

**(1994) 03 DEL CK 0003**

**In the Delhi High Court**

**Case No :** Civil Writ Petition No. 1780 of 1993

Trinagar Shiksha Pracharini Sabha

APPELLANT

Vs

Delhi Development Authority and Another

RESPONDENT

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**Date of Decision :** 17-03-1994

**Acts Referred:**

Delhi Development Authority (Disposal of Developed Nazul Land) Rules, 1981 — Rule 207

**Citation :** (1994) 54 DLT 75

**Hon'ble Judges :** R.C. Lahoti, J;Arun Kumar, J

**Bench :** Division Bench

**Advocate :** P. Dutta, U.L. Watwani, Ravinder Sethi, S. Bansal and V.K. Seth, for the Appellant;

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## **Judgement**

Arun Kumar, J.

(1) The petitioner has filed the present writ petition challenging the demand contained in the allotment-cum-demand letter dated 4/03/1993 issued by respondent No. 1. By the said letter he respondent has allotted 1.5 acres of land to the petitioner for purposes of a middle school at Rohini, Delhi. Out of this allotment 75 acre of land is meant for school building for which petitioner has been called upon to pay premium @ 45 lac per acre while for the remaining land meant for playground. The petitioner has to pay ground rent @Rs.5000.00per year.

(2) The petitioner is a Society registered under the Societies Registration Act, 1860 with the object of imparting education. Towards this object the petitioner is running a School. The petitioner Society applied for allotment of Nazul land to the Director of Education, Delhi, for construction of a new school building and a playground for the students of the school. The application was made on 18/12/1986. Since allotment of Nazul land in Delhi rests with the Delhi Development Authority, the Director of Education sponsored the case of the petitioner for allotment of land to the Delhi Development Authority vide its letter

dated 5/02/1990. The Institutional Allotment Committee of the Delhi Development Authority recommended the case of the petitioner society on 11/07/1990 for allotment of land subject to availability of the land in the area of the petitioner's choice. In the proforma of information furnished by the petitioner society it had given the choice of the locality where the land was required as (1)Lawrance Road; (2) Anywhere at Lawrance Road. Thereafter on 16/08/1990the petitioner made enquiries from the Delhi Development Authority about further action in the matter. It appears that land was not available in the locality of the petitioner's choice. Ultimately the petitioner by its letter dated 21/02/1991requested for allotment of land at any other site. The Delhi Development Authority was able to find that land could be allotted to the petitioner in the Rohini area. From the additional affidavit filed on behalf of the Delhi Development Authority on 13/09/1993 it appears that thereafter the file was sent to the Lt. Governor, Delhi ,who is also the Chairman of the Delhi Development Authority for his approval for allotment of land to the petitioner society in the Rohini area. The file was received from the Lt. Governor by the Delhi Development Authority on 6/11/1991 after the approval of the Lt. Governor. According to the Delhi Development Authority in view of the change in locality, re-sponsorship from the Directorate of Education, Delhi Administration, Delhi was required as per Rules. It was only on 18/05/1992 that the Directorate of Education re-sponsored the case of the petitioner for allotment of land in Onkar Nagar or Keshav Puram. the petitioner society, however, by its letter dated 23/06/1992 requested for allotment of land in Rohini. The Delhi Development Authority by its letter dated 9/07/1992 sought comments of the Directorate of Education on this request of the petitioner society. The comments from the Directorate of Education were received on 20/08/1992 by the Delhi Development Authority where after the case was again sent to the Vice-Chairman, Delhi Development Authority and the Lt. Governor of Delhi for their approval. The approval for allotment of land to the petitioner society at Rohini was received on 8/02/1993. In pursuance there of the allotment-cum-demand letter was issued to the petitioner on 4/03/1993.

(3) The petitioner has challenged this allotment-cum-demand letter dated 4/03/1993.

(4) During the course of hearing of the petition the challenge was confined to the following grounds:-

(I)the increase in the rate of premium of land demanded from the petitioner is arbitrary, illegal and discriminatory;(ii) the delay on the part of the Delhi Development Authority in processing the case of the petitioner for allotment of land in its favor has led to the petitioner being charged higher rates;(iii) the revised rate being charged from the petitioner is not applicable to the land in Rohini, where petitioner has got the allotment.

(5) Regarding the first point, the case of the petitioner society is that several other societies who had made similar applications for allotment of land for

purposes of schools, Along with the petitioner, or near about the time the petitioner made its application, were- allotted land at much cheaper rates whereas the petitioner has been asked to pay at revised rates which are very high. The petitioner has given instances of various other societies in this connection. The point of discrimination does not stand scrutiny in view of the fact that the allotment in favor of the petitioner society has been made on 4/03/1993 whereas in case of other societies, particularly the societies whose instances have been cited by the petitioner, allotment had been made much before. The petitioner has not pointed out a single instance wherein an allotment made on or about 4/03/1993, different rates have been charged. It is the case of the respondent Delhi Development Authority that for Nazul land the rates charged are as notified by the Central Government from time to time and that the Delhi Development Authority has no say in the matter of fixation of rates. The rates charged from the petitioner society are as per notification of the Govt. of India issued on 3/03/1993.

(6) In this connection our attention has been invited to Rule 5 of the Delhi Development Authority (Disposal of Developed Nazul Land) Rules 1981 (hereinafter referred to as the Nazul Land Rules). The said rule provides as under:-

"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 of the permit 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."

(7) The land rate charged from the petitioner is on the basis of rate determined by the Central Govt. and applicable at the relevant time. The other Societies whose instances have been cited were charged land rates on the same basis and as .per the rates prevailing at the time of allotment in their favor. Accordingly we .find no substance in the contention of the petitioner that the rate charged by the respondent from the petitioner for the land allotted to it is arbitrary, illegal or discriminatory.

(8) Next it is urged on behalf of the petitioner society that the petitioner made its application for allotment of land for school on 18/12/1986 and it is the delay on account of the respondents which has resulted in petitioner having been called upon to pay at such a high rate. In other words according to the petitioner if the petitioner's application had been expeditiously dealt with, the petitioner would have been required to pay at a much lesser rate.

(9) As already pointed out, the Delhi Development Authority has filed an additional affidavit on 13/09/1993 as per direction of this Court to explain how the petitioner's file was dealt with. The learned Counsel for the Delhi

Development Authority has drawn our attention to certain relevant rules of the Nazul land rules. Rule 4 provides that the Delhi Development Authority may allot Nazul land to individuals, body of persons, public and private institutions etc. etc. As per Rule 5, the Delhi Development Authority may allot Nazul land to schools, colleges, universities etc. etc. According to Rule 20, the allotment of land to public institutions under Rule 5 is subject to certain conditions. For purposes of the controversy in the present case it will be worthwhile to reproduce Rule 20.

20. Allotment to certain public institutions. (1) 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; 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 part of 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; (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 by a Department of the Delhi Administration or a Ministry of the Central Government."

(10) The provisions of Rule 20 appear to be mandatory. As per Sub-rule (I)(a)(i), the public institution seeking allotment of Nazul land must be one serving the interest of the population of the Union Territory of Delhi. As per Sub-rule (I)(iii), it should also be apparent from the nature of work to be carried out by that public institutions that the type of work for which allotment of land is sought cannot be carried out with equal efficiency elsewhere than in that part of the Union Territory where allotment is sought. This sub-rule shows the importance being attached to the area where the allotment of land is being sought by a public institution. Before the land is allotted it has to be assessed that the nature of work to be carried out on the land will be conducive for the needs of the area concerned. Sub-rule (e) requires that the allotment of land has to be sponsored or recommended by the Delhi Admn. Therefore, sponsorship of land by the Directorate of Education becomes a mandatory requirement as per Rule 20.

(11) The question further arises as to whether when initially sponsorship was made in favor of the petitioner by the Directorate of Education on 5/02/1990 re-sponsorship was required? A perusal of Rule 20 shows that re-sponsorship would be necessary every time the area or locality where the allotment of land is sought is changed. The authorities have to assess the needs of the particular locality in relation to the nature of work or activity of the public institution which seeks allotment of land and only after such assessment the sponsorship has to be made to the Delhi Development Authority for allotment of land.

(12) In this connection it is important to notice Rule 44 of the Delhi School Education Rules. Rule 44 provides as under:-

"44. Notice of intention to open a new school. (1) With a view to enabling the Administrator to arrange for the planned development of school education in Delhi, every individual, association of individuals, society or trust, desiring to establish a new school, not being a minority school, shall before establishing such new school, give an intimation in writing to the Administrator of his or their intention to establish such school. (2) The intimation, referred to in Sub-rule (1) shall contain the following particulars, namely:- (a) the Zone in which the new school is proposed to be established, and the approximate number of students likely to be educated in such school; (b) the stage of education intended to be imparted in the new school; (c) the number of schools of the intended stage in existence in the Zone where the new school is proposed to be established and the population of such Zone. (d) whether the person proposing to establish the new school have any alternative Zone in view; and if so, the particulars of such alternative Zone with respect to the matters specified in Clauses (a) and (e); (e) the particulars including measurements of the building or other structure in which the school is proposed to be run; (f) the financial resources from which the expenses for the establishment and running of the school are proposed to be met and whether any application is proposed to be made for any aid; (g) the composition of the managing committee of the proposed new school until the new school is recognised and a new managing committee is constituted in accordance with the scheme of management made under the Act. (h) the proposed procedure, until its recognition under the Act, for the selection of the head of the school and other teachers and non-teaching staff and the minimum qualifications for their recruitment; (i) the proposed scales of pay for the head of the school and other teaching and non-teaching staff until the school is recognised under the Act. (j) admission, tuition and other fees which would be levied and collected until its recognition under the Act, from the students of the proposed new school. (k) any other facility which is proposed to be provided for the students of the proposed new school. (3) The Administrator may, after considering the particulars specified in the intimation given to him under Sub-rule (2) and after making such inquiries as he may think fit, inform the person or persons by whom the intimation was given to him whether or not opening of the proposed new school would be, in his opinion, in the public interests. Provided that the Administrator shall, if he is of opinion that the number of schools existing in the Zone where the new school is proposed to be opened is sufficient to meet the needs of that Zone, inform the person or persons by whom the intimation was given to him that the opening of the new school in such Zone would be against the public interest and may indicate, to such person or persons, any other Zone which, in his opinion, needs the establishment of a new school, and thereupon it would be open to such person or persons to open a new school in the Zone indicated by the Administrator."

(13) Thus whenever a new school is to be opened an intimation in writing of such

intention has to be sent to the Administrator by the body which seeks to open a new school. The intimation is required to give, among other things, (a) particulars regarding the Zone in which the new school is proposed to be established and the approximate number of students likely to be educated in such a school; (b) the stage of education intended to be imparted in the new school; (e) the number of schools of the intended stage in existence in the Zone where the new school is proposed to be established and the population of such Zone. It is on the basis of this information/particulars that the Administrator makes up his mind as to whether the new school is allowed to be established in the concerned Zone. The Administrator has to assess whether sufficient schools are available in a Zone or not. If IN a particular Zone there already a sufficient number of schools, the Administrator may inform the body which proposes to open a new school that it would not be in public interest to do so and may suggest any other Zone where in his opinion new schools need to be established. It is thereafter that a new school will be opened in the Zone indicated by the Administrator. A combined reading of the above statutory provisions shows that it is a very important consideration for allowing anew school to be opened that the area in which it is opened requires augmentation of the facilities for education to students.

(14) In the present case in the first instance the Director of Education sponsored the case of the petitioner for Lawrance Road area thereafter when no land was available in that area the petitioner was informed accordingly and the petitioner exercised its choice for Rohini area where land was available. In view of the change of locality/Zone, re-sponsorship became necessary and there was nothing wrong in the Delhi Development Authority in asking for re-sponsorship by the Director of Education. Every time the Zone is changed the Administrator or the Director of Education has to reassess the feasibility or suitability of establishing a new school in the new Zone.

(15) The learned Counsel for the petitioner has contended that in view of the use of the word "anywhere" in the minutes of the Institutional Allotment Committee dated 11.7.1990 and in para 4 of the Sponsorship letter dated 5.2.1990 there was no need for responsorship and for the time spent in seeking responsorship, the D.D.A. should be held re-sponsible. This contention does not stand scrutiny. Firstly ,it will be seen from the Proforma of information filled by the petitioner that the petitioner has used the word "anywhere" Along with Lawrance Road, i.e.Lawrance Road or anywhere at Lawrance Road. The letter of Director of Education dated 5.2.1990 forwards the petitioner's application to the D.D.A.Along with its recommendation. Therefore, action by the D.D.A.-has to be on the basis of the petitioner's application which says anywhere at Lawrance Road. It appears that the person filling the blanks on the cyclostyled letter of the Director of Education dated 5.2.1990 did not fill the complete legend in para 4 and shortened anywhere at Lawrance Road" to just "anywhere". Secondly, the minutes of the Institutional Allotment Committee what is to be seen is the actual resolution which merely says "The Committee recommended the allotment of

land subject to availability in the area of choice". Thus one has to again go back to the actual application of the petitioner to find the area of its choice. Thirdly, the provisions contained in the statutory rules referred to above are very clear and leave no scope for such arguments. Sponsorship has to be in relation to an area or Zone and every time this is changed fresh sponsorship is required. Before sponsoring a case the Administrator has to be satisfied about the requirements of Rule 44 of the Delhi School Education Rules.

(16) Under these circumstances the respondents cannot be blamed for the delay in finally allotting the land to the petitioner society. Moreover it has to be noted in this connection that the revised land rates notified by the Govt. on 3/03/1993 are applicable with effect from 1/04/1992 and it cannot be said that the demand-cum-allotment letter was issued just a day after the revised rates were announced .

(17) This brings us to the last point urged on behalf of the petitioner society to challenge the impugned demand.

(18) It is submitted that in the schedule attached to the notification dated 3/03/1993 wherein revised land rates have been given, Rohini, i.e. the Zone in which land has been allotted to the petitioner society does not find mention anywhere and, Therefore, the Delhi Development Authority could not charge the petitioner society @ Rs. 45 lacs per acre. The rate of Rs. 45 lacs per acre has been notified for Zone Iii, i.e. West Delhi and Zone Iv, i".e. North Delhi. Various localities falling in these Zones have been given in the lists. However, Rohini does not find mention either in Zone Iii or Zone IV. According to the petitioner it could at best be charged on the basis of rates applicable for Zone Vi comprising of Narela and other outlying colonies for which the rate is Rs. 27.5 lac per acre. It is correct that in the lists of localities for Zone Iii and Zone Iv for which the applicable rate is Rs.45 lacs per acre i.e. the rate being charged from the petitioner society, Rohini is not mentioned. However, the learned Counsel for the Delhi Development Authority has placed On record a project report regarding Rohini Project according to which the land in Rohini project is North-West Delhi adjacent to Pitam Pura and ShalimarBagh. Another brochure relating to Rohini Project shows that the Rohini project is North-West Delhi within a distance of 15 Kms. from Connaught Place and in continuation of Shalimar Bagh and Pitam Pura residential schemes.

(19) Our attention has also been drawn to the Scheme of Conversion from leasehold system into free hold announced by the Delhi Development Authority in April 1992, a copy of which has been placed on record by the petitioner society itself .Accord ing to that scheme Rohini falls in North Delhi, Zone IV. Thus it cannot be said that Rohini falls in outer Delhi, i.e. Zone VI. Rohini appears to be very much part of North-West Delhi and is certainly not an outlying area of Delhi. Therefore, even if Rohini as such has not been specifically mentioned in the schedule of rates notified by the Govt. of India, the rates applied for Rohini by the Delhi Development Authority appear to be correct.

(20) For the above reasons we find no merit in this writ petition and the same is dismissed in liming.