

Ram Chander Educational Society and anr Vs. Delhi Development Authority and anr

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Court : Delhi

Decided On : Feb-04-2011

Judge : S. Muralidhar, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Section 151; Societies Registration Act

Appeal No. : W.P.(C) 5205 of 2008 & CM APPLs 13289, 13291, 13797 & 13798 of 2009

Appellant : Ram Chander Educational Society and anr

Respondent : Delhi Development Authority and anr

Advocate for Def. : Mr. Rajiv Bansal; Mr. Abhir Datt, Advs.

Advocate for Pet/Ap. : Mr. Gaurav Mitra; Mr. Saurabh Seth, Advs.

Judgement :

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

1. The Petitioner No.1 is the Ram Chander Educational Society and the Petitioner No.2 is its President. The prayer in the petition is to quash the show cause notice dated 6th May 2004 as well as a letter dated 6th July 2004 issued by the Directorate of Education, Government of the National Capital Territory of Delhi (GNCTD) Respondent No.2, withdrawing the sponsorship for the allotment of land in favour of the Petitioner No.1. The other prayers are for a declaration that sponsorship letter dated 12 th November 2002 is subsisting and for a direction to the Respondents to change the sponsorship of allotment of land in favour of the Petitioner No.1 for establishing a Senior Secondary School in Janakpuri/Vikaspuri, District West-B from Zone 18 to Zone 17 and to allot the land to the Petitioner on the basis of the application submitted by it. Background Facts

2. The Petitioner No.1 is an educational society duly registered with the Registrar of Societies, Delhi. On 31st December 2001, it applied to the Respondent No.2 for issuance of an Essentiality Certificate in terms of Rule 44 of the Delhi School Education Rules, 1973 for allotment of land for the purpose of establishing a Senior Secondary School.

3. By a letter dated 17th January 2002, Respondent No.2 informed the Petitioner No.1 that an Essentiality Certificate had been granted to it for the purpose of establishment of a new school in Janakpuri/Vikaspuri area, Zone 18, District West-B. Petitioner No.1 then submitted an application to the Delhi Development Authority (DDA), Respondent No.1 for allotment of the land for the purpose of establishing a Senior Secondary School in the said area. It is stated that on 12 th November 2002, on the basis of the Essentiality Certificate issued by it, Respondent No.2 also sponsored the name of Petitioner No.1 to the DDA for allotment of land for the purpose of establishing a school to be located in Zone 18. Petitioner No.1 also furnished a Fixed Deposit Receipt (FDR) in the sum of Rs. 25 lakhs in favour of Respondent No.2.

4. When DDA took up the application of Petitioner No.1 for allotment of land, it realized that while no land was available in Zone 18 it was available in Zone 17. A piece of land measuring 2 acres in Sunder Vihar area in Zone 17 was earmarked for allotment to Petitioner No.1. The Petitioners state that although in terms of a

decision taken at a meeting held by the Institutional Branch of the DDA on 18 th May 2001 Petitioner No.1 was not required to get the Essentiality Certificate changed, as a matter of abundant caution Petitioner No.1 applied to Respondent No.2 for change of the Essentiality Certificate from Zone 18 to Zone 17. By a letter dated 11th March 2003, Respondent No.2 accepted the request and changed the Essentiality Certificate from Zone 18 to Zone 17. Thereafter, the Petitioners forwarded the changed Essentiality Certificate to the DDA for allotment of land in Zone 17. DDA then proposed to allot land measuring 8100 sq. m. in Zone 17 in Sunder Vihar area, District West-B to Petitioner No.1.

5. On 6th May 2004, Respondent No.2 issued Petitioner No.1 a show cause notice stating that Petitioner No.1 had got its Essentiality Certificate changed from Zone 18 to Zone 17 but had not informed the Estate Branch/ Land Acquisition Collector (LAC) about the change in area. It was pointed out that the sponsorship for the allotment of land was only for Zone 18 and it was on that basis that an Essentiality Certificate could be granted. Consequently, Petitioner No.1 was called upon to explain why its sponsorship for the allotment of land should not be withdrawn. Petitioner No.1 on 14th May 2004 replied to Respondent No.2 explaining the circumstances and stated that the failure to inform the Estate Branch about the change in area was unintentional and without any malafide motive. By the impugned letter dated 6th July 2004, Respondent No.2 withdrew the sponsorship granted to Petitioner No.1. By a letter dated 29th July 2005, Petitioner No.1 requested for restoration of the sponsorship letter.

6. Thereafter, Petitioner No.1 filed a Suit No. 881 of 2006 in the court of the Civil Judge, Delhi against Respondent No.2 for a declaration that the letter dated 6th July 2004 withdrawing the sponsorship was bad in the eyes of law and that the earlier sponsorship letter dated 12 th November 2002 subsisted. During the hearing of the said suit on 29th April 2006, Mr. R. K. Vadhera, Assistant Director of Respondent No.2, the sole defendant, made the following statement:

"As per the instructions of the Defendant, I state that the plaintiff will apply fresh for the grant of sponsorship letter for establishing Senior Secondary School in Zone 17, Paschim Vihar, Delhi as essentiality certificate has already been changed from

Zone 18 to Zone 17 by the Defendant. Seniority of the plaintiff for allotment of the land shall be maintained as it was before withdrawal of the sponsorship letter. The matter will be decided by the Defendant at the earliest possible opportunity."

7. In view of the above statement, the suit was disposed of by the Civil Judge as compromised on 29th April 2006, after recording statement of learned counsel for Petitioner No.1. Thereafter, Petitioner No.1 on 16th May 2006 applied to Respondent No.2 for issuance of a fresh sponsorship letter for establishing a Senior Secondary School in Zone 17, Sunder Vihar area. Despite a lapse of more than one year thereafter, Respondent No.2 did not take any decision. The Petitioners state that on 15 th May 2007, the officials of Respondent No.2 orally informed them that it would not be possible to issue a fresh sponsorship letter. Consequently, the Petitioner No.1 filed an application under Section 151 of Code of Civil Procedure, 1908 in the court of the Civil Judge for recalling the order dated 29th April 2006. Thereafter, the Petitioners were advised to file the present writ petition and consequently, moved an application for withdrawal of the application filed for recalling the order with liberty to seek other appropriate remedies. On 3rd July 2008, the Civil Judge dismissed the application of Petitioner No.1 as withdrawn with liberty to avail appropriate legal remedies available to it.

8. In para 22 of the writ petition, the Petitioners have set out instances where allotments of lands were made to Societies notwithstanding that the area for which the Essentiality Certificate/ sponsorship was granted was at a different location. Petitioner No.1, therefore, contends that it has been discriminated against. It is stated that the Petitioner No.1s case figured at Serial No.12 in a list of 291 Societies in respect of which investigations had been undertaken by the Central Bureau of Investigation (CBI). It is stated that subsequently, the allotments of lands were made by the DDA to some among the said 291 Societies.

9. At this stage, it must be noticed after 9th December 2004 there has been a significant change in the DDA (Disposal of Developed Nazul Land) Rules, 1981 (hereinafter "Nazul Land Rules") which governs allotment of land to institutions. Prior to the said amendment, DDA had in terms of the Nazul Land Rules been allotting land for higher and technical educational institutions on the basis of the

recommendations of the concerned departments of the GNCTD at rates which were lower than the commercial rates and on first come first serve basis. In 2003, DDA changed its policy for disposal of land to hospitals, clubs and community halls from allotment by way of recommendation to disposal through auction/tender. Subsequent to passing a resolution on 15 th December 2003, a meeting was held on 9th December 2004 by the Institutional Allotment Committee (IAC) under the chairmanship of the Lieutenant Governor (LG) of Delhi changing the basis of allotment of land to one by way of auction. Consequently the notification dated 9th December 2004 came to be issued amending Rule 5 of the Nazul Land Rules to bring about the aforementioned change.

10. The notification dated 9th December 2004 was challenged in a batch of writ petitions [Writ Petition (Civil) Nos.16691-92 of 2004 titled 'Society for Employment and Career Counselling (Registered) v. Chairman, DDA']. By a judgment dated 17th April 2006 disposing of W.P. (C) Nos.16691-92 of 2004, a learned Single Judge of this Court held that the amendment to the Nazul Land Rules by the notification dated 9th December 2004 did not affect societies registered under the Societies Registration Act. It was held that even subsequent to the said amendment, the said societies continued to be eligible for allotment by way of recommendation. It was however held that none of the Petitioners in those cases could claim any enforceable right pursuant to the recommendations made in their favour by the IAC.

11. The allotment policy regarding schools was further reviewed by the DDA by a resolution dated 19th January 2006. 50% of the available school plots were to be placed at the disposal of the GNCTD. The balance 50% was to be put to public auction. As per the auction terms, the auction purchasers were obliged to provide 25% free ship to students from the economically weaker sections. The auction would be restricted to societies, trusts, individuals and associations of individuals. Consequently, by a gazette notification dated 19 th April 2006, a further amendment was brought about to the Nazul Land Rules to give effect to the above changes.

12. The appeals against the judgment dated 17th April 2006 of the learned Single Judge, filed both by the societies as well as the DDA, are stated to be pending before the Division Bench of this Court. The writ petitions challenging the further amendment to the Nazul Land Rules by the gazette notification dated 19th April 2006 are also pending before the Division Bench.

13. As far as the present petition is concerned, Petitioner No.1 has chosen not to join those societies who have challenged the amendments made to the Nazul Land Rules first on 9th December 2004 and again by the notification dated 19th April 2006. According to the Petitioners, they are entitled to the reliefs prayed for in this petition even without such challenge.

Submissions of Counsel

14. Mr. Gaurav Mitra, learned counsel appearing for the Petitioners submits that after having made a statement before the Civil Judge in Suit No. 881 of 2006, Respondent No.2 was bound to consider the Petitioner No.1s application for issuance of a fresh sponsorship letter in respect of Zone 17. Since Petitioner No.1 was not earlier informed that it had to get sponsorship certificate also changed, it did not take any steps in that regard. In any event, there was no justification for withdrawing the sponsorship granted to Petitioner No.1 Society when in fact, as per the decision of the Institutional Branch of the DDA taken on 18th May 2001, there was no necessity to get the sponsorship letter changed. It was submitted that Petitioner No.1 should not be made to suffer for no fault of its. It is submitted that the changes to the Nazul Land Rules on 9 th December 2004 and 19th April 2006 were prospective. The application of Petitioner No.1 for a changed sponsorship certificate had to be considered in terms of the Nazul Land Rules as they stood on the date of the recommendation made by the IAC.

15. Mr. Rajiv Bansal, learned counsel appearing for the DDA, submits that after the changes brought about to the Nazul Land Rules by way of notification dated 9th December 2004 and thereafter by the notification dated 19th April 2006, no allotment can be made in favour of any Society through the earlier method of sponsorship. The land had to be necessarily disposed of only through public auction. DDA was not a party to Suit No.881 of 2006 and was not bound by the

statement made on behalf of Respondent No.2 before the Civil Judge in the said suit, on the basis of which the said suit was disposed of. Even if a fresh sponsorship letter were now to be issued by Respondent No.2 changing the area from Zone 18 to Zone 17, DDA would not be able to act on such sponsorship letter, since according to the amended Nazul Land Rules, no such allotment is possible. Mr. Bansal relies upon the decision of the Supreme Court in *Sethi Auto Service Station v. Delhi Development Authority* (2009) 1 SCC 180 and submits that there was no formal order issued to allot any land to Petitioner No. 1 and that the position would be no different even if there were notings in the file of the DDA recommending the making of such allotment. If, in the meanwhile, there was a change in the Nazul Land Rules, then the case for allotment had to be considered only in terms of the changed Rules.

16. Mr. Gaurav Mitra, learned counsel for the Petitioners, seeks to distinguish the judgment in *Sethi Auto Service Station v. Delhi Development Authority*. He submits that the said case concerned the resitement of an existing petrol pump. The Petitioners in the said case contended that notwithstanding the change in the policy of resitement, their request ought to have been considered under the older policy of 1999 of the DDA, according to which, a request for resitement on the ground of reduction of sales below the prescribed limit could be entertained by the DDA provided that it was referred by the Oil Company. Under the revised policy of 2003, however, resitement on account of fall in sales was not permitted. It is submitted that as far as the present case is concerned, the Petitioners had complied with all the requirements of the DDA and Respondent No.2 prior to the change brought about to the Nazul Land Rules by the notification dated 9th December 2004. The issuance of a sponsorship letter indicating the changed zone was a mere formality. The application of Petitioner No.1 which was pending as on the date of the change to the Nazul Land Rules had to necessarily be considered only in terms of the Rules, as they existed prior to 9th December 2004. The changes brought about by the notifications dated 9th December 2004 and 19th April 2006 to the Nazul Land Rules were prospective. Moreover, the notifications themselves did not indicate that they were retrospective. It is stated that a change to a subordinate legislation like Nazul Land Rules cannot have retrospective effect unless the principal legislation expressly permits it. Pleading that Petitioner No.1

had a legitimate expectation that it would be allotted an institutional plot in terms of the unamended Nazul Land Rules, it is submitted that Petitioner No.1 could not be made to suffer on account of the failure of the Respondent No.2 and the DDA to process its request in time. Learned counsel for the Petitioners placed reliance on the decision dated 28th May 2003 of the learned Single Judge of this Court in CW 2126 of 2003 (Glory Public School v. Lt. Governor) and the decision of the Supreme Court in Mahabir Vegetable Oils (P) Ltd. v. State of Haryana (2006) 3 SCC 620.

17. As regards those institutions and societies who were among the 291 whose allotments were investigated by the CBI, Mr. Bansal has filed a note stating that although 118 cases of allotments of plots for schools had been cleared by the GNCTD, allotment were ultimately made only in 35 cases and that too prior to 15th December 2003, i.e. prior to the changes in the Nazul Land Rules. After 15th December 2003 only two allotments were made: one in favour of the Ritnand Balved Education Foundation and the other by way of additional land to the Lal Bahadur Shastri Educational Society.

Effect of the amendments to the Nazul Land Rules

18. The main issue in the present petition is whether the Petitioners pending application for allotment of an institutional plot ought to be considered by the DDA and Respondent No.2 in terms of the Nazul Land Rules as they stood prior to the amendment brought about by the notifications dated 9th December 2004 and 19th April 2006? The Petitioners submit that the said question should be answered in the affirmative.

19. In the present case it is not in dispute that there was no formal allotment of an institutional plot made in favour of Petitioner No.1 prior to the notification dated 9th December 2004 amending the Nazul Land Rules. The application of Petitioner No.1 for a changed sponsorship letter was pending as on that date. Before the allotment could materialize the Nazul Land Rules were amended. The Petitioners have not challenged the amendments. They contend that the decision already taken by the DDA to allot a plot in Zone 17 Dwarka in favour of Petitioner No.1 should be given effect to. It is contended that the delay in Respondent No.2

issuing a sponsorship letter cannot deprive Petitioner No.1 of a vested right to allotment of the plot that already stood earmarked in its favour by the IAC in terms of the unamended Nazul Land Rules.

20. The decision of the Supreme Court in *Sethi Auto Service Station v. Delhi Development Authority* is a complete answer to the issue that arises in the present petition. The question that was considered in the said case was whether the applications for resitement of the two petrol pumps of the Petitioners in that case were required to be considered in terms of the policy that was in force prior to 1993 or in terms of the policy that stood changed thereafter in June 2003. Under the old policy, if the Petitioners were able to show that there was a drop in the sales of petrol in their pumps on account of a planned scheme or project, resitement would be permitted. Under the changed policy, resitement would not be permitted for such a reason. The Petitioners in the said case, as in the instant case, did not challenge the change in the policy. However, they contended that the decision already taken by the DDA to allot alternative sites to the Petitioners in terms of the old policy should be given effect to. Just as in the present case, it was contended by the Petitioners in that case that "the mere fact that DDA chose to sit over the recommendations and did not issue formal orders of allotment could not rob the appellants of their valuable right to such allotment." As in the present case, the stand of the DDA in the said case before the High Court was that such allotments could no longer be made after the guidelines for resitement of petrol outlets were revised in June 2003. In terms of the June 2003 guidelines DDA had to dispose of land for petrol outlets only through the competitive mode of tender or auction.

21. The Supreme Court in *Sethi Auto Service Station* upheld the dismissal of the writ petitions and subsequent appeals of the Petitioners in that case by the High Court. The Supreme Court first held that (SCC, p.185) "notings in a department file did not have the sanction of law in order to put an effective order". Therefore, the mere recommendation of the Technical Committee of the DDA did not confer any legal right on the Petitioners. The decision of the Technical Committee of the DDA did not fructify (SCC, p.186) "into an order conferring legal right upon the appellants." It further held (SCC, p.187) that "mere favourable recommendations

at some level of the decision-making process, in our view, are of no consequence and shall not bind DDA". It was held on facts that the doctrine of legitimate expectation was not attracted since the older policy merely laid down a criterion for resitement and did not oblige the DDA to provide land. Therefore, at best, appellants had an expectation of being considered for resitement. Finally, in para 39 of the judgment, it was observed as under (SCC @ p. 193):

"39. We are convinced that apart from the fact that there is no challenge to the new policy, which seems to have been conceived in public interest in the light of the changed economic scenario and liberalised regime of permitting private companies to set up petrol outlets, the decision of DDA in declining to allot land for resitement of petrol pumps, a matter of largesse, cannot be held to be arbitrary or unreasonable warranting interference. Moreover, with the change in policy, any direction in favour of the appellants in this regard would militate against the new policy of 2003. In our opinion, therefore, the principle of legitimate expectation has no application to the facts at hand." (emphasis supplied)

22. In the considered view of this Court, the above decision in Sethi Auto Service Station v. Delhi Development Authority answers the issue in the present case against the Petitioners. In terms of the said decision, which was rendered in similar facts and circumstances, the pending application of Petitioner No.1 for allotment of an institutional plot had necessarily to be considered only in terms of the amended Nazul Land Rules which did not permit allotment by way of recommendation but only by way of public auction. It is significant that there is no savings clause in the amended Nazul Land Rules permitting applications pending on the date of the amendment to be considered in terms of the pre-amended Rules. The intention therefore was that once the Nazul Land Rules were amended they would apply to all pending applications for allotment of institutional plots as well. The amendments were in fact prospective since they were not meant to reopen cases where formal allotments had already been made. However, in the instant case, prior to the amendments no formal allotment of a plot in Zone 17 was made in favour of Petitioner No.1.

No legitimate expectation

23. The decisions in Mahabir Vegetable Oils (P) Ltd. v. State of Haryana and Glory Public School are distinguishable on facts. As explained in Sethi Auto Service Station, the Petitioners could not possibly have a legitimate expectation that notwithstanding the change in the Nazul Land Rules a plot would be allotted in favour of Petitioner No.1. The statement on behalf of Respondent No.2 before the Civil Judge was made at a time when a change had already been made to the Nazul Land Rules and no allotment by way of recommendation was possible as on that date. No such statement could bind the DDA which was not a party to the suit. In any event, there is no estoppel against law. The Petitioners have not challenged the changed policy of the GNCTD, as reflected in the amendments to the Nazul Land Rules. No direction can possibly issue to the DDA to make an allotment in favour of Petitioner No.1 contrary to the amended Nazul Land Rules.

24. The writ petition is dismissed. The interim order is vacated. The pending applications are disposed of.

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