
(2015) 08 DEL CK 0323

In the Delhi High Court

Case No : LPA 103/2015, Cont. Cas (C) 239/2015 and C.M. No. 5151/2015

Mount Carmel School Society

APPELLANT

Vs

Delhi Development Authority and Others

RESPONDENT

Date of Decision : 20-08-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151

Citation : (2015) 152 DRJ 169

Hon'ble Judges : Pradeep Nandrajog and Mukta Gupta, JJ.

Bench : Division Bench

Advocate : Jose Verghese, Ashwani K. Sakhuja and Puneet Saini, Advocates, for the Appellant; Dhruv Tamta, Rajiv Bansal and Nikhil Bhardwaj, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

Mukta Gupta, J.—The present appeal is directed against the order dated December 18, 2014 passed by the learned Single Judge in WP. (C) No. 1687/2014 dismissing the application of the appellant Mount Carmel School Society (in short "Mount Carmel") seeking stay of the construction raised by respondents No. 2 and 3 in respect of plot of land of two acres situated in Sector 22, Dwarka, Papankalan adjoining the school building of Mount Carmel at Dwarka (hereinafter referred to as "plot in question").

2. Mount Carmel filed a writ petition bearing No. 1687/2014 inter alia praying for a direction to respondent No. 1 DDA to allot the plot of two acres at Sector 22, Dwarka, Papan Kala, adjoining the school building of Mount Carmel School, Dwarka for the use of its students as well as residents of its locality, restraining the DDA from in any manner changing the land use of the plot in question and in case the plot in question is already allotted to respondent No. 2 i.e. Director of Education, a writ of certiorari cancelling the said allotment.

3. A brief background of the case is that Mount Carmel approached the DDA on

December 13, 1995 seeking allotment of land for its senior secondary school in Dwarka in response whereof the DDA vide its letter dated March 12, 1996 asked for completion of certain formalities and requirements. The Director of Education wrote to the DDA that it had recommended the allotment of 1.6 hectare of land to Mount Carmel and later on December 29, 1998, the DDA also conveyed its recommendation of allotment of plot of land admeasuring 1.6 hectare at Sector 22, Dwarka at the provisional cost of Rs. 1.8 crores. Mount Carmel requested for reduction of the land price, however vide letter dated March 09, 2000 Mount Carmel was informed about allotment of two acres of land instead of 4 acres @ Rs. 50 lakhs with 120% enhanced per acre.

4. Challenging the order dated March 09, 2000, Mount Carmel filed a writ petition being WP. (C) No. 4359/2000 which was disposed of on May 06, 2003 holding that it was not the prerogative of Mount Carmel to seek allotment of larger area at a particular rate which they want. Finding no infirmity with the process of fixation of cost, the writ petition was dismissed along with other writ petitions subject to directions in respect of the payment to be made by the petitioners who had not deposited the full amount. This judgment dated May 06, 2003 passed in WP. (C) No. 4359/2000 was upheld by the Division Bench of this Court and also by the Supreme Court when the Special Leave Petition filed by Mount Carmel was dismissed.

5. After having faced adverse orders till the Supreme Court, Mount Carmel started a second round of litigation by filing WP. (C) No. 1687/2014 this time seeking directions to DDA to allot a plot of 2 acres for the purpose of playground besides other prayers as mentioned in para 2 above. In the said writ petition, an application under Section 151 CPC was filed seeking stay of construction raised by Director of Education on the plot or in the alternative grant of an order of status quo. The learned Single Judge vide the impugned order dated 18th December, 2014 held that having lost upto the Supreme Court, there was no prima facie case in favour of Mount Carmel and thus it need not even go the other two requirements for grant of an injunction i.e. balance of convenience and irreparable loss and dismissed the application.

6. Learned counsel for Mount Carmel re-urges the issues that Director of Education had in fact recommended allotment of land for its senior secondary school with a irrecoverable bank guarantee of Rs. 10 lakhs which Mount Carmel performed. Though 1.6 hectare of land was allotted on provisional cost of Rs. 1.8 crores, Mount Carmel was further directed to furnish latest bank balance certificate. However, the balance of 1.6 hectare of land was not granted. It is stated that before the Supreme Court, Mount Carmel failed as it was not able to show any allotment made in favour of any other society having been allotted an area of 4 acres contrary to the policy. However, now Mount Carmel has come to know from various notings which Mount Carmel received under the Right to Information Act, that approval had already granted and Mount Carmel having cleared all the formalities, allotment of plot of land should have been made in its

favour and that number of other institutions have already been given allotment of 4 acres of land.

7. In the present appeal, we are confined to the impugned order passed by the learned Single Judge dated 18th December, 2014 whereby stay of construction by the Director of Education on the adjoining plot was not granted. When the matter was heard, no such plea of other societies being granted 4 acres of land at Dwarka had been taken and thus, the same cannot be considered in the present appeal. As noted above, Mount Carmel was also offered 4 acres of land, however at the price fixed by the DDA. Since Mount Carmel failed to pay the price as desired by the DDA, 2 acres of land was allotted and the remaining 2 acres was not allotted. This order has already attained finality and the learned Single Judge committed no error in rejecting the application on the ground that when there is reasonable doubt regarding the maintainability of the petition itself being barred by principles of *res judicata*, there was no *prima facie* case made out for grant of injunction. We concur with the view expressed by the learned Single Judge. We do not find any *prima facie* case in favour of Mount Carmel. Hence there is no merit in the present appeal.

8. The appeal is dismissed.

Cont. Cas (C) No. 239/2015 & CM 5151/2015

9. While issuing notice in LPA on February 25, 2015 this Court directed the respondents to maintain status quo as of that date in respect of the subject land.

10. In the contempt petition, Mount Carmel alleges violation of the order dated February 25, 2015 passed by this Court. A perusal of the contempt petition reveals that it re-agitates the entire issue taken up by it in the writ petition and the LPA and no material has been placed on record how violation of order has taken place. Moreover, when the order dated February 25, 2015 was passed, none was present for respondent DDA. On April 21, 2015 i.e. the next date, counsel for respondents pointed out that much before the order of status quo was passed by the Division Bench, disputed site had been allotted by the DDA to Govt. of NCT of Delhi and construction was going on. Thus this Court modified the order as under:--

"1. Learned counsel for the respondents states that much before the order for status quo was passed by the Division Bench on February 25, 2015 the disputed site had been allotted by the DDA to Government of NCT of Delhi, which had, after inviting tenders accepted the offer from contractor who commenced construction of a building.

2. The photographs of the construction show that the roof of the second floor has been cast.

3. Under the circumstances, we relieve the respondents from the rigors of the status quo but observe that ongoing construction would be subject to such orders which may be passed in the appeal.

4. Re-notify for August 05, 2015."

11. In the present petition except a bald assertion of the status quo order being violated, there is no material to show how it is being violated. There being no violation of status quo order passed by this Court on February, 2015 as by the said date work had already commenced on the plot by the respondents, we find no reason to take action against the respondents under the Contempt of Courts Act.

12. Consequently, the notice of contempt issued to respondents is discharged and petition and application are dismissed.