

(1993) 09 DEL CK 0005

In the Delhi High Court

Case No : Civil Writ Petition No. 1437 of 1989

Purboshree Mahila Samiti

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 03-09-1993

Acts Referred:

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

Citation : (1993) 27 DRJ 380 : (1993) RLR 577

Hon'ble Judges : Jaspal Singh, J

Bench : Single Bench

Advocate : S. Mukherjee and B.S. Mathur, for the Appellant;

Judgement

Jaspal Singh, J.

(1) The petitioner, through this writ petition, seeks the quashing of the revision of the rate of land from Rs.8 lakhs to Rs. 28,50,000.00 per acre and the consequent demand of Rs.10,50,625.00 towards security deposit. However, first the facts.

(2) The petitioner is a Society duly registered under the Societies Registration Act, 1860. In furtherance of its objects, it has been running a Balwadi and a charitable dispensary. On its application for allotment of land for running a Balwadi and dispensary, it was allotted land measuring 0.5 acres on payment at the rate of Rs.8 lakhs per acre besides 381 annual ground rent of 2-1/2 per cent of the said premium. However, the grievance of the petitioner Society is that by letter dated April 17,1989, it was informed that the land rates had been revised from Rs.8 lakhs to Rs.28,50,000.00 per acre calling upon it, as already noticed above, to deposit Rs.10,50,625.00 towards security deposit. The case of the petitioner Society is that the revision so made is illegal, without jurisdiction and void besides being arbitrary. It further claims that the respondent is estopped from making any such demand and alleges that the principle of promissory estoppel is squarely attracted as acting on the allotment letter it had got the

building plan sanctioned and had by the time of the receipt of the revised demand, raised substantial construction.

(3) The respondent has stoutly resisted the petition. In the counter filed by it number of objections were taken though, during arguments, the main grounds of attack were: (a) the petitioner is not running a school and that running of a Balwadi does not amount to running an educational institution; (b) the respondent is well within its rights to revise the land rates as the letter of allotment itself envisaged enhancement and (c) as the petitioner had agreed to enhancement, the principle of promissory estoppel would not be attracted.

(4) During arguments the learned counsel for the petitioner had drawn my attention to a Division Bench judgment of this court in D.D.A. vs. Lala Amarnath Educational & Human Society and another 1990(3) DL 347. It was argued that in the said case also similar facts were involved and demand had been raised but the same had been quashed. However, on the other hand, it was argued on behalf of the respondent that the said judgment could not be considered to be good law any more in view of a Full Bench judgment of this court in Ramanand Vs. Union of India and Others, .

(5) In the Division Bench judgment referred to above and relied upon by the learned counsel for the petitioner the facts were similar. There too it was a registered society carrying on educational activities. In that case too revised demand had been made and the same was quashed holding that the Delhi Development Authority, which was a respondent in those proceedings, could not make any such revised demand and that in any case the principle of promissory estoppel was attracted. Thus in case this judgment is taken to have not been directly or impliedly over-ruled in Rama Nand vs. Union of India it would hold the ground and would sway the outcome of this petition.,

(6) Is the judgment of the Full Bench in Rama Nand vs. Union of India attracted to the facts of the present case? I feel it is not and, in support, I am principally leaning upon the Delhi Development Authority (Disposal of Developed Nazul Land) Rules, 1981. The case before the Full Bench related to Rule 6 read with Sub Rule (1) of Rule 2. The court was principally concerned with "pre-determined rates" and the effect of their revision visa-vis Rule 6. The case before me, however, neither relates to "pre-determined" rates nor to Rule 6. It, in fact, is covered by Rule 5. To make the position clear let me reproduce Rules 4,5 and 6. They run as follows:-

"4. Persons to whom Nazul land may be allotted:-The Authority may, in conformity with the plans, and subject to the other provisions of these rules, allot Nazul land to individuals, body of persons, public and private institutions, co-operative house building societies, other co-operative societies of individuals, co-operative societies of industrialists and to the departments of the Central Government, State Governments and the Union Territories. 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. 6. Allotment of Nazul land at pre-determined rates- Subject to the other provisions of these rules the Authority shall allot Nazul land at the predetermined rates in the following cases, namely- (i) to individuals whose land has been acquired for planned development of Delhi after the 1st day of January, 1961, and which forms part of Nazul land; Provided that if an individual is to be allotted a residential plot, the size of such plot may be determined by the Administrator after taking into consideration the area and the value of the land acquired from him and the location and the value of the plot to be allotted.; (ii) to individuals in the low income group or the middle income group other than specified in clause (i)- (a) who are tenants in a building in any area in respect of which a slum clearance order is made under the Slum Areas Act; (b) who, in any slum area or other congested area, own any plot of land measuring less than 67 square metres or own any building in any slum area or other congested area; (iii) to individuals, other than those specified in clauses (i) and (ii) who are in the low income group or the middle income group, by draw of lots to be conducted under the supervision of the Land Allotment Advisory Committee; (iv) to individuals belonging to Scheduled Castes and Scheduled Tribes or who are widows of defense personnel killed in action, or ex-servicemen, physically handicapped individuals subject to the provision of rule 13. (v) to industrialists or owners and occupiers or warehouses who are required to shift their industries and warehouses from non-conforming areas to conforming area under the Master Plan, or whose land is acquired or is proposed to be acquired under the Act. Provided that the size of such industrial plot shall be determined with reference to the requirement of the industry or warehouses set up or to be set up in accordance with the plans and such industrialist 383 and owners of warehouses have the capacity to establish and run such industries or warehouses and on the condition that the land allotted at predetermined rates shall not, in any case, exceed the size of the land which has been, if any, acquired from such industrialist or owners and occupiers of warehouses and which form part of Nazul land, Provided further that in making such allotment, the Authority shall be advised by the Land Allotment, Advisory Committee; (iv) to co-operative group housing societies, co-operative housing societies, consumer co-operative societies and co-operative societies of industrialists on "first come first served basis". Reference may also be made to Sub Rule (1) of Rule 2 which is in following terms:- "(1) "pre-determined rates" means the rates of premium chargeable from different categories of persons and determined by notification from time to time, by the Central Government, having regard to- (a) cost of acquisition. (b) development charges, and (c) concessional charges for use and occupation- (i) for developed residential plots, at the Rate of Rs.3.60 per square metre for the first 167 square metres or part thereof, Rs.4.80 per square metre

for the next 167 square metres or part thereof, Rs.6 per square metre for the next 167 square metres or part thereof, Rs.7.20 per square metre for the next 167 square metres or part thereof, Rs.8.40 per square metre for the next 167 square metres or part thereof, and Rs.9.60 per square metre thereafter; (ii) for developed industrial plots, at the rate of Rs.3.60 per square metre for the first 0.81 hectares or part thereof, Rs.4.80 per square metre for the next 0.81 hectares or part thereof, Rs.6 per square metre for the next 0.81 hectares or part thereof, Rs.7.20 per square metre for the next 0.81 hectares or part thereof, Rs.8.40 per square metre for the next 0.81 hectares or part thereof, and Rs.9.60 per square metre for the next 0.81 hectares thereafter. Provided that the pre-determined rates at which allotment is made to persons belonging to middle income group may be higher than the rates of premium fixed for plots allotted to persons in the low income group; Provided further that in fixing the pre-determined rates of premium, the Central Government may fix a higher rate of premium for plots situated on main roads, corners of two roads, or at other advantage positions than the rates of premium fixed for plots situated far away from the main roads;"

(7) As would be borne out from a bare perusal of Rules 5 and 6, the cases which are covered by Rule 5 have nothing to do with "pre-determined rates". In fact Rule 6 has no application where the allotment of Nazul land is made to schools, colleges, universities, hospitals, other social or charitable institutions, religious, political, semi-political organisations 384 and local bodies. Rule 6 actually applies to individuals whose land had been acquired for planned development of Delhi; to individuals in the low-income group or the middle- income group other than specified in the first clause; to individuals, other than those specified in the first two clauses who are in the low income group or middle income group and to individuals belonging to scheduled castes and scheduled tribes or those who are widows of defense personnels killed in action etc. Rule 6 is also confined to industrialists or owners or occupiers of ware-houses etc. and to co-operative group housing societies, co-operative housing societies, consumer co-operative societies and co-operative societies of industrialists. In the present case, as already noticed above, the petitioner is, a society duly registered under the Societies Registration Act and is running a Balwadi besides a charitable dispensary. It is this which distinguishes the case from the one which was before the Full bench.

(8) It was strenuously argued by the learned counsel for the respondent that the land had been allotted for running a Balwadi and that a Balwadi cannot be taken to be a school. I am afraid, I cannot make myself agree to this contention. Balwadi means a kindergarten or a nursery school. That it is so finds support from Vidhi Shabdavali (Legal Glossary) published in 1988 by the Ministry of Law and Justice, Govt. of India where the word "Balwadi Shikshak" has been translated to mean "kindergarten teacher". Further support would be found not only from the fact that the plot which was allotted by the authorities was reserved for a nursery school but also from a certificate dated May 4, 1993

issued by the Delhi Social Welfare Advisory Board being run by the Delhi Administration certifying that the petitioner has "undertaken several programmes for the welfare and development of the under-privileged, under-served and deprived sections of the community" and that it is "also in receipt of grants from this Board since 1974-75 for running a Nursery School (Balwadi) which is one of the approved programmes of the Central Social Welfare Board, Department of Women and child Welfare, Government of India."

(9) That the petitioner Society is running a school for the needy is further borne out from the document placed by it on the record which contains the particulars of the students who are enjoying the benefit of the Balwadi. It cannot thus be said that running a Balwadi means something different from running a school.

(10) It was further argued that in the case before the Division Bench the educational institution in question was recognised under the Delhi School Education Act, 1973 whereas the present school is not so recognised. I feel this too would not make any difference. Rule 5, as already quoted above, does not require that the "schools" referred to therein must be recognised under the Delhi School Education Act, 1973. In any case neither any such condition was attached even at the time of the allotment of the land nor the respondent can be now allowed to say that since Balwadi is not recognised under the Act it cannot avail of the relief sought by it. Even otherwise, the Balwadi being a pre-primary school, I wonder if it needs at all to be recognised under the Delhi School Education Act, 1973.

(11) For what has been recorded by me above, I am inclined to hold that the Division Bench judgment in Delhi Development Authority vs. Lala Amarnath Educational and Human Society and another as referred to above, is squarely applicable. Even the principle of promissory estoppel would be applicable in view of that judgment. As in the said case, in the present case also, acting on the letter of allotment, the plans were got sanctioned and substantial construction had been raised before the demand was raised. 385

(12) Following the Division Bench judgment, referred to above, the learned counsel for the petitioner submits that the petitioner too has no objection to the rate of the land being raised to Rs.9,50,000.00 per acre requiring in an additional deposit of Rs.75,000.00 .

(13) A writ of mandamus is consequently issued quashing the impugned demand raised by the respondent. The petitioner, however, shall be liable to pay increased cost of land at the rate of Rs.9,50,000.00 per acre.

(14) Parties shall bear their own costs.