

(2012) 08 DEL CK 0465

In the Delhi High Court

Case No : Writ Petition (C) No. 3230 of 2007

Moon Light Education and Welfare Society

APPELLANT

Vs

Delhi Development Authority and Others

RESPONDENT

Date of Decision : 27-08-2012

Acts Referred:

Citation : (2012) 132 DRJ 105

Hon'ble Judges : Sunil Gaur, J

Bench : Single Bench

Advocate : Gaurav Mitra and Mr. Kartik Nagarkatti, for the Appellant; Rajiv Bansal, Advocate for R-1 to R-3 Mr. Anuj Tyagi and Mr. Sachin Chopra, Advocates for R-4 and R-5, for the Respondent

Final Decision : Dismissed

Judgement

Sunil Gaur

1. In May, 2003, the petitioner - an educational institution had sought allotment of land for a middle school at Model Town/ Dheerpur/ Rohini or Shalimar Bagh, Delhi from the respondent-DDA, who vide communication of 23rd May, 2003 (Annexure - F) had called upon the petitioner-society to submit the sponsorship for allotment of land from the Government of NCT of Delhi. Petitioner claims that though an Essentiality Certificate, having validity of three years w.e.f. 4th June, 2001 was obtained by the petitioner from the concerned authority and was submitted to the respondent-DDA along with Sponsorship Certificate of 16th April, 2003 with letter of 25th June, 2003 (Annexure-G colly), but the respondent-DDA had negligently failed to process the case of petitioner for allotment of land for school, despite petitioner fulfilling all the requisite formalities. It is asserted on behalf of the petitioner that vide letter of 29th January, 2004, request for processing petitioner's application to allot land for its school was reiterated but to no avail and petitioner had got the Essentiality Certificate renewed till June, 2008. In this writ petition, the three reliefs claimed are; firstly, to direct the Directorate of Education to extend / renew/ revalidate

the Essentiality Certificate of the petitioner till respondent-DDA takes decision to allot a suitable land to the petitioner, secondly, that petitioner be exempted from obtaining Sponsorship Certificate for allotment of land and the Essentiality Certificate and third relief sought is the main relief i.e. to direct the respondent-DDA to allot suitable land to the petitioner.

2. In the counter affidavit filed to this petition, the stand of respondent-DDA is that in pursuance to the Resolution of 19th January, 2006, Policy regarding allotment of land to schools etc. was renewed in order to strike the balance between the transparent mode of allotment and essential application of free education to the poor and accordingly, amended DDA (Disposal of Developed Nazul Land) Rules, 1981 (hereinafter referred to as the "Nazul Rules") notified on 19th April, 2006 came into operation whereby 50% of the available school plots were to be placed at the disposal of the Government and the remaining 50% to be auctioned to the public.

3. According to respondent-DDA, switchover from allotment of public land to educational institutions at the concessional rates was necessitated as CBI had pointed out serious lacunae in the allotment of land to the educational societies by the DDA. Counsel for respondent-DDA asserts that the amendment in the Nazul Rules in the year 2006 was brought about in the light of the Apex Court decision in Aggarwal and Modi Enterprises Pvt. Ltd. and Another Vs. New Delhi Municipal Council, declaring the public auction as transparent mean of disposal of public property. It is the case of the respondent-DDA that vide letter of 17th May, 2004 (Annexure R-3), the deficiencies in petitioner's application for allotment of land was pointed out. There is no rejoinder of the petitioner to assert that the said deficiencies, as pointed out in the letter of 17th May, 2004 (Annexure R-3) of respondent-DDA, were made good by the petitioner.

4. At the hearing, learned counsel for the petitioner had relied upon the decision of Single Bench of this Court in Glory Public School and Another Vs. Lt. Governor, Govt of NCT and Others, to urge that there can be no retrospective application of the amended Nazul Rules, as the eligibility of the petitioner in the year 2003 is to be seen.

5. To refute the aforesaid contention, it was urged by respondent's counsel that no enforceable right had accrued in favour of the petitioner prior to amendment of Nazul Rules in the year 2006 and so, petitioner cannot seek allotment of land at pre-determined rates, as the same would be contrary to the decision of a Division Bench of this Court in batch of petitions rendered on 25th March, 2011 in W.P.(C) No. 2459-60/2005, titled as Bhagwan Mahavir Education Society (Regd.) & Anr. Vs. DDA & Ors."

6. Upon considering the submissions advanced in the light of material on record and the decisions cited, it becomes evident that the petitioner had an arguable case to seek enforcement of respondent's offer to allot land for its school in pursuance to respondent's Communication of May, 2003 (Annexure-F) but

petitioner ought to have pursued its remedies to seek the allotment of land for its school at pre-determined rates and should not have remained content with the intimation of 25th June, 2003 (Annexure-G colly) to the respondent-DDA of having a valid Essentiality Certificate because the communication of 17th May, 2004 (Annexure R-3) of the respondent-DDA requiring the petitioner to submit revalidated Essentiality Certificate along with other requisite documents is not shown to have been complied with by the petitioner.

7. Without availing of the remedies against non- allotment of land to the petitioner from the year 2003 till the amended Nazul Rules came into force on 19th April, 2006, the petitioner cannot put the blame on the respondent-DDA for not allotting the land in question by relying upon Glory Public School (Supra), as in the aforesaid case despite time bound direction of four months, the respondent-DDA had not acted upon the Representation of the aforesaid school and in that context, it was said that the delay is attributable to the respondent. It is not so in the instant case.

8. The validity of the amended Nazul Rules has been already upheld by a Division Bench of this Court in Bhagwan Mahavir (Supra), wherein the allotment having not matured prior to the Nazul Rules as amended in 2006, was held to be valid ground for not allotting land at pre-determined rates to the educational societies like the petitioner by observing as under:-

29. We are, thus, of the considered view that the interpretation of Rules placed before us by the DDA is the correct view and the petitioners have no case in this behalf in view of no allotment having matured in their favour prior to the amendments of the said Rules.

Thus, the question of retrospective application of the Nazul Rules, as amended in the year 2006 to the cases pending prior thereto, which had not matured by then, does not arise. Thus, the reliefs sought in this petition are declined, while leaving the parties to bear their own costs.