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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CONT.CAS(C) 883/2011

SETH POKHARMAL EDUCATIONAL SOCIETY Petitioner
Through: Mr. R.K. Saini, Advocate.

versus

GC PATNAIK & ORS Respondents
Through: Mr. Rajiv Bansal, Advocate for the
respondent/DDA.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER
02.12.2011

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1. This petition has been preferred under Sections 11 & 12 of the Contempt of Courts Act, 1971, whereby the petitioner alleges deliberate and willful disobedience of the judgment of the learned Single-Judge of this Court dated 17.04.2006 passed in a batch of writ petitions including W.P.(C.) No. 18728/2004 preferred by the petitioner herein.

2. It appears that the DDA took a decision on 15.12.2003 to allot Nazul Land to societies which desire to set up higher/technical institutes at a premium determined through auction. In this judgment the learned Single-Judge interpreted the Delhi Development Authority

(Disposal of Developed Nazul Land) Rules, 1981 (hereinafter referred to as the Nazul Land Rules) and drew a distinction between companies, trusts & firms on the one hand and the societies on the other hand in the matter of allotment of Nazul Land for institutional purposes. It was held on an interpretation of the then existing rules that, whereas companies, trusts & firms were entitled to allotment of earmarked Nazul Land for institutional purposes on rate determined through public auction, societies were entitled to allotment at pre-determined rates as determined by the Central Government. The learned Single-Judge after coming to the aforesaid conclusion, in para 43, held that *"Petitioners would be entitled to be considered for allotment of land for setting up higher/technical institutes at rates determined by the Central Government, as they have been found to be eligible and they have complied with Rule 20 of the Nazul Land Rules"*.

3. Since the Court drew a distinction between societies on the one hand and the companies, trusts & firms on the other hand, the policy decision dated 15.12.2003 above referred to was also quashed. The Court issued the following directions in the matter:

"46. Writ petitions stand disposed of declaring that the petitioners would be entitled to be considered for allotment of Nazul Land under Rule 5 of the DDA (Disposal of Developed Nazul Lands) Rules, 1981 for setting up higher/technical institutes at a premium determined by the Central Government. Policy decision dated 15.12.2003 in so far it requires allotment of Nazul land to societies for setting up high/technical institutes at a premium determined through auction is quashed. Mandamus is issued to DDA to identify available plots for setting up

higher/technical institutes and apportion the same for allotment to societies (falling in one class) and companies, firms and trusts (falling in second class); simultaneously, DDA would identify the societies whose entitlement has been cleared. If plots to be allotted to societies are more than the number of eligible societies, specific plot be allotted within a period of 3 months from today and premium charged as determined by the Central Government. If number of societies exceed the number of available plots, DDA is directed to evolve a reasonable criteria and as per criteria allot the specified listed plots to the eligible societies within 3 months."

4. As aforesaid, this decision was rendered on 17.04.2006.
5. On 19.04.2006, the Nazul Land Rules were amended. With this amendment, the distinction earlier existing between companies, trusts & firms on the one hand, and the societies on the other hand was obliterated.
6. Various societies assailed the amendment in the Nazul Land Rules carried on 19.04.2006 by filing writ petitions. This batch of writ petitions was disposed of by the Division Bench on 25.03.2011, inter alia, in ***Bhagwan Mahavir Education Society (Regd.), & Another Vs. DDA & Others, W.P.(C.) Nos. 2459-60/2005***. The Division Bench held that the amended Nazul Land Rules would be applicable to all cases which were pending with the DDA for allotment. It was held that till so long as the actual allotment letter is not issued, the mere recommendation for allotment made in an internal notings of the DDA would not create any right in favour of any applicant. Since the amended Nazul Land Rules came into force prior to allotment of the plots to the writ petitioners, the amended rules were held to be

applicable in their case.

7. The Division Bench relied on, inter alia, the decision of the Supreme Court in the **Sethi Auto Service Station and Another Vs. Delhi Development Authority and Others**, (2009) 1 SCC 180. The Division Bench in its conclusions, inter alia, observed:

"..... There can really be no doubt that the mere recommendations of the IAC would not confer any right whatsoever unless a decision taken on the file is approved by the competent authority and thereafter communicated to the beneficiary. The decision in Sethi Auto Service Station and Anr.v. Delhi Development Authority and Ors.'s case (supra) which also relies upon the earlier pronouncements including in the case of Bachhittar Singh v. The State of Punjab; AIR 1963 SC 395, leaves no manner of doubt in this behalf.

26. To constitute an enforceable right, the decision of the statutory authority has to be duly communicated. In the present case, there was no such communication. In view of the aforesaid factual matrix, regardless of any internal decision taken prior to the final picture that has emerged under the Rules, since no allotment had actually been made till then, it is the finally amended Rules which would govern the rights and obligations of the parties. We have to thus see the Rules as they stood in 2006 with the amendments carried out therein with effect from 19.04.2006."

8. In the meantime, the DDA had preferred Letters Patent Appeals (L.P.A.) to assail the judgment of the learned Single-Judge dated 17.04.2006, including in the case of the petitioner herein. The said L.P.A.s came up before the Division Bench on 05.05.2011. On this day, the DDA sought to withdraw the L.P.A.s in view of the law enunciated by the Division Bench of this Court in **Bhagwan Mahavir Education Society** (supra) and other connected matters decided on 25.03.2011.

Though the respondents in the said appeals, including the petitioner herein, contended that the decision in **Bhagwan Mahavir Education Society** (supra) had no application to the said L.P.A.s, the Division Bench permitted the withdrawal of the L.P.A.s without going into the issue whether or not the decision in **Bhagwan Mahavir Education Society** (supra) was applicable in the case of the petitioner and other respondents in the L.P.A.s. The present petition has been filed in the aforesaid background.

9. The submission of Mr. R.K. Saini, learned counsel for the petitioner, is that the effect of withdrawal of the L.P.A.s by the DDA, which had been preferred against the judgment of the learned Single-Judge dated 17.04.2006, is that the said judgment of the learned Single-Judge has attained finality. He submits that the respondent/DDA is, therefore, bound to implement the said judgment which, inter alia, directed the respondent/DDA to identify the available plots for setting up high/technical institutions; apportion the same for allotment of the same to societies as one class, and companies, firms and trusts as other class; identify the societies whose entitlement has been established; if plots to be allotted to societies are more than the number of eligible societies, specific plot be allotted within a period of 3 months on premium charged as determined by the Central Government, i.e. at pre-determined rates, and if the number of societies exceeds the number of available plots, to evolve a reasonable

criteria and to make allotment of the specified plots within 3 months.

10. Mr. Saini further submits that the amendment in the Nazul Land Rules carried out on 19.04.2006 and the judgment of the Division Bench cannot take away the rights vested in the petitioner vide the judgment of the learned Single-Judge, which has attained finality. They cannot have the effect of setting aside the judgment of the learned Single-Judge.

11. On the other hand, Mr. Rajiv Bansal, who appears on advance notice on behalf of the respondents, submits that the law enunciated by the Division Bench in **Bhagwan Mahavir Education Society** (supra) is very clear. The Division Bench has concluded that in all such cases where actual allotment letters had not been issued and allotment not communicated to the allottee, the changed policy which has intervened during the pendency of the application of the applicant would govern the decision whether or not to allot the plot to the applicant, since a mere recommendation by one of the Committees of the DDA made during the internal processing of the case, does not create any vested right in the applicant to claim allotment of land.

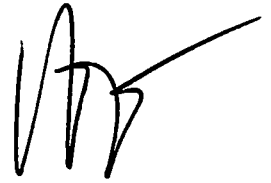
12. Mr. Bansal submits that since the amendment in the rules came into effect on 19.04.2006, i.e. after the judgment of the learned Single-Judge and while the matter was still pending consideration for allotment of plot to the petitioner and other applicants, by application of the judgment of the Division Bench in **Bhagwan Mahavir**

Education Society (supra) the changed rules became applicable even in the petitioner's case, according to which, Nazul Land could be allotted, including to societies, only on rates determined through public auction. He submits that it is for this reason that the respondent/DDA withdrew the L.P.A.s by placing reliance on the judgment of the Division Bench in **Bhagwan Mahavir Education Society** (supra).

13. Having heard learned counsel for the parties, I am of the view that there is no merit in the petitioner's submission that there is any breach, much less willful or deliberate breach, of the judgment of the learned Single-Judge dated 17.04.2006. The direction issued by the learned Single-Judge was to consider the petitioner's case for allotment in terms of the pre-existing policy as it existed prior to 19.04.2006. There was no specific direction for allotment of any particular identified plot. No allotment has ever been made by the DDA to the petitioner. Within the period granted by the learned Single-Judge for carrying out the exercise of identifying the plots for allotment to societies, the amendment in the rules came into force on 19.04.2006. It is clear from the decision of the Division Bench that since the rules with regard to allotment of land to societies had undergone amendment during the pendency of the application of the petitioner, it is the changed rules which would apply to the petitioner's case. Clearly, the said amendment was applicable in the case of the petitioner as well. Therefore, the withdrawal of the L.P.A.s by the DDA cannot be said to

vest any right in the petitioner inasmuch, as, the respondent/DDA has acted in terms of the judgment of the learned Single-Judge in W.P.(C.) No. 18748/2004 dated 17.04.2006 by applying principle laid down by the Division Bench in **Bhagwan Mahavir Education Society** (supra). The action of the DDA is, therefore, in compliance of the judgment of the learned Single-Judge dated 17.04.2006 and cannot be said to be in breach thereof.

14. Dismissed.



VIPIN SANGHI, J

DECEMBER 02, 2011
'BSR'

→ Fresh RA 192/12 filed.
→ Fresh cm 5794/12 (stay)
filed.