

\$~11

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 12163/2016, CM No. 48038/2016**
HOLY WELFARE TRUST (REGD)

..... Petitioner

Through: Mr. Vikram Nandrajog, Adv.

versus

UNION OF INDIA & ANR

..... Respondents

Through: Mr. Dev P. Bhardwaj, CGSC for UOI
with Ms. Nirmal Bhendari, Section
Officer (L&DO)

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER

%

19.07.2018

1. The present petition has been filed with the following prayers:-

“It is, therefore, most respectfully prayed that this Hon’ble Court be pleased to:-

Issue a Writ of Mandamus or any other similar Writ, Order or Direction in the like nature directing the respondent to forthwith process the case of the petitioner for allotment of a Plot of Land for establishing a Nursery School in the Colony Shivalik near Malviya Nagar in South Delhi or at any other place / colony in South Delhi and make allotment thereof in favour of the Petitioner.

Such other and further orders as this Hon’ble Court deems fit and proper in the facts and circumstances of this case may also be passed in favour of the petitioner.”

2. It is the case of the petitioner that the petitioner is a society registered under the Societies Registration Act, 1860. It is averred that the petitioner applied to the Directorate of Education, South Zone, Defence Colony, Delhi for sponsorship / issue of Essentiality Certificate for Nursery School in South Delhi Zone, Delhi. The Essentiality Certificate dated January 12, 1996 was issued by the Directorate of Education to the petitioner. On February 01, 1996 the petitioner applied to the Rehabilitation Division of the Ministry of Home Affairs, for allotment of a plot in Shivalik for establishing a Nursery School. It is averred that as the application was not considered, the petitioner filed W.P.(C) No. 1282/1996. The same was disposed of as the respondents stated that the application of the petitioner will be considered in six weeks. A reference is made to the contempt petition filed by the petitioner.

3. On March 21, 1997, the petitioner was informed that its application regarding allotment of nursery school in Shivalik has been considered and that in addition to the essentiality certificate, the petitioner is required to produce a recommendation / sponsorship from the Directorate of Education, Govt. of NCT of Delhi. On March 26, 1997, sponsorship certificate was issued to the petitioner by the Directorate of Education, Govt. of NCT of

Delhi. Since the matter was not considered by the respondents, the petitioner filed Civil Writ Petition No. 6549/1998, which was disposed of on November 18, 2004. As the case of the respondent was that the file of the petitioner has been lost, the petitioner may be asked to submit records of the documents filed by the petitioner for processing the application, the Court directed the petitioner to submit a compilation of the documents starting with the application which is available with the petitioner and the case of the petitioner should be examined on the basis of the said documents as having been completed on submission of the sponsorship certificate in 1998. It is averred that between 2004 and 2015, the respondents kept the matter pending on one pretext or the other and the petitioner has been following up the matter with the respondent through RTI. At long last, the respondent vide its letter dated June 02, 2015 forwarded documents under RTI to the petitioner which included an office memorandum dated March 02, 2015, the minutes of meeting of the Land Allotment Screening Committee held on February 19, 2015, the agenda for the Land Allotment Screening Committee and letter dated April 09, 2015 written by the respondents to Deputy Director of Education, Govt. of NCT of Delhi, which document shows that the case of the petitioner shall be considered by the Screening Committee on

May 18, 2005 wherein the Committee noted that 47 requests for allotment of school sites have been received and proposed that nursery sites should be offered to MCD / NDMC in the first instance. Thereafter, the Land Allotment Screening Committee meeting held on December 15, 2008 it was decided that data / information should be first compiled.

4. It is averred that the petitioner had clarified about the query regarding experience of running a school. It is also averred that the Residents Welfare Association was against establishment of any nursery school in colony. It is averred that the Land Allotment Screening Committee in its meeting dated February 19, 2015 opened a new unwarranted issue namely that the sponsorship certificate has been issued way back in 1998 and that it would be appropriate to ask the GNCTD if they still stick to the certificate. It is the case of the petitioner that vide its letter dated June 08 2015 reminded the respondents that it was deviating from the direction issued by this Court vide its order dated November 18, 2004 whereby the case of the petitioner for allotment of land for establishing a nursery school was to be considered on the basis of documents as having been completed on submission of the sponsorship certificate in 1998 and that there was no occasion to now go on the premise that the said certificate was issued long ago. It is also stated that

the petitioner pursued the matter with the respondents under RTI Act. Since the respondents did not give any firm answer, an appeal has also been filed before the Chief Information Commissioner, who passed a detail order on July 01, 2016.

5. Mr. Vikram Nandrajog, learned counsel for the petitioner submitted that it is the respondents who have delayed the matter for more than two and a half decades for allotment of land for nursery school. It is his submission that the mandate of order dated November 18, 2004 passed by this Court is very clear. The respondents had raised unwarranted queries about the experience of the petitioner in running a school despite there being no such requirement in its prescribed application proforma and despite the clarifications issued repeatedly by the petitioner that the petitioner had submitted an application for opening a new school. According to him, the plots for establishing nursery schools in Shivalik and also other South Delhi Colonies are still available. The validity of the sponsorship certificate is a non-issue as the Directorate of Education has not cancelled the sponsorship certificate issued to the petitioner and there is no reason for the respondents to keep the matter pending on that pretext of getting a clarification. He states, it is a clear case of arbitrariness, where this Court must take a serious

view and grant relief as prayed for in the writ petition.

6. A counter affidavit has been filed by the respondents wherein the facts are not disputed. They at page 162 of the paper book referred to the fact that the matter was placed before the Land Allotment Screening Committee on December 15, 2016 to allot land to Nursery School to the Holy Welfare Trust in Shivalik Colony in pursuance of directions of this Court on November 18, 2004. The Committee considered the proposal and decided that there is no provision in the MPD 2021 to set up a Nursery School; the sponsorship certificate issued by Govt. of NCT of Delhi has become invalid and Residents Welfare Association is opposed to such construction the allotment of land to run nursery school cannot be done.

7. Mr. Bhardwaj reiterates the stand as taken in the counter affidavit. He has also drawn my attention to page 170 of the paper book to contend that it has been decided that in view of the requirements of Government agencies, there is no scope for allotment of land to the NGOs in the near future as the L&DO do not have enough land. It is his submission that this Court shall not substitute the opinion of the Authority with its opinion.

8. Having heard the learned counsel for the parties and considered the record, this Court is of the view that the reasoning given by the respondents,

which have been noted above is not unreasonable. The plea of Mr. Nandrajog that the case of the petitioner has to be considered on the date when the application was made, is without any merit. No doubt, that the respondents have delayed the consideration of the case of the petitioner but that can't be a ground to overlook the subsequent developments including the fact that the respondents have decided not to consider allotment of land in favour of the NGOs (religious / educational / social / cultural institutions). The said decision is because of the scarcity of land. Moreover, they have also taken into consideration that the concerned RWA is opposing the establishment of nursery school in their area.

9. Keeping in view the stand taken by the respondents as noted above, this Court is of the view that this Court should not substitute the views taken by the Authorities with its own views and direct the allotment of land in favour of the petitioner. In this regard, this Court refers to the judgment of the Supreme Court in the case reported as *(2012) 6 SCC 357 Registrar General, High Court of Patna, v. Pandey Gajendra Prasad*, wherein the Supreme Court has held that the Court while exercising the power of judicial review cannot substitute its own views with the views of the Authority. It further held as under:-

“The Court dealing with the exercise of power of judicial review does not substitute its judgment for that of the legislature or executive or their agents as to matters within the province of either, and that the Court does not supplant 'the feel of the expert' by its own review, is also fairly well-settled by the decisions of this Court. In all such cases judicial examination is confined to finding out whether the findings of fact have a reasonable basis on evidence and whether such findings are consistent with the laws of the land.”

10. The writ petition is dismissed. No costs.

CM No. 48038/2016

Dismissed as infructuous.

V. KAMESWAR RAO, J

JULY 19, 2018/ak