

(2011) 05 DEL CK 0316
In the Delhi High Court
Case No : LPA No. 1781 of 2006

Mother Teresa Institute of Management (Regd.)	APPELLANT
Vs	
Delhi Development Authority	RESPONDENT

Date of Decision : 27-05-2011

Acts Referred:

Constitution of India, 1950 — Article 226
Delhi Development Act, 1957 — Section 22
Delhi Development Authority (Disposal of Developed Nazul Land) Rules, 1981 — Rule 5

Citation : (2011) 05 DEL CK 0316

Hon'ble Judges : Sudershan Kumar Misra, J; Sanjay Kishan Kaul, J

Bench : Division Bench

Advocate : P.V. Kapur and Ankit Jain, for the Appellant; Rajiv Bansal, Razia Ali and Abhir Datt, for the Respondent

Final Decision : Dismissed

Judgement

Sanjay Kishan Kaul, J.—A number of educational institutions filed writ petitions under Article 226 of the Constitution of India before this Court aggrieved by the non-allotment of land to them at pre-determined rates under the Delhi Development Authority (Disposal of Developed Nazul Land) Rules, 1981 (hereinafter referred to as the "said Rules"). Such Petitioners included higher and technical institutes, schools and even hospitals. The common case made out was that their applications for allotment of Nazul land at pre-determined rates was at advanced stage after due clearance but on the eve of proposed allotment the policy was changed and the land was now sought to be disposed of only by way of public auction, which would imply much higher rates rather than the pre-determined rates.

2. We may note at this stage that the said Rules have seen various amendments, i.e. the position prevalent prior to 2002, amendments made effective from 5.7.2002, amendments made effective from 9.12.2004 and amendments made effective from 19.4.2006. The said Rules have been framed under the Delhi

Development Act, 1957 (hereinafter referred to as the "said Act") and Section 22 of the said Act provides for the developed and un-developed land in Delhi to be placed at the disposal of the DDA by the Central Government, which is known as Nazul land.

3. We may add that the last amendment to the said Rules was carried out post the judgment rendered by the learned single Judge of this Court, which has been impugned in the present LPA since the policy decision taken by the DDA on 15.12.2003 to dispose of Nazul land only by auction was held contrary to Rule 5 of the said Rules and was, thus, declared illegal and void. The lacuna found in the said Rules by the said judgment whereby societies registered under the Societies Registration Act were not to be covered by the policy decision of 15.12.2003 was sought to be got over by the last set of amendments.

4. The challenge laid to the last set of amendments made effective from 19.4.2006 has been repelled by this Court in WP (C) No. 2459-60/2005 titled Bhagwan Mahavir Education Society (Regd.) and Anr. v. DDA and Ors. connected matters decided on 25.3.2011. It has been held that under the existing Rules, it is the mode of auction which is available for disposal of the Nazul land for higher and technical education institutes, schools and hospitals other than cases which fall within the domain of Rule 5 read with Rule 20 of the said Rules and the Petitioners therein did not fall in that category.

5. We had recorded in our order dated 5.5.2011 that the challenge laid by the DDA to the impugned judgment in LPA Nos. 1114/2006, 1115/2006, 1117/2006, 1118/2006, 1123/2006, 1125/2006, 1640/2006, 1642/2006, 1646/2006, 1647/2006 was withdrawn by the counsel for the DDA as in his view our judgment in Bhagwan Mahavir Education Society (Regd.) and Anr. v. DDA and Ors. connected matters (supra) protected the interest of the DDA. In fact, other LP As filed by private parties also stand withdrawn.

6. The Appellant herein being one of the original Petitioners is, however, aggrieved with some part of the directions in the impugned order. These directions relate to the DDA being required to identify sites it intends to allot to societies, holding of draw of lots in case the number of eligible societies are more than the plots or adopting some rational criteria on the ground that plot No. 15-X, Karkardooma, Delhi measuring 0.5 acres was already earmarked for the Petitioner and thus that allotment should not be impaired by such direction. It is the submission of the Appellant in the appeal that once the Appellant was found entitled to allotment the DDA should have been directed to allot the land already earmarked for the Appellant society.

7. Learned Counsel for the Appellant, faced with the judgment in Bhagwan Mahavir Education Society (Regd.) and Anr. v. DDA and Ors. connected matters (supra) sought to distinguish the present case on its own facts to contend that despite that Judgment, the Appellant herein would be entitled to the plot. The factual basis for the same is set out hereinafter.

8. The Appellant claims that it applied for allotment of land on 14.12.2000 and the Director of Higher Education, GNCTD sponsored the name of the Appellant for allotment of institutional land on 18.1.2001. It is the case of the Appellant that the Lieutenant Governor (for short "LG") approved the change of land use with a note on the relevant plan for allotment on 1.11.2002 and plot No. 15-X was earmarked for the Appellant. Such change of land use was to benefit three allottees, viz., the Appellant, Missionaries of Charity and New Millennium Education Society.

9. The Appellant claims that allotment was made to Missionaries of Charity on 15.1.2003 and that too without reference to the Institutional Allotment Committee. The Institutional Allotment Committee made a recommendation in favour of the Appellant in February, 2003 but the allotment letter was not issued. The allotment was also made in favour of New Millennium Education Society on 6.3.2003.

10. The Appellant claims that it has been subject to hostile discrimination as initially the Director, Higher Education, GNCTD withdrew the sponsorship for no reason, without any show cause notice on 13.4.2004. The Appellant succeeded in the challenge to the said action on WP (C) No. 6429/2004 decided on 6.5.2004 which, however permitted a decision to be taken post a show cause notice. It is thereafter that a show cause notice dated 17.5.2004 was issued by the Director, Higher Education, GNCTD to which the Appellant filed a response but the decision went against the Appellant on 16.6.2004. This decision was then challenged in WP (C) No. 11455/2004 and an amendment was issued on 29.9.2004 directing the DDA to process the case of the Appellant as per law.

11. There is really a dual plea raised by the Appellant:

- i. Inordinate delay in processing the application of the Appellant though the mandate of an office order No. F.1(60)/91 - Istl./3027 dated 19.6.1991 is to complete all formalities within three (3) months from the date of the application.
- ii. A discriminatory treatment, as two other similarly situated institutes had already been allotted land.

12. Learned Counsel for the Appellant submitted that it is only on filing of the writ petition that the DDA for the first time took a stand in their counter affidavit that in view of the policy decision dated 15.12.2003 to make allotment only by auction and the consequent amendment to Nazul Rules dated 9.12.2004, the case of the Appellant could not be processed for allotment. These Nazul Rules, of course, were subsequently amended in 2006 as noticed aforesaid. It is the case of the Appellant that if the policy decision dated 15.12.2003 stood in the way of the Appellant, then allotment could not have been made to Lal Bahadur Shastri Institute of Management, Ritanand Balved Education Foundation and Central Government Industrial Workers Co-operative House Building Society Ltd., who were allotted land after policy decision.

13. The amended Rules were found not to apply to a society and this deficiency was conceded by the learned ASG before the learned single Judge and as recorded in the impugned Judgment.

14. The Appellant sought to rely upon the judgment in S.B. International Ltd. and Others Vs. Asstt. Director General of Foreign Trade and Others, to contend that the delay was malafide and that the Appellant was entitled to allotment despite the amendments carried out to the Nazul Rules in the year 2006.

15. Learned Counsel for the DDA, however, sought to repel the argument advanced on behalf of the Appellant. It was not disputed that the Appellant applied on 14.12.2000 for allotment of institutional land. The proposal for modification in the lay out plan of facility centre 18, Karkardooma was sent for approval of the competent authority vide letter dated 30.9.2002. The LG approved the modifications vide order dated 1.11.2002. The modifications were two-fold -

i. Conversion of a plot earmarked for a nursing home measuring 2430 sq. mtrs. for Government/Institutional use.

ii. Plot Nos. 14-X & 15-X earmarked for Guest Houses measuring 1850 sq. mtrs. each and plot No. 16-X earmarked for Banquet Hall measuring 1900 sq.mtrs. to be converted to educational institution.

16. It is out of the latter plots that a 2100 sq.mtrs. plot was sought to be allotted to the New Millennium Education Society, plot measuring 1600 sq. mtrs. was approved for allotment to Missionaries of Charity and the plot as claimed by the Appellant. It is also not disputed that the Institutional Allotment Committee recommended the case for allotment on 13/17.2.2003 and the final proposal for allotment was made on 2.4.2003. The allotment of other two was proceeded with but an impediment arose insofar as the allotment of plot to Appellant is concerned. A letter dated 7.4.2003 was received from Sister M.C. Nirmala, Superior General, Missionaries of Charity addressed in response to the Chairman of the Appellant Society with a copy marked to the LG and the DDA raising serious objections about the use of the name "Mother Teresa". The Missionaries of Charity claimed that the name of Mother Teresa could be used only by them and land was being allotted to them for carrying out different charitable works. However, the plot adjacent to the land allotted to Missionaries of Charity was sought to be allotted to the Appellant, which was a commercial institute under the name, Mother Teresa Institute of Management. This was alleged to be a misuse of the name of Mother Teresa. Mother Teresa herself in a statement released on 14.10.1984 had given the exclusive right to control the use of her name to the Office of the Superior General of the Missionaries of Charity. It is in this context that when the file of the Appellant was put up before the Commissioner (Land Disposal) a query was raised on 16.4.2003 which resulted in a response being sought from the Appellant.

17. The Appellant sent a reply dated 7.5.2003 to Sister Nirmala with a copy

marked to the DDA assuring that the Society would take necessary steps to change the name. This change of name never took place and thus another letter was received from the Missionaries of Charity on 2.6.2003 requesting that no allotment should be made to the Appellant till the Appellant Society changed its name. The notings in the file of the DDA on 5.6.2003, thus, record that in view of the assurance of the Appellant, the case be put up for presentation after the change of name of the Appellant Society. The Appellant thereafter also never took any steps to change the name and it is an undisputed position that the name has not been changed even till date.

18. The aforesaid position, thus, continued to prevail till the decision of 15.12.2003 came into being whereafter no action for allotment was taken.

19. The DDA has also explained the allotment to other two entities qua whom the Appellant is claiming parity. Insofar as the Missionaries of Charity is concerned, it is stated that the Institutional Allotment Committee recommended the allotment of land in its meeting held on 13.3.2002 (contrary to the allegation of the Appellant). The LG granted approval to the proposal of allotment on 4.4.2002 and the provisional Demand-cum-Allotment Letter was issued on 26.4.2002 by the DDA followed by a revised Demand-cum-Allotment letter dated 28.8.2002. The plot No. 14-X was identified by the Planning Department of the DDA on 1.11.2002 and the final approval of the LG was granted on 23.12.2002. The perpetual lease deed was executed on 30.4.2003. Thus, all actions relating to allotment stood concluded prior to the decision of 15.12.2003.

20. Similarly, qua the New Millennium Educational Society, the proposal for allotment of land was put up for approval of competent authority on 11.7.2002 and the LG approved the allotment on 31.7.2002. Pursuant to the approval of the lay out plan on 1.11.2002 plot No. 16-X was identified by the Planning Department of the DDA on 17.12.2002 for allotment. The LG approved the proposal on 17.2.2003 and the provisional Demand-cum-Allotment letter was issued on 6.3.2003. The perpetual lease deed was executed on 31.12.2003 but prior to the crucial date of 15.12.2003 the allotment had been made.

21. Insofar as the Appellant is concerned, the proposal was not put up for approval of the LG in view of the objection raised by the Missionaries of Charity and no formal approval by the LG was made. The Appellant Society took no remedial action in pursuance to its assurance to the Missionaries of Charity to change its name.

22. Learned Counsel for the DDA has explained the position qua allotment made to Lal Bahadur Shastri Institute of Management, Ritanand Balved Education Foundation and Central Government Industrial Workers Co-operative House Building Society Ltd., who are stated to have been allotted land after the policy decision. Lal Bahadur Shastri Institute of Management is stated to have been allotted 3000 sq. mtrs. of land on 24.10.2002 under the Orders of the Lieutenant Governor and the demand-cum-allotment letter was issued on 22.11.2002. The

physical possession was handed over on 29.12.2003. However, in the meantime, said Institute vide letter dated 06.01.2003 had requested for allotment of at least 1 acre (4046 sq. mtrs.) of land and the Lieutenant Governor vide letter dated 14.01.2003 had agreed to the allotment of 1 acre. Thus, the matter was processed for allotment of additional land. The additional 1000 sq. mtrs. of land was sought to be allotted from the adjoining plot and this proposal was approved by the Lieutenant Governor on 29.11.2004. On receipt of the modified plan for additional land, the demand letter was issued on 12.05.2005 and possession was handed over on 07.09.2005. It has, thus, been explained that the allotment of 3000 sq. mtrs. had already taken place, but only the additional land of 1000 sq. mtrs. was allotted after policy decision.

23. Similarly, in the case of Central Government Industrial Workers Co-operative House Building Society Ltd., the allotment of land for community halls was made at `1/- prior to the amendment of the Nazul Rules on 19.04.2006 and the position is stated not to have changed even thereafter. The application for such allotment was received on 29.05.1998 and was recommended by the Institutional Allotment Committee in its meeting held on 13.02.2003 and 17.02.2003, which was approved by the Lieutenant Governor on 28.08.2004 and the allotment letter was issued on 09.09.2004. The possession was handed over on 11.04.2006 and lease deed was executed on 12.06.2006. This allotment being at a fixed rate for community hall, the amendment to Nazul Rules is stated to have no bearing to the matter in issue.

24. The last is the case of Ritanand Balved Education Foundation, which has applied for allotment of land for senior secondary school vide application dated 23.05.2000 in the area of Surajmal Vihar, Mayur Vihar and Anand Vihar Institutional Area. The request of the society was rejected vide letter dated 26.02.2002 as no land was available in the area where allotment was sought. At request of the society, the Planning Wing of DDA informed that land could be considered for allotment in Mayur Vihar after sub-division of the plan. The case of the society was placed before the Institutional Allotment Committee in its meeting held on 13/17.12.2003 which recommended the case of the society for allotment, but subject to sub-division. The allotment was, however, held up for want of sub-division of the plot, which had to be shared by two societies. The DDA received a clarification from the Govt. of NCT of Delhi in respect of the sponsorship of 10.01.2002, which was valid upto 10.01.2007. The case was processed for allotment of land measuring 5670 sq. mtrs. and was approved on 21.05.2004. The demand-cum-allotment letter was issued on 15.06.2004 and possession was handed over on 01.07.2004. The lease was executed on 23.08.2004. However, in the meantime, vide the policy decision dated 15.12.2003 all allotments had been put on hold and this allotment is, thus, stated to be under a bona fide mistake. Thus, show-cause notices dated 06.01.2010 and 15.03.2010 were issued to the said society to which there was no response and, thus, the Lieutenant Governor cancelled the allotment on 15.05.2010, which was communicated vide letter dated 28.08.2010 to the

society. The society, however, filed Writ Petition (Civil) No. 6092/2010 challenging the cancellation of allotment and by an Order dated 09.09.2010, coercive steps had been stayed.

25. On giving a thoughtful consideration to the matter, we are unimpressed by the submissions made on behalf of the Appellant. No doubt the case for allotment of three entities was processed simultaneously, for which even the lay out plan of facility centre No. 18, Karkardooma was modified. After the approval of the Institutional Allotment Committee, the case had to be put up before the LG for final approval whereafter only the occasion for issuance of allotment letter would arise.

26. In the case of Missionaries of Charity and New Millennium Educational Society such allotment was made prior to the crucial date of 15.12.2003. However, no allotment was made in favour of the Appellant as the file was not even put up to the LG. The reason for the same was the objection raised by the Missionaries of Charity to the adoption by the Appellant of the name "Mother Teresa".

27. Learned Counsel for the Appellant cannot be permitted to plead that since DDA had not raised this issue directly with the Appellant, the Appellant did not change its name. The Missionaries of Charity had, in fact, a direct communication with the Appellant and had marked copies to the competent authorities inter alia seeking restraint against the allotment of land to the Appellant till such time the Appellant changed its name. The Appellant, in fact, assured vide its letter dated 7.5.2003 to the Missionaries of Charity that it would do the needful. The Appellant was, thus, fully conscious of the fact that its allotment was being jeopardized on account of its name. The Appellant despite this assurance took no steps. The file of the Appellant was kept in abeyance as per note dated 5.6.2003 awaiting the promised change of name by the Appellant. Since the Appellant failed to do so and in the mean time a policy decision was taken on 15.12.2003, the allotment never matured in favour of the Appellant. The Appellant, thus, had no vested right to claim any allotment of a plot when no allotment was made in its favour.

28. We are not able to accept the plea advanced on behalf of the Appellant that there was any malafide or unreasonable delay whereby the allotment to the Appellant was withheld. The allotment was withheld as noticed above on account of the objections raised by the Missionaries of Charity of which the Appellant was fully aware but took no remedial measures. The Appellant was sought to be allotted land adjacent to the plot of the Missionaries of Charity. The name of Mother Teresa, as explained by the Missionaries of Charity in their letter could not have been adopted by the Appellant. The failure of the Appellant to take remedial action in this behalf over considerable period of time has led to a situation where a policy decision dated 15.12.2003 has interceded in between and after that date, in view of the subsequent amendments to Nazul Rules of the year 2006, the mode of allotment is by public auction for societies like the

Appellant.

29. In view of the aforesaid position, the plea of discrimination can also not be sustained qua the Missionaries of Charity and the New Millennium Educational Society.

30. Insofar as the allotment to Lal Bahadur Shastri Institute of Management, Ritanand Balved Education Foundation and Central Government Industrial Workers Co-operative House Building Society Ltd. are concerned, the same has already been explained by the DDA. The improper allotment made has been cancelled though the allottee obtained a stay against the said cancellation.

31. We are, thus, of the considered view that the Appellant is not entitled to the allotment of plot and is, thus, governed by our judgment in Bhagwan Mahavir Education Society (Regd.) and Anr. v. DDA and Ors. connected matters (supra) its factual position being no different.

32. The appeal is accordingly dismissed in terms aforesaid.