
(2009) 02 P&H CK 0208
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 10990 of 2007

Delhi Public School Society and another	APPELLANT
Vs	
Haryana Urban Development Authority and others	RESPONDENT

Date of Decision : 24-02-2009

Acts Referred:

Citation : (2009) 2 PLR 448 : (2009) 5 RCR(Civil) 776

Hon'ble Judges : M.M.Kumar, J and Jora Singh, J

Advocate : Mr. M.L. Sarin, Senior Advocate, with Mr. Sumeet Goel, Advocate. Mr. Aashish Chopra, Advocate. Mr. Ajay Nara, Advocate., Advocates for appearing Parties

Judgement

M.M. Kumar, J.—This order shall dispose of a bunch of 6 petitions filed under Article 226 of the Constitution because in all the petitions common questions of law have been raised. Moreover, in all the petitions challenge is to the separate but identical orders dated 5.7.2007, passed by the Estate Officer, Haryana Urban Development Authority, Faridabad. The petitioners have also prayed for directing the respondents not to interfere in running of their schools including preprimary/nursery classes.

2. Petitioners No. 1 in these petitions are privately managed educational institutions/Societies, who are imparting education to the children of the residents by running their schools in different sectors of Faridabad. The Haryana Progressive Schools" Conference (Regd.) petitioner No. 2 in these petitions is an association of about one hundred and ninety eight unaided privately managed schools in the State of Haryana. The petitioners established their schools after raising construction over the plots allotted to them by the Haryana Urban Development Authority between 1982 to 1996.

3. The Estate Officer, HUDA, Faridabad, issued show cause notices under Section 17(3) of the Haryana Urban Development Authority Act, 1977 (for brevity, the Act) to the petitioners. The reason disclosed in the show cause notices was that the petitioners are running `nursery schools", which is termed as `illegal". The

Estate Officer called upon the petitioners to show cause as to why the site and building be not resumed alongwith forfeiture of whole or any part of the money paid.

4. The petitioners have claimed that the basis of issuance of such show cause notices to them and other schools is the judgment delivered by the District Consumer Disputes Redressal Forum, Faridabad, dated 7.11.2005, on a complaint filed by one Disha Education Society. The other basis for issuance of show cause notices to them is the purported reliance of the respondents on a Public Interest Litigation filed in this Court by way of C.W.P. No. 4434 of 2007 (Comprehensive Child Development and Welfare Society and another v. The Administrator, HUDA). It is claimed that this Court had directed the respondents to examine each individual case and to pass speaking order. The petitioners have also relied upon the terms and conditions of the lease deed which postulate that the petitioners were required to establish "a school" without restricting the operation of the school to primary/middle/secondary and senior secondary classes. They have asserted that the expression would include all the classes of nursery etc.

5. It has been disclosed by the petitioners that on 4.4.2007, when C.W.P. No. 4434 of 2007 (supra) involving PIL came up for consideration, the learned Advocate General, Haryana, brought to the notice of the Court that Estate Officer, HUDA, Faridabad had already issued notices for resumption of sites under Section 17(3) of the Act and hearing in pursuance to the said notices was fixed for 16.4.2007. This Court while observing that the Estate Officer, HUDA, Faridabad, should pass a speaking order in order to ascertain the stand of the authorities for consideration of the matter pending before this Court, adjourned the matter for 25.7.2007 for further consideration. On the said date, the petitioners in CWP No. 4434 of 2007, made a statement that since the Estate Officer, HUDA, has passed the orders, the said writ petition be dismissed as withdrawn. This Court ordered accordingly.

6. On 5.7.2007, the Estate Officer, HUDA, Faridabad, passed separate but identical orders in respect of all the schools and directed them to stop the alleged misuser within 15 days from the date of order, failing which the site was to be resumed without any further notice. In the speaking order dated 5.7.2007, the Estate Officer after referring to the proceedings of C.W.P. No. 4434 of 2007 (supra) held on 4.4.2007, mentions that in order to give effective opportunity to all the affected parties, a public notice was published in the leading newspapers requiring all such persons who were running preprimary/nursery classes in their respective schools in violation of the allotment letter, to make their submissions in writing as well as to appear before him on 16.4.2007 to show cause as to why action under the Act for violations of the terms and conditions of the allotment letter may not be taken against them. A perusal of order further shows that the authorised representatives of the schools pleaded before the Estate Officer that there was no concept to separate preprimary schools since preprimary is an

integral part of primary. The Central Board of School Education and the Indian Council of School Education also recognises the preprimary as a part of formal school of the level of High/Higher Secondary/Senior Secondary School. It was also disclosed that on the basis of directives of Honble the Supreme Court and High Court of Delhi, a committee under the Chairmanship of Shri Ashok Ganguly, Chairman, CBSE was formed to prescribe the norms for admissions in nursery and KG classes in CBSE affiliated Secondary and Senior Secondary Schools. The HUDA had allotted nursery school sites after 1999 whereas the schools in question are running nursery/preprimary classes since their inception, which is also in the larger interest of the students as well as the institutions. After noticing the aforementioned stand, the Estate Officer proceeded to record the following findings in all the cases :

" I have also gone through the provisions of the Haryana School Education Rules, 2003. As per these Rules, the schools are classified as Pre Primary, Primary, Middle, Secondary, Senior Secondary Schools. Moreover, it has also been clarified that the PrePrimary Schools are those schools, which impart education below primary stage whereas primary schools and middle schools have been described as schools imparting primary stage of education having classes 1st to 5th and classes 1st to 8th respectively. Similarly Secondary School and Senior Secondary Schools have also been classified for imparting secondary stage of education having classes upto 1st to 10th or 6th to 10th and schools having classes upto 12th with or without primary classes. The school site was allotted by HUDA just to run a Primary School and not the nursery or Pre nursery school. In the light of the terms and conditions of the allotment letter, wherein it has been specifically mentioned that sites allotted by HUDA have to be used for the purpose stated in the allotment letter and the Haryana School Education Rules, 2003, which have provided for the classification of schools and also the clarification given by CBSE regarding as to whether CBSE affiliated schools can run Nursery classes or not, I have formed an opinion that the allottee has violated the terms and condition of allotment, thereby, necessitating resumption of the site. However, since the schools have been running the Preprimary/Nursery Classes, I grant them an opportunity to stop misuser of the allotted site within a period of 15 days, failing which the site in question shall stand resumed without any further notice or order. It is made clear that no further time shall be granted to stop the misuser and if the intimation regarding stoppage of misuser with an undertaking not to restart the misuse of allotted site is not filed with the office within the above stated stipulated period of 15 days, the order of resumption shall come into force immediately."

7. Feeling aggrieved against the order dated 5.7.2007, certain schools alongwith Haryana Progressive Schools Conferencepetitioner No. 2 filed C.W.P. No. 10909 of 2007 (Haryana Progressive Schools Conference and others v. State of Haryana and others) in this Court. On 25.7.2007, the said writ petition was dismissed as withdrawn enabling the petitioner schools to file separate writ petitions. Accordingly, order dated 5.7.2007 passed by the Estate Officer, HUDA, Faridabad,

has been challenged in this bunch of writ petitions.

8. It is pertinent to mention here that on 25.7.2007, when CWP No. 10990 of 2007 (one of the writ petitions of this bunch) came up for consideration before the Honble Ist Division Bench, the following order was passed :

" It has been contended before us by Sh. M.L. Sarin, learned senior counsel for the petitioners that the writ petition, on the basis of which the impugned order has been passed, has been withdrawn by the petitioners and in that petition, no order was passed by this Court directing the said officer to pass the impugned order. Another submission of the counsel for the petitioners is that the reliance placed by the Estate Officer on Haryana School Education 2003 Rules is misplaced. It was also further contended that in terms of allotment, there was no bar for running a PreNursery School in a Residential Senior Secondary School otherwise it would have also encompassed in its folds a bar for running a PreNursery School. Had there been such an intention of the authorities then to mean to the contrary at the time of allotment, then the same would have been provided in the terms of the lease agreement.

Without adverting to the arguments advanced by the learned counsel for the petitioners, we would like Mr. Ajay Nara, counsel appearing for HUDA to place on record the status of the School sites which have been allotted specifically for PreNursery Schools. Mr. Nara is also directed to file an affidavit as to what would be the availability of the students who would be seeking admission to PreNursery Classes in the next ten years. The affidavit should also specify that prior to coming into force Haryana School Education 2003 Rules, whether there were different sites for Schools, as has been done pursuant to Haryana School Education 2003 Rules i.e. Pre Nursery, Primary, Middle, High and Senior Secondary School. We would also like to know from the counsel appearing for the petitioners whether the petitioners are fulfilling the condition of the lease by giving admission to the children from weaker sections of the society up to 10% as per the term of allotment.

Counsel appearing for HUDA prays for some time to file affidavit. Let the same be filed within 4 weeks. Rejoinder, if any, be filed by the petitioner within 4 weeks thereafter.

Meanwhile, the operation of the impugned order is stayed.

Copy of the order be given dasti on the payment of the usual charges."

9. Similar orders were also passed on 1.8.2007, 10.8.2007 and 22.8.2007 in CWP Nos. 11577, 12272 of 2007 and 13034 of 2007 respectively. A bare perusal of the orders dated 25.7.2007, 1.8.2007, 10.8.2007 and 22.8.2007, passed by the Hon'ble Ist Division Bench shows that the HUDA was required to place on record the status of the School sites which have been allotted specifically for Pre Nursery Schools. It was further directed to file an affidavit as to what would be the availability of the students who would be seeking admission to Pre Nursery

Classes in the next ten years. Specific information by way of affidavit was also sought that prior to coming into force of the Rules, whether there were different sites for Schools, as has been done pursuant to coming into force of the Rules i.e. Pre Nursery, Primary, Middle, High and Senior Secondary School. This Court also sought information whether the petitioners are fulfilling the condition of the lease by giving admission to the children from weaker sections of the society up to 10% as per the term of allotment.

10. In pursuance to interlocutory orders dated 25.7.2007, passed in CWP No. 10990 of 2007, the Estate Officer, HUDA, Faridabad, has filed an affidavit dated 14.2.2008 mentioning that 14 sites have been allotted for pre-nursery school, out of which only 9 sites are fully constructed and schools are running therefrom. With regard to availability of students who would be seeking admission to pre-nursery classes in the next ten years, the figures of 70,000/ approximately has been mentioned. It has further been mentioned that the HUDA has allotted 66 school sites for primary, middle, high and senior secondary schools other than 14 pre-nursery school sites. In all these 66 schools pre-nursery classes are running. A Civil Misc. No. 22978 of 2008 in CWP No. 11405 of 2007 was also filed on behalf of the respondents for placing on record 9 photocopies of the allotment letters pertaining to land allotted to nursery schools at Faridabad.

11. In the written statements filed in these cases, common stand has been taken by the respondents. It has been asserted that writ petitions against order dated 5.7.2007 are not maintainable because the petitioners have not availed the remedy of appeal. It has further been mentioned that there is arbitration clause in the letter of allotment which postulate that all dispute and difference arising out of or in any way touching or concerning the allotment whatsoever has to be referred to the sole arbitration of the Chief Administrator or any other nominee appointed by him, whose decision is to be final and binding on the concerned parties. It has further been submitted that once the purpose of allotment has been specifically mentioned in the letter of allotment i.e. High/Higher Secondary/ Senior Secondary School etc. then the same creates a restriction and the petitioners cannot plead that allotments were made for the purpose of running pre-nursery schools. It is, however, claimed that for the first time, the respondents came to know about the violation of the lease deed/allotment letter when they were supplied a copy of CWP No. 4434 of 2007 (supra). Other broad facts have not been disputed although it has been claimed in a blanket manner that the impugned order dated 5.7.2007 does not suffer from any legal infirmity.

12. We have heard learned counsel for the parties and minutely gone through the paper books of each case with their able assistance. It would be appropriate to gather the details of allotments made in favour of the petitioner schools, Sector, size of plot and the purpose of allotment as indicated in the allotment letters as well as the lease deed/Deed of Conveyance which were subsequently executed between HUDA and the various allottees. The aforementioned details are depicted in the following chart :

Sr. No.

C.W.P. No.

Allotment Letter/Deed of Lease/Deed of Conveyance

Sector

Size

Purpose of allotment of site as mentioned in the allotment letter/Deed of Lease/Deed of Conveyance

1.

10990 of 2007

RAI96/149, dated 29.3.1996

19 Faridabad

7.18 acres (34751.2 sq.yds.) + 0.8 acres (3872 sq.yds)

Residential Senior Secondary School

2.

11427 of 2007

RAIII(76)82/13230, dated 18.6.1982 Deed of Lease dated 4.3.2005

17, Faridabad

8.3 acres

Purpose not disclosed in the allotment letter. However, as per deed of lease land was allotted for `Higher Secondary School".

3.

11436 of 2007

RAIII93/756757, dated 2.3.1994 Deed of Lease dated 9.5.2001

37 Faridabad

5.0035 acre

High School

4.

11581 of 2007

RAI95/Instt./796, dated 10.11.1995

21A Faridabad

2.25 acres

High School

5.

11593 of 2007

RA385/313/12983, dated 16.7.1985 Deed of Lease dated 20.9.2006

14, Faridabad

5 acres

As per allotment letter for 'High School', whereas Deed of Lease describes 'Higher Secondary School'

6.

13029 of 2007

(i) RAIII93/406, dated 10.11.1993(ii) RAIII94/908, dated 27.4.1994

14 Faridabad

1.5013772 acre (7266.66 sq. yds.) 58" x 32" 0.435

(i) Allotment letter dated 10.11.1993 describes 'for 'High School'.(ii) Allotment letter dated 27.4.1994 describes 'for play ground' additional land

13. A perusal of the aforesaid table shows that specific purpose of allotment has been specified in the letters of allotment i.e. High School, Higher Secondary School or Senior Secondary School alone. Similar stipulation has been incorporated in the lease deed executed between the petitioners and the Haryana Urban Development Authority. Therefore, it cannot be concluded that the petitioners could be permitted to use the allotted sites for the purposes of running prenursery/nursery classes. We do not find any substance in the claim made by the petitioners that they are running their respective schools for the last 10 to 23 years and there was no statutory classification with regard to nursery/primary/middle/secondary and senior secondary level of classes in the State of Haryana when land was allotted to them for running the High or Higher Secondary schools and that the classification for the first time was made by the Haryana School Education Rules, 2003 (for brevity, 'the Rules'), which were enforced on 30.4.2003. Once a site has been allotted for a High School, Higher Secondary or Senior Secondary School then it cannot be claimed by the petitioners, as of right to run the classes for prenursery and nursery.

14. The allotment letters issued to the petitioners clearly postulate that allotment of plots has been made to them for running High/Higher Secondary/Senior Secondary Schools on lease hold basis. According to clause 18 in most of the cases, it is mandated that the school is to reserve 10% seats for students belonging to economically weaker sections of the society and the fee which is

charged by the Government schools would be charged from students admitted under 10% category. Likewise, clause 20 fixed the priorities and postulate that the children of plot holders/residents of the sector should be admitted on priority basis and the school is primarily meant for the residents of the sector only.

15. It is not out of place to notice that in pursuance to order dated 25.7.2007 passed in CWP No. 10990 of 2007, the Officiating Principal and Manager, Delhi Public School, Sector 19, Faridabad, has filed an affidavit dated 10.11.2008 by stating that 10% of the students are being admitted, which is evident from para Nos. 2 and 3 of the affidavit and the same reads as under :

"2. That for the session 20072008, there were 1 student in the Nursery Class, 61 students each in class 1 to 3; 1 student each in class IV, VII, IX and X; 2 students each in class VIII and XII & 9 students in class IX i.e. total of 201 students under the EWS/Shiksha Kendra Category. The total expenditure/fee concession for the EWS/Shiksha Kendra Category students for the session 2007 2008 was 17,18,969/.

3. That for the session 20082009, there are 1 student each in Preparatory Class as also in class IX and XII; 31 students in class I; 63 students in class II; 61 students each in class III and IV & 2 students in class XI i.e. total of 221 students in the EWS/Shiksha Kendra category. The total expenditure/fee concession of the students for the EWS/Shiksha Kendra category for the session 20082009 is Rs. 7,91,178/ till 31.10.2008 against the proposed budget of Rs. 18,00,000/."

16. It has come on record that the petitioners have been using these premises for running prenursery and nursery classes over a period ranging from 10 to 23 years. Therefore, it would not be equitable to permit resumption of their plots on that basis. We feel that in the facts and circumstances of the case it would be just and fair if the petitioners are directed to file an undertaking that they would not run prenursery/ nursery classes in the allotted premises. Such an undertaking would put an end to the misuse of the site/premises, which is not permitted by the terms and conditions of the allotment letter. Once the misuse is stopped then the impugned orders would also in a way become ineffective. Accordingly, we dispose of these writ petitions by issuing following directions :

(a) Within two months from today, the petitioners shall file an undertaking before the competent authority i.e. Estate Officer, Haryana Urban Development Authority, Faridabad, stating that they would discontinue the pre nursery/nursery classes from the next academic session i.e. 200910 and would not admit the students in 2009 nor the students would be kept in the nursery class on the pretext that they have been promoted from prenursery class. In other words, the undertaking has to be clear that no classes of prenursery and nursery would continue in the academic session 200910;

(b) The Haryana Urban Development Authority shall accept the aforesaid undertaking as sufficient compliance with the terms and conditions of allotment

letter/lease deed and pass appropriate orders withdrawing the impugned orders proposing to resume the site/premises of the petitioners; and

(c) In case the petitioners fail to file the undertaking in terms of the direction at (a) then the notice of resumption given to them may be taken to its logical end and the writ petition would be deemed to be dismissed.

17. The writ petitions stands disposed of in the above terms.