

#57

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 30.07.2018

W.P.(C) 7696/2018 & CM APPL.29486/2018 (Stay)

SATGURU EDUCATION SOCIETY AND ANR. Petitioners

versus

DELHI DEVELOPMENT AUTHORITY AND ANR. Respondents

Advocates who appeared in this case:

For the Petitioners : Mr. O.P. Saxena and Mr. Deepak Arora, Advocates

For the Respondents : Mr. Dhanesh Relan and Ms. Gauri Chaturvedi, Advocates for R-1

CORAM:

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

J U D G M E N T

SIDDHARTH MRIDUL, J (ORAL)

1. The present petition under Article 226 of the Constitution of India essentially seeks the issuance of a writ of certiorari quashing the impugned order bearing No.F.19(93) 97/IL/1047 dated 16.07.2018, whereby the respondent No.1/DDA had directed the petitioner school to hand over

possession of the land bearing No.A-2, DDA, MIG Flats, Lawrence Road, Keshavpuram, New Delhi (hereinafter referred to as 'the subject land'), where the latter is running the school, namely, Satguru Model School, on the ground that they have grossly violated the terms and conditions of the allotment letter dated 21.02.2000, as well as, the Lease Deed dated 09.06.2005. The said impugned order dated 16.07.2018 is reproduced hereunder for the sake of felicity:-

“DEVELOPMENT AUTHORITY
INSTITUTIONAL LAND BRANCH
A-216, Vikas Sadan INA, New Delhi-110023

F.19(93)97/IL1047

Dated:16.07.2018

ORDER

WHEREAS by virtue of allotment letter dated 21.02.2000, 790 Sqm of land at A-2, DDA, MIG Flats, Lawrence Road, Keshavpuram, New Delhi was allotted to Satguru Educational Society for construction of Nursery School.

WHEREAS as per the terms and conditions of clause II (i) of lease deed, the society has to pay the yearly ground rent of the land from the date of handing over the possession of the land but the same has not been deposited by the society since 2005.

AND WHEREAS terms and conditions of clause 11(4) of lease deed, the society has to complete the construction of school building on the allotted land within a period of two years from the date of handing over the possession of the land but no completion certificate/occupancy certificate has been submitted by the society till date.

AND WHEREAS as per the term and condition of clause 5 of allotment letter as well as clause 11(4) of lease deed, allotment is made for only running a Nursery School, whereas during inspection it was found that Primary School is running.

AND WHEREAS final show cause notice was also issued on 15.02.2018 to the society explained the reason for violation of aforesaid terms and condition of lease deed as well as allotment letter.

Now, therefore, in view of the gross violations of terms and conditions of allotment letter as well as lease deed referred to above, the Competent Authority has determined the lease/cancelled the allotment of land allotted to the society for construction of Nursery School at A-2, DDA, MIG Flats, Lawrence Road, Keshavpuram, New Delhi, with immediate effect.

The President of the society/allottee is, therefore, directed to hand over the possession of subject land to the concerned officer, DDA on 30.07.2018 at 11.00 A.M. positively, failing which necessary action will be initiated in accordance with the provision meant for the purpose.

Sd/-
Lease Administration Officer (IL)/DDA

The Secretary,
Satguru Educational Society
Near Sacha Sauda Roohani Ashram
A-2, Keshavpuram,
New Delhi-110035”

2. It is an admitted position that, the impugned order dated 16.07.2018 was preceded by a Show Cause Notice dated 15.01.2018, directing the petitioner school to show cause as to why action, in accordance with law, be not taken against them, for violation of the terms and conditions of allotment letter, as afore-stated.
3. It is further an admitted position that, the petitioner school had

responded to the said Show Cause Notice vide communication dated 28.01.2018, wherein *inter alia* it had been asserted that, they have been granted permission by the Education Department of the Municipal Corporation of Delhi to run a school.

4. A plain reading of the impugned order, however, shows that the issues raised in the reply furnished on behalf of the petitioners has not been dealt with at all therein. Furthermore, the petitioners were not even granted an opportunity of being heard prior to the passing of the impugned order, which action is contrary to the principles of natural justice.

5. In view of the dictum of the House of Lords in **Ridge vs. Baldwin**, reported as **1964 AC 40**, which has permeated every judicial order rendered since by the Hon'ble Supreme Court of India and this Court, and in keeping with the dictum of the Constitution Bench of the Hon'ble Supreme Court of India in **State of Punjab vs. K.R. Erry and Sobhaq Rai Mehta**, reported as **(1973) 1 SCC 120**, there can be no manner of doubt that it is unfair for a quasi judicial authority not to have allowed a reasonable opportunity to be heard before arriving at a decision, which has prejudicially and adversely affected the rights and interest of the petitioner school.

6. In **State of Orissa vs. Dr. (Miss) Binapani Dei and Others**, reported

as **(1967) 2 SCR 625** the Hon'ble Supreme Court of India observed as follows:-

“An order by the State to the prejudice of a person in derogation of his vested rights may be made only in accordance with the basic rules of justice and fairplay. The deciding authority, it is true, is not in the position of a Judge called upon to decide an action between contesting parties, and strict compliance with the forms of judicial procedure may not be insisted upon. He is however under a duty to give the person against whom an enquiry is held an opportunity to set up his version or defence and an opportunity to correct or to controvert any evidence in the possession of the authority which is sought to be relied upon to his prejudice. For that purpose the person against whom an enquiry is held must be informed of the case he is called upon to meet, and the evidence in support thereof. The rule that a party to whose prejudice an order is intended to be passed is entitled to a hearing applies alike to judicial tribunals and bodies of persons invested with authority to adjudicate upon matters involving civil consequences. It is one of the fundamental rules of our constitutional set-up that every citizen is protected against exercise of arbitrary authority by the State or its officers. Duty to act judicially would therefore arise from the very nature of the function intended to be performed; it need not be shown to be super-added. If there is power to decide and determine to the prejudice of a person, duty to act judicially is implicit in the exercise of such power. If the essentials of justice be ignored and an order to the prejudice of a person is made, the order is a nullity. That is a basic concept of the rule of law and importance thereof transcends the significance of a decision in any particular case.”

7. In this view of the matter, having heard learned counsel for the parties, it is considered just, necessary and expedient to set aside the impugned order, as being violative of principles of natural justice.
8. However, the respondent No.1/DDA is at liberty to issue fresh Show Cause Notice to the petitioner school, requiring the latter to show cause as to

why action, in accordance with law, be not taken against them for violation of the terms and conditions of the allotment letter dated 21.02.2000 issued in favour of the petitioner school.

9. Needless to state that, apart from granting the petitioner an opportunity to reply to the show cause, a further opportunity of hearing shall be granted to them, before determination is made by the competent authority, in relation to the subject land, in accordance with law.

10. It is hoped and expected that the entire process shall be concluded expeditiously and preferably within a period of six weeks from today.

11. With the above directions, the writ petition is disposed of. The pending application also stands disposed of.

12. A copy of this judgment be given *dasti* under the signature of Court Master to counsel for the parties.

**SIDDHARTH MRIDUL
(JUDGE)**

JULY 30, 2018
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