

\$~4.

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

+ LPA 119/2017

M/S SHREEYANS EDUCATIONAL SOCIETY

..... Appellant

Through: Mr. Saurabh Kripal, Advocate

versus

DELHI DEVELOPMENT AUTHORITY & ORS

..... Respondent

Through: Mr. Rajeev Bansal, Sr.Adv. with
Ms Mrinalini Sen, Ms. Kritika
Gupta, Juhi Sarona and Arpita for
R-1/DDA
Mr. Santosh Kr Tripathi, ASC with
Mr. Rizwan, Adv for R-2&3

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MS. JUSTICE DEEPA SHARMA

ORDER

16.05.2017

%

1. The appellant has preferred the present Letters Patent Appeal to assail the judgment dated 24.08.2016 rendered in W.P. (C) No.7456/2016- preferred by the appellant. The appellant had preferred the said writ petition to seek a direction to the respondents to comply with directions contained in the orders passed by this court in W.P. (C) No.15169/2004 dated 04.05.2006, and the order dated 15.01.2014 passed in LPA Nos.1670-71/2006. The appellant also sought a direction to the respondents to restore the sponsorship of the appellant/ petitioner for setting up a school in Vasant Kunj. A restraint was sought against

respondent no.2/ GNCTD from cancelling/ withdrawing the extension of the essentiality certificate granted to the petitioner on 10.06.2004. Ultimately, a direction was sought to the DDA to allot land to the petitioner to set up a middle school in Zone 20.

2. The background in which the aforesaid writ petition was preferred may not be taken note of. The petitioner initially preferred W.P. (C) No.15169/2004 against the GNCTD and the DDA. The issues raised in the said petition primarily were in relation to the withdrawal of the sponsorship granted by GNCTD for allotment of land to the petitioner by the DDA for setting up a middle school.

3. The writ petition was disposed of by the learned Single Judge on 04.05.2006. The learned Single Judge quashed the order dated 02.04.2004 whereby the petitioner was found unfit for allotment of land to set up a school at Vasant Kunj. A mandamus was issued to the DDA to further process the application of the petitioner for allotment of land. The eligibility of the petitioner was directed to be treated as for Zone 20. The DDA was directed to take a final decision and communicate the same to the petitioner within three months from the date of the order.

4. The decision of the learned Single Judge was assailed by the GNCTD by preferring LPA 1670-71/2006. The DDA, however, did not assail the said order of the learned Single Judge. Instead, the DDA issued the order dated 23.08.2006 in compliance of the said order. The DDA observed that no right in favour of the petitioner had ever crystallised, as no demand letter was issued to the society. It was further observed that the mode of allotment had since been changed vide gazette notification dated 19.04.2006. Consequently, the application made by the petitioner

to the competent authority for allotment of land to set up a middle school was rejected.

5. The LPA preferred by the GNCTD was decided on 15.01.2014. It appears that the order dated 23.08.2006 was not brought to notice of the Division Bench. Consequently, the Division Bench observed that in case the direction issued by the learned Single Judge had not been complied with in view of the pendency of the appeal, the same be complied with within eight weeks.

6. In the meantime, the appellant had preferred W.P. (C) No.18530/2006 to assail the order dated 23.08.2006. The said writ petition was still pending when the decision in the aforesaid LPA was rendered by the Division Bench on 15.01.2014. After the said decision was rendered, the petitioner moved an application to seek early hearing of the said writ petition. The said writ petition was, consequently, taken up by the learned Single Judge on 15.09.2014 for hearing and after hearing brief submissions, the petitioner withdrew the writ petition. The order of withdrawal dated 15.09.2014 read as follows:

“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. The petitioner thereafter moved the application to seek revival of the said writ petition. That application was too rejected by the learned Single Judge vide order dated 15.12.2014. The appellant then preferred W.P. (C) No. 7456/2016, which has been rejected by the impugned order.

The learned Single Judge has held that since the DDA had complied with the earlier judgment of the learned Single Judge dated 04.05.2006 and passed the order dated 23.08.2006, which had been assailed by the appellant in W.P. (C) No.18530/2006 and the said writ petition had been withdrawn unconditionally, the appellant could not once again challenge the said rejection order dated 23.08.2006 by filing the present writ petition. Consequently, the writ petition was dismissed as being barred by constructive resjudicata.

8. The submission of Mr. Kripal, counsel for the appellant is that the withdrawal of the writ petition had taken place on account of an assurance given by the officers of the DDA that the appellant would be allotted land. In this regard, he has referred to the application moved by the appellant to seek revival of the writ petition vide C.M. No. 20405/2014, and the averments made therein.

9. We cannot appreciate this submission of the appellant. The DDA is a statutory body and it functions through its officers. Its acts and decisions are premised on written documents and communications. No officer of the DDA holds the authority to give any verbal assurance to any party, and the DDA as an institution would not be bound - even if any such assurance were to be given. It is not the submission of the appellant that the said so called verbal assurance was ever recorded or minuted by the DDA in its records. This submission of the appellant cannot be accepted also for the reason that when W.P.(C.) No. 18530/2006 was unconditionally withdrawn on 15.09.2014, no such statement was made on behalf of the petitioner/ appellant before the Court. There was no question of the DDA giving any assurance to the petitioner or to the Court that it would consider the appellant's case for allotment of land.

10. For all the aforesaid reasons, we are of the view that the learned Single Judge rightly held the writ petition to be barred by the principles of constructive res judicata. We do not find any merit in the present appeal and there is no reason to interfere with the impugned judgment. Dismissed.

VIPIN SANGHI, J

DEEPA SHARMA, J

MAY 16, 2017

sr