

Reserved

Chief Justice's Court

Case :- SPECIAL APPEAL No. - 29 of 2023

Appellant :- State of U.P. Thru. Prin. Secy. Secondary Education Govt. Of U.P. Civil Sectt. , Lko. And Others

Respondent :- C/M , Seth Jaipuriya School, Lko. Thru. Manager

Counsel for Appellant :- C.S.C., Indrajeet Shukla

Counsel for Respondent :- Som Kartik Shukla, Ashok Kumar Singh, Prashant Chandra (Sr.Adv.) with Anshuman Singh, Ashok Kumar Singh, Geetika Yadav, Utsav Misra, Ratnesh Chandra

With

Case :- PUBLIC INTEREST LITIGATION (PIL) No. - 9322 of 2021

Petitioner :- Vishwanath Dwivedi

Respondent :- State of U.P.Thru Prin.Secy. Madhamik Shiksha Lko and others

Counsel for Petitioner :- Ashok Shukla, Priyank Yadav, Surendra Kumar Shukla

Counsel for Respondent :- C.S.C., Ratnesh Chandra, Sameer Kalia

With

Case :- PUBLIC INTEREST LITIGATION (PIL) No. - 575 of 2022

Petitioner :- Rahul Shukla

Respondent :- State of U.P. Thru. Prin. Secy. Panchayat Raj State U.P. Civil Secret. Lucknow and others

Counsel for Petitioner :- Satyendra Prakash Singh, Abhishek Pratap, Asit Kumar Chaturvedi

Counsel for Respondent :- C.S.C., Abhinav Trivedi, Ashok Kumar Singh, Anshuman Singh, Brijesh Kumar Singh, Kaustubh Singh, Namit Sharma, Ratnesh Chandra, Sameer Kalia, Shailendra Singh Chauhan, Shradha Mishra, Srideep Chatterjee, Sudhir Kumar, Utsav Mishra, Virendra Mishra

Hon'ble Arun Bhansali, Chief Justice

Hon'ble Jaspreet Singh, J.

(Per:- Jaspreet Singh, J.)

1. This is a batch of three petitions;

(i) an intra-court appeal wherein the judgment dated 27.09.2022 passed in Writ-C No. 522 of 2022 (Committee of Management Vs. State of U.P.) allowing the writ petition has been challenged by the State;

(ii) A Public Interest Litigation bearing No. 9322 of 2021 (Vishwanath Dwivedi Vs. State of U.P. and Others) wherein directions have been sought against the respondent no. 1 to 6 of the said PIL to take appropriate action on the representation and proposal made by the District Inspector of Schools as per his letter dated 04.04.2019 and a further direction that the respondent nos. 1 to 7 of the WPIL may resume the land from Sri Yogeshwar Rishikul Bal Ved Vidyapeeth Junior High School as well to initiate the civil and criminal proceedings against the respondent nos. 8, 9 and 10 of the WPIL.

(iii) Another Public Interest Litigation (PIL) bearing No. 575 of 2022 (Rahul Shukla Vs. State of U.P. and Others) wherein a direction has been sought for the State-respondents to resume its land and a further direction to conduct fresh probe alleging illegal transfer of land.

2. Since the facts giving rise to the intra-court appeal and PILs are common and emerge from a common thread, hence, all the three petitions were clubbed, were heard together and are being decided by this common judgment.

3. For a better appreciation of the controversy involved in the aforesaid three petitions, the facts are being first noticed and thereafter first, the intra-court appeal will be considered and then the two PILs, connected, will be considered.

FACTUAL MATRIX

4. The State of U.P. vide notification dated 25.10.1972 issued under Section 4 (1) of the Land Acquisition Act, 1894 (hereinafter referred to Act of 1894) proposed to acquire 22 Bighas, 17 Biswa and 10 Biswansi of land for public purposes i.e. for extension and to provide a playground for Sri Yogeshwar Rishikul Bal Ved Vidyapeeth Junior High School (hereinafter referred to as the Society') which was a running school under the name and style of Yogeshwar Rishikul Inter College, Shahadatganj, Lucknow and Swami Yoganand Balika Inter College, Sahadatganj, Lucknow.

5. The State further issued a notification under Section 6 of the Act

of 1894 on 12.07.1975. This was followed by a declaration of an Award dated 11.06.1976. The land was acquired for the Society which proposed to extend its playground for the two schools being run by the Society and accordingly an agreement was executed between the State Government and the Society. This was also notified in the Gazette on 26.06.1975 and the possession of the land was handed over to the Society on 21.06.1976 and since then the Society was running the schools as mentioned hereinabove.

6. The agreement dated 26.06.1975 inter-alia contained certain clauses which are germane to the controversy in question. Clause (a), Clause (f) and Clause (h) are relevant, around which, the respective parties have made their submissions and they are being reproduced hereinafter for ready reference:-

(a) That the second party, its successors and assignees, will use the said land for the aforesaid purpose and for no other purpose without the previous sanction in writing of the state government.

(f) That in case of breach by the second party of any of the terms and conditions of this agreement, the first party shall be entitled to declare the transfer of the land to the second party as null and void where upon the land shall revert back to the state government.

(h) That the second party shall not transfer the said land or any part thereof by sale, mortgage, gift, lease otherwise except with the previous sanction of the state government.

7. Since the land was acquired for the Society for educational purposes, the agreement also contained a stipulation that in case if there was any enhancement in compensation payable to the original land-holders, then the beneficiaries (the Society) would pay the enhanced compensation.

8. It is in the aforesaid context that in the year 1993, the Society had applied for a permission in terms of Section 5-A of the Societies Registration Act, 1860 (hereinafter referred to as the Act of 1860) wherein it was stated by the Society that there had been an enhancement in the payment of compensation at the behest of same land-holders and since the Society did not possess enough funds, hence, in order to satisfy the enhanced award, it had sought the permission of the Court to sell

some part of the land to cover the payment of additional compensation.

9. In the aforesaid factual background, the court of Additional District Judge-IV, Lucknow in Case No. 142 of 1993 vide order dated 03.08.1995 permitted the Society to sell some part of the land only to cover the payment of enhanced compensation amounting to Rs. 7,00,000/- lakhs.

10. The Society for which the land was acquired, sold part of the land and it is alleged that it was sold without prior written permission of the State, hence, the transfer is bad and also in violation of the clauses as noticed above in the preceding paragraphs. The details of transfer is as under:-

(i) 2004 square meters was sold to Sri Dau Dayal Agarwal (who is impleaded as respondent no. 10 in WPIL No. 9322 of 2021 and respondent no. 14 in WPIL No. 575 of 2022) vide sale deed dated 07.08.2009 ;

(ii) 645 square feet was sold to Sri Sanjeev Agarwal vide sale deed dated 07.08.2009 and ;

(iii) 29, 614 square meters was sold to M/s De Lotus Builders and Colonizers (who is impleaded as respondent no. 9 in WPIL No. 9322 of 2021 and respondent no. 12 in the WPIL No. 575 of 2022) on 07.04.2011.

11. After purchasing the land M/s De Lotus Builders had submitted its residential building plan which was cancelled by the Lucknow Development Authority vide its order dated 28.08.2014. After cancellation of the building plan, M/s De Lotus Builders leased the land to RPM Academy vide lease deed 05.11.2015 over which a school under the name and style of Seth M.R. Jaipuria is being run from Class I to VIII. The Manager, Seth M.R. Jaipuria School is the sole respondent in the intra-court appeal and is respondent no. 12 in the PIL bearing No. 575 of 2022.

12. In March, 2019, the District Inspector of School- I and II inspected the school Sri Yogeshwar Rishikul Balika Inter College, Shahadatganj,

Lucknow and while submitting its report, it flagged several irregularities and deficiencies in the said school and it also noticed that the Society had illegally sold some land of the Society.

13. A First Information Report dated 04.10.2018 was lodged against Sri Subrato Majumadar who was the then Secretary and he was apprehended and later he was granted bail.

14. Taking note of the report of the District Inspector of Schools, a three member Committee under the chairmanship of the Joint Director (Education), Camp Office, Lucknow was constituted who submitted its report recommending the resumption of the land. It also recommended that the persons who were the beneficiaries of the illegal sale be treated as Land Mafia and appropriate proceedings should be drawn against them.

15. It is in the aforesaid backdrop that the PIL bearing No. 9322 of 2021 (Vishwanath Dwivedi Vs. State of U.P. and others) came to be filed wherein the Coordinate Bench of this Court vide order dated 12.07.2021 required the State to file its counter affidavit indicating what action has been taken by the State for resumption of the land.

16. It is in the same vein that another PIL bearing No. 575 of 2022 (Rahul Shukla Vs. State of U.P. and Others) was also instituted raking up similar issues as was already seized by the Court in the WPIL No. 9322 of 2022.

17. A Coordinate Bench of this Court in WPIL No. 575 of 2022 (Rahul Shukla Vs. State of U.P. and Others) appointed Sri Asit Kumar Chaturvedi, learned Senior Counsel as well as Sri Abhishek Pratap as an Amicus Curiae vide order dated 06.09.2022.

18. It is in the aforesaid backdrop, it reveals that the two PILs primarily raised the same issue of the alleged illegal transfer of land by the Society to other third parties, as the land was sold without prior permission of the State. At this stage, it will be worthwhile to refer to the reliefs claimed by the petitioner in the two respective PILs, which are being reproduced hereinafter for ready reference:-

Reliefs claimed in PIL No. 9322 of 2021

“i. Issue an order, direction or writ in the nature of mandamus commanding the Respondent no. 1 to 6 to take appropriate action on the recommendation and proposal made by the District Inspector of Schools, the respondent no. 7 vide its letter dated 4.4.2019 contained in Annexure no. 7 and 8.

ii. Issue an order, direction or writ in the nature of mandamus commanding the Respondent no. 1 to 7 to resume (take back) the land in question from Sri Yogeshwar Rishikul Bal Ved Vidyapeeth Junior High School (Respondent no. 8) since it has violated the terms and conditions under which land in question was transferred to it including resumption also from the Respondent no. 9 and 10 to whom the land is alienated by Respondent no. 8.

iii. Issue an order, direction or writ in the nature of mandamus commanding the Respondent no. 1 to 6 to take appropriate action civil as well as criminal against for Respondent no. 8, 9 and 10 violating the terms and conditions under which land in question was transferred to it.

Reliefs Claimed in PIL No. 575 of 2022

“(i) Issue a writ, order or direction in the nature of MANDAMUS directing O.P.No.-1 to 9 to take appropriate steps to revert back 11 Bigha land either to Government of U.P. or to O.P.No.10.

ii) Issue a writ, order or direction or writ in the nature of Mandamus commanding the Respondent No. 1 to 9 to conduct a fresh probe in the anomalies indicated by the petitioner in the illegal sale and purchase of land by fraudulent means.

iii) Issue a writ, order or direction in the nature of mandamus directing opposite parties No. 1 to 9 to take appropriate action against the responsible officers, employees and persons who facilitated illegal and fraudulent purchase of land in question.

iv) Issue any other appropriate writ, order or direction in favour of the petitioner as the Hon'ble Court may deem fit in the circumstances of the case.”

19. In the interregnum, the Committee of Management of Seth M.R. Jaipuria School decided to upgrade the school up to Class X and it also resolved to seek affiliation from Central Board of Secondary Education (hereinafter referred to as ‘the CBSE’).

20. As per the CBSE Affiliation Bye-laws, an institution seeking such affiliation is also required to obtain a No Objection Certificate from the State Government to the effect that the State Government has no objection if the affiliation is granted by the CBSE.

21. It is in this context that the Committee of Management of M.R. Seth Jaipuria School applied for a No Objection Certificate from the State Government in the prescribed format along with the necessary

documents, required for the aforesaid purpose.

22. In order to regulate the grant of the aforesaid NOCs, the State Government had issued four Government Orders from time to time, i.e. Government Orders dated 30th November, 1991, 04th January, 1994, 29th November, 1997 and 14th July, 2009, wherein it was provided that such NOCs shall be issued by the Regional Committee comprising of the Regional Manager, District Magistrate and Joint Director and District Inspect of Schools of the concerned region/school.

23. It is in furtherance thereof that necessary inspection was made and it was forwarded to the Committee to take a decision. The Joint Director issued a letter to the Committee of Management of Seth M.R. Jaipuria School dated 16.11.2019 indicating that it had examined the documents submitted by the said school and since it found that the title of the land was not clear, hence, the NOC could not be granted and the same was returned.

24. The Committee of Management of Seth M.R. Jaipuria School assailed the said letter/order dated 16.11.2019 before this Court in W.P. No. 3010 of 2021. The learned Single Judge of this Court by means of its order dated 15.07.2021 disposed of the said writ petition quashing and setting aside the order impugned dated 16.11.2019 and it directed that a decision be taken on the application of the School concerned seeking NOC in terms of the Government Order dated 14th July, 2009 expeditiously. The relevant portion of the order dated 15.07.2021 passed by the writ court in W.P. No. 3010 of 2021 is being reproduced hereinafter for ready reference:-

“In view of above since the decision has not been taken by the Committee consisting of four members as provided in paragraph 5 of the Government Order dated 14th July 2009, in which opposite party no.4 is only a Member Secretary, the impugned order is not sustainable as it has been passed by the opposite party no.4 himself.

*In view of above, the impugned order dated 16.11.2019, contained in annexure no.1 to the writ petition, issued by the Joint Director, Secondary Education, Sixth Region, Lucknow is hereby quashed and the respondents are directed to take a decision in terms of Government Order dated 14th of July, 2009 expeditiously.
With the aforesaid, the writ petition is disposed of.”*

25. In compliance of the aforesaid order dated 15.07.2021, a Committee under the Chairmanship of the Commissioner, Lucknow was constituted which found that the title to the land of the school was not in accordance with the standards provided by the CBSE Bye-laws, hence, it once again declined to issue the NOC vide order dated 08.10.2021.

26. This order dated 08.10.2021 was challenged by the Committee of Management of Seth M.R. Jaipuria School by means of Writ-C No. 522 of 2022 which has been allowed by the learned Single Judge by means of its judgment dated 27.09.2022 which is the subject matter of the instant intra-court appeal bearing No. 29 of 2023.

Submissions of the respective parties in respect of the Intra-court appeal

27. Sri Indrajeet Shukla, learned Additional Chief Standing Counsel for the State-appellants in the intra-court appeal has vehemently submitted that the order passed by the learned Single Judge dated 27.09.2022 in Writ-C No. 522 of 2022 is bad in law as it erred in ignoring that the respondent (petitioner before the writ court) did not acquire clear title, hence, for the said reason, the State Government was justified in declining to grant a No Objection Certificate.

28. It is further urged that the State had acquired the land for the Society and in terms of the agreement entered between the State Government and the Society dated 26.06.1975, it clearly prohibited the sale/transfer of the land without the prior permission in writing from the State Government.

29. It is further urged that the agreement which was also published in the Gazette dated 26.06.1975 clearly incorporated a term that in case the land in question was transferred without prior permission in writing from the State, such transfer would be rendered void and the land would revert back to the State Government.

30. It is further urged that admittedly the transfer of the land was made by the Society without seeking the prior permission, the transferee would also be bound by the clauses of the agreement between the State and the

Society, hence, the document would be rendered void and the land would revert back to the State by virtue of the said condition. Once the transfer was without prior permission of the State Government then the transferee could not derive any better title than its transferor and the reversion would take place, hence, the land vested with the State Government and in such circumstances, the transferee would have prima facie no title and recognizing this principle, the Committee constituted by the State Government for considering the grant of No Objection Certificate rightly exercised its jurisdiction in declining to grant the NOC.

31. The learned Additional Chief Standing Counsel has further pointed out that the Society transferred the land not only in violations of the conditions of the statutory agreement but it transferred the land by devising a methodology which was fraudulent in nature.

32. It is submitted that even if the permission as obtained under Section 5-A of the Societies Registration Act, 1860 is seen, even then at the relevant time the land was not sold, rather the land came to be sold in the month of August, 2009 and April, 2011 i.e. almost about 16 to 18 years after seeking the permission and that too for a price running in crores of rupees as is evident from the sale deeds and where the respondent (writ-petitioner) did not adhere to the binding clauses in terms of the agreement and it misapplied the limited permission granted by the Court rather attempted to overreach the same, hence, in such circumstances, no bonafides can be attributed to the respondent/writ petitioner.

33. It is further submitted that where the title did not vest with the School, hence, the Committee was justified in refusing to grant NOC as otherwise it would amount to giving premium to the illegal acts and benefits acquired by the Committee of Management of Seth M.R. Jaipuria School.

34. It has further been urged that the Government Order dated 30th November, 1991, required the institution seeking NOC, to give details of

the land and this is primarily to enable the State Government to examine as to whether the title of the institution is clear and/or test the veracity of the details given by such institution and in case if the Committee did not find favour with the details or it was not satisfied then it could legally refuse to grant the said NOC.

35. The learned Additional Chief Standing Counsel has also argued that the writ petition itself was not maintainable as there was no resolution filed by the Committee authorizing institution of the writ petition.

36. Lastly, it is urged by the learned Additional Chief Standing Counsel that the learned Single Judge was not justified in observing that the State Government was making a roving inquiry. It also erred in observing that the NOC could only be seen in context with as to whether the State Government has any objection regarding the grant of affiliation only as the State Government also grants affiliation to schools through Uttar Pradesh Madhyamik Shiksha Parishad and to that extent there may not be any conflict of interest.

37. It is also urged that the issue of title which in the given facts and circumstances clearly vested with the State Government and the Committee of Management of the School concerned had acquired the alleged title in clear contravention of the agreement, hence, the State Government was justified in refusing to grant NOC and the learned Single Judge by granting a Mandamus directing the State-Authorities to grant the NOC within a period of two months has clearly gone beyond the scope of the controversy which was before the learned Single Judge. Accordingly, for all the aforesaid reasons, the intra-court appeal deserves to be allowed and the writ petition of the sole respondent (writ petitioner) deserves to be dismissed.

38. Sri Prashant Chandra, learned Senior Counsel along with Sri Anshuman Singh, Sri Ashok Kumar Singh and Ms. Gitika Yadav, learned counsel has refuted the aforesaid submissions and has urged that there has been no violation of any condition as alleged by the State.

39. It is submitted that even though the land was acquired for the Society but in the year 1993, since it was considered necessary by the Society to sell some part of the land, consequently, it had applied for the permission in terms of Section 5-A of the Act of 1860.

40. The said case was registered before the Court of District Judge as Case No. 142 of 1993. The State was a party to the said proceedings and it had also granted its no objection. Since the State had already granted its no objection, accordingly, there was no further requirement of seeking the leave or prior written permission again.

41. It is further urged that while the proceedings were pending before the 4th Additional District Judge, Lucknow, the State had filed its response and it agreed that it had no objection in case if the land is transferred. Once, the permission had been granted after noticing the stand of the State, now it cannot be said that the Society had either concealed any fact or it transferred the land without prior permission.

42. It is further urged that this grant of permission was assailed, though by the Lucknow Development Authority in a writ petition which was dismissed as infructuous vide order dated 16.05.2005 passed in W.P. No. 2719 (MB) of 1995 and as such the issue of grant of permission attained finality.

43. It is further urged that once the permission was available, even if at all, the land was sold at a later date, it would not invalidate the sale. It was always open for the State-Authorities to have contested the grant of permission before the District Judge but it did not and rather it supported the case of the Society. Once, the transfer had taken place and it was within the knowledge of the State-Authorities that the Society contemplated to transfer, then the actual or effective date of the sale would be of hardly any relevance.

44. It is further urged that till date there has been no order passed by any Competent Authority or court whereby the sale deed executed by the Society in favour of the transferee has been annulled.

45. It is further urged that in order to seek an affiliation from the

CBSE, as per the bye-laws of the CBSE, the prior permission is to be sought from the State-Government and that too for a limited purpose and it is not as if the State has been conferred to act as an Authority to examine the title. Since CBSE is an Affiliating Body and the purpose to seek NOC from the State is confined to the extent that the State may not have an objection or they may not be any conflict of interest as the State also has its Examination Board i.e. Uttar Pradesh Madhyamik Shiksha Parishad which grants affiliation to various schools, who desire to seek affiliation with the Uttar Pradesh Madhyamik Shiksha Parishad.

46. In this regard, the Government Orders also reveal that all prevailing powers are not vested with the Committee rather it is confined only for a prima facie scrutiny to ensure that there may not be any competing interest between the affiliating board of the State and that of the Affiliating Body such as the CBSE and that the information furnished by the institution is not patently false.

47. It is urged that the land in question was acquired for the Society for educational purposes and even the Committee of Management of Seth M.R. Jaipuria School is undertaking the same purpose of imparting education and a school is being run from Classes I to Class VIII and for which the State has never raised any objection. Even the school building was raised after seeking necessary permissions from the Development Authority and till such point of time, there was no objection raised.

48. It is only when the Committee of Management of Seth M.R. Jaipuria School resolved to extend the classes up to Class X for which it was required to obtain affiliation which was proposed to be taken from the CBSE and as per the bye-laws, prior permission of the State-Government is required, hence, it is for this limited purpose that the State can examine the issue, however, it cannot usurp the powers to adjudicate the issue of title which can only be done by a Competent Court of law.

49. It is thus submitted that the State Government cannot enhance the scope of scrutiny rather it is confined only in terms of the Government

Order to record its prima facie satisfaction that there is no competing interest of the State with the other affiliating body and that the information furnished is not false or incorrect. This aspect has been effectively considered by the learned Single Judge and it has rightly been held that the State can only look as to whether it has any objection to the grant of affiliation and it cannot go any further into issue of title.

50. It is urged that it is always open for the CBSE Board to form its own satisfaction whether the affiliation is to be granted or not in terms of its own bye-laws but merely because the bye-laws of the CBSE require a prior NOC from the State Government does not mean that the State has been invested with any power to enter into the question of title or raise any objection thereto which does not flow from any information or details being false.

51. In the given set of facts and circumstances, the State had earlier declined to grant the NOC which had prompted the respondent to file petition bearing No. 3010 of 2021 which was allowed by the learned Single Judge vide order dated 15.07.2021 and a further direction was issued that the Committee as constituted in terms of Government Order dated 14th July, 2009 shall take a decision expeditiously.

52. In furtherance thereof, the Committee again vide its order dated 08.10.2021 declining to grant the NOC on the same grounds upon which the earlier order dated 16.11.2019 was passed and was set aside by this Court vide order dated 15.07.2021. In such circumstances, the learned Single Judge having found that the Committee had extended the inquiry into a unfounded realm, hence, not only the order dated 08.10.2021 was quashed but a further direction was given to issue the NOC within a period of two months as not granting the positive direction would result in the petitioner running in-circles and for the aforesaid reason, the order impugned cannot be faulted and the intra-court appeal deserves to be dismissed.

Findings of the Court in Re:- Intra-Court Appeal:-

53. Having heard the learned counsel for the parties, at the outset, it

will be relevant to notice the reasons given by the learned Single in the order impugned dated 27.09.2022 while allowing the writ petition of the respondents and the relevant portion thereof is reproduced hereinafter for ready reference:-

"19. In view of the submissions made at the bar, this court is to consider as to what are the scope of the powers conferred upon the State Government in pursuance to clause 2:3:5 of the CBSE Manual which prescribes for obtaining a no objection certificate from the State Government to the effect that the State Government has no objection to the affiliation of the school with the CBSE.

20. It is necessary to notice the requirements specified by CBSE for grant of affiliations to the schools desirous of seeking affiliation. The necessary requirements (for deciding the lis)are specified in paragraphs 2.3.4 and 2.3.5 which are quoted herein below.

"2.3.4: Recognition from the respective State Government.

The Schools seeking affiliation with the Board shall submit formal prior Recognition Certificate from concerned State Education Department as per extant rules and provisions contained in RTE Act 2009.

2.3.5: No objection from the respective State Government.

The schools mentioned under clauses 2.1.5, 2.1.6, 2.1.7 and 2.1.8 seeking affiliation with the Board shall submit formal prior 'No Objection Certificate' to the effect that State Government has no objection to the affiliation of the School with CBSE No Objection Certificate once issued to any school will be considered at par even if it prescribes a specific period and/ or level unless it is withdrawn."

21. While paragraph 2.3.4 prescribes recognition under Right of Children to Free and Compulsory Education, Act 2009 and Rules framed there under, paragraph 2.3.5 deals with affiliation.

22. The difference between 'recognition' and 'affiliation' was explained by Supreme Court in THE PRINCIPAL AND OTHERS vs THE PRESIDING OFFICER AND OTHERS (1978) 1. SCC 498 wherein the Court recorded as under:

"There is a significant difference between 'affiliation' and 'recognition. Whereas 'affiliation', it may be noted, is meant to prepare and present the students for public examination, 'recognition' of a private school is for other purposes mentioned in the Act and it is only when the School is recognised by the" appropriate authority that it becomes amenable to other provisions of the Act."

23. In pursuance to the said requirement prescribing obtaining of no objection for affiliation under paragraph 2.3.5, the State Government has issued an extensive Government Order prescribing the manner in which the applications seeking no objection certificate shall be dealt with. The Government Order dated 14.07.2009 records the requirement as issued by the CBSE and also with the ICSE Board and proceeded to constitute a committee comprising of four persons who were conferred with the power of inspection and were further to provide a report in terms of the said inspection for being granted the no objection certificate.

25. From the perusal of the impugned order, it appears that the State Government took over the role of the CBSE to find whether the

petitioner would be entitled for the affiliation or not. The said action of going into the title and the other requirements as prescribed by the CBSE were clearly beyond the requirement as specified in Clause 2:3:5 as well as in the Government Order dated 14.07.2009. The requirement as specified by CBSE is confined to a no objection only with regard to affiliation, thus the normal meaning that can be deciphered from interpretation of clause 2:3:5 is that the State Government has to grant a no objection certificate only to the effect that whether the State Government has any objection to the institutions being 'affiliated' with the CBSE. No other requirement is to be fulfilled by the State Government while deciding application for grant of NOC for affiliation. The other requirements are to be judged by the CBSE while granting or refusing to grant affiliation. The Government Order dated 14.07.2009 clearly goes beyond the prescribed scope of the grant of no objection certificate by the State, it clearly infringes the right of the petitioner's institution to run an educational institution after getting affiliation from CBSE which itself is a society registered under the Societies Registration Act. The requirement of obtaining a no objection certificate of affiliation from the State Government cannot confer the right on the State Government to act like a bull in a china shop and to carry a roving inquiry/investigation into the manner of acquisition of title as has been done by means of the impugned order.

26. The scope of no objection certificate as is required in terms of clause 2:3:5 is only confined to the objection by the State with regard to the grant of affiliation with CBSE, as sought by the petitioner from the CBSE. It cannot go into any other question. It is inconceivable as to what the four member committee constituted in terms of the Government Order dated 14.07.2009 is to oversee while granting the no objection certificate for affiliation. It appears that the Government Order as perceived the no objection certificate by the State for affiliation as the power on the State Government to see whether the institution fulfills all the requirements as are prescribed by the CBSE for grant of affiliation. The said fact is also evident from the manner in which the applications have been invited and the disclosures with regard to title etc. have been demanded and have been supplied by the petitioner.

27. In view of the my specific view that the scope of powers for grant of no objection certificate for affiliation is only confined to the powers of the State for objecting only to the affiliation and nothing beyond that. It appears that the requirement as specified in Clause 2:3:5 was incorporated because a State, in exercise of its powers can take a ground to promote education only through its Regional Boards and not otherwise and thus the no objection certificate as required under Clause 2:3:5 is confined to that issue alone."

54. At this stage, it will also be relevant to notice the Government Orders dated 30th November, 1991, 04th January, 1994, 29th November, 1997 and 14th July, 2009, and which have been placed on the record as Annexure No. 5 and 19 with the affidavit of the appellants in support of the application for interim relief filed in the intra-court appeal. The relevant portion of the aforesaid respective Governments Order is being reproduced hereinafter for ready reference:-

Government Order dated 30.11.1991

"मुझे यह कहने का निदेश हुआ है कि शासन द्वारा सम्यक विचारोपरान्त प्रदेश स्थित शिक्षण संस्थाओं को काउंसिल फार दि इण्डियन स्कूल सर्टीफिकेट एक्जामिनेशन नई दिल्ली एवं सेन्ट्रल बोर्ड आफ सेकेण्ड्री एजुकेशन नई दिल्ली से सम्बद्धता हेतु अनापत्ति प्रमाण पत्र दिये जाने की वर्तमान प्रक्रिया को संशोधित कर दिया है। उक्त परीक्षा परिषदों से सम्बद्धता हेतु अनापत्ति प्रमाण पत्र दिये जाने के लिए अब शिक्षण संस्थाओं को संलग्न परिशिष्ट-1 तथा 2 पर आवेदन पत्र देना होगा। जो संस्था काउंसिल फार दि इण्डियन स्कूल सर्टीफिकेट एक्जामिनेशन नई दिल्ली से सम्बद्धता हेतु राज्य सरकार से अनापत्ति प्रमाण- पत्र दिये जाने की माँग करेगी, वह अपना आवेदन पत्र परिशिष्ट-1 के अनुसार तथा जो संस्था सेन्ट्रल बोर्ड आफ सेकेण्ड्री एजुकेशन नई दिल्ली से सम्बद्धता हेतु माँग करेगी, वह अपना आवेदन पत्र परिशिष्ट-2 के अनुसार अपेक्षित सूचनाओं को पूर्ण एवं स्पष्ट रूप से इंगित करते हुए, सम्बन्धित सम्भागीय उप शिक्षा निदेशक को प्रस्तुत करेगी। सम्भागीय उप शिक्षा निदेशक अपने मण्डल में स्थित संबंधित शिक्षण संस्था का स्वयं स्थलीय निरीक्षण करने के उपरान्त उक्त संस्था को अनापत्ति प्रमाण पत्र दिये जाने अथवा न दिये जाने के सम्बन्ध में अपनी आख्या/संस्तुति शिक्षा निदेशक, उ०प्र० को प्रेषित करेंगे। स्थलीय निरीक्षण के उपरान्त यदि विद्यालय में किसी प्रकार की कमियाँ पायी जाती हैं तो सम्भागीय उप शिक्षा निदेशक अपने स्तर से सम्बन्धित संस्था को उन कमियों के बारे में सूचित करेंगे।

उक्त परीक्षा परिषदों से सम्बद्धता हेतु इच्छुक शिक्षण संस्थाओं को आनापत्ति प्रमाण पत्र के लिए रु० 500/- आवेदन शुल्क के रूप में जमा करना होगा। आवेदन शुल्क की यह धनराशि राजकीय कोषागार में जमा की जानी होगी और निर्धारित आवेदन पत्र के चालान की मूल प्रति संलग्न की जानी होगी। ऐसे आवेदन पत्रों पर कोई कार्यवाही नहीं की जायेगी, जिनके साथ चालान की मूल प्रति संलग्न नहीं होगी।

3- जो संस्था वर्ष 1993-94 के शैक्षिक सत्र से उक्त परीक्षा परिषदों / संस्थाओं से सम्बद्धता हेतु प्रदेश सरकार से अनापत्ति प्रमाण पत्र के लिए इच्छुक होगी, उसके लिए आवेदन पत्र देने की अंतिम तिथि 31 दिसंबर, 1991 होगी, और विलम्ब शुल्क के साथ आवेदन पत्र देने की अंतिम तिथि 31 जनवरी, 1992 होगी। आगामी वर्षों के लिए आवेदन पत्रों देने की अंतिम तिथि 31 अगस्त होगी। 31 अगस्त के पश्चात प्राप्त आवेदन पत्रों की केवल प्रत्येक कलेण्डर मास या उसके बाद के लिए रुपये 100/- का विलंब शुल्क भुगतान करने पर ही ग्रहण किया जायेगा, किन्तु 30 नवम्बर के पश्चात प्राप्त आवेदन पत्रों की सम्बन्धित शैक्षिक वर्षों से स्वीकार नहीं किया जायेगा। ऐसे आवेदन पत्रों पर इससे आगामी शैक्षिक सत्र के लिए विचार किया जायेगा।

4- यह भी निर्णय लिया गया है कि शिक्षण संस्थाओं को अनापत्ति प्रमाण पत्र प्रदान करते समय सामान्य शर्तों के अधीन वर्तमान प्रक्रिया के अनुसार निम्नलिखित प्रतिबंधों के अन्तर्गत अनापत्ति प्रमाण पत्र जारी किया जाये।

(क). विद्यालय की पंजीकृत सोसाइटी का समय-समय पर नवीनीकरण कराया जायेगा।

(ख). विद्यालय के प्रबन्ध समिति में शिक्षा निदेशक द्वारा नामित सदस्य होगा।

(ग). विद्यालय में कम से कम 10 प्रतिशत स्थान अनुसूचित जाति / अनुसूचित जनजाति के मेधवी बच्चों के लिए सुरक्षित रहेंगे और उनसे उत्तर प्रदेश माध्यमिक शिक्षा परिषद / बेसिक शिक्षा परिषद द्वारा संचालित विद्यालयों में विभिन्न कक्षाओं के लिए निर्धारित शुल्क से अधिक शुल्क नहीं लिया जायेगा।

(घ). संस्था द्वारा राज्य सरकार से कोई अनुदान मांग नहीं की जायेगी और यदि पूर्व में विद्यालय माध्यमिक शिक्षा परिषद से मान्यता प्राप्त है तथा विद्यालय का सम्बद्धता सेन्ट्रल बोर्ड आफ सेकेण्ड्री एजुकेशन नई दिल्ली / काउंसिल फार दि इण्डियन स्कूल सर्टीफिकेट एक्जामिनेशन नई दिल्ली से प्राप्त होती है तो उक्त परीक्षा परिषदों से सम्बद्धता प्राप्त होने की तिथि से परिषद से मान्यता और राज्य सरकार से अनुदान स्वतः समाप्त हो जायेगी।

(ङ). संस्था के शिक्षण तथा शिक्षणेत्तर कर्मचारियों की राजकीय सहायता प्राप्त शिक्षण संस्थाओं के कर्मचारियों को अनुमन्य वेतनमानों तथा अन्य भत्तों से कम वेतनमान

तथा अन्य भत्ते नहीं दिये जायेंगे।

(च). कर्मचारियों की सेवा शर्तें बनायी जायेंगी और उन्हें सहायता प्राप्त अशासकीय उच्चतर माध्यमिक विद्यालयों के कर्मचारियों को अनुमन्य सेवा निवृत्त लाभ उपलब्ध कराये जायेंगे।

(छ). राज्य सरकार द्वारा समय समय पर जो भी आदेश निर्गत किये जायेंगे, संस्था उनका पालन करेगी।

(ज). विद्यालय का रिकार्ड निर्धारित प्रपत्र पंजिकाओं में रखा जायेगा।

5. अनापत्ति प्रमाण-पत्र निर्गत किये जाने हेतु उक्त शर्तों को सम्बन्धित संस्थाओं की सोसाइटी के बाईलाज में समावेश किया जाना अनिवार्य होगा। अनापत्ति प्रमाण पत्र दिये जाने के सम्बन्ध में शासन को आख्या एवं संस्तुति भेजते समय इस बात का स्पष्ट उल्लेख किया जायेगा कि सम्बन्धित संस्था के बाईलाज में उक्त प्रतिबन्धों को समाविष्ट किये जाने हेतु प्रबन्धनतंत्र की सहमति प्राप्त है और इसके लिए संस्था का विधिवत् प्रस्ताव/रिज्यूलुशन है। संस्था द्वारा सोसाइटी के बाईलाज में उक्त प्रतिबन्धों को समाविष्ट किये जाने हेतु वांछित कार्यवाही किये जाने के उपरान्त ही राज्य सरकार द्वारा अनापत्ति प्रमाण पत्र देने के आदेश निर्गत किये जायेंगे। सोसाइटी के बाईलाज में यह भी प्राविधान किया जायेगा कि उक्त शर्तों में बिना शासन के पूर्वानुमोदन के कोई परिवर्तन/परिवर्द्धन संशोधन नहीं किया जायेगा।

6- सम्बन्धित सम्भागीय उप शिक्षा निदेशकों द्वारा सुनिश्चित कर लिया जाय कि जिस किसी संस्था को राज्य सरकार द्वारा अनापत्ति प्रमाण पत्र प्रदान किया गया है अथवा किया जा रहा है, वह उक्त प्रतिबन्धों का पालन कर रही है। यदि किसी संस्था के सम्बन्ध में यह पाया जाता है कि उक्त प्रतिबन्धों का पालन नहीं किया जा रहा है तो सम्बन्धित सम्भागीय उप शिक्षा निदेशक के द्वारा शिक्षा निदेशक एवं राज्य सरकार की स्थिति से तुरन्त अवगत कराया जायेगा, ताकि राज्य सरकार द्वारा उक्त संस्था के विरुद्ध आवश्यक कार्यवाही की जा सके।

7- शासन द्वारा यह भी निर्णय लिया गया है कि प्रदेश के सम्भागीय उप शिक्षा निदेशक अपने मण्डल में स्थित ऐसे विद्यालयों जो कॉउंसिल फार दि इण्डियन स्कूल सर्टीफिकेट एक्जामिनेशन नई दिल्ली/सेन्ट्रल बोर्ड आफ सेकेण्ड्री एजुकेशन नई दिल्ली से सम्बद्ध हो अथवा सम्बद्धता हेतु अनापत्ति प्रमाण पत्र के इच्छुक हों, के सम्बन्ध में नियंत्रण अधिकारी होंगे और वे स्वयं अपने मण्डल में स्थित ऐसे विद्यालयों का निरीक्षण कर आख्या निर्धारित प्रपत्र में शिक्षा ----- प्रस्तुत करेंगे।

8- प्रदेश के शिक्षण संस्थाओं को उक्त परीक्षा परिषदों/संस्थाओं हेतु अनापत्ति प्रमाण पत्र दिये जाने हेतु प्रस्तावित मानक परिशिष्ट-3 में संलग्न है। कृपया ऐसे विद्यालयों से प्राप्त आवेदन पत्रों पर संलग्न परिशिष्ट-1,2 तथा 3 में उल्लिखित बिन्दुओं तथा सम्बन्धित परीक्षा परिषदों के मानकों को ध्यान में रखते हुए परीक्षण कर आख्या प्रस्तुत की जाये।

भवदीय,
अशोक गांगुली
उप सचिव

Government Order dated 04.01.1994

"उपर्युक्त विषयक भारत सरकार के पत्र संख्या-1-42/93-स्कूल-3 दिनांक 10.09.93 का कृपया संदर्भ ग्रहण करें। इस सम्बन्ध में निवेदन है कि प्रदेश में स्थित अशासकीय पब्लिक विद्यालयों को राज्य के बाहर स्थित परीक्षा निकाय/केन्द्रीय माध्यमिक शिक्षा परिषद, नई दिल्ली/सर्टीफिकेट फार इण्डियन स्कूल सर्टीफिकेट इक्जामिनेशन नई दिल्ली से सम्बद्धता दिये जाने हेतु शासनादेश दिनांक 30.11.91 द्वारा मानक एवं प्रतियां निर्धारित की गई। इसके अन्तर्गत प्रदेश में स्थित शिक्षण संस्थाओं को अनापत्ति प्रमाण पत्र प्रदान करते समय सामान्य शर्तों के अधीन निम्नलिखित प्रतिबन्ध के अन्तर्गत अनापत्ति प्रमाण पत्र जारी करने का निर्णय, लिया गया।

(क) विद्यालय की पंजीकृत समिति का समय-समय पर नवीनीकरण कराया जायेगा।

(ख) विद्यालय की प्रबन्ध समिति में शिक्षा निदेशक द्वारा नामित एक सदस्य होगा।

(ग) विद्यालय में कम से कम 10 प्रतिशत स्थान अनुसूचित जाति / अनुसूचित जनजाति के मेधावी बच्चों के लिए सुरक्षित रहेंगे और उनमें उत्तर प्रदेश माध्यमिक शिक्षा परिषद/बेसिक शिक्षा परिषद द्वारा संचालित विद्यालयों में विभिन्न कक्षाओं के लिए निर्धारित शुल्क से अधिक शुल्क

नहीं लिया जायेगा।

(घ) संस्था द्वारा राज्य सरकार से कोई अनुदान की माँग नहीं की जायेगी और यदि पूर्व में विद्यालय माध्यमिक शिक्षा परिषद् से मान्यता प्राप्त है तथा विद्यालय क सम्बद्धता सेन्ट्रल बोर्ड आफ सेकेण्ड्री एजुकेशन नई दिल्ली/ काउन्सिल आफ दि इण्डियन स्कूल सर्टीफिकेट एक्जामिनेशन नई दिल्ली से प्राप्त होती है तो उक्त परीक्षा परिषदों से सम्बद्धता प्राप्त होने की तिथि से परिषद से मान्यता और राज्य सरकार से अनुदान स्वतः समाप्त हो जायेगी।

(ङ) संस्था के शिक्षण तथा शिक्षणेत्तर कर्मचारियों को राजकीय हंडायता प्राप्त शिक्षण संस्थाओं से कर्मचारियों को अनुमन्य वेतनमानों तथा अन्य भत्तों से कम वेतनमान तथा अन्य भत्ते नहीं दिये जायेगे।

(च) कर्मचारियों की सेवा-विनियमावली बनायी जायेगी और उन्हें सहायता प्राप्त अशासकीय उच्चतर माध्यमिक विद्यालयों के कर्मचारियों को अनुमन्य सेवा निवृत्त का लाभ उपलब्ध कराया जायेगे।

(छ) राज्य सरकार द्वारा समय-समय पर जो भी आदेश निर्गत किये जायेगें संस्था उसका पालन करेगी।

(ज) विद्यालय का रिकार्ड निर्धारित प्रपत्र / पंजिकाओं में रखा जायेगा।

(झ) यदि हा तो कृपया प्रबन्धधिकरण का इस आशय का प्रस्ताव संलग्न करे कि विद्यालय विभाग / सासन के सभी प्रतिबन्ध कम 1 से 8 तक स्वीकार है तथा शासन का पूर्वानुमति बिना उक्त प्रतिबन्धों में कोई परिवर्तन/परिवर्धन / संशोधन नहीं किया जायेगा।

समावेशन किया जाना होगा और तत्संबंधी सूचना प्राप्त होने के उपरान्त ही राज्य सरकार द्वारा अनापत्ति प्रमाण पत्र निर्गत किये जाते हैं। वर्ष 1986 से उपरोक्त शर्तों पर प्रबन्धतंत्र की सहमति प्राप्त होने के उपरान्त ही प्रदेश शासन द्वारा अनापत्ति प्रमाण पत्र निर्गत किया जा रहा है और यह कोई नवीन व्यवस्था नहीं है। हेतु उक्त शर्तों को संबंधित संस्थाओं की सोसाईटी बाइलाज में अनापत्ति प्रमाण पत्र निर्गत किये जाने के उपरोक्त प्रक्रिया के निर्धारण के पश्चात आवेदक द्वारा शासन को प्राप्त प्रत्यावेदन पर विचार विमर्श किया गया इस सम्बन्ध में एक बैठक भी आयोजित की जिसमें अन्य अधिकारियों के अतिरिक्त कैथेलिक डायोसीज आफ लखनऊ के बिशप तथा आवेदक उपस्थित थे। बैठक में युक्तियुक्त विचार विमर्श के उपरान्त यह निर्णय लिया गया कि उपरोक्त प्रतिबन्ध-2 के स्थान पर निम्नलिखित संशोधित प्राविधान जोड़ दिया जाय।

"विद्यालय की प्रबन्ध समिति में राज्य सरकार के जिलास्तर के किसी अधिकारी को संस्था के सदस्य के रूप में नामित किया जायेगा।"

उपरोक्त प्रतिबन्ध के बिन्दु-3 में भी संशोधन किये जाने हेतु निवेदन किया किन्तु अनुसूचित जाति/जनजाति के लिए अनुमन्य सुविधा से संबंधित उक्त बिन्दु में निर्धारित व्यवस्था को संशोधित किया जाना उपयुक्त नहीं पाया गया।

इस प्रकार यह तथ्यों के विपरीत है कि प्रदेश शासन द्वारा आवेदक के प्रत्यावेदनों पर विचार किया

कृपया वस्तुस्थिति से अवगत होना चाहें।

भवदीय
(अशोक गांगुली)
संयुक्त सचिव 80/-"

Government Order dated 29.11.1997

"उपर्युक्त विषयक शासनादेश संख्या 2762/15-13-91-4(46) / 91 दिनांक 30-11-91 में निर्धारित प्रक्रियानुसार यह व्यवस्था है कि केन्द्रीय माध्यमिक शिक्षा परिषद, नई दिल्ली/ कौंसिल फार दि इण्डियन स्कूल सर्टीफिकेट नई दिल्ली से सम्बद्धता हेतु अनापत्ति प्रमाण पत्र के लिए आवेदन करने वाली संस्थाओं द्वारा अपने आवेदन पत्र सम्भागीय उप शिक्षा निदेशक को प्रस्तुत किये जायेंगे। सम्भागीय उप शिक्षा निदेशक अपने मण्डल स्थित संबंधित शिक्षण संस्था का स्वयं निरीक्षण करने क उपरान्त उक्त संस्था को अनापत्ति प्रमाण पत्र दिये जाने अथवा न दिये जाने के संबंध में अपनी आख्या/संस्तुति शिक्षा निदेशक उत्तर प्रदेश को प्रस्तुत करेंगे। स्थलीय निरीक्षण के उपरान्त यदि विद्यालय में किसी प्रकार की कमियों पाई जाती है तो सम्भागीय उप शिक्षा निदेशक अपने स्तर से संबंधित संस्था को उन कमियों के बारे में सूचित करेंगे।

2- इस संबंध में शासन द्वारा सम्यक विचारोपरान्त यह निर्णय लिया गया है कि उपरोक्त निर्धारित प्रक्रिया को संशोधित करते हुए यह व्यवस्था की जाती है कि जिन संस्थाओं द्वाारा सी०बी०एस०ई० नई दिल्ली/आई०सी०एस०ई० नई दिल्ली से सम्बद्धता हेतु राज्य सरकार से जो अनापत्ति प्रमाण पत्र की मांग की जायेगी, तद्विषयक आवेदन पत्र सम्बन्धित सम्भागीय

संयुक्त शिक्षा निदेशकों को प्रस्तुत किये जायेंगे। तदोपरान्त संस्थाओं का निरीक्षण आख्या प्रेषण व अन्य समस्त कार्यवाही संबंधित सम्भागीय संयुक्त शिक्षा निदेशकों द्वारा की जायेगी। शासनादेश दिनांक 30.11.1991 उपरान्त सीमा तक संशोधित समझें, जायेंगे तथा शासनादेश द्वारा अन्य व्यवस्था यथावत रहेंगे।

3- कृपया तदनुसार अग्रेतर कार्यवाही सुनिश्चित करने का कष्ट करें।

ह०/-

(अशोक गांगुली)

संयुक्त सचिव"

Government Order Dated 14.07.2009

"माध्यमिक शिक्षा अधिनियम 1921 की धारा 7 (ख) के अन्तर्गत प्रदेश में डिप्लोमा एवं प्रमाण पत्र को अप्राधिकृत रूप से 'प्रदान करने का प्रतिषेध है। इसी प्राविधान बगे देखते हुये प्रदेश से बाहर स्थित परीक्षा परिषदों (सी०बी०एस०ई०/ आई०सी०एस०ई०) की अनुमति दिये जाने के संबंध में राज्य सरकार द्वारा अनापत्ति प्रमाण पत्र निर्गत किया जाता है।

3- सी०बी०एस०ई० एवं आई०सी०एस०सी० के बाईलाज में प्रावधानित व्यवस्था के अन्तर्गत राज्य सरकार द्वारा उक्त संस्थाओं को अनापत्ति प्रमाण पत्र दिये जाने की व्यवस्था है। शासनादेश दिनांक 30 नवम्बर, 1991 द्वारा प्रदेश स्थित सी०बी०एस०ई० एवं आई०सी०एस०सी० द्वारा संचालित शिक्षण संस्थाओं के लिए अनापत्ति प्रदान किये जाने की सामान्य शर्तें निर्धारित की गयी हैं। शासनादेश के प्रस्तर-पाँच के अनुसार अनापत्ति प्रमाण पत्र निर्गत किये जाने हेतु संस्थाओं, की सोसायटी बाईलाज में राज्य सरकार द्वारा निर्धारित: शर्तों का समावेश किया जाना अनिवार्य है। अनापत्ति प्रमाण पत्र दिये जाने के संबंध में आख्या एवं संस्तुति भेजते समय संस्थाओं स्पष्ट उल्लेख किया जाता है कि संबंधित संस्था द्वारा सोसायटी नियमावली में उक्त शासनादेश द्वारा निर्धारित, शर्तों को समाविष्ट किये जाने के लिए प्रबंध तंत्र की सहमति से विधिवत् प्रस्ताव पारित किया गया है। संस्था द्वारा सोसायटी के नियमावली में शर्तों के समाविष्ट किये जाने के उपरान्त ही राज्य सरकार द्वारा संस्था को सी०बी०एस०ई०/ आई०सी०एस०ई० की संबद्धता हेतु अनापत्ति प्रमाण पत्र निर्गत किया जाता है, जिसमें संस्था द्वारा राज्य सरकार के पूर्वानुमोदन के बिना कोई परिवर्तन / परिवर्द्धन एवं संशोधन नहीं किया जा सकता है।

4- यहाँ उल्लेखनीय है कि वर्तमान व्यवस्था के अंतर्गत अनापत्ति प्रमाण पत्र हेतु संस्था प्रबंधक द्वारा शासनादेश दिनांक 30 नवम्बर, 1991 में निर्धारित प्रक्रिया एवं प्रारूप पर आवेदन पत्र संयुक्त शिक्षा निदेशक कार्यालय में प्रस्तुत किया जाता है। संयुक्त शिक्षा निदेशक द्वारा स्थलीय निरीक्षण कर प्रत्येक बिन्दु पर आख्या / संस्तुति निदेशक (मा०) को उपलब्ध कराया जाता है। निदेशक (मा०) से आख्या एवं संस्तुति प्राप्त होने पर राज्य सरकार द्वारा अनापत्ति प्रमाण पत्र निर्गत किये जाने की यह प्रक्रिया जहाँ एक और जटिल तथा समयसाध्य है वहीं दूसरी ओर संबंधित संस्थाधिकारी को अनेक कठिनाइयों का भी सामना करना पड़ता है। इस प्रकार जनपद स्तर से शासन स्तर पर प्रक्रियान्तर्गत होने वाले विलम्ब एवं अनुभूत कठिनाइयों एवं क्षेत्रीय आवश्यकताओं के दृष्टिगत संस्थाहित में आवश्यक है कि वर्तमान प्रक्रिया में बदलाव करते हुये अनापत्ति प्रमाण पत्र दिये जाने की व्यवस्था को विकेंद्रित कर दिया जाए।

5- अतः वर्णित परिस्थितियों में प्रदेश स्थित सी०बी०एस०ई० तथा आई०सी०एस०ई० बोर्ड द्वारा संचालित किये जाने के पूर्व संस्थाओं को अनापत्ति प्रमाण पत्र राज्य सरकार के स्थान पर निम्नवत् गठित समिति द्वारा दिया जायेगा:-

(क) 'मण्डलायुक्त, संबंधित मण्डल - - अध्यक्ष

(ख) जिलाधिकारी, संबंधित जनपद -- सदस्य

(ग) संयुक्त शिक्षा निदेशक, संबंधित मण्डल -- सचिव

(घ) जिला विद्यालय निरीक्षक, संबंधित जनपद -- सदस्य

6- संस्था प्रबंधन द्वारा शासनादेश 30 नवम्बर, 1991 में निर्धारित प्रक्रिया एवं प्रारूप पर अनापत्ति प्रमाण पत्र हेतु संबंधित मण्डल के संयुक्त शिक्षा निदेशक को आवेदित किया जायेगा। संयुक्त शिक्षा निदेशक द्वारा अधिकतम दो माह के अन्दर संबंधित आवेदित विद्यालय का स्थलीय निरीक्षण करके उक्त शासनादेश में इंगित बिन्दुओं पर स्पष्ट आख्या संबंधित मण्डलायुक्त को उपलब्ध करायी जायेगी। आख्या प्राप्त होने पर उपर्युक्त गठित समिति द्वारा अधिकतम एक माह के अन्दर अनापत्ति प्रमाण पत्र निर्गत किये जाने पर निर्णय लेकर सभी संबंधित तथा सी०बी०एस०ई०/आई०सी०एस०ई० बोर्ड एवं शिक्षा निदेशक, सांध्यमिक को सूचित किया जायेगा।

भवद्वीया
(एफ०एन० प्रधान)
संयुक्त सचिव"

55. From the perusal of the aforesaid Government Orders, it does not indicate that there is any power conferred to the Committee so constituted to enter into questions of title. The language of the Government Orders appears to be only regulatory and not adjudicatory. It may prima facie examine the basic infrastructure needed to cater to schools imparting education up to classes as per the prescribed minimum requirements and standards. The Committee which has been constituted under the said Government Orders is only to examine as to whether the grant of affiliation by the CBSE may not have any conflicting interest in respect of a school which may have sought the affiliation from the State Board or that the institution may not be possessing the required infrastructure or the information furnished by it is false.

56. If the bye-laws of the CBSE is seen, it would indicate that it is the CBSE who would on its own examine the issue whether the requirements of land and the parameters laid down by the CBSE for schools seeking affiliation are adhered or not and then take its own independent decision of granting or not granting the affiliation.

57. The CBSE as per its bye-laws has the discretion of considering the entire issue and it may or may not grant the affiliation but that is for the said Affiliating Body to decide. The State on its own may not be entitled to refuse the NOC merely on the ground of defect in title.

58. In the instant case, it would be seen that in so far as the issue of title is concerned, the State can initiate proceedings for seeking relief as

may be available to it in law but it is not permissible for the State to use its different instrumentality to achieve something indirectly what it has failed to achieve directly i.e. to obtain/resume the land by initiating legal proceedings as per law.

59. In the aforesaid facts and circumstances, it cannot be disputed that the role of the State Government as a party contesting the issue of title is different to a Committee constituted under the Government Order dated 14th July, 2009 only to examine the issue of grant of NOC for seeking affiliation from the CBSE.

60. The Committee so constituted under the Government Order dated 14th July, 2009 is a Committee of very limited purpose and the said Committee of limited jurisdiction cannot be used to act as a Body giving its finding on the issue of title and in this case a dispute where the Society and the State are the direct competing parties any adjudicatory finding by the Committee cannot be held to be justified.

61. In so far as the submission regarding the writ petition itself was not maintainable is concerned as raised by the appellant-State, it will be relevant to notice that the aforesaid objections had not been raised before the learned Single Judge. For the said reasons, this Court is not inclined to entertain the said plea in this intra-court appeal and is accordingly turned down.

62. Thus, for the aforesaid reasons, this Court does not find that there is any error in reasoning and the judgment dated 27.09.2022 passed by the learned Single Judge in Writ-C No. 522 of 2022, accordingly, the intra-court appeal bearing No.29 of 2023 is *dismissed* and the judgment dated 27.09.2022 stands affirmed.

Submissions of the parties in respect of other two PILs

63. None of the counsel for the writ petitioners who had filed the PILs argued but only the learned Senior Counsel appointed as Amicus Curiae addressed the Court.

64. The submissions of Sri Asit Kumar Chaturvedi along with Sri Abhishek Pratap, learned counsel who were appointed as amicus curiae

by a coordinate Bench of this Court by means of order dated 06.09.2022, is that the beneficiaries of the said acquisition of land i.e. Society and the sale of the said land by the Society in favour of Dau Dayal Agarwal, M/s De Lotus Builders and the subsequent lease by the M/s De Lotus Builders in favour of Seth M.R. Jaipuria School are the real beneficiaries and the transaction of transfer is a sham and the State is also indulging in shadow boxing with the said beneficiaries.

65. It is further submitted that a systematic method was utilized to deprive the State of its property and transferring it for valuable sale consideration in favour of the private respondents.

66. It is urged that the PIL raises an issue as to the land which was acquired by the State and giving it to the Society for a laudable purpose and for extending the educational facilities but it has been misused as the land was transferred for a valuable consideration in favour of third parties which has benefited the Society immensely and in turn it has further been leased to a Committee for running a school which is also generating income out of it and the State has been made to suffer.

67. It is further urged that the State has also not adopted any proactive measures to take the land/resume it despite knowing that the land has illegally been transferred in contravention of the clauses which were incorporated in the agreement dated 26.09.1975 which was also published in a Government Gazette giving it the nature of a statutory agreement.

68. It is further submitted that by the learned Senior Counsel/the Amicus Curiae that the transfer as made by the Society in favour of the private respondents is bad in the eyes of law and the land which was acquired by the State for a salutary purpose has been dissipated at the hands of the private parties which is against the public policy and thus not only the transactions are fraudulent but the State is responsible for granting unnecessary premium to the private parties as no real effort has been made to resume the land. Accordingly, it is urged that the reliefs which have been prayed in the PILs should be allowed.

69. Refuting the aforesaid submissions, Sri Indrajeet Shukla, learned Additional Chief Standing Counsel for the State-appellants has pointed out that the State has already taken proactive measures seeking resumption of the said land. He has referred to a supplementary affidavit dated 19.11.2024 wherein it is indicated that show cause notice has been issued to the private respondents indicating as to why the land may not be resumed.

70. It is urged that the proceedings are already seized by the Competent Authority and after receiving the reply, the matter would be taken to its logical conclusion, soon.

71. Sri Utsav Mishra, learned counsel who appears for the Yogeshwar Rishikul Inter College and Sri Virendra Mishra, learned counsel appearing for the Dau Dayal Agarwal have vehemently urged that that the instant PILs are not maintainable as it involves complicated issues of title which can only be considered by the competent civil courts. The said issues which require leading of evidence and are pure questions of fact is not a subject to be taken up in a PIL.

72. It is further urged that in both the PILs, the petitioners have not disclosed their credentials and in absence thereof the PILs are legally not maintainable, hence, they deserve to be dismissed.

73. It is further urged that prior to these two PILs, another PIL was instituted which was dismissed by the Court bearing No. 5666 (MB) (PIL) of 2011 (Smt. Anita Dixit Vs. State of U.P. and Others) vide order dated 10.06.2011 specifically noticing that since the dispute is of private nature, therefore, the remedy would be to approach the competent District Authorities. Hence, for the same very reason, the instant two PILs are also not maintainable.

Findings of the Court in Re:- PILs

74. Having considered the rival submissions in the two PILs, noticing that a coordinate Bench of this Court vide order dated 06.09.2022 had appointed Sri Asit Kumar Chaturvedi, learned Senior Counsel along with Sri Abhishek Pratap, as amicus curiae, hence, at this stage, the issue of

locus-standi and absence of the credentials of the petitioners of the PILs pales into insignificance.

75. Considering the submissions of the learned Amicus in context with the prayers made in the two PILs, which have already been reproduced in the earlier part of the judgment, it is clear that the grievance which is sought to be ventilated before this Court in a PIL is regarding resumption of land which needless to say, requires entering into questions of facts and evidence.

76. It is not disputed that the sale deeds executed by the Society in favour of private respondents and the lease executed by M/s De Lotus Builders in favour of Seth M.R. Jaipuria School have not been set aside by any court till date nor any proceedings in this regard have been initiated before any Competent Court. At this stage, an order passed in another PIL where a similar issue relating to the same transaction was raised i.e. W.P. bearing No. 5666 (MB) (PIL) of 2011 (Anita Dixit Vs, State of U.P.) which was dismissed vide order dated 10.06.2011 may be noticed and the same reads as under:-

“Dispute seems to be of private nature. Option is still open for the petitioner to approach the appropriate educational authorities to ventilate her grievance. In case the Committee of Management is doing some illegality or irregularity in violation of rules or statutory provisions, then appropriate action may be taken as provided in accordance with law.

Accordingly, with liberty to the petitioner to approach the district authorities, the writ petition is finally disposed of.

No order as to costs. “

77. It is also trite law that complicated issues of title which is based on disputed questions of fact and require evidence cannot be looked into by this Court in exercise of powers under Article 226 of the Constitution of India.

78. In the given facts and circumstances, where the issue involved relates to challenge to registered instruments, its validity including the impact of an agreement between the State and the Society relating to the year 1975, the effect and impact of an order passed by the Additional District Judge-IV, Lucknow in Case No. 142 of 1993, dated 03.08.1995,

the competence of the parties to execute a registered instrument which includes sale deeds and lease deeds are all disputed questions of facts and require evidence in order to resolve the respective rights of the parties.

79. Needless to say that this Court in terms of Article 226 of the Constitution of India usually does not interfere in cases of dispute relating to title especially in a PIL. The Hon'ble Supreme Court in *Esteem Properties Pvt. Ltd. Vs. Chetan Kamble and Others*; **2022 (11) SCC 661**. The relevant portion thereof reads as under:-

"31. From the above it is clear that the bona fides of Respondent 1 and 2 were not considered in a proper perspective by the High Court. Even otherwise, it is this Court's opinion that the PIL petitioners had no reason to file a public interest litigation when the subject matter was evidently a title claim between a private party and the State.

32. Interestingly, the State Government itself concedes the title to the appellants herein and has filed affidavits to such effect, both before this Court and the High Court. In this scenario, we are not dealing with an ignorant or illiterate respondent, the State Government has accepted the title vesting in the Gonsalves family and subsequently in Esteem Properties."

80. Another fact which emerges from the record is that the State had filed an affidavit on 19.11.2024 in compliance of the order passed by the Court dated 18.10.2024 wherein in paragraph 14 it has been stated that proceedings have been initiated for resuming the land and in this regard notice dated 09th November, 2024 was issued to the Society and the same has been served on 12.11.2024 and 15 days time has been granted to respond and it further states that the proceedings shall be concluded within two months. A copy of the said notice has been brought on record as Annexure No. 3 with the said affidavit. This indicates that in so far as the State is concerned, it has already initiated proceedings which as stated shall be taken to its logical conclusion within a period of two months.

81. In this view of the matter where the State has already taken steps for proceeding further, as notice for resumption has been issued as indicated in the previous paragraphs and also noticing that a First Information Report had been lodged against the erstwhile Secretary of the Society wherein Sri Dau Dayal Agarwal is also a co-accused and the

matter is also engaging the attention of the Competent Court, hence, leaving it open for the Competent Authorities to proceed in accordance with law, this Court does not deem it appropriate to enter into the disputed questions of facts and title.

82. Since the State has already initiated proceedings both by lodging the First Information Report as well as seeking resumption, hence, this Court is of the view that there will be no purpose in keeping the PILs pending where the primary relief has already been taken note of by the State-Authorities and they have initiated the proceedings in accordance with law. However, it is provided that the Authorities/Court seized with the proceedings shall decide the same expeditiously in accordance with law.

83. Accordingly, we do not intend to keep the PILs pending as it has served the purpose. It is also clarified that any observations made by this Court while dealing with the intra-court appeal or the instant two PILs may not be construed as an expression of opinion on merits of the title of the parties which in any case shall be considered by the appropriate Authority seized with the matter on the strength of the evidence and material placed before it.

Conclusions:-

84. With the aforesaid observations, the intra-court appeal bearing ***Special Appeal No. 29 of 2023 (State of U.P. and Others Vs. Committee of Management, Seth Jaipuria School)*** is ***dismissed*** as well as two PILs bearing No. ***9322 of 2021 (Vishwanath Dwivedi Vs. State of U.P. and Others)*** and ***PIL bearing No. 575 of 2022 (Rahul Shukla Vs. State of U.P. and Others)*** shall stand ***disposed of***. Costs are made easy.

Order Date :- 19th December, 2024.

Asheesh/-

(Jaspreet Singh, J.) (Arun Bhansali, CJ.)