Mount Carmel School Society vs D.D.A on 14 December, 2007

Author: S.B. Sinha

Bench: S.B. Sinha, Harjit Singh Bedi

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           CASE NO.:
Appeal (civil)  5944 of 2007

PETITIONER:
Mount Carmel School Society

RESPONDENT:
D.D.A.

DATE OF JUDGMENT: 14/12/2007

BENCH:
S.B. Sinha & Harjit Singh Bedi

JUDGMENT:
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J U D G M E N T (Arising out of SLP (C) No.3251 of 2006) S.B. Sinha, J.

1. Leave granted.

2. This appeal is directed against a judgment and order of a Division Bench of Delhi High Court dated 7.9.2005 passed in LPA No.404 of 2003.

3. Appellant is a society registered under the Societies Registration Act. It runs an educational institution. It applied for allotment of four acres of land for running a senior secondary school before the Delhi Development Authority. The Institutional Allotment Committee which was constituted by the Authority, made recommendations for allotment of four acres of land. Indisputably the competent authority of the DDA took a policy decision only to allot two acres of land.

4. Several writ petitions were filed which by reason of the impugned judgment have been dismissed by a Division Bench of the Delhi High Court. Before embarking on the questions raised before us, we may place on record that except the present appeal, other appeals were heard and dismissed by a Division Bench of this Court (Coram Hon. B.P. Singh and P.K. Balasubramanyam, JJ). The said order, however, is not a reasoned one.

5. Mr. K.K. Rai, learned senior counsel appearing on behalf of appellant, submitted that the factual scenario obtaining in the present appeal is different from the others, inasmuch as recommendations of allotment of four acres of land were made both in its favour as also in favour of one Shri Venkateshwara Educational Society; but whereas in the case of the latter society four acres of land

was directed to be allotted; the appellant was denied of a similar grant.

The High Court, learned counsel argued, misdirected itself in passing the impugned judgment in so far as it failed to take into consideration that the said Shri Venkateshwara Educational Society was not a necessary party in the writ petition as no relief was claimed against it, inasmuch as if the writ petition were to be allowed, the said society would not have suffered any prejudice.

6. Mr. V.B. Saharya, learned counsel appearing on behalf of the respondent, on the other hand, supported the impugned judgment.

7. The question which arose for consideration before the High Court was as to whether the Delhi Master Plan having provided for allotment of four acres of land for running of a secondary school, the Delhi Development Authority could take a policy decision of allotment only of two acres of land.

8. We have noticed hereinbefore that a large number of societies applied for allotment of land for setting up senior secondary schools. A recommendation had been made in favour of the apellant by the Institutional Allotment Committee on or about 23.10.1998. Indisputably, similar recommendations had been made in favour of other societies as well, including the said Shri Venkateshwara Educational Society. Recommendations of the Committee, however, do not appear to have been approved by the authority. It furthermore appears that the appellant was asked to send its latest bank balance certificate and/or financial status.

9. The Lt. Governor, who is Chairman of the Society, had also asked for certain clarifications pertaining to constructions of the school building. On or about 9.3.2000, a provisional allotment was made but, allegedly, the appellant society failed to furnish an undertaking within the period stipulated therefor.

10. Indisputably, the Vice Chairman of the Delhi Development Authority made recommendations for allotment of only two acres of land in favour of the appellant. Shri Venkateshwara Educational Society, however, was allotted a land measuring four acres of land way back on 25.8.1999.

11. The policy decision of the Authority which was impugned in the writ petition was taken in October 1999. It has not been shown before us that any allotment has been made in favour of any society allotting land having an area of four acres, after October 1999.

12. We may furthermore notice that the plea of discrimination raised in the writ petition was absolutely vague as it was merely averred :

> The petitioner also wrote to Respondent No.1 on 24.03.2000 requesting for allotment of 1.6 hectares of land at the prevailing rate of Rs.30 lakhs per acre in 1996 when the application for land was made and other similarly situated institutions were allotted land...

13. Grounds taken in the writ petition in this behalf also did not specify that the appellant had been discriminated against, vis-`-vis the said Shri Venkateshwara Education Society or any other allottee. Details of the grant in favour of the said society was not furnished. In absence of any specific contention having been raised, it was not possible for the respondent to furnish any reply thereto.

14. No argument also appears to have been advanced in this behalf before the learned Single Judge. The memo of appeal of the appellant was not supported by any affidavit affirmed either by one of its authorized representatives who was present in court or by the advocate appearing on its behalf, stating that the contention in regard to the discriminatory treatment was raised before the learned Single Judge but was not dealt with.

15. A Judge s record, as is well known, must be accepted as correct. Appellant, thus, could have filed an application for review before the learned Single Judge. The same was not done.

16. We are, therefore, of the opinion that the High Court cannot be said to have committed any error in passing the impugned judgment.

17. A feeble attempt was made by Mr. Rai to contend that the Central Government also was of the opinion that the area to be allotted for senior secondary school cannot be reduced. The High Court, in this regard held :

> Equally importantly, the learned Single Judge has noted that the official records of the Central Government dealing with the communications of DDA were produced before him. The nothings in the file, which were apparently perused by the learned Single Judge, show that the recommendations of DDA were considered by the Central Government and thereafter finally approved for implementation. In view of this factual position, we are quite satisfied that the land rates were determined by the Central Government and were not fixed by DDA. There was no excessive delegation of power or responsibility on the part of the Central Government and so this contention must be rejected. In view of the said findings of the High Court which, as noticed hereinbefore, have been accepted by this Court, we are not inclined to take a different view therefrom.

18. For the reasons aforementioned, there is no merit in this appeal. It is dismissed accordingly with costs. Counsel s fee assessed at Rs.25,000/- (Rupees twenty five thousand only).