

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **LPA No. 654/2008**

% Date of decision: 24.10.2008

DELHI UNION OF JOURNALISTS COOP. HOUSE
BUILDING SOCIETY & ORsAppellants
Through: Mr. Sumit Bansal with Mr. Arun
Sharma, Mr. Manish Paliwal, Mr.
Kanishk Ahuja, advs

Versus

UNION OF INDIA & ORS.Respondents
Through: Mr. N. Waziri with Mr. Keshav Thakur,
adv. for the respondent No. 2.
Mr. Rajiv Bansal, Adv. for the DDA/R-3.

CORAM:

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL
HON'BLE MR. JUSTICE MOOL CHAND GARG

1. Whether the Reporters of local papers
may be allowed to see the judgment? No.
2. To be referred to Reporter or not? No.
3. Whether the judgment should be
reported in the Digest? No

SANJAY KISHAN KAUL, J. (ORAL)

CM No.15111/2008 in LPA No. 654/2008

Allowed, subject to all just exceptions.

LPA No. 654/2008 & CM No. 15113/2008

1. The appellants are the three co-operative societies of the residents of the area in question i.e. Gulmohar Park. The resident
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societies were aggrieved on account of the lease granted of the plot of 1200 sq. yds. to respondent No. 4 for construction of a dance school though the plot had been earmarked for a Nursery School. The allotment had taken place on 25.9.1997. Writ petition (Civil) No. 662/2000 was filed making the following prayers:

- a) In the nature of certiorari quashing the grant of lease of the plot of an extent of 1200 sq. yds. earmarked for nursery school under the layout plan for the Gulmohar Park scheme to the fourth respondent for construction of a dance school as being illegal, unconstitutional and violative of the layout plan and the master plan.
- c) Appropriate writ or direction restraining the respondents from in any manner acting in pursuance of the said allotment including marking construction on the plot in question.
- d) In the nature of a certiorari calling for the records of the respondents in relation to the impugned notification No. K-13011/21/93-DDIO Govt. of India, Ministry of Urban Affairs and Employment (Delhi Division) dated 20.9.1995 and quashing the same as unconstitutional, illegal being violative of the fundamental right of the petitioners to primary education.

2. The aforesaid writ petition was disposed by the Division Bench of this Court in terms of the order dated 24.3.2004. The Division Bench took note of the fact that the land was earmarked for a Primary School and a Police Post but the purpose came to be amended by issuing a notification dated 20.9.1995. In terms of the said notification, the nursery school site according to the layout plan can be utilized for a number of purposes including a Fine Arts School. It may be noticed that the phraseology used was "where no such facility are available in the vicinity". The significance of this,

according to the appellants/societies, is another Fine Arts School in the vicinity and, thus, there was no occasion to allot the plot to a Fine Arts School.

3. The Division Bench, however, did not consider favourably the plea of the petitioners. However, it did observe that the appellants were trying to get this site for a Nursery School for which they were advised to get a sponsorship from the Directorate of Education, Delhi Administration by the DDA and in case such a recommendation is obtained, the DDA would consider the case of the appellants for allotment for a Nursery School.

4. The appellants were not satisfied with this order and approached the Supreme Court by filing Special Leave Petition (Civil) No. 18712/2004 which was dismissed *in limini*. This was the end of the first round of litigation. It may be noted, at this stage, that even till date it is not the case of the appellants that they had obtained any such sponsorship but, on the other hand, it is pleaded that there was no such requirement to obtain a sponsorship.

5. The second round of litigation began when the appellants filed another Writ Petition (Civil) No. 3192-94/2006. It was the case of the appellants that there was an important policy decision taken by the then minister for Urban Development on 2.12.1999 which has been kept away from the appellants and was not considered by the DDA. It is in view, thereafter, that the following order was passed on 3.3.2006 in the said writ petition:

Learned counsel for DDA states that within 10 days from today, Vice

Chairman, DDA would take the necessary decision on petitioner's representation dated 10.2.2006 and while taking the decision would take note of the note dated 2.12.1999 of the Minister of Urban Development. Counsel states that decision would be brought in court on the next date of hearing.

6. The aforesaid direction has resulted in the matter being considered by the Vice Chairman, DDA but once again by the order dated 03.4.2006 the appellants' case did not find favour. The appellants withdrew that writ petition in order to enable them to avail of the legal remedy to challenge the fresh order passed on 3.4.2006.

7. The genus of the present third round of litigation is the order dated 3.4.2006. The order dated 3.4.2006 records that the allotment was made of land measuring 1000 sq. mtrs. in favour of Kalashram for the purposes of dance and drama institute on 25.9.1997 as per the Government's notification dated 20.9.1995 permitting the user of the land for a Fine Arts School. The challenge to the allotment was by the earlier Writ Petition (Civil) No. 662/2000 and the order passed therein attained finality right upto the Apex Court. It has also been observed that there is concluded contract between the Kalashram and the DDA on receipt of payment and delivery of physical possession on 21.11.1997 in pursuance to allotment and such right of Kalashram could not be taken away by withdrawing the contract as represented by the association.

8. The appellants challenged the order in another Writ Petition (Civil) No. 12122-124/2006 which has been dismissed by the

impugned order dated 16.4.2007. The appellants, thereafter, filed an application under Section 340 of the CrPC as also an application for review and the review application stands rejected by the second impugned order dated 25.7.2008.

9. In order to appreciate the controversy, we consider it necessary to reproduce the note of the then Urban Development Minister which is the bedrock of the case of the appellants and its non-mention/non-consideration by the Vice Chairman, DDA in the order dated 3.4.2006 giving rise to this third round of litigation. The same reads as under:

“MINISTER OF URBAN DEVELOPMENT
Allotment of sites earmarked for Nursery Schools in the approved lay-out of various colonies

A number of complaints have been received by me from Residents' Welfare Associations and Cooperative House Building Societies regarding allotment of Nursery School sites for purposes other than the Nursery School. Most of them pleaded that construction on these sites would cause further congestion and create a number of environmental problems. They wanted these areas to be kept open as park.

2. Yesterday, Shri Shaib Singh Verma, MP and former Chief Minister of Delhi, brought to my notice a case in which a Nursery School site in Rohini has been allotted for what he termed as 'Semi-commercial activity'. Earlier in the day, another deputation of Pitampura had met me with similar grievances.

3. I think, in the present conditions, wherein over-crowding and congestion is becoming a menace in Delhi, allotment of Nursery School sites for purpose other than the purpose specified in the lay-out plan, would not be in public interest. Such allotment should cease forthwith. The area should be used for the

Nursery School, which is meant for the small children in the neighbourhood, or developed/kept as green park- If there is any case of exceptional nature which requires special consideration, specific orders of the Ministry should be obtained.

(Jagmohan)
02.12.1999

Secretary(UD)

IS(UD)

VC, DDA

Commissioning (Institutional Planning), DDA"

(emphasis supplied)

10. A perusal of the impugned order shows that learned single judge has traced out the aforesaid history of the prior litigation and taken note of the principal plea advanced on behalf of the appellants that the note has not even been referred to while passing the order dated 3.4.2006 by the Vice Chairman, DDA. The learned single judge found that the respondents were right in contending that the writ petition filed by the petitioners having already been rejected on 24.3.2004 and the SLP having been dismissed, the challenge to the notification dated 20.9.1995 enlarging the scope of land allocated for a Nursery School to include various other purposes including a Fine Arts School stood rejected. The appellants were, thus, not entitled to rake up the issue again. The leave granted to the appellants to apply afresh by the Division Bench by the order dated 24.3.2004 would only imply that the same can be there if some other suitable land was available.

11. Another aspect taken note of by learned single judge is that the note dated 2.12.1999 of the then Minister of Urban Development was not specific to the allotment made in favour of LPA 654/2008

respondent No. 4 and was recorded more than two years after the allotment. The note was of a general nature and did not advert to the notification dated 20.9.1995 issued by the Central Government, a challenge to which has already been turned down by the Court in the first round of litigation.

12. It was, thus, found that the fact that the impugned order dated 03.4.2006 by the Vice Chairman, DDA did not specifically refer to the note dated 02.12.1999 of the then Urban Development Minister would not make any difference as the challenge to the validity of allotment in favour of respondent No. 4 already stood negated by Division Bench of this Court by the order dated 24.3.2004 in the first round of litigation.

13. We have once again heard learned counsel for the parties at length. The continued grievance of the appellants, who are societies, is that the allotment of the land in favour of respondent No. 4 has been contrary to the wishes and requirements of the residents of the society. We, however, cannot lose sight of the fact that there are no such norms whereby the wishes of the residents societies are taken into account while utilizing the land in the area as often happens in certain countries.

14. We are further constrained by the result of the earlier litigation initiated by the appellants and the challenge of the appellants having been rejected. The principal plea of there being another Fine Arts School in the vicinity and, thus, the notification dated 20.9.1995 itself providing that in such a case there was no

need for making another allotment formed subject matter of the first round of litigation. The appellants, unfortunately, did not succeed and that SLP was also rejected by the Supreme Court. That issue cannot be re-agitated again.

15. In the second round of litigation, all that could have been done was that the effect of the note of the then Minister for Urban Development to be considered. As to what would be the result of such consideration is itself a moot point in view of the challenge rejected in the first round of litigation. It is true that the note dated 2.12.1999 of the then Urban Development Minister has not been specifically mentioned in the decision taken by the Vice Chairman, DDA on 3.4.2006. However, an important aspect is that the note is general in nature and cannot really be stated to constitute a substratum for giving rights to the appellants to agitate the matter in Court. It was the view of the then Minister of Urban Development arising from a problem which was noticed by a certain members of Parliament. Not only that the most important aspect of the note is that the note itself makes it clear that the allotment should "cease forthwith". The note as made could, at best, have a future impact while the allotment in favour respondent No. 4 stood crystallized on the same being made, payment being accepted and the possession having been handed over and much prior in time.

16. Learned counsel for the appellants submits that the plot is still lying vacant. In our considered view, that has no impact in respect of the matter in question and this has possibly occurred on

account of the various rounds of the litigations filed by the appellants.

16. We find no infirmity in the conclusion arrived at by the learned single judge on this aspect which is the basis for rejection of the present petition. The order dated 3.4.2006 is challenged by the petitioner in the Writ Petition itself has noticed the rationale for rejection of the representation of the appellant on the aforesaid ground though it may not have mentioned the notings dated 2.12.1999.

17. In view of the aforesaid finding, we are not required to go into the aspect of condonation of delay as the same has been occasioned by the reason of the appellants preferring the review application before the learned single judge.

CM No. 15112/2008

Dismissed as infructuous.

SANJAY KISHAN KAUL,J

MOOL CHAND GARG,J

OCTOBER 24, 2008
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