
(1977) 12 DEL CK 0004

In the Delhi High Court

Case No : Civil Appeal No. 309 of 1974

Audyogic Karamcham Group Housing Society Limited

APPELLANT

Vs

Delhi Development Authority and Others

RESPONDENT

Date of Decision : 20-12-1977

Acts Referred:

Citation : (1978) 14 DLT 110

Hon'ble Judges : V.S. Deshpande, J;H.L. Anand, J

Bench : Division Bench

Advocate : B. Kirpal, Jagdeep, K.K. Sharma, Madan Lokur, Keshav Dayal, R.K. Khanna, B.N. Lokur, K.N. Kataria, Ashok Sen and S.N. Kumar, for the Appellant;

Judgement

V.S. Deshpande, J.

(1) Two important questions of law arise in this writ petition, namely :-

(1)How the executive power of the Union of India to dispose of its own land under Article 298 of the Constitution is to be exercised in compliance with its obligation under Article 14 of the Constitution not to deny to any person equality before the law or the equal protection of the laws ?

(2)Whether the directions given by the Central Government to the Delhi Development Authority regarding the disposal of nazul land could be issued only under the Delhi Development Act, 1957 particularly u/s 22(3) thereof or- also under Article 298 in exercise of executive power and the difference between the ambits of relevant considerations which may underlie a direction issued under the statute or the Constitution as the case may be ?

THEimportance of these questions is accentuated by the fact that land with a building potential in Delhi and particularly in South Delhi is scarce and the Central Government as the owner of nazul land has to do the very difficult task of choosing some from numerous applicants for allotment of plots of land.

(2) Nazul land belonging to the Central Government in Delhi which is placed by it

at the disposal of the Delhi Development Authority u/s 22(3) of the Delhi Development Act has to be dealt with by the Authority in accordance with the Rules made and directions given by the Central Government in that behalf u/s 22(3) of the Act. The basic policy of the Central Government in this regard was conveyed to the Delhi Development Authority by letter dated 3rd January 1972 (Annexure F to the Writ petition). This letter was treated by the learned counsel for the parties in their arguments before us as being in the nature of directions issued u/s 22(3) of the Act. It lays down the manner in which the allotment of plots should be made to the group housing societies in the different parts of Delhi/New Delhi, namely :-

(A) Six such societies should be allotted land in South Delhi in view of commitments already given to them by the Government of India/Delhi Administration. Since land in South Delhi is scarce, no other group housing society need be considered for allotment in that area for the present. The price of land in South Delhi may be fixed higher than that applicable to other areas as suggested by the D.D.A.

(B) Group housing societies other than the six mentioned above should be considered for allotment in other areas (Rohtak Road, Najafgarh Road and Shahdara). Care should, however, be taken to see that group housing societies consisting of members working in a particular area, e.g., University teachers and lecturers are allotted land in that part of Delhi which is nearest to the place of their employment as far as possible.

(C) Allotment should be made to the societies in order of their date of registration.

(D) Not relevant.

(E) Allotment of land to group housing societies should be made on the basis of 50 apartments per acre with a 15 per cent variation. Ordinarily, not more than 2 acres should be allotted to a group housing society.

(F) No flat/apartment will have carpet area exceeding 200 sq. feet.

(3) The petitioner and Respondent 3 are both group housing cooperative societies. The members of the petitioner society consist wholly of persons working in the various industrial establishments of the Okhla Industrial Area in South Delhi. In fact, bye-law No. 5(i) (h) of the petitioner society confine eligibility to be a member of the society only to a person who is an employee of an industry situated in the Okhla Industrial Estate or its vicinity. Respondent 3 society has, however, no such restriction on its membership. Any one who is domiciled in Delhi, New Delhi or Delhi Cantonment and who does not own a dwelling house or a plot therein can become a member of the society. Out of its 214 members, only members 1 to 25, 67 to 71, 97 to 136 are employees of the Jamia Milia. Members 26 to 34 and member 77 are said to be working in the vicinity of Jamia Milia. Members 47 to 66, 72 to 76, 78 to 96, and 141 to 214 are said to be residents of the locality while members 35 to 46 and 137 to 140 are

said to be children, brothers, dependents, etc., studying at the Jamia Milia. The date of registration of the petitioner society is also much prior to that of the Respondent 3 society. Both the societies along with many others applied to the Central Government as also to the Delhi Development Authority for allotment of plots for group housing. Both of them along with others applied for allotment of land in South Delhi. The applications of both of them along with others were rejected on the ground that the land in South Delhi was scarce and that they should apply for allotment of land in other parts of Delhi.

(4) Respondent 3, however, took up the matter directly with the Minister concerned. In letter dated 21st March, 1973 addressed by Shri M. F. H. Beg, Honorary Secretary of Respondent 3 society to Shri Bhola Paswan Shastri, Minister for Works and Housing, the previous rejection of the application of the society was sought to be reviewed on "two very special grounds. Firstly, as members of the minority community we have special reasons for being in the South Delhi area, our needs for Mosques, Urdu Schools and burial grounds cannot be met in Shahdara etc. Secondly, since most of our members are teachers it is inconceivable for them to stay in trans Jamuna etc. and come to Okhla". On 26th June, 1973 Shri Jagmohan, Vice-Chairman, Delhi Development Authority, wrote to Shri A. N. Kidwai, Secretary to the Government of India, Ministry of Works and Housing, stating that "the D.D.A. had passed a resolution declaring the area around Jamia Milia as "development area". The formal notification in this regard was yet to be issued. It would be possible to find some small piece of land for group housing purposes in this area. It was felt that Respondent 3 society has a case for allotment on special consideration provided the allotment is restricted to those who are associated with the Jamia Milia" Institute. However, it was for the Government to finally decide the allotment of the land because of the orders issued on 3rd January, 1972 (Annexure F to the writ petition)". Shri Kidwai made an endorsement on 28th June, 1973 in the margin of this letter as follows :--

"H.M.&H.M.(S) have both felt that because of the very special case of this Society as indicated in Shri Beg's letter the request for a suitable plot of land in South Delhi to this society be agreed to."

MORE formally this was followed by the letter dated 26th July, 1973 (Annexure M to the writ petition) from the Joint Secretary to the Government of India, Ministry of Works and Housing, to the Vice-Chairman of the Delhi Development Authority which ran as follows:

"IN partial modification of the instructions contained in letter dated January 3, 1972, it has been decided that a suitable plot of land near Okhla in South Delhi may be allotted to Dr. Zakir Hussain Memorial Co-operative Group Housing Society Ltd."

Accordingly, January 23, 1974, 4.25 acres of land in Zone F.1/7 in South Delhi was allotted to Respondent 3 society by the Delhi Development Authority in

compliance with the orders of the Central Government.

(5) This allotment of land to the Respondent 3 society is challenged by the petitioner society in this writ petition as being illegal and mala fide and particularly as being against the policy laid down by the Central Government in its letter of January 3, 1972 (Annexure F to the writ petition). The petitioner avers that it has a better claim for allotment of land in South Delhi as compared with the claim of Respondent 3 on both the grounds, namely, (1) all its members work in the Industrial Estate at Okhla in South Delhi and (2) its date of registration is much prior to that of the Respondent 3. The allotment to Respondent 3 is, Therefore, discriminatory and contrary to Article 14 of the Constitution.

(6) Since the Respondent I Delhi Development Authority has acted under the express orders of the Central Government. Respondent 2, the main defense was by Respondents 2 and 3. They point out that (1) the writ petition does not disclose any real contravention of Article 14 of the Constitution since there is nothing to show that the petitioner is similarly situated as compared with Respondent 3. The latter society largely consists of members associated with the Jamia Milia" which is a national institution with historical background. The said institution has behind it a history of the national struggle for independence of this country. The members of Respondents 3 are middle class teachers of the Jamia Milia as well as some others connected in one way or the other with the Jamia Milia. The members of Respondent 3 have certain special socio-cultural needs such as the availability of Urdu Medium School, mosques and burial grounds. (2) In answer to the query by the Court made on October 22, 1974 as to the land already with the Jamia Milia for the housing of their own teachers and the staff, the Government stated in an additional affidavit filed on January 2, 1975, paragraph 8, that "the Delhi Administration has allotted about 500 bighas of land to the Jamia Milia for institutional purposes; as per the Master Plan for Delhi, a portion of the land allotted for institutional purposes can be utilised for construction of staff quarters of the Institution on being allowed by the Delhi Development Authority as a case of special appeal; it is not possible for the deponent to say as to how much land will be allowed by the Authority under special appeal to be utilised by the Jamia Milia for construction of quarters for their own teachers and staff". The Delhi Development Authority (Respondent 1) has not, however, said anything in answer to the above query. The Jamia Milia is not a party to the writ petition.

(7) The different facets of the two questions of law set out at the outset above which may now be considered are as follows :-

(1)Whether the petitioner society has a locus standi to question the grant of land by the Respondents I and 2 to Respondent 3 ?

(2)Whether the reasons underlying the grant of land to respondent 3 are to be covered by direction issued u/s 22(3) of the Delhi Development Act or only by

Article 298 of the Constitution ?

(3) Are these reasons contrary to Article 14 of the Constitution ?

(4) Whether the grant of land is otherwise unnecessary or excessive ?

(8) Question No. (1) The property in the land for which the petitioner, the respondent 3 and other group housing societies were applicants for grants for house building purposes belonged to the Government and has been placed at the disposal of the Delhi Development Authority for development and disposal. The petitioner does not, of course, have any legal right that a grant of land to it must be made by the Government or that the grant of land to other societies must not be made by the Government. The Government need not make any grants of the land to any one. But the familiar description of an owner's right "I shall give my land to any one I like" is not true regarding the Government. As observed by the Supreme Court in *Erusian Equipment and Chemicals Ltd. Vs. State of West Bengal and Another*, : -

"THE Government is a government of laws and not of men. It is true that neither the petitioner nor the respondent has any right to enter into a contract but they are entitled to- equal treatment with others who offer tender or quotations for the purchase of the goods. This privilege arises because it is the Government which is trading with the public and the democratic form of Government demands equality and absence of arbitrariness and discrimination in such transactions. Hohfeld treats privileges as a form of liberty as- opposed to a duty. The activities of the Government have a public element and, Therefore, there should be fairness and equality. The State need not enter into any contract with any one but if it does so, it must do so fairly without discrimination and without unfair procedure."

(9) Since the development of the land necessarily results in allotment of plots of land to different persons and bodies for different purposes, both the Government and its statutory agent, the Delhi Development Authority, are under an obligation to observe the constitutional requirements of Article 14 of the Constitution. This obligation is that they must give an equality of opportunity to the various applicants and they must fairly consider the applications of all of them. Since the land is not sufficient to meet the needs of all the applicants and since the merits of the applicants will vary, the Respondents 1 and 2 will be able, acting under Article 14, to make one or more reasonable classifications among the applicants and to decide to whom the land is to be granted. Firstly, the position of an applicant is different from an ordinary member of the public. As against the rest of the public, an applicant is entitled to make an application. For instance, he is domiciled in Delhi and does not own any other plot of land or house in Delhi. Further, he may be working in the particular part of Delhi in which he is seeking land for allotment. Lastly, the applicant may be a group housing co-operative society which is according to the policy of the Government to be dealt with in accordance with the priority of the date of its registration as a co-operative

society. Secondly, the grant of land by the Government to the Respondent 3 affects the petitioner more particularly than it does an ordinary member of the public. The applicant is, Therefore, not merely a" general critic of the grant. He is not like a press commentator or an author or a politician who are merely criticising the Government having a theoretical interest in proper administration. The petitioner is particularly damnified by the grant to Respondent 3 because the quantum of altottable land in South Delhi is scarce. Allotment to one applicant lessens the chances of every other applicant to get such scarce land. The right of the applicant to challenge the grant is strengthened if the applicant can show that it has been discriminated against contrary to Article 14. The petitioner, Therefore, has the locus standi under Article 226 of the Constitution to challenge the grant (Godde Venkateswara Rao Vs. Government of Andhra Pradesh and Others, . Radhey Sham v. Lt. Governor, Delhi. 2nd (1970) 2 Delhi 260, and many other American, English and Indian decisions considered in an Article "Standing and Justiciability", 1971 Journal of the Indian Law Institute 153).

(10) On behalf of the Central Government, Shri B. N. Lokur relied on K.V. Rajalakshmiah Setty and Another Vs. State of Mysore and Another, for the proposition that if the Government gives a concession by way of allotment of a plot of land to Respondent 3, no right is created thereby in the petitioner to the allotment of a plot of land. In our view, " this decision does not apply to the facts of our case. There is no question of concession being given by the Government either to Respondent 3 or to the petitioner. As stated above, while it is in the discretion of the Government not to allot land to any one, once the Government decides to make an allotment it is subject to the obligation imposed on it by Article 14. The decision referred to by Shri Lokur does not consider the application of Article 14 at all. Reference was also made to T. Devadasan Vs. The Union of India (UOI) and Another, . The reservation of posts in favor of the Scheduled Castes and Tribes was justified there expressly in terms of clause (4) of Article 16 to which is an exception to the first two clauses of Article 16 as also to Article 14.

(11) No such constitutional or statutory exception to Article 144 exists in favor of respondent No. 3. The allotment to respondent No. 3 was based on two reasons, namely (1) that its members belonged to a minority community which has special socio-cultural needs, and (2) that most of its members are teachers. The allotment was not based only on the first reason. Had the allotment been made only for the first reason it could have been argued that it was contrary to Article 15(1) because it was made only on the ground of religion. For, the minority referred to is based only on the ground of religion; it is only because it belongs to the particular religion that it has these needs. But the crux of Article 15(1) is that it hits only that action which is based only on the ground of religion, etc. A fair reading of the order passed by Shri Kidwai in the context of the letter written by Shri Beg would show that Shri Kidwai based his order on all reasons given in Shri Beg's letter. He did not single out the minority status of respondent No. 3 as being the only reason for the allotment.

(12) Shri Kumar said that at the time Shri Beg wrote his letter and Shri Kidwai passed his order half or more than half of members of respondent No. 3 were teachers working at Jamia Milia. The second reason was, Therefore, as important as the first one for the making of the allotment. It cannot be said, Therefore, that the allotment was based only on the ground of religion and was contrary to Article 15(1). This question was not raised in the pleadings, but was put by us to the learned counsel in view of its relevants and hence this expression of opinion by us.

(13) While, Therefore, the members of the petitioner Society claimed to be considered for allotment on the ground that they are working in South Delhi, the members of respondents No. 3 Society support their entitlement both on the grounds of being a minority community and the majority of the members at the time of the application being teachers of Jamia Milia. The two claimants are not similarly situated in all respects. Each of them belongs to a different class. The Government had elbow-room to classify them into two different categories. This is a reasonable classification. Which of these two classes should be preferred for allotment in South Delhi was for the Government to decide. This is a value judgment which is to be made only by the Government. The Court has no reasons for questioning it.

(14) Harman Singh and Others Vs. Regional Transport Authority, Calcutta and Others, , was also referred to. It only held that the right guaranteed by Article 19(1)(g) does not guarantee a monopoly to a particular individual or association. Therefore, even though the larger taxis had been issued permits, the Government was not prevented from issuing more permits to smaller taxis. The ratio of this decision has no application to the facts of the present case. Lastly, reliance was also placed on Sheila Kapur and Others Vs. The Chief Commissioner, Delhi and Others, . This decision holds that while the provisions of Article 14 of the Constitution would not be attracted, the Government is expected to act in consonance with the principle of fair play even while extending concessions to citizens and treat them as far as possible on equal basis. We do not understand it to mean that equality of opportunity based on Article 14 need not be extended by the Government to the various applicants for grant of land. We only gather from the decision that the ultimate decision to whom such a grant should be made has to be of the Government which will no doubt bear in mind the different merits of each applicant.

(15) In terms of the amended Article 226(1) of the Constitution, the claim of the plaintiff would fall firstly under clause (a) being for the enforcement of the fundamental right guaranteed by Article 14. This would be so even if the grant is held to have been made by the Government in exercise of its executive authority under Article 298 of the Constitution. In case the grant is construed to be under a direction issued u/s 22(3) of the Delhi Development Act and it is contrary to such a direction it would also be in contravention of an instrument, namely, the direction given u/s 22(3) of the Delhi Development Act and would then be

covered by clause (b) of Article 226(1) of the Constitution. The petition is, Therefore, maintainable and the petitioner has a locus standi to maintain it.

(16) Question No. (2) :- The difficulty of understanding the considerations underlying the grant of land by the Government to Respondent 3 arises in this way. On the one hand, the object of the Delhi Development Act, 1957 is the development of Delhi according to plan and to provide for matters ancillary thereto. The word "development" is defined in section 2(d) of the Act and means the carrying out of building, engineering, mining or other operations in, on, over or under land or the making of any material change in any building or land. The Master Plan and the Zonal Plans which are framed under Chapter Iii of the Act define the various zones into which Delhi is divided for the purpose of development indicating the manner in which the land in each zone is to be used. The uses of the land include residential, commercial, industrial and other kinds of uses. It is incidental to these activities for the Government and/or the Delhi Development Authority to determine the conditions on which grants of land would be made and also take decisions as to which of the applicants the grants would be made. But there is no indication in the Act itself as to the criteria on which reasonable classifications of applicants for grants of land could be made and which of the applicants should be preferred to the others. u/s 22(3), the Central Government can make Rules and can also give directions under which the land is to be dealt with by the Delhi Development Authority. No Rules have been framed. In so far as the directions deal with development or any matter covered by the Act, they have to be in consonance with the Act. The basic condition that an applicant for the grant of land must undertake to use the land for the purpose of development under the Act must be an underlying consideration in every grant. Beyond this minimum condition, however, the merits of the applicants would have to be judged by many other qualifications. These, on the other hand, have nothing to do with the Act. They are general considerations which Government has to bear in mind to enable it to make reasonable classifications among the various applicants for grant of land. For instance, the use of the land for building a residence may be desired by different kinds of applicants such as (1) persons who work in or near the area in which the land is situated, (2) persons who live nearabout, (3) persons whose children come to the area for-education, (4) persons who want to avail themselves of facilities for education, prayers and burial ground situated in a particular locality. While a direction issued u/s 22(3) must include the consideration that an application for grant of land must be for the purpose of development, this is the only extent to which such direction has to be in accordance with the Act. The other four qualifications which may be possessed by the applicants which may be considered by the Government and/or the Authority in making the grant are strictly speaking not derived from any of the provisions or the spirit of the Act. It may be that these qualifications are incidental to the "efficient administration of the Act" within the meaning of section 22(3) under which also the Central Government may issue directions to the Delhi Development Authority from time

to time. They may also be incidental to the carrying out of the purposes of section 22 of the Act. This only means that the prescribing of these qualifications to be possessed by the applicants would not be contrary to the Act. This does not mean, however, that these qualifications were prescribed by the Government because the Act in any sense required them to be prescribed. Further, such other qualifications which may be deemed to be relevant for the purpose of grant may also be prescribed by the Government. These qualifications are neither inspired by the Act nor are they contrary to it. Since they are outside the ambit of the Act, their only connection with the Act is that they are not contrary to it.

(17) While the source of power to issue directions may be traced to section 22(3) or more generally to section 41(1) of the Act, the content of the directions cannot be traced to these provisions. The ambit of the content has, Therefore, to be related to the general power of an owner of a land to dispose of the land. Such power is given to the Government by Article 298 of the Constitution.

(18) Just as an ordinary owner of land may deal with it according to the Constitution and the law, similarly the Government may also do so. One peculiar obligation binding not on ordinary person but on the Government is that imposed by Article 14. We now know that the main ground on which the petitioner pressed its application; was that all the members of the petitioner society are working in the Industrial Estate at Okhla. Their need is supposed to be greater than the need of many other people because they have to work in factories many , of which work day and night. Many of the members of the petitioner society have, to work at odd hours and it is all the more necessary that they should be given land near to the place of work. We also know that respondent No. 3 society has no such restriction on its membership. Any one can become its member whether he is working in or near the Jamia Milia or not. Government has been candid enough to admit that the considerations underlying the grant to respondent No. 3 are not restricted to the fact that some of the members of respondent No. 3 work in the Jamia Milia. Actually those who work in Jamia Milia are only 70 as against the rest of the present total membership of 214. The majority of the members now are those who are not working in the Jamia Milia. There are other reasons for the allotment to respondent No. such as the association of respondent No. 3 with the memory of the late Dr. Zakir Hussain and the association of Dr. Zakir Hussain and the society with the Jamia Milia. It has also been taken into consideration that the members of respondent No. 3 wish to avail themselves of the education in Urdu medium, the burial ground and the mosque which are all available at the Jamia Milia. Further, it has been said that the socio-cultural needs of the minority community (Muslims) had to be attended to.

(19) The thrust of the petitioner's argument is that the allotment of land to respondent No. 3 expressly purports to be in accordance with the directions issued u/s 22(3) of the Act. The petitioner points out that the two relevant qualifications to be possessed by an applicant under the Government policy laid

down in Annexure F are (1) that the members of an applicant society must be working in the locality in which the grant of land is sought, and (2) the registration of the applicant society must be prior to the registration of the rival applicant societies. Since the petitioner scores in both these respects over the Respondent 3, the grant of land to the Respondent 3 and rejection of the application of the petitioner for it is discriminatory and contrary to Article 14.

(20) The Government does not view the matter in this light. It emphasises that the qualifications of Respondent 3 are entirely different from the qualifications of the petitioner. The strong point of Respondent 3 is not that its members or even a substantial part of its members work at the Jamia Milia. Its strong part is that the members belong to the minority community who desire to have Urdu education at the Jamia Milia, offering of prayers at the mosque there and burial of the dead in the burial ground there. There is nothing common between the petitioner and the Respondent 3. There can be no comparison between the qualifications possessed by each of them. While the case of the petitioner is covered by Annexure F, the case of the Respondent 3 is covered by Annexure M. What is Annexure M ? Unlike Annexure F, Annexure M does not lay down any qualifications to be possessed by an applicant for the grant of a land. When it says that the grant of land to Respondent 3 is made "in partial modification of the instructions contained in letter of January 3, 1972", it really means that the grant is made as an exception to the requirements laid down in Annexure F. Annexure M does not even say the grounds on which this exception is made. But Annexure M must be understood to be a complete departure from Annexure F. It need not be disputed that the grant to Respondent 3 is contrary to the policy of the Government laid down in Annexure F. But this does not secure the success of the writ petition and does not entail the quashing of the grant to Respondent 3. We are still required to consider the matter further.

(21) If the content of the considerations which may justify the Government in granting land u/s 22(3) is not supplied by the Delhi Development Act then the ambit in which these considerations can operate is much wider under Article 298. The considerations urged by the petitioner for grant of land are certainly relevant under Article 298. This only means that the application of the petitioner was worthy of consideration. This is not sufficient for the success of the petition. For, the application of the petitioner has been considered and has been rejected on the ground that the land in South Delhi is scarce. Scarcity is of course a relative term. It is different from total non-availability. Therefore, it only means that a very strong case must be made out before grant out of scarce land can be made.

(22) Has such strong case been made out by Respondent 3 ? In so far as 70 members of the society are employees of the Jamia Milia it could be said that such a strong case has been made out. The Government could take the view that as between the persons who work in the Industrial Estate of Okhla and the persons who work in the Jamia Milia, the latter set should be preferred over the former because the Jamia Milia on account of its history and national importance

deserves a little more attention than the Okhla Industrial Estate. The two institutions are of totally different character and it is only for the Government to make a choice between the two in respect of granting of land in South Delhi. The Court is not in a position to find fault with the preference of the Government for the Jamia Milia as against the Okhla Industrial Estate. But this consideration is confined only to those who work in the Jamia Milia. To say that every one who has any kind of association with the Jamia Milia should deserve the same consideration as Jamia Milia itself would deserve would be to make too vague a statement which cannot stand scrutiny. In the present case, one kind of association is the desire of the parents to educate their children in Jamia Milia. The education of children may be for a short period or for a pretty long period. It may only be a desire and may not be acted upon. No details are given as to how many children desire to be educated there and for what period and whether this desire would be acted upon definitely if the land is granted. Another kind of association is the residence in the locality. One cannot agree that mere residence nearabout the Jamia Milia would mean association with the institution. The answer to question No. 2, Therefore, would be that the reasons for the allotment of land to respondent No. 3 fall under Article 298 of the Constitution rather than under the direction issued in pursuance of section 22(3) of the Delhi Development Act.

(23) Question No. (3) :- It is only if the applications of the petitioner and respondent No. 3 had to be considered under the criteria laid down under Annexure F that the question of grant being contrary to Article 14 would have arisen. Shri B. N. Lokur for the Government argued that no criteria are laid down in Annexure F for grant of land in South Delhi. He argued that the priority of registration and the working place of the members of the society being near the place of the grant are criteria which are relevant for grant of land in areas other than South Delhi. This argument is only plausible but is not convincing. Firstly, immediately after stating that the land in South Delhi is scarce and that no allotment in South Delhi was to be made for the present, Annexure F goes on to say that higher price was to be charged for the land in South Delhi. This means that allotment in the future is not totally ruled out. If allotment is to be made even in a rare case, there is no reason why the priority of registration and the nearness of the working place should not be taken into account for such allotment in South Delhi as they have to be taken into account for the rest of Delhi. The mere scarcity of land in South Delhi does not distinguish it from the rest of Delhi in such a manner that these two considerations which are relevant in the rest of Delhi would become irrelevant in South Delhi. If they are not irrelevant in South Delhi, then the petitioner and the respondent No. 3 could be compared regarding the merits of their applications on these two grounds. The question, Therefore, arises whether Annexure F is the only policy of the Government under which the grant of land could be made.

(24) It would appear that Annexure F is the only general policy direction issued by the Government u/s 22(3). As observed in dealing with question No. 2,

however, the power of the Government to allot land under Article 298 of the Constitution cannot be totally taken away either by section 22 or by the direction issued u/s 22(3). Only certain criteria for allotment of land u/s 22(3) are embodied in Annexure F. The Government is not precluded thereby from disposing of the land for other considerations on which the allotment could be based in exercise of the general constitutional power given by Article 298.

(25) As the petitioner and respondent No. 3 fall into two different classes, the merits of their respective claims cannot be compared with each other. All that we can say is that the allotment to respondent No. 3 is not contrary to Article 14 of the Constitution and is valid under Article 298 of the Constitution.

(26) Question No. (4) :- Annexure F paragraph 1(e) however says that only one acre of land has to be given for 50 flats to a group housing society and in any case the grant should not exceed two acres. The grant of 4.25 acres to respondent No. 3 Society is in excess of the direction contained in Annexure F, paragraph 1(e). It is true that an exception can be made to this rule which is to be observed "ordinarily". It is also not clear if this ceiling is to be applied only to the allotment made in areas other than South Delhi. Further the grant being justifiable mainly under Article 298, the ceiling placed on allotment in the direction issued u/s 22(3) may not be relevant

(27) The grant of 500 bighas of land to Jamia Milia for purposes which include the building of staff quarters may not also be relevant in this case. For, those quarters, if constructed by the Jamia Milia, will belong to the Jamia Milia. They could be occupied only by those who are working with Jamia Milia, but would have to be vacated when they cease to work with Jamia Milia. The allotment to the members of respondent No. 3 is made for building ownership flats. The possession of separate land by the Jamia Milia does not detract from the justifiability of the allotment to respondent No. 3. If the present total membership of respondent No. 3 is taken into account, no part of the area allotted to respondent No. 3 may be said to be excessive or unnecessary.

In the result, the writ petition is dismissed with no order as to costs.