, ASC with
Ms. Sona Babbar,
Mr. Shiva Sharma and
Ms. Swati, Advs.**

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT (ORAL)

GITA MITTAL, ACTING CHIEF JUSTICE

1. The appellant challenges the judgment dated 13th February, 2017 whereby W.P.(C) No.6220/2015 was rejected by the learned Single Judge.
2. The appellant no.1 is an unaided school situated in South District Delhi managed by the Rajdhani Educational Society which stands recognised up to the VIII standard following the Central Board of Secondary Education pattern for imparting education. The appellant seeks upgradation of the school up to class XII in the

Humanities and Commerce streams. It appears that the appellant's application was rejected, resulting in filing of W.P.(C) No.8354/2014 which was disposed of by the order dated 27th March, 2015 directing as hereunder :

“7. a. That the respondent-Directorate of Education shall depute the concerned officer to inspect the school premises on 31.03.2015 at 10.30 a.m. to verify the number of rooms and satisfy the respondent that two additional rooms have since been constructed. In addition, the petitioner shall furnish a building certificate, worded as the certificate dated 16.12.2014 but of the current date. This would satisfy the respondent's requirement with regard to the structural safety of the additional rooms.

8. In the event the certificate, as indicated above, is provided by the petitioner within a period of one week from today (i.e.) 27.03.2015 and the respondent is satisfied that additional rooms, as asserted by the petitioner, have been constructed, the respondent shall forthwith issue the recognition of upgradation for the academic session commencing 2015-16 without any further delay.”

3. In compliance with the order of this court, an Inspection Committee of the respondents conducted an inspection of the Rajdhani Public School on 1st April, 2015 to verify the stated facts. In its report dated 30th April, 2015, it was observed that the construction was not complete; that the land where the additional rooms were being constructed was not contiguous to the original building of the

school; that there were constructions other than those of the school between the original building and the land on which the two rooms were under construction.

4. In view thereof, by the order dated 6th May, 2015 the request of the school for upgradation into the senior secondary school with the said two streams of subjects was rejected for non-compliance of the provisions of sub-rule XI of Rule 50 of the Delhi School Education Act and Rules, 1973.

5. The petitioner had assailed this order by way of W.P.(C) No. 6220/2015. During the pendency of the writ petition on 13th February, 2017, the controversy was narrowed down as stands noted in paras 16, 17 and 19 of the impugned order, which, for convenience, are extracted below:

“16. Having heard the learned counsel for the parties, insofar as the plea of the learned counsel for the petitioner that the issue needs to be looked from the perspective of the order passed by this Court on March 27, 2015 whereby this Court has narrowed down the controversy is concerned, when the matter was listed on July 1, 2015 this Court had noted the fact that the land of the petitioner No.1 measuring 3580 sq. yds. is in three lots, which are at a distance from each other. The Court also observed that the role of the respondents was thus not confined merely to see whether the classrooms constructed are in order but also to see whether the classrooms constructed were conjoint to the existing structure/building. In fact on July 13, 2015, the

issue that in terms of Rule 51 of the DSE Rules, 1973, the playground can be in the nearby locality was also argued, apart from the issue of class rooms which made this Court to issue notice. Further, I note the petitioners, through their Counsel on November 2, 2015 had represented to show the third parcel of land admeasuring 1700 sq. yds. Even this Court on February 17, 2016 directed the petitioner School to allow the Committee from Directorate of Education to inspect the plot of 1700 sq. yds. designated as playground. The said order was followed by order dated March 2, 2016. The said order was subject matter of an intra court appeal. Be that as it may, vide order dated May 16, 2016, this Court appointed a Local Commissioner for inspection and the Local Commissioner did inspect the land of 5000 sq. yds. which the petitioners intend to use as playground and filed his report. The aforesaid would reveal that the petitioners had never contested the orders passed by this Court from time to time for ascertaining the aspect whether the petitioner No. 1 is in possession of the required land and also in accordance with Rule 51 of DSE Rules, 1973. Further, it was during the inspection by the Local Commissioner, the petitioners represented that the land of 1700 sq. yds, which was earlier arranged by the petitioners for playground on lease is not available as the lessor is not permitting the inspection of the said piece of land. The said piece of land was not shown to the Commissioner. In fact, during inspection, the petitioners arranged for another piece of land admeasuring 5000 sq. yds. which was also inspected. It is to be seen whether this

land along with other lands, referred above meets the requirement. Hence, the plea of Mr. Singh that issue is only with regard to two additional rooms is liable to be rejected.

17. In so far as the aspect whether petitioner fulfils the land requirement is concerned, this Court had noted that the petitioners have offered land in three parcels of 1080 sq. yds., 800 sq. yds. and 1700 sq. yds., which aspect was noted by this Court on July 1, 2015. Be that as it may I note the petitioners in their affidavits of rebuttal filed on 27th January, 2016 have taken a stand that the total land area of the School is 1200 sq. yds. + 800 sq. yds. + 1700 sq. yds., i.e., 3700 sq. yds. which in excess of 2400 sq. meters. Without going into the issue whether the first parcel of land is 1080 sq. yds. or 1200 sq. yds., proceeding on a premise the School Management has arranged piece of land admeasuring 5000 sq. yds on lease, which could be used as a playground for the School children, the Commissioner has noted that after deducting, out of 5000 sq. yds land setbacks like broad passage to the parcel of land etc., around 4100 sq. yards rectangular area was available which was proposed to be utilized by them as a playground. It was also noted that the said land is surrounded by agricultural land on sides and on enquiry as to how the school children would access the playground situated far away from the main school building, the school management replied that they would use school buses to transport the school children to & fro and it would take hardly five minutes in bringing the children to the playground by the buses. The lease deed, GPA and Khatoni in their favour have

been filed on record. I have seen the Lease Deed. The Lease Deed as placed on record (page 453) shows that the same has been executed between one Mr. Pawan Kaushik and the Rajdhani Educational Society as the lessee, whereby the lessor Pawan Kaushik intend to rent out an area of 5000 sq. yds of land to the second party i.e Rajdhani Educational Society for a period of 30 years. Suffice to state and as conceded by the learned counsel for the petitioner that the said Lease Deed is not registered. Such a document, i.e., an unregistered document would not create an interest in favour of the lessee Rajdhani Educational Society in view of Section 49 of the Registration Act, 1908. The said document cannot be read to mean that the School/Society has the land of 5000 sq. yds. for the purpose of playground. In the absence of which, the requirement of 2400 sq. meters of land has not been met by the petitioners.

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19. In so far as the issue of two additional rooms is concerned, as noted from order dated July 13, 2015, it was represented by the petitioners that the finding in the impugned order that two class rooms are on different plot of land is factually incorrect. The September 28, 2015, order sheet reveals the submission made on behalf of the petitioners to relocate the class rooms from the present location to the second block where room nos. 20 and 21 are positioned. Pursuant thereto, an inspection was carried out by the School Authorities. In the Inspection Report, an objection raised with regard to the location of room nos. 20 and 21 as room no. 20 is located on the second

floor whereas room no. 21 is located on the first floor and can only be accessed by an iron stairway. The case of the respondents is that the width of the iron stairway is 1.5 feet and therefore being narrow, it can cause complications in case of emergent situation were to arise. In their response to the affidavits filed by the respondents on January 27, 2016, petitioners would submit that there are two staircases, which have access to classroom nos. 20 and 21, an iron staircase and a concrete staircase. The iron stair case measures 3 feet and not 1.5 feet as alleged by the respondents in the inspection report dated October 14, 2015. According to me, this issue also need not be gone into in view of my finding above on the non-availability of required land of 2400 sq. meters.”

6. Premised on the finding that the school did not have required land of 2400 sq.yds., the learned Single Judge found that the direction to grant recognition/upgradation to the petitioner no.1 to maintain a Senior Secondary School in the two streams could not be granted and the writ petition came to be dismissed.

7. It appears that thereafter the appellant took steps and got registered the lease deed in respect of the land measuring 5000 sq. yds. Based on registration of the said lease deed, the appellant filed a review petition being Review Petition No. 84/2017 which was rejected by the learned Single Judge by the order dated 1st March, 2017. Certainly, the judgment dated 13th February, 2017 cannot be

tested on the basis of a document which was not even in existence on the date when the judgment was passed.

8. It is urged on behalf of the appellant today that the appellant meets the requirements of law and is entitled to the permission to upgrade the school up to XII class in the streams of Humanities and Commerce.

9. So far as the judgment dated 13th January, 2017 and the order dated 1st March, 2017 are concerned, it is therefore an admitted position that the appellant did not have legal title to the land required for such upgradation. The same has been acquired by the appellant only subsequent to the passing of the judgment in the writ petition. Therefore, so far as the present appeal is concerned, the challenge to the judgment is unwarranted and cannot be sustained.

10. However, it cannot be denied that the appellant would be entitled to make an application afresh to the respondents for grant of permission to upgrade the school to the Senior Secondary level in accordance with law. It is always open to the appellant to satisfy the requirements in law. As and when the appellant makes such application, the respondent are bound to and shall consider the same expeditiously and dispose of in accordance with law.

11. A grievance is made by the appellant that each time they satisfy the objections pointed out by the respondents, new objections are unearthed and pointed out. The respondents shall ensure that the application of the petitioner is considered from every aspect and

objections, if any, are disclosed in one go to the appellant so far as the fulfilment of the requirements for upgradation of the school are concerned.

The appeal and all pending applications are disposed of in the above terms.

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ACTING CHIEF JUSTICE

ANU MALHOTRA, J

APRIL 19, 2017/kr