



2024:DHC:3196



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

% Judgment reserved on: 16.03.2024

Judgment pronounced on: 24.04.2024

+ W.P.(C) 5932/2016

HARYANA SHAKTI COLLEGE OF EDUCATIONPetitioner

versus

GURU GOBIND SINGH INDRAPRASTHA UNIVERSITY

AND ANR

.....Respondents

Advocates who appeared in this case:

For the Petitioners : Mr. Anand Yadav, Advocate.

For the Respondents : Ms. Ekta Sikri, Mr. Jasbir Bidhuri and
Mr. Shashwat Sharma, Advocates for R-1.
Mr. Udit Malik, ASC (Civil) for GNCTD
with Mr. Vishal Chanda, Advocate.
Mr. Kailash Vasdev, Senior Advocate
with Mr. Umrao Singh Rawat, and
Mr. Nitin Mishra, Advocates for DDA.

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

J U D G M E N T

TUSHAR RAO GEDELA, J.

[The proceeding has been conducted through Hybrid mode]

1. The present petition has been filed under Article 226 of the Constitution of India, *inter alia*, seeking the following reliefs:-

“a) Quash and set aside order/letter no. F.GGSIPU/Incharge(Aff)2016/9072 dated 31.05.2016 issued by respondent no.1, Guru Gobind Singh Indraprastha University.

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W.P.(C) 5932/2016

Page 1 of 32



b) Direct respondents to grant affiliation to petitioner for conducting B.Ed. Course from academic year 2013-14 and onwards.

c) any other and further writ, order or direction that this Hon'ble Court may deem fit and proper in the circumstances of the case be also made in favour of the Petitioner and against the Respondents."

2. The facts as narrated in the petition are as under:-

i) It is the case of the petitioner that Haryana Shakti Education Society Kanjhawala (hereinafter referred to as "*the Society*") came into existence and same was registered under the Societies Registration Act, 1860 on 01.12.1945. The villagers of Kanjhawala donated land measuring 100 bigha and 2 biswa in Village Kanjhawala to the society. At that time land of Village Kanjhawala was governed by Punjab Land Revenue Act, 1887 (hereinafter referred to as "*the Punjab Act*") and there was no restriction on land use which could be used for any purpose. Similarly there was no requirement to obtain any permission to raise construction of any kind on the said land. Building was constructed by society on said land. The society started a school in the name of Haryana Shakti Senior Secondary School (hereinafter referred to as "*The School*") on the said land. The villagers further donated land measuring 70 bigha and 3 biswa to the society in the year 1952. Therefore, in all, the Society is owning land measuring 170 bigha and 5 biswa in Village Kanjhawala, Delhi.



ii) The Delhi Land Reforms Act, 1954 (hereinafter referred to as “DLR Act”) was promulgated and brought into force on 20.07.1954. It is stated that the provisions of DLR Act was not made applicable to parcels of land which were being used for public purpose or work of public utility was being carried out in terms of section 1(2)(c) of DLR Act. It is submitted that as per section 1(4) of the DLR Act, the declaration by Chief Commissioner under clause (c) of sub-section (2) of section 1, shall be conclusive evidence that land is held and occupied for public purpose or work of public utility.

iii) It is the case of the petitioner that on 19.03.1957, the school was granted permanent recognition by Board of Higher Secondary Education, Delhi. *Vide* the notification dated 12.08.1959, a list of areas which the Chief Commissioner declared under clause (c) of sub-section (2) of section 1 of DLR Act was notified holding that those areas are held and occupied for “public purpose or a work of public utility” as on date of commencement of said Act. Land measuring 100 bigha 2 biswas and 70 bigha and 3 biswas in Village Kanjhawala which was donated to the Society was included in said notification and therefore it was declared that land of society is held and occupied for public purpose or work of public utility and therefore as per sub-section (4) section 1 of DLR Act, declaration of Chief Commissioner under section 1(2)(c) of DLR Act is conclusive evidence that said land is held and occupied



for public purpose or work of utility and same cannot be questioned by anyone.

iv) The petitioners state that the society took various steps for seeking recognition to start B.Ed. course with intake of 100 seats from academic session 2010-2011. Various correspondences were exchanged between the petitioner, the respondents, National Council for Teachers Education (hereinafter referred to as the “NCTE”) and various other departments. The Joint Inspection Team comprising members of respondent no.1/ University and Department of Higher Education of Delhi on 04.07.2012 inspected the premises for granting affiliation for academic year 2012-2013. The NCTE on 17.08.2012 granted recognition to the petitioner college for B.Ed. course with an intake of 100 seats from the academic session 2012-2013.

v) It is the case of the petitioner that the petitioner/ college was granted provisional affiliation dated 17.09.2012 by the Board of Affiliation of University and sent the list for admission of students for B.Ed. programme for the academic session 2012-2013. University *vide* a letter dated 21.11.2012 requested the petitioner to submit record indicating date of recognition granted by Directorate of Education (hereinafter referred to as “DoE”).

vi) The petitioner submitted that the Cabinet Committee of Government of NCT of Delhi *vide* its decision dated 10.12.2012 approved the proposal of grant of NOC to institutions to run approved courses from Lal Dora, Extended Lal Dora, Agricultural



land, school building and other non-confirming areas. The Directorate of Higher Education intimated the Registrar of University *vide* letter dated 16.05.2013 that since the petitioner institution falls under the category of 'Non-Confirming Area', thus as per the existing policy guidelines, NOC cannot be issued to the petitioner. On 05.06.2013, the petitioner requested the Registrar of University to arrange for inspection by the Joint Assessment Committee (hereinafter referred to as "*JAC*") at the earliest.

vii) It is the case of the petitioner that in its 57th meeting held on 05.06.2013, the Board of Affiliation of University considered the case of the petitioner and on the basis of non-grant of NOC by Directorate of Higher Education, rejected the case of petitioner for grant of affiliation to petitioner for the academic session 2013-14. The petitioner filed a W.P.(C) No. 4009/2013 challenging the denial of affiliation by University to the petitioner. This Court while disposing of the W.P.(C) No. 4009/2013 *vide* order dated 02.09.2013, directed the University to reconsider the application of petitioner for grant of affiliation for its B.Ed. course without insisting upon NOC from the Government of NCT of Delhi in terms of said order but taking into consideration the fact that the petitioner institute is being run/ sought to be run in a non-confirming area, thereby contravening the provisions contained in section 14 of the Delhi Development Act, 1957 (hereinafter referred to as "*DDA*"). The



petitioner filed LPA No. 707/2013 challenging the judgement dated 02.09.2013.

viii) The petitioner submitted that in the meanwhile, the University *vide* a letter dated 10.09.2013 arbitrarily and illegally refused to extend/ continue the affiliation to the petitioner for conducting B.Ed. Programme for the academic session 2013-14. The petitioner filed a Writ Petition bearing no. 6365/ 2013 challenging the letter dated 10.09.2013 passed by the University. The NCTE *vide* order dated 05.06.2015 issued revised recognition order to petitioner for conducting B.Ed. Programme of two year duration with an annual intake of 100 for two basic units of 50 students, each from academic session 2015-2016 subject to fulfillment of conditions.

ix) It is the case of the petitioner that *vide* order dated 07.01.2016, this Court passed a common order in LPA no. 707/2013 and W.P.(C) 6365/2013 filed by the petitioner, permitting the petitioner to place all relevant material before the University to establish land in question does not fall in Non-Confirming Area and it was also directed that the University thereupon shall reconsider the whole issue and pass an appropriate orders in accordance with law regarding grant of affiliation to petitioner after giving it an opportunity of being heard.

x) The petitioner submitted that on 12.01.2016, the respondent no. 2/Directorate of Higher Education issued policy guidelines to



issue NOC to new/existing institutions situated in confirming or non-confirming areas. The petitioner filed a representation dated 14.01.2016 and addressed it to Registrar of the University. The petitioner also filed response and case law to queries raised by Committee during the course of hearing. The University *vide* letter dated 31.05.2016 held that land in question cannot be said to be a confirming land under MPD-2021 for the purpose of affiliation with University.

xi) The petitioner submitted that the impugned decision of the respondent no.1/University dated 31.05.2016 holding that land in question is non-confirming is wrong and incorrect and that the same has been passed without due application of mind and is therefore, liable to be quashed and set aside as illegal, discriminatory and contrary to provision of law.

CONTENTIONS OF THE PETITIONER

3. Appearing for the petitioner, Mr. Anand Yadav, learned counsel, at the outset submits that the subject matter land was originally governed by the Punjab Act. However, after the Delhi Land Reforms Act, 1954 was promulgated, the subject lands were governed by this Act. He submits that by virtue of the notification dated 12.08.1959, issued under section 2(1)(c) of the DLR Act, the subject lands were declared as being held for “*Public Purpose or for works of Public Utility*”, whereafter the DLR Act ceased to apply. According to Mr. Yadav, once the lands were declared as Public Utility Lands, the same continued to retain the said character even subsequently and as such the



requirement of obtaining the NoC from any of the departments including the respondent no.3/DDA does not arise. Further to the above, he submits that neither the respondent no.3/DDA has any jurisdiction to oppose the same nor the respondent no.2/ Directorate of Higher Education can refuse grant of affiliation on the basis of the petitioner continuing in non-conforming zone. He submits that once the DDA has notified the Zonal Development Plan (hereinafter referred to as “*the ZDP*”) and earmarked various users of lands within the said ZDP and the subject lands falling within the Facility Corridor land, it cannot be contended by the respondents that the petitioner’s institution would fall in the non conforming zone. If it is so held, according to Mr. Yadav, the respondent no.1 cannot refuse grant of affiliation to the petitioner.

4. After referring to the notification dated 12.08.1959 issued by the Chief Commissioner, Mr. Yadav drew attention of this Court to page 4 of the Master Plan Delhi 2021 (hereinafter referred to as “*the MPD 2021*”) particularly to Clause (i) of point 20 of introduction of the MPD 2021 to submit that areas earmarked for Trade and Commerce would be developed as “*Facility Corridors*”. Delving further into the said issue, learned counsel referred to Chapter 5.0 regarding Trade and Commerce, particularly Clause 5.7.1 to the topic “*Sub City Level Commercial Areas*”. In conjunction to the explanation contained therein, learned counsel drew attention of this Court to Chapter 13 of the MPD 2021 regarding Social Infrastructure to indicate how the planned development is to be envisioned. Clause 13.11 deals with Public and Semi Public Facilities within which Clause 13.21 deals with Educational Facilities.



Learned counsel refers to sub-Clause 8 of Clause 13.21 to urge that the same permits opening of a Teacher Training Centre/Institute, Nursing and Paramedic Institute. He correlates this with Chapter 17 which is the “*Development Code*”. Learned counsel read Clause 4 which designates the Use Zones to submit that even according to the MPD 2021, Educational Institutions, Research University and Colleges etc., which fall within the Public and Semi Public Facilities etc., are permissible even in the Residential Zones. That apart, learned counsel refers to the permissible institutions which can be developed in Public and Semi Public Facility areas earmarked by the MPD 2021 particularly sub-Clause (viii) of Clause 8(2) of Chapter 17 which stipulates that Teacher Training Institute can be established in Residential, Commercial and Public/Semi Public Facility Areas. He submits that the petitioner simply sought to commence a Teacher Training Institute in the area where it is permissible to do so.

5. Mr. Yadav extensively referred to the ZDP for Zone –N, within which the subject land/area in question falls. He referred to Chapter 11.0 regarding “*Proposed Land Use*”, particularly Clause 11.6, 11.6.1 and 11.6.2 to submit that the Public/Semi Public Facilities were to be provided as “*Facility Corridors*” along major roads. He submits that according to Clause 11.6.2 (vi), Teacher Training Institute are permissible under Clause 8(2) of the MPD 2021.

6. Mr. Yadav, learned counsel submits that under section 12 of the DDA Act, 1957, the DDA is mandated to carry out the planned development of Delhi after issuing appropriate notification in that



regard. He submits that with the publication of the ZDP for Zone N, the DDA has accomplished the said object. He then invites attention of this Court to section 14 of the DDA Act, to submit that it is prohibited to use any land falling within that Zone N to be used otherwise than in conformity with the ZDP. He however, submits that the proviso is an exception to the aforesaid stipulation and the user may continue even if it is contrary to the earmarked use subject to the same being regulated by formulation of Regulations by the DDA. Learned counsel vehemently submits that till date no such Regulations have been formulated by the DDA for the said Zone or even otherwise. According to him, as a result of the aforesaid facts, the user of the land by the petitioner is permissible and is not ousted on the grounds of subject land falling within “*non conforming*” area.

7. Learned counsel submits that the notification dated 12.08.1959, issued under the provisions of DLR Act not having been rescinded or overridden by any Act, Rule, Regulation or notification of the DDA, still holds the field and the subject land retains its Public Utility character and on account of non formulation of Regulations under section 14 of the DDA Act, the DDA specifically is precluded from contending that the user of the subject land falls in the “*non conforming zone*”. He submits that it is not disputed by any other respondent that subject land was part of the MPD 1962 and the above notification was issued prior to that, i.e., the year 1959. Thus, according to learned counsel, the subject land was already a declared Public Utility Land.

8. Mr. Yadav submits that it is not disputed that a School by the



name Haryana Shakti Senior Secondary School had been existing long before India became independent in 1947, however had received recognition on 19.03.1957 from the Directorate of Higher Education which too had acknowledged that the School has been in existence from 1945 atleast. On this count, learned counsel submits that the land in question has been in use for a recognized educational institution from the year 1945 and the present revalidation for the petitioner sought is in furtherance of the said objective on a land which falls within the specification “*Public Utility*” as per the notification of 1959 and “*Public/Semi Public Facility*” and “*Facility Corridor*” as per the MPD 2021.

9. Learned counsel referred to the contents of the affidavit dated 01.03.2023 filed on behalf of the respondent no. 3/DDA to submit that the respondent no.3/DDA has stated that the subject land admeasuring 100 bigha 02 biswa in Village Kanjhawala partly falls on the proposed ‘80 meter right of way road’, partly on the proposed ‘*Facility Corridor*’ and partly under the ‘*Residential*’ land use. So far as the subject land falling within the proposed 80 meter road is concerned, he vehemently opposes the same and tried to demonstrate from the ZDP that there is no such 80 meter road falling within the subject land. Learned counsel referred to the rejoinder to clarify the said aspect. With respect to the other two aspects, he submits that the land falling within those areas admittedly would be “*conforming*” areas and as such no objection on behalf of the respondent no. 3/DDA can be entertained at all.

10. Learned counsel extensively referred to and read portions of the



impugned order dated 31.05.2016 to submit that the same has completely overlooked the overwhelming documentary evidence and has given no reasons, muchless cogent reasons for refusal to grant affiliation. He then referred to the written submissions filed on behalf of the petitioner and the judgements relied upon for various propositions which are as under:

A) *Gurbux Singh & Anr vs. Shri K.K. Dahiya & Anr*, rendered by a Co-Ordinate Bench of this Court on 16.08.2004, W.P.(C) No.3460/1995.

B) *Lal Singh & Ors V The Lt. Governor, Delhi & Ors*, reported as 1971 SCC OnLine Del 173

C) *White Hill vs. Delhi Development Authority & Ors*, reported as 1986 SCC OnLine Del 123.

D) *Smt Somawanti & Ors vs. The State of Punjab & Ors*, reported as 1962 SCC OnLine SC 23.

CONTENTIONS OF RESPONDENT NO.3/DDA :-

11. Mr. Kailash Vasdev, learned senior counsel, appears for the respondent no.3/DDA.

12. Learned Senior Counsel commenced his arguments by objecting to the locus of the petitioner to maintain this petition. Mr. Vasdev submits that the institution which is recognized by the Directorate of Higher Education is the Haryana Shakti Senior Secondary School whereas the present petition has been filed by the petitioner which is a newly formed institution and has no rights over the subject land. As such, according to learned senior counsel, the petition be dismissed with exemplary costs.



13. Learned Senior Counsel also argued that the petitioner being a new institute has not even applied for regularisation in accordance with the Policy of the respondent no.3/DDA and as such the petition is premature. He submits that the petitioner may apply to the respondent no.3/DDA which would consider the said application in accordance with the policy. That having not been done, according to the learned senior counsel, the petition is not maintainable.

14. On merits, Mr. Vasdev, learned senior counsel referred to Clause 17 of the Policy Guidelines of the year 2011 which stipulates that where a new institution seeks affiliation, it has to obtain a NoC from the respondent no.3/DDA. He contends that the petitioner being a new institution has to necessarily apply afresh for affiliation and according to the said policy, the same cannot be processed unless and until, such institution (the petitioner in this case) obtains NoC from the respondent no.3/DDA. On that basis, learned senior counsel submits that the petitioner has to necessarily apply to the respondent no.3/DDA first, which it has not done so far.

15. That apart, learned senior counsel also strenuously emphasized that the user of the subject land has to conform to the provisions of section 14 of the DDA Act as also the MPD 2021. He submits that under the ZDP it is only the '*Haryana Shakti Senior Secondary School, Kanjhawala Road*' which has applied for regularization of the land use as per the said ZDP and not the present petitioner. He drew attention to para 7 of the impugned order to submit that it rightly appreciated the aspect of the petitioner not being able to establish as to whether the said



land was conforming or non conforming land with respect to the MPD. Learned senior counsel also contended that the provisions of DLR Act deal only with rights of the Bhumidhar or Asami and have no provision to determine whether the land would be conforming or not. Unless the same is first determined, reference to section 14 of DDA Act or its proviso would be irrelevant.

16. Learned senior counsel further submitted that as per ZPD of Zone-N prepared under MPD-2021, the land under reference to the extent of 100 bigha and 02 biswa only in Village Kanjhawala, Delhi tentatively falls partly on the proposed '*80 meter right of way road*', partly on the proposed '*Facility Corridor*' and partly under the '*Residential*' land use.

17. Mr. Vasudev, learned senior counsel also referred to the notification dated 04.07.2018 issued by DDA under Section 57 of the Act for regulations for enabling the planned development of privately owned lands. In that, he particularly refers to Clause 6 titled '*Procedure for grant of Permission for Development*' to submit that the owner satisfying the prescribed applicability and conditions laid down in the Regulations, shall submit an application of intent for development on its land to DDA (in development areas) or respective Urban Local Body (in non development areas), along with dimensioned survey plan on a scale of 1:1000 showing the boundaries and dimensions of its land, locations of existing streets, surrounding buildings and premises etc.

18. Learned senior counsel next referred to the communication dated 18.04.2011 of the SDM to the Haryana Shakti Education Society (the



sponsoring society) whereby it was informed that the subject land is used for educational purposes. Even this, according to Mr. Vasdev, does not determine whether the land is conforming or not. He submits that it would be relevant to note that the petitioner neither challenged the minutes of the Meeting dated 06.05.2008 whereby the objections/suggestions of the public *qua* the ZDP was invited nor has he challenged the sanctioning of the Master Plan or the ZDP. According to learned senior counsel, once petitioner has not challenged the basic documents, it is precluded from seeking the reliefs as sought. In order to buttress his case on that point, he drew attention to the prayer clause of the writ petition where no such challenge can be found and the respondent no.3/DDA was only made a party to the present writ petition *vide* order dated 15.07.2016 by this Court on the request of the respondent no. 1/University. Learned senior counsel contended that even if this Court were to agree with the petitioner, the Minutes of the Meeting dated 06.05.2008, the MPD and the ZDP would still stand and the issue of the non determination of the subject land being conforming or not would remain unanswered. The petitioner would still have to apply to the respondent no.3/DDA to determine the conformity of the subject land without which the respondent no.1/University would not affiliate the petitioner. Learned senior counsel thus submits that the petition be dismissed.

CONTENTIONS OF THE RESPONDENT NO.1/UNIVERSITY: -

19. Ms. Ekta Sikri, learned counsel for the respondent no.1/University at the outset handed over the bench the Statutes of the University,



particularly, Statute 24 notified on 16.02.2000. In particular, learned counsel referred to Clause 3(ii)(b) of Statute 24 of the University, whereby an essential condition of the applicants seeking affiliation are to submit the NoC by the concerned State Government and recognized by the appropriate statutory authority. She submits that the petitioner has not been granted the NoC by the GNCT of Delhi and as such an essential condition for obtaining affiliation has not been met by the petitioner. She referred to the judgement of the Full Bench of this Court in *State of Haryana vs. Global Educational Social Trust & Others* reported in **2012 SCC OnLine Del 4437**, particularly to para 18, to submit that the college/institution so affiliated to respondent no.1/University, is required to fulfill the conditions stipulated under the Statutes, Ordinances, Regulations and Directions of respondent no.1/University including as to appointment of teachers and their service conditions, admission of students and the terms and conditions of such admission and to also submit itself to inspections by respondent no.1/University. There, thus has to be a strong nexus between respondent no.1/University and its affiliate colleges and Institutions.

20. In terms of the above, Ms Sikri invites attention of this Court to the communication dated 16.05.2013 whereby the Directorate of Higher Education informed the respondent no.1/University that since the petitioner falls under the category of 'non-conforming area' and as per the existing Policy Guidelines, NoC could not be issued. Learned counsel submits that having regard to this communication, the respondent no.1/University could not have granted affiliation since one



of the essential conditions was found lacking.

21. That apart, learned counsel referred to the letter dated 03.06.2011 communicated by the DDA to the petitioner, whereby it was informed that the name of the petitioner is at Serial No.1 of Annexure V of approved ZDP for Zone-N and the same is under progress for regularization as per the Policy. According to learned counsel, unless the approval is granted by the respondent no.3/DDA, yet again the respondent no.1/University would be unable to grant affiliation.

22. Learned counsel extensively referred to the Policy Guidelines of the GNCT of Delhi particularly to Clauses 1.2, 3.1(i) and 3.2 to submit that the said Policy Guidelines envisage the institutions seeking affiliation to be running within the conforming area. She submits that the institution that is existing in the subject land is the School and not the petitioner. Hence, according to her, unless the petitioner applies to the DDA for regularizing the non conforming area to '*conforming area*', the respondent no.1/University is not permitted to grant affiliation. Learned counsel submits that the respondent no.1/University is bound by the Policy Guidelines of the State and cannot violate the same. Thus, the petitioner cannot be granted affiliation by the respondent no.1/University.

23. Learned counsel submits that it is only the Haryana Shakti Senior Secondary School, Kanjhawala which is recognized by the ZDP and not the petitioner. By referring to Clause 16 and 17 of the Policy Guidelines dated 06.05.2011, learned counsel submits that the stipulations envisage institutions only in conforming area as per the norms of the DDA under



the MPD 2021. According to learned counsel, the petitioner is a new institution and is bound by the said Policy. On that basis, it is submitted that the affiliation cannot be granted to the petitioner unless requisite approvals/regularization is sought and accorded to the petitioner. She also contends that the Report dated 09.08.2013 of the Committee which was constituted as per the order dated 05.08.2013 passed by this Court in W.P. (C) No.4009/2013 also does not advance the case of the petitioner.

24. Ms. Sikri, also referred to the judgement dated 02.09.2013 of this Court in W.P.(C) No.4009/2013, to submit that the respondent no.1/University was directed to take a fresh decision keeping in view the fact that the petitioner was in a non conforming area, thereby contravening provisions of section 14 of DDA Act. This was challenged by the petitioner in appeal bearing LPA No.707/2013 which was disposed of on 07.01.2016, directing the petitioner to place all the relevant records establishing that the land in question does not fall in the '*non conforming zone*' before the respondent no.1/University. The said direction resulted in the impugned order which according to learned counsel, considered all aspects and passed a reasoned order. Thus, the petition be dismissed with costs.

25. Ms. Sikri, learned counsel also argued that given the limited protection of the proviso to section 14 of the DDA Act, any alteration in the purpose, extent and the specific usage of the land/ building can be done only as per the Regulation, if any, as stipulated in the proviso to Section 14 or by ensuring that the land or building is used in conformity



with the notified zonal plan under section 14 of the DDA Act. She contends that the petitioner has failed to produce any document issued under a Regulation as stipulated under the proviso to Section 14 or under the Zonal Plan as referred under Section 14 of the DDA Act and no regulation have been made till date.

26. Learned counsel submitted that as per Clause 17 of the policy guidelines of the year 2011, if a new Institute is established in lal-dora/ Extended lal-dora/agricultural land, the same has to be as per norms of DDA under the notification of MPD-2021 only. Since ZDP of all the relevant zones have been approved/notified by the respondent no.3/DDA pursuant to MPD 2021, the proposal will be subject to the condition that the institution would procure a communication from the respondent no.3/DDA clarifying that the institute is located either in the confirming area or area proposed for inclusion as institutional land or area proposed for regularization as per the policy of the respondent no.3/DDA.

27. She submits that in the present case since no such communication of the respondent no.3/DDA has been furnished to the respondent no.1/University, it would not be able to process the application of affiliation. On that basis learned counsel prays that the present writ be dismissed.

REJOINDER

28. Mr. Yadav, learned counsel in rejoinder submits that the arguments addressed by the learned senior counsel based on legal objections cannot be considered by this Court, since the affidavit filed



on behalf of respondent no. 3/ DDA does not depose any of those facts nor the objections urged by the learned senior counsel. He submits that it is trite that parties even in a Writ Petition cannot be permitted to argue issues which have not been contended in the pleadings.

29. On merits, Mr. Yadav reiterates his previous contentions/arguments.

ANALYSIS AND CONCLUSIONS:-

30. This Court has heard the arguments of Mr. Yadav learned counsel for the petitioner, Mr. Kailash Vasdev, learned senior counsel for the respondent no.3/DDA, Ms Sikri, learned counsel for respondent no.1/ University, examined the documents on record and those handed over the bench and considered the judgements relied upon by the parties.

31. The issues that need consideration by this Court are:-

- (i) *Whether the subject land of the petitioner does or does not fall within the conforming or non conforming area as envisaged under various laws including the DDA Act, 1957, the MPD 2021 and the ZDP, 2010 and;*
- (ii) *Whether the petitioner needs to obtain any NoC from the respondent no.3/DDA for the purposes of applying for affiliation from the respondent no.1/University?*

32. In order to appreciate the aforesaid questions, it would be relevant to note that the respondents cumulatively emphasized on the fulfillment of Clause 17 of the Policy Guidelines dated 06.05.2011 of the respondent no.2/Directorate of Higher Education as was continued in



the Policy Guidelines dated 12.01.2016. The same is extracted hereunder:

“17.NOC/ Revalidation of NOC in non-conforming area:-

“The establishment of new Institutes in lal-dora/ extended lal-dora/ agricultural land has to be taken up as per norms of DDA under the notification of MPD-2021 only. The Policy for revalidation of NOC for the Institutes located in non-conforming area is to be taken up by the Cabinet, including issue of NOC for 2nd Shift, if any application is received.

Second shift may be allowed in existing institutions falling in non-conforming areas, provided they fulfil all the necessary conditions in terms of space, security, faculty, library etc. And also have clearance from the statutory authorities like AICTE, UGC. Since Zonal Development Plans of all the relevant zones have been approved/notified by the Delhi Development Authority pursuant to MPD 2021, the proposal will be subject to the condition that the institution would procure a communication from DDA clarifying that the institute is located either in the conforming area or area proposed for inclusion as institutional land or area proposed for regularization as per the policy of the DDA on the matter.”

A perusal of the aforesaid clause reveals that in case of new institutes seeking establishment or established in lal dora/extended lal dora or agricultural lands and applying for NoC, the same ought to be as per the norms of DDA under the notification of the MPD 2021 only. In case of re-validation of the NoC of the institutes located in non conforming areas, the policy decisions are to be taken up by the Cabinet of Directorate of Higher Education. Apart from certain other conditions, the applicant was to submit a communication from the DDA that the institute is located either in the conforming area or the area proposed for inclusion as institutional land or area proposed for regularisation as per the policy of the DDA on the matter. In other words, in the present



case, the petitioner is to submit to the respondent no.1/University a communication as stipulated above from the respondent no.3/DDA that the subject land is either '*conforming area*' or falling within the area '*proposed for regularisation*' as per the DDA.

33. It would also be relevant to note at this stage itself that in the previous litigation between the parties, *sans* the respondent no.3/DDA, learned single judge of this Court in W.P.(C) No.4009/2013 had *vide* the judgement dated 02.09.2013 directed the respondent no.1/University to consider afresh the application of the petitioner seeking affiliation considering the subject land as non conforming area and dispose of the same, however, without insisting on the requirement of any NoC from the GNCT of Delhi or the Directorate of Higher Education. Except the petitioner, the respondents including the respondent no.1/University or the respondent no.2/Directorate of Higher Education, GNCT of Delhi had never challenged the said judgement or its findings. Thus, the aspect of any clearance or NoC from the date of Directorate of Higher Education in that regard has already been settled in favour of the petitioner and remains unchallenged even after the passage of more than a decade.

34. In the LPA No. 707/2013, the learned Division Bench of this Court in its judgment dated 07.01.2016 directed the respondent no.1/University to reconsider the application of the petitioner and pass a speaking order. It was in pursuance of this order that the impugned order was passed. Thus, to the extent of the findings and conclusions of the learned Single Judge as well as the learned Division Bench are



concerned, this Court shall advert to the same as uncontroverted.

35. As per the petitioner, by the communication dated 16.05.2011 the respondent no.1/University, for the purposes of affiliation with it for conducting B.Ed. programme, asked the petitioner to submit the necessary letter/communication from the respondent no.3/DDA regarding the conformity of the subject land. By the letter dated 10.06.2011, the respondent no.1/University informed the petitioner that after examining the communication dated 03.06.2011 from the respondent no.3/DDA, its Committee had recommended the case of the petitioner for further process of affiliation subject to fulfillment of other necessary conditions. Simultaneously, NCTE *vide* the letter dated 17.08.2012 granted the Recognition Order under section 14(3)(a) of the NCTE Act, 1993 for 1 year duration with intake of 100 students for the academic year 2012-13.

36. It was only by the letter dated 10.05.2013 that the respondent no.2/Directorate of Higher Education, GNCTD refused to grant NoC to the petitioner on the ground that the institution falls under the category of '*Non conforming Area*'. It was this letter that was impugned in LPA NO. 707/2013 and W.P.(C) No. 6365/2013. The course of the said litigation is already explained in the preceding paragraph.

37. Now coming to the facts as expounded in the present writ petition. It is neither denied nor doubted by any of the respondents that by the letter/order dated 12.08.1959, the Chief Commissioner, Delhi, under the provision of section 1(2)(c) of the DLR Act notified and published as per the provisions of Rule 1(c)(3) of the DLR Rules, 1954 in the Delhi



Gazette, that certain lands in Delhi are held and occupied for a public purpose or a work of public utility on the date of commencement of the said Act. Undoubtedly, the subject lands were notified too as public purpose or held for works of public utility. This has neither been denied nor controverted by any of the respondents. So much so, the respondent no.2/Directorate of Higher Education has not even filed its counter affidavit in the present matter. Thus, this Court proceeds with this established fact.

38. The aforesaid fact, being *de facto* was also reiterated as *de jure* by virtue of sub-section (4) of section 1 of the DLR Act, 1954 according to which, the declaration of the Chief Commissioner under clause (c) of subsection (2) of section 1 of DLR Act shall be conclusive evidence that the land is held and occupied for a public purpose or a work of public utility. It would be apposite to consider the language of clause (c) of subsection (2) of section 1 of DLR Act which is hereunder:

“1. (1) *This Act may be called the Delhi Land Reforms Act, 1954.*

(2) *It extends to the whole of the Union territory of Delhi, but shall not apply to—*

(a) xxx

(b) xxx

(c) areas held and occupied for a public purpose or a work of public utility and declared as such by the Chief Commissioner or acquired under the Land Acquisition Act, 1894, or any other enactment other than this Act, relating to acquisition of land for a public purpose.

(emphasis supplied)

The language is clear and brooks no ambiguity. All those lands which have been declared under the powers conferred and notified, shall



be treated as held for public purpose or for works of public utility. By the Act, such declaration deems the conclusivity of evidence of the nature of such lands. Accordingly, there is no iota of doubt whatsoever, that the subject land was held for public purpose or for works of public utility. Either way, it was neither an agricultural land nor fell within the ambit of DLR Act as clearly stipulated. Thus, one thing is clear, the subject lands were never agricultural lands.

39. Relevant it would be, also to consider the effect of the Notification dated 12.08.1959 itself. For clarity, the said notification is extracted hereunder:

*“GOVERNMENT OF INDIA
DELHI ADMINISTRATION
EXTRODINARY
PART IV
PUBLISHED BY AUTHORITY
NO. 401, DELHI TUESDAY, AUGUST 25-1959,
BHADRA 3, 1881.
DELHI ADMINISTRATION
NOTIFCATION
DATED, the 12th August, 1959.*

37. KRO/59 – The following list of areas, which the Chief Commissioner, Delhi is pleased to declare in pursuance of clause (c) of section (2) of Section 1 of the Delhi Land Reforms Act, 1954 and after previous publication as held and occupied for a public purpose or a work of public utility on the date of commencement of the said Act, is published as required by sub clause (3) of clause [c] of rule 1 of the Delhi Land Reforms Rules, 1954.

*Sd/-
The Controller
Deptt of Publication
Civil Lines, Delhi 110 054.”*



2024: DHC: 3196



1	2	3	4	5	6	7	8	593/114
					Bgh. Bs.			DELHI GAZETTE EXTRAORDINARY
					11 9	4 10	Do	
					11 10	2 10	Do	
					11/ 13 1	0 4	Ghair Mumkin Kotha Chahi	
					11/ 13 2	2 0	Chahi	
					11/ 13 2	0 5	Ghair Mumkin Chahi	
					11 14	3 12	Chahi	
					11 15	3 12	Do	
					12 5	2 10	Do	
					15 fields	41 17		
Kanjhawala	56 105	Shamlat Panna Uddian Hassab rasad ratba khewat	Under the custody of P.W.D.	128	0 17	Ghair Mumkin road.		PART IV
				136 2	12 8	Do		
	160 246	Shamlat Panna Hiran, Panna Paton, Panna Jhaman, Hasab-rad raqba khewat.	Do	136 1	16 14	Do		
	160 243	Do	Haryana Shakti School, Kanjhawala	111	70 3	Ghair Mumkin school		
	161 250	Haryana Shakti School, Kanjhawala	Under the custody of school	110	100 2	Do		
	160 244	Shamlat Panna Hiran, Panna Pattu, Panna Jhaman, Hasab-rasad raqba khewat.	Under the custody of Health Department	109	23 0	Ghair Mumkin hospital		
	162 252	Shamlat Deh Hasab-rasad raqba khewat	Under the custody of District Board Education Department	67 6	2 12	Ghair Mumkin school		
				14	3 14	Do		
				15	4 16	Do		
Lad Pur	72 136	Shamlat Panna Hiran Hasab-rasad kabza ari khewat	Under the custody of Canal Department	49 6 2	0 13	Ghair Mumkin canal		PART IV DELHI GAZETTE EXTRAORDINARY 593/115
				15 2	1 15	Do		
				16 2	0 6	Do		
				17	1 4	Do		
				91 23 3	0 4	Do		
				93 4 2	0 11	Do		
				6 2	0 5	Do		
				94 10 2	0 7	Do		

(emphasis supplied)

Signature Not Verified

Digitally Signed
By: VINOD KUMAR
Signing Date: 26.04.2024
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W.P.(C) 5932/2016

Page 26 of 32



It is noteworthy that the notification postulates a deeming provision. In that, it considers such declaration to be with effect from the date of the commencement of the Act itself. This would gather great significance inasmuch as, the declaration being conclusive evidence of the “*public purpose or works of public utility*” of subject lands would be effective from the date of commencement of the Act, that is, 1954. The DDA Act was notified on 30.12.1957. Thus, it is obvious, that the subject lands were declared to be held for “*public purpose or for works of public utility*” with effect from 1954, preceding the promulgation of the DDA Act. It is trite that deeming fiction must be read in a manner so as to further the objective of the fiction itself and taken to its logical conclusion. Reliance is placed on the judgement of the Supreme Court in *State of Bombay vs. Pandurang Vinayak Chaphalkar & Ors*, reported as 1953 SCC OnLine SC 47. The relevant portion is extracted hereunder:-

“11... When a statute enacts that something shall be deemed to have been done, which in fact and truth was not done, the court is entitled and bound to ascertain for what purposes and between what persons the statutory fiction is to be resorted to and full effect must be given to the statutory fiction and it should be carried to its logical conclusion. (Vide James, L.J. in Levy, In re, ex p Walton [Levy, In re, ex p Walton, (1881) LR 17 Ch D 746 at p. 756 (CA)] .)...”

40. From the aforesaid analysis both on facts and on law, it is quite clear and undisputed that the subject lands were held for public purpose or for works of public utility from the year 1959, if not 1954. Before further embarking upon the facts it would be quite significant to note that none of the respondents, particularly the DDA or the GNCT of



Delhi have placed on record any documentary evidence or even in pleading that the said notification of 1959 of the Chief Commissioner, Delhi was either revoked, rescinded, quashed/set aside or modified or overruled at any subsequent point in time till date. Hence, this Court takes it to be an undisputed position on facts and law that the notification still holds good.

41. It is also relevant to consider the fact that by the letter dated 19.03.1957, the Board of Higher Education granted Permanent Recognition to the Haryana Shakti Higher Secondary School and is not disputed. This too was before the DDA Act was brought into force on 30.12.1957. By the letter dated 31.01.2013, the Education Officer, Zone XII informed the Directorate of Higher Education that the said School is functioning since 1945. This is of considerable importance since it lends credence to the submission that the subject lands were being used for educational purposes even before the DLR Act, 1954 or the DDA Act, 1957, were promulgated.

42. It is clear from page 4 of the MPD 2021 particularly Clause (i) of point 20 of introduction of the MPD 2021, that areas earmarked for Trade and Commerce were to be developed as "*Facility Corridors*". Chapter 5.0 thereof, is in respect of Trade and Commerce, particularly Clause 5.7.1 of the topic "*Sub City Level Commercial Areas*". Chapter 13 of the MPD 2021 regarding Social Infrastructure clearly indicates how the planned development of Delhi has been envisioned by the respondent no.3/DDA. Clause 13.11 deals with Public and Semi Public Facilities within which Clause 13.21 deals with Educational Facilities.



Sub-Clause (8) of the said Clause permits opening of a Teacher Training Centre/Institute, Nursing and Paramedic Institute. This needs to be correlated with Chapter 17, which is the “*Development Code*”. Clause 4 designates the “*Use Zones*” according to which Educational Institutions, Research University and Colleges etc., fall within the Public and Semi Public Facilities etc and are permissible even in the Residential Zones. It is also clear that apart from the above, as per sub Clause (viii) of Clause 8(2) of Chapter 17, Teacher Training Institutes can be established in Residential, Commercial – 1 and Public/Semi Public Facility Areas as earmarked by the MPD 2021. It is undisputed that the petitioner simply sought to commence a Teacher Training Institute in the area where it is permissible to do so. In other words, even as per the MPD 2021, whether the area falls within the Residential Zone or Commercial -1 Zone or Public/Semi Public Facility Area, the petitioner cannot be denied affiliation on the grounds of being established on non conforming area.

43. Yet another angle to consider the dispute is by referring to the ZDP for Zone –N, within which the subject land/area in question falls. It would be relevant to consider Chapter 11.0 regarding “*Proposed Land Use*”, particularly Clause 11.6, 11.6.1 and 11.6.2 according to which Public/Semi Public Facilities were to be provided as “*Facility Corridors*” along major roads. Reference may be had to Clause 11.6.2 (vi), which permits opening and establishment of Teacher Training Institute under Clause 8(2) of the MPD 2021. It is relevant to note that according to the ZDP, Zone – N, no particular user for the subject lands



was discernible nor was clearly pointed out by the respondent no.3/DDA.

44. Significant arguments were addressed on the effect of section 14 of the DDA Act and its proviso. To appreciate the effect of the said section it would be apposite to reproduce the same hereunder:

“14. User of land and buildings in contravention of plans.—After the coming into operation of any of the plans in a zone no person shall use or permit to be used any land or building in that zone otherwise than in conformity with such plan:

Provided that it shall be lawful to continue to use upon such terms and conditions as may be prescribed by regulations made in this behalf any land or building for the purpose and to the extent for and to which it is being used upon the date on which such plan comes into force.”

(emphasis supplied)

The language brooks no ambiguity. Once a ZDP is notified, the lands falling within such Plans cannot be used in contravention of such user, provided such usage not in conformity of such Plan, can be continued as per the Regulations to be framed in that regard by the DDA. It is not disputed that no such Regulations under proviso to section 14 of DDA Act has been framed till date. Meaning thereby, there is no regulation prescribed by virtue whereof, lands such as the subject lands can be regulated. In other words, the user of the subject lands as “*Public purpose or for works of Public Utility*”, as notified under the gazette notification dated 12.08.1959, is permissible. This view is fortified by the judgements of *Lal Singh (supra)*, *White Mills (supra)* and *Somawanti (supra)*.

45. The attention of this Court was also drawn to the affidavit dated



01.03.2023 filed on behalf of the respondent no.3/DDA wherein it was contended that the subject land admeasuring 100 bigha 02 biswa in Village Kanjhawala partly falls on the proposed '80 meter right of way road', partly on the proposed 'Facility Corridor' and partly under the 'Residential' land use. Mr. Yadav had vehemently opposed the contention that a proposed 80 meter road exists within the subject lands and tried to demonstrate from the ZDP, that it is not so. It is worth noting that this was the only affidavit filed by the respondent no.3/DDA. It appears that the DDA itself is treating those lands as partly "Facility Corridor", partly "Residential". If this Court were to go even by the recitals of the affidavit of the respondent no.3/DDA, it is clear that the MPD 2021 itself as noted above permits establishment of Teacher Training Institutes in both, the Facility Corridors/ Public/Semi Public Facility Areas as well as Residential Zones. If that were so, the petitioner undisputedly falls within the permissible zone and does not need any NoC from the respondent no.3/DDA regarding the subject lands being within the conforming zone.

46. In view of the above detailed analysis and findings, the contentions/arguments of the respondent nos.1 and 3 would become irrelevant and pale into insignificance.

47. **Issue no. (i)** is answered in the affirmative in that, the petitioner falls within the conforming area and **issue (ii)** raised above is answered in the negative, in that, the petitioner need not seek NoC from the respondent no.3/DDA.

48. Consequently, the impugned order dated 31.05.2016 is untenable



2024:DHC:3196



in law and is accordingly quashed and set aside. Resultantly, the respondent no.1/University is directed to process the application for affiliation sought by the petitioner, subject to fulfillment of all other conditions as prescribed without insisting for a NoC from the respondent no.3/DDA regarding the question as to whether the petitioner is established in non conforming zone/area within eight weeks from the receipt of this order.

49. The present writ petition alongwith the pending applications, if any, are disposed of in above terms, however, without any order as to costs.

TUSHAR RAO GEDELA, J.

APRIL 24, 2024/rl