

Rishabh Educational Society Vs. Delhi Development Authority and ors

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Court : Delhi

Decided On : Dec-17-2013

Judge : G.P. Mittal

Appellant : Rishabh Educational Society

Respondent : Delhi Development Authority and ors

Advocate for Def. : Mr. Rajiv Bansal, Ms. D. Ray, Ms. Megha Bharara, Ms. H. Hnunpull

Advocate for Pet/Ap. : Mr. R.K. Saini

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI Reserved on:

13. h December, 2013 Pronounced on:

17. h December, 2013 + W.P.(C) 1755/2010 RISHABH EDUCATIONAL SOCIETY
..... Petitioner Through: Mr. R.K. Saini, Advocate versus DELHI DEVELOPMENT
AUTHORITY & ORS. Respondents Through: Mr. Rajiv Bansal, Adv. with Ms.
D. Ray, Adv. for R-1. Ms. Megha Bharara, Adv. for R-3. Ms. H. Hnunpull, Adv. for
R-4. CORAM: HON'BLE MR. JUSTICE G.P. MITTAL

JUDGMENT

G.P. MITTAL, J.

1. Having failed to get allotment of a site for running a nursery school, the Petitioner has preferred this writ petition with the following prayers:

(b) A writ of certiorari quashing the action of the Respondent in not allotting land for nursery school to the Petitioner Society after more than 8 years of recommendations and even after clearance from the Institutional Allotment Committee and earmarking of a piece of land, being illegal, arbitrary, unjust, malafide, discriminatory, unwarranted and in gross violation of the Rules, Regulations and Policy and the Principles of Equity, Justice, Good Conscience and Estoppel and consequently quashing the letter dated 5.10.2009 (Annexure P-14); (c) A writ of mandamus commanding the Respondent to forthwith allot to the Petitioner the alternative site/plot of land for nursery school in DDA Janta Flats, Pocket D Area, Kondli Gharoli Complex, Mayur Vihar Phase III, proposed for it by the Planning Department (TYA) on 23.8.2004, after the site earlier earmarked for it in the same area was found not having a clear approach;

2. The sum and substance of the averments made in the writ petition is that after completion of all the formalities in 2001, the case of the Petitioner for allotment of a site for running a nursery school was cleared by the Planning Department of the DDA and a site was earmarked in Kondli Gharoli Complex, Mayur Vihar Phase-III. However, for want of a clear approach to the site, it was not feasible to establish and run a nursery school at the said site and hence, the Petitioner made a representation dated 09.06.2003 to the Director, DDA to allot it an alternative site rather than the one suggested by the Planning Department. It is the case of the Petitioner that sometime in the year 2004, an alternative site was identified in Pocket D, Kondli Gharoli Complex, Mayur Vihar Phase-III. However, an unduly long time was taken in processing the file and in the meanwhile Master Plan-2021 came into effect w.e.f. 07.02.2007 whereby it was laid down that nursery schools may function only as a part of the primary school/secondary school/senior secondary school wherever needed. The practice of providing dedicated nursery school plots in the layout plan was discontinued and hence an alternative site was refused to the Petitioner. The grievance of the Petitioner is that since the Petitioner had applied for allotment of a plot for running a nursery school in the year 1997, its eligibility should be considered on the date of the application and since the plot

was identified in the year 2004, the Respondent DDA is under obligation to allot the same to the Petitioner in accordance with the provisions of the Master Plan in existence at the relevant time.

3. In the counter affidavit filed by the DDA, it is stated that since the allotment of the plot had not yet been made, there was no vested right in the Petitioner for allotment of a site for running a nursery school. The Respondent refers to the New Master Plan-2021, according to which it is not permissible to allot any site for nursery school.

4. The short question for determination in the instant writ petition is whether earmarking of any plot in the files of the DDA conferred any vested right in the Petitioner for allotment of a site and whether the Petitioner is entitled to the allotment of a plot in accordance with the rules which were in existence at the time of making the application. In support of his case, Mr. R.K.Saini, learned counsel for the Petitioner relies on two decisions of the Supreme Court, that is, *The Vellore Educational Trust v. State of Andhra Pradesh & Ors.*, JT1987(4) SC396 and *Anjuman-E-Islam v. State of Karnataka and Anr.*, 2001 (9) SCC465. In *The Vellore Educational Trust*, the decision had turned on the ground that the Respondent had granted recognition to certain colleges, i.e. Chudi Ranganayakalu Charitable Trust, Guntur and Chudi Ranganayakalu Engineering College at Chilkalurupeta in Guntur District which had applied for the same on 15.10.1984 while the Petitioners application for grant of such recognition for a private engineering college for which an application was made on 24.05.1984 was rejected on the ground that new Rules had come into force in July, 1985. This is what the Supreme Court had to say in Para 8 and 10 of the judgment :

8. It is evident from the Government's letter dated November 15, 1985, annexed as Annexure-I to the writ petition that the respondent 1 accorded permission to Nagarjuna Education Society, Guntur to establish a private engineering college subject to the fulfilment of conditions mentioned in Section 20 of the Act. Permission was accorded for establishment of a new engineering college even after the government policy said to have been adopted in July 1985. The respondent No.1 also considered the application made by Chudi Ranganayakalu

Charitable Trust, Guntur who applied for permission for the establishment of a private engineering college on October 16, 1984 and granted permission for the establishment of Chudi Ranganayakalu Engineering College at Chilakalurupeta in Guntur District. It may be mentioned in this connection that the application made by the petitioner was much earlier in point of time as it was submitted on May 24, 1984. It was also long before the policy adopted by the respondent No.1. x x x x x x x x x x x x 10. The impugned order made by the respondent No.1 refusing to grant permission solely on the ground of policy of the Government, is in our considered opinion not at all tenable as we have stated hereinbefore that such permission has already been accorded to establish private engineering college to Nagarjuna Education Society on November 15, 1985. Moreover the application for permission was filed long before the alleged policy in question was adopted by the respondent No.1.

6. Hence, the decision in The Vellore Educational Trust turned on account of arbitrariness and discrimination on the part of the State.

7. As far as Anjuman-E-Islam is concerned, the Supreme Court categorically ruled that the decision was rendered on the peculiar facts of the case and it would not mean to be a precedent for the others.

8. Turning to the facts of the instant case, it is well settled that noting in the file would not confer any right upon any person. (Bahadursinh Lakhubhai Gohil v. Jagdishbhai M. Kamalia & Ors., (2004) 2 SCC65 and Bachhittar Singh v. State of Punjab, (1987) 3 SCC34.

9. In Howrah Municipal Corporation & Ors. v. Ganges Rope Co. Ltd. & Ors., (2004) 1 SCC663 the Respondent applied for sanction for construction of additional three floors to the existing complex as per the relevant building bylaws and the application was required to be processed ordinarily within a period of 60 days. However, the application was not processed and in the meanwhile Howrah Municipal Corporation Building Rules, 1991 framed under the provisions of Howrah Municipal Corporation Act, 1980 were amended and multi-storey construction above one plus two floors on G.T. road Howrah was prohibited. The Supreme Court held that there was no vested right in the Respondent to obtain the

sanction within the stipulated period of 60 days and that the application was to be processed in accordance with the rules as applicable at the time when the application was actually processed. In para 37, the Supreme Court held as under:

37. The argument advanced on the basis of so-called creation of vested right for obtaining sanction on the basis of the Building Rules (unamended) as they were on the date of submission of the application and the order of the High Court fixing a period for decision of the same, is misconceived. The word vest is normally used where an immediate fixed right in present or future enjoyment in respect of a property is created. With the long usage the said word vest has also acquired a meaning as an absolute or indefeasible right [see K.J.

Aiyer's Judicial Dictionary (A Complete Law Lexicon), 13th Edn.].. The context in which the respondent Company claims a vested right for sanction and which has been accepted by the Division Bench of the High Court, is not a right in relation to ownership or possession of any property for which the expression vest is generally used. What we can understand from the claim of a vested right set up by the respondent Company is that on the basis of the Building Rules, as applicable to their case on the date of making an application for sanction and the fixed period allotted by the Court for its consideration, it had a legitimate or settled expectation to obtain the sanction. In our considered opinion, such settled expectation, if any, did not create any vested right to obtain sanction. True it is, that the respondent Company which can have no control over the manner of processing of application for sanction by the Corporation cannot be blamed for delay but during pendency of its application for sanction, if the State Government, in exercise of its rule-making power, amended the Building Rules and imposed restrictions on the heights of buildings on G.T. Road and other wards, such settled expectation has been rendered impossible of fulfilment due to change in law. The claim based on the alleged vested right or settled expectation cannot be set up against statutory provisions which were brought into force by the State Government by amending the Building Rules and not by the Corporation against whom such vested right or settled expectation is being sought to be enforced. The vested right or settled expectation has been nullified not only by the Corporation but also by the State by amending the Building Rules. Besides this, such a settled expectation or the

socalled vested right cannot be countenanced against public interest and convenience which are sought to be served by amendment of the Building Rules and the resolution of the Corporation issued thereupon.

10. Similar question fell for consideration before the Supreme Court in Sethi Auto Service Station & Anr. v. DDA & Ors., (2009) 1 SCC180 where the Petitioner was entitled to resitement of his petrol pump in accordance with the guidelines issued in 1999. The policy was revised w.e.f. 20.06.2003 stating that the resitement will be permissible only where the existing petrol pump/gas godown site is utilised for a planned project / scheme. Although the Petitioner had made an application for resitement of the site much before revised policy dated 20.06.2003 came into existence, the Supreme Court held that the doctrine of legitimate expectations was not attracted in the instant case. In para 38, the

38. Having bestowed our anxious consideration to the facts in hand, in our judgment, the doctrine of legitimate expectation, as explained above, is not attracted in the instant case. It is manifest that even under the 1999 policy, on which the entire edifice of the appellants' substantive expectation of getting alternative land for resitement is built does not cast any obligation upon DDA to relocate the petrol pumps. The said policy merely laid down a criterion for relocation and not a mandate that under the given circumstances DDA was obliged to provide land for the said purpose. Therefore, at best the appellants had an expectation of being considered for resitement. Their cases were duly considered, favourable recommendations were also made but by the time the final decision-making authority considered the matter, the policy underwent a change and the cases of the appellants did not meet the new criteria for allotment laid down in the new policy.

11. The instant case is also covered by decision of a Division Bench of this Court in Bhagwan Mahavir Education Society (Reg.) & Anr. v. Health & Education Society (Reg.), W.P.(C) 2459-60/2005, decided on 25.03.2011 where on account of amendment in Rules 4,5,8 and 20 of the Delhi Development Authority (Disposal of Developed Nazul Land) Rules, 1981 w.e.f. 19.04.2006, the Division Bench held that from the date of amendment, the only mode for disposal of Nazul Land for

hospitals, dispensaries, higher or technical education institutions and schools would be by way of public auction.

12. In this view, there is no escape from the conclusion that on account of noting in the files, no vested right was created in favour of the Petitioner as to the allotment of any plot of land for running a nursery school. On coming into force of the Master Plan-2021, neither the Petitioner nor anybody else was entitled to allotment of any land from the DDA for running a nursery school.

13. The writ petition therefore has to fail; the same is accordingly dismissed.

14. Pending application also stands disposed of. (G.P. MITTAL) JUDGE
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