

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
(Appellate Side)

WPA 12044 of 2017
with
CAN 1 of 2017 (Old No. CAN 5889 of 2017)
(Through Video Conference)

Reserved on : 29.09.2022
Pronounced on: 30.09.2022

DB Block Residents Association & Anr.

...Petitioners

-Vs-

State of West Bengal & Ors.

...Respondents

Present:-

Mr. Siddharth Mitra,
Mr. Saptarshi Banerjee,
Mr. Soumabha Ghose,
Mr. Deepan Kumar Sarkar,
Mr. Ayush Jain,
Ms. Ananya Sinha,
Ms. Deepti Priya, Advocates

... for the Petitioners

Mr. S.N. Mookherjee, Learned Advocate General,
Mr. Tapan Kumar Mukherjee,
Mr. Joyak Kumar Gupta, Adocates

....for the State

Mr. Sirsanya Bandopadhyay,
Mr. Arka Kumar Nag,
Mr. Tirthankar Dey,
Mr. Souvik Roy, Adocates

....for the BMC

Mr. Amitava Chaudhuri,
Ms. Monoleena Chaudhuri,
Mr. N. Roy, Adocates

....for the Board

Coram: THE HON'BLE JUSTICE PRAKASH SHRIVASTAVA,
CHIEF JUSTICE
THE HON'BLE JUSTICE RAJARSHI BHARADWAJ,
JUDGE

Rajarshi Bharadwaj, J:

1. The instant writ petition has been filed in the Appellate side of this Hon'ble High Court in relation to an illegal construction and transferring of government land (Plot No. DB-118 sector 1, Salt Lake, Kolkata- 700064) earmarked for primary school in the Master Plan of Bidhannagar.
2. The facts of the case in a nutshell are that the Master Plan of Salt Lake dated 25.01.1967 had earmarked spaces for colleges, higher secondary schools, primary schools, park, local centers and plots for shops. For the interest of children a plot being numbered DB-118 had been allocated for the establishment of a primary school in the residential area by the government.
3. The Department of Higher Education vide letter No. 450-Edn(T) dated 12.07.2006 informed the Urban Development Department herein the respondent No.2 that the West Bengal Joint Entrance Board herein respondent No. 4 had requested for allotment of a plot of land measuring around 25 cothahs in Bidhannagar to build its office since they had no separate office for the Board that is constituted under the West Bengal Joint Entrance Examination Board Act, 2014.
4. The respondent No.2 vide letter No. 798-UD/O/M/SL(AL/NR)8L-06/07 dated 04.03.2009 requested the Executive Engineer to search for a plot of land measuring around 25 kathas in Bidhannagar for the purpose of construction of the office of respondent No.4. The Executive Engineer vide letter No. 855/D(E) dated 21.10.2009 replied to the respondent No.2 that one vacant plot being plot No. DB-118 in Sector-1, Salt Lake was lying vacant of about 20 kathas that has been earmarked as "School Plot" in the working map of Salt Lake City.

5. The Urban Development Department vide letter No.168-UD/O/M/SL (AL/NR)/8L-06/07 dated 15.01.2010 informed the Principal Secretary of Higher Education Department that the Governor of West Bengal under the Government Grants Act, allotted the said plot in favour of the Higher Education Department for construction of office of West Bengal Joint Entrance Examination Board for a period of 999 years on payment of provisional salami of rupees one lakh per Katha.

6. On 16.03.2010 the West Bengal Joint Entrance Examination Board received a letter issued by the Higher Education Department, thereby authorizing the Chairman of the West Bengal Joint Entrance Examination Board on behalf of the Higher Education Department, to perform all necessary formalities including making required payments from the exchequer of the West Bengal Joint Entrance Examination Board and to follow up the work for possession of the land and subsequently the construction of the office building thereon.

7. On 28.03.2017 the petitioner No.1, which is a society registered under the West Bengal Society Registration Act, 1961 and petitioner No.2, who is the secretary of the said society through R.T.I sought copy of the decision taken by the authorities for construction of the office building alongwith a sanctioned plan on plot no. 118 of DB block and details of the firm being authorized to construct building on the said plot. However, no answers were provided by the authorities. On the other hand, upon completion of all the procedures, the construction works for building the office of the West Bengal Joint Entrance Examination Board commenced on 20.04.2017.

8. A few days after the commencement of the construction work the members of petitioner No.1 obstructed such construction and asked the contractor employed for construction of the building to stop the work at the site as the said land was allotted for building primary school.

9. Thus, being aggrieved by such construction of office building in a plot that was essentially allocated for building primary school, the petitioner No.1 and petitioner No.2 filed the present petition. Hence, the following are the issues before this Court:

- I. Whether releasing the plot of land being Block No. DB-118 Sector-I Salt Lake duly earmarked as primary school by the Respondent No.1 and 2 is in violation of The West Bengal Town and Country (Planning and Development) Act, 1979, as mandated by Article 45 read with Article 21A of the Constitution of India?
- II. When the Master Plan specifies the use of a plot for building primary school in a residential area whether the plot can be used for any other purpose?

10. The following are the contentions of the petitioner Nos.1 and 2:

- i. By allotting the plot of land for construction of the office building the state authorities have deliberately throttled the rule of law as the construction would affect the quality of life of the residents living in the said area.
- ii. According to the West Bengal Government Township (Extension Civic Amenities) Act, 1975 'School' comes within the definition of civic amenities and the executive authorities cannot deprive the residents of such amenities. Moreover, as per Part-III of Schedule IV of the said Act, only Educational Institutions as per planning falls within compatible use in respect of residential area.
- iii. The plot in question was clearly earmarked for building primary school and as per the provisions of the West Bengal Town and Country (Planning and Development) Act, 1979.

- iv. The State Government has defeated the object and reasons behind enactment of West Bengal Primary Education Act, 1973, which was enacted for development, expansion, management and control of primary education with a view to make it universal, free and compulsory.
 - v. Any scheme in a residential area is to be planed in accordance with the requirements of the residents. If the scheme is nullified by arbitrary act and derogation of power of the authority the court should quash such order.
11. The Respondent Nos. 1 and 2, i.e., The State of West Bengal and The Principle Secretary of the Urban Development Department, submits that:
- i. The map within the plot of land in question has been earmarked as primary school, is only a working map. It is not the LUDCP (Land Use and Development Control Plan) map as required to be prepared under Section 31 of the West Bengal Town and Country (Planning and Development) Act, 1979. Moreover, as per the Urban & Regional Development Plans Formulation and Implementation (URDPFI) guidelines 2015 the land for public and semi-public zone may include the permitted uses, activities for government and semi-government offices, education institutions, schools, colleges etc. In the instant case, the building to be used as office for the respondent No.4 certainly falls within the ambit of educational institutions.
 - ii. There are several primary schools permitted to be established around Salt Lake on plots which were not earmarked for school in the original map. Thus, keeping with the changing need for development, plans can be changed.
 - iii. The allotment of the land in question to the Higher Educational Department is not at all in violation of any constitutional provisions as alleged since it is for the benefit of the public at large.

- iv. The construction of the office building is solely for educational purpose and not for commercial use. Therefore, the initial aim for allotment of the disputed land and the present use of it for building the office of the West Bengal Joint Entrance Examination Board has not been vitiated.
12. The contentions of the Respondent No.4 are:
- i. The West Bengal Joint Entrance Examination Board is engaged in conducting Joint Entrance Examinations for selecting students for admission into the undergraduate courses in the Engineering and Technology, post graduate professional, Vocational and General Degree Courses in various Educational Institutions rendering Professional, Vocational and General Education in West Bengal. Thus, the board does not carry out any profit making assignment but provides smooth machinery for admission into several educational courses.
 - ii. The Board does not conduct any of the above mentioned examinations in its premises rather hires different schools all over the state to conduct such examination. Moreover, the entire procedure from filling up of form to publication of results is conducted in an online mode owing to which there is no scope of huge commotion or congestion in the locality.
 - iii. The Board has to keep sufficient space in the proposed building merely for storing the answer sheets of the students for a considerable period of time.
 - iv. The purpose for allotting the disputed plot of land for building primary school was for facilitating such amenities to people staying in and around the said locality. However, today there are a total of seventeen government schools within the jurisdiction of Bidhannagar, i.e., in the vicinity of the disputed plot of land. In addition to that, thirteen plots of land are vacant within that area which has been earmarked for school/educational purpose.

13. Having heard the learned counsel for parties and perusal of records this Court is of the view that by allocating the land in question to Respondent No.4, the Respondent Nos. 1 and 2 have not violated the Master Plan as alleged by Petitioner Nos.1 and 2. The residents of the locality have not been deprived of any civic amenities extended to them by the legislature.

Supreme Court in Gujarat University and Another -vs- Krishna Ranganath Mudholkar and Others, reported in 1963 Supp (1) SCR112; AIR 1963 SC 703 held that the Expression “Education” is of wide importance and includes all matters relating to imparting and controlling education. The purpose of the Master Plan is to provide the land in question for “public educational purpose” without any profit motive. The disputed plot marked as school plot can be used for any educational purpose and also for imparting and controlling education. Further, Section 31(4)(a)(i) of the West Bengal Town and Country (Planning & Development) Act, 1979 states that the LUDCP (Land Use and Development Control Plan) shall “indicate broadly the manner in which the planning authority or the Development Authority proposes that the land in such area should be used”. In the instant case, the plot has been used in the manner as led down in the Master plan by building an office for the respondent No.4.

14. Furthermore, the West Bengal Joint Entrance Examination Board has been reconstituted by the West Bengal Joint Entrance Examination Board Act, 2014 and has been duly passed by the legislature and is now fully under the control of the Higher Educational Department, Government of West Bengal. Therefore, West Bengal Town and Country (Planning and Development) Act, 1979 is not violated by allotment of the land for the construction of office building of the West Bengal Joint Entrance Examination Board and the plot is used and has been allotted to West Bengal Joint Entrance Examination Board for *bona fide* interest of the public at large.

15. For the foregoing reasons the writ petition is dismissed. All pending applications are accordingly disposed of.

(PRAKASH SHRIVASTAVA)
CHIEF JUSTICE

(RAJARSHI BHARADWAJ)
JUDGE

Kolkata

30.09.2022
PA(BS)