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

+ **W.P.(C) 6874/2015 and CM APPL. 29187/2017**

SIR SYD EDUCATIONAL & SOCIAL
WELFARE SOCIETY

..... Petitioner

Through: Counsel (appearance not given).

versus

MINISTRY OF URBAN DEVELOPMENT,
NCT OF DELHI & ORS

..... Respondents

Through: Mr G.D. Mishra, Standing Counsel
for R-2/EDMC.

Mr Ankur Jain, Advocate for DUSIB.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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12.11.2018

1. The petitioner has filed the present petition, *inter alia*, praying as under:-

“a) Set aside order dated 18.2.2015 in terms of noting in the file and proof of approval of the Standing Committee etc. which justify legal right to allot the land for the public purpose;

b) Pass order or direction in the nature of mandamus to the respondents to issue letter of allotment of land in question to the Sir Syd Memorial School in view of the proper formalities has been completed in all respect following procedure of law and the petitioner undertakes to fulfill all the terms and conditions as required under law.”

2. By the communication dated 18.02.2015 (hereafter ‘the impugned

communication'), Delhi Urban Shelter Improvement Board (hereafter 'DUSIB') has rejected the application filed by the petitioner for allotment of land at Welcome Colony, Seelampur for running a school.

3. The petitioner, essentially, seeks that DUSIB be directed to allot a plot of land to the petitioner for running a school for children of minorities and backward classes.

4. The petitioner's request has been denied as DUSIB has no policy for allotment of land to such societies.

5. The petitioner claims that he has been discriminated against as other persons/entities have been allotted lands for running educational institutions. This is disputed by DUSIB as it claims that such allotments were made prior to its constitution.

6. The controversy arises in the following context. On 07.01.1999, the petitioner made an application for allotment of vacant piece of land located between Allah wali mosque and Idgah in Welcome Colony, Seelampur.

7. The petitioner also made an application dated 15.01.1999 to the National Commission for Minorities for allotment of the land for running an educational institution. The National Commission for Minorities recommended the petitioner's case to the Department of Education, by a letter dated 07.02.1999.

8. The petitioner's request was considered by the concerned authorities and was rejected by a letter dated 06.07.1999 (a copy of which has been handed over by the learned counsel for the respondents) issued by the Slum

and JJ Department of Municipal Corporation of Delhi as no such land was available at the material time.

9. The petitioner relied upon the several file notings, which indicate that the petitioner's request was considered and steps were taken for making available a vacant open land for the purposes of public utilities including a school. The petitioner relies on a noting dated 02.06.1999 made by the Director (Town Planner) wherein it was suggested that the part of the land under unauthorised occupation of Idgah be retrieved and further, certain open space available in the Sulabh Sauchalya Complex, Seelampur be made available for running a primary school. Thereafter, on 18.06.1999, MCD proposed utilisation of the vacant / open land of an abandoned septic tank in Seelampur, Phase-IV, JJR Colony for utilisation of public utilities. The file notings also indicate that subsequently, suggestions were made for modification of the layout plan and change of use of the land pertaining to an abandoned septic tank for the purposes of using the same for "Social facilities".

10. The learned counsel appearing for the petitioner states that this clearly indicates that the land was available with the MCD at the material time.

11. The petitioner has also relied on certain noting dated 02.05.2000 and 08.05.2000 which indicate that steps were being taken for change in the layout plan.

12. The counter affidavit filed on behalf of DUSIB indicates that on 01.03.2000, the Standing Committee of MCD passed a resolution for approval of the modification in the layout plan for change of open/green

area to “Social Facilities (School etc.)”. It is also affirmed that thereafter, site inspection was carried out which indicated that the land in question had been encroached upon. It is further, affirmed that the request for modification of the layout plan for change of use to social facilities was not supported by the members of MCD.

13. The Slum and JJ Department of MCD was transferred to DUSIB with effect from 01.07.2010.

14. Indisputably, DUSIB does not have a policy for allotment of land to societies such as the petitioner.

15. The only question to be addressed is whether the petitioner was discriminated against prior to DUSIB taking over the Slum and JJ Wing of MCD in as much as the request of other persons for allotment of land had been acceded to. This Court is of the view that the petitioner’s grievance regarding hostile discrimination is unmerited. Other entities have been allotted land in various other areas where such land was available at the material time. The petitioner’s request had been rejected on 06.07.1999 as no land for running a school was available with the Slum and JJ Wing of MCD at the material time. This is clearly established by the file notings placed on record by the petitioner, which indicates that steps for change in layout plan was being considered by the MCD much after the petitioner’s application had been rejected.

16. Clearly, at this stage, no relief can be granted to the petitioner as DUSIB cannot be directed to allot land to the petitioner contrary to its policies. Needless to state that if DUSIB decides to allot the land in question

(at Welcome Colony, Seelampur) to any society for educational purpose, the petitioner would be fully entitled to apply for the same and would be accorded equal treatment as other such similarly placed applicants.

17. The petition is dismissed with the aforesaid observations. The pending application is also disposed of.

NOVEMBER 12, 2018
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VIBHU BAKHRU, J