(2011) 03 DEL CK 0504

In the Delhi High Court

Case No : Writ Petition (C) No. 2459-60 of 2005

Bhagwan Mahavir Education Society (Regd.) and Another APPELLANT

Vs

DDA and Others RESPONDENT

Date of Decision : 25-03-2011

Acts Referred:

Constitution of India, 1950 — Article 166(1), 21, 41
Delhi Development Act, 1957 — Section 2, 22, 22(3), 56, 56(2)
Delhi Development Authority (Disposal of Developed Nazul Land) Rules, 1981 — Rule 20, 3, 33, 4, 4(1)
Right of Children to Free and Compulsory Education Act, 2009 — Section 12

Citation : (2011) 03 DEL CK 0504

Hon'ble Judges : Sudershan Kumar Misra, J;Sanjay Kishan Kaul, J

Bench : Division Bench

Advocate : Raju Ramachandran, Ravi Gupta, Laliet Kumar, in W.P. C No. 2459-60/2005, Harish Malhotra, Tanuj Khurana, in W.P. C Nos. 0294/2006 and 12200/2006, Ravinder Sethi, Rajiv Kumar Ghawana, in W.P. C Nos. 8162/2005, 17412/2005, 3394/2006 and 81/2007, R.K. Saini, in W.P. C Nos. 8162/2005, 2714/2007, 2547/2007 and 7000/2008, Digvijay Rai, in W.P. C No. 9222/2006, Rajeshwar Dagar, in W.P. C No. 11873/2006, Sachin Midha, Sarfaraz Ahmed, Sumit Rajput, in W.P. C No. 3394/2006 and 7695/2009, Praveen Kumar, for GGSIP University, A.S. Singh, for UOI in W.P. C Nos. 3394/2006 and 3602/2008, Naveen Bhardwaj and Harjot Singh Rohilla, in W.P. C No. 10280/2006, Madan Lal Sharma, in W.P. C No. 2096/2008, Sachin Puri and Kaadambari Puri, in W.P. C No. 10383/2006, Gagan Chhabra, in W.P. C Nos. 3394/2006 and 8184/2007, Sumit Bansal, Ateev Matghur and Vaibhav Arora, in W.P. C Nos. 4203/2006, 11879/2006, 15647/2006, 6130/2007 and 6132/2007, P.R. Chopra, in W.P. C No. 10721/2006, Rakesh Mahajan, in W.P. C No. 18116-118/2006, Sumit Batra, in W.P. C No. 158/2007, N. Menon, in W.P. C No. 4687/2007, Anita Abraham, in W.P. C No. 7962/2007, Ankit Jain, in W.P. C No. 8017/2007, Viraj R. Datar and Chetan Lokur, in W.P. C No. 649/2011 and Chandra Shekhar, in W.P. C Nos. 1030/2007 and 1530/2007, for the Appellant; Rajiv Bansal, Harshit Agarwal, Saurabh Suman Sinha, Abhir Dutt and Razia Ali for DDA, Sachin Midha, Sarfaraz Ahmed, Sumit Rajput, in W.P. (C) No. 9222/2006, L.K. Garg in W.P. (C) No. 2459/2005, 8162/2005, 11873/2006, 11879/2006, 6130/2007 and 7173/2007, Sana Ansari, Proxy Counsel for GNCT in W.P. (C) Nos. 3394/2006 and 81/2007, Mukesh Anand, for the UOI in W.P. (C) No. 13177/2006, Nawal Kishore, Jha, for GNCTD, Virendra Kumar Singh, for UOI in W.P. (C) No. 2096/2008, Aakash D. Pratap, for

UOI in W.P. (C) No. 10294/2006, Vijay Kinger, for UOI in W.P. (C) No. 18116-18/2006, Meera Bhatia, for UOI in W.P. (C) No. 158/2007, Saleem Ahmed, for UOI in W.P. (C) No. 7000/2008, Raman Oberoi, for UOI in W.P. (C) No. 1030/2007, Sachin Datta, Abhimanyu Kumar for UOI in W.P. (C) No. 21/2009, Payal Jain, Proxy counsel for UOI in W.P. (C) No. 4687/2007, Y.D. Nagar, for UOI in W.P. (C) No. 7173/2007, Sonia Mathur, for UOI in W.P. (C) No. 4895/2007, V. Singh, for R2 in W.P. (C) No. 5612/2008, Atul Bandhu, for UOI in W.P. (C) No. 4956/2008, Chetan Chawla, for UOI in W.P. (C) No. 5612/2008, Jatan Singh, Ashish Kumar Srivastava for UOI in W.P. (C) No. 7711/2008 and 7713/2008, Anuj Aggarwal, for UOI, Sandeep Khatri, Reeta Kaul for R2 in W.P. (C) No. 7965/2009, Baldev Malik, for UOI in W.P. (C) Nos. 10251/2009 and 10263/2009, Vikram Saini, Proxy counsel for Reeta Kaul, for R2 in W.P. (C) No. 7965/2009, M.P. Singh, for UOI in W.P. (C) No. 649/2011, Anusuya Salwan, Neha Mittal for DDA in W.P. (C) Nos. 2459/2005, 17412/2005, 1530/2007 and 3711/2007, Neeraj Chaudhari, Khalid Arshad for UOI in W.P. (C) Nos. 2714/2007, 7274-7279/2008, 7281/2008 and 7282/2008, Ravinder Agarwal and Nitish Gupta for UOI in W.P. (C) Nos. 8162/2005, 13177/2006, 81/2007 and 2714/2007, for the Respondent

Final Decision : Dismissed

Judgement

Sanjay Kishan Kaul, J.—The claim of the Petitioners for entitlement to land at pre-determined rates under the Delhi Development Authority (Disposal of Developed Nazul Land) Rules, 1981 {''the said Rules'' for short} for running of higher and technical education institutes, schools and hospitals has given rise to this batch of writ petitions.

2. The common grievance of the Petitioners is that their cases for allotment of Nazul land at pre-determined rates was at an advanced stage after due clearances but on the eve of the proposed allotment, the policy was changed, and all land is now being disposed of only by way of public auction. The nature of activities set out above are stated to entitle the Petitioners to land at cheaper rates i.e. pre-determined rates rather than through auction mode.

3. We may at the inception itself state that the submissions of learned Counsel for the parties has not been based on factual matrix of each case but only on the general principles of law and the factual position qua the said Rules and the amendments made thereto.

4. The Delhi Development Authority (''DDA'' for short) is a statutory body established under the Delhi Development Act, 1957 (''the DDA Act'' for short) for purposes of development of Delhi according to plan and for matters ancillary thereto. The developed and undeveloped lands in Delhi could be placed at the disposal of the DDA by the Central Government in terms of Section 22 of the DDA Act, which reads under:

22. NAZUL LANDS (1) The Central Government may, by notification in the Official Gazette and upon such terms and conditions as may be agreed upon between

that government and the Authority, place at the disposal of the Authority all or any developed and undeveloped lands in Delhi vested in the Union (known and hereinafter referred to as "nazul lands") for the purpose of development in accordance with the provisions of this Act.

(2) No development of any nazul land shall be undertaken or carried out except by, or under the control and supervision of, the Authority after such land has been placed at the disposal of the Authority under Sub-section (1).

(3) After any such nazul land has been developed by, or under the control and supervision of, the Authority, it shall be dealt with by the Authority in accordance with rules made and directions given by the Central Government in this behalf.

(4) If any nazul land placed at the disposal of the Authority under Sub-section (1) is required at any time thereafter by the Central Government, the Authority shall, by notification in the Official Gazette, replace it at the disposal of that government upon such terms and conditions as may be agreed upon between the government and the Authority.

5. Section 56 of the DDA Act empowers the Central Government to make rules after consultation with the authority to carry out the purposes of the DDA Act. In terms of Section 56(2) of the DDA Act without prejudice to the generality of power, such rules may provide for any of the matters specified therein. Clause (j) of Section 56(2) of the DDA Act refers to the manner in which the Nazul land shall be dealt with after development. It is in pursuance to the exercise of such power to make rules r/w Section 22(3) of the DDA Act, that the said Rules came to be enacted. Chapter II of the said Rules deals with the disposal of Nazul land. The purposes for which the Nazul land can be allotted is set out in Rule 3 of the said Rules, which reads as under:

3. Purposes for which Nazul land may be allotted - Authority may allot Nazul land for public utilities, community facilities, open spaces, parks, playgrounds, residential purposes, industrial and commercial uses and such other purposes as may be specified from time to time by the Central Government by notification.

6. Rule 4 of the said Rules sets forth the persons to whom the Nazul land may be allotted while Rule 5 of the said Rules refers to the premium for allotment of Nazul land to certain public institutions. Rule 8 of the said Rules prescribes the manner of allotment which is to be on payment of premium as may be determined either by auction or by tender in accordance with provisions of Chapter III and Chapter IV of the said Rules. Rule 20 of the said Rules deals with the allotment to certain public institutions. Rules 4, 5 and 20 of the said Rules have seen amendments and it is these amendments which are crucial to the submissions made by the learned Counsel for the parties. We set out hereinafter the history of the amendments to these Rules.

AMENDMENT TO THE RULES

POSITION PRIOR TO 2002

7. Rules 4 and 5 of the said Rules empowered DDA to allot land to schools, colleges, universities, hospitals other social or charitable institutes at a premia and ground rent in force immediately before coming into force of the said Rules or at such rates the Central Government may determine from time to time. Rule 8 of the said Rules prescribed that save as otherwise provided in Rules 5 to 7 of the said Rules, allotment of land is to be made on payment of such premia as may be determined either by auction or by tender in accordance with the provisions of the said Rules. Rule 20 of the said Rules prohibit allotment of Nazul land to public institutes referred to in Rule 5 unless it was to a Society registered under the Societies Registration Act or was owned or run by the Government or any legal authority having a non-profit making character and the allotment was to be sponsored or recommended by a Department of Delhi Administration or a Ministry of the Central Government. The relevant rules read as under:

4. Persons to whom Nazul land may be allotted The Authority may, in conformity with the plans, and subject to the other provisions of these rules, allot Nazul land to individuals, body of persons, public and private institutions, co-operative house building societies, other cooperative societies of individuals, cooperative societies of industrialists and to the departments of the Central Government, State Governments and the Union territories.

5. Rules of premium for allotment of Nazul land to certain public institutions.

The Authority may allot Nazul land to schools, colleges, universities, hospitals, other social or charitable institutions, religious, political, semi-political organizations and local bodies or remunerative, semiremunerative or un-remunerative purposes at the premia and ground rent in force immediately before the coming into force of these rules, or at such rates as the Central Government may determine from time to time.

8. Manner of Allotment

Save as otherwise provided in rules 5, 6 and 7, allotment of Nazul land for a residential purpose, an industrial purpose, a commercial purpose or any other purpose shall be made on payment of such premium as may be determined either by auction or by tender in accordance with the provisions of these rules.

20. Allotment to certain public institutions

1) No allotment of Nazul land to public institutions referred to in Rule 5 shall be made unless,

a) According to the aims and objects of that public institution,

i) It directly sub-serves the interest of the population of the Union Territory of Delhi;

ii) It is generally conducive to the planned development of the Union Territory of Delhi;

iii) It is apparent from the nature of work to be carried out by that public institution, that the same cannot, with equal efficiency, be carried out elsewhere than in that part of Union Territory.

b) It is a society registered under the Societies Registration Act, 1860 (21 of 1860) or such institution is owned and run by the Government or any local authority, or is constituted or established under any law for the time being in force;

c) It is of non-profit making character;

d) It is in possession of sufficient funds to meet the cost of land and the construction of buildings for its use; and e) Allotment to such institution is sponsored or recommended by a Department of the Delhi Administration or Ministry of the Central Government.

AMENDMENTS EFFECTIVE FROM 05.07.2002

8. Rule 4 of the said Rules was amended by adding Sub-rule (2) whereby the Nazul land could be allotted to a company, firm or trust for purposes of establishment of hospitals or dispensaries. As a sequitur, an explanation was added in Rule 5 of the said Rules stating that for the purpose of this Rule, the expression "Hospitals" did not include hospitals/dispensaries established by a company, firm or trust as referred to in Rule 4(2) of the said Rules. Similarly, amendments were made in Rule 8 of the said Rules. Rule 20 was also amended so as to expand the allotment of land at pre-determined rates to entities apart from societies registered under the Societies Registration Act i.e. a company, firm or trust for purposes of establishment of a hospital or dispensary provided it is sponsored or recommended, which condition was not applicable if the allotment was by way of auction or tender. The aforesaid amendments thus made provision for allotment of land at pre-determined rates to a company, firm or trust for setting up a hospital /dispensary apart from the mode of auction or tender. The amended rules thus read as under:

4. Persons to whom Nazul land may be allotted [(1)] The Authority may, in conformity with the plans, and subject to the other provisions of these rules, allot nazul land to individuals, body of persons, public and private institutions, cooperative house building societies, other cooperative societies of individuals, cooperative societies of industrialists and to the departments of the Central Government, State Governments and the Union Territories.

[(2) The Authority may, in conformity with the plans, and subject to the other provisions of these rules, allot nazul land to a company, firm or trust or the purpose of the establishment of hospitals or dispensaries]

5. Rules of premium for allotment of Nazul land to certain public institutions.

The Authority may allot Nazul land to schools, colleges, universities, hospitals, other social or charitable institutions, religious, political, semi-political organizations and local bodies or remunerative, semiremunerative or un-remunerative purposes at the premia and ground rent in force immediately before the coming into force of these rules, or at such rates as the Central Government may determine from time to time.

[Explanation - For the purpose of this rule the expression "hospitals" do not include the hospitals/dispensaries established by a company, firm or trust as referred to in Sub-rule (2) of rule (4)).]

8. Manner of allotment - Save as otherwise provided in Rules 5, 6 & 7 allotment of Nazul and for a residential purpose, an industrial purpose, [a commercial purpose, or for the purpose of the establishment of hospital or dispensary] or any other purpose shall be made on payment of such premium as may be determined either by auction or by tender in accordance with the provisions of these rules.

20. Allotment to certain public institutions - No allotment of Nazul land to public institutions referred to in Rule 5 shall be made unless

(a) according to the aims and objects of that public institution -

(i) it directly sub-serves the interests of the population of the Union Territory of Delhi;

(ii) it is generally conducive to the planned development of the Union Territory of Delhi;

(iii) it is apparent from the nature of work to be carried out by that public institution, that the same cannot, with equal efficiency be carried out elsewhere than in that Union Territory.

(b) it is a society registered under the Societies Registration Act, 1860 (21 of 1860) or such institution is owned and run by the Government or any Local Authority, or is constituted or established under any law [for the time being in force or it is a company, firm or trust for the purpose of establishment of hospital or dispensary];

(c) it is of non-profit making character;

(d) it is in possession of sufficient funds to meet the cost of land and the construction of buildings for its use; and

(e) allotment to such institution is sponsored or recommended by a [Department of the Government of National Capital Territory of Delhi] or a Ministry of the Central Government:

[PROVIDED that in case of allotment to a company, firm or trust for the purpose of establishment of hospital or dispensary by tenders or auction, as the case may be, such company, firm or trust, as the case may be, shall not be required to be sponsored by a Department of the Government of National Capital Territory of Delhi or a Ministry of the Central Government.]

AMENDMENTS EFFECTIVE FROM 09.12.2004

9. The scope of amendments carried out in 2002 was expanded to include higher/ technical educational institutes apart from hospital/dispensary. This is so to facilitate allotment of land at pre-determined rates to a company, firm or trust not only for a hospital/dispensary but also for a higher / technical educational institute.

AMENDED RULES READ AS UNDER:

4. Persons to whom Nazul land may be allotted

[(1)] The Authority may, in conformity with the plans, and subject to the other provisions of these rules, allot nazul land to individuals, body of persons, public and private institutions, cooperative house building societies, other cooperative societies of individuals, cooperative societies of industrialists and to the departments of the Central Government, State Governments and the Union Territories.

[(2) The Authority may, in conformity with the plans, and subject to the other provisions of these rules, allot nazul land to a company, firm or trust or the purpose of the establishment of (hospitals, dispensaries or higher/technical education institutes.)]

5. Rules of premium for allotment of Nazul land to certain public institutions.

The Authority may allot Nazul land to schools, colleges, universities, hospitals, other social or charitable institutions, religious, political, semi-political organizations and local bodies or remunerative, semi-remunerative or un-remunerative purposes at the premia and ground rent in force immediately before the coming into force of these rules, or at such rates as the Central Government may determine from time to time.

[Explanation - For the purpose of this rule the expressions "colleges", "universities" and "hospitals" do not include higher/technical education institutes or hospitals or universities established by a company, firm or trust, as the case may be, as referred to in Sub-rule (2) of Rule 4.]

8. Manner of allotment - Save as otherwise provided in rules 5, 6 and 7, allotment of Nazul land for a residential purpose, an industrial purpose, [a commercial purpose, or for the purpose of the establishment of {hospitals, dispensaries or higher/technical education institutes}] or any other purpose shall be made on payment of such premium as may be determined either by auction or by tender in accordance with the provisions of these rules.

20. Allotment to certain public institutions - No allotment of Nazul land to public institutions referred to in Rule 5 shall be made unless -

(a) according to the aims and objects of that public institution -

(i) it directly subserves the interests of the population of the Union Territory of

Delhi;

(ii) it is generally conducive to the planned development of the Union Territory of Delhi;

(iii) it is apparent from the nature of work to be carried out by that public institution, that the same cannot, with equal efficiency be carried out elsewhere than in that Union Territory.

(b) it is a society registered under the Societies Registration Act, 1860 (21 of 1860) or such institution is owned and run by the Government or any Local Authority, or is constituted or established under any law [for the time being in force or it is a company, firm or trust for the purpose of establishment of hospital or dispensary];

(c) it is of non-profit making character;

(d) it is in possession of sufficient funds to meet the cost of land and the construction of buildings for its use; and

(e) allotment to such institution is sponsored or recommended by a [Department of the Government of National Capital Territory of Delhi] or a Ministry of the Central Government:

[PROVIDED that in case of allotment to a company, firm or trust for the purpose of establishment of {hospitals or dispensaries or higher/technical education institutes} by tenders or auction, as the case may be, such company, firm or trust, as the case may be, shall not be required to be sponsored by a Department of the Government of National Capital Territory of Delhi or a Ministry of the Central Government.]

AMENDMENTS EFFECTIVE FROM 19.04.2006

10. The last set of amendments is very crucial to the matter in issue. Rule 4(1) of the said Rules was amended to include firms and companies eligible for allotment of Nazul land. Rule 4(2) of the said Rules was amended so that the authority shall dispose of the Nazul land by auction to the following institutions:

i) Hospitals;

ii) Dispensaries;

iii) Nursing Homes;

iv) Higher or Technical Institutions;

v) Community Halls;

vi) Clubs;

vii) Schools;

11. Rule 5 of the said Rules was amended whereby subject to the other

provisions of the said Rules, DDA could allot Nazul land to schools, colleges, universities, hospitals and other social and charitable institutes at premia and ground rent in force. In turn Rule 8 of the said Rules was amended providing that save as otherwise provided in Rule 4(2) & Rules 5 to 7 of the said Rules, allotment of Nazul land for any purpose shall be made on such premia as may be determined either by auction or by tender. Rule 20 was also amended by the addition of a proviso specifying that nothing in that rule shall apply to provisions of Rule 4(2) of the said Rules. Amended rules read as under:

4. Persons to whom Nazul land may be allotted

[(1)] The Authority may, in conformity with the plans, and subject to the other provisions of these rules, allot nazul land to individuals, body of persons, firms, companies, public and private institutions, cooperative house building societies, other cooperative societies of individuals, cooperative societies of industrialists and to the departments of the Central Government, State Governments and the Union Territories.

[(2)] The Authority may, in conformity with the plans, and subject to the other provisions of these rules, dispose of nazul land by auction to the following institutions:

a) Hospitals;

b) Dispensaries;

c) Nursing homes;

d) Higher or technical institutions;

e) Community halls;

f) Clubs;

g) Schools.

5. Rules of premium for allotment of Nazul land to certain public institutions.

The Authority may allot Nazul land to schools, colleges, universities, hospitals, other social or charitable institutions, religious, political, semi-political organizations and local bodies or remunerative, semiremunerative or un-remunerative purposes at the premia and ground rent in force immediately before the coming into force of these rules, or at such rates as the Central Government may determine from time to time.

8. Manner of allotment - Save as otherwise provided in Sub-rule 2 of Rule 4, rules 5, 6 and 7, allotment of Nazul land for any purpose shall be made on payment of such premium as may be determined either by auction or by tender in accordance with the provisions of Chapter III or Chapter IV, as the case may be, of these rules.

20. Allotment to certain public institutions - No allotment of Nazul land to public institutions referred to in Rule 5 shall be made unless -

(a) according to the aims and objects of that public institution -

(i) it directly subserves the interests of the population of the Union Territory of Delhi;

(ii) it is generally conducive to the planned development of the Union Territory of Delhi;

(iii) it is apparent from the nature of work to be carried out by that public institution, that the same cannot, with equal efficiency be carried out elsewhere than in that Union Territory.

(b) it is a society registered under the Societies Registration Act, 1860 (21 of 1860) or such institution is owned and run by the Government or any Local Authority, or is constituted or established under any law [for the time being in force or it is a company, firm or trust for the purpose of establishment of {hospitals, dispensaries or higher/technical education institutes}];

(c) it is of non-profit making character;

(d) it is in possession of sufficient funds to meet the cost of land and the construction of buildings for its use; and (e) allotment to such institution is sponsored or recommended by a [Department of the Government of National Capital Territory of Delhi] or a Ministry of the Central Government:

[PROVIDED that in case of allotment to a company, firm or trust for the purpose of establishment of {hospitals or dispensaries or higher/technical education institutes} by tenders or auction, as the case may be, such company, firm or trust, as the case may be, shall not be required to be sponsored by a Department of the Government of National Capital Territory of Delhi or a Ministry of the Central Government.]

[Provided that nothing in this rule shall apply to the provisions of Sub-rule (2) of Rule 4.]

THE PETITIOENRS'' CASE

12. It is the case of the Petitioners that after they received the requisite sponsorship and completed the other formalities, their cases were placed before the Institutional Allotment Committee ("IAC" for short). The meeting of the IAC was held on 13.03.2003 and 17.03.2003. The cases of the Petitioners were recommended, but it is not in dispute that the allotment actually did not take place. By virtue of the amendments, the DDA is entitled to either auction the land or allot land at pre-determined rates for establishment of higher/technical education institutes, schools or hospitals, but no proper safeguard or guidelines have been put in force as to whom land is to be allotted and by which mode. The case of the Petitioners is that despite being cleared by the IAC, the right of

allotment, which ought to have accrued within a reasonable time, did not materialize.

13. It is the plea of the Petitioners in petitions dealing with Higher/Technical Education Institutes and Schools that the right to education should be treated on a different pedestal and thus the Government is duty-bound to provide cheaper land to private institutions facilitating this activity as otherwise it would have a deleterious impact on the right to education. Learned Counsel sought to derive strength for their arguments by relying upon Articles 21 and 41 of the Constitution of India and the observations made by the Supreme Court in T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others, that there should be no profiteering in education. The public interest element in this behalf was emphasized by reference to the judgment of the Supreme Court in Meerut Development Authority Vs. Association of Management Studies and Another, . In the facts of the said case, the Meerut Development Authority (MDA) had made available land to institutions imparting education in engineering at concessional rates of 50 per cent of the sector rates, which was stated to take care of the public interest parameter. Thus, it was found that the State had made effective provisions for securing right to education by resolving to make land available at concessional rates with a view to give effect to Directive Principles of State Policy enshrined under Article 41 of the Constitution of India.

14. The Petitioners also sought to draw strength from The Delhi Professional Colleges or Institutions (Prohibition of Capitation Fee, Regulation of Admission, Fixation of Non- Exploitative Fee and Other Measures to Ensure Equity and Excellence) Act, 2007 ("Act of 2007" for short). The Act of 2007 was enacted with the object of prohibiting capitation fee, regulation of admission, fixation of non- exploitative fee, allotment of seats to Scheduled Castes, Scheduled Tribes and other socially and economically backward classes and other measures to ensure equity and excellence in professional education in the National Capital Territory of Delhi. The Act of 2007 is to apply to unaided institutions affiliated to a University imparting education in degree, diploma and certificate courses. Section 5 of the Act of 2007 especially prohibits collection of capitation fee and enjoins the State Government to set up a Fee Regulatory Committee u/s 6 of the Act of 2007. In terms of Section 7 of the Act of 2007, one of the factors for determination of the fee as per Clause (b) thereof is the available infrastructure including allotment cost of land. Section 10 of the Act of 2007 prohibits collection of excessive fee. The submission thus is that on the one hand commercialization of education is sought to be prohibited in an endeavour to make education available at reasonable rates to public at large, while on the other hand, contrary to this intent, land is sought to be auctioned at market rates. It is contended that the high prices paid for the land at auction would in turn affect the fee to be fixed by the Fee Regulatory Committee and would thus burden the students.

15. It is the submission of learned Counsel for the Petitioners that even post the amendments carried out with effect from 19.04.2006, the rights of the

Petitioners cannot be affected. This plea is predicated on the construction of the said Rules. Rule 4(2) of the said Rules though refers to disposal of Nazul land by auction or by tender to the institutions mentioned in Clauses (a) to (g) of Rule 4(2) of the said Rules, Rule 5 of the said Rules permits the Nazul land to be allotted to the different institutions mentioned therein at pre-determined rates. The manner of allotment is specified in Rule 8 of the said Rules, but the same is followed by Rule 20 of the said Rules which deals with the allotment to certain public institutions under Rule 5 of the said Rules. Learned Counsel for the Petitioners also drew our attention to the definition of "pre-determined rates" in Section 2(l) of the said Rules which is based on cost of acquisition, development charges and concessional charges for use and occupation. It is thus the submission of learned Counsel for the Petitioners that the Rule of Harmonious Construction should be applied which in turn would imply that the allotment under Rule 4(2) of the said Rules can be made not only by auction, but also at pre-determined rates. A wider meaning is sought to be given to the word "allot". Learned Counsel referred to the judgments in Jagdish Singh v. Lieutenant Governor Dehi and Ors. AIR 1977 SC 2239, Sultana Begum Vs. Prem Chand Jain, and State of Rajasthan Vs. Gopi Kishan Sen, , which set out the Rule of Harmonious Construction. It is thus pleaded that all the modes are open for allotment of land and lands can be allotted at pre-determined rates to the Petitioners for which recommendations were already made by the IAC.

16. Learned Counsel for the Petitioners submitted that once the conditions as laid down in Rule 20 of the said Rules are satisfied, a society can be allotted land under Rule 5 of the said Rules at pre-determined rates for any of the three purposes, to meet the plea of learned Counsel for DDA that Rule 5 of the said Rules is the controlling Rule and the requirements in Rule 20 of the said Rules are in addition.

17. Learned Counsel for the Petitioners also drew our attention to the order dated 27.09.2001 issued by the Directorate of Education in terms whereof the LG was pleased to re-constitute the Land Allotment Committee with the terms of reference providing that the allotment of land to the private educational societies would be made by the DDA strictly on the basis of the decision of the Land Allotment Committee and as per the priorities fixed by the Land Allotment Committee, which would not be reviewed by the DDA. The submission thus is that once the Land Allotment Committee has recommended allotment, the order itself envisages that no other authority should interfere in the process of allotment.

DEFENCE OF DDA

18. Mr. Rajiv Bansal, the counsel appearing for DDA, submitted that the expression "allot" has been used in the aforesaid Rules in the ordinary sense, i.e., to apportion or to distribute. The allotment can be on the basis of auction or tender or pre-determined rates. While Rule 26 of the said Rules provides for allotment by way of auction, Rule 33 of the said Rules provides for allotment by

way of tender.

19. Rule 4(1) of the said Rules refers to the entities whether natural or juristic, to whom land allotment can be made. And as per the currently amended Rules in force, the allotments are to be made by auction for purposes set out in Clauses (a) to (g) of Rule 4(2) of the said Rules. Thus, it is only through the auction mode that such allotment has to be made, but the proviso carves out an exception for allotment of land to the Central Government, a State Government, a Union Territory or local bodies who may get allotment of land at pre-determined rates even for purposes set out in Clauses (a) to (g) of Rule 4(2) of the said Rules. Rule 5 of the said Rules refers to allotment of land at pre-determined rates. It only gives discretion to the authority to allot Nazul land at pre-determined rates if the conditions prescribed are satisfied, but no person, learned Counsel for the DDA contended, could claim an inherent right to get such land at pre-determined rates. The provisions are clear in their terms and it was submitted that if Rules 4 and 5 of the said Rules are read together, there was no inconsistency or disharmony which require the aid of Rule of Harmonious Construction.

20. The interpretation put forth in respect of Rule 5 of the said Rules is that it permits the DDA to allot Nazul land at pre-determined rates even to schools, colleges, universities and hospitals, but these four categories are followed by the words "other social or charitable institutions''. Thus, only schools, colleges, universities or hospitals which are run for charitable purposes would be entitled to such allotment at pre-determined rates as the expressions should be read ejusdem generis. The aforesaid interpretation is also sought to be supported by the frame of Rule 20 of the said Rules which deals with allotment to certain public institutions. The Rule 20 of the said Rules begins with "No allotment of Nazul land to public institution referred to in Rule 5 shall be made unless ...." Rule 5 and Rule 20 of the said Rules are thus stated to be applicable to public institutions and Rule 5 of the said Rules had to be worded in this manner for providing allotment of lands at pre-determined rates to institutions, say, for the blind, under-privileged children or children with special needs. Rule 20 of the said Rules, as per its sub clauses, lays down the pre-conditions without which the land cannot be allotted to anyone at pre-determined rates and thus prescribes the manner and condition in which Rule 5 is to operate. This is the reason why the proviso to Rule 20 of the said Rules specifically states that nothing stated in the said Rule would apply to provisions of Rule 4(2) of the said Rules.

21. The aforesaid interpretation is also sought to be supported by the factual matrix. In this behalf, Resolution dated 15.12.2003 has been referred to when the Policy for Allotment of Land to Higher/Technical Educational Institutions was considered. It was resolved that the new policy would be implemented in a fair and transparent manner and that allotment of land to educational institutions running on commercial lines should be made through auction including the cases where allotment was yet to be made. In a meeting held under the Chairmanship

of the LG on 09.11.2004, The Summary Record of Discussions on Institutional Allotment records a decision taken that all pending IAC recommendations would abate. Thus, unless land had already been allotted and a communication in that regard was duly sent, the uniform decision was to pursue the auction mode for the allotment of land. Learned Counsel for the DDA also emphasized that insofar as the larger question of providing education at reasonable rates is concerned, the recent legislation, i.e., The Right of Children to Free and Compulsory Education Act, 2009 {"the Act of 2009" for short}, which has received the assent of the President on 27.08.2009, takes care of this. The definition of a "School" u/s 2(n) of the Act of 2009 includes unaided schools not receiving any kind of aid or grant to meet its expenses. Section 12 of the Act of 2009 provides for extent of a school''s responsibility for free and compulsory education and 25 per cent of the strength of each school is to be filled by children belonging to weaker sections and disadvantaged groups in the neighbourhood. Thus, the legislature has taken due care of the mandate of Article 21 and Article 41 of the Constitution of India for providing education. Learned Counsel emphasized that the larger issue was only a bogey being raised by the Petitioners and relied upon the observations made in para 50 of the judgment in Meerut Development Authority v. Association of Management Studies and Anr.''s case (supra) as under:

50. We are, however, of the opinion that the effort, if any, made by MDA to augment its financial resources and revenue itself cannot be said to be unreasonable decision. It is well said that the struggle to get for the State the full value of its resources is particularly pronounced in the sale of State owned natural assets to the private sector. Whenever the Government or the authorities get less than the full value of the asset, the country is being cheated; there is a simple transfer of wealth from the citizens as a whole to whoever gets the assets "at a discount". Most of the times the wealth of a State goes to the individuals within the country rather than to multinational corporations; still, wealth slips away that ought to belong to the nation as a whole.

(Emphasis supplied)

It was, thus, submitted that once the legislature has provided for proper education through an enactment of Parliament, it is not open to the Petitioners to claim that land should be made available to them at cheaper rates. This would amount to giving discount to these institutions at the cost of the larger public as observed aforesaid.

22. Learned Counsel for the DDA also emphasized that undisputedly no allotment letters had been issued and ultimate authority vested with the LG. The Office Order dated 27.09.2001 could not, and did not, take away the authority of the LG, but was passed with the objective at that time of preventing any other authority from dealing with the issue of allotment of land for educational purposes which was dependent on the IAC recommendations. The final authority still vested with the LG.

23. No communication for allotment of land had been sent and the mere recommendations of IAC, it was pleaded, would not confer any right in the Petitioners for allotment of land. In this behalf, learned Counsel for the DDA relied upon the observations made in Sethi Auto Service Station and Another Vs. Delhi Development Authority and Others, where it was observed that notings made in the departmental file do not have the sanction of law to be an effective order. The relevant observations made in para 14 to 16 of the said judgment are as under:

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

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

16. To the like effect are the observations of this Court in Laxminarayan R. Bhattad and Others Vs. State of Maharashtra and Another, , wherein it was said that a right created under an order of a statutory authority must be communicated to the person concerned so as to confer an enforceable right.

(Emphasis supplied)

OUR CONCLUSIONS

24. We have given our thoughtful considerations to the matter in issue. We are of

the considered view that the matter in issue pertains really only to reading and interpretation of the Rules as the intent of the legislature is translated into statutory provisions by enactment.

25. Before we come to the interpretation of the Rules, we must notice that undoubtedly in order to prevent multifarious authorities dealing with the matter of allotment of land, the Office Order dated 27.09.2001, was passed. This Office Order, issued by the Joint Director of Education, only provided that the decision of the Land Allotment Committee regarding allotment of land to private educational institutions would be followed. Such a decision, however, in our view, cannot in any manner dilute the ultimate authority of the LG to take a decision whether to allot or not. The Resolution dated 15.12.2003, and the file notings placed on record, show that a conscious decision was taken to initially keep the matter in abeyance without issuance of any allotment letter and thereafter it was resolved that such allotment should only take place by way of auction. The reason appears to be that there were various complaints about the institutions to whom land was allotted in such a manner and it was felt that transparency would be best served through the auction mode despite the land being utilized for educational purposes. To serve that purpose, it was decided to make necessary amendments to the said Rules. There can really be no doubt that the mere recommendations of the IAC would not confer any right whatsoever unless a decision taken on the file is approved by the competent authority and thereafter communicated to the beneficiary. The decision in Sethi Auto Service Station and Anr.v. Delhi Development Authority and Ors.'' s case (supra) which also relies upon the earlier pronouncements including in the case of Bachhittar Singh Vs. The State of Punjab, , leaves no manner of doubt in this behalf.

26. To constitute an enforceable right, the decision of the statutory authority has to be duly communicated. In the present case, there was no such communication. In view of the aforesaid factual matrix, regardless of any internal decision taken prior to the final picture that has emerged under the Rules, since no allotment had actually been made till then, it is the finally amended Rules which would govern the rights and obligations of the parties. We have to thus see the Rules as they stood in 2006 with the amendments carried out therein with effect from 19.04.2006.

27. Rule 3 of the said Rules provides for allotment of land for certain purposes. It does not say the manner of allotment. It has been rightly noticed that under the said Rules only three modes are envisaged - auction, tender and pre-determined rates. Rule 4 of the said Rules in turn stipulates the entities to whom such Nazul land could be allotted. Under the earlier Rule 4(1) of the said Rules, only a co-operative society could be a beneficiary of allotment of Nazul land, but that definition was expanded by including hospitals, nursing homes and then by including institutes of higher and technical education and schools. This Rule 4(1) of the said Rules when it uses the expression "allot" necessarily implies that any of the three modes of allotment would be available for allotment of Nazul land to

these entities. Rule 4(2) of the said Rules clarifies the picture. It specifically provides the mode of disposal by auction of Nazul land to the institutions mentioned thereunder from Clauses (a) to (g) of Rule 4(2) of the said Rules which includes hospitals, dispensaries, nursing homes, higher or technical education institutions, community halls, clubs and schools, subject of course to the other provisions of the said Rules. The only exception carved out is that the same would not affect the allotment of land to the Central Government, a State Government, a Union Territory and the local body. After setting forth the mode of disposal of land to these institutions only by auction, these Rules are followed by Rule 5. Rule 5 deals with the premium for allotment of Nazul land to certain public institutions i.e. through the mode of pre-determined rates. It begins with "Subject to the provisions of Sub-rule (2) of Rule 4". If one reads Rule 4 of the said Rules, it is abundantly clear that only a particular kind and character of institutions are to get the benefit of the same. No doubt, the words schools, "colleges", "universities" and "hospitals" are used in Rule 5 of the said Rules, but these are immediately followed by the expression "other social or charitable institutions". The first four words, thus, have to be read ejusdem generis with the latter expression and, therefore, the logical conclusion is that Rule 5 would include schools, colleges, universities, hospitals or other social institutions provided they are also run for charitable purposes. The basis for this has been explained by the learned Counsel for the DDA. Mr. Bansal stated that there are institutions of this nature, i.e., where education is for blind, under-privileged or children with special needs, etc., which may still require land to be made available at pre-determined rates. We may notice at this stage that one of the petitions being W.P. (C) No. 7408/2008, which was tagged with the present lot of writ petitions, dealt with the case of a society seeking land for setting up a dispensary to provide free treatment to the poor. In the said case, it was contended that since no charge at all was to be levied, it fell squarely within the scope of Rule 5 as defined by learned Counsel for DDA himself. He stated that this petition be segregated since he needs to seek further instructions from the DDA keeping in mind the provisions of Rule 5 of the said Rules. That has already been done. Rule 8 of the said Rules makes it abundantly clear that the mode of allotment is auction or tender save as otherwise provided in Rule 4(2) & Rules 5 to 7 of the said Rules.

28. That brings us to Rule 20 of the said Rules which deals with allotment to certain public institutions. It provides certain stipulations for allotment of land to public institutions referred to in Rule 5 of the said Rules. It puts the condition of a non-profit making character and a sponsorship or recommendation by a Department of Govt. of NCT of Delhi or by a Ministry of the Central Government as a mandatory requirement apart from the other clauses. The requirement of sponsorship is, however, not to apply where the mode of allotment is through auction. The second proviso attached to this Rule again makes it clear that nothing in this Rule would apply to Rule 4(2) of the said Rules. Thus, other than the case of some special institutes, the clear mode of disposal of Nazul land for

hospitals, dispensaries, higher or technical education institutes and schools, would continue to be by way of auction. We are unable to accept the plea that there is any unguided power conferred under the said Rules which is capable of being misused. It is, in fact, the past misuses which gave rise to the amendments with a view to minimize arbitrary exercise of excessive discretion.

29. We are, thus, of the considered view that the interpretation of Rules placed before us by the DDA is the correct view and the Petitioners have no case in this behalf in view of no allotment having matured in their favour prior to the amendments of the said Rules.

30. We may also notice that the endeavour of the Petitioners to raise a larger issue of Article 21 and Article 41 of the Constitution of India, is not of much avail. Firstly, as observed in Meerut Development Authority v. Association of Management Studies and Anr.''s case (supra), that a State must get full value of its resources because otherwise it benefits a certain section "at a discount" to the detriment of the larger public and thus the "wealth that ought to belong to the nation as a whole slips away". Secondly, in furtherance of the Directive Principles contained in Section 41 of the Constitution of India, the legislature in its wisdom has enacted the Act of 2009. It more than takes care of the object of providing education at private institutions to the under privileged and weaker sections of the society. It deals with different eventualities. The Petitioners cannot hide behind the provisions of the Act of 2007 which seek to regulate the unaided institutions with the object of preventing profiteering. The Fee Regulatory Committee constituted u/s 6 of the said Act is to be guided by factors set out in Section 7 of the Act of 2007. Thus, allotment cost of land is one factor to be taken care of. The result would be that the fee would be determined keeping in mind the cost of land to the institution. That being the position, an institution can charge appropriate fee from the students and the rights of economically weaker sections and under privileged are taken care of by the Act of 2009.

31. We may add that, in our considered view, the ratio of T.M.A. Pai Foundation v. State of Karnataka''s case (supra) has not been correctly appreciated by the Petitioners. What has been prohibited by the judgment is profiteering in education. The word "profiteering" has been defined in Black''s Law Dictionary Sixth Edition as under:

Profiteering: Taking advantage of unusual or exceptional circumstances to make excessive profits; e.g. selling of scarce or essential goods at inflated prices during time of emergency or war.

In Concise Oxford Dictionary, 8th Edition, "Profiteering" has been defined as under:

Profiteering: Make or seek to make excessive profits specially illegally or in black market conditions.

Thus, what is prohibited is making excessive profits especially illegally. It is not as if no profit can be made. Not only that, it is not the case of the Petitioners that no profit element will be involved in the working of their institutions, but only that the price of education will increase on account of increase of cost of land. This aspect is taken care of by the Act of 2007. Under the circumstances and looking to the meaning of the expression "profiteering", as extracted above, it cannot be said that merely because the cost of education to citizens might increase, it will lead to profiteering by educational institutions.

32. We are, thus, of the unequivocal view that under the existing Rules, it is the mode of auction which is available for disposal of the Nazul land for higher and technical education institutes, schools and hospitals other than cases which fall within the domain of Rule 5 r/w Rule 20 of the said Rules. The Petitioners do not fall in this category.

33. The writ petitions are accordingly dismissed leaving the parties to bear their own costs.

