

(2012) 12 DEL CK 0021

In the Delhi High Court

Case No : LPA 739 of 2012, CM No. 18965 of 2012 (for stay) , CM No. 18966 of 2012 (for condonation of delay) and CM No. 18967 of 2012 (for exemption)

Venkateshwar Education and Medical Society (Regd.)

APPELLANT

Vs

Delhi Development Authority

RESPONDENT

Date of Decision : 04-12-2012

Acts Referred:

Citation : (2013) 133 DRJ 215

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Rajiv Nayar with Mr. Gaurav Mitra, Mr. Saurabh Seth, Mr. Shivashankar Panicker, Mr. Vineet Kumar and Ms. Samreen, for the Appellant; Shobhana Takiar, for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Sahai Endlaw, J.—This intra court appeal impugns the judgment dated 27th August, 2012 of the learned Single Judge dismissing the WP(C) No. 22581/2005 preferred by the appellant. The said writ petition was preferred seeking a direction to the respondent no. 1 DDA to allot land to the appellant Society, for running a Senior Secondary School in Rohini, as recommended by the Institutional Allotment Committee (IAC) and at rates at which the land had been made available to other 53 Societies who were cleared alongwith the appellant Society in the IAC meetings held on 13/17th February, 2003. The writ petition also impugned the letter dated 14th November, 2005 of the DDA whereby the prayer of the appellant for allotment of land had been rejected. The learned Single Judge has dismissed the writ petition, relying on the judgment dated 25th March, 2011 of the Division Bench of this Court in WP(C) No. 2459-60/2005 titled Bhagwan Mahavir Education Society (Regd.) Vs. Delhi Development Authority and other connected matters and holding that the amendment of the year 2006 to the Delhi Development Authority (Disposal of Developed Nazul Land) Rules, 1981 did not allow the grant of relief sought by the appellant.

2. The appeal is accompanied with an application for condonation of delay of 34 days in filing the appeal. The counsel for the respondent DDA appears on advance notice and has opposed the condonation of delay. It is argued that delay has been attributed to the certified copy of the impugned judgment having been misplaced and a fresh certified copy having been applied for and to the engagement of a new counsel; that the said reason is falsified by the appearance of the advocates on behalf of the appellant on 7th November, 2012 when this appeal was listed first and where the appearance of the "erstwhile counsel" is noted. It is thus argued that the delay ought not to be condoned.

3. Though undoubtedly the appellant in the application for condonation of delay has portrayed as if a new counsel was engaged for preparing the appeal and which took time, and the counsel who had appeared before the learned Single Judge himself appeared in this appeal also, but we have nevertheless, to satisfy our judicial conscience heard the counsels on merit also.

4. It is the case of the appellant in the writ petition that in the meetings of the Institutional Land Allotment Committee of the respondent DDA held on 13th and 17th February, 2003, recommendation to allot a plot of land measuring 2 acres in PSP-4, Sector 16, Rohini, Phase III to the appellant Society subject to confirmation by the Planning Department was made; however the said plot was having pits and undulation and construction activity was not possible thereon; that the appellant Society thus requested for an alternative plot; that the matter was then sent to the Planning Department for confirmation of the recommendation of the Institutional Land Allotment Committee and which confirmed the recommendation; that the Department of Education also renewed the Essentiality Certificate issued to the appellant Society till 31st December, 2008; that on 12th August, 2004 the respondent DDA asked the appellant Society to furnish proof/documents showing availability of sufficient funds to meet the cost of land; that the same was furnished by the appellant Society; that however despite the appellant Society having complied with all the requirements which were essential for allotment of the land, no steps in furtherance of allotment were taken and no demand letter issued to the appellant; that allotment of land to some of the other Societies whose cases were recommended in the meeting held on 13th and 17th February, 2003 were however made; that the appellant was thus discriminated against; that WP(C) No. 1033/2005 was earlier filed by the appellant seeking a direction for allotment, in which a direction was issued to the respondent DDA to take a decision in regard on the pending application of the appellant Society; that in compliance thereof the respondent DDA vide letter dated 14th November, 2005 rejected the request of the appellant Society for allotment inter alia relying on Circular dated 20th May, 2005. Impugning the said rejection letter dated 14th November, 2005 and the Circular dated 20th May, 2005, writ petition from which this appeal arises was filed.

5. The senior counsel for the appellant has argued that the sole basis for the

Single Judge dismissing the writ petition is the reliance on the judgment of the Division Bench in Bhagwan Mahavir Education Society (Regd.). It is contended that the said reliance is misconceived inasmuch as Bhagwan Mahavir Education Society (Regd.) was a case where land had not been allotted. It is contended that in the present case a specific plot of land already stood allotted to the appellant Society and thus the amendment w.e.f. 19th April, 2006 to the Rules aforesaid doing away with the allotment of Nazul land at pre-determined rate to Societies as the appellant and providing for disposal of such land only by auction would not apply to the appellant. It is also argued that the case of the appellant is different from that considered by the Division Bench in Bhagwan Mahavir Education Society (Regd.) and other connected petitions inasmuch as none of those petitioners had made the payment; on the contrary payment of the entire consideration of Rs. 2.24 crores has been made by the appellant Society way back in the year 2004 and the respondent DDA while on the one hand is retaining the said monies and on the other hand is denying allotment to the appellant Society on the ground of subsequent amendment in the Rules.

6. Having not found any discussion on the aforesaid aspect of the appellant having made payment of Rs. 2.24 crores in the judgment of the learned Single, it was inquired from the senior counsel for the appellant whether such a plea had been taken. He replied in the affirmative. On being asked to show the said plea, attention is invited to ground "R" in the Memorandum of Appeal which is as under:

R. Because the Ld. Single Judge failed to appreciate that grave injustice and hardship would be caused to the Appellant, without any fault of its own. In this regard it may be submitted that the Appellant has duly deposited Rs. 2.24 crores with the Respondent at the time of the application. This amount has been held by the Respondent ever since without taking any action on the alternate allotment. Thus it is clear that the Respondent is clearly approbating and reprobating at the same time, while enjoying the benefit of the money so deposited by the Appellant and at the same time not allotting the land to the Appellant. To further prejudice the rights of the Appellant, the cost of the land (even at pre-determined rates) has gone up considerably in the past few years thus causing grave financial loss to the Appellant.

7. It was however inquired whether such a plea was taken in the writ petition. The senior counsel for the appellant, from a copy of the writ petition annexed to the Memorandum of Appeal is unable to show any such plea. However, the senior counsel for the appellant states that such payment is borne out from a document on record namely the letter dated 20th September, 2004 at page 74 of the paper book. On the contrary, the counsel for the respondent DDA states that the plea to the said effect in ground "R" (supra) is false. It is stated that it was the case of the appellant itself in the writ petition that no demand letter even had been issued and without a demand letter, the payment could not have been made. It is further stated that the document dated 20th September, 2004 at page 74 on

which a reliance is placed is not of payment but a letter of the appellant Society to the DDA showing availability of the sum of Rs. 2,24,73,613/- with the appellant. The senior counsel for the appellant after obtaining instructions confirms that what is stated in ground "R" (supra) in the Memorandum of Appeal is not correct and no payment has been made. He has however no instruction as to why a false ground is taken in the memo of appeal.

8. We strongly deprecate and condemn the conduct aforesaid of the appellant. The Memorandum of Appeal is accompanied with the affidavit of the President of the appellant Society confirming the contents thereof to be true to his knowledge. He has clearly sworn a false affidavit. The ground "R" (supra) cannot be explained away as a mistake or inadvertence. The appellant Society was claiming the land to setup an Educational Institution and claiming its members and office bearers to be interested in imparting education. He is clearly an educated person. The counsel who has drafted the Memorandum of Appeal though instructing the senior counsel also has no explanation whatsoever for admittedly false averments in ground "R" (supra). Inference, but has to be drawn that a false plea was taken to distinguish the case from the Division Bench judgment in Bhagwan Mahavir Education Society (Regd.) and to somehow or the other have the notice of the appeal issued and to keep the land entangled in litigation and this is clearly abuse of the process of this Court and the appeal is liable to be dismissed on this ground alone.

9. We may however notice that a Division Bench of this Court in Sunhill Educational Society (Regd.) and Another Vs. Delhi Development Authority and Another , in which case also on an earlier occasion an allotment had indeed been made in favour of the appellant therein, though had been cancelled and file notings approving allotment existed, held that no right to allotment of land vested in favour of the appellants and that till the actual allotment letter is issued, the recommendations of the Land Allotment Committee do not vest any right in the applicants for allotment of land. It was further observed that if a contrary view were to be taken, then all others who had applied for land prior to change in policy, cannot be treated differently. SLP(Civil) 26921/2012 preferred to the Supreme Court against the said judgment of the Division Bench was dismissed on 21st September, 2012..

10. Similarly, in St. Sophia's Christian Education Society Vs. D.D.A. and Another, it was held by the Division Bench of this court that disposal of land by the DDA has to be in terms of norms as prevalent on the date when the decision is to be taken and that it is common knowledge that pre-determined rates on which allotment was earlier made were far below the market rate. Again in M.S. Educational Society Regd. Another Vs. Delhi Development Authority and Another, , the same view was taken.

11. We may lastly add that the ratio even of Bhagwan Mahavir Education Society (Regd.) Vs. Delhi Development Authority is that unless land is allotted and communication in that regard sent, no right accrues in favour of the applicant.

Admittedly no allotment letter was issued to the appellant. This Court cannot now direct the DDA to apply the old policy vis-?-vis the appellant. Thus on merits also, the appellant has no case. The appeal is dismissed with costs of Rs. 20,000/- payable by the appellant to the DDA within four weeks from today.