

(2005) 02 DEL CK 0121

In the Delhi High Court

Case No : CW 6465/99 and CM 13662/99

Rajnagar Co-Op. House Building Society Ltd.

APPELLANT

Vs

Delhi Development Authority and Another

RESPONDENT

Date of Decision : 01-02-2005

Acts Referred:

Citation : (2005) 117 DLT 412 : (2005) 80 DRJ 134

Hon'ble Judges : S. Ravindra Bhat, J

Bench : Single Bench

Advocate : R.P. Bansal and Avnash Kumar, for the Appellant; Ansuya Salwan, for R-1 and Ravinder Sethi and Rajiv Kumar Dhawan, for R-2, for the Respondent

Final Decision : Dismissed

Judgement

S. Ravindra Bhat, J.—In this petition under Article 226 of the Constitution of India, the allotment of land measuring 1.70 acres, by the first respondent (hereafter "DDA") to the second respondent (referred to as "The Educational Institution") has been assailed; a direction to quash that allotment and offer allotment of the plot to the petitioner has been sought.

2. The petitioner is a Cooperative Group Housing Society. It was allotted 48 bighas and 2 bids was at Raj Nagar, Pitampura, Delhi for the purpose of developing house sites and allotting them to its members. A perpetual lease deed was entered into between the DDA and the petitioner society on 05.11.1977. The petitioner society developed the land, carved out plots and allotted them to its members.

3. An area of 1.70 acres was left out for institutional purpose and as per the lease deed, reverted back to the lesser, namely, DDA. It is alleged that the layout plan earmarks the site for a primary school.

4. The petitioner is aggrieved by the allotment made to the educational institution. According to its averments, the plot had to be offered to it for the purpose of running a primary school. Reliance has been placed upon a circular

dated 07.01.1977 which states that plots in cooperative group housing societies would be first offered to such group housing societies in accordance with an order dated 27.06.1970. The grievance is that the DDA ought not to have been allotted the plot to the educational institution without first offering it to the petitioner society.

5. The other ground on which allotment to the educational institution has been assailed is that the plot has been earmarked for a primary school whereas that institution has established a school up to secondary level. It is, Therefore, pleaded that the allotment is contrary to law and arbitrary.

6. The DDA as well as the educational institution have filed their returns. Their stand appears to be broadly similar. The DDA contends that the policy of 1977 relied upon by the petitioner does not hold the field since Rules have been framed in the year 1981; they are the DDA (Disposal of Developed Nazul Land) Rules 1981 (hereafter ""Rules""). The Rules have statutory character and they require that any agency or person interested in allotment of such lands has to comply with certain conditions stipulated. In this regard, reliance has been placed upon Rules 5 and 20 of the said Rules.

7. The educational institution's stand is that they have been put in possession of the plot for which they had paid Rs. 96,60,816/- (Rs. Ninety Six Lakhs Sixty Thousand Eight Hundred and Sixteen only). As regards the allegation that the use to which the plot is being contrary to the lay out plan, it is stated that the allotment is made further to the formalities required under the Rules and after assessment of the local needs, by the Directorate of Education which has to issue a certificate in that regard. It is, Therefore, averred that the description in the lay out plan is at best broadly indicative of the purpose, namely, establishment and running of a school, and no grievance can be made out about the nature of the school as long as that general purpose is catered to.

8. Mr. Avinash Kumar, learned counsel for the petitioner submits, that the allotment of land to the educational institution is contrary to the 1977 policy and hence arbitrary. The DDA was under an obligation to ensure that the plot in question, which was developed by the petitioner society, ought to be first offered to it, as per the policy of 1977. He submits that there is a local need for a primary school which obliged the DDA to give the first option in respect of the plot to the petitioner society. It is reiterated that the impugned allotment apart from being vocative is contrary to the circular also violates the lay out plan since the educational institution runs secondary school and not a primary school.

9. Ms. Anusuya Salwan, learned counsel for the DDA has defended the allotment. She states that the allotment was made in the year 1999. At that point in time, 1977 policy did not hold a field. According to her, all issues of allotment of such lands are governed by the 1981 Rules, which have the effect of superseding the existing policy. Besides, the Rules are statutory in character. Any person or institution seeking allotment of land has to apply under the said Rules and also

fulfill the conditions spell out in such Rules. It is submitted that allotment of land to schools, colleges etc. has to be as per the rates determined in Rule 5 and that the conditions for such allotment are governed by Rule 20. Counsel submits that the petitioner society does not fulfill any of the conditions spelt out in Rule 20. Indeed, it never made an application in that regard. Hence, there is no question of it being eligible for any allotment. Even otherwise, it is submitted that the petitioner is ineligible.

10. Mr. Ravinder Sethi, learned senior counsel for educational institution supported the stand of DDA as far as the inapplicability of the 1977 policy is concerned. He has relied upon certain judgments of this Court such as Division Bench judgment in Adhunik Bal Shiksha Samiti (FAO OS No. 99/93 decided on 11/04.1996); the Division Bench Ruling in Timarpur Nav Vasudha Enclave Cooperative House Building Society v. DDA (CW No. 560/91 decided on 20.12.1991) and the decision of a Division Bench in UP Samaj Cooperative House Building Society (CWP No. 3383/91). It has been urged that in these decisions, the view taken has been that the Nazul Rules superseded the 1977 circular.

11. Reliance has also been placed upon a Division Bench judgment in Dehati Cooperative House Building Society v. DDA (CWP No. 4831/95 decided on 1st March 1996) to the effect even if the lay out plan indicates the purpose as a primary school, nevertheless if it is allotted for some other school, no substantial difference would be made as far as legality of the allotment was concerned. It is submitted that this position was subject to proceedings under Article 136 of the Constitution and the Supreme Court did not interfere with the judgment.

12. The relevant part of the circular relied upon by the petitioner dated 07.01.1977 reads as follows:

"Disposal of Institutional Plots available in cooperative house building schemes

(i) Available plots in cooperative house building societies will be first offered to CHBS in Accordance with the Order No. 7-1(5)69/UD dated 26/27.06.1970 at a nominal ground rent of Rupee1/- per annum.

(ii) The second preference in case of non-acceptance by Cooperative House Building Societies will be given to MCD

(iii) The third preference in case of non-acceptance both from Cooperative House Building Societies and MCD will be given to any other registered society whose request will be pending with DDA."

Rules 5 and 20 of the Nazul Rules read 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 Explanation - For the purpose of this Rule the expression ""hospitals"" do not include the hospitals/dispensaries established by a company, firm or trust as referred to in sub-Rule (2) of Rule (4)."

20. Allotment to certain public institutions - No allotment of Nazul land to public institution referred to in Rule 5 shall be made unless -

(a) according to the aims and objects of that public institution-

(i) it directly subserves the interests of the population of the Union Territory of Delhi;

(ii) it is generally conducive to the planned development of the Union Territory of Delhi;

(iii) it is apparent from the nature of work to be carried out by that public institution, that the same cannot, with equal efficiency be carried out elsewhere than in that Union Territory.

(b) it is a society registered under the Societies Registration Act, 1860 (21 of 1860) or such institution is owned and run by the Government or any Local Authority, or is constituted or established under any law [for the time being in force or it is a company, firm or trust for the purpose of establishment of hospital or dispensary];

(c) it is of non-profit making character;

(d) it is in possession of sufficient funds to meet the cost of land and the construction of buildings for its use; and

(e) allotment to such institution is sponsored or recommended by a [Department of the Government of National Capital Territory of Delhi] or a Ministry of the Central Government:

[Provided that in case of allotment to a company, firm or trust for the purpose of establishment of hospital or dispensary by tenders or auction, as the same may be, such company, firm or trust, as the case may be, shall not be required to be sponsored by a Department of the Government of National Capital Territory of Delhi or a Ministry of the Central Government.]"

13. The decisions of at least three Division Benches with regard to the petitioner's claim for entitlement, in my opinion, conclude the issue. In *Adhunik Bal Shiksha Samiti's* case (*supra*), the question was whether allotment and grant of possession of portion of land earmarked for primary school could be disturbed was examined; that case was in the context of an injunction suit. The Division Bench held that *prima facie* the allotment to the society notwithstanding the request of the cooperative society was proper.

14. In the *Timarpur Nav Vasudha Enclave* case (*supra*), the Division Bench expressly stated as follows :-

"In 1970. Govt.of India had given directions in which it has been stated that the Society which has developed the land with its own funds may be given priority of allotment of the open land for the purpose of school or community centre etc. These instructions must be taken to have been superseded by the Statutory Rules, namely, DDA Disposal of Nazul Land Rules 1981. Rule 20 of the said Rules provided that the Society has to be framed for the purpose of starting any educational institution. There are other conditions also laid down in the said Rules to allotment of a plot for the purpose of starting a school."

15. In UP Samaj Cooperative House Building Societies as well as in Dehati Cooperative House Building Society cases respectively, particularly, the latter decision, the Court had expressly held that allotment of such plots to cooperative housing societies cannot be made for the mere asking; nor can they question allotments made to eligible institutions. In Dehati Cooperative House Building Society it was also held that

"It was submitted that the land is meant for a primary school but respondent No. 3 has secured it for a senior secondary school, a purpose not permissible. Suffice it to observe that the several documents filed by respondent No. 1 and 3 go to show that the allotment has been made for the purpose of a middle school. The reservation of the land is for educational purpose and it will not make any substantial difference if the allotment is for the purpose of middle school which may in future be extended or enlarged into a senior secondary school."

16. An analysis of the Rules as well as various Division Bench Rulings would lead to the following conclusions :-

(i) The Nazul Rules superseded the 1970/77 policy.

(ii) The combined reading of Rules 5 and 20 show that, inter alia, a public institution has to fulfill the following characteristics if it seeks allotment of land for establishing and administering a school :

(a) It should have in its aims and objects the fulfillment of parameters indicated in Rule 20(a);

(b) It must be, inter alia, a society registered under the Societies Registration Act 1860;

(c) It must be a non-profit making organization;

(d) It must have sufficient funds for meeting the cost of land and construction of building and

(e) The allotment to such institution must be sponsored or recommended by a Department of NCT or a Ministry of the Central Government.

(iii) The mere fact that a plot is earmarked for a primary school is not conclusive as to the use permitted; it is a broad indicator of the nature of use. Allotment can be made, for the purpose of some other school, if the conditions under Nazul

Rules are fulfilled.

17. In the present case, there is nothing on record to indicate that the petitioner, a cooperative housing society ever fulfilled any of the eligibility criteria spelt out by the Nazul Rules. It has not averred nor it was brought to my notice during the course of hearing, that the petitioner has established a society or is possessed of sufficient funds or has fulfilled the other criteria mandated by Rule 20. In these circumstances, the petitioner cannot complain of allotment of the plot to the educational institution. In my considered view, even having regard to the liberalized Rules of standing, the petitioner cannot be considered as a person aggrieved with sufficient locus standi to maintain the petition.

18. Apart from the lack of standing, having regard to the fact that the Rules have the effect of superseding the pre-existing policies (as discussed earlier) - a conclusion supported by no less than three Division Bench decisions in that regard - as also Full Bench ruling in Ramanand v. Union of India AIR 1994 Del 29 challenge by the petitioner to the allotment of the plot and its claim for allotment must necessarily fail.

19. In view of the foregoing, the writ petition is bereft of merit. Rule discharged. Consequently, the writ petition and the interim application are hereby dismissed with no orders as to costs.