

\$~27

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

+ **W.P.(C) 7445/2013**

SETH POKHARMAL EDUCATIONAL SOCIETY Petitioner

Through: Ms. Asha Jain Madan, Adv.

versus

DELHI DEVELOPMENT AUTHORITY Respondent

Through: Mr. Sanjeev Sabharwal, Standing
Counsel.

CORAM:

HON'BLE MR. JUSTICE G.P. MITTAL

ORDER

29.11.2013

1. This is second round of litigation between the parties.
2. The Petitioner filed a writ petition being W.P.(C) No.18728/2004 which came to be decided by the learned Single Judge of this Court on 17.4.2006. While interpreting Rule 20 of the Delhi Development Authority(Disposal of Developed Nazul Land) Rules, 1981 (Nazul Land Rules), the Petitioner's plea that it was entitled to be considered for allotment of a plot of land at the rates determined by the Central Govt. under Rule 5 of the Nazul Land Rules, was upheld. Paras 45 and 46 of the judgment in W.P.(C) No.18728/2004 are extracted hereunder:-

“45. To sum up, entitlement of the petitioners for allotment of Nazul Land under Rule 5 requires DDA to identify the sites which it intends to allot to societies for setting up higher/technical institutes. This would include a decision to identify the sites for setting up higher/technical institutes to be established by companies, firms or trusts to whom allotment has to be made at a premium determined at auction. Further, fairness

in action would require that if number of plots identified for allotment to societies is less than the number of existing societies whose entitlement has been scrutinized, allotment be made by draw of lots or any other reasonable criteria. If number of plots available exceed the number of societies, DDA would be obliged to forthwith allot specific plots to the petitioners and charge premium as per rates determined by the Central Government.

46. Writ petitions stand disposed of declaring that the petitioners would be entitled to be considered for allotment of Nazul Land under Rule 5 of the DDA (Disposal of Developed Nazul Lands) Rules, 1981 for setting up higher/technical institutes at a premium determined by the Central Government. Policy decision dated 15.12.2003 in so far it requires allotment of Nazul land to societies for setting up high/technical institutes at a premium determined through auction is quashed. Mandamus is issued to DDA to identify available plots for setting up higher/technical institutes and apportion the same for allotment to societies (falling in one class) and companies, firms and trusts (falling in second class); simultaneously, DDA would identify the societies whose entitlement has been cleared. If plots to be allotted to societies are more than the number of eligible societies, specific plot be allotted within a period of 3 months from today and premium charged as determined by the Central Government. If number of societies exceed the number of available plots, DDA is directed to evolve a reasonable criteria and as per criteria allot the specified listed plots to the eligible societies within 3 months.”

3. The DDA preferred an LPA No.1642/2006 against the judgment passed by the learned Single Judge. In the meanwhile, Rules 4, 5 and 20 of the Nazul Land Rules were amended w.e.f. 19.04.2006 and a Division Bench of this Court while deciding a batch of writ petitions including W.P.(C) No.2459-60/2005 titled *Bhagwan Mahavir Education Society (Regd.) & Anr. v. DDA & Ors.* on 25.03.2011, held that it is the mode of auction which is available for disposal of the Nazul Land for higher and technical education institutes, schools and hospitals other than cases which fall

within the domain of Rule 5 read with Rule 20 of the said Rules.

4. On the basis of the judgment in the earlier said writ petition, the DDA sought to withdraw LPA No.1642/2006 filed by it against the order of the learned Single Judge in W.P.(C) No.18728/2004. In spite of the objections raised by the Petitioner (herein), the withdrawal of the LPA was allowed. Thereafter, the Petitioner wrote a letter dated 31.05.2011 to the DDA followed by the reminders dated 14.06.2011 and 01.09.2011 requesting the DDA to allot it a land in terms of the judgment passed by the learned Single Judge in W.P.(C) 18728/2004, dated 17.04.2006. The second reminder dated 01.09.2011 written by the Petitioner to the DDA is extracted hereunder:-

“Dear Sir,

Reference our letter dated 31.05.2011 & 14.06.2011 (copies enclosed) we have requested your goodself to consider the case of our society for allotment of land for setting up Higher/Technical Institute at the rate determined by the Central Govt. As per the order of Ld. Single Judge dated 17.04.2006 (copy enclosed) whereby the society was held entitled to be considered for allotment of land.

As you are aware that the appeal filed by DDA in the above LPA has been withdrawn by DDA on dated 05.05.2011 and stands disposed off (copy enclosed). Thus, the order of the Ld. Single Judge dated 17.04.2006 has attained finality and therefore, in terms of the said judgment DDA is obliged to consider the case of the society for allotment of land for setting up Higher/Technical Institute at rates determined by the Central Government.

This is also to inform you that our society-Seth Pokhar Mal Educational Society is registered under Section XXI of Punjab Act 1860 with Registrar of Societies and not profit making (Charitable) in nature. The society has also been provided exemption from payment of Income Tax under Section 12A and Rules 10 (23C) 6 of Income tax Act and is eligible for Allotment of Nazul Land Under Rule 5 of the DDA (disposal of Developed Nazul Lands, Rule 1981)

for setting up Higher/Technical Institute at a Premium determined by the Central Govt.

It is, therefore, requested that the directions of the Ld. Single Judge as contained in para 43 & 46 of the judgment dated 17.04.2006 may please be complied with and the land to our society may kindly be allotted at the earliest possible.

*With regards,
(K.C. Garg)
President.”*

5. However, the DDA failed to allot the land as requested by the Petitioner forcing it to move a petition under Sections 11 and 12 of the Contempt of Courts Act, 1971. The crux of the contempt petition was that LPA No.1642/2006 having been withdrawn by the DDA, DDA was bound to decide about the allotment of the land to the Petitioner in terms of the judgment passed in W.P.(C) No.18728/2004. The learned Single Judge while dismissing the contempt petition on 02.12.2011 dealt with the contentions raised on behalf of the parties as under:-

“9. The submission of Mr. R.K. Saini, learned counsel for the petitioner, is that the effect of withdrawal of the L.P.A.s by the DDA, which had been preferred against the judgment of the learned Single-Judge dated 17.04.2006, is that the said judgment of the learned Single-Judge has attained finality. He submits that the respondent/DDA is, therefore, bound to implement the said judgment which, inter alia, directed the respondent/DDA to identify the available plots for setting up high/technical institutions; apportion the same for allotment of the same to societies as one class, and companies, firms and trusts as other class; identify the societies whose entitlement has been established; if plots to be allotted to societies are more than the number of eligible societies, specific plot be allotted within a period of 3 months on premium charged as determined by the Central Government, i.e. at pre-determined rates, and if the number of societies exceeds the number of available plots, to evolve a reasonable criteria and to make allotment of the specified plots within 3 months.

10. Mr. Saini further submits that the amendment in the Nazul Land Rules carried out on 19.04.2006 and the judgment of the Division Bench cannot take away the rights vested in the petitioner vide the judgment of the learned Single-Judge, which has attained finality. They cannot have the effect of setting aside the judgment of the learned Single-Judge.

11. On the other hand, Mr. Rajiv Bansal, who appears on advance notice on behalf of the respondents, submits that the law enunciated by the Division Bench in Bhagwan Mahavir Education Society (supra) is very clear. The Division Bench has concluded that in all such cases where actual allotment letters had not been issued and allotment not communicated to the allottee, the changed policy which has intervened during the pendency of the application of the applicant would govern the decision whether or not to allot the plot to the applicant, since a mere recommendation by one of the Committees of the DDA made during the internal processing of the case, does not create any vested right in the applicant to claim allotment of land.

12. Mr. Bansal submits that since the amendment in the rules came into effect on 19.04.2006, i.e. after the judgment of the learned Single-Judge and while the matter was still pending consideration for allotment of plot to the petitioner and other applicants, by application of the judgment of the Division Bench in Bhagwan Mahavir Education Society (supra) the changed rules became applicable even in the petitioner's case, according to which, Nazul Land could be allotted, including to societies, only on rates determined through public auction. He submits that it is for this reason that the respondent/DDA withdrew the L.P.A.s by placing reliance on the judgment of the Division Bench in Bhagwan Mahavir Education Society (supra).

13. Having heard learned counsel for the parties, I am of the view that there is no merit in the petitioner's submission that there is any breach, much less willful or deliberate breach, of the judgment of the learned Single-Judge dated 17.04.2006. The direction issued by the learned Single-Judge was to consider the petitioner's case for allotment in terms of the pre-existing policy as it existed prior to 19.04.2006. There was no specific direction

for allotment of any particular identified plot. No allotment has ever been made by the DDA to the petitioner. Within the period granted by the learned Single-Judge for carrying out the exercise of identifying the plots for allotment to societies, the amendment in the rules came into force on 19.04.2006. It is clear from the decision of the Division Bench that since the rules with regard to allotment of land to societies had undergone amendment during the pendency of the application of the petitioner, it is the changed rules which would apply to the petitioner's case. Clearly, the said amendment was applicable in the case of the petitioner as well. Therefore, the withdrawal of the L.P.A.s by the DDA cannot be said to vest any right in the petitioner inasmuch, as, the respondent/DDA has acted in terms of the judgment of the learned Single-Judge in W.P.(C.) No. 18748/2004 dated 17.04.2006 by applying principle laid down by the Division Bench in Bhagwan Mahavir Education Society (supra). The action of the DDA is, therefore, in compliance of the judgment of the learned Single-Judge dated 17.04.2006 and cannot be said to be in breach thereof. (emphasis supplied)

14. Dismissed."

6. Thus, the Petitioner preferred an SLP against the order dated 02.12.2011 passed by the learned Single Judge. However, the SLP was withdrawn by the Petitioner on 21.02.2012 with liberty to file a review application before the learned Single Judge. The Review Petition came to be dismissed on 27.03.2012. Thereafter, the Petitioner again approached the Supreme Court vide SLP No.24180-24181/2012. The SLP came to be dismissed on 04.09.2013 with the following observations:-

".... In our considered view in the factual scenario which is succinctly noticed by the High Court in the impugned order(s), as also reiterated by Shri P.P.Rao at the time of hearing of these petitions, we cannot hold and conclude that the respondents in not implementing the order passed by the High Court in Writ Petition No.18728 of 2004 have committed any wilful disobedience of the order(s) and directions(s) issued by it.

In view of the above, we decline to entertain these special leave petitions and the same are disposed of accordingly.

We clarify that we have not expressed any opinion on the correctness or otherwise of the view taken by the Division Bench of the Delhi High Court in the case of Bhagwan Mahavir Education Society (Regd.) and Anr. vs. DDA and Ors.

Ordered accordingly.”

7. The learned counsel for the Petitioner has taken pains to refer to the judgment of the Supreme Court extracted above and has submitted that the learned Single Judge while disposing of the Contempt Petition has held that in view of the decision of the Division Bench, the Rules with regard to allotment of land to the societies had undergone amendment during the pendency of the application (sic. Appeal) of the Petitioner and it were the changed Rules which would apply to the case of the Petitioner. The learned Single Judge held that the withdrawal of the LPA by the DDA cannot be said to vest any right in the Petitioner as the DDA had acted in terms of the judgment in W.P.(C) No.18748/2004 dated 17.04.2006 by applying the principles laid down by the Division Bench in *Bhagwan Mahavir Education Society (supra)*. The learned Single Judge, thus held that the action of the DDA is therefore in compliance of the judgment dated 17.04.2006 passed by the learned Single Judge.
8. The learned counsel for the Petitioner has also referred to the order dated 04.09.2013 passed in SLP (C) Nos.24180-24181/2012 and has urged that the order of the learned Single Judge merges in the order passed in the SLP by the Hon'ble Supreme Court and since the Supreme Court has simply observed that the DDA was not in wilful disobedience of the order(s) and direction(s) issued by the High Court, the order of the learned Single Judge that the order dated 17.04.2006 passed by the

learned Single Judge stands complied with in view of the principles laid down by the Division Bench in *Bhagwan Mahavir Education Society (supra)* is of no consequence and cannot be looked into.

9. Relying on the report of the Supreme Court in *Commissioner, Karnataka Housing Board v. C. Muddaiah*, (2007) 7 SCC 689, the learned counsel for the Petitioner has vehemently argued that the second writ petition is maintainable and is not barred.
10. This Court is, however, unable to be persuaded with the contention raised. The SLP was not admitted for hearing and was dismissed by the Supreme Court vide order dated 04.09.2013. In other words, the order dated 02.12.2011 passed by the learned Single Judge that the judgment dated 17.04.2006 stood complied with in view of the Division Bench judgment in W.P.(C) 18728/2004 dated 17.04.2006, was upheld.
11. I have gone through *C. Muddaiah*, relied upon by the learned counsel for the Petitioner. The same is not attracted in the facts of the instant case. In *C. Muddaiah*, there was a clear cut order passed by the High Court that promotion of Shri C. Muddaiah was to be worked out with the promotion accorded to Shri K. Srinath and consequent benefits were allowed to Shri C. Muddaiah. The department concerned while allowing promotion to Shri C. Muddaiah as Superintendent from the cadre of FDAs w.e.f. 22.03.1984 and then as Assistant Revenue Officer w.e.f. 26.10.1997, denied arrears of salary to him on the ground that he (Shri C. Muddaiah) had actually not worked in that capacity. It was in this context that although the contempt application was dismissed, the writ petition was entertained holding that once the direction is issued by a Competent Court and it has to be complied with and implemented without any reservations.

12. The facts of the instant case are, however, entirely different. The learned Single Judge categorically held that *the direction issued by the learned Single-Judge was to consider the petitioner's case for allotment in terms of the pre-existing policy as it existed prior to 19.04.2006. There was no specific direction for allotment of any particular identified plot. No allotment has ever been made by the DDA to the petitioner. Within the period granted by the learned Single-Judge for carrying out the exercise of identifying the plots for allotment to societies, the amendment in the rules came into force on 19.04.2006. It is clear from the decision of the Division Bench that since the rules with regard to allotment of land to societies had undergone amendment during the pendency of the application of the petitioner, it is the changed rules which would apply to the petitioner's case.* Thus the matter stands concluded between the parties.
13. Thus, the instant petition is frivolous and misconceived being barred by the principles of *res judicata*; the same is accordingly dismissed *in limine* with costs of ₹1,00,000/-.
14. 50% of the costs shall go to the Respondent DDA. Rest 50% shall be deposited with Delhi High Court Legal Services Committee within six weeks.
15. Pending applications also stand disposed of.

(G.P. MITTAL)
JUDGE

NOVEMBER 29, 2013

vk