
(2014) 09 RAJ CK 0101

In the Rajasthan High Court

Case No : Special Appeal (Writ) No. 1083 and 1089/2009

Rajasthan Housing Board

APPELLANT

Vs

Vidya Samiti

RESPONDENT

Date of Decision : 11-09-2014

Acts Referred:

Constitution of India, 1950 — Article 226, 324(1)

Citation : (2014) 09 RAJ CK 0101

Hon'ble Judges : J.K. Ranka, J;Ajay Rastogi, J

Bench : Division Bench

Advocate : S.P. Purohit, Director Law and A.K. Goyal, R.E, Advocate for the Appellant; Chakra Kriti Samdehi, Administrative Officer, R.S. Rawat, Managing Trustee and Krishna Yogashram, Advocate for the Respondent

Final Decision : Allowed

Judgement

Ajay Rastogi, J.—Since common question is involved in both the intra-court appeals and writ petitions decided by the Id. Single Judge by two separate orders dt. 27.08.2009 but on the same facts under consideration, hence, on the joint request made by the parties, are being disposed of by this order.

2. The brief facts that culled out from the averments & record, which are relevant for our consideration, are that the respondent No. 1 is a Society registered under the Societies Registration Act, 1958 and came to be established for imparting education, running educational institutions namely Dayanand Public Senior Secondary School, Varun Path, Mansarovar, Jaipur & DAV Central School, Barf Khana, Jawahar Nagar Road, Jaipur and both are aided institutions, funded by the Government and their administration is regulated and controlled by the provisions of Rajasthan Non-Government Educational Institutions Act, 1989.

3. The appellant i.e. Rajasthan Housing Board is being established under the State Legislation namely Rajasthan Housing Board Act, 1970 and having its regulations for disposal of properties viz., Rajasthan Housing Board (Disposal of

Property) Regulations, 1971. It is alleged by the respondent No. 1, being writ petitioner that the Samiti submitted application for allotment of land in Mansarovar Scheme, Jaipur dt. 02.02.1995 in office of the appellant-Board and certain correspondence took place by the respondent No. 1 with the appellant-Board. However, the application for allotment of land in Mansarovar Scheme, Jaipur was placed before the Property Allotment Committee (in short "the PAC") in its meeting held on 26.09.1998 under the Chairmanship of Sh. B.L. Dusad and the PAC considered various applications including the application submitted by the respondent No. 1 for allotment of land. It is alleged that the PAC took decision to allot 5228 Sq. Mtrs. & 5150 Sq. Mtrs. of land in favour of Dayanand Public Senior Secondary School & Vedic Balika Mahavidhyalaya, educational institutions run by the Society (respondent No. 1) but at the same time before these decisions could be carried out & implemented, the Election Commission simultaneously declared & notified the Code of Conduct on 26.09.1998 and after the declaration of assembly polls on 26.09.1998, the decisions could not be processed and it was alleged in the petition that even after lifting of code of conduct on 04.12.1998 when no action was taken by the appellant-Board in implementing decisions of the PAC regarding allotment of respective plots to the Institutions of respondent No. 1-Samiti, two separate petitions came to be filed by the respondent No. 1 seeking mandamus against the appellant Board for issuance of allotment letter and demand notice to the respondent No. 1-Samiti in pursuance to decisions of the PAC dt. 26.09.1998 and delivered actual physical possession of land measuring 5228 Sq. Mtrs. & 5150 Sq. Mtrs. in Sector-3, Mansarovar, Jaipur in accordance with the provisions of Act and Regulations, 1971. The writ petitioner/respondent No. 1 suo moto sent a cheque in the name of appellant-Board without there being any letter of allotment in their favour or demand, if any raised by the appellant-Board, along with their letter dt. 17.06.2000, however, it was returned to the respondent No. 1 vide communication dt. 24.08.2000 (Ann. R-1/4).

4. After the notices came to be served, reply was separately filed by the appellant-Board in both the writ petitions and it was specifically averred that indisputably meeting of the PAC was convened on 26.09.1998 under the Chairmanship of Sh. B.L. Dusad which considered applications for allotment of land but after declaration of dates of assembly polls simultaneously on 26.09.1998 by the Election Commission, no action was taken over such decisions and the proceedings, in totality, of the meeting held on 26.09.1998 were kept in abeyance till electoral process is over on 04.12.1998 and it is also alleged that the matter was considered in terms of directions from the Election Commission through its Chief Electoral Officer to the appellant-Board, the matter was dropped and in a subsequent PAC meeting dt. 30.04.1999, it was decided to reconsider agendas which once taken up and considered by the PAC in its earlier meeting dt. 26.09.1998 but it is evident from the record and the specific averments of fact made before the court that minutes of meeting of the PAC convened on 26.09.1998 regarding alleged allotment of land to the respondent No. 1, writ

petitioner in the petition, were neither signed nor issued at any given point of time and such minutes have never seen light of the day. However, in the next PAC meeting held on 30.04.1999 in which all the agendas of the previous meeting dt. 26.09.1998 were reconsidered including the matter of allotment of land to both the institutions, it was decided that after obtaining audited accounts reports for the years 1997-98 & 1998-99 from both the above institutions, the matter may be placed again in the next PAC meeting. Thereafter both the cases were again placed in the PAC meeting dt. 16.12.1999 and it was decided that after obtaining complete information and required documents from both the institutions, the case may be again placed in the next PAC meeting and thereafter, the case of Dayanand Public School was again placed in the PAC meeting dt. 03.08.2000 but on account of his not providing complete information and required documents, it was decided that the matter of allotment of land to the above institutions be rejected and filed. It may also be relevant to note that apart from the dispute which the respondent No. 1 raised regarding allotment of land in Sector-3, Mansarovar, Jaipur, which at one stage was considered by the PAC in its meeting dt. 26.09.1998, the PAC in its meeting dt. 02.06.2007 allotted a land measuring 3000 Sq. Mtrs. to Dayanand Shiksha Samiti for establishing B.Ed. College in Pratap Nagar Scheme, Jaipur and allotment letter dt. 12.08.2008 demanding Rs. 1,36,81,630/- was sent to the Institution but in spite of notices dt. 19.01.2009 & 10.09.2009 duly served on the Institution, when still in terms of the demand notices the Institution failed to deposit the aforesaid demand, the allotment of land in Pratap Nagar Scheme, Jaipur in favour of Dayanand Shiksha Samiti for establishing B.Ed. College was cancelled vide letter dt. 09.03.2010. It may also be noted that in regard to the subject land, which the respondent No. 1 demanded on the basis of so-called decision of the PAC took in its meeting dt. 26.09.1998, the PAC in its meeting dt. 14.06.2000 allotted a land measuring 5960 Sq. Mtrs. in Mansarovar, Sector-3, Jaipur to one Kundan Lal Memorial Educational Society vide its communication dt. 13.07.2000 but due to some litigation and not depositing the demand within the stipulated period, the allotment to Kundan Lal Memorial Educational Society of the land measuring 5960 Sq. Mtrs. came to be cancelled on 05.08.2010 and the subject land measuring 5958.80 Sq. Mtrs. in Mansarovar Scheme, Sector-3, Shipra Path, Jaipur came to be allotted by the PAC in its meeting dt. 21.06.2012 to respondent No. 3-Krishna Yogashram Trust and letter of allotment-cum-demand notice dt. 27.09.2012 was sent to Krishna Yogashram Trust for depositing a total sum of Rs. 9,20,60,553/- and, as informed to this court, the full & final amount, in terms of demand notice, was deposited by Krishna Yogashram Trust (respondent No. 3) and physical possession of the institutional plot measuring 5958.50 Sq. Mtrs. has been handed over to the respondent No. 3-Trust by the appellant-Board on 11.02.2013 and a Conveyance-cum-Perpetual Lease-Deed between the appellant-Rajasthan Housing Board on one part and Trustee of Krishna Yogashram Trust, 3/62, S.F.S., Agarwal Farm, Mansarovar, Jaipur came to be executed and registered with the Sub-Registrar, Jaipur on 30.03.2013.

5. The Id. Single Judge after taking into consideration the material which came on record observed that a decision was taken by the PAC in its meeting dt. 26.09.1998 for allotment of plot to the respondent No. 1 in Sector-3, Mansarovar, Jaipur, however, that decision was kept in abeyance because of the Code of Conduct being imposed by the Election Commission on the day, the meeting held on 26.09.1998 and after the elections are over on 04.12.1998, according to the Id. Single Judge, the alleged decision of the PAC meeting dt. 26.09.1998 stands restored back and issued mandamus to the appellant-Board to allot the land to writ petitioner/respondent No. 1 at Mansarovar, Jaipur of equal measurement, if available, and if not available, then after hearing the petitioner/respondent No. 1 in the nearby colony vide order impugned dt. 27.08.2009 and on the appeal being preferred by the appellant-Board against order of the Id. Single Judge the operation of impugned order came to be stayed and has not been given effect to during pendency of the appeals.

6. The lawyers are not assisting their respective clients and went on strike without any cause or justification but as the litigants have shown urgency in the matter, we have granted indulgence to the parties, who appeared in person and made submissions before the court and with whatever assistance being made available by the respective parties to this court, we examined the controversy came up for consideration in the instant intra-court appeals.

7. The Officer, appearing on behalf of the appellant-Board, submits that there was no such decision of the PAC dt. 26.09.1998 which could confer any right in favour of the respondent No. 1/petitioner for allotment of land and in fact there is no decision or communication to the respondent No. 1/petitioner regarding allotment of land. On the contrary, when the case for allotment was considered in the subsequent meetings of the PAC, the reports were demanded from the Institutions including their last balance-sheets of two years and finally when Institutions failed to make compliance, their application itself for allotment of land came to be cancelled in the PAC meeting dt. 03.08.2000 and in absence of any prejudice being caused or legal/fundamental right being conferred by any action of the appellant-Board, the writ petition itself was not maintainable and in these facts & circumstances, the directions issued by the Id. Single Judge, in the facts of the instant case, are wholly unsustainable in the law.

8. He further submits that apart from the controversy going on, the PAC in its meeting held on 02.06.2007 allotted a land measuring 3000 Sq. Mtrs. in favour of Dayanand Shiksha Samiti for establishing B.Ed. College in Pratap Nagar Scheme, Jaipur and demand notice was issued on 12.08.2008 and despite ample opportunity being afforded to deposit in terms of demand notice dt. 12.08.2008 followed by notices dt. 19.01.2009 & 10.09.2009, still when the Institution failed to deposit, the allotment of land in favour of Dayanand Shiksha Samiti for establishing B.Ed. College in Pratap Nagar Scheme, Jaipur was cancelled vide letter dt. 09.03.2010. The Officers, further submits that in the light of change in circumstances which has taken place thereafter and may also be relevant for the

present purpose, the subject land in question, as claimed, was earlier allotted to Kundan Lal Memorial Educational Society by the PAC in its meeting dt. 14.06.2000 and allotment letter was issued on 13.07.2000 but on account of non-fulfillment of conditions and deposit, in terms of demand notice, the allotment was cancelled vide communication dt. 05.08.2010 and thereafter the subject land measuring 5958.80 Sq. Mtrs. came to be allotted to Krishna Yogashram Trust (respondent No. 3) by the PAC in its meeting held on 21.06.2012 and allotment letter was issued to Krishna Yogashram Trust, in terms whereof, demand was deposited within the stipulated time and physical possession of the subject land was handed over on 11.02.2013 and Conveyance-cum-Perpetual Lease-Deed has also been executed between the appellant-Board and Trustee of Krishna Yogashram Trust duly registered before the Sub-Registrar, Jaipur on 30.03.2013 and further submits that when the land was later on allotted to the respondent No. 1 in Pratap Nagar Scheme, Jaipur, which is also one of the scheme of respondent-Board, indisputably it was not accepted by the respondent No. 1, then at least the respondent No. 1 does not hold any equity for allotment of land, as prayed for, and order passed by the Id. Single Judge, in these facts & circumstances, is not legally sustainable and deserves to be quashed and set aside.

9. The representative appearing for the respondent No. 1/petitioner supported order of the Id. Single Judge and submitted that once there was a decision of the PAC in its meeting dt. 26.09.1998 which could not be implemented merely because of declaration of assembly pools on 26.09.1998 by the Election Commission imposing Code of Conduct, once assembly elections were over and model Code of Conduct was lifted from 04.12.1998, the respondent No. 1/petitioner still holds right to seek direction from this court for execution of decision of the PAC, took in its meeting dt. 26.09.1998 and this what the Id. Single Judge has considered in the order impugned and as regard other submissions made relating to the land allotted to them later on at Pratap Nagar Scheme, Jaipur is concerned, the representative submits that in absence of complete information being made available to them and since it was demanded to reduce the price quoted in the demand notice, when still no communication was made by the appellant-Board or the Government, as the case may be, the demand could not be paid/deposited but this fact could not be disputed that the land was allotted to the Institution at Pratap Nagar Scheme, Jaipur which is one of the scheme of appellant-Board and on account of non-payment, in terms of demand and fulfilling the conditions in terms of letter of allotment, that came to be cancelled.

10. The representative of respondent No. 3 Krishna Yogashram Trust submits that the land has been allotted to them in accordance with law after going through the process provided under the Regulations, 1971 and after fulfilling all the conditions in terms of letter of allotment, full & final amount has been deposited and physical possession of the subject land has also been handed over to them and after the Conveyance-cum-Perpetual Lease-Deed being executed,

which is not a subject matter of challenge in any of the present proceedings, at least the subject land could not be allotted to the respondent No. 1/petitioner even if he has been able to make out a case for consideration and apart from it, in terms of order of the Id. Single Judge, there is no option left with the appellant-Board either to allot them land in Mansarovar Scheme, Jaipur of equal measurement and if not available then after hearing the respondent No. 1/petitioner in the nearby colony and submits that once the land which was later on allotted to the respondent No. 1 in Pratap Nagar Scheme, Jaipur has not been accepted, at least now he is not in a position to claim that in terms of order of the Id. Single Judge is entitled to claim allotment of land in Mansarovar Scheme, Jaipur and further submits that in absence of any legal right being conferred in favour of respondent No. 1, the Id. Single Judge was not justified in granting mandamus for allotment of land in favour of the respondent No. 1 under order impugned dt. 27.08.2009, which deserves to be quashed & set aside.

11. We have heard the parties, present in person and perused the material on record with their assistance.

12. It is not disputed that the PAC in the meeting held on 26.09.1998 having various agendas including allotment of land and as regards respondent No. 1/petitioner is concerned, there were two separate agendas No. 2 & 4 for allotment of land to Dayanand Public Senior Secondary School and Vedic Balika Mahavidyalaya and decided to ascertain availability of land measuring 5228 Sq. Mtrs. to Dayanand Public Senior Secondary School & 5150 Sq. Mtrs. to Vedic Balika Mahavidyalaya. The agendas of the PAC meeting dt. 26.09.1998 No. 2 & 4 being relevant for the present controversy, are reproduced hereunder, ad infra:-

13. However, the above fact cannot be considered in isolation from the fact that because of declaration of assembly pools on 26.09.1998 by the Election Commission imposing Code of Conduct, all the decisions were kept in abeyance and the fact which is brought to our notice that minutes of the meeting dt. 26.09.1998 were neither signed nor issued at any given point of time and such minutes of meeting of the PAC dt. 26.09.1998 have never seen light of the day. In this context, this fact can be further supported by the material which has come on record that in the subsequent meeting of the PAC dt. 30.04.1999 all the agendas of previous meeting dt. 26.09.1998 came up for re-consideration including the matter of allotment of land to both the Institutions, which are available as Agenda Nos. 1/2 & 1/4 & reads ad infra:-

14. As it reveals, the PAC decided to obtain audited accounts reports of the year 1997-98 & 1998-99 from both the Institutions and the matter was ordered to be placed in the next PAC meeting and both the Agendas No. 1/2 & 1/4 of the PAC meeting dt. 30.04.1999 again came up before the PAC in its meeting dt. 16.12.1999 and it was resolved that after obtaining complete information and required documents from both the Institutions, their case may be put up in the next PAC meeting. Thereafter the matter was again placed in the PAC meeting on 03.08.2000 in the case of Dayanand Public School and since despite opportunity

afforded, the desired information and documents needed, were not placed before the PAC, it was decided that the matter of allotment of land to the Institutions be rejected and filed.

15. In fact, from the material, it has come on record that what was considered by the PAC in its meeting dt. 26.09.1998 apart from the fact that it was not signed and seen light of the day, the consideration could not have been executed after it was reconsidered by the PAC in its later meetings, reference whereof has been made supra and more so, after the PAC in its meeting dt. 03.08.2000 has rejected the application for allotment of land to the Institution, the respondent No. 1/petitioner cannot be held to be justified now in seeking mandamus for execution & implementation of so-called decision of the PAC meeting dt. 26.09.1998 and this has been completely overlooked by the Id. Single Judge while passing the order impugned dt. 27.08.2009.

16. It is true that the Election Commission is entitled to issue directions u/Art. 324(1) of the Constitution, as it thinks fit, for conducting free and fair elections and for maintaining purity of the election process and if the Election Commission has interdicted the appellant-Board not to take further steps, considered by the PAC in its meeting dt. 26.09.1998, which however not the subject matter of challenge but if the appellant-Board also took a decision to keep such of alleged decision in abeyance and considered to examine all such agendas afresh which came up for re-consideration in the PAC meeting dt. 30.04.1999, in our considered view, no legal right could be said to be conferred in favour of the respondent No. 1/petitioner, on the basis of alleged consideration made by the PAC in its meeting dt. 26.09.1998, to seek mandamus from this court by filing writ petition u/Art. 226 of the Constitution.

17. This fact cannot be ruled out that subject land at Mansarovar Scheme, Jaipur was allotted finally to respondent No. 3 Krishna Yogashram Trust and after making compliance, in terms of demand notice, possession has been handed over to the respondent No. 3 and Conveyance-cum-Perpetual Lease-Deed between the appellant-Board and Trustee of Krishna Yogashram Trust has been executed, certainly right conferred could not be divested without due process of law and no right could be conferred to the respondent No. 1/petitioner in the present proceedings for seeking mandamus and at the same time, this fact also could not be ignored that even in terms of order of the Id. Single Judge, the land was allotted to the respondent No. 1/petitioner in Pratap Nagar Scheme, Jaipur by the appellant-Board but indisputably the respondent No. 1/petitioner failed to deposit, in terms of the demand notice/letter of allotment dt. 12.08.2008 and finally that came to be cancelled vide letter dt. 09.03.2010.

18. In the facts & circumstances of the instant case, we are of the considered view that no legal right on the basis of consideration of allotment, which has taken by the PAC in its meeting dt. 26.09.1998, in any manner could be said to be conferred in favour of the respondent No. 1/petitioner and in absence whereof, mandamus could not be issued to the appellant-Board, as directed by

the Id. Single Judge vide order impugned in the instant proceedings dt. 27.08.2009 and the same is in no manner legally sustainable in the eye of law and deserves to be quashed.

19. Consequently, both the appeals stand allowed and order of the Id. Single Judge impugned dt. 27.08.2009 is hereby quashed and set aside.

20. No costs.