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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 1747/2018, CM No. 7239/2018

D.A.V. COLLEGE TRUST AND MANAGEMENT SOCIETY &
ANR

..... Petitioners

Through: Mr. Ravinder Sethi, Sr. Adv. with
Mr. R.K. Saini and Mr. Puneet
Sharma, Advs.

versus

DELHI DEVELOPMENT AUTHORITY & ORS Respondents

Through: Mr. Dhanesh Relan, Standing
Counsel with Ms. Komal and Ms.
Kajri Gupta, Advs. for DDA

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER

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13.03.2018

1. The present petition has been filed by the petitioners challenging the order dated December 12, 2017 whereby the Competent Authority has determined the lease by cancelling the allotment of land allotted to the society for construction of school at Sreshtha Vihar, New Delhi, on the ground that the play field area available at the site is only 700 Sqm. as against of 3270 Sqm. and as obvious the school has consumed the land meant for play field area and constructed the building thereon.

2. The facts as noted from the writ petition are that on August 30, 1998, Sreshtha Vihar CGHS approved the opening of the branch of D.A.V. Public School in 'Sreshtha Vihar'. It desired the petitioner No.1 to start the school

in the session beginning in May, 1989. Petitioner No.1 started a school on the said land as per the desire of the residents of the society on July 31, 1990 after taking its possession from the society and after completion of the requisite formalities. It is the case of the petitioners that an Essentiality Certificate was issued in favour of the petitioner No.1 by the Director of Education. The petitioners refer to a letter dated May 21, 1991 written to the Director of Education, requesting it to recommend the case to the DDA for an early allotment of two plots of land for the school building. The school was recognised on October 31, 1991 and upgraded upto class 10th on March 13, 1996. It was upgraded to Senior Secondary Level on May 06, 1998 and Senior Secondary Level to CBSE on December 15, 1998. It is the case of the petitioners that they have been approaching the respondent Authority for allotment of land. It is also their case, they had deposited an amount of ₹10,00,000/- on August 12, 1996 and ₹12,00,000/- on October 04, 1996, on account towards the cost of land. It is averred that the respondents regularised the demised land in favour of the petitioner No.1 on February 20, 2002. On February 05, 2013, a show cause notice was issued by the respondents at the office of the petitioner No.2 to which a reply was submitted on February 12, 2013. It is averred that petitioner No.2 submitted

an application dated February 14, 2013 with the Vice Chairman, DDA, Institutional Land Branch, Vikas Sadan, New Delhi for relaxing the terms and conditions of the regularisation of the land and also for execution of the lease deed of the land but the same was not properly considered. Thereafter, the petitioners had approached this Court in W.P. (C) 2020/2013 challenging the show cause notice issued by the DDA along with an application under 151 CPC for stay / interim orders and this Court vide its order dated March 20, 2013 issued to the DDA for May 14, 2013 and directed that any final action taken by the DDA shall be, subject to the outcome of the writ petition. The said interim order was made absolute and the matter was finally withdrawn with liberty to file a fresh petition on the same cause.

3. It is the submission of Mr. Ravinder Sethi, learned Senior Counsel for the petitioners that the terms of regularisation issued vide letter dated February 20, 2002 stipulated that the Hon'ble Lt. Governor had regularised the land measuring 5450 Sqm. including 2180 Sqm. for school building and 3270 Sqm. for play field on the rates mentioned therein.

4. According to him, in a communication dated May 19, 2008 to show cause notices, the petitioners had drawn the attention of the respondent DDA that no unauthorised construction has been made by them after 2002 i.e.

after the regularisation and also no additional demand was ever raised by the DDA against the plot/building of the school thereafter. He contended, again in the year 2013, the show cause notice as referred above was issued by the DDA to which the reply was given on February 12, 2013 wherein in para 13, it is reiterated that they have not raised any construction after issuance of the letter dated February 20, 2002 for regularisation. It is his submission that construction was in existence before 2002, which was in the form of school building. According to him, this aspect has not been considered by the respondents in the impugned order. He would also state, that even the request of the petitioners for personal hearing has not been considered favourably. Had a personal hearing been given the petitioners would have satisfied the authority about the existence of the construction in the year 2002 itself, which surely would have weighed with the DDA, and would not have resulted in the impugned order, which has a drastic effect.

5. He also states that the complete payment as asked for in the letter dated February 20, 2002 having been made for the whole of land including the play field, the order of determining the lease/cancellation of allotment could not have been made. He also plead discrimination, as in the case of *Laxman Public School* in similar circumstances, the DDA has regularised

the construction. He seeks the quashing of the impugned communication.

6. On the other hand, Mr. Dhanesh Relan, learned Standing Counsel for the respondents has drawn my attention to the order of regularisation dated February 20, 2002 to contend that 2180 Sqm. of land was meant for school building and 3270 Sqm. was meant for play field on payment of the amount specified therein. He has drawn my attention to a communication dated March 15, 2000 to contend license fee to be paid for the cost of land, measuring 2180 Sqm. for school building and land measuring 3270 Sqm. for play field were different inasmuch as for the school building, the rate was at ₹19.5 Lacs+Damages per acre along with annual ground rent @ 2 ½ per cent per annum whereas for the play field it was ₹1,000/- per acre per annum. He also refers to one of the terms in the communication i.e Clause 4 to contend that the play ground was to be kept open and no structure of even temporary nature could be raised on the land.

7. He also draws my attention to page 113 of the paper book which is a reply to the show cause notice issued in the year 2013 to contend that it is the case of the petitioners that they had raised the building with mutual understanding of the Competent Authorities. This according to him reveals the construction on the open land. Mr. Relan also states, there cannot be an

issue of regularisation of the construction by the DDA as it is only concerned with the land as allotted to the petitioners. He also refers to an FIR filed in the case and proceedings pending in this Court.

8. Having heard the learned counsel for the parties, there is no dispute that the regularisation of the land was to the extent of 5450 sqm, out of which 2180 sqm was for school building and 3270 sqm for play field. The show cause notice issued was to the extent that the area of 3270 sqm has shrunk to 700 sqm, which DDA confirms in the impugned order. It is not the case of the petitioners that they have contested the area of 3270 sqm immediately after 2002 in a communication to DDA. So, it would be irrelevant if the plea that the construction was in existence in 2002 has not been considered by the Authority in the impugned order. That apart, the stand that the area was already constructed was taken for the first time in 2008 pursuant to a show cause notice.

9. The plea of Mr. Relan that the license fee for the open field is less than the license fee for the constructed land is appealing, but this submission has been contested by Mr. Sethi.

10. Be that as it may, insofar as the plea of Mr. Sethi, a personal hearing ought to have been given to the petitioners is not appealing, as it is not his

case that an instruction/statutory Rule exist which obligates a hearing to be given to a party. There is no dispute that the show cause notice was given to which a reply was filed, which was considered. This itself is in compliance of principles of natural justice.

11. Insofar as the plea of Mr. Sethi relying on *Laxman Public School* is concerned, each case has to be seen in its own facts. Even otherwise, there cannot be any negative equality. It is conceded that no such plea was taken in reply to the show cause notice.

12. No other submission has been made. I do not see any merit in the petition. The same is dismissed. No costs.

V. KAMESWAR RAO, J

MARCH 13, 2018/aky