

(2012) 08 DEL CK 0459

In the Delhi High Court

Case No : Writ Petition (C) 11647 of 2006

Graduate School of Business and Administration Society

APPELLANT

Vs

Delhi Development Authority

RESPONDENT

Date of Decision : 30-08-2012

Acts Referred:

Citation : (2012) 08 DEL CK 0459

Hon'ble Judges : Sunil Gaur, J

Bench : Single Bench

Advocate : V.K. Sharma, for the Appellant; Rajiv Bansal, Advocate with Ms. Swati, for the Respondent

Final Decision : Dismissed

Judgement

Sunil Gaur

1. Implementation of Recommendation of 3rd March, 2000 (Annexure P-4) by respondent- Government of NCT of Delhi to respondent - DDA is sought by way of this writ petition. Vide Application of 20th May, 1999 (Annexure P-5) petitioner-Society had sought allotment of one acre of land for establishing business institute/school. Respondent's Institutional Allotment Committee in its meeting held in February, 2003 had recommended allotment of a plot measuring 1000 sq.m. i.e., Plot No.7, PSP Facility, Sector 25, Phase III, Rohini, Delhi. Since CBI had pointed out serious lacunae in the allotment of land by DDA to educational societies, the aforesaid recommendation was not accepted and the policy for allotment of institutional land was reviewed by the Central Government leading to amendment of DDA (Disposal of Developed Nazul Land) Rules, 1981 in December, 2004 providing auction as a mode of allotment of institutional land to bring about the transparency and also to generate much needed revenue.

2. It is a matter of record that the aforesaid amendment of the year 2004 in the DDA (Disposal of Developed Nazul Land) Rules, 1981 was quashed by a Single Judge of this Court vide its order in Society for Employment and Career

Counselling (Regd.) and Another Vs. Chairman, DDA and Others, . Soon thereafter, on 19th April, 2006, the DDA (Disposal of Developed Nazul Land) Rules, 1981 were again amended to restore auction as a mode of allotment of institutional lands and the validity of the DDA (Disposal of Developed Nazul Land) Rules, 1981 as amended in the year 2006 already stands upheld by Division Bench of this Court in W.P. (C) No. 2459-60/2005, Bhagwan Mahavir Education Society (Regd.) and Anr. vs. DDA & Ors, rendered on 25th March, 2011.

3. By relying upon the decisions in "Jasjit Kaur vs. Registrar, Co-Op. Societies & Ors." 161 (2009) DLT 562 (DB); "DDA vs. Amar Nath Garg" 161 (2009) DLT 532 (DB); "Abhishek Antil vs. National Aviation Company of India Ltd." 161 (2009) DLT 534 and Akhil Bhartiya Upbhokta Congress Vs. State of Madhya Pradesh and Others, , petitioner's counsel had contended that for no fault of the petitioner, its Application (Annexure P-5) for allotment of Institutional Land was kept pending by the respondent from the year 1999 and after a long wait, petitioner had sent a reminder of 1st February, 2006 (Annexure P-10) to the respondent regarding allotment of the land in question but to no avail. Thus, it was urged on behalf of the petitioner that for the lapse on the part of the respondent, petitioner cannot be made to suffer by applying the DDA (Disposal of Developed Nazul Land) Rules, 1981 as amended in the year 2006 and the petitioner's case deserves to be considered under the existing Rules which permitted allotment of Institutional land to the educational societies at pre-determined rates.

4. On behalf of the respondent, it was asserted that no right had crystallized in favour of the petitioner prior to the DDA (Disposal of Developed Nazul Land) Rules, 1981 being amended in the year 2006 and so, under the amended DDA (Disposal of Developed Nazul Land) Rules, 1981 allotment of Institutional Lands to private societies, like the petitioner, has to be by way of an auction and so, this petition deserves rejection as a Division Bench of this Court in Bhagwan Mahavir Education Society (supra) has already found the amended DDA (Disposal of Developed Nazul Land) Rules, 1981 to be valid.

5. Upon hearing and on perusal of the material on record and the decisions cited, this Court finds that the question of retrospective application of the DDA (Disposal of Developed Nazul Land) Rules, 1981 as amended in the year 2006 does not arise for consideration and so, the decisions in Jasjit Kaur, Amar Nath and Akhil Bhartiya (supra) are of no assistance to the case of the petitioner.

6. In Jasjit Kaur (supra), right had accrued prior to amendment of the Delhi Cooperative Society Rules as transfer of membership had taken place prior to amended Rules coming into force, whereas in the instant matter, it was merely a recommendation and no right had accrued in favour of petitioner to seek allotment in question and so, reliance placed upon the decision in Jasjit Kaur (supra) is clearly misplaced. Similarly, in Amar Nath (supra) the right to seek conversion of leasehold land to freehold had accrued prior to the change of policy and so, equitable principle of promissory estoppel was applied to consider the conversion under earlier policy of the year 1999 and so ratio of this decision does

not apply to the instant case.

7. In *Akhil Bhartiya* (supra), the existing policy for allotment of land by State of Madhya Pradesh was found by the Apex Court to be arbitrary and discriminatory and that there was no provision in the concerned Act or the Rules for disposal or transfer of the land, whereas in the instant case, there is DDA (Disposal of Developed Nazul Land) Rules, 1981 which holds the field, whose validity has been already upheld and so the ratio of the aforesaid decision does not advance the case of petitioner herein.

8. It is being so said because a Division Bench of this Court in *Bhagwan Mahavir Education Society* (supra) has held in no uncertain terms that right to allotment had not matured in favour of the educational societies prior to amendment of the DDA (Disposal of Developed Nazul Land) Rules, 1981 in the year 2006 and so, their entitlement has to be seen in light of the DDA (Disposal of Developed Nazul Land) Rules, 1981 as amended in the year 2006. In *Career Counselling* (supra), it has been ruled as under:-

x x x Generally speaking, law in force as on date of its applicability determines the rights and liabilities of a party. If between date of application and decision by the Statutory Authority, law changes, law applicable as on date of decision governs the field. Exception to the aforesaid is the dictum of the Supreme Court in the decision reported as *S.B. International Ltd. and Others Vs. Asstt. Director General of Foreign Trade and Others*, wherein their Lordships held that unless established that the authority dealing with the application was acting mala fide and was delaying taking decision and, therefore, could not benefit due to its own wrong, i.e. could not apply the law in force when decision was taken, normal rule that law in force as on date of decision, must govern.

9. In the face of the afore-noted legal position and the fact that there is no allegation of mala fide against respondent - DDA, it cannot be said that respondent had taken any undue benefit of keeping petitioner's application for allotment of the Institutional Land pending despite Recommendation (Annexure P-4) by respondent-Government of NCT of Delhi, for the allotment of land to the petitioner. Therefore, the law as applicable, on the date of decision would govern the field.

10. In the aforesaid perspective, the instant petition also meets the same fate as has been met by similar Institutions, like *Bhagwan Mahavir Education Society* at the hand of a Division Bench of this Court in *Bhagwan Mahavir Education Society* (supra). Resultantly, this petition is dismissed with no orders as to costs.