

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

Date of Decision: November 28, 2018

Pronounced on: February 08, 2019

+ **W.P.(C) 9036/2008**

+ **W.P.(C) 4324/2010**

KARUNAMAY DHARAMARTH SOCIETY REGD.....Petitioner

Through: Mr. Sanjeev Sindhwani, Senior
Advocate with Mr. Daleep Dhyani,
Advocate

Versus

UNION OF INDIA & ORS.

LT. GOVERNOR, GOVT. OF NCT OF DELHI & ORS.

.....Respondents

Through: Mr. Naushad Ahmed Khan, ASC
(Civil) for respondent-GNCTD
Ms. Saroj Bidawat, Advocate for
respondent-UOI
Mr. Rajiv Bansal, Senior Advocate
with Ms. Kamna Singh and Ms.
Parul Panthi, Advocates for
respondent-DDA

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT

1. In the above-captioned first petition, a mandamus is sought to first three respondents to execute and register a lease-deed in terms of letter of allotment of 24th June, 1985 in favour of petitioner in respect of 4 acres of land, out of land comprised in *Khasras No.109 and 185 situated in Village Nasirpur, Delhi (hereinafter referred to as the 'subject land')* and

to hand over the possession of the said land to petitioner-Society.

2. In the Reply Affidavit filed by respondents No.2 & 3, the stand taken is that petitioner-Society had failed to complete all the required formalities and to deposit the lease money for formal allotment of the 'subject land'. It is also stated in the aforesaid Reply Affidavit that on 24th June, 1985, the Lieutenant Governor of Delhi had decided in-principle to make allotment of the 'subject land' on certain terms and conditions and since those terms and conditions were not fulfilled, therefore, there was no execution of the lease-deed. It is also asserted in the Reply Affidavit of respondents No.2 & 3 that possession of 40 Bighas of Gaon Sabha land, which was found vacant out of 91 Bighas and 10 Biswas, was handed over to respondent-DDA and it is so reflected in the Report of 13th October, 2003 (*Annexure R-1*). It is further asserted in this Reply Affidavit that as per Notification of 24th October, 1994, Revenue Estate of Village Nasirpur was declared urbanized under Section 507 of *the Delhi Municipal Corporation Act, 1957* and the all the properties of this Revenue Estate vested in the Central Government/DDA and that W.P. (C) 3817/1991 filed by private persons/individuals on similar facts stood dismissed for non-prosecution.

3. In the rejoinder filed by petitioner-Society to the Reply Affidavit of respondents No.2 & 3, it is reasserted that petitioner-Society vide letter of 8th July, 1985 addressed to Director (Panchayat), Delhi had conveyed its acceptance to all terms of the letter of allotment of 24th June, 1985 and it was also communicated to respondents that petitioner-Society has arranged the funds to deposit lease amount, etc., and is ready to pay it at any time. Petitioner-Society asserted that vide letter of 17th August, 1985,

audited statement of account of petitioner-Society was also submitted to Director (Panchayat), Delhi and vide another Communication of 10th January, 1986, a request was made to Director (Panchayat), Delhi to act upon the letter of allotment of 24th June, 1985. However, it is stated that during the said period, a Notification for requisition of land in Village Nasirpur under *the Land Acquisition Act* was issued, but the said Notification was quashed by Supreme Court vide order of 10th December, 1987 in W.Ps.(C) 991/1986 and 12641/1986. According to petitioner-Society, from the year 1986 till 1990, the President of petitioner-Society had made several visits to the office of respondents No.2 & 3 with a request to execute the lease-deed, but to no avail.

4. It is also asserted in the rejoinder that vide letter of 3rd April, 1990, readiness and willingness of petitioner-Society to comply with all the terms and conditions of allotment of letter of 24th June, 1985 was conveyed to Director (Panchayat), Delhi and several representations and visits were made to the office of respondents No.2 & 3 to execute the lease-deed in respect of 4 acres of land allotted to petitioner-Society, i.e., the subject land. Copies of letters of 8th July, 1985; 17th August, 1985 and 10th January, 1986 making such requests have been annexed with the writ petition as Annexures P-3 to P-5. In this rejoinder, counter-affidavit of March, 1992 (*Annexure P-11*) filed by respondents in the W.P. (C) 3817/1991 preferred by *Raj Karan & Others vs. Lt. Governor & Ors.* is relied upon to assert that the Lieutenant Governor had decided to honour the commitment to allot the subject land to petitioner-Society.

5. It is specifically asserted in this rejoinder that the *status quo* order of 6th December, 1991 passed in W.P. (C) 3817/1991 relating to subject

land also continued till 7th April, 2008. It is maintained in this rejoinder that the resultant effect was that transfer of 40 Bighas of Gaon Sabha land to DDA on 13th October, 2003 and the subject land was put on hold. It is clarified that in the rejoinder filed by petitioner that the subject land was not included in the 40 Bighas of Gaon Sabha land of Village Nasirpur, which was to be handed over to respondent-DDA.

6. The stand taken by respondent-DDA is that the possession of 40 Bighas out of Khasra No.109 in Village Nasirpur was taken in October, 2003 and it was transferred to the Engineering Department of respondent-DDA for development Scheme and a road passes through 40 Bighas of land of Khasra No. 109 of Village Nasirpur. It is also asserted in this counter-affidavit by respondent-DDA that 40 Bighas of land in Khasra No. 109 of Village Nasirpur is lying vacant and is free from encroachment and DDA is constructing a road on the subject land. However, petitioner-Society's claim for allotment of land *ad-measuring* 4 acres in Village Nasirpur, is refuted by respondent-DDA in its counter-affidavit filed while asserting that no right accrued to petitioner.

7. In the rejoinder to the counter-affidavit filed by respondent-DDA, it is reiterated that the physical possession of 40 Bighas of land in Khasra No. 109 in Village Nasirpur was never handed over to respondent-DDA and no physical demarcation was carried out. The right to allotment of subject land is reasserted by petitioner-Society. It is pointed out that as per Annexure P-11 (colly.) to W.P. (C) 4324/2010 in the earlier W.P. (C) 3817/1991 titled *Raj Karan & Others (supra)*, the prayer made was to quash the allotment of 4 acre of land i.e. 2 acres each in Khasra No.109 and 185 of Village Nasirpur, Delhi in favour of respondents No.4 & 5,

who are petitioners herein, and not to handover the possession of subject land to petitioner-herein.

8. With the consent of learned counsel for the parties, above captioned petitions were heard together and are being decided by this common judgment.

9. It is matter of record that during pendency of above captioned first writ petition, order of 14th June, 2010 was passed by the Director (Panchayat), GNCTD with the approval of the Lieutenant Governor of Delhi to cancel the '*in-principle*' allotment of subject land made to petitioner-Society way back in June, 1985. In the above-captioned second petition, order of 15th June, 2010 (*Annexure P-26*) cancelling the allotment of subject land made to petitioner-Society is assailed primarily on the ground that the allotment of subject land to petitioner-Society was prior to the Notification of 24th October, 1994 and so, the subject land would not form part of the urban area and since stay was operating in W.P. (C) 3817/1991, therefore, lease-deed could not be executed. The Doctrine of *Promissory Estoppel* is invoked by petitioner-Society in the above-captioned second petition. The stand taken in the counter-affidavit filed in the above-captioned second petition is that petitioner-Society had miserably failed to fulfil and comply with the conditions precedent for allotment of subject land. It is asserted that entire Gaon Sabha land of Village Nasirpur including the subject land has been declared to be urban area and so, cancellation of '*in-principle*' allotment of subject land to petitioner-Society way back in 1985, is sought to be justified. In the above-captioned second petition, the stand taken by petitioner-Society in the writ petition has been reiterated in the rejoinder filed.

10. Impugned order of 14th June, 2010 is assailed by learned senior counsel for petitioner on the ground that an '*offer of allotment*' of '*subject land*' creates a pre-existing right, which attracts the doctrine of legitimate expectancy. It is pointed out that impugned order proceeds on the basis that petitioner has not completed the requisite formalities, as stipulated in the allotment letter of 24th June, 1985. It is further pointed out that respondents have not shown which formality has not been completed by petitioner. It is submitted that petitioner's readiness and willingness to deposit the lease amount, ground rent, etc., is evident from various communications made by petitioner to respondents. During the course of hearing, attention of this Court was drawn by learned senior counsel for petitioner to Communications (*Annexure P-3 to P-5*) in support of the above submission. To now make payment of lease money, etc., at pre-existing rates, reliance is placed by learned senior counsel for petitioner upon Supreme Court's decision in *ITC Limited v. State of Uttar Pradesh and Others*, (2011) 7 SCC 493.

11. Learned senior counsel for petitioner had emphatically submitted that respondents in W.P. (C) 3817/1991 preferred by *Raj Karan & Others* (*supra*) had taken the stand that the Lieutenant Governor had decided to honour the commitment made for allotment of '*subject land*' to petitioner. It is submitted that in view of *status quo* order operating during the period in question, petitioner's right to get the lease deed executed in respect of '*subject land*' subsists. Reliance is also placed by learned senior counsel for petitioner upon Supreme Court's decision in *Ram Niranjana Kajaria v. Sheo Prakash Kajaria and Others*, (2015) 10 SCC 203 to submit that respondents cannot be allowed to wriggle out of

their commitment to allot the '*subject land*' to petitioner. To invoke the doctrine of legitimate expectancy, reliance is placed by learned senior counsel for petitioner upon Supreme Court's decision in *Southern Petrochemical Industries Co. Ltd. v. Electricity Inspector & Etio and Others*, (2007) 5 SCC 447. It is further submitted that *in principle* allotment of subject land to petitioner cannot be taken away on the premise that the '*subject land*' stood urbanized in the year 2002. It is also submitted that handing over of 40 bighas out of 91 bighas 10 biswas of the land in question to DDA in the year 2003 has no bearing on the facts of the instant case as a conscious decision to allot the '*subject land*' to petitioner was taken by respondents way back in the year 1985 and it was reiterated by respondents in W.P. (C) 3817/1991. Thus, principle of promissory estoppel is sought to be invoked by learned senior counsel for petitioner to seek quashing of impugned order and a mandamus to respondents to execute the lease deed in respect of '*subject land*'.

12. On the contrary, learned senior counsel for respondent-DDA and learned Additional Standing Counsel for respondent-GNTCD negate the aforesaid stand on behalf of petitioner and support the impugned order and submits that petitioner has not paid the lease money, etc., and so, cancellation of '*in-principle*' allotment of '*subject land*' to petitioner is justified. It is submitted that in view of urbanization of the '*subject land*' and the policy decision of Government of NCT of Delhi to allot Gaon Sabha lands to individuals or individual institutions, amply justifies the impugned cancellation. Reliance is placed upon a Division Bench decision of this Court in W.P. (C) 2459-60/2005 titled *Bhagwan Mahavir Education Society (Regd.) & Anr. v. UOI & Ors.*, rendered on 25th March,

2011 to submit that since no actual allotment of '*subject land*' was made, therefore, principle of promissory estoppel or the doctrine of legitimate expectancy cannot be invoked. Thus, it is submitted that writ petitions filed by petitioner deserve to be outrightly dismissed.

13. After having considered the submissions advanced on behalf of both the sides and on perusal of impugned order, material on record and the decisions cited, I find that way back in June, 1985, Lieutenant Governor of Delhi had approved the allotment of 4 acres of land to petitioner-Society for purpose of setting up of a school for handicap, orphan, mentally retarded and physically weak children. Petitioner is a registered charitable society, which has been established with the objective of promoting education, child health and overall development of children. Although it is a stand of respondent that petitioner-Society has failed to complete the requisite formalities by depositing the lease money, etc., to enable respondents to execute the formal lease-deed, but the material on record reveals that petitioner vide letter of 8th July, 1985 had conveyed its acceptance to respondent's letter of 24th June, 1985. It is relevant to note that it was not a mere promise to allot the '*subject land*' to petitioner, but actually for all practical purposes, the '*subject land*' stood allotted to petitioner. Infact, it was more than an '*in-principle*' allotment. All that was left to be done was to simply deposit the lease money, etc.. Petitioner vide Communications (*Annexure P-3 to P-5*) had called upon respondents to disclose as to what is the amount of lease money to be deposited and where. Somehow, from the year 1985 till the year 1990, lease money in respect of '*subject land*' could not be deposited on account of silence on part of respondents and for this, petitioner

cannot be blamed.

14. During the course of hearing, respondents' counsel had not drawn attention of this Court to any document to show that any Communication was addressed to petitioner specifying as to what amount of lease money is to be deposited and where. The matter lingered on for no fault of petitioner. Certainly, this cannot be a ground to cancel the '*in-principle*' allotment of '*subject land*' to petitioner. Relevantly, some third party i.e. *Raj Karan & Others (supra)*, had challenged the '*in-principle*' allotment to petitioner by way of W.P.(C) 3817/1991 and vide order (*Annexure P-9*), it was directed way back in December, 1991 that *status quo* shall operate. It is matter of record that the said writ petition was ultimately dismissed in default in the year 2008. Therefore, petitioner had filed the instant petition being W.P. (C) 9036/2008, in which respondents were directed to maintain *status quo*. Thus, the factual position relates back to the year 1985 as till then, there was no change in respect of '*subject land*' except that it was urbanized in the year 1994 and that in the year 2000, a Circular was issued by respondents that Gaon Sabha land cannot be allotted to any individual or institution.

15. To say the least, pendency of W.P.(C) 1724/1990 and a *status quo* order in the said petition till the year 2008, cannot operate to the detriment of petitioner as for no fault of petitioner, the execution of the lease-deed in respect of subject land could not take place. Mere urbanization of large chunk of land including the '*subject land*' in the year 1994 has to operate prospectively and cannot be made to operate retrospectively, to undo the in-principle allotment of '*subject land*' to petitioner. So, notification of the year 1994, urbanizing the '*subject land*'

cannot be the basis to cancel the in-principle allotment in question. The Circular/Order of 30th November, 2000 declaring that henceforth Gaon Sabha land cannot be allotted to any individual or institution does not and will not stand in the way of respondents to execute the lease-deed in respect of '*subject land*' as, by then, the '*subject land*' was no longer a Gaon Sabha land. Otherwise also, the Circular/Order of 30th November, 2000 cannot be made to operate retrospectively and thus, cannot be the basis to cancel the in-principle allotment of '*subject land*' to petitioner. Thus, this Court is of the considered opinion that impugned order of 14th June, 2010 cancelling the in-principle allotment of '*subject land*' to petitioner cannot be legally justified. Moreover, it runs counter to the '*doctrine of legitimate expectancy*' and '*principle of promissory estoppel*'.

16. Since the *status quo* order in respect of '*subject land*' is operating till date, therefore, the '*doctrine of legitimate expectancy*' has been rightly pressed into service. Such a view is taken as in W.P.(C) 3817/1991 titled *Raj Karan & Others (supra)*, it was reiterated by respondents that in-principle allotment shall be honoured. There is no justification whatsoever to dishonour the aforesaid undertaking furnished to the Court in W.P.(C) 3817/1991. It is a fit case to invoke the '*principle of promissory estoppel*'. Division Bench decision in *Bhagwan Mahavir (supra)* is distinguishable on facts as in the said case, there was no allotment, whereas in the instant case, in-principle allotment has been duly communicated by respondents to petitioner, which makes out a case for invoking the '*principle of promissory estoppel*' against the respondents. Particularly when respondent in W.P.(C) 3817/1991 had

undertaken to abide by 'in principle' allotment of subject land to petitioner.

17. During the course of hearing, respondents' counsel had relied upon Supreme Court's decision in *Vimlesh Kumari Kulshrestha vs. Sambhaji Rao and Another* (2008) 5 SCC 58 to assert that specific performance cannot be decreed as no proper description of the property was given in the Agreement. To say the least, in the instant case, Khasra numbers have been given in the in-principle allotment of four acres of land by respondents in favour of petitioner. The ratio of Supreme Court's decision in *Vimlesh Kumari Kulshrestha (supra)* has no application to the facts of the instant case, as it is prerogative of respondents to allot four acres out of these Khasras and also because in the instant case, actual demarcation of the said four acres of land could not be possibly given in the in-principle allotment letter. It is a ministerial act, which is to be performed by respondents and on this specious ground, respondents cannot wriggle out of their obligation to spell out as to what is the quantum of lease money, etc. to be deposited and to execute the lease-deed in question in respect of four acres of land in question.

18. This Court is conscious of the fact that in-principle allotment of 'subject land' was made to petitioner way back in the year 1985 and at that time, the premium for lease was ₹30,000/- per acre and annual ground rent was at the rate of 2.5% of the premium. Supreme Court in *ITC Limited (supra)* had evolved an equitable solution which aptly applies to the instant case. The solution evolved was to apply the pre-determined rates of the relevant year. The guiding factor in the instant case would be to apply the last revised pre-existing rates and the

corresponding annual ground rent. It is deemed appropriate to adopt such a course as change in policy decision to allot the lands by auction cannot be retrospectively applied to the instant case. Thus, it will be equitable to direct the respondents to forthwith execute the lease-deed in respect of the '*subject land*' in favour of petitioner, upon petitioner depositing the last revised pre-existing rates (*to be intimated by respondents to petitioner*) with interest at the rate of 11% p.a. Thereafter, the respondents shall promptly execute the lease-deed in favour of petitioner promptly. Consequentially, impugned order is hereby set aside and a mandamus is issued to the respondents to forthwith execute a formal lease-deed in respect of '*subject land*' in favour of petitioner, provided petitioner promptly deposits the lease money, etc., at the afore-referred pre-determined rates upon being informed about it.

19. With aforesaid directions, both these petitions are disposed of while leaving the parties to bear their own costs.

(SUNIL GAUR)
JUDGE

FEBRUARY 08, 2019
s/r