

UNION OF INDIA AND ANR.

v.

JAIN SABHA, NEW DELHI AND ANR.

NOVEMBER 21, 1996

[B.P. JEEVAN REDDY AND K. VENKATASWAMI, JJ.]

Allotment of land—Schools and Charitable Institutions—Allotment of land by Government/Land and Development Officer—1.363 acres of land @ Rs. 5,000 per acre in favour of charitable institution—Amount of consideration paid—But possession could not be delivered for various reasons—No steps taken by institution thereafter to enforce its claim—About 20 years later alternate land of 2.15 acres proposed to be allotted at uniform rate of Rs. 8 lakhs per acre—Subsequently, formal letter of allotment issued stipulating a rate of Rs. 5,000 per acre for 1.363 acres (Original offer) and Rs. 38 lakhs per acre for excess land of 0.787 acre—Institution accepted the offer and deposited Rs. 10 lakhs towards part consideration—Subsequently, on basis of High Court's decision in Lala Amarnath's case institution filed writ petition before High Court claiming that rate charged for additional land should be Rs. 8 lakhs per acre—Held : Institution had no right to allotment—Once rate offered by Government was accepted and part consideration made, institution could not resile from its position and claim lower rate—Lala Amarnath's case inapplicable—Institution could only request Government for sympathetic consideration of its case—Government should review entire policy relating to allotment of land to schools and charitable institutions.

The respondent-Sabha was allotted 1.363 acres of land by the appellant for running a school. The respondent paid the amount of consideration in the same year of allotment. However, possession could not be delivered for various reasons and no steps were taken by the respondent thereafter to enforce its claim. About 20 years later an alternate plot of land of 2.15 acres was proposed to be allotted at an uniform rate of Rs. 8 lakhs per acre. However, 4 years later a formal letter of allotment was issued stipulating a rate of Rs. 5,000 per acre for 1.363 acres (which was the original offer) and Rs. 38 lakhs per acre for the excess land of 0.787 acre. The respondent accepted the offer and deposited Rs. 10 lakhs towards part consideration and also requested for further time to deposit the balance amount.

A However, the respondent resiled from this position pursuant to a
 decision of the High Court in *Lala Amarnath's* case. Taking advantage of
 this decision the respondent filed a writ petition in the High Court claim-
 ing that the rate charged from the additional land should be @ Rs. 8 lakhs
 per acre only and not @ Rs. 38 lakhs per acre. The High Court allowed
 B the petition. Being aggrieved the appellant preferred the present appeal.

Disposing of the appeal, this Court

C HELD : 1. The judgment of the High Court in *Lala Amarnath's* case
 was in no way relevant to the facts of this case. Therefore, the reversal of
 its stand by the respondent- 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 not 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. The Sabha had no *right to allotment*. It was not
 D brought to the notice of this Court that allotment of land to a school by the
 Government of India or by the Land and Development Officer was governed
 by any statute or statutory powers. It is not - and it cannot be - the case of
 the Sabha that its acceptance by making part payment was vitiated by the
 later judgment of the High Court between third parties and that it was not
 bound by the said acceptance. If it takes that stand, the result would be that
 E the very offer contained in the letter of allotment would lapse; there would
 be no allotment at all in favour of the Sabha. This is the factual position.
 As regards the legal aspect, it appears highly doubtful whether the writ
 petition itself was maintainable but it is not necessary 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
 F does not refer to any such objection nor does it deal with it. The proper
 course in all the circumstances of the case is to leave it open to the respon-
 dents to approach the appellants with the request for a sympathetic con-
 sideration of its case. [8-C-H; 9-A-B]

G *Delhi Development Authority v. Lala Amarnath*, 42 (1993) D.L.T. 651,
 held inapplicable.

H 2. 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, strin-
 gent 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 nothing could be said about the particular school run by the respondent, it is common knowledge that some of the schools are being run on totally commercial lines. Huge amounts are 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; it is not meant to enable the allottees to make money or profiteer with the aid of public property. [9-G-H; 10-A-C]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 14729 of 1996.

From the Judgment and Order dated 29.11.91 of the Delhi High Court in C.W. No. 3605 of 1990.

Arun Sharma, V.K. Verma for the Appellants.

Dr. A.M. Singhvi, Manish Kumar, Rakesh K. Sharma, Anish Dayal for the Respondents.

-The Judgment of the Court was delivered by

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 directions. The first respondent is Jain Sabha, New Delhi [Sabha] and the second respondent is the President of the first 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

A acres @ 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. As 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 for 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 @ Rupees eight lakhs per acre. Sabha represented against the price proposed to be charged. On 18th July, 1990, a formal letter of allotment was issued in respect of 2.15 acres of land. So far as the rate is concerned, a distinction was made therein. With respect to the extent of 1.363 acres [which was the area originally allotted or intended to be allotted to the Sabha], consideration was fixed at Rs. 5,000 per acre but in respect of the excess land of 0.787 acres, consideration was fixed at Rupees thirty eight lakhs per acre. The 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 in accordance with the policy of the Central Government of schools, it is not open to the government to charge market rate. Relying upon the said judgment, Sabha filed the writ petition (from which this appeal arises) in the Delhi High Court questioning the demand of consideration @ 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 0.787 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 0.787 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 dated 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 be 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 it, it

A may deposit the sum of Rs. 7,185.75p and the ground rent. Accordingly, the Sabha deposited the said amount which amounts to acceptance of the conditions 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 for charging @ Rupees five thousand per acre for the alternate site of 2.15 acres cannot be 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 @ 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 tuition 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 time 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, 1990 as follows:

"No. JAS/Land/1

Dated 17.8.1990

H The Land & Development Officer,
Government of India,

Nirman Bhavan
New Delhi-1

A

Sub. : Allotment of land for Jain Happy School

Ref. : Your letter NO. LV-4(162)/90/300 dt.18.7.1990

B

Dear Sir,

With reference to your above cited letter, which was received by us on 23.7.1990 and in continuation to our letter of even No. dated 13.8.90, we are enclosing herewith a Pay Order No. 001670 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.

C

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 at a time and hence part payment is being made, which may kindly be accepted.

D

In view of the above, you are requested to please allow us more time to make the balance payment.

E

Thanking you,

Yours faithfully,

Sd/-

(Shri Pal Jain)

Hony. General Secretary"

F

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 Amamath*.

G

H

A On 28th October, 1990, the Sabha addressed a letter referring to the judgment of the Delhi High Court in *Lala Amarnath* and requesting 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 not see any relevance of the said decision to the facts of this case. Be that as it may, 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., on 14th October, 1986, 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, 1990, 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 @ 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 appellant, 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 request 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 Sabha 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 what is the proper direction to be made in the matter consistent with law, 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

- A 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 respondent, it
- B is common knowledge that some of the schools are being run on totally commercial lines. Huge amounts are 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; it is not meant to
- C 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.

V.S.S.

Appeal disposed of.