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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

1.

CWP-10990-2007

Date of Decision:- April 29, 2024

The Delhi Public School Society and Anr.

....Petitioners

Vs.

Haryana Urban Development Authority and Ors.

...Respondents

2.

CWP-11427-2007

Modern School and Anr.

....Petitioners

Vs.

Haryana Urban Development Authority and Ors.

...Respondents

3.

CWP-11436-2007

DAV Public School and Anr.

....Petitioners

Vs.

Haryana Urban Development Authority and Ors.

...Respondents

4.

CWP-11581-2007

Shahadra Angels Educational Society (Regd.) and Anr.

....Petitioners

Vs.

Haryana Urban Development Authority and Ors.

...Respondents

5.

CWP-11593-2007

Lala Madho Ram Bhagwan Dass Charitable Society (Regd.) and Anr.

....Petitioners

Vs.

Haryana Urban Development Authority and Ors.

...Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

HON'BLE MS. JUSTICE AMARJOT BHATTI

Present: Mr. Puneet Mittal, Senior Advocate (through VC) with
Mr. Manav Bajaj, Advocate and Ms. Nitika Sharma, Advocate
for the petitioners in CWP-10990-2007.

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Mr. Aashish Chopra, Senior Advocate (through VC) with
Ms. Rupa Pathania and Ms. Nitika, Advocate
for the petitioners in CWP Nos. 11427, 11581 & 11593 of 2007.

Mr. Satya Veer Singh and Ms. Mohak Badhana, Advocate
for the petitioners in CWP-11436-2007.

Mr. Ankur Mittal, Advocate with
Ms. Kushaldeep Kaur, Advocate for the respondents.

LISA GILL, J.

1. This order shall dispose of CWP Nos. 10990, 11427, 11436, 11581 and 11593 of 2007.

2. All the above said five writ petitions are taken up for hearing and decision together at request and with consent of learned counsel for parties as separate but identical orders of even date i.e. 05.07.2007 passed by Estate Officer, Haryana Urban Development Authority (HUDA), Faridabad have been impugned therein.

3. Petitioners in these writ petitions are privately managed Educational Institutions/Societies imparting school education to children of residents while running schools in different sectors of Faridabad. Petitioner No. 2 in all writ petitions except CWP-10990-2007 is Haryana Progressive Schools' Conference (Regd.) which is an Association of about two hundred (200) unaided privately managed schools in the State of Haryana. Plots for establishing schools were allotted to petitioners by HUDA from the year 1982 to 1996 upon which construction has been raised by petitioners with schools established thereon.

4. Show cause notice(s) under Section 17(3) of Haryana Urban Development Authority Act, 1977 (for short – 'HUDA Act') was/were issued by Estate Officer, HUDA, Faridabad on the ground that petitioners were running

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‘Nursery Schools’ which is illegal as the site in question had been allotted for running High school, Secondary school and Senior Secondary school. It is the case of petitioners that show cause notice(s) in question were issued on account of public interest litigation by way of CWP-4434-2007 (Comprehensive Child Development and Welfare Society and another versus The Administrator, HUDA and others). Respondents therein had been asked to examine each individual case and pass speaking orders. Stand taken by the State in CWP-4434-2007 was that notice for resumption of sites under Section 17(3) of HUDA Act had already been issued. Said writ petition was, accordingly, withdrawn on 25.07.2007.

5. Estate Officer, HUDA, Faridabad vide impugned order(s) dated 05.07.2007, passed identical orders directing the schools in question to stop the alleged misuser of sites by running Nursery school on the premises within fifteen (15) days from the date of order, failing which site(s) would be resumed. Stand of respondents is that as per provisions of Haryana School Education Rules, 2003 (for short – ‘2003 Rules’), schools are classified as Pre-Primary, Primary, Middle, Secondary and Senior Secondary schools. Pre-Primary schools are those schools which impart education below primary stage whereas Primary schools and Middle schools impart education from 1st standard to 5th standard and 1st standard to 8th standard respectively. Secondary schools impart education from 1st to 10th standard or 6th to 8th standard and Senior Secondary schools having classes up to 12th standard with or without primary classes. School site(s) in question were allotted by HUDA to run Primary, Middle, High, Senior Secondary schools and not Nursery or Pre-nursery. Estate Officer, HUDA, Faridabad concluded that by running Pre-Nursery and Nursery classes on the

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plots allotted for schools for High/Secondary schools amounted to misuse of premises. Some of the schools aggrieved therefrom alongwith Haryana Progressive Schools' Conference (petitioner No. 2 in four of writ petitions), filed CWP-4434-2007 which was dismissed as withdrawn on 25.07.2007 to enable petitioner schools to file separate petitions. Subsequently, present writ petitions as well as number of others were filed.

6. Said bunch of writ petitions included petitions in which sites in question had been allotted for Primary and Middle schools as well. Operation of impugned order was stayed by this High Court and Estate Officer, HUDA was directed to place on record status of schools sites, which had been allotted specifically for Pre-Nursery schools with availability of students seeking admissions in Pre-Nursery classes in the last ten years and to file affidavit to specify as to whether prior to coming in force of Haryana School Education Rules, 2003, there were different sites for schools as provided thereunder.

7. Writ petitions pertaining to Primary school sites were segregated on 12.11.2008 and two bunches were carved out i.e. bunch of 19 writ petitions (lead case CWP-11416-2007) pertaining to Primary school sites and another bunch (present cases) with lead case being CWP-10990-2007 pertaining to High schools/Senior Secondary Schools sites.

8. Division Bench of this Court decided both bunches vide separate orders of even date i.e. 24.02.2009. CWP-11416-2007 alongwith connected 19 petitions which pertained to Primary School sites were disposed of on 24.02.2009 while holding that sites which have been allotted for Primary/High Schools cannot be considered to have excluded the use of land for Nursery or Pre-Nursery classes. It was held as under:-

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“14. The allotment letters issued to the petitioners clearly postulate that allotment of plots has been made to them for running Primary and High Schools, as detailed in para 2 above, on lease hold basis. Even clauses 18 and 20 of the lease deed talks 'school only'. According to clause 18 in most of the cases, it is mandated that the school is to reserve 10% seats for students belonging to economically weaker sections of the society and the fee which is charged by the Government schools would be charged from students admitted under 10% category. Likewise, clause 20 fixed the priorities and postulate that the children of plot holders/residents of the sector should be admitted on priority basis and the school is primarily meant for the residents of the sector only. **There is nothing in the allotment letters which may distinguish the expression Primary and High School from that of Pre-nursery/Nursery School.**(emphasis added)

15. It has also come on record that the petitioners have raised the issue before the respondents during the course of personal hearing that there was no concept of separate pre-primary schools at the time when allotments were made to them and pre-primary was considered as an integral part of primary. They had further pleaded that Central Board of School Education and Indian Council of School Education considered the pre-primary as a part of formal school education at the level of High School or Senior Secondary School. The petitioners have been running pre-primary programmes like nursery classes since their inception. In the speaking order dated 5.7.2007, primary reliance has been placed on the concept of pre-primary, primary, middle, secondary and senior secondary schools. The aforesaid classification flows from the Rules, the relevant portion of which has already been extracted in para 7 above. It is, thus, clear that such a stand would be unsustainable because new conditions restricting the scope of allotment letters cannot be imposed by the Rules framed in the year 2003. The rules

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of the game cannot be written after the game is over. Therefore, it would be wholly arbitrary to apply the Rules of 2003 to the allotments made between 1979 to 1996. It cannot be concluded that there is any violation of the terms and conditions incorporated in the allotment letters or the provisions of the Act. Moreover, during all these years, pre-nursery, nursery and other classes are being run by the petitioners and they have been executing lease deeds with the respondents. We further find that no objection at any stage has ever been raised by them, which has emanated only on the enactment of the Rules in 2003. Therefore, they would be estopped from continuing with the interpretation of including pre-nursery and nursery schools in the expression 'primary school'.

16. During the course of arguments it was also pointed out that the respondents have taken shelter under proceedings initiated by way of PIL in CWP No. 4434 of 2007 (supra), which has subsequently been withdrawn. It is pertinent to mention that no order was passed by this Court directing HUDA to issue show cause notices or pass presumption orders in respect of the schools which are running pre-primary classes. We find that the officers of HUDA have not exercised their power arbitrarily because it defies ignorance that in the absence of any order by this Court, any such show cause notices could be issued, as has been done in these cases. Moreover, there is no prohibition in any of the allotment letter allotting land for Primary and High School, that pre-primary classes would not be permissible. The concept of nursery and pre-nursery classes was introduced only by the Rules in 2003.”

9. It was, thus, held that all the school sites must be considered to be allotted for the purpose of pre- nursery/nursery and primary classes and concluded by Division Bench in said matter that:-

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“19. As a sequel to the above discussion, we are of the considered view that the sites which have been allotted for primary/high schools cannot be considered to have excluded the use of the land for nursery or pre-nursery classes. Accordingly, the impugned orders in respect of each of the petitioners, dated 5.7.2007, passed by the Estate Officer, HUDA, Faridabad, are hereby quashed and the petitioners would be within their rights to continue running nursery/pre-nursery classes”

10. Said decision dated 24.02.2009 in CWP-11416-2007, it is informed, has attained finality.

11. Other bunch of petitions (present writ petitions) pertaining to Secondary, Senior Secondary School sites was, however, dismissed vide order of even date i.e. 24.02.2009 while holding that specific purpose of allotment has been detailed in letters of allotment i.e. site is to be used for running High School, Higher Secondary School or Senior Secondary School alone. It was held as under:-

“ A perusal of the aforesaid table shows that specific purpose of allotment has been specified in the letters of allotment i.e. High School, Higher Secondary School or Senior Secondary School alone. Similar stipulation has been incorporated in the lease deed executed between the petitioners and the Haryana Urban Development Authority. Therefore, it cannot be concluded that the petitioners could be permitted to use the allotted sites for the purposes of running pre-nursery/nursery classes. We do not find any substance in the claim made by the petitioners that they are running their respective schools for the last 10 to 23 years and there was no statutory classification with regard to nursery/primary/middle/secondary and senior secondary level of classes in the State of Haryana when land was allotted to them for running the High or

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Higher Secondary schools and that the classification for the first time was made by the Haryana School Education Rules, 2003 (for brevity. 'the Rules'), which were enforced on 30.04.2003. Once the site has been allotted for a High School, Higher Secondary or Senior Secondary School then it cannot be claimed by the petitioners, as of right to run the classes for pre-nursery and nursery.”

12. Said decision dated 24.02.2009 in CWP-10990-2007 was challenged by allottees and following order was passed by Hon'ble the Supreme Court in Civil Appeal Nos. 7158-7162 of 2009:-

“ We have heard learned counsel for the parties at length.

In nature of the order proposed to be passed, we are purposefully refraining from observing anything on merits so as to not prejudice either party.

Nothing has been pointed out by the respondents, to our satisfaction, that the appellants are in any way differently situated from the petitioners in CWP No.11416 of 2007 allowed on 24.02.2009. The same Division Bench disposed of the present matter, on the same day, wherein similar questions appear to have been involved including facts, taking divergent views.

Therefore, we are satisfied, that on this short ground alone the impugned order is not sustainable and is set aside. The matter is remanded to the High Court for fresh consideration and disposal in accordance with law. Till the matters are disposed, the interim orders passed by this Court on 02.04.2009 shall continue.

The appeals are disposed of in above terms.”

13. It is in this factual matrix that writ petitions have been placed before us for adjudication.

14. Learned counsel for petitioners submit that it has been correctly held by Division Bench in CWP-11416-2007 that there is nothing in allotment

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letters which may sustain the distinction between expression Primary and High Schools from that of Pre-Nursery/Nursery school. Necessary analogy is that permission to establish High School, Senior Secondary School in itself would have ingrained permission to run Pre-Nursery school. Correct interpretation, it is urged, would be that it is not possible to run High School/Senior Secondary school on the site(s) meant for Primary or Middle school and not the converse that Primary and Pre-Primary schools cannot be run thereon because the latter interpretation would lead to unnecessary bother and inconvenience to parents who would have to admit their wards to different schools at various stages of education and at the same time it may also not be a viable proposition for educational institutions. There cannot be a divorce or segregation of classes of Pre-Nursery from Higher Classes in the context of schools providing education at the level at High School/Secondary/Senior Secondary level. It is, thus, prayed that these writ petitions be allowed on the same analogy as has been drawn in decision dated 24.02.2009 in CWP-11416-2007 and connected matters.

15. Learned counsel for respondents has made a feeble attempt to submit that distinction between Primary and High school and that of Senior Secondary school is starkly apparent, therefore, writ petitions should be dismissed as it is proved that petitioners have misused the site(s) allotted to them. Running of Pre-Nursery/Nursery schools is claimed to be violation of 2003 Rules. It is, thus, prayed that these writ petitions be dismissed.

16. We have heard learned counsel for parties and have gone through the files with their able assistance.

17. Issuance of show cause notice to present petitioners as well as Educational Institutions running Primary, Middle schools and passing of

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impugned order dated 05.07.2007 by Estate Officer, HUDA, Faridabad are a matter of record. It is further not in dispute that segregation of writ petitions which were filed in 2007 was carried out as above. Bunch of petitions relating to primary schools was disposed of on 24.02.2009 holding that petitioners would be entitled to run Pre-Nursery and Nursery classes. It was specifically held therein that all school sites must be considered to be allotted for the purpose of Pre-Nursery, Nursery and Primary classes because it is unimaginable that students seeking admission in Pre-Nursery and Nursery would be without any schools for the period when allotments were made to the schools. Categorization of sites after 2003 Rules would be applicable to any allotment made after that period and that in none of the allotment letters, there is a prohibition to running of Pre-Primary, Pre-Nursery and Nursery classes in said schools. Concept of Pre-Nursery and Nursery classes was introduced through 2003 Rules.

18. In our considered opinion, there is indeed no distinction which is carved out in the present matters which would distinguish them from the matters decided on 24.02.2009 in CWP-11416-2007 and others. Perusal of files reveals that allotment letters were issued way back between years 1982-1996 with lease deeds being executed in later years. Details of petitioners’ schools, sector, size of plot, purpose of allotment of site as indicated in allotment letters and lease deeds/deed of conveyance subsequently executed between HUDA and various allottees in the present writ petitions are reproduced as hereunder:-

Sr. No.	CWP No.	Allotment letter/Deed of lease/Deed of conveyance	Sector	Size	Purpose of allotment of site as mentioned in the allotment letter/Deed
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					of Lease/Deed of Conveyance	
1.	10990 2007	of	RA-I-96/149 dated 29.03.1996	19 Faridabad	7.18 acres (34751.2 sq. yds.)+0.8 acres (3872 sq. yds)	Residential Senior Secondary School
2.	11427 2007	of	RA-III(76)- 82/13230, dated 18.6.1982 Deed of Lease dated 04.03.2005	17 Faridabad	8.3 acres	Purpose not disclosed in the allotment letter. However, as per deed of lease land was allotted for 'Higher Secondary School'.
3.	11436 2007	of	RA-III- 93/756- 757, dated 2.3.1994 Deed of Lease dated 09.05.2001	37 Faridabad	5.0035 acre	High School
4.	11581 2007	of	RA-I- 95/Instt./796, dated 10.11.1995	21-A Faridabad	2.25 acres	High School
5.	11593 2007	of	RA-3- 85/313/12983. Dated 16.07.1985 Deed of Lease dated 20.09.2006	14 Faridabad	5 acres	As per allotment letter for High School', whereas Deed of Lease describes 'Higher Secondary School'

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19. Details of schools which were subject matter of CWP-11416 of 2007 and connected petitions, as reproduced in order dated 24.02.2009 are replicated as hereunder:-

Sr. No.	CWP No.	Allotment letter/Deed of lease/Deed of conveyance	Sector	Size	Purpose of allotment of site as mentioned in the allotment letter/Deed of Lease/Deed of Conveyance
1.	11405 of 2007	RA-III-93/301, dated 24.08.1993 Deed of Lease dated nil	15 Faridabad	1.5086088 acre (7301.6 sq. yds.)	Primary School
2.	11415 of 2007	RA-III- 93/563-64, dated 14.02.1994 Deed of Lease dated 28.05.2004	28 Faridabad	1.36 acres, 5.0051652	Primary School
3.	11416 of 2007	Memo. No. RA-III- 95/80, dated 13.11.1995	3 Faridabad	One acre	Primary School
4.	11430 of 2007	RA-III- 93/571, dated 18.02.1994 Deed of Lease dated 17.08.2001	21-C Faridabad	0.9548473 acres	Primary School
5.	11431 of 2007	RA-III- 94/1137, dated 10.06.1994 Deed of Lease dated 07.12.2001	29 Faridabad	7257.17 sq. yds.	Primary School
6.	11432 of 2007	RA-III- 93/556, dated 27.01.1994 Deed of Lease dated 27.09.2000	9 Faridabad	1.4903574 acre (7213.33 sq. yds.)	Primary School
7.	11435 of 2007	RA-III- 94/550, dated 27.01.1994 Deed of Lease dated 14.05.2001	16-A Faridabad	1.4994 acre	Primary School

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8.	11577 of 2007	RA-III-93/3806-08 dated 26.11.1993 Deed of Lease dated 29.12.1999	3 Faridabad	1.4648528 acre (7213.33 sq. yds.)	Primary School
9.	11578 of 2007	RA-III-93/291, dated 20.03.1993 Deed of Lease dated 24.09.2003	28 Faridabad	1.41 acre	Primary School
10.	11579 of 2007	RA-III-93/767, dated 18.03.1994	16-A Faridabad	1.2774448 acre	Primary/ High School
11.	11590 of 2007	RA-III-941/1155, dated 29.06.1994	21-A Faridabad	5.0051652 acre	Primary/ High School
12.	11591 of 2007	RA-I-96/241-42, dated 05.06.1996 Deed of Lease dated 16.02.2005	21-B Faridabad	5 acre	As per allotment letter for ‘High School’, whereas Deed of Lease describes ‘primary school building’
13.	11592 of 2007	58041, dated 06.12.1979 Deed of Lease dated 08.10.1997	7 Faridabad	3.97 acre (19239 sq. yds.)	Nothing specified in the allotment letter, whereas Deed of Lease describes ‘Primary School’
14.	11594 of 2007	RA-3-86/16143, dated 10.11.1986	17 Faridabad	1½ acre	Primary School
15.	12271 of 2007	RA-III-93/454, dated 15.12.1993 Deed of Conveyance dated 20.07.1998	21-A Faridabad	1.501376 acre (7266.66 sq. yds.)	As per allotment letter for ‘Primary School’, whereas Deed of

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					Conveyance describes 'to be used as a site for residential purpose in the urban area of Faridabad'
16.	12272 of 2007	RA-III-94/565, dated 14.02.1994 Deed of Lease dated 19.11.1997	8 Faridabad	1.0319545 acre (4994.66 sq. yds.)	As per allotment letter for 'Primary/ High School', whereas Deed of Lease describes for 'St. Thomas School, Faridabad'
17.	12273 of 2007	(i) 17575-77 dated 17.06.1980 (Annexure P2) (ii) RA-3-85/77/12986 dated 16.07.1985 (iii) RA-III-93/579 dated 24.02.1994 (iv) Deed of Lease dated 13.05.1997	16 Faridabad	1/2 acre (2420 sq. yds.) Additional land 1 acre Additional land 1.47 acre	(i) Nothing specified in the allotment letter dated 17.06.1980. (ii) As per allotment letter dated 16.07.1985 additional land was allotted 'for the purpose of school'. (iii) As per allotment letter dated 24.02.1994 land was 'for Play Ground'. (iv) Deed of Lease describes 'Senior

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					Secondary School'
18.	13020 of 2007	RA-II-99/388, dated 16.07.1999 Deed of Conveyance dated 01.07.2002	21-D Faridabad	484 sq. yds.	As per allotment letter for 'Primary School', whereas Deed of Conveyance describes 'to be used as a site for school purpose in the urban area of Faridabad'
19.	13034 of 2007	RA-3-61-84/18393, dated 09.05.1984 Deed of Lease dated 21.03.1997	16-A Faridabad	1.68 acres	Primary School

20. There is merit in the argument raised by learned counsel for petitioners that as per allotment letters in question, permission to establish Secondary/Senior Secondary school does not exclude the permission to run Pre-Nursery/Nursery school. There is infact no prohibition to this effect. In the given factual matrix, learned counsel for HUDA is unable to deny that a view divergent from the one expressed in order dated 24.02.2009 in CWP-11416-2007 would be unjustified and uncalled for. Rationale and basis of said decision is applicable on all fours in the present factual matrix as well.

21. Keeping in view the facts and circumstances as above, it is held that sites which have been allotted to petitioners for running High School/Secondary School, Senior Secondary school much prior to coming into existence of 2003 Rules, do not exclude the use of land for Pre-Nursery, Nursery, Primary/Middle

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classes. Impugned orders dated 05.07.2007 passed by Estate Officer, HUDA, Faridabad are, accordingly, set aside. Petitioners would be entitled to continue running Pre-Nursery/Nursery classes.

- 22. Writ petitions are disposed of accordingly.
- 23. Pending application(s), if any, stand(s) disposed of.

(LISA GILL)
JUDGE

(AMARJOT BHATTI)
JUDGE

April 29, 2024
Rts

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No