

Mount Carmel School Society Vs. Delhi Development Authority and Anr.

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Court : Delhi

Decided On : Dec-18-2014

Judge : V.K.Shali

Appellant : Mount Carmel School Society

Respondent : Delhi Development Authority and Anr.

Advocate for Def. : Ms. Shobhana Takiar, Ms. Zubeda Begum

Advocate for Pet/Ap. : Dr. Jose Verghese, Mr. Jawahar Singh, Ms. Priya Singh

Judgement :

* HIGH COURT OF DELHI AT NEW DELHI + W.P. (C) No.1687/2014 Decided on
:

18. h December, 2014 MOUNT CARMEL SCHOOL SOCIETY Petitioner Through: Dr. Jose Verghese, Mr. Jawahar Singh & Ms. Priya Singh, Advocates. Versus DELHI DEVELOPMENT AUTHORITY & ANR. Respondents Through: Ms. Shobhana Takiar, Adv. for DDA. Ms. Zubeda Begum, SC for R-2 & 3. CORAM: HONBLE MR. JUSTICE V.K. SHALI V.K. SHALI, J.

(ORAL) C.M. No.17983/2014 1. This is an application for staying the construction raised by respondent Nos.2 and 3 in respect of plot of land in question, which is purported to have been allotted to the petitioner. Alternatively, the petitioner has prayed for grant of an order of status quo.

2. I have heard the learned counsel for the petitioner as well as learned counsel for the respondents.
3. The case of the petitioner is that it has been allotted only two acres of land while as its case was recommended in the year 1996 for four acres of land. It is contended by Mr. Jose, the learned counsel for the petitioner that prior to this, litigation was started by the petitioner society against the respondent/DDA for allotment of four acres of land which went right upto the Supreme Court; however, the same was unsuccessful. The case which was setup by the petitioner in the said petition was that it was recommended for four acres of land but it had been allotted only two acres of land in accordance with the policy which was prevalent at the time of allotment.
4. It is the contention of the learned counsel for the petitioner that after disposal of the special leave petition by the Apex Court, the petitioner learnt about the fact that there were nine other societies, who were allotted four acres of land by the respondent/DDA and thus, the petitioner was discriminated which resulted in filing of the present writ petition.
5. It is contended by the learned counsel that as the petitioners claim for this additional land of two acres is the adjoining land to their plot of land, the respondent be restrained from raising any construction.
6. The learned counsel has also stated that in order to show its bona fides, the petitioner society has already deposited a sum of Rs.25 lacs on 16.10.2014 pursuant to the orders passed by this court and, therefore, the respondent be restrained from creating equities in their favour.
7. The learned counsel for the respondent/DDA has contested the plea of the learned counsel for the petitioner. She has drawn my attention to the judgment of the learned single judge wherein the petitioners claim for allotment of four acres of land was rejected on account of the fact that the DDA had taken a categorical stand that after October, 1999, no society whatsoever was allotted four acres of land. The learned single judge had also taken note of the fact that the premium which was being charged by the respondent was known to the petitioner and the

petitioner was free to accept the allotment of the said parcel of land at the rate at which it was being offered to it. Meaning thereby that it had a right to accept or reject the allotment of the said parcel of land.

8. It has, accordingly, been contended by Ms. Takiar that once the aforesaid issue of allotment of four acres of land stands concluded by the learned single judge vide its judgment rejecting the claim of the petitioner, which has been upheld right upto the Apex Court, the present writ petition itself is not maintainable as it is barred by the principles of res judicata. It has also been urged that in case the petition itself is not maintainable, there is absolutely no question of grant of ad interim relief during the pendency of the petition to the petitioner staying raising of construction by the respondents, who are valid allottees of the plot of land.

9. I have carefully considered the submissions and have also gone through the record. I find merit in the contention of the learned counsel for the respondent/DDA that before an ad interim injunction is granted in favour of the petitioner, the petitioner must be able to show that it has a prima facie case. By prima facie case, the petitioner is required to show that it has some chance of success in the main writ petition and in case the respondents are permitted to change the nature of the property, its right will get defeated.

10. In the instant case, instead of the petitioner being able to show a prima facie case in its favour, the learned counsel for the respondent/DDA has, in my view, created a reasonable doubt regarding maintainability of the petition itself because the issue of allotment of four acres of land, on account of which the petitioner is alleged to have been discriminated, must be clearly reflected in the petition even though the learned counsel for the petitioner states that the present petition is emanating from a fresh cause of action which is curiously missing from the petition. The respondent has taken a categorical stand before the court that earlier no allotment of four acres of land has been made in favour of any party after October, 1999.

11. The petitioner ought to not only aver in the petition but also show by some prima facie proof that after October, 1999, the respondent/DDA has allotted some society four acres of land which, in my submission, the petitioner has miserably

been unable to show at this stage. Therefore, I feel that the very absence of prima facie case in favour of the petitioner disentitles the petitioner to any order or direction restraining the respondents from raising any construction on the plot of land in question. In any case, even if this direction or a restraint order is not passed, since petition is pending, anything with regard to the suit property has to be necessarily subject to the decision in the writ petition as the principles of lis pendens will apply.

12. I am not dealing with the other two conditions of balance of convenience and irreparable loss on account of the fact that the petitioner has not been able to satisfy the first condition itself.

13. For the aforesaid reasons, I feel the application deserves to be disallowed. Accordingly, the same is dismissed. C.M. No.19085/2014 (u/O VI Rule 17 CPC) 1. Issue notice. Ms. Shobhana Takiar and Ms. Zubeda Begum, the learned counsel accept notice on behalf of the DDA and respondent Nos.2 & 3 respectively.

2. Let reply to the application be filed before the next date of hearing.

3. List for disposal of remaining applications on 30th January, 2015, the date already fixed. V.K. SHALI, J.

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