

(2006) 02 P&H CK 0107

In the Punjab And Haryana At Chandigarh

Case No : Review Application No. 19 of 2001 in C.M. No. 753/755 of 2000
(Arising out of LPA No. 1368 of 1993)

Seven Seas Educational Society

APPELLANT

Vs

Haryana Urban Dev.Authority and others

RESPONDENT

Date of Decision : 28-02-2006

Acts Referred:

Citation : (2006) 4 RCR(Civil) 221

Hon'ble Judges : H.S.Bedi, J and Ajay Kumar Mittal, J

Advocate : Mr. M.L. Sarin, Sr. Advocate with Mr. Sahil Sharma, Advocate and Mr. Vivek Sood, Advocate. For the Tiny Tot Nursery School, Mr. Inderjit Kaushal, Advocate. Mr. R.N. Raina, Advocate. For the Respondent Nos. 2 and 3, Mr. Ashok Aggarwal, Sr. Advocate with Ms. Vandana Malhotra, Advocate. Mr. Anmol Rattan Sidhu, Addl. Advocate General, Haryana., Advocates for appearing Parties

Judgement

H.S. Bedi, J. (Oral)

1. By the present application, a review of the judgment of the learned Single Judge dated 9.8.2001 has been prayed. The Haryana Urban Development Authority (hereinafter referred to as "HUDA") invited applications for allotment of school sites. After the process of selection, the sites were allotted to the various applicants. This allotment was challenged by way of Civil Writ Petition No. 1303 of 1992. The learned Single Judge of this Court in his judgment dated 11.9.1992 accepted the writ petition and issued certain directions to HUDA in relation to making a fresh allotment of the sites. The judgment of the learned Single Judge was challenged by the allottees by way of a Letters Patent Appeal. The Division Bench in its judgment dated 1.3.1996 passed in LPA No. 1368 of 1992 affirmed the judgment of the learned Single Judge but also issued certain other directions with regard to the disposal of the sites. The judgment rendered in the Letters Patent Appeal was assailed before the Hon'ble Supreme Court. The Hon'ble Supreme Court, in its judgment dated 15.7.1996, reported in New India Public School and others v. HUDA and others, 1997(1) RCR(Civil) 97 : JT 1996(7) SC 103 held as under :

"5. The Division Bench has doubted bona fides in the allotments in question as expressly found in the judgment. Since, the learned Single Judge had accepted the averments, but the Division Bench was not inclined to accept the same and doubted the bona fides of the actions of the authorities and resultant allottees, due to absence of any strong material, we cannot lightly brush aside or disagree with the observations made by the learned Judges of the Division Bench. Under those circumstances, we are inclined to uphold the order of the Division Bench, subject to the following further directions. While accepting the directions given by the Division Bench we further add that the Committee would, as suggested by the Division Bench, in evaluating the property, determine the market value of the sites allotted prevailing as on September 11, 1992 in the light of the directions issued in the judgment. After the determination so made, an option would be given only to the petitioners i.e. Ajay Memorial School, Ashok Trehan Memorial Charitable Trust and Manav Mangal Society and Lt. Col. Y.P. Mahindru, for payment of the market price in lump sum. In the event of their accepting the offer the same shall be laid before the first Court of the High Court to obtain the approval thereof. The High Court, before giving approval, would consider the valuation and other relevant material. The HUDA also is directed to frame an appropriate scheme for allotment of the sites under discretionary power or other mode otherwise than by public auction and then place the scheme before the first Court of the High Court and obtain approval of the validity and correctness of the scheme and would thereafter proceed with the disposal of properties in future. As far as allotment to the petitioners, viz. Ajay Memorial School, Ashok Trehan Memorial Charitable Trust and Manav Mangal Society and Lt. Col. Y.P. Mahindru, in these special leave petitions is concerned, the same will be subject to the above directions and in the event of their nonacceptance, the properties should be put to public auction along with other sites and buildings. The plots allotted to the rest of the petitioners other than those cases where notices were issued, will be subject to the directions issued by the Division Bench. The other unallotted plots also should be put to public auction as ordered by the Division Bench."

2. Pursuant to the directions of the Hon"ble Supreme Court, the learned Single Judge before whom the matter was put up, again noticed that the directions had to be complied with by the HUDA and a direction was accordingly issued. Pursuant to the aforesaid order, the HUDA fixed the price of a plot at Rs. 1,200/ per square meter in its meeting held on 25.9.2000. As the Hon"ble Supreme Court had directed that the price had to be approved by the High Court, this matter was again put up before the learned Single Judge, who in his order dated 9.8.2001 held that the fixation of price of Rs. 1,200/ per square meter was excessive and accordingly reduced the amount to Rs. 500/ per square meters but treating the schools as having some commercial element as well, increased the price by 50% on that account and accordingly fixed Rs. 750/ per square meter as the price to be paid within 30 days failing which the allottees would be liable to pay Rs. 1,200/ per square meter. It was also held that if the payment was made

within 30 days, no interest was leviable.

3. By this application, a review of the order dated 9.8.2001 has been sought by the applicants on three grounds; firstly that the price fixed by the learned Single Judge was excessive; secondly the direction issued that the amount be paid in lump sum within 30 days failing which the amount at the rate of Rs. 1,200/ per square meter was to be recovered was not called for in the light of the directions issued by the Hon"ble Supreme Court in *Bhartiya Vidya Bhawan, Panchkula v. Haryana Urban Development Authority and others*, Civil Appeal Nos. 1507815081 of 1996 in SLP(C) Nos. 1272023 of 1996 and thirdly the order of the Hon"ble Supreme Court *ibid* that the amount already paid by the Schools should be adjusted to the amount calculated by the HUDA had been ignored.

4. We have heard the learned counsel for the parties on this score. We are of the opinion that the review is not in the nature of a rehearing of the matter and the jurisdiction in review is very clearly circumscribed. In this view of the matter, we find no justification in reducing the price of Rs. 750/ per square meter fixed by the learned Single Judge. Mr. Raina has, however, pointed out that his clients were running Nursery Schools and as such the commercial element in the case of such schools was clearly lacking. We are of the opinion that this too would not be a ground for review. We, however, find merit in the two other points made by the applicants as the learned Single Judge appears to have ignored the order dated 18.11.1996 passed by the Hon"ble Supreme Court. The same is reproduced as under :

"These appeals are sequel to the decision of this Court in *New India Public School and others v. HUDA and others*, 1996(5) SCC 510. This Court in the operative part of the said decision has held that HUDA should collect the market value in respect of the allotted land as on September 11, 1992. Initially, the appellant institution was granted 7.6 acres for a total consideration of Rs. 14,44,740/. Since the appellant had committed default in payment of the amount, the original allotment was cancelled on August 28,. 1980 and at request fresh allotment had come to be made on February 24, 1993 to the extent of 5 acres of land at revised rates with total coming to Rs. 16,80,208/. We need not traverse the entire controversy since it is already covered by the judgment referred to hereinbefore. Since the appellant was also on the same footing, it should also pay the market price as on September 11, 1992. The respondent authority should calculate the amount and direct the appellant to pay the same. The amount already paid should be adjusted towards the amount to be calculated by HUDA; the balance amount shall be paid by the appellant. In case of any difficulty in payment, it is needless to mention that HUDA will give to the appellant appropriate benefit of paying the amount in instalments."

A bare reading of this order would show that the last two points raised by the applicants are with regard to the payment in instalments and also adjustment of the amount already paid. We accordingly direct that in the light of the aforesaid observations of Hon"ble Supreme Court that the allottees of plots for Nursery

School which undisputedly have limited means shall pay the amounts due from them in yearly instalments starting from 1.5.2006 whereas the other allottees shall pay in six monthly instalments starting from 1.5.2006; the full amount to be paid within six years. We also direct that in case HUDA has not made any adjustment of the amounts already paid, the needful shall also be done and the statement of accounts conveyed to the allottees. We further direct that in case of delay in payment of any instalment, interest at the rate of 12% per annum too shall be payable by the defaulter. We further order that to facilitate the functioning of the scheme formulated by this Court, the lease hold amounts will be calculated by the HUDA and conveyed to the petitioners within a period of three months. The petitioners have undertaken to pay the entire lease hold amounts by the end of April, 2007. We further clarify that the amounts already paid shall include the interest paid by the petitioners.

The review application stands disposed of accordingly. Dasti.