

(2005) 05 P&H CK 0114
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 6233 of 2004

Green Park Association and Another	Vs	APPELLANT
Union Territory and Others		RESPONDENT

Date of Decision : 31-05-2005

Acts Referred:

Capital of Punjab (Development and Regulation) Act, 1952 — Section 4
Constitution of India, 1950 — Article 226
Punjab Capital (Development and Regulation) Buildings Rules, 1952 — Rule 2
Punjab Municipal Corporation Act, 1976 — Section 275

Citation : (2005) 141 PLR 497 : (2005) 3 RCR(Civil) 374

Hon'ble Judges : D.K. Jain, C.J.; Hemant Gupta, J

Bench : Division Bench

Advocate : Surjit Singh and Vikas Singh, for the Appellant; Rajiv Atma Ram and Deepak Sharma, for Respondent Nos. 1 and 2 Rajiv Rain and S.D. Sharma and Neeraj Sharma, for the Respondent

Final Decision : Dismissed

Judgement

Hemant Gupta, J.

The primary question which arises for determination in the present writ petition is:-

"Whether the allotment of land measuring 2050 sq. yards to respondent No. 4 is out of land meant for "public space i.e., landscape features, educational, public and community buildings and public amenities" or is a part of a public park and is not available for allotment for a school site."

2. A Division Bench of this Court in Civil Writ Petition No. 7923 of 1989 titled Sat Pal Verma (died) through his L.Rs. v. Advisor to the Administration and Ors., decided on 3.12.2001, alongwith a bunch of other writ petitions, passed an order that the use of residential/semi-residential premises, shop-cum-flats, shop-cum-offices in Chandigarh, for running of education institutions amounts to misuse and that the Administration should take policy decision in the matter of running

of recognised educational institutions in such sites. The Administration was directed to constitute a high powered committee to take appropriate decision in respect of the recognised private schools which fulfill all the norms laid down by the Education Department. The Chandigarh Administrator and Chandigarh Housing Board were directed to take steps to stop running of all private educational institutions which are not recognised or which do not fulfill the norms laid down by the Education Department by the end of then current academic session. Still further, it was directed that if the high-powered Committee decides against the running of private schools in residential premises then one year further time should be allowed to the schools to shift from the present sites. The directions issued by this Court read as under:-

"(i) to (ii) xx xx xx xx

"(iii)(a) xx xx xx xx xx

(b) The Chandigarh Administration and Chandigarh Housing Board are directed to take steps to stop running of all private education institutions which are not recognised or which do not fulfill the norms laid down by the Education Department. Action in this regard may be taken immediately after the end of the current academic session. This would necessarily involve giving notice and opportunity of hearing to the persons likely to be affected due to cancellation of allotments or resumption of sites/buildings.

(c) As regards the recognised private schools which fulfill all the norms laid down by the Education Department, Chandigarh, the Chandigarh Administration is directed to constitute a high-powered committee headed by Advisor to the Administrator, Union Territory, Chandigarh, to examine the feasibility, viability and justification of allowing continued running of such educational institutions. The committee shall consist of the Chairman, Chandigarh Housing Board; Chief Architect, Chandigarh; Chief Engineer, Chandigarh; Director (College Education); and Director (School) Education, Chandigarh. The Committee may co-opt other persons having at least 20 . years experience in the filed of planning and architecture. The Committee shall take appropriate decision within 4 months and if necessary, suggest amendment of the existing rules and regulations for allowing the educational institutions to be run at the present sites. However, it is made clear that this direction shall not be construed as a mandate for permitting the continued running of all educational institutions in the existing buildings. Rather, while deciding the matter, the Committee shall consider all the relevant factors including the damage to the concept of planned development enshrined in the plan prepared by Le Corbusier and the provisions of the 1952 Act, the rules framed thereunder, the likely traffic problems and the fact that large number of seats remain vacant in government schools every year and the students of private institutions can be accommodated against those seats.

(d) If the Committee decides against the running of private schools in residential premises, then one year further time should be allowed to the schools to shift

from the present sites.

(e) and (f) xx xx xx xx

(g) The Committees constituted by the Chandigarh Administration, the Punjab Urban Planning and Development Authority and the Haryana Urban Development Authority may also suggest modalities for allotment of land for private schools at cheaper rates. Thereafter, the respective administration shall advertise school sites on six monthly basis and allot the same in accordance with the policies framed by them."

3. After the decision of High Powered Committee, the Chandigarh Administration invited applications from the public to be received upto 20.11.2002 for allotment of sites for 3 High Schools, 11 Primary Schools and 1 Middle Schools. The said sites also included a site in Sector 11-B, Chandigarh, with tentative area of 2000 sq. yards as a site meant for Primary School. In pursuance of such advertisement, respondent No. 4 submitted an application for allotment of school site. In such application, in column No. 3 of Check List, it was pointed out that the applicant Society is registered since 2.5.1977 and running school known as Sanwar Montessori School recognised since 1.4.1980. In Column No. 4, it is stated that the applicant Society is running the present school since 1.8.1975 which stands recognised by the Administration since 1.4.1980. Respondent No. 4 was called for the interview by the Screening Committee on 18.12.2002 regarding allotment of site. The Screening Committee provisionally found respondent No. 4 suitable for allotment of the school site. As the number of eligible and suitable applicants were more, therefore, the allotment of site was decided to be done through draw of lots to be held on 23.4.2003. In the said draw of lots from amongst five other eligible Societies, respondent No. 4 was declared successful. The said respondent was consequently issued Letter of Intent for allotment of land on 29.9.2003, in respect of land measuring 2050 sq. yards on deposit of 25% of the premium of site. The letter of allotment of site was issued on 4.11.2003 on deposit of requisite amount and on completion of other formalities.

4. Petitioner No. 1 is a Society of residents of Sector 11-B, Chandigarh; whereas petitioner No. 2 is a resident of Sector 11. They have sought intervention of this Court alleging that the Building Scheme by the respondent-Administration provided for a Government School in Sector 11, Chandigarh, the subject area was ear-marked for park/open space as well as Community Centre which are the essential requirements for the development of an area. The site was specifically marked for Community Centre for the residents of Sector 11, Chandigarh, which is clear from the layout plan attached with the writ petition. It was alleged that the layout plan has never been changed nor it could have been changed. The Punjab Municipal Corporation Act applicable to Chandigarh provides for a scheme u/s 275 and such scheme is to be drawn after public notice by inviting suggestions. It was alleged that without following any procedure, without inviting any objections and without granting any opportunity of hearing, the site has

been allotted to respondent No. 4 in a clandestine manner. It has been further pleaded that the area is a residential area where a Government School is already provided. With the opening of second school, the character of the area will change and that the width of the road in the vicinity is only 12 feet and with such a private school, the entry area will be jammed with traffic and the safety of the children would be at a great risk. The petitioners served notice dated 3.3.2004 but since no corrective steps were taken, writ petition dated 22.3.2004 was filed on 8.4.2004 challenging allotment of site to respondent No. 4.

5. Written statement has been filed of respondent Nos. 1 and 2 whereas separate written statements have been filed on behalf of respondent Nos. 3 and 4. In the written statement filed on behalf of respondent Nos. 1 and 2, it has been stated that under the provisions of the Capital of Punjab (Development & Regulation) Act, 1952 (hereinafter to referred to as "the Act"), the Chief Administrator is competent to issue such directions u/s 4 of the Act, as may be considered in respect of any site or building either generally for whole of Chandigarh or any particular locality. In pursuance of such provisions, the Zoning Plans of various sub-sectors/pockets/sites are prepared and got approved from the Chief Administrator. The approved Zoning Plan of Sector 11-B, Chandigarh, is attached as Annexure R-1. The keys given in the Zoning Plan, Annexure R-1, makes it clear that the site in question was ear-marked for public spaces i.e. Landscape features, educational, public and community buildings and public amenities. Still further, it was pointed out that the petition is under the misconception that the site of Community Centre has been allotted to respondent No. 4. In fact, the site allotted to respondent No. 4 is adjacent to the site for Community Centre. It was pointed out that the total area of Sector 11 is 244.75 acres (approx.) and the total area under the open spaces in the Sector is 18.5 acres approx and out of which 11 acres (approx.) is under open spaces in sub-sector 11-B. It is further mentioned that public space measuring 7.5 acres was released to the Chief Engineer, Union Territory, Chandigarh, for development of the park vide letter dated 23.8.1945 and that 2050 sq. yards out of 7.5 acres have been allotted for construction of Primary School. Site measuring 4550 sq. yards has already been earmarked for Community Centre and that 7 acres of land still exists as park. The Chief Administrator also approved the Zoning Plan of the school site allotted to respondent No. 4 on 11.5.2004. The said Zoning Plan has been attached as Annexure R-4.

6. In the written statement filed on behalf of respondent No. 4, it was stated that Sanawar Montessori School is being run by respondent No. 4 in Sector 11-B, Chandigarh, since August, 1975. Sanawar Montessori Education Society which controls and looks after the affairs of the school was registered on 2.5.1977. It was also pointed out that the present writ petition has been filed at the behest of the persons who also applied for allotment of the site but were not successful in the draw of lots. It was further pleaded that had the petitioners any interest in the park, they would have approached this Court when 11 Primary Schools sites including the site in question were declared and advertised by the Chandigarh

Administration on 16.10.2002. The Zoning Plan prepared in pursuance of the directions of the State Government/Chief Administrator u/s 4 of the Act is alleged to be statutory plan and that no illegality was committed by the Administration in allotting this School site in Sector 11-B, Chandigarh. It was further pointed out that after the allotment of school site, there remains a continuous park in the area which is approximately to the extent of 50-60 Kanals and that this site will not create any hindrance in the enjoyment of public to use the existing public park. It was pointed out that as per terms of the Act, the provisions of Section 275 of the Punjab Municipal Act are not applicable for Chandigarh. It was pointed out that the Government School in the beginning was a Primary School which was later on upgraded to High School and thereafter to Senior Secondary School keeping in view the demand/necessity of the public. The said school is having double shift on account of less seats in the said school. It was pointed out that most of the Government Schools are located on V-6 roads, where a larger number of students study in double shifts, whereas in the site allotted to respondent No. 4, only 300 students are to be accommodated and V-6 roads will be used only for 250 yards.

7. In the written statement filed on behalf of respondent No. 3, it was stated that the function of allotment of sites of private/Govt. Schools is not a function transferred by the Union Territory Administration to the Municipal Corporation, Chandigarh, and that the said respondent is taking all effective steps for improvement and development of the park including laying of footpath etc. The railing around the park is already in position and plantation work is going on.

8. Learned Counsel for the petitioners has at the outset stated that he is not challenging the legality and validity of The Allotment of Land to Educational Institutions (Schools), etc. on Lease-Hold Basis in Chandigarh Scheme, 1966 (hereinafter to be referred as the "1966 Scheme") but is aggrieved in respect of allotment of site to respondent No. 4 even in terms of such scheme.

9. Shri Sarjit Singh, learned senior counsel for the petitioners, has vehemently argued that 7.5. acres of land in Sector 11-B has been reserved for the Children Park as is evident from the communication dated 23.8.1994 addressed by the Chief Architect to the Chief Engineer. Thus, any allotment of land to respondent No. 4 out of said site of 7.5 acres is not permissible. The site which has been dedicated to park cannot be converted for the use of a school under any circumstances. Reliance is placed upon Bangalore Medical Trust Vs. B.S. Muddappa and others, , Dr. G.N. Khajuria and others Vs. Delhi Development Authority and others, , Nizam and Others Vs. Jaipur Development Authority and Others, , and Arun Kumar v. Nagar Mahapalika Allahabad and Ors. 1987 ALJ 1038. Still further, it is argued that as per Zoning Plan Annexure R-1, the land is meant for use of place (public?) spaces. The education purpose as a type of building permitted in such Zoning Plan will take within its ambit "a public educational institution" such as Government School and not a school run by a private Society. It is further argued that the official respondents have not

disputed that the land measuring 7.5 acres has been reserved for a park vide communication dated 23.8.1994 and, therefore, the allotment of a site out a said park to respondent No. 4 is not sustainable in law. It is argued that respondent No. 4 is not a recognised school and, thus, not eligible for allotment of school site under the aforesaid scheme. Still further, the Screening Committee has not visited the site before allotment which is required in terms of Clause 6(iv) of 1996 Scheme so as to verify the existing school to consider the feasibility of allotment of site to such a school.

10. On the other hand, learned Counsel for the respondents has pointed out that as per Master Plan, three schools are contemplated in Sector 11, Chandigarh. Only one school is in existence whereas second school site has been allotted to respondent No. 4. The school site has been allotted out of land reserved for public spaces i.e. Landscape features, educational, public and community buildings and public amenities. As per definition of "public building" contained in Rule (xxxviii) of the Punjab Capital (Development and Regulation) Building Rules, 1952 (hereinafter to be referred to "the Rules"), school is part of a public building and, thus, allotment of school site in favour of respondent No. 4 is in accordance with Zoning Plan. It is further argued that communication dated 23.8.1994 is inter-departmental communication from the Chief Architect to the Chief Engineer of Chandigarh Administration. There is no approval of the Chief Administrator in exercise of the powers u/s 4 of the Act for reserving 7.5. acres of land as a park out of public spaces depicted in the Zoning Plan, Still further, it is pointed out that the site of the Community Centre was carved out in 1992 with the approval of the Chief Administrator. Vide letter dated 25.6.2002, the Chief Administrator accorded approval for carving out 11 Nursery School Sites of 2000 sq. yards in various sectors, including the site in question. The Chief Architect was requested to incorporate the same in the layout plan of the sectors. However, subsequently, the Chief Administrator accorded approval to the upgradation of 11 Nursery School sites (including the site in dispute) to Primary Schools and communicated the same to the Chief Architect on 3.3.2004 vide Annexure R-3. Such approval has been granted in terms of Section 4 reads with Rule 2(vi) of the Rules. Thus, the statutory requirement of preparation of Zoning Plan has been complied with. It was also submitted that there is no distinction between Zoning Plan and Layout Plan which has been used inter changeably in the statute and in the records.

11. It was submitted that 1996 Scheme was amended w.e.f. 20.12.2001 wherein Clause 4 i.e. pertaining to eligibility for allotment as a "recognised schools" was substituted and an Educational Institution having competence and experience, as per criteria and policy, were made eligible. It is pointed out that respondent No. 4 is recognised by the Chandigarh Administration w.e.f. 1.4.1980 till 31.3.1997 which is evident from Annexure R-4/2. It is further pointed out that after 31.3.1997 none of the schools running in residential buildings in Chandigarh was granted recognition in view of the writ petition pending before this Court in respect of running of such schools in residential buildings. Still further,

respondent No. 4 was short-listed as one of the six applicants eligible for allotment of site in Sector 11-B, Chandigarh. The said respondent was successful in the draw of lots conducted on 23.4.2004 and, thus, the allotment of site to the said respondent is in accordance with the 1996 Scheme. It is argued that the judgments referred to by the learned Counsel for the petitioners are clearly distinguishable in view of the fact that in these judgments the site ear-marked was sought to be utilized for a different purpose without complying with the procedure for the change of purpose and was, thus, in contravention of the statutory provisions. In the present case, the layout plan initially prepared itself stipulate the land use for educational building and such educational building has been approved to be set up in the layout plan by the Chief Administrator and, thus, there is no other requirement under the statute which can be said to be not followed before allotment of site to respondent No. 4.

12. We have also gone through the records leading to the approval of the site by the Chief Administrator for Nursery/Primary Schools including the site in dispute as well as the proceedings of the Screening Committee under 1996 Scheme for allotment of site to respondent No. 4. A perusal of the record shows that layout of 11 schools sites was earmarked by the office of the Chief Architect including the site in dispute and sent for approval to the Chief Administrator, Chandigarh Administration. It was pointed out that the subject land is a public space i.e. meant for landscape features, education, public, community buildings and public amenities. The Finance Secretary-cum-Chief Administrator accorded approval for carving out 11 Nursery School sites of 200 sq. yards and the Chief Architect was requested to incorporate the same in the layout plan of the respective sectors. The said letter read as under:

"From

The Finance Secretary-cum-Chief Administrator, Chandigarh Administration.

To The Chief Architect and Secretary, Department of Urban Planning, Chandigarh Administration.

Memo No. 1968/UTF(3)-2002/ Dated, Chandigarh the 25.6.2002. Subject: Carving of school sites in various sectors of Chandigarh.

2. Approval of the Finance Secretary-cum- Chief Administrator is hereby accorded for, the carving of 11 (Eleven) Nursery School sites of 2000 sq. yards in various sectors in Chandigarh as per list sent by you vide your memo under reference.

You are requested to incorporate the same in the layout plan of respective Sectors.

Sd/- Superintendent Finance-I, for Finance Secretary-cum-Chief Administrator, Chandigarh Administration."

Subsequently, Nursery School sites were upgraded to that of Primary School sites

and the letter dated 25.6.2002 was withdrawn vide communication dated 3.3.2004, appended as Annexure R-3. The said letter reads as under:

"From

The Finance Secretary-cum-Chief Administrator, Chandigarh Administration.

To

The Chief Architect, Department of Urban Planning, Chandigarh Administration,

Memo No. 21/I/254-UTFI(3)-2004/ Dated, Chandigarh the 3.3.2004. Subject: Allotment of land to 11 Primary School sites of area 2000 sq. yards. Reference your UO No. Arch.-04/021, dated 23.1.2004 on the subject noted above.

2. Approval of Finance Secretary-Cum-Chief Administrator, Chandigarh Administration is hereby accorded to change to status of the 11 (Eleven) School sites of 200 sq. yds. carved out in different sector from Nursery to Primary School sites.

3. The approval conveyed vide memo No. 1968-UTFI(3)-2002/5745 dated 25.6.2002 may be treated as withdrawn.

Sd/- Superintendent Finance-I, for Finance Secretary-cum Chief Administrator, Chandigarh Administration."

At this stage, the reproduction of the following statutory provisions would be helpful in appreciating the respective arguments raised by learned Counsel for the parties.

"The Capital of Punjab (Development and Regulation) Act, 1952.

2(b): "amenity" includes roads, water-supply, street, lighting, draining, sewerage, public building, horticulture, landscaping and any other public utility service provided at Chandigarh.

4. Power to issue direction in respect of erection of building: (1) For the purpose of proper planning or development of Chandigarh, the Central Government or the Chief Administrator may issue such directions, as may be considered necessary, in respect of any site or building, either generally for the whole of Chandigarh or for any particular locality thereof regarding any one or more of the following matters, namely:

(a) architectural features of the elevation or frontage of any building;

(b) erection of detached or semi-detached buildings or both and the area of the land appurtenant to such building;

(c) the number of residential buildings which may be erected on any site in any locality;

(d) prohibition regarding erection of shops, work shops ware-houses, factories or

buildings of a specified architectural character or building designed for particular purposes in any locality;

(e) maintenance of height and position of walls, fences, hedges or any other structural or architectural construction"

(f) restrictions regarding the use of site for purposes other than erection of buildings.

(2) Every transferee shall comply with the directions issued under Sub-section (1) and shall as expeditiously as possible, erect any building or take such other steps as may be necessary, to comply with such directions.

22. Power to make rules: (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the purpose of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:

(a) the terms and conditions on which land or building may be transferred by the Central Government under this Act;

(b) to (d) xx xx xx xx

(c) erection of any building or the use of any site;

(f) to(k) xx xx xx xx

(I) any other matter which has to be or may be prescribed.

The Punjab Capital (Development and Regulations) Building Rules, 1952.

2(iv) "Architectural Control Sheet" shall mean sheets of drawing with directions signed by the Chief Administrator and kept in his office showing the measure of architectural control which shall be observed in the special areas.

(xv) "class of building" shall mean a building in one of the following four categories:

(a) Residential building.

(b) Commercial building.

(c) Warehouse and Industrial building.

(d) Public building.

(xxi A) "Frame Control Area" shall mean the areas shown as such in a Zoning Plan or indicated as such in Drawing No. 22, Job No. 2 dated the 26th August, 1967 issued by the Chief Administrator.

(xxx B) "Frame Control Drawing" shall mean the numbered sheet of drawing signed by the Chief Administrator and kept in his office defining boundaries of building plots, compulsory building lines, permissible heights of buildings to be

realised in prescribed stages, site and floor coverage, restrictions on treatment of external facade including the permissible sizes of opening and such other restrictions on the development of sites as may be prescribed.

(xxxviii) "Public building" shall mean a building used or constructed or adopted to be used, either ordinarily or occasionally as a place of public worship, or as a hospital, college, school, hotel, restaurant, theater, public hall, public assembly or entertainment for persons admitted thereto by tickets or otherwise, or used or construed or adopted to be used either ordinarily or occasionally for any similar public purpose.

(Ivi) "Zoning Plan" shall mean the numbered plan signed by the Chief Administrator and kept in his office defining the layout of any numbered sector of the Master Plan of Chandigarh showing the streets, boundaries of buildings plots, open spaces, position of protected trees or other features and showing in colour by other means the specified land use, building lines, permissible heights of buildings, site coverage and such other restrictions on the development of land or buildings as may be prescribed.

3. Application : (a) A person who erects or re-erects or occupies any building shall comply with these rules and in addition shall comply with the restrictions shown on the Zoning Plan.

(b) A person who erects or re-erects a building in special area listed in the Schedule I shall in addition to these rules also comply with the restriction given in the "Architectural Control Sheet" and any other directions that may be issued by the Chief Administrator.

(bb) A person who erects or re-erects a building in a Frame Control Area shall, in addition to these rules also comply with the restrictions given in the Frame Control Drawings and any other directions that may be issued by the Chief Administrator.

(c) These rules shall also be applicable if any material change of use is proposed in an existing building.

(d) A person who executes work or installs sanitary fittings in connection with a building shall comply with the requirements of rules included in Part V (relating to draining control) in so far as they are applicable.

19. Zoning Plan: The erection or re-erection of every building shall comply with the restrictions of the zoning plan and the schedule of clauses appended thereto and the architectural control sheets, if applicable.

The Allotment of Land to Educational Institutions (Schools), Etc. on Lease-Hold Basis in Chandigarh Scheme, 1996.

4. Eligibility for allotment: An Educational Institution (School/Society/Trust) fulfilling the criteria laid down by the Chandigarh Administration from time to time shall be eligible for allotment of land subject to the following:

(i) The Educational Institution (School/Society/Trust) have the requisite competence and experience in running an Educational Institution (School) on the date of notice inviting applications, as per the criteria and policy set by the Chandigarh Administration from time to time.

(ii) The Educational Institution/Society/Trust has enough funds at the time of applying to pay at least 25% of the advertised cost of the land and 25% of the estimated cost of the building to be erected thereupon and shall give sufficient proof for the same.

6. Procedure for allotment:

(i) to (iii) xx xx xx xx

(iv) Applications so received under Sub-para (i) shall be screened by a Screening Committee consisting of the Secretary Education (Chairperson). Finance Secretary or his representative, Chief Architect, Estate Officer, Director Public Instructions (Colleges) and Director Public Instructions (Schools). The Screening Committee shall interview the applicants, examine records, make site visit or take any other action necessary for scrutinizing the applications. The Screening Committee shall make detailed recommendation as regards the allotment to applicants found eligible as per the criteria and policy laid down. The recommendation shall include the nature and size of site for which an applicant may be considered."

13. We have heard learned Counsel for the parties at great length and have also gone through the records provided by the learned Counsel representing the official respondents. However, we are unable to agree with the argument raised by the learned Counsel for the petitioners. Annexure R-2, on which heavy reliance is placed by the petitioners reads as under:

"From

The Chief Architect, Department of Urban Planning, Chandigarh Administration.

To

The Chief Engineer, U.T. Chandigarh

Memo No. S-11/STP-94/ Dated 23.8.94 Subject: Representation of residents of Sector 11, Chandigarh.

Ref: Your Office Memo No. 6522 dated 16.6.94.

Sh. J.C. Verma vide his representation dated 22.9.93, on behalf of the residents of Sector 11, Chandigarh have raised following demands:

1. About 20 acres of common land in Sector 11 has remained undeveloped. The same may be developed with paths, landscaping and a children park.

2. Playing field of the existing Govt. High School in Sector 11 may be developed.

3. A community centre may be established in the Sector.

The matter has been examined and item-wise comments are given below:

1. Instead of 20 acres, there is about 7.5. acres of land in Sector 11-A and B which needs to be developed. The same is shown in green on a copy of layout plan placed below. Drawings for development of part of this area as children park and the remaining area with concrete paths and landscaping will be issued to the Engineering Department for implementation.

2. Playing field within the School compound may be developed by the Engineering Department.

3. A site for community centre in Sector 11 has already been earmarked and architectural drawings for construction of the same have been supplied to the Chief Engineer on 29.12.92.

Sd/- Senior Town Planner, for Chief Architect, Department of Urban Planning, Chandigarh Administration."

The said document is, in fact, inter-departmental communication addressed by the Chief Architect to the Chief Engineer, Union Territory, Chandigarh, wherein the office of the Chief Architect has offered its comments on the representation made by one of the residents of Sector 11. It is pointed out that 7.5. acres of land in Sector 11-A and B (both the parties admit that reference is only to the land of Sector 11-B) needs to be developed. It has been commented that drawing for development of part of this area as Children Park and the remaining area with concrete paths and landscaping will be issued to the Engineering Department for implementation. The comments have to be appreciated in the context of the demand raised in representation which leaves no manner of doubt that 7.5 acres of land, in fact, requires development. In the Zoning Plan originally prepared for Sector 11-B, the permissible use of such land is public spaces as per column 2 of the key therein. Whereas in column No. 3 i.e. the type of building permitted, the said land is reserved for landscaping features, educational, public and community buildings and public amenities. Therefore, the comments of the Chief Architect were relating to undeveloped land in Sector 11. It is, thus, not a reservation for a public park exclusively. Still further, under Rule 2(lvi) of the Rules, Zoning Plan is a numbered plan signed by the Chief Administrator and kept in his office defining the layout of any numbered sector of the Master Plan of Chandigarh. The Master Plan produced before us during the course of hearing in respect of Sector 11 reflects three schools. The site in dispute, is, in fact, a second school site. Once the Chief Administrator has approved the Zoning Plan carving out of school site of 2050 sq. yards, it will supersede communication dated 23.8.1994 even if it amount to affecting any change in the Zoning Plan though no such change was ever proposed, considered or even granted. The site has been reserved in the Zoning Plan originally prepared as the one meant for landscape features, educational, public and community buildings. The public building as defined in Clause 2(xxxviii) of the

Rules means a building used or constructed or adopted to be used for a school as well. Therefore, the land use of the said site was reserved for a school in the original Zoning Plan itself. Therefore, the allotment of site to respondent No. 4 cannot be said to be in violation of the land use reserved under the Zoning Plan.

14. The argument that only Government School would come within the permissible land use is devoid of any merit. The public building defined under the Rules include the building used or constructed or adopted to be used as a place of public worship, or as a hospital, college, school, hotel, restaurant, public lecture room, public exhibition etc. etc. or used or constructed or adopted to be used either ordinarily or occasionally for any other similar public purpose. The said public purpose is not relatable to the use of land by the government but the user thereof which is meant for the public at large. Therefore, we do not find any merit in the argument that only government school would fall within the definition of public building. The layout of such school has been approved by the Chief Administrator in terms of Rule 2(lvi) of The Rules. Still further, approval of the Zoning Plan of the School in terms of Rule, 3 Annexure R-4, by the Chief Administrator also shows that the procedure for carving out of site for a school has been complied with meticulously. Thus, all the provisions of the statute under the Rules framed thereunder stand complied with. The learned Counsel could not refer to any provision which was not followed or complied with by the respondents before allotting site to respondent No. 4 under the Act and the Rules framed thereunder. The final authority for all approvals is Chief Administrator. Such approval having been granted by the Chief Administrator, the onus was on the petitioner to show that such action is either arbitrary, irrational or improper.

15. The decision of a Division Bench of Allahabad High Court in the case reported as Arun Kumar v. Nagar Mahapalika, Allahabad and Ors. 1987 ALJ 1038, heavily relied upon by learned Counsel for the petitioners, is not applicable to the facts of the present case. The dispute in the said case was grant of lease of open spaces in Mod Lal Nehru Park (earlier known as Alfred Park). The Court did not find any favour with the stand of the State that it has right to regulate its open spaces in any manner it desire. From the perusal of the official documents produced as well as Master Plan, the Court concluded that it is public park dedicated for the benefit and enjoyment of the citizens of Allahabad. Reliance was placed upon U.P. Urban Planning and Development Act, 1973, as well as U.P. Parks, Play Grounds and Open Spaces (Preservation and Regulation) Act, 1975 to hold that the existence of the institution or buildings inside the park cannot be justified. Learned Counsel for the petitioner has argued that once the land was reserved for park, it is dedicated to public for use as a park and such purpose cannot be changed. However, in the present "case, the site in dispute is reserved for education, public and community buildings and public amenities in the original Zoning Plan itself. Therefore, carving out of a school site in such area does not violate any of the provisions of the statute. The mere fact that the site has been allotted after more than 50 years of preparation of the Zoning Plan will not confer any right in favor of the residents of the locality to use the entire area

as a park when the land use was reserved for educational and public buildings.

16. In Bangalore Medical Trust's case, the available space reserved in the scheme for a public park or play-ground was allotted for the purpose of constructing a hospital without alteration of scheme prepared under the Bangalore Development Authority Act, 1976. In Dr. G.N. Khajuria and Ors. case (supra), again the area reserved for park was allowed to be used as a school. In Nizam's case (supra), again the open space reserved in the approved plan under the Rules was sought to be allotted to the school. It was held that allotment of site out of open space is illegal and void. The said judgments are again not applicable to the facts of the present case.

17. Another judgment to which reference was made by the petitioner in Daya Swamp Nehra and Ors. v. The State of Punjab and Ors. AIR 1964 P&H 533 wherein the challenge was to a site for a petrol pump. The said allotment was sought to be defended by contending that the petrol pump is an "amenity" being a "public utility service" and, thus a public building and, therefore, fall within the purpose of the open spaces, the purpose mentioned in the Zoning Plan. It was held that the petrol pump cannot be said to fall within the definition of public building. Such petrol pump can fall either as a commercial building, warehouse or industrial building. The Court also took the view that the petrol pump will not fall within the public utility service as a commercial undertaking by a private party was not intended to be included in the amenities as defined in the statute. The Court did not conclusively deal with such clause as it found it unnecessary for the purpose of the said case. The said judgment does not provide any help to adjudicate upon the issue raised in the present petition wherein the land reserved for educational and public building has been allotted for a school site.

18. The question which now requires to be decided is whether respondent No. 4 was eligible for allotment of school site. Learned Counsel for the petitioners has relied upon unamended definition of eligibility contained in Clause 4 of 1996 Scheme. But such clause having been substituted on December 20, 2001, it was no longer mandatory for a recognised school to be eligible for allotment of site. Still further, respondent No. 4 was recognised school till 1997 and thereafter none-of the schools running from the residential buildings were granted recognition in view of the writ petitions pending before this Court challenging the running of schools in residential buildings. Therefore, we do not find any merit in the argument that respondent No. 4 was not eligible for allotment of a school site in terms of 1996 Scheme.

19. The argument that the Screening Committee has not visited the site in terms of Clause 6(iv) of the Rules is again without any substance. Firstly, there is no such allegation made in the writ petition. Secondly, the proceedings of the Screening Committee produced before us shows that the Committee has considered the experience of the Society in running of school as well as finances to meet the costs of construction. The said school was one of the six Societies considered eligible for allotment of school site in Sector 11-B, Chandigarh.

Subsequently, on the basis of draw of lots conducted on 23.4.2003 amongst these eligible Societies, the said respondent was successful. None of the eligible Societies found suitable for the site in Sector 11-B has disputed the allotment of site to respondent No. 4. In public interest litigation, we say nor more in respect of allotment of site to respondent No. 4.

20. Though learned Counsel for the petitioners has raised the argument that school site has been allotted on a meager sum of Rs. 18,45,000/- though the value is crores of rupees in the market. However, the said argument cannot be raised by the petitioners as at the outset learned Counsel for the petitioners has stated that he is not challenging the validity of any of the clauses of the Scheme under which the allotment has been made. The school site has been allotted under the scheme on a pre-determined price and, thus, it is not open to the petitioner to raise such an argument at this stage. Learned Counsel for the petitioners has given up the challenge to the Scheme for the reason that another bunch of writ petitions challenging the validity of the scheme is pending consideration before this Court and it will amount to pre-judging the issue without hearing the affected parties. Therefore, the said argument raised by the learned Counsel for the petitioners at the fag end of his arguments is not examined in the present case.

21. The law is well settled that the decisions taken in administrative matters, the scope of judicial review is confined to the decision making process and does not extend to the merits of the decision taken. It is well known that when relevant consideration has been taken note of and irrelevant aspects have been eschewed from consideration and that no relevant aspect has been ignored and the administrative decision has the nexus to the facts on the record, then the same cannot be attacked on merits. Judicial review is permissible only to the extent of finding whether the procedure in reaching the decision has been observed correctly and not the decision itself.

22. In the recent judgment reported as Delhi Development Authority and Another Vs. UEE Electricals Engg. (P) Ltd. and Another, , the administrative action can be interfered with in exercise of judicial review on the ground of illegality, irrationality and procedural impropriety. It has been held to the following effect:

"11. One can conveniently, classify under three heads the grounds on which administrative action is subject to control by judicial review. The first ground is "illegality" the second "irrationality", and the third "procedural impropriety". These principles were highlighted by Lord Diplock in Council of Civil Unions v. Minister for the Civil Service 1984(3) All.E.R. 935. (commonly known as CCSU case).

12. Courts are slow to interfere in matters relating to administrative functions unless decision is tainted by any vulnerability such as, lack of fairness in procedure, illegality and irrationality. Whether action falls within any of the

categories has to be established. Mere assertion in that regard would not be sufficient.

13. The famous case Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation 29 All.E.R. 682 commonly known as "The Wednesbury's case" is treated as the landmark so far as laying down various basic principles relating to judicial review of administrative or statutory direction.

14. The law is settled that in considering challenge to administrative decisions Courts will not interfere as if they are sitting in appeal over the decision.

15. The principles have been noted in aforesaid terms in Union of India and Anr. v. G. Ganayutham 1977(7) S.C.C. 463 and Indian Railway Construction Co. Ltd. Vs. Ajay Kumar, . In essence, the test is to see whether there is any infirmity in the decision making process and not in the decision itself."

Thus, in view of the principles of law and the findings recorded above, we do not find any illegality, irrationality or procedural impropriety in the allotment of site of school to respondent No. 4 in exercise of our jurisdiction of judicial review under Article 226 of the Constitution of India. Therefore, we dismiss the present writ petition with no orders as to costs.