

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 611 OF 2008

Jawed Urdu Primary School
Through its Secretary and Anr.

.. Appellants

Versus

Collector of Mumbai & Ors.

.. Respondents

J U D G M E N T

M. R. Shah, J.

1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 29.09.2005 passed by the Division Bench of the High Court of Judicature at Bombay in Writ Petition No. 2356 of 2005 by which the High Court has dismissed the said writ petition preferred by the appellants herein (the original writ petitioners), the original writ petitioners have preferred the present appeal.

2. The facts leading to the present appeal in nutshell are as under:

It is the case on behalf of the appellants–original writ petitioners that the appellant-Trust registered under the provisions of the Maharashtra Public Trusts Act came into existence by virtue of trust deed on 28.02.2000. That respondent No. 4 herein – Nasheman Welfare and Educational Society came into existence in the month of December, 1999. That, in the month of March 2001, the appellant-Trust started an Urdu Medium Secondary School. That the school is located in the slum area. That the school is in rental premises.

2.1 It was the case on behalf of the original writ petitioners that due to increasing number of students, the appellant-Trust was finding it difficult to accommodate all of its students, therefore, the original writ petitioners made an application on 25.07.2001 to the Collector of Greater Mumbai for a plot of land reserved for primacy school located at CTS No. 174, Kirol and CTS No. 351 Asalpha, Ghatkopar (the land in question). According to the appellant-Trust, on such an application, the Collector of the Greater Mumbai vide its communication dated 12.09.2001 forwarded the request of the appellant-Trust to the City Survey Officer, Ghatkopar and Tahsilder of Kurla and asked to conduct the inspection of the site and submit a report, if the said plot can

be allotted to the appellant-Trust. That, on 13.12.2001, the Deputy Director of Education granted recognition on no grant basis to the classes of Standard-VIII of the Jawed Urdu High Court run by appellant-Trust from June 2000. That, on 02.04.2002, the Managing Trustee of the appellant-Trust made an application to the Collector of Greater Mumbai for allotment of plot in question for the primary school. The said application was submitted in Proforma-A. That, on 24.09.2002, the Deputy Education Inspector submitted his detailed report regarding details of Trust, requirements and financial status of the appellant-Trust and recommended to allot the land in question to the appellant-Trust. That, on 24.09.2002, the Managing Trustee of the appellant-Trust made an application to the Principal Secretary, Forest and Revenue Department for allotment of the plot in question. That, on 27.09.2002, the Maharashtra State Secondary and Higher Secondary Education Board granted recognition to the appellant-Trust. It was the case on behalf the appellant-Trust that thereafter on 21.04.2003, the Managing Committee of the appellant-Trust again made an application to the Principal Secretary, Forest and Revenue Department, Government of Maharashtra, Mumbai and submitted the

required documents for allotment of the plot in question. That, on 28.04.2003, the appellant-Trust wrote a letter to the Commissioner of the Municipal Corporation of Greater Mumbai for allotment of the plot for Multi Medium Primary School. That, again on 02.05.2003, another application was made by the appellant-Trust for allotment of the plot in question. That, on 04.06.2003, the Corporation communicated to the appellant-Trust that, as per the policy of the Municipal Corporation, the Municipal school plot to be allotted to private educational institution is allotted by giving public advertisement in local newspaper for calling application from the interested educational institutions.

2.2 It was the case on behalf of the appellant-Trust that, in between, the appellant-Trust learnt that respondent No. 4 – Nasheman Education and Welfare Society located at Vikroli was being actively considered for allotment of the plot in question, though they were not involved in any educational activity and the aim and objects of respondent No. 4 also do not provide for running a primary school and, therefore, the appellant-Trust, through its Advocates gave a notice on 10.11.2003 to the respondents calling upon them to inform about the actual status

of the plot in question within seven days and not to allot the plot of land to any society or institution without advertisement in local newspaper. That, in the month of February, 2004, the appellant-Trust filed Writ Petition No. 645 of 2004 before the High Court of Bombay for issue of a writ of Certiorari, Writ of Mandamus and an order of injunction from allotting the plot in question to respondent No. 4 or any other society/institution/person not conforming to the prescribed norms for allotment of the said plot.

2.3 That, by an order dated 24.06.2004, the Division Bench of the High Court disposed of the said writ petition by quashing and setting aside the order of allotment in favour of respondent No. 4 and remanded the matter back to the Minister of Revenue. The Division Bench also directed the Minister of Revenue to consider the claim of the appellant-Trust on one hand and respondent No. 4 on the other, afresh.

2.4 It is the case on behalf of the appellant-Trust that thereafter the appellant-Trust submitted representation in support of its case. That, by an order dated 01.06.2005, the then Chief Minister and also the Revenue Minister passed an order to allot the land in question in favour of respondent No. 4 mainly on the

ground that the appellant-Trust is already running a school, may be in the rented premises, however, respondent No. 4 proposes to establish a new primary school and it is the endeavour of the State to encourage the new institution.

2.5 Feeling aggrieved and dissatisfied with the order passed by the then Chief Minister and also the Revenue Minister dated 01.06.2005 allotting the land in question in favour of respondent No. 4, the appellants herein preferred Writ Petition No. 2356 of 2005 before the High Court. That, by the impugned judgment and order, the High Court has dismissed the said writ petition mainly and solely on the ground that, as such, the plot in question was reserved for the primary school in the development plan and that the appellant-Trust never applied for establishing the primary school, whereas respondent No. 4 has made representation for allotment of the plot for establishing a primary school.

3. Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court dismissing the writ petition, the original writ petitioners have preferred the present appeal.

4. Shri B. B. Sawhney, learned senior counsel has appeared on behalf of the appellants-original writ petitioners. Shri N.R. Katneshwarkar, learned advocate has appeared on behalf of the State of Maharashtra. Shri Atul Yeshwant Chitale, learned Senior Advocate has appeared on behalf of respondent No. 3 and Shri Shyam Divan, learned Senior Advocate has appeared on behalf of respondent No. 4.

5. Shri Sawhney, learned senior counsel appearing on behalf of the appellants-original writ petitioners has vehemently submitted that the High Court has materially erred in dismissing the writ petition preferred by the appellants herein solely on the ground that the appellant-Trust never applied for the allotment of the land for establishing the primary school. It is vehemently submitted by the learned senior counsel appearing on behalf of the appellants that, as such, the appellants were running the primary school and, in fact, they wanted to shift that primary school to the plot in question and, therefore, they applied for the allotment of the plot in question for establishing the primary school also. Shri Sawhney, learned senior counsel appearing for the appellants has taken us through the various correspondences of the applications/representations made by the

appellants in support of their case that the appellants-original writ petitioners did apply for the allotment of the land in question for establishing the primary school.

5.1 It is vehemently submitted by the learned senior counsel appearing for the appellants that the High Court has, therefore, dismissed the writ petition and non-suited the appellants-original writ petitioner on a wrong premise. Shri Sawhney, learned senior counsel has further submitted that, as such, the object of the appellant-Trust is to run the educational institution both secondary as well as the primary. It is submitted that, as such, the appellants are running the educational institution to cater the need of the slum area. It is submitted that as the educational institution was being run in the rented premises, the appellant-Trust and the educational institution were facing difficulties and, therefore, they applied for the allotment of the land in question. It is vehemently submitted by the learned senior counsel for the appellants-original writ petitioners that, as such, in fact, respondent No. 4 never applied for allotment of the land in question for establishing the primary school. It is vehemently submitted that even the object of respondent No. 4 Trust do not provide for running/establishment of a primary school.

5.2 It is vehemently submitted by the learned senior counsel for the appellants that, in fact, respondent No. 4 never applied for allotment of the land in question in a prescribed format. It is submitted that a simple representation was made to the then Chief Minister for allotment of the land and the then Chief Minister and the Revenue Minister allotted the land in question in favour of respondent No. 4. It is submitted that, therefore, the land in question ought not to have been/could not have been allotted in favour of respondent No. 4-Trust who, as such, was not even running the primary school at the relevant time and/or even they did not make an application for recognition of the primary school. It is submitted that, therefore, the allotment of the land in question in favour of respondent No. 4 was absolutely arbitrary and illegal, which deserves to be quashed and set aside. It is submitted that all the aforesaid facts, though were pointed out to the High Court, the High Court did not consider the same and has non-suited the appellants-original writ petitioners on the wrong premise that the appellants-original writ petitioners did not apply for allotment of the land in question for establishing the primary school. It is further submitted that even the grounds/reasons given by the Chief Minister in the order dated

01.06.2005 are not germane and on the grounds stated in the order dated 01.06.2005, the land in question could not have been allotted to respondent No. 4-Trust.

5.3 Making the above submissions, it is prayed to allow the present appeal.

6. Shri Shyam Divan, learned Senior Advocate appearing on behalf of respondent No. 4, has vehemently opposed the present appeal. Shri Katneshwarkar, learned advocate appearing on behalf of the respondent-State of Maharashtra has also supported the order passed by the then Chief Minister dated 01.06.2005.

6.1 Shri Shyam Divan, learned Senior Advocate appearing for respondent No. 4, while opposing the present appeal, has vehemently submitted that admittedly the land in question was reserved for the primary school in the development plan. It is submitted that even considering the applications/representations made by the appellants-original writ petitioners, which are on record, it can be said that the appellants-original writ petitioners applied for the land in question for mixed use – for establishing the secondary school as well as the primary school. It is submitted by the learned senior counsel appearing for

respondent No. 4 that, in fact, respondent No. 4's application was filed on 11.06.2001 i.e. prior to appellants' application filed on 25.07.2001. It is submitted that respondent No. 4's application sought allotment of the subject land specifically for the purpose of setting up a primary school. It is submitted that, on the contrary, the appellants' application related to a high school. It is submitted that, therefore, the High Court has rightly dismissed the writ petition and has rightly refused to grant any relief in favour of the appellants-original writ petitioners.

6.2 Shri Shyam Divan, learned Senior Advocate appearing for respondent No. 4, has further submitted that the subject land has been validly allotted to respondent No. 4. It is submitted that the subject land has been allotted in favour of respondent No. 4 in compliance of the procedure prescribed for the allotment of Government lands in Maharashtra; and after due consideration to the applications received by the Government authorities, including the application filed by the appellant-Trust. It is submitted that the subject land cannot be allotted to the appellant-Trust since its application does not relate to the construction of a primary school.

6.3 It is further submitted by Shri Shyam Divan, learned Senior Advocate appearing for respondent No. 4, that the land in question is allotted in favour of respondent No. 4 considering the provisions of Section 40 of the Maharashtra Land Revenue Code, 1966 and even Rules 5 and 6 of the Maharashtra Land Revenue (Disposal of Government Lands) Rules, 1971 and on the terms and conditions stipulated in the circular dated 08.02.1983 and after following the due procedure, as required.

6.4 It is submitted by Shri Shyam Divan, learned Senior Advocate appearing for respondent No. 4 that, pursuant to the order passed by the then Chief Minister and the Revenue Minister dated 01.06.2005 granting allotment of the land in question in favour of respondent No. 4, the name of respondent No. 4 has been entered in the Revenue records. Making the above submissions, it is prayed to dismiss the present appeal.

7. Shri Katneshwarkar, learned advocate appearing on behalf of the respondent-State of Maharashtra, has supported the order dated 01.06.2005 as well as the impugned order passed by the High Court.

7.1 It is submitted by Shri Katneshwarkar, learned advocate appearing on behalf of the respondent-State of Maharashtra that,

pursuant to the directions issued by the Division Bench of the High Court in Writ Petition No. 645 of 2004, the then Chief Minister, who was also holding the charge of Revenue, considered the cases of both – appellants as well as respondent No. 4 – and thereafter considering the pros and cons of the matter and considering the case of both the applicants, in the larger public interest and also considering the policy of the State Government, has allotted the land in question in favour of respondent No. 4. It is submitted that no *mala fides* are alleged and/or any submissions are made by the learned senior counsel appearing on behalf of the appellants on *mala fides*.

8. Shri Atul Yeshwant Chitale, learned Senior Advocate appeared on behalf of respondent No. 3-Brihanmumbai Municipal Corporation, has stated at the bar that if neither the appellant-Trust nor respondent No. 4 are allotted the land in question, respondent No. 3-Brihanmumbai Municipal Corporation is ready and willing to take the land in question and establish a primary school to cater the need of the locality.

9. Heard the learned Counsel appearing on behalf of the respective parties at length. We have perused and considered in detail the material on record, more particularly, the

applications/representations made by the appellants as well as the correspondence/representations/applications made by respondent No. 4.

9.1 It is not in dispute that the land in question is reserved for the primary school in the development plan. It is the case of behalf of the appellants as well as respondent No. 4 that both of them applied for the land in question for establishing the primary school. It is required to be noted that the applications for allotment of the land were required to be made in Proforma-A. Relying upon the representations/applications/communications, right from 25.07.2001, and the subsequent correspondences on record, it is the case on behalf of the appellants-original writ petitioners that they made the application for allotment of the land in question specifically for establishing the primary school. On a bare reading of the application dated 25.07.2001 made by the appellant-Trust, it appears that the said application cannot be said to be made specifically for a primary school. In the application dated 25.07.2001, the appellant-Trust requested for allotment of the land in question by stating that the land in question is reserved for the school or for such purposes by the Government of Maharashtra and the same is quite convenient

and suitable to them to have school building and to accommodate their children/students and also to adjust the growing crowd of the students in the said school. Thereafter, for the first time, in the representation dated 02.04.2002, the appellant-Trust stated that they are running a high school and a primary school. Even considering the representation dated 02.04.2002, it cannot be said that the appellants applied for the allotment of the land specifically for establishing the primary school. Even in the proforma, the reason for applying the land is stated to be “for school and play-ground”. Even in the subsequent communication dated 24.09.2002, there is no specific mention that the land is applied specifically for establishing the primary school. Merely because the appellant-Trust might be running even a primary school, along with the secondary school, it cannot be presumed that the appellant-Trust applied for the land in question specifically for the primary school. Therefore, considering the aforesaid facts and circumstances of the case, it cannot be said that the High Court has committed any error in not granting the relief to the appellants and/or the High Court has committed any error in dismissing the writ petition.

9.2 At the same time, we cannot lose sight of the fact that even the grant of land in favour of respondent No. 4 also cannot be sustained, as the same, for the reasons stated hereinabove, is found to be illegal and/or arbitrary.

9.3 Respondent No. 4 is relying upon its first application dated 11.06.2001 in support of its case that they applied for the land in question for setting up a primary school. However, considering the material on record, there does not appear to be any application submitted by respondent No. 4 dated 11.06.2001 and that too in the Proforma-A, but it is on record that a straight request was made by respondent No. 4 to the then Chief Minister (Annexure P-28). Annexure P-29 dated 11.06.2001 is by one Mohd. Aarif Nasim Khan, the then Minister of State for Food, Civil Supply and Consumer Protection forwarding the representation received from respondent No. 4, by which he recommended to allot the land in question in favour of respondent No. 4. Even considering the documents produced at Annexure P-28, a representation/request made by respondent No. 4 for allotment of the land in question made to the then Chief Minister, it is not born out that a request was made for allotment of land by respondent No. 4 specifically for establishment of a

primary school. Even in the recommendation made by the then Minister of State for Food, Civil Supply and Consumer Protection dated 11.06.2001, it cannot be said that even the recommendation was for allotting the land in question in favour of respondent No. 4 for establishing the primary school. On the basis of the said representation, the State Government took a decision and/or granted sanction to grant the land in question in favour of respondent No. 4. The subsequent opinions of the various authorities, if are perused and considered, they are solely on the basis that the Government has granted the sanction to allot the land in favour of respondent No. 4. It is also required to be noted at this stage that even at the relevant time respondent No. 4 did not even apply for the recognition to start a primary school. At this stage, noting on the file of the Revenue Department dated 22.09.2004 deserves to be noted, which reads as under:

“22-09-2004 The Education Department has not received any proposal from the Nasheman Education Welfare Society about starting a school. Further, even a permission has not been given to the society for a primary school at the place in question. However, please see the order of the Hon’ble Chief Minister on page 73/TV. Pursuant thereto there should be no objection for the Finance Department to concur.”

Therefore, considering the entire material on record and the circumstances narrated hereinabove, even respondent No. 4 was not eligible and/or entitled to the allotment of the land in question, as they also never applied for allotment of the land in question specifically for establishing the primary school and, that too, in Proforma-A. A simple representation was made to the then Chief Minister and also the Revenue Minister for allotment and the same representation came to be accepted by the Government. Therefore, the grant of the land in favour of respondent No. 4 is also illegal and arbitrary and the same has been confirmed subsequently by the concerned Minister by an order dated 01.06.2005 which was impugned before the High Court. Even the grounds/reasons stated in the order dated 01.06.2005 confirming the allotment in favour respondent No. 4 also cannot be said to be germane and/or a valid ground/reason to allot the land in question in favour of respondent No. 4. As observed hereinabove, even respondent No. 4 was not entitled to the allotment of land in question for the reasons stated hereinabove. Under the circumstances, the allotment of land in question in favour of respondent No. 4 also cannot be

sustained and the same deserves to be quashed and set aside by this this Court even in exercise of its powers under Article 142 of the Constitution of India, as this Court has once found that the allotment in favour of respondent No. 4 is also illegal and arbitrary, this Court is of the opinion that not interfering with the order dated 01.06.2005 and/or grant of land in question in favour of respondent No. 4 would tantamount to continuing the illegality.

10. As stated by the learned counsel appearing on behalf of respondent No. 3-Brihanmumbai Municipal Corporation at the bar that if neither the appellant-Trust nor respondent No. 4 are allotted the land in question, considering the growing population and the need of the primary school in the locality, respondent No. 3-Brihanmumbai Municipal Corporation is ready and willing to take the land in question and establish a primary school in the locality.

11. In view of the above and for the reasons stated above, we dispose of the present appeal with the following observations and directions:

- (i) The impugned judgment and order dated 29.09.2005 passed by the High Court is hereby

confirmed. It is observed and held that the appellants herein-original writ petitioners were rightly held to be not entitled to allotment of the land in question;

(ii) The order dated 01.06.205 allotting the land in question in favour of respondent No. 4 is also hereby quashed and set aside. Therefore, the allotment granted in favour of respondent No. 4 is hereby quashed and set aside;

(iii) Neither the appellants-original writ petitioners nor respondent No. 4 are entitled to the allotment of the land in question; and

(iv) The land in question be granted/allotted in favour of respondent No. 3-Brihanmumbai Municipal Corporation after complying with other procedural requirements and on compliance of the other terms and conditions in accordance with law and the policy, so that respondent No 3 may establish and run the primary school on the land in question which will be in the larger public interest.

12. The present appeal is accordingly disposed of in terms of the above. However, in the facts and

circumstances of the case, there shall be no order as to costs.

.....J.
[L. NAGESWARA RAO]

.....J.
[M. R. SHAH]

New Delhi,
April 9, 2019.