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

+ W.P.(C) 5874/2014

GAKKO BUNKA EDUCATION SOCEITY..... Petitioner

Through Mr. Mohit Kumar Shah, Advocate

versus

SOUTH DELHI MUNICIPAL CORPORATION

AND ANR. .... Respondents

Through Mr. Gaurang Kanth, Advocate

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Date of Decision : 30<sup>th</sup> October, 2014

**CORAM:**

**HON'BLE MR. JUSTICE MANMOHAN**

### **J U D G M E N T**

**MANMOHAN, J: (Oral)**

1. Present writ petition has been filed seeking quashing of the condition in Para No.(ii) sub para (ii) imposed by the respondents vide letter dated 05<sup>th</sup> March, 2013 while sanctioning the additional FAR for the petitioner's School building situated at Sector A, Pocket B & C, Vasant Kunj, New Delhi whereby the petitioner was asked to deposit Rs.2,07,73,000/- towards the additional FAR charges. Petitioner also prays for quashing the Order/Letter bearing No. D/1018/EE (Bldg) HQ-1/South DMC/2013 dated 19<sup>th</sup> December, 2013 issued by the respondent No.2 whereby it refused to refund the aforesaid amount deposited by the petitioner under protest

towards the additional FAR charges. The relevant portion of letter dated 19<sup>th</sup> December, 2013 reads as under:-

*“1. Such exemption is available to the Societies as per Gazette Notification 17<sup>th</sup> July, 2012 in whose favour the land was allotted. In the instant case, the land under reference was allotted by the D.D.A. in favour of the Embassy of Japan and not in favour of Gakko Bunka Education Society;*

*2. The Ministry of External Affairs, vide its letter dated 20.12.1989 (condition No.7), envisages clearly that the school premises will not be entitled to privileges and immunities, as normally extended to premises of Foreign Diplomatic and Consular Missions;*

*3. The land belongs to the Embassy of Japan and the Society i.e. Gakko Bunka Education Society, claiming the exemption of additional FAR Charges has been formed for the purpose to run the School only.”*

2. Mr. Mohit Kumar Shah, learned counsel for petitioner states that in 1989 the Ministry of External Affairs had granted permission to Embassy of Japan to open and run the Japanese School. In pursuance to said recommendation, Delhi Development Authority (hereinafter referred to as ‘DDA’) had allotted a land admeasuring 3.0134 acres in Sector A, Pocket B & C, Vasant Kunj, New Delhi for construction of Japanese School.

3. On 30<sup>th</sup> December, 2003, the Embassy of Japan entered into a Memorandum of Understanding with petitioner-Society for running and managing the Japanese School since the Embassy of Japan was engaged in various other works and found it difficult to run the day-to-day business of the school. The petitioner-Gakko Bunka Education Society is stated to be

registered vide Registration No. S/47461/2003 under the Societies Registration Act, 1860.

4. Mr. Shah states that petitioner-society is a charitable organization as it undertakes educational activities and has obtained the Certificate dated 28<sup>th</sup> March, 2005 under Section 12A of the Income Tax Act, 1961 (for short 'Act, 1961'). Consequently, according to him, the petitioner-society is registered as a charitable institution and is exempt from payment of income tax.

5. He states that the petitioner society vide Resolution dated 01<sup>st</sup> October, 2012 authorised the then Principal Mr. Haruhisa Usui to apply for sanction of building plans for additional construction to be carried out in the already existing building of the Japanese School. He points out that the respondent No.1, vide its letter dated 05<sup>th</sup> March, 2013, sanctioned the building plans for the proposed construction by the petitioner subject to the deposit of an amount of Rs.2,07,73,000/- on account of additional FAR charges as a pre-condition for the release of sanction.

6. On receiving the said letter, the petitioner contacted the respondents and during the said meetings, it was pointed out to the officers of the respondent No.1 that the petitioner is an educational institution exempt under the Income tax Act, 1961 and hence the petitioner is entitled for the benefit of the Notification dated 17<sup>th</sup> July, 2012. However, according to Mr. Shah, the officials of the respondents clarified that it was internally decided by the senior officials of the North Delhi Municipal Corporation that the benefit of the DDA's notification dated 17<sup>th</sup> July, 2012 would be extended only to those institutions who can produce certificate under Section 80G of the Income Tax Act, 1961. He stated that since the respondents were not

releasing the petitioner's sanction plan, the petitioner was left with no option but to succumb to the illegal demand made by the respondents under protest.

7. Though Mr. Shah admits that land was allotted in favour of Embassy of Japan and not in favour of petitioner-society, yet he contends that the issue of ownership is irrelevant for the purposes of refund of additional FAR charges. In support of his contention, Mr. Shah relies upon the DDA Notification dated 17<sup>th</sup> July, 2012. He points out that the Notification dated 17<sup>th</sup> July, 2012 is an amendment to an earlier Notification dated 23<sup>rd</sup> December, 2008. The relevant portion of the said Notifications reads as under:-

**A) Notification dated 23<sup>rd</sup> December, 2008:-**

|    |                                                                                   |                                                                                                                                                                                                                                                                                                 |                                                                                                                        |             |
|----|-----------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------|-------------|
| 6. | (g) Additional FAR charges for institutional plots i.e. including hospital plots. | @ 50% of the updated Zonal market rate of Institutional properties for those disposed by auction as well as for those properties which were allotted to private Parties. This is not applicable to those institutions which were allotted land @Rs.1/- for whom no such charges is recommended. |                                                                                                                        |             |
|    |                                                                                   |                                                                                                                                                                                                                                                                                                 | South & Dwarka                                                                                                         | Rs. 29525/- |
|    |                                                                                   |                                                                                                                                                                                                                                                                                                 | North, East, West, & Rohini                                                                                            | Rs.13008/-  |
|    |                                                                                   |                                                                                                                                                                                                                                                                                                 | Narela                                                                                                                 | Rs.9691/-   |
|    |                                                                                   |                                                                                                                                                                                                                                                                                                 | This is not application to those institutions which were allotted land @Re.1/- for whom no such charge is Recommended. |             |

**B) Notification dated 17<sup>th</sup> July, 2012:-**

| Sl. No. | Item.                                                 | Modified Rates approved by the Ministry.                                                                                                          |
|---------|-------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------|
| 1.      | Additional FAR charges for Institutional Plots. 6(g). | <u>No additional FAR charges to be recovered from Educational societies/Health-care and Social welfare societies having Income Tax Exemption.</u> |

*The other contents of the notification dated 23/12/2008 will remain unchanged.....*

(emphasis supplied)

8. Mr. Shah also points out that the Division Bench of this Court has already allowed refund of additional FAR charges levied by respondent No.1 in *LPA 107/2014* , *W.P.(C) Nos. 7921/2012, 1327/2013 and 915/2014*. He submits that on the principle of fairness, petitioner is also entitled to a refund of additional FAR charges.

9. On the other hand, Mr. Gaurang Kanth, learned counsel for respondents states that petitioner is not entitled for refund of additional FAR charges as the ownership of land of Japanese school is in favour of Embassy of Japan, whereas the application for sanction of building plan and for refund of additional FAR had been made by the Principal of Japanese School.

10. Mr. Kanth further states that in the meeting held on 18<sup>th</sup> March, 2013, it was decided that refund of additional FAR charges would be made only to those entities which furnish the proof of income tax exemption in the form of 80G Certificate/Letter duly issued by the Income Tax Department. He points out that petitioner had failed to furnish the certificate under Section 80G of the Act, 1961.

11. Having heard learned counsel for parties and having perused the papers, it is apparent that the Japanese School is being run, operated and managed by the petitioner-society and it is responsible for school's administration as well as its day-to-day affairs including additional construction therein. Some of the relevant terms of the Memorandum of Understanding dated 30<sup>th</sup> December, 2003 executed between the Embassy of Japan and the petitioner-society are reproduced hereinbelow:-

*“7. The Society had been registered on 11<sup>th</sup> November, 2003 with the object of conducting the School in Delhi on the lines of the education system of Japan;*

*NOW, THEREFORE, IT IS CONFIRMED AS FOLLOWS:-*

*I SCOPE OF UNDERSTANDING*

*From the designated date 30<sup>th</sup> December 2003, the Society would render their services in the functioning of the School, its administration and day-to-day affairs, and the Embassy would provide such appropriate support and advice for the purpose.*

*xxxx xxxx xxxx xxxx*

*III ROLE OF THE SOCIETY*

*xxxx xxxx xxxx xxxx*

*C. All liabilities, statutory or otherwise, in regard to the running of the School, including statutory impositions, taxes, rates, cesses, levies, and duties, shall be borne by the Society.*

*D. The Society shall be liable to obtain all clearances, permits and comply with all legal requirements applicable.”*

12. Further, the documents on record show that the Principal of Japanese School had applied for sanction of building plan on behalf of petitioner-society in his capacity as its authorized representative and the respondents had granted sanction to him for additional construction vide letter dated 05<sup>th</sup> March, 2013.

13. In the opinion of this Court, respondents having received the FAR charges and having granted the sanction to the petitioner-society is estopped from challenging the locus of the petitioner-society from claiming refund of the additional FAR charges. Also keeping in view the contemporaneous

documents like Memorandum of Understanding dated 30<sup>th</sup> December, 2003, income tax exemption letter dated 18<sup>th</sup> March, 2005 and sanction letter dated 05<sup>th</sup> March, 2013, it cannot be said that the petitioner had resorted to subterfuge to take advantage of DDA's notification dated 17<sup>th</sup> July, 2012.

14. This Court is of the view that the intent of the DDA Notifications dated 23<sup>rd</sup> December, 2008 and 17<sup>th</sup> July, 2012, was to give exemption to the Educational Societies having income tax exemption from payment of additional FAR charges. If the intent was to exempt only the owners from payment of additional FAR Charges, the same would have been categorically and explicitly mentioned therein.

15. This Court is further of the opinion that in view of the petitioner having been registered under Section 12A read with Section 12AA(1)(b) of the Act, 1961, petitioner-society is a charitable institution, exempt from payment of taxes and is entitled to the benefit of the Notification dated 17<sup>th</sup> July, 2012. In fact, exemption under Section 80G of the Act, 1961 is a benefit given to people who give donations to institutions having registration under Section 12A of the Act, 1961.

16. The respondents' stand in the counter affidavit is not in consonance with the DDA's Notification dated 17<sup>th</sup> July, 2012, which clearly stipulates that no additional FAR charges shall be recovered from Educational Societies having income tax exemption. The aforesaid DDA Notification nowhere stipulates that a Certificate/Letter under Section 80G of the Act, 1961 is mandatory. Consequently, the respondents' stand that the benefit of Notification dated 17<sup>th</sup> July, 2012 is restricted to only those institutions which have exemptions under Section 80G of the Act, 1961, is untenable in law.

17. The controversy at hand is also settled beyond doubt by the Exemption letter dated 17<sup>th</sup> May, 2013 issued by the Office of the Director of Income Tax (E). The relevant portion of the said letter reads as under:-

*“Sub.: Request for issue of letter for exemption of Income – reg*

*Kindly refer to your letter dated 9/5/2013 on the captioned subject. In this regard, it is clarified that by virtue of certificate No. 1742 dated 28/03/2005 issued u/s 12A by this office, your society is a charitable institution and its income is exempt from tax as per provisions of Income-tax Act, 1961.”*

(emphasis supplied)

18. In view of the aforesaid, present writ petition is allowed and respondent-Corporation is directed to refund the additional FAR charges to the petitioner within a period of four weeks.

**MANMOHAN, J**

**OCTOBER 30, 2014**

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