SUPREME COURT OF INDIA

Union of India

Vs.

Jain Sabha, New Delhi

(B.P. Jeevan Reddy and K. Venkataswami JJ.)

21.11.1996

JUDGMENT

B.P.JEEVAN REDDY, J.

Leave granted.

This appeal is preferred by the Union of India through the Secretary, Ministry of Urban Development and the Land and Development Officer, Ministry of Urban Development against the judgment of the Delhi High Court allowing the writ petition filed by the respondents with certain direction. The first respondent is Jain Sabha, New Delhi (Sabha) and the second ressondent is the President of the fires respondent-Sabha.

The Sabha applied to the Land and Development Officer [L&D.O.] for allotment of a plot of land for locating the school being run by them. The L&D.O. allotted in 1963 a plot of land admeasuring 1.363 acres a Rs.5000/- per acre plus the annual ground rent of five percent thereon. The allotment could not, however be given effect to. The Sabha was representing repeatedly for allotment of the land. In 1967 another letter of allotment was issued stipulating the very same rate. Ns required by the said letter, the Sabha deposited an amount of Rs.7,185/- on 8th July, 1967. The physical possession of the land could not however be delivered to Sabha on account of existence of certain structures which could not be vacated or removed. sabha continued to press tor allotment. A question was also raised in the Parliament on 27th February 1978 in this behalf to which a reply was given by the government that an alternate plot of 2.15 acres would be allotted to the appellant-petitioner. This change in the extent to be allotted was the consequence of change in policy. Sometime after 1967, it appears, the relevant rules were amended according to which no school can be established in a plot of land less than two acres in extent. Be that as it may, possession of the alternate land was also not given to the Sabha. Correspondence went on between the parties. On 14th October, 1986, the L&D.O. informed the Sabha that an extent of 2.15 acres is being allotted to the Sabha for running the school s Rupees eight lakhs per acre. Sabha represented against the price proposed to be charged. Sn 18th July, 1990, a formal letter of allotment was issued in respect of 2.15 acres of land. So far ms the rate is concerned a distinction was made therein. With respect to the extent af 1.363 acres [Which was the area originally allotted or intended to be allotted to tho Sabha] consideration was fixed at Rs.5,000/- per acre but in respect of the excess land of o 787 acres, consideration so fixed at Rupees thirty eight lakhs per acre total consideration so fixed for the entire extent of 2.15 acres came to Rs.29,90,600/- [premium] and Rs.74,765/- payable as ground

rent per annum. On 16th August, 1990 the Sabha deposited a sum of Rupees ten lakhs towards the consideration demanded.

On September 5, 1990 Delhi High Court delivered its judgment in Delhi Development Authority V. Lala Amarnath [42 (1993] D.L.T.651] holding that in respect of Nazul land allotted on 'no profit no loss' basis ln accordance with the policy of the central government to schools it is not open to the government to charge market rate. relying upon the said judgments Sabha filed the writ petition (from which this appeal arises] in the Delhi High Court questioning the demand of considerations Rupees thirty eight lakhs per acres for part of the land allotted to it, i.e., in respect of an extent of 0.787 acres. The Delhi High Court has allowed the writ petition directing that the government shall charge @ Rupees five thousand per acre for the- extent of 1.363 acres [the original proposed extent] and @ Rupees eight lakhs per acre for the excess land of C; 787 acres. The Sabha is also made liable to pay proportionate ground rent and other charges in accordance with law. The money already paid by Sabha is directed to be adjusted against the amount determined as payable on the above basis. It has been further directed that physical possession of the land shall be handed over to the Sabha on completing all the formalities within two months of the judgment. The case put forward by the Sabha and accepted by the High Court is to the following effect: as far back as 1967, 1.363 acres was allotted to the Sabha @ Rupees five thousand per acre; as per the order of allotment, the Sabha had deposited the sum of Rs.7,185/- on 8th July, 1967; so far as this extent is concerned, the question of rate cannot be re- opened. [Indeed, the rate in respect of this extent is not in issue between the parties.] The dispute pertains only to the rate chargeable for the additional extent of 0.737 acres. So far as this additional extent is concerned, the government had agreed to allot the same @ Rupees eight lakhs per acre through its letter dated October 14, 1986 which was unreasonably enhanced to Rupees thirty eight lakhs per acre under a subsequent letter rated 18th July, 1990. This enhancement is unreasonable and arbitrary. The government cannot charge anything more than Rupees eight lakhs for this additional extent.

For a proper appreciation of the controversy, it is necessary to first determine the correct state of facts. By its letter dated June 3, 1967, the Deputy Land and Development Officer, New Delhi informed Sabha that "the President is pleased to sanction allotment of another plot of land measuring 1.363 acres in Edward Square, New Delhi....for the construction of a building for the Jain Happy School " subject to conditions specified therein. The rate prescribed was Rupees five thousand per acre plus the annual ground rent @ five percent thereon. It was further stipulated that the land shall be used by the Sabha only for construction of a building for Jain Happy School and for no other purpose, that no religious instructions shall, be imparted and that "no citizen shall he denied admission to their school on grounds of religion, race caste, language or any of them". The Sabha was intimated that if the conditions mentioned in the said letter were acceptable to its it may deposit the sum of Rs.7,185.75p and the ground rent. Accordingly, the Sabha deposited the said amount which amounts tc acceptance of the condition stipulated. The possession of the land could not, however be delivered to the Sabha for various reasons. The Sabha was thereupon asked to choose an alternate site. The Sabha was representing for allotment and possession of the land and the matter was kept pending. A question was raised in this behalf in the Parliament. The Minister for Works and Housing replied that possession of the land could not be delivered to the school on account of number of built-up structures on the land. At last, on 14th October 1986, the government of India informed the Sabha that its request fur charging a Rupees five thousand per acre for the alternate site of 2.15 acres cannot he accepted and that the rate charged shall be Rupees eight lakhs per acre, i.e., for the entire extent allotted. Evidently, the Sabha made representations against this whereupon the Government of India issued the formal letter of allotment dated 18th July, 1990. In

this letter, it was stated that an extent of 2.15 acres is allotted in DIZ Area, New Delhi for the school, instead of 1.363 acres, subject to several conditions mentioned therein. With respect to the rate charged, it was stipulated that so far as additional land of 0.787 acres is concerned, it shall be charged s Rupees thirty eight lakhs per acre while for the original extent of 1.363 acres, the premium amount already paid by the Sabha shall be treated as sufficient. One of the conditions stipulated that "in the event of dissolution of the Jain Happy School, the land allotted and the assets created thereon will be transferred to an institution having similar aims and objects with the prior approval of the Govt. and failing that to Government". Yet another condition was that "the institution shall not increase the rate of tution fee without the prior sanction of the competent authority and shall follow the provisions of Delhi School Education Act/Rules, 1973 and other instructions issued from to time". It was also stipulated that "the Jain Happy School shall not refuse admission to the residents of the locality". This offer was stated to be valid for one month and if acceptable to the Sabha, it was required to communicate its acceptance and remit the consideration amount. Pursuant to this letter, the Sabha wrote to the L&D.O. on 17th August, 1996 as follows:

"No.JAS/Land/1 Dated 17.8.1990

The Land & Development Officer,

Government of India, Nirman Bhavan

New Delhi-1

Sub:- Allotment of land for Jain

Happy School

Ref:- Your letter No.LV-

4(162)/90/300 dt.18.7.1990.

Dear Sir,

With reference to your above cited letter, which was received by us on 23.7.1990 and in continuation to ourletter of even No. dated 13.8.90, we are enclosing herewith a Pay Order No. 001670 for dated 16.8.90 for Rs.10 lakhs on Central Bank of India, Gole Market, New Delhi-1 as a part payment for the above subjected land.

Since the fee structure of the school is such that it runs on 'No Profit & no loss' basis and since the amount to be deposited is very huge, it is not possible for the Sabha to deposit full amount a time and hence part payment is being made, which may kindly he accepted. In view of the above, you are requested to please allow us more time to make the balance payment.

Thanking you,

Yours faithfully,

Sd/-

(Shri Pal Jain)

Hony.General Secretary"

It is clear from the letter that Sabha accepted the rate specified in the allotment letter dated July 18, 1990, viz., rate of Rupees thirty eight lakhs per acre for the additional extent of 0.787 acres and the rate of Rupees five thousand per acre for the initial extent of 1.363 acres - apart from the other conditions of allotment - and deposited a sum of Rupees ten lakhs towards the total consideration payable as per the said allotment letter. It also requested for further time to deposit the balance amount. Within two months, however, Sabha resiled from this position seeking to take advantage of a decision of the Delhi High Court in Lala Amarnath. On 26th October, 1990, the Sabha addressed a letter referring to the judgment of the Delhi High Court in Lala Amarnath reguesting that as per the said judgment, it should not be charged at a rate of more than Rupees eight lakhs for the additional extent of 0.787 acres, and that the amount already paid by it should be adjusted accordingly and the excess amount refunded to it. Pausing here, we may mention that the said judgment of the Delhi High Court deals with a different situation under a policy said to be in force at the time of allotment in that case. The terms of allotment and all the material facts are wholly different. We do no see any relevance of the said decision to the facts of this case. Be that as it mays when its request was not acceded to the Sabha filed the writ petition from, which this appeal arises.

It is not brought to our notice that allotment of land to a school by the Government of India or by the L&D.O. is governed by any statute or statutory powers. The Sabha had no right to allotment. It is true that an allotment was made of 1.363 acres in the year 1967 and Sabha had remitted the consideration of Rs.7,185.75p in that year itself. But for one or the other reason, possession of the land could not be delivered and no steps were taken by the Sabha thereafter to enforce its claim. About twenty years later , i.e. s on 14th October, 1936, 2.15 acres was proposed to be allotted at a uniform rate of rupees eight lakhs per acre. This offer was later revised in the respondents' letter dated 18th July, 1999, as stated above. The Sabha accepted the same and deposited the sum of Rupees ten lakhs towards part consideration. It only changed its stance two months later when it came to know of the judgment of the Delhi High Court in Lala Amarnath and on that basis demanded that the rate to be charged for the additional land should be @ Rupees eight lakhs per acre only and not a Rupees thirty eight lakhs per acre. We have pointed out that the said judgment was in no way relevant to the facts of this case and, therefore, it is clear that the reversal of its stand by the Sabha was neither justified as a fact nor justified in law. Even assuming that the said judgment was relevant in some manner, the Sabha could only request for revision of price but could not claim such revision as a matter of right, in view of its acceptance of the terms of letter of allotment dated July 18, 1990. It is not - and it cannot be - the case of the Sabha that its acceptance aforesaid is vitiated by the later judgment of the High Court between third parties and that it is not bound by the said acceptance. If it takes that stand, the result would be that the very offer contained in the letter dated July 18, 1990 would lapse; there would be no allotment at all in favour of the Sabha. This is the factual position. Now, coming to the legal aspect, it appears highly doubtful whether the writ petition itself was maintainable but we do not wish to pursue this line of enquiry for the reason that no such objection seems to have been raised before or considered by the High Court The judgment of the High Court does not refer to any such objection nor does it deal with it.

Sri Singhvi, learned counsel for the appellants however submits that the Sabha is running a school catering to the students from the poor and middle classes, that it is a purely charitable and genuine

charitable organisation and that in view of its repeated requests for allotment of land over more than last thirty years, its request for, and its need for land, should be sympathetically considered. Counsel also submits that the Subha is in no position to pay the full consideration demanded by the Government. He also submits that the Sabha is anxious to help supplement the Government's efforts and obligation to provide school education and hence, it should not be asked to pay the said revised price for the additional land of 0.787 acres. Sri Singhvi submitted that many other schools similarly situated have been allotted land at very low prices and that there is no reason for not extending the same treatment to the appellants. The question is the proper direction to be madein the matter consistent with laws justice and public interest. In our opinion, the proper course in all the circumstances of the case is to leave it open to the respondents to approach the appellants with the above request. It is open to the respondents to place all the relevant facts Before the appellants and ask for a reconsideration of the matter. It is for the Union of India and the L.&D.O. to consider whether their orders contained in the allotment letter dated 18th July, 1990 call for any revision. The appeal is disposed of with the above direction. The judgment of the High Court is set aside. No costs.

It is directed that for a period of six months from today, status quo as on today shall continue. Before parting with this case, we think it appropriate to observe that it is high time the government reviews the entire policy relating to allotment of land to schools and other charitable institutions. Where the public property is being given to such institutions practically free, stringent conditions have to be attached with respect to the user of the land and the manner in which schools or other institutions established thereon shall function. The conditions imposed should be consistent with public interest and should always stipulate that in case of violation of any of those conditions, the land shall be resumed by the government. Not only such conditions should be stipulated but constant monitoring should be done to ensure that those conditions are being observed in practice. While we cannot say anything about the particular school run by the respondents it is common knowledge that some of the schools are being run on totally commercial lines. Huge amounts being charged by way of donations and fees. The question is whether there is any justification for allotting land at throw-away prices to such institutions. The allotment of land belonging to the people at practically no price is meant for serving the public interest, i.e. spread of education or other charitable purposes; lt is not meant to enable the allottees to make money or profiteer with the aid of public property. We are sure that the government would take necessary measures in this behalf in the light of the observations contained herein.