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

+ **W.P.(C) 8396/2018**

SIVKAN EDUCATIONAL SOCIETY

..... Petitioner

Through: Mr. Sameer Rohtagi, Mr. Dilip Singh, Ms. Iti Sharma, Mr. Akshit Pradhan and Mr. Puneet Sharma, Advs.

versus

**THE DELHI DEVELOPMENT AUTHORITY
AND ORS**

..... Respondents

Through: Mr. Rajiv Bansal, Sr. Adv. with Mr. G.S. Oberoi, Ms. Disha Sachdeva, Ms. Parul Panthi and Ms. Vaishali Rawat, Advs. for R-1/DDA
Ms. Jyoti Taneja, Adv. for R-GNCTD

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

J U D G M E N T

08.01.2020

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1. On 24th June, 1999, the petitioner applied, to the Delhi Development Authority (DDA), for allotment of land at Pappan Kalan, Dwarka, for setting up of a Senior Secondary School. One of the prerequisites, for allotment of land, is a sponsorship letter from the Directorate of Education (hereinafter referred to as “the DoE”). Except for the said sponsorship letter, all other documents were annexed with the application. It was further stated, therein, that the sponsorship letter, of the DoE, was expected shortly and would be submitted immediately on

its receipt. There is no dispute about the fact that, a sponsorship letter, by the DoE, for setting up of a Senior Secondary School was, in fact, later submitted by the petitioner.

2. The application of the petitioner was placed, before the Institutional Allotment Committee (IAC) of the DDA, for consideration, on 24th May, 2000. For want of proof of existence of adequate funds, the application was deferred. On 22nd June, 2000, the DDA wrote to the petitioner, directing it to furnish proof of having a bank balance covering at least 75% of the cost of the land. The petitioner, accordingly, submitted, to the DDA, a certificate, dated 11th July, 2000, reflecting a bank balance of ₹ 1,11,34,970/-. Pursuant thereto, the application of the petitioner was again placed, before the IAC which, on 21st July, 2000, approved allotment, to the petitioner, of an institutional plot, for construction of a Senior Secondary School, at Sector 19, Dwarka.

3. The aforesaid proposal for allotment of land at Sector 19, Dwarka was also accorded the approval of the Hon'ble Lieutenant Governor (hereinafter referred to as "the Hon'ble LG"), on 9th September, 2000.

4. The petitioner came to know, thereafter, that there was a high tension electricity wire over the plot allotted to it and that it was not possible, therefore, to construct a play area for children in the said plot. The petitioner also got to learn, subsequently, that the case was actually one of double allotment, as the plot, allotted to the petitioner, had already been allotted, earlier, to the Delhi Administration, for setting up of a Senior Secondary School. The petitioner, therefore, addressed

representations, dated 3rd October, 2000 and 22nd February, 2001, bringing these facts to the notice of the DDA and requesting, therefore, that an alternate plot be allotted to the petitioner.

5. Apparently, thereafter, the DDA informed the petitioner that there was no other plot available, in Dwarka, which was suitable for setting up of a Senior Secondary School. The consent of the petitioner was, therefore, sought, for establishment of Middle School, for which a suitable plot was available in Dwarka. The petitioner, accordingly, wrote, on 18th April, 2001, to the DDA, communicating its consent for establishing and running of a Middle School in a plot, admeasuring 1.5 acres, in Phase I, Dwarka. It was requested, therefore, that the said plot be allotted to the petitioner. This request was reiterated, by the petitioner, *vide* representation dated 11th May, 2001.

6. The writ petition avers that a plot, admeasuring 1 acre, was earmarked for the petitioner, in Sector 2, Dwarka, for which the petitioner communicated its consent, *vide* letter dated 12th July, 2001, which was followed by a reminder dated 5th September, 2001.

7. *Vide* letter dated 22nd April, 2004, the DDA regretted its inability to accede to the request, of the petitioner, for allotment of land to set up a Middle School, as the sponsorship, of the DoE, as granted to the petitioner, was for establishment of a Senior Secondary School. The petitioner was, therefore, directed to furnish proof of sponsorship for establishing a Middle School, from the DoE, so that its case could be processed further.

8. The petitioner responded, *vide* communication dated 31st August, 2004, addressed to the DDA, pointing out that allotment of land, admeasuring 4000 sq. m., in favour of the petitioner, for setting up a Middle School, had already been considered and approved by the IAC, in its meeting held on 30th May, 2002. Despite this, in deference to the request, of the DDA, to the petitioner, to arrange for a revised sponsorship, from the DoE, for establishing a Middle School, the petitioner requested the DDA, in turn, to write to the DoE (with a copy to the petitioner), informing the DoE regarding non-availability of land for setting up a Senior Secondary School at Dwarka, and conveying, to the DoE, its decision that, if No Objection Certificate was issued, by the DoE, for establishment of Middle School by the petitioner, land would be allotted by the DDA for the said purpose.

9. *Vide* Notification G.S.R. No. 220(E), dated 19th April, 2006, the Delhi Development Authority (Disposal of Nazul Land) Amendment Rules, 2006 (hereinafter referred to as “the 2006 Amendment Rules”) were notified, whereby and whereunder the MoUD effected certain amendments in the Nazul Land Rules, substituting the pre-existing system of allotment of lands, to entities intending to set up certain specified categories of institutions (including higher education institutions) with the system of auction. By virtue of the said amendments, disposal of Nazul land, to educational institutions, had necessarily to be effected by auction, save and except in the case of allotment of land to the Central or State Government, Union Territory, local body, autonomous bodies or organisations owned by the Central

Government. Rule 1 (2) of the 2006 Amendment Rules, however, made these amendments effective from the date of notification thereof in the Official Gazette, which was 19th April, 2006.

10. Though the petitioner has referred to several notings, on the files whereunder the case of the petitioner, for allotment of land, was being processed, from time to time, in my opinion, and for reasons which will become apparent presently, it is not necessary to burden this judgement with any allusion thereto. Suffice it to state that, consequent thereupon, on 5th July, 2011, the DDA wrote to the MoUD, intimating that a representation, that the petitioner had preferred during the aforementioned period, on 6th November, 2008, has been placed before the DDA on 14th May, 2010, in one of the meetings convened by the Authority, and that it had been decided, in the said meeting, that cases, in which no demand letter had been issued to the applicant for allotment of plot, had no sustainable claim and could not be allowed. Despite this, the matter was again placed, before the DDA on 21st January, 2011, on which occasion the rigour of the earlier decision was somewhat relaxed, and it was decided that the matter be placed, once again, before the MoUD for consideration. It was in this background, stated the letter, that the matter was being placed before the MoUD, whose consideration and orders, thereon, were sought.

11. The MoUD addressed two communications, to the DDA, on 9th July, 2012 and on 7th September, 2012, by way of response to the above letter dated 5th July, 2011. In the communication dated 9th July, 2012, the MoUD conveyed, to the DDA, the desire, of the Minister for Urban

Development, that the comments of the Chairman, DDA (the Hon'ble LG), be obtained on the issue. In its subsequent communication, dated 7th September, 2012, also issued apropos the letter dated 5th July, 2011 *supra*, however, the MoUD backtracked on the issue, by conveying that, under the Delhi Development Authority (Disposal of Nazul Land) Rules, 1981 (hereinafter referred to as "the Nazul Land Rules"), allotment of land to educational societies fell within the province of the DDA, and the approval of the MoUD was not required. As such, the DDA was requested to take a view on the matter.

12. On 2nd August, 2013, a detailed representation was addressed, by the petitioner to the DDA. Drawing attention to the aforementioned facts of its case, the petitioner submitted that, for no fault of the petitioner, it was having to run from pillar to post to have a plot of land allotted, despite its application having been approved by the Hon'ble LG as far back as on 9th September, 2000. It was pointed out that, though the petitioner had consented to establish a Middle School, instead of a Senior Secondary School, no allotment letter, for the said purpose, had been issued. It was also pointed out, in the said letter, that, on applying under the Right to Information Act, 2005 (hereinafter referred to as "the RTI Act"), the petitioner had come to know that as many as 20 societies, junior to the petitioner, had been allotted lands, in Dwarka, for constructing and setting up of Senior Secondary Schools. It was also submitted that, once allotment had been approved by the DDA, sponsorship by the DoE had no role to play, and its revalidation was not required. It was further submitted that the change of mode of allotment, to auction, had taken place in 2006, whereas the petitioner's case stood approved in 2000, and

could not, therefore, be affected by the said amendment. Inasmuch as the petitioner's case already stood recommended by the DDA, for allotment of alternative plot, the DDA was exhorted to comply with the said decision and allot an alternative plot to the petitioner.

13. The aforesaid representation failing to elicit any response from the DDA, the petitioner moved this Court for relief, by way of WP (C) 4066/2014 (*Shivkan Educational Society v. D.D.A.*).

14. On 19th August, 2014, the following order was passed by this Court, in the aforesaid WP (C) 4066/2014:

“ Mr. Rajiv Bansal, learned counsel appearing for DDA has handed over in Court a photocopy of a note approved by the Lt. Governor in the capacity of Chairman of the DDA to the effect that the allotment of lands to schools has to be done by way of auction only and that the case of the petitioner as recommended by the Directorate of Education was valid only for a period of five years which has expired long back. It has also been observed in the note that the note which was placed before the Lt. Governor did not show any educational activity having been carried out by the petitioner Society and consequently, the respondent DDA was left to take a decision in the light of the policy formulated in this regard.

2. A copy of the note has been given to Mr. Arun Bhardwaj, learned senior counsel appearing for the petitioner who seeks time to examine the same.

3. List on 18.09.2014 in “At the end of board matters”.”

15. Subsequently, on 27th October, 2014, the petitioner withdrew WP (C) 4066/2014. The order passed, on the said occasion, reads thus:

“1. After brief submissions, the learned counsel for the petitioner seeks permission to withdraw the petition and the application.

2. The learned counsel for the respondent does not have any objection to the same except that the petitioner cannot file a writ petition on the basis of the same cause of action.

3. Having regard to the submissions made by the learned counsel for the parties, the petitioner and the application are dismissed as withdrawn.”

16. The writ petition avers that no copy of the “note”, dated 25th September, 2012, had been supplied to it, till the proceedings before this Court on 19th August, 2014. However, as the DDA placed pointed reliance on the said note, and the petitioner withdrew WP (C) 4066/2014 consequent on the production of the aforesaid note before this Court by the DDA, and the said note stands impugned in these proceedings, it becomes necessary to reproduce the said note, *in extenso*, thus:

“ I have seen the submissions on file. DDA has not mentioned in their notes as to what efforts had been made by DDA since 2006 to put the process of allotment of school plots to private educational societies through option in practice after amendment of DDA (Disposal of Developed Nazul Land) Rules, 1981 vide notification No.K-20013/4/2006/DDVA dated 19.4.2006 by Government of India, MoUD. VC DDA may submit a status report on this.

As regards the case of Sivkan Education Society, notes in DDA files do not indicate details of any work done by the Society in the field of school education since its registration on 28.1.1998 and there is no report about functioning of this Society or antecedents of its current management. Sponsorship of Directorate of Education, GNCTD was valid only for 5 years w.e.f. 15.9.1999 and had lapsed long back. Moreover, as there will be a huge difference in the rate of disposal of land through auction and that the concessional rates at which land was being allotted to such societies before 19.4.2006, allotment of land to any private educational Society except through auction as per current provisions of DDA (Disposal of Development Nazul Land Rules) 1981 will have serious financial implications of

revenue loss to the DDA running into crores of rupees and corresponding pecuniary gain to the society. The Govt. of India, MoUD have, left this sensitive issue to DDA for decision vide letter No. J-13036/10/2011-DDVA dated 07.09.2012 and have not approved allotment of land in the present case.

In view of the above, the allotment of land to private educational societies must necessarily be made through auction as per DDA (Disposal of Developed Nazul Land) Rules, 1981. DDA should, therefore, close all such pending requests for allotment of land, once for all, and implement the policy of allotment of school sites to private educational societies only through auction as per current provisions of DDA (Disposal of Developed Nazul Land) Rules 1981 as amended vide notification No. K-20013/4/2006/DDVA dated 19.4.2006 by Government of India, Ministry of Urban Development.”

17. It appears, however, that matters did not rest with the aforesaid note, dated 25th September, 2012, of the Hon’ble LG, and the case was reconsidered, as is reflected by the following note, put up by the Vice Chairman of the DDA, on 5th September, 2013, to the Hon’ble LG (in his capacity as Chairman, DDA), in the same file:

“ May please see the facts of the case regarding allotment of a plot to Shivkan Educational Society for construction of a Senior Secondary school at Dwarka. It has been submitted that though a plot of 2 acres was allotted to the Society on the approval of the then Hon’ble LG in the year 2000 on the basis of recommendation made by the Directorate of Education, Govt. of NCT of Delhi, the possession of the said plot would not be handed over due to passing of a high tension wire line over the plot. It was also informed that the plot has already been allotted to Directorate of Education, Govt. of NCT of Delhi for setting up of a Government school. Thereafter, efforts were made to allot an alternative plot to the Society that too of the smaller size of 4000 sqm. in Dwarka for setting up a Middle School; however, the same could also not be materialised.

As has been submitted above up to 89/N, it can be summarised that the Society was deprived of the allotment of a plot though it was entitled to it at that point of time and

subsequent efforts to allot an alternative plot in view of the cancelled plot could not materialise due to no fault of the Society.

In view of the above facts and circumstances of the case, the request of the Society for reconsideration of an alternative plot as at 'X' at 89/N merits consideration."

18. This provoked the following response, on the file, addressed by the Additional Secretary to the Hon'ble LG to the Vice Chairman, DDA:

" In respect of F. No. 18 (35)/99/IL, DDA may submit the following clarification: –

1. Why the plot originally proposed to be allotted to Sivkan Educational Society was subsequently allotted to Dte. of Education when the obstacle to the allotment was common i.e. High Tension Wire?

2. How Dte. Of Education accepted this plot (with HT wire passing through the land) needs explanation.

3. While DDA does not relate judgement of Hon'ble High Court dated 25.3.2011 and 4.5.2012 in the context of the case even though its reported stand before the High Court (in respect of other similarly placed societies) was that ***"in cases where no allotment letter had been issued, the mode of allotment has been changed from 'allotment' to 'auction'."***

4. That DDA is accepting that no allotment letter has been issued in this case. Therefore, it is not bound by any contract that exists between 2 parties. Then why DDA is still treating the issue as a case of alternative allotment.

5. The stand of DDA in Court of Law in cases of allotment of a demand letter was not issued for whatever reason should be known. Copy of affidavits filed in Hon'ble High Court and Supreme Court is required.

6. No input has been received so far in response to DO letter dated 20.2.2013 addressed to Addl. Secretary,

MoUD regarding formulation of policy for allotment to educational institutions at concessional rates.

7. Insofar as decision by the Authorities concerned, the decision taken by the then Hon'ble Lt. Governor still stands i.e. the request of Sivkan Educational Society cannot be considered in the light of amendment to DDA (Disposal of Developed Nazul Land) Rules, 1981, which permits allotment only through 'auction' after amendment of the Rules w.e.f. 19.4.2006. Therefore, why DDA is again pursuing with the proposal is not clear.

8. That in r/o Krishna Geetanjali Foundation Society, Veena Rai Suri Educational Welfare Society, West End Educational & Welfare Society & DAV College Trust, it has been given that the allotment was made no demand-cum-allotment letter could be issued. After receiving full payment, alternative plot was allotted except in r/o DAV College Trust which demanded land premium. This is quite intriguing as to how (i) DDA could accept full payment without issuing the demand-come-Allotment letter and (ii) allot alternative plot.

9. Whether the matter is presently sub judice in light of SLPs that are pending in Hon'ble Supreme Court needs to be clarified by the Chief Legal Adviser, DDA. CLA's legal advice is also required to be obtained with regard to viability of the instant proposal in the backdrop of Hon'ble High Court's decision dated 25.3.2011 and 4.5.2012.

10. In the matter of allotment of land to Pragati Educational and Welfare Society, the then Hon'ble Lt. Governor did not approve allotment of land and instead directed DDA to file SLP in Hon'ble Supreme Court **to decide an important question of law i.e. "when there is clear policy of allotment of land to, inter alia, private education societies for schools through auction as per DDA (Disposal of Developed Nazul Land) Rules, 1981 as amended on 19.4.2006, whether any allotment of land can be made in violation of statutory rules.**

11. Recently, on the basis of decision made by the Cabinet Committee on Economic Affairs, Govt. of India

has implemented ‘auction’ instead of ‘allotment’ in respect of allocation of coal blocks on the face of findings by CAG that there has been huge revenue loss to the exchequer by means of allotment that is not transparent and based on favouritism and nepotism. This decision was taken notwithstanding the fact that the case is presently under consideration by the Hon’ble Supreme Court. The instant proposal also needs to be seen in the same prism.”

19. The response to the aforesaid request, from the office of the Hon’ble LG, for clarifications, as provided by the AD (IL) *vide* Noting dated 13th December, 2013, was in a tabular format which, to the extent it is relevant, may be reproduced thus:

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S. No.	QUERY	CLARIFICATION OF IL BRANCH
1.	Why the plot originally proposed to be allotted to Sivkan Educational Society was subsequently allotted to Dt. Of Education when the obstacle to the allotment was common i.e. High Tension Wire?	<i>This plot in Sector-19, Dwarka was originally allotted to the Directorate of Education, Delhi Government in the year 1997 for Sr. Sec. School.</i> While considering the case of allotment of land to Sivkan Education Society <i>the same plot in Sector-19 Dwarka was again proposed by the Planning Wing/AE (IL), DDA considering it as lying vacant/un-allotted and probably not aware of the fact that it is already allotted to Delhi Govt. Even in the IAC meeting held on 21.7.2000 there was no reference of any High</i>

		Tension Wire passing over the land and the fact was brought to the notice of IL Branch, DDA by the Sivkan Education Society only on 03.10.2000 vide their representation addressed to the then Director (Lands) (Page-132/C). From the record <i>it seems that the Department was un-aware of above facts</i> while doing the allotment in favour of Sivkan Education Society.
2.	How Dte of Education accepted this plot (with HT wire passing through the land) needs explanation.	It is for the Deptt. of Education to give its explanation as to why it accepted the allotment of plot despite the fact that the HT wire was running through the allotted plot. However as per the physical inspection of the site carried out and also the photograph of same is placed opposite on the file, the site allotted to Directorate of Education, GNCTD for school is still lying vacant and no construction has been started till date. Directorate of Education has never approached this office for Extension of Time or for allotment of alternative site. However, the reason for non-construction is being sought separately from Directorate of Education.

3.	Why DDA does not relate judgement of Hon'ble High Court dated 23.05.2011 and 04.05.2012 in the context of the case even though it is reported stand before the High Court (in respect of other similar placed societies) was that "in cases where no allotment letter had been issued, the mode of allotment has been changed from 'allotment' to 'auction'."	There was no occasion for DDA to relate judgement of Hon'ble Court dated 23.05.2011 and 04.05.2012 on account of the fact that there was no court case till date with the Society. However, in the present case, the demand letter was not issued by DDA since it was brought to the notice of the Department that the plot proposed to Sivkan Education Society already stands allotted to Directorate of Education and also the fact that the High Tension Wire passing over the proposed plot. Therefore the request of the Society for allotment of alternative site needs to be examined and decided on merits.

5.	The stand of DDA in Court of Law in cases of allotment of a demand letter was not issued for whatever reason should be known. Copy of affidavits filed in Hon'ble High Court and Supreme Court is required.	Although it has been the stand of the DDA that in cases of allotment where demand letter not issued for whatever reason, the society cannot claim their rights of allotment but in cases where the allotment has been approved by the Hon'ble LG and demand letter could not be issued due to specific reason/circumstances, such cases has been decided accordingly in the past based on merit of

		individual cases. Some of these cases are Rahul Dhaka Vikas Samiti, Hybro Education Society and Rai Bahadur Raghubir Singh Educational Society. The allotment in these cases have been made after the change of mode of disposal from allotment to auction i.e. 19.04.06.

7.	In so far as decision by the Authority is concerned, the decision taken by the then Hon'ble Governor still stands i.e. the request of Sivkan Education Society cannot be considered in the light of amendment to DDA (Disposal of Development Nazul Land) Rules, 1981, which permits allotment only through 'option' after amendment of the Rules w.e.f. 19.04.2006. Therefore, while DDA is again pursuing with the proposal is not clear.	As and when any representation is received, the file is required to be put up to the Competent Authority with complete facts for disposal for representation. Therefore, with a view to seek proper order on representation, the file is generally put up whenever any representation is received so as to ensure disposal of representation. Even in the present case the society vide their representation dated 02.8.2013 has sought to review their case at par with the allotment case of Rahul Dhaka Welfare Educational Society and this office was under the direction to put up the case with factual position. Moreover in this case the allotment was approved by the Competent

		Authority i.e. Hon'ble LG, Delhi in the year 2000. The present proposal relates to allotment of alternative site and the matter pertains before amendment of Rules w.e.f. 19.4.2006.
8.	That in r/o Krishna Gitanjali Foundation Society, Veena Rani Suri Educational Welfare Society, West End Educational and Welfare Society and DAV College Trust, it has been given that though allotment was made no demand-come-allotment letter could be issued. After receiving full payment, alternative plot was allotted except in r/o DAV College Trust which demanded land premium. This is quite intriguing as to how (i) DDA could not accept full payment without issuing the demand-come-allotment letter and (ii) allot alternative plot.	All the cases referred in para 8 are those cases where payments were received pursuant to the demand-cum-allotment letter and an alternative site has been allotted with the approval of the Competent Authority as the sites originally allotted was not feasible for one reason or the other.

10.	In the matter of allotment of land to Pragati Educational and Welfare Society, the then Hon'ble Lt. Governor did not approve allotment of land and instead directed DDA to file SLP in Hon'ble Supreme Court to decide an important question of law i.e.	Initially the then Hon'ble LG has not approved the allotment of land to Pragati Educational Society and directed DDA to file SLP. The SLP was filed. However, the Supreme Court refused to interfere with the order of the Hon'ble Delhi High Court as a result of which DDA

	“when there is clear policy of allotment of land to, inter alia, private educational societies for schools through option as per DDA (Disposal of Developed Nazul) Rules, 1981 as amended on 19.04.2006, whether any allotment of land can be made in violation of statutory rules.	is left with no alternative but to allot the land notwithstanding the fact that the policy of allotment of institutional land to educational institution was changed from mode of ‘allotment’ to the mode of ‘auction’ pursuant to the notification dated 19.04.06. As such the allotment in the case of Rahul Dhaka Vikas Samiti/Hydro Educational Society/Strength India Education Society or in any other such case are no violation of statutory rules as the allotment in all these cases were approved by the Competent Authority i.e. the Lt. Governor prior to the date of 19.04.06 i.e. the date of change of mode of disposal of institutional land from allotment to auction. Moreover, the present case also relates prior to 19.4.2006 therefore, there is no violation of amended Nazul Rules 1981.
11.	Recently, on the basis of decision made by the Cabinet Committee on Economic Affairs, government of India has implemented ‘auction’ instead of ‘allotment’ in respect of allocation of coal blocks on the face of findings by CAG that there has been huge	The decision of Cabinet Committee on Economic Affairs, govt. of India making auction instead of allotment in respect of allocation of coal blocks on the findings of CAG are very much being implemented in DDA and since 2006 no fresh allotment has been made

	revenue loss to the exchequer by means of allotment that is not transparent and based on favouritism and nepotism. This decision was taken notwithstanding the fact that the case is presently under consideration by the Hon'ble Supreme Court. The instant proposal also needs to be seen in the same prism.	for Schools/Colleges/Hospitals / Higher Technical Institutions to the Private Societies except by way of Auction. In the present case, the application for alternative site was processed prior to change in policy of allotment of institutional land from mode of 'allotment' to 'auction' in the year 2006. However, the allotment could not be fructified primarily for the reason that the plot earmarked for the society had already been allotted to the Deptt. of Education. Moreover the Institutional allotment for schools were made to Society registered under the Societies Act 1861 to serve the citizens at large on no profit/no loss basis. Therefore, it may not be proper to compare these two and even presently also DDA is allotting land under Socio-Culture / Religious Category on allotment basis on predetermined rates to the societies who are registered under Societies Act 1861.
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(Emphasis supplied)

20. The petitioner addressed representations, to the DDA, on 19th February, 2015, 13th March, 2015, 28th April, 2015, 7th May, 2015, 15th

July, 2015, 23rd November, 2015 and 29th January, 2016, but to no avail. It was only when, *vide* letter dated 18th March, 2016, the MoUD requested the DDA to provide a factual note, regarding the allotment of an alternative plot to the petitioner, that the DDA condescended to send a response, on 21st March, 2016, in which the facts of the case were briefly reiterated and the request, of the petitioner, for being allotted an alternative plot, was forwarded to the MoUD for necessary action. However, on further requests being made by the MoUD, the DDA, vide a terse communication dated 20th July, 2016, stated “that the matter has been examined thoroughly and the claim of the Society for alternative allotment does not merit any consideration and cannot be acceded to.”

21. After representing, yet again, to the DDA, without success, the petitioner has approached this Court, by means of the present writ petition, seeking quashing of the decision, dated 25th September, 2012 *supra*, of the Hon’ble LG, and a mandamus, to the DDA, to allot alternative land to the petitioner, in lieu of the land which had been allotted to the petitioner on 9th September, 2000.

Rival contentions

22. I have heard, in detail, Mr. Sameer Rohatgi, learned counsel for the petitioner, and Mr. Rajiv Bansal, learned Senior Counsel appearing for the DDA.

23. Mr. Rohatgi, learned counsel for the petitioner, advances the following contentions:

(i) Approval, for allotment of land, to the petitioner, for setting up the school, had been accorded, by the Hon'ble LG, as far back as on 9th September, 2000. Actual allotment could not be effected, solely because the plot, allotted to the petitioner, had High Tension wires overhead, and already stood allotted to the Delhi Administration.

(ii) In the circumstances, the petitioner, on 11th May, 2001, expressed its willingness to establish and run a Middle School. It was nearly three years thereafter, that the DDA, on 22nd April, 2004, required the petitioner to furnish proof of sponsorship, by the DoE, for establishment of a Middle School by the petitioner. The petitioner did not object to this direction, but only requested the DDA to write, to the DoE, so that the petitioner could obtain sponsorship, from the DoE, for establishment of a Middle School by the petitioner.

(iii) As approval already stood accorded, by the Hon'ble LG, for allotment of land, to the petitioner, on 9th September, 2000, the amendment of the Nazul Land Rules, whereby the pre-existing system of allotment was substituted by auction, would not apply to the petitioner. This position was also reflected in the opinion of the Chief Legal Adviser of the DDA, as tendered to the Hon'ble LG on 2nd January, 2009, in which it was stated that the case of the petitioner could not be regarded as pending at the stage of application, as the Hon'ble LG had already taken a decision, in 2000, to allot land to the petitioner, when the pre-existing policy of

allotment was in force. The right that stood vested in the petitioner, by virtue of the said decision of the Hon'ble LG, it was submitted, could not be divested at a later point of time, merely because the Nazul Land Rules had been amended thereafter.

(iv) Other societies, similarly situated, had been allotted land, even after the amendment of the Nazul Land Rules and replacement, thereby, of the pre-existing system of allotment by that of auction. This fact has been accepted by the DDA, as well.

(v) The DDA had, time and again, in the official notings, opined that the case of the petitioner was meritorious, and the petitioner deserved to be allotted an alternative plot of land.

(vi) The impugned decision, dated 25th September, 2012, of the Hon'ble LG, erroneously treated the petitioner as a fresh applicant, ignoring the fact that, in the case of the petitioner, approval, for allotment of plot, already stood accorded by the Hon'ble LG himself, albeit by his predecessor.

(vii) Rejection of the petitioner's case on the ground of change of policy from allotment to auction, would amount to applying, retrospectively, the amendments to the Nazul Land Rules, effected on 19th April, 2006. This was impermissible.

Mr. Rohatgi also drew my attention to the opinions and decisions, taken on the file at various points of time, by the DDA as well as by the Hon'ble LG, in favour of the claim of his client.

24. Contending *per contra*, Mr. Rajeev Bansal, learned Senior Counsel appearing for the DDA submitted, at the outset, that there was, in fact, no allotment of a plot, in favour of the petitioner, at all. He drew my attention to the noting, dated 9th September, 2000, of the Hon’ble LG, which merely stated that land “may be allotted” to the petitioner. According to Mr. Bansal, any rights, in favour of the petitioner, would crystallise only on issuance of a letter of allotment, for which purpose reliance is placed, by Mr. Bansal, on *Sethi Auto Service Station v. D.D.A.*¹

25. On merits, too, Mr. Bansal would submit, the petitioner has no case, as the plot, in respect of which approval had been accorded by the Hon’ble LG, could not be released to the petitioner, as it already stood allotted to the Delhi Administration. The proposal to allot, to the petitioner, a plot of land for establishing a Middle School, could not fructify, for want of sponsorship by the DoE therefor. The matter, thereafter, never travelled back to the Hon’ble LG, so that the submission, of the petitioner, that the impugned decision, dated 25th September, 2012, amounted to a review of the earlier approval accorded by the Hon’ble LG was, according to Mr. Bansal, misconceived.

26. Mr. Bansal further submitted that it was a trite position, in law, that file notings, and internal communications between departments, or official functionaries, did not clothe the citizen with any enforceable right. In fact, submits Mr. Bansal, quashing of the decision, dated 25th September, 2012, of the Hon’ble LG, would not result in any benefit to

¹ (2009) 1 SCC 180

the petitioner, inasmuch as the second prayer, in the writ petition, was for allotment, to the petitioner, of an alternative plot, in lieu of the earlier allotment effected in the petitioner's favour, whereas, in fact, there was no such earlier allotment. Mr. Bansal reiterates the point, by submitting that the plot of land had never been *allotted*, and had only been *allocated*, in favour of the petitioner. Mr. Bansal points out, in this context, that the proposal of the Director (Land), dated 4th September, 2000, which had been accorded the approval of the Hon'ble LG on 9th September, 2000, merely stated that "land measuring 2.0 acre *may be allotted* to Sivkan Educational Society for construction of a senior secondary school..." No description, of the land, to be allotted, was forthcoming in the said noting. There could be no allotment of land, to any individual, without the land being described in clear terms. In fact, submits Mr. Bansal, the petitioner had itself, in its representation dated 3rd October, 2000, addressed to the DDA, stated that the petitioner understood "that the plot area *being considered for allotment* of Senior Secondary School is reduced from 4 acres to 2 acres".

27. Mr. Bansal also points out that the recommendation, to allot the petitioner a plot of land for establishing a Middle School, was never even placed before the IAC.

28. Mr. Bansal also seeks to discountenance the submission, of Mr. Rohatgi, that other societies, similarly situated, had been allotted lands, or plots, even after the amendment of the Nazul Land Rules in 2006, by submitting that, in all such cases, actual letters of allotment had been

issued prior to 19th April, 2006, and it was only the physical act of handing over possession, that took place after 19th April, 2006.

29. Mr. Rohatgi has placed reliance on the judgement, of a coordinate Single Bench of this Court in *Hello Home Educational Society v. D.D.A.*² The said decision, however, is in appeal, before the Division Bench of this Court in LPA 224/2019³, and the website of this Court reveals that, after judgement was reserved in the present writ petition, the Division Bench, *vide* order dated 2nd April, 2019, stayed the operation of the judgement of the learned Single Judge, observing, in the process, as under:

“5. In a situation where there were only file notings and no order issued by the DDA to allot the plot in question in favour of Respondent No.1, it *prima facie* appears to this Court that the impugned order allowing the writ petition of the Respondent No.1 could not have been passed by the learned Single Judge. The decision in *Ram Chander Educational Society v. DDA 117 (2011) DLT 653* and the decision dated 25th March, 2011 of the Division Bench in *W.P. (C) 2459-60/2005 (Bhagwan Mahavir & Ors. v. Union of India & Ors.)* appear *prima facie* to support the case of the Appellant DDA.”

30. Mr. Bansal, *per contra*, places extensive reliance on *Bhagwan Mahavir Education Society v. U.O.I.*⁴, which was decided by a Division Bench of this Court, speaking through Sanjay Kishan Kaul, J. (as he then was) on 25th March, 2011. Mr. Bansal relies, further, on the judgement, of a learned Single Judge of this Court in *Shubit Education Society v. D.D.A.*⁵. Mr. Rohatgi seeks to distinguish *Bhagwan Mahavir Education*

² Judgement dated 15th November, 2018 in WP (C) 4459/2014

³ D.D.A. v. Hello Home Education Society

⁴ 2011 SCC OnLine Del 1501

⁵ 241 (2017) DLT 157

*Society*⁴ on the ground that, unlike that case, the approval of the decision to allot a plot to the petitioner had, in the present case, been communicated to the petitioner.

Analysis

31. It is plainly obvious, at the very outset, that the petitioner cannot maintain any claim for being allotted land to establish a Middle School, as the requisite sponsorship, by the DoE, was not forthcoming. Clause (e) of Rule 20 of the Nazul Land Rules prohibits allotment of Nazul land to public institutions, referred to in Rule 5 of the said Rules (which includes schools, colleges and universities), unless allotment, to such institution, is sponsored or recommended by the Department of the GNCTD or the Ministry of the Central Government. The concerned Department of the GNCTD, to issue such sponsorship, in the case of allotment to an educational institution, is, undisputedly, the DoE. This position, which flows from the Nazul Rules themselves, also stands recognized, by a Division Bench of this Court in *Trinagar Shiksha Pracharini Sabha v. D.D.A.*⁶ There can be no cavil with this proposition, as the petitioner has itself placed, on record, under cover of an additional affidavit, communication, dated 15th September, 1999, from the DoE to the Commissioner (Land), DDA, sponsoring the allotment of land, to the petitioner, to establish a Senior Secondary School. The DDA relies on para 4 of the said document, which stipulates that the sponsorship would be valid for five years, to contend that the said period has expired. A reading of the said document reveals that the words “Senior Secondary”

⁶ 54 (1994) DLT 75

has been consciously inserted, in the blank space provided, therefor, at the head of the document, making it manifest that the sponsorship is *specifically* for establishment of a Senior Secondary School. The contention, of the petitioner, that, in view of the said document, no separate sponsorship, for establishing and running a Middle School, was required, appears to be no more than the petitioner's wishful *ipse dixit*, bereft of any support known to law, statutory or otherwise.

32. As the applicant was desirous of being allotted land for the said purpose, the onus was on the petitioner to obtain, and furnish, sponsorship, from the DoE, entitling the petitioner to establish a Middle School. The petitioner failed to do so. Sans such sponsorship, allotment of land, to the petitioner, for establishing a Middle School would infract, straightaway, the express statutory proscription contained in Rule 20 of the Nazul Land Rules.

33. The petitioner has, therefore, only itself to thank, for allowing its chance of having land, allotted to it, for establishing a Middle School, to go abegging. The DDA had, vide its letter dated 22nd April, 2004 *supra*, specifically directed the petitioner to obtain sponsorship, from the DoE, for establishing a Middle School. Instead of making efforts towards that end, the petitioner responded, on 31st May, 2004, exhorting the DDA to approach the DoE, and inform the DoE regarding the requirement of such sponsorship. As to why the petitioner took such a misguided step, is not readily forthcoming; suffice it, however, to state that, as a result thereof, till the amendment of the Nazul Land Rules in 2006 – and, indeed, till today – the petitioner never obtained sponsorship, from the DoE, for establishing a Middle School. On 19th April, 2006, when the Nazul Land

Rules were amended, therefore, the petitioner did not even have a legitimate expectation, much less a vested or enforceable right, to be allotted land for setting up a Middle School.

34. Resultantly, the chance of any allotment of land, to the petitioner, for establishing a Middle School, stands extinguished, as much by efflux of time and amendment of the Nazul Land Rules in the interregnum, as by the inaction, on the part of the petitioner, in which a lengthy securing sponsorship, by the DoE, for the said purpose. The said issue, therefore, no longer survives for consideration.

35. The alternative submission of the petitioner, for being allotted suitable land, on which it could establish and run a Middle School is, therefore, rejected.

36. Adverting, now, to the claim, of the petitioner, for allotment of a plot of land, for setting up of a Senior Secondary School.

37. Insofar as the issue of allotment, to the petitioner, of land to establish a Senior Secondary School, is concerned, the noting, dated 6th September, 2000, which was approved by the Hon'ble LG, reads thus:

“ Shivkan Educational Society had requested for allotment of land for construction of a senior secondary school.

Department of Education, GNCTD has sponsored the case of the society vide their letter dated 5.9.99 for construction of a senior secondary school.

IAC has recommended allotment of land for construction of a senior secondary school Sector 19, Dwarka.

As per the financial status of the society, they are in a position to make the payment towards the cost of plot. They have ₹ 1.11 crores in their account.

Land measuring 2.0 acre may be allotted to Shivkan Educational Society for construction of a senior secondary school at the rate of ₹ 50 lakhs per acre +120% enhanced (prov.) Along with 2.5% ground rent.”

38. Mr. Bansal has contended that no enforceable, or vested right, in the petitioner’s favour, in the order, would enure, till actual allotment, to the petitioner, of the plot of land. He submits that the approval, by the Hon’ble LG, on 9th September, 2000, was only for the decision to allot a plot of land, to the petitioner, for establishing a Senior Secondary School. Till such time as actual allotment of the land takes place, Mr. Bansal would seek to submit, the right remains inchoate, and unenforceable in law. Mr. Bansal has placed reliance, in this context, on *Sethi Auto Service Station*¹.

39. Though there are certain superficial differences, between the facts of the case, as they obtained in *Sethi Auto Service Station*¹, vis-à-vis those obtaining in the present proceedings, in law, the case appears covered against the petitioner by the said decision.

40. The two appellants before the Supreme Court, in *Sethi Auto Service Station*¹ (referred to, hereinafter, as “the appellants”) owned petrol outlets, adjacent to each other. An eight-lane express highway was constructed, on the main road abutting the two outlets, as a result of which vehicular access to the outlets, was rendered practically impossible

or, at any rate, was greatly restricted. As a consequence, running of the outlets, became financially unviable. The appellants approached the DDA, seeking resitement.

41. The Screening Committee of the DDA, after initially approving the allotment of two alternative sites to the appellants, backtracked during its final confabulations on the issue, wherein it disapproved the proposal, and opined that the alternative sites ought to be auctioned. The proposal for relocation of the two petrol pumps was also disapproved, subsequently, by the Vice Chairman of the DDA.

42. It was in these circumstances that the owners of the two petrol outlets approached this court, under Article 226 of the Constitution of India.

43. The outlets claimed that, by virtue of the approval by the Screening Committee of the DDA, to allot alternative sites, a legitimate expectation had been created in their minds. The outlets also alleged discrimination as, in their submission, other similarly situated outlets had been relocated.

44. The Supreme Court observed that all decisions, that had been taken on the requests of the two outlets, for relocation/ resitement, had been taken by way of notings in the official file, without any order of resitement/relocation having ever been communicated to either of the appellants. Relying on its earlier decisions in *Bachhittar Singh v. State*

*of Punjab*⁷ and *Laxminarayan R Bhattad v. State of Maharashtra*⁸, the Supreme Court held, in paras 14, 15 and 16 of the report, thus:

“14. It is trite to state that notings in a departmental file do not have the sanction of law to be an effective order. A noting by an officer is an expression of his viewpoint on the subject. It is no more than an opinion by an officer for internal use and consideration of the other officials of the department and for the benefit of the final decision-making authority. Needless to add that internal notings are not meant for outside exposure. Notings in the file culminate into an executable order, affecting the rights of the parties, only when it reaches the final decision-making authority in the department, gets his approval and the final order is communicated to the person concerned.

15. In *Bachhittar Singh v. State of Punjab [AIR 1963 SC 395 : 1962 Supp (3) SCR 713]*, a Constitution Bench of this Court had the occasion to consider the effect of an order passed by a Minister on a file, which order was not communicated to the person concerned. Referring to Article 166(1) of the Constitution, the Court held that order of the Minister could not amount to an order by the State Government unless it was expressed in the name of the Rajpramukh, as required by the said article and was then communicated to the party concerned. The Court observed that business of State is a complicated one and has necessarily to be conducted through the agency of a large number of officials and authorities. Before an action is taken by the authority concerned in the name of the Rajpramukh, which formality is a constitutional necessity, nothing done would amount to an order creating rights or casting liabilities to third parties. It is possible, observed the Court, that after expressing one opinion about a particular matter at a particular stage a Minister or the Council of Ministers may express quite a different opinion which may be opposed to the earlier opinion. In such cases, which of the two opinions can be regarded as the “order” of the State Government? It was held that opinion becomes a decision of the Government only when it is communicated to the person concerned.

16. To the like effect are the observations of this Court in *Laxminarayan R. Bhattad v. State of Maharashtra [(2003) 5*

⁷ AIR 1963 SC 395

⁸ (2003) 5 SCC 413

SCC 413] , wherein it was said that a right created under an order of a statutory authority must be communicated to the person concerned so as to confer an enforceable right.”

(Underscoring supplied; italics in original)

45. In view of the above legal position, the Supreme Court held that the recommendations of the Technical Committee of the DDA had never fructified into any order, communicated to the appellants, resulting in the conferment, on them, of any legal right. Para 22 of the report is also relevant, in this regard, and reads as under:

“22. From the afore-extracted notings of the Commissioner and the order of the Vice-Chairman, it is manifest that *although there were several notings which recommended consideration of the appellants' case for relocation but finally no official communication was addressed to or received by the appellants accepting their claim.* After the recommendation of the Technical Committee, the entire matter was kept pending; in the meanwhile a new policy was formulated and the matter was considered afresh later in the year 2004, when the proposal was rejected by the Vice-Chairman, the final decision-making authority in the hierarchy. It is, thus, plain that though the proposals had the recommendations of the State Level Coordinator (Oil Industry) and the Technical Committee but *these did not ultimately fructify into an order or decision of DDA conferring any legal rights upon the appellants. Mere favourable recommendations at some level of the decision-making process, in our view, are of no consequence and shall not bind DDA. We are, therefore, in complete agreement with the High Court that the notings in the file did not confer any right upon the appellants as long as they remained as such.* We do not find any infirmity in the approach adopted by the learned Single Judge and affirmed by the Division Bench, warranting interference.”

(Emphasis supplied)

46. Though the law, as laid down in the afore-extracted passages from *Sethi Auto Service Station*¹ (which stands reiterated, by this Court, in *Bhagwan Mahavir Education Society*⁴), is by itself sufficient to non-suit

the petitioner, para 32 of the report, which deals with the plea of legitimate expectation, as advanced by the appellants before the Supreme Court, also merits reproduction, thus:

“32. An examination of the aforementioned few decisions shows that the golden thread running through all these decisions is that a case for applicability of the doctrine of legitimate expectation, now accepted in the subjective sense as part of our legal jurisprudence, arises when an administrative body by reason of a representation or by past practice or conduct aroused an expectation which it would be within its powers to fulfil unless some overriding public interest comes in the way. However, *a person who bases his claim on the doctrine of legitimate expectation, in the first instance, has to satisfy that he has relied on the said representation and the denial of that expectation has worked to his detriment. The Court could interfere only if the decision taken by the authority was found to be arbitrary, unreasonable or in gross abuse of power or in violation of principles of natural justice and not taken in public interest. But a claim based on mere legitimate expectation without anything more cannot ipso facto give a right to invoke these principles.*”

(Emphasis supplied)

47. It is difficult to distinguish the facts of the present case from those that obtained in ***Sethi Auto Service Station*¹**. In the present case, too, it is not disputed that no allotment letter was ever issued to the petitioner. Any right, as claimed by the petitioner, is based entirely on file notings on the official files.

48. Prior to their metamorphosing into *communicated* orders, such file notings confer no right, as held in ***Bachhittar Singh*⁶** and followed in ***Sethi Auto Service Station*¹** as well as, later, in ***Pimpri Chinchwad New Township Development Authority v. Vishnudev Cooperative Housing***

*Society*⁹. That apart, given the amount of vacillation exhibited, by the DDA as well as the MoUD, it is not possible even to hold that either authority *consistently* expressed the view that the petitioner was entitled to be allotted a plot, for establishing a Senior Secondary School.

49. No right having, thus, fructified in favour of the petitioner, the petitioner cannot lay any claim to allotment of land, for setting up of a Senior Secondary School.

50. Besides, with effect from 19th April, 2006 the Nazul Land Rules were amended, to replace the pre-existing system of allotment at pre-determined rates, by auction, in the case of educational institution, such as the petitioner. Inasmuch as no right vested in the petitioner, on the date of the said amendment, it cannot be said that, by applying the amendment, the DDA was divesting the petitioner of any right.

51. That apart, the documents on record indicate that no alternative plot, where a Senior Secondary School could be established, was available in Dwarka. The record reveals that the first reference, by the petitioner, to the existence of available plots for establishment of Senior Secondary Schools in Dwarka, is in the petitioner's representation dated 23rd November, 2015. Even if this were assumed to be so, it would be of no help to the petitioner, as, much before 2015, the policy of allotment of land to societies desirous of establishing educational institutions had been done away with, and substituted by the auction procedure. There is no whisper of any averment, in any of the representations addressed by the petitioner prior to 2006 (when the Nazul

⁹ (2018) 8 SCC 215

Rules were amended), of plots, for establishing Senior Secondary schools being available in Dwarka. Rather, the avowed case, on which the parties appear to be *ad idem*, is that the sole plot which was so available already stood allotted to the Delhi Administration – which was why the petitioner agreed to the proposal to establish a Middle School. Even if, for a moment, it were to be presumed that the petitioner had an enforceable right to be allotted a plot for establishing a Senior Secondary School, the right could translate into reality only if a plot *were* available, and not otherwise. No mandamus can issue, to the DDA, to allot a plot, to the petitioner, for establishing a Senior Secondary School, even if the approval, therefor, by the Hon'ble LG, had actually been communicated to the petitioner, if no such plots were actually available. An enforceable legal right to allotment must necessarily predicate the existence of a plot which could be allotted. The court cannot issue a mandamus to the DDA to do the impossible. Water cannot be wrung out of a stone.

52. In any event, in the absence of any right having vested in the petitioner, to allotment of a plot for establishing a Senior Secondary School, the question of whether there did, or did not, exist any such plots, pales into insignificance.

53. The case is, undoubtedly, unfortunate. The petitioner appears to have been motivated, throughout, by laudable objectives, and, had the DDA deigned to accommodate the request of the petitioner, perhaps, the interests of education may have been best subserved. The DDA was unable to do so, however, and this Court is equally unable to provide succour to the petitioner. The writ court cannot act solely on equity, and, sans the existence of a legal right, in favour of the petitioner, as well as a

corresponding legal duty, or the respondent, to act in furtherance thereof, no mandamus can issue.

54. It is clarified, therefore, that if, within the constrictive parameters of the law, it is possible to allot land, to the petitioner, to set up an educational institution, this judgement shall not impede the DDA, in any manner, from doing so. This Court has adjudicated only on the rights of the petitioner as they emanate in law, and on the sustainability, on merits, of the prayer, of the petitioner, for issuance of a mandamus to the DDA.

Conclusion

55. Resultantly, the writ petition is dismissed, with no orders as to costs.

JANUARY 08, 2020/HJ

C.HARI SHANKAR, J.