

(2005) 09 DEL CK 0115
In the Delhi High Court
Case No : LPA 393 of 2003

Mount Abu Education Society (Regd.)	APPELLANT
Vs	
Delhi Development Authority and Union of India (UOI)	RESPONDENT

Date of Decision : 07-09-2005

Acts Referred:

Delhi Development Authority (Disposal of Developed Nazul Land) Rules, 1981 — Rule 5

Citation : (2005) 84 DRJ 365

Hon'ble Judges : B.A. Khan, Acting C.J.; Madan B. Lokur, J

Bench : Division Bench

Advocate : K.T.S. Tulsi, Anurag Kumar Aggarwal, Amit Khemka, Neeraj Malhotra, Nisha Bagchi, Jyoti Singh and Vishal Kumar, for the Appellant; Jagmohan Sabharwal and Shobhana Takiar, for the Respondent

Final Decision : Dismissed

Judgement

Madan B. Lokur, J

1. In this batch of appeals under Clause X of the Letters Patent, the Appellants are aggrieved by the judgment and order dated 6th May 2003 passed by a learned Single Judge in a batch of writ petitions.

2. The facts of the case are few and undisputed. The Appellants are societies that had applied to the Delhi Development Authority for allotment of 4 acres of land for running a senior secondary school in terms of the Delhi Master Plan. The case of the Appellants was recommended by the Institutional Allotment Committee for allotment of 4 acres of land but they were in fact allotted only 2 acres and at a rate which, according to the Appellants, is unreasonably high. The grievance of the Appellants before the learned Single Judge and before us also relates to two issues: firstly, the decision of the Delhi Development Authority (for short DDA) to allot approximately 2 acres of land to the Appellants is contrary to the Delhi Master Plan as against their clam for allotment of 4 acres of land and secondly the manner in which the land rates were fixed by the Central Government which,

it is said, is contrary to the relevant rules.

3. As regards the first contention, according to the Appellants, the Master Plan for Delhi came into force on 1st August 1990 and was valid for a period of 10 years. The Master Plan provides for facilities relating to senior secondary schools under the head of INFRASTRUCTURE - SOCIAL. This reads as follows:-

"EDUCATION

Norms have been worked out for the provision of adequate educational facilities at various levels considering the age group projections and other relevant considerations. In Primary and Secondary schools and colleges, separate norms for reservation of play field areas in the schools have been given which must be indicated that the day layout plans. In case of low-income communities, the space for Nursery school shall be utilised for creche which could be run by public, private or voluntary agencies. Specific areas have been reserved for city level integrated schools to accommodate central schools and public schools.

Planning standards for educational facilities are given below :

(a) xxx xxx xxx

(b) xxx xxx xxx

(c) Senior Secondary School (VI to XII)

1 for 7,500 population Strength of the school "1000 students Area per school "1.60 ha. (approx. 4 acre) School building area" 0.6 ha.

Play field area with a minimum of 68 mtr. X 128 mtr. to be ensured for effective play.

(d) xxx xxx xxx

(e) xxx xxx xxx"

4. On the basis of the above, the Appellants say that they are entitled to allotment of 4 acres of land for their Senior Secondary School. We are unable to appreciate how any right is conferred on any of the Appellants by this to have an allotment of 4 acres of land as against 2 acres that has been allotted to them, because all that the Master Plan lays down in this regard is that it prescribes certain norms and a planning standard for Senior Secondary Schools. As per these, a senior secondary school having a strength of 1000 students should be built upon an area of 1.60 hectares or about 4 acres. There is nothing in these provisions or for that matter any provision of the Master Plan that mandates the DDA to allot 4 acres of land to a person applying for setting up of a Senior Secondary School or prohibits it from allotting a lesser area for this purpose. The allotment of land falls in the domain of the DDA and it is for the Authority to allot to the extent it deems proper depending on several factors or not to allot at all. There may be a case where it had allotted 4 acres for the same purpose, but that would be assailable only when a case of any patent hostile discrimination is made

out, which is not pleaded or discernible in the present case. Suffice it to say that the Appellants are not vested with any right to seek allotment of 4 acres of land, nor are the DDA under any statutory obligation to do so. Faced with this, it was submitted by learned counsel for the Appellants that if it is decided to allot land to the Appellants, then the DDA should allot only 4 acres of land, otherwise it should not allot any land to them; if only 2 acres of land are allotted to the Appellants, the DDA would be acting in an unfair manner and contrary to the Master Plan. He relied upon *Bangalore Medical Trust Vs. B.S. Muddappa and others*, particularly paragraph 20 to contend that in a case such as the present, diversion of user of land would be contrary to law. The relevant paragraph reads as follows:-

"20. Section 65 empowers the government to give such directions to the BDA as are, in its opinion, necessary or expedient for carrying out the purposes of the Act. It is the duty of the BDA to comply with such directions. It is contended that the BDA is bound by all directions of the government, irrespective of the nature of purpose of the directions. We do not agree that the power of the government u/s 65 is unrestricted. The object of the directions must be to carry out the object of the Act and not contrary to it. Only such directions as are reasonably necessary or expedient for carrying out the object of the enactment are contemplated by Section 65. If a direction were to be issued by the government to lease out to private parties areas reserved in the scheme for public parks and playgrounds, such a direction would not have the sanctity of Section 65. Any such diversion of the user of the land would be opposed to the statute as well as the object in Constituting the BDA to promote the healthy development of the city and improve the quality of life. Any repository of power - be it the government or the BDA - must act reasonably and rationally and in accordance with law and with due regard to the legislative intent."

5. We are unable to appreciate how this decision helps the Appellants. There is no allegation that the DDA has diverted any land for use other than for a school. Admittedly, the land allotted to the Appellants was meant for a school and the allotment was in conformity with the land use prescribed in the Master Plan and Zonal Development Plan. There is nothing to suggest that the remaining 2 acres of land will be allotted contrary to the prescribed land use. The contention urged in this regard is premature.

6. The only two questions that arise in this context are whether the Appellants have a right to allotment of land and if so whether they have a right to allotment of 4 acres of land. The decision cited by learned counsel for the Appellants does not establish or refer to any such right that the Appellants may claim for allotment of land. As far as the question of allotment of 4 acres of land is concerned, our view is that the Master Plan does not compel the DDA to allot only 4 acres of land to the Appellants.

7. Learned counsel for the Appellants contended that even the DDA realised that it was not permissible to allot less than 4 acres of land and that is why the DDA

itself mooted a proposal on 25th September 2001 to amend the Master Plan. We are of the view that this does not alter the legal position in any manner whatsoever. It cannot be that after having allotted 2 acres of land to the Appellants, the DDA realised that it could not do so and Therefore moved for an amendment of the Master Plan. If the DA believed that it was acting contrary to the Master Plan, the more appropriate course to adopt would have been to cancel the allotments made. But that was not done. All that this suggests, Therefore, is that the DDA also realised that the norms and planning standard laid down in the Master Plan were unrealistic, given the scarcity of land in Delhi and that is why it moved for an amendment of the Master Plan. In any case, this is entirely in the realm of speculation and, as mentioned above, the proposal of the DDA to amend the Master Plan does not alter the legal position, as we understand it.

8. The DDA has stated in its counter affidavit filed to Civil Writ Petition No. 5264 of 2002, and this has not been specifically denied by the Appellants that several factors, including extreme scarcity of land in Delhi, went into the decision to allot only 2 acres of land to the Appellants. It has been stated by the DDA as follows:-

"(i) That it was noticed that population has been increasing at the rapid pace of almost 5 lakh population being added every year to Delhi. The increase in the population was posing additional demand for infrastructure particularly for educational facilities, i.e., schools within existing urban areas and urban extension. Since most of the existing land in urban areas had already been developed and utilised there was extreme scarcity of land to accommodate the additional demand.

(ii) During various meetings taken at the office of the Lt. Governor a view was expressed that large open spaces/play areas in schools remain unused during the day. It was also felt that if the playground component of the Senior Secondary School is deleted from the allotment, then the same land can be conserved and optimum use can be made of open spaces.

(iii) It is pertinent to mention that the deliberations considered that the quantum of land to be allowed for construction of school building ought to be retained. Only that component of play-field which is given on notional license fee can be reduced from the allotment. The open spaces surrounding/adjacent to the schools will be utilised as play/open areas by the children/ residents of the area to optimize utilisation of the open space. These deliberations and considerations were made wholly in public interest and after taking into consideration all the relevant matters in issue. In this view of the matter it had been decided that two acres of land would be allotted for Senior Secondary School.

(iv) That in view of the foregoing, the Vice-Chairman of the DDA had recommended allotment of two acres of land to the petitioner vide his noting dated 25.10.2001. This proposal was approved by the Lt. Governor, Delhi on 26.10.2001."

9. The DDA has also stated in its counter affidavit, and this has been referred to

by the learned Single Judge, that no institution, society or school has been allotted 4 acres of land after October 1999. As such, the Appellants cannot claim any preferential treatment over others only because they have approached the Court for allotment of 4 acres of land.

10. In view of the above uncontroversial factual position, we are satisfied, even on facts, that the Appellants have not made out any case for interference with the impugned judgment and order.

11. The second issue that has arisen in this case is with regard to the rate at which land has been allotted to the Appellants. The contention of learned counsel for the Appellants in this regard is rather limited - there is no challenge to the actual rate, as indeed there cannot be - the challenge is only on the ground that as per the extant rules the rate is to be fixed by the Central Government and not by the DDA. It is, Therefore, not necessary to advert to that portion of the impugned judgment and order which deals with the issue of price fixation and the extent of judicial review in that regard.

12. Rule 5 of the DDA (Disposal of Developed Nazul Land) Rules, 1981 was referred to by learned counsels for the Appellants and this reads as follows: --

"5. Rules of premium for allotment of Nazul Land to certain public institutions
"The Authority may allot Nazul land to schools, colleges universities, hospitals, other social or charitable institutions, religious, political, semi-political organisations and local bodies for remunerative, semi-remunerative or unremunerative purposes at the premia and ground rent in force immediately before the coming into force of these rules, or at such rates as the Central Government may determine from time to time."

13. According to learned counsel for the Appellants, the above Rule shows that it is only the Central Government that can fix the land rates from time to time but that has not been done in the present case. Reliance is placed on a letter dated 30th June 1999 wherein the Central Government, inter alia, wrote to the Lt. Governor who is the Chairman of DDA as follows: --

"On the issue relating to charging the institutional land rates and the process of allotment by auction or competitive tendering, this Ministry is of the view that DDA is free to take an appropriate decision on both the issues at their end with the approval of competent authority."

The contention of learned counsel for the Appellants is that this letter clearly shows that the Central Government abdicated its responsibility and delegated its power to fix the land rates to DDA, which is not permissible. A case of excessive delegation was sought to be made out and reliance, in this respect, was placed on *M/s Oberoi Motors v. The Union Territory Administration* AIR 1978 P & H 294, *A.K. Roy and Another Vs. State of Punjab and Others*, and *Sahni Silk Mills (P) Ltd. and Another Vs. Employees" State Insurance Corporation*, .

14. We are of the view that the contention is misconceived inasmuch as a perusal

of the entire correspondence between the Central Government and DDA shows that even though DDA may have made the calculations in respect of the land rates, the issue was actively considered by the Central Government, which addressed a letter dated the 15th December 2000 to the Vice-Chairman of DDA wherein it was categorically stated that the matter of fixing land rates has been considered and final approval of the Central Government was accorded as indicated by DDA. The letter also directs that the rates would be applicable till further directions of the Central Government.

The letter dated 15th December, 2000 reads as follows:-

"No. J-13036/3/2000-DDVA

Government of India

Ministry of Urban Development and Poverty Alleviation

Nirman Bhavan, New Delhi.

Dated: 15/12/2000

To,

The Vice Chairman,

Delhi Development Authority

Vikas Sadan

New Delhi-110 0023.

Subject: Rates of premium of institutional lands In DDA area

Sir,

This is in continuation of the D.O. Letter of the Secretary, Urban Development No. J-2201/4/95-LD dated 30.6.1999, and refers to your proposal received vide your D.O. Letter No. F2(4)/96/AO (P) dated 14/12/2000 regarding rates of premium for institutional lands being charged by the DDA w.e.f. 1.4.1996 to 31.3.1998. The matter has been considered and final approval of the Ministry is hereby accorded to the rates of premium for institutional lands in DDA area indicated in the schedule annexed to your abovementioned letter.

2. It is also directed that these rates will be applicable till further directions of the Ministry as to the rates or the method of disposal of lands, for which a detailed proposal may be sent to the Ministry by 15.1.2001.

Yours faithfully,

(Nisha Singh)

Deputy Secretary of the Govt. of India

Tel: 3019280"

15. In view of the above, it would not be correct to say that the Central Government did not determine the land rates as required by Rule 5 of the Nazul Land Rules. At best, it can be said that the Central Government did not itself carry out the exercise of making the determination, having given the task to DDA, but ultimately it was the Central Government that looked into the matter and decided to approve what was suggested by DDA, for which obviously the Central Government would bear full responsibility. Given the factual position, we are of the view that no case of delegation, let alone one of excessive delegation, has been made out.

16. Even otherwise, we are of the view that the learned Single Judge was quite right in relying upon the decision of the Supreme Court in *Sahni Silk Mills* wherein it is said that in the present administrative set-up, judicial aversion to delegation cannot be carried to an extreme. In paragraph 5 of the Report, it was held:

"The courts are normally rigorous in requiring the power to be exercised by the persons or the bodies authorised by the statutes. It is essential that the delegated power should be exercised by the authority upon whom it is conferred and by no one else. At the same time, in the present administrative set-up extreme judicial aversion to delegation cannot be carried to an extreme. A public authority is at liberty to employ agents to exercise its powers. That is why in many statutes, delegation is authorised either expressly or impliedly. Due to the enormous rise in the nature of the activities to be handled by statutory authorities, the maxim *delegatus non potest delegare* is not being applied specially when there is question of exercise of administrative discretionary power."

17. Equally importantly, the learned Single Judge has noted that the official records of the Central Government dealing with the communications of DDA were produced before him. The nothings in the file, which were apparently perused by the learned Single Judge, show that the recommendations of DDA were considered by the Central Government and thereafter finally approved for implementation. In view of this factual position, we are quite satisfied that the land rates were determined by the Central Government and were not fixed by DDA. There was no excessive delegation of power or responsibility on the part of the Central Government and so this contention must be rejected.

LPA Nos. 421 and 424 of 2003

18. The additional contention urged in these LPAs (arising out of CW Nos. 2631/2001 and 3293/2001) is that the area now made available for a school building and a playground is changed to a ratio of 75:25 because of the reduced land allotment, as against the ratio of 40:60 envisaged under the Master Plan.

19. We are of the view that this is really a policy issue. If the area allotted were required to be reduced, and we do not find any fault in such a decision, the question before the Respondents would be whether to maintain the 40:60 ratio

or change it. That they have decided to alter it to 75:25 for all is a policy decision. As long as the Respondents have the power to make the change, it is not possible for us to decide whether the new ratio of 75:25 is correct or whether the earlier ratio should be retained. That the Respondents have the power cannot be doubted after our conclusion that the relevant portion of the Master Plan only lays down norms and a planning standard and not any binding code for allotment of land.

20. Even otherwise, in the counter affidavit filed by the DDA in CW No. 2631/2001, it has been explained that during meetings taken in the office of the Lt. Governor regarding allotment of land, a view was expressed that large open spaces/play areas in schools remain unused during the day. It was felt that if the playground component is deleted from the allotment, then the area of land can be conserved and optimal use be made of open spaces, keeping in view the acute scarcity of land in Delhi and the need of a growing population. Whether the playground area for children should be reduced or not is a debatable question, but it is not necessary for us to go into it and it is in any case beyond our jurisdiction in the present appeals. Suffice it to say that the DDA has given a good enough Explanation for altering the ratio of land use from 40:60 to 75:25.

21. Another contention urged in this context is that the change in ratio has not resulted in a substantial reduction in the cost of land. This contention requires to be rejected for two reasons; firstly, the land rates were not in issue before us and secondly, the change in ratio was not with the intention of modifying the overall cost of land. That the total cost of land has undergone a minor change is merely coincidental and has no nexus with the policy decision on land utilization.

22. Both the additional contentions urged in these LPAs must be rejected.

LPA No. 404 of 2003

23. The additional contention urged in this appeal was that the Institutional Allotment Committee had recommended on 23rd October 1998 (as communicated to the Appellant on 29th December 1998) allotment of 4 acres of land to the Appellant but in fact only 2 acres were allotted. It was submitted that some other educational societies whose cases were considered by the Institutional Allotment Committee on the same day were allotted 4 acres and the Appellant was singled out for discriminatory treatment.

24. From a reading of the impugned judgment and order, we do not find any such contention having been urged before the learned Single Judge. Similarly, the writ petition filed by the Appellant (a copy of which has been filed Along with the grounds of appeal) does not suggest any such grievance having been made by the Appellant. In any case, the Respondents have stated on affidavit before the writ Court that the views of the Institutional Allotment Committee are only recommendatory and that the Lt. Government had taken a decision on 27th August 1999 to allot 2 acres of land to the Appellant, which decision does not appear to have been challenged by the Appellants.

25. We also find that this Appellant has not made the other allottees, in respect of whom a grievance has been made, a party to these proceedings. Therefore, no order can be passed against them.

26. We find no merit in the additional contention urged on behalf of the Appellant in this appeal.

27. Some learned counsels for the Appellants made a general grievance that the interest rate for delayed payments is rather high. This cannot be helped. The Appellants were forewarned of the consequences of non-payment or delayed payment of the demanded allotment amounts. If in spite of this, they chose to take the gamble of not paying the demanded amount, they have only themselves to blame for the situation that they are now placed in. Notwithstanding this, we grant one months time to the Appellants take any payments due from them, with interest, failing which the Respondents are at liberty to cancel their allotment.

28. We find no merit in any of the appeals. They are all dismissed and the impugned judgment and order dated 6th May 2003 is upheld.