

(2003) 05 DEL CK 0081

In the Delhi High Court

Case No : CWP No. 5264 of 2002, CWP No's. 5379, 6103, 6417, 7102 of 1999, 1365, 3067, 4359, 5973 of 2000, 1920, 420, 1761, 2631, 3124, 3293, 4859, 5422, 5717, 5841 of 2001, 1129, 5412, 5418 of 2002 and 647 of 2003

Mount Abu Education Society (Regd.)

APPELLANT

Vs

Delhi Development Authority and Another

RESPONDENT

Date of Decision : 06-05-2003

Acts Referred:

Citation : (2003) 4 AD 185 : (2003) 105 DLT 150 : (2003) 68 DRJ 726

Hon'ble Judges : Sanjay Kishan Kaul, J

Bench : Single Bench

Advocate : Deepak Khosla, Anurag Kumar Aggarwal, Rajeshwar Kumar Gupta, D.V.S. Gupta, Nisha Bagshi, Rakesh Tiku, Amit Khemka and K.P. Singh, for the Appellant; Geeta Mittal, Shobhana Takiar and Kanika Agnihotri for R1, Prrerna Priyardarshini, Jaswinder Singh, Sujata Kashyap and A.K. Bhardwaj for R2, for the Respondent

Final Decision : Dismissed

Judgement

Sanjay Kishan Kaul, J.

1.The petitioner institutions are aggrieved by the decision of the respondent to allot them less land and at higher cost for running of the schools to be set up by these institutions.

2.The aforesaid is the broad parameter of the grievances of the petitioners, which may vary in the individual facts of each case. It is, thus, necessary to first deal with the common issues and then to consider in what manner the same would effect each of the cases.

3.The Master Plan in question came into force on 01.08.1990 and was for a period of 10 years. The said Master Plan has been amended from time to time. The Master Plan provides for facilities relating to a senior secondary school under

the head of "Infrastructure - Social - Education", which is as under :-

"1 for 7,500 population Strength of the school - 1000 students Area per school - 1.60 ha. (approx. 4 acre) School building area - 0.6 - ha. Play field area with a minimum of 68 mtr. x 128 mtr. to be ensured for effective play."

4. Though the aforesaid parameters have been prescribed, DDA has allotted land of approximately half the said area of about 2 acres on the ground of general scarcity of land, increase in population and increase in demand for infrastructure. The respondent - DDA has stated that after October, 1999, it has not allotted 4 acres of land to any society and has uniformly implemented the policy of allotting approximately 50% of the said area of about 2 acres. The proposal for modification of the Plan is stated to be pending final approval with the Ministry of Urban Development and Poverty and Alleviation. This is to comply with the requirement of Section 11A of the Delhi Development Act, 1957 (hereinafter to be referred as, "the said Act").

5. The contention advanced on behalf of the petitioners is that DDA is an Authority duly constituted under the said Act and is bound by provisions of the said Act. It is, thus, the duty of the respondent to promote the planned development of Delhi according to the Plan to be prepared and approved in the manner prescribed under the said Act. The Plan in question was so approved laying down the criteria for a senior secondary school. The power to modify a plan is limited by Section 11A of the said Act to the extent it does not effect important alterations in the character of the plan and which do not relate to the extent of land users or standards of population density. Such a modification can be carried out by the Authority. Under sub-section (2) of Section 11A, the Central Government may make any modification to the Master Plan or the Zonal Development Plan whether such modifications are of the nature specified in sub-section (1) or otherwise. In order to carry out the modification(s), the objections / suggestions are to be invited and it is only after due consideration of the same, the Plan can be amended. Since admittedly, no modification of the Plan has taken place, it has been contended that DDA is bound by the provisions of the Master Plan. Learned counsel referred to various provisions of the said Act, such as Sections 14, 29, 31 and 31A of the said Act, which stipulate a bar and provide for penalty for carrying out any development in contravention of the Master Plan.

6. Learned counsel for the petitioners contended that the power to allot land vested in the respondent Authority under the Delhi Development Authority (Disposal of Developed Nazul Land) Rules, 1981 (hereinafter to be referred as, "the said Rules") and the same has to be exercised in conformity with the approved Master Plan. In terms of rule 2(f) of the said Rules, a Land Allotment Advisory Committee is constituted for carrying out purposes of the said Rules, which makes its recommendations. Rule 4 is 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, cooperative house building societies, other co-operative societies of individuals, co-operative societies of industrialists and to the departments of the Central Government, State Governments and the Union territories."

7.The expression "plan" has been defined u/s 2(k) of the said Act to mean a Master Plan or the Zonal Development Plan for the zone referred to in Sections 7, 8 and 11A of the said Act. It is, thus, contended that the Authority can allot Nazul land only in conformity with the plans in terms of rule 4 of the said Rules.

8.The plea and justification raised on behalf of the respondent of pressing needs for more educational institutions in a city is, thus, repelled by learned counsel for the petitioners on the ground that the same cannot be contrary to the statutory provisions of the said Act and the Master Plan. It has also been contended that in most cases, the Master Plan itself provided for earmarked portion of 4 acres for the senior secondary school and consequences of the action of the respondent is to withhold almost half of the land.

9.The respondent Authority has sought to justify the action in reducing the quantum of the land allotted by it on the ground of a consistent action without any discrimination in this behalf inasmuch as after October, 1999, no allotment of 4 acres of land has been made. It is further stated that the number of students remains the same as also the buildable area. Thus, the construction to be constructed on the plot remains the same, though the open area has been reduced. Open area has not been eliminated. It has been stated that the standard set out in the Master Plan cannot be adhered to on account of ground realities specially as the Master Plan was meant for 10 years. Thus, the planning standards may not be the allotment standards. In this behalf, strong reliance has been placed on the norms set out by the Directorate of Education and the Central Board of Secondary Education (for short, "CBSE") and it has been contended that the play area as specified by the Directorate of Education has been taken into consideration. The CBSE issued a letter dated 24.07.2001 in respect of the revised norms of land requirement for affiliation of privately managed schools in the National Capital Territory of Delhi. It has been submitted that the said norms have been duly met with, which provide for a maximum area of 4000 sq. mtrs. for a senior secondary school. Reference has been made to the letter dated 10/12.07.2002 of the CBSE, which refers to the deficiencies of land in respect of certain schools run by the Directorate of Education of Delhi, but not affiliated with the Board. Reference has also been made to the norms referred to in the letter dated 24.07.2001, which have been fixed by the Affiliation Committee of the Board in view of the pressure of population and scarcity of land.

10.It may be noted that the aforesaid pleas have been opposed by the petitioners on the ground that the guidelines of CBSE and the Directorate of Education are not to govern the allotment of the land by the respondent - DDA.

11.The respondent have referred to the decision taken in terms whereof due to the growing population of the city, valuable requirements as notified by the Directorate of Education and CBSE, optimal utilization of open space in residential areas, scarcity of available land in the city, etc., the quantum of land allowed for school building was permitted to be retained and only the component of play field given on license fee could be reduced from the allotment. Thus, open spaces were to be utilized for providing needs of children / residents of the area. The proposal in this behalf is stated to have been approved on 25.09.2001 and is pending consideration before the Ministry of Urban Development.

12.Learned counsel for the respondent has placed strong reliance on the plea that the petitioners have no legal right to claim allotment of 4 acres of land merely by reason of their having submitted an application for allotment of such land. It is stated that DDA is bound to maximize the public interest, which is the reason for reduction of the area from 4 acres to 2 acres. The decision of the CBSE is relied upon on the ground that the expert academic body itself issued revised norms of land requirement for affiliation of schools whereby the school was to be constructed in an area of about 2 acres of land with part of the land kept for proper playground. Reference has also been made to the scientific demographic study carried out by the Department of Education setting out the norms envisaged under MPD 2001 are unrealistic and cannot be complied with. This is stated to have been done in January, 2003. Even the population density for MPD 2001 projection is stated to have changed.

13.Learned counsel for the respondent referred to various judgments of the Supreme Court, which took judicial notice of the changes, imperative needs and the ground realities in respect of different aspects of planned development of Delhi. In *Jai Narain and Others Vs. Union of India and Others*, , the Supreme Court held that the Court can take judicial notice of the fact that there was utmost urgency to acquire land for construction of sewage treatment plant for planned development of New Delhi.

14.Learned counsel for the respondent submitted that the Master Plan only set out the basic standards and guidelines within which the allotment and actual development is carried out and Section 7(2) of the said Act specifically provides that the Master Plan shall define various zones into which Delhi may be divided for purposes of development and indicate the manner in which the land in each zone is proposed to be used. Further Section 7(2)(b) specifically states that the Master Plan will serve as a basic pattern of framework. Since there was growing requirement of the school with the large growth of population and the planning period itself had expired, it was considered appropriate to give lesser area for plain fields in order to utilise the land for the schools.

15.In *Maya Devi Vs. Union of India and Others*, , the learned Single Judge of this Court was concerned with the issue of construction of flats in area stated to have been earmarked as a site reserved for a primary school in the lay-out plan. The learned Single Judge held that so far as modification of the lay-out plan was

concerned, the same can be modified by the Vice-Chairman of the DDA. It was further observed that the relevant page 33 of the Master Plan dealt with the planning standards for educational facilities and an approximate area was stated and, thus, was held to be in the form of the proposal only.

16. Learned counsel contended that if the contention of the petitioners was to be accepted, then only permissible school size of a senior secondary school would be 4 acres, which is not so in Delhi as there are number of schools running in a lesser area. It is contended that the public interest is the paramount consideration and the decision taken by the respondent is in public interest. Learned counsel referred to the judgment of the Supreme Court in *Ramniglal N. Bhutta and another Vs. State of Maharashtra and others*, . This was a matter dealing with the question of acquisition of land. The Supreme Court held that competing interest must be balanced keeping in mind the interest of justice and public interest. It was also held that the power under Article 226 of the Constitution of India (hereinafter to be referred to as, `the Constitution") must be exercised only in furtherance of interest of justice and not merely on making of a legal point.

17. Learned counsel vehemently contended that mere making of an application for allotment would not give an entitlement to the petitioners for allotment of a plot of a particular size and no absolute and/or enforceable right for allotment comes into existence merely by making the application. Reference in this behalf was made to the Full Bench judgment of this Court in *Ramanand Vs. Union of India and Others*, , which dealt with the issue of allotment of alternative plots to persons whose lands were acquired. Such alternative plots were given under a scheme made in this behalf. This was apart from the compensation for the land acquired. It was, thus, held that there was no right to seek such an allotment, but only to be considered for allotment of an alternative plot. Rule 4 of the Rules was held to be a discretionary power of the DDA to allot land to a named category of persons, which did not confer right of allotment on any particular person and it was held that in terms of Rule 6, which provides for determination of the size of the plot, the DDA has a power to decide the right of allotment of a plot would accrue in what size and where. Even the land rates were held to be applicable being the pre-determined rates notified by the Central Government on the date of offer by the DDA and not on the basis of the date of the application.

18. Learned counsel for the petitioners have referred to certain judgments in the synopsis of the submissions filed, though they were never cited or pointed out during the course of the arguments at the bar and, in my considered view, the same need not be referred to in view thereof. These judgments have been referred to substantiate the general principles of violation of the principles enshrined in Article 14 of the Constitution of India as well as against the rule of law like *Menaka Gandhi v. Union of India*, AIR 1985 SC 597 ; *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, and *AIR India Vs. Nergesh Meerza and Others*, .

19.Learned counsel for the petitioners referred to the judgment of the Supreme Court in Dr. G.N. Khajuria and others Vs. Delhi Development Authority and others, , which was the case dealing with the allotment of land for a nursery school, when in terms of the Zonal Development Plan the land was reserved for a park.

20.In Bangalore Medical Trust Vs. B.S. Muddappa and others, , the issue was one of a conversion of a public park into a private nursing home.

21.In E.P. Railway Refugees H.B. Coop Society v. Commissioner of Police, 1993 RLR 552, the plot earmarked for a primary school was sought to be used for construction of a police station without following the procedure u/s 11A of the said Act.

22.Thus, all the aforesaid cases are such where the land was being utilised for purposes other than what is envisaged under the Master Plan or the Zonal Development Plan.

23.I have considered the submissions of the learned counsel for the parties in this behalf. There is no doubt that the Master Plan provided for the standards to be adhered to by the respondent authorities in respect of the user, development and allotment of land. The allotment has to take place under the Rules. The Master Plan and the Zonal Development Plan have statutory flavour and the provision is made in the said Act itself as to the manner in which they have to be amended. This is so provided u/s 11A of the said Act. The lay-out plan does not have a statutory flavour and can be amended by Vice-Chairman of the DDA in pursuance to the powers conferred on him. A sanctity has to be attached to the Master Plan. The significance of this is, in fact, accepted by the respondent by reason of their conduct. There is no doubt that the Master Plan was to remain in force for a period of 10 years and even during the currency of the Plan, the very basis and norms on which it was framed changed and the population far exceeded than what was envisaged. The respondent being conscious of the sanctity of the Master Plan have themselves stated that the process of modification of the same was initiated by them on 25.09.2001, but despite reminders, the same has not been finalised. The consequences of non-finalisation of the Master Plan is, thus, on the respondents.

24.I am unable to accept the contention advanced on behalf of the respondent that merely by reason of pendency of the consideration of the proposal, the said norms can be followed.

25.There is, however, no doubt about change in the ground realities and, as has been observed by the Supreme Court in the judgments referred to above, judicial notice of these facts can be taken. There has been a vast inflow of population into Delhi requiring increase in the infrastructure for the same. Education forms an important part of this infrastructure. Thus, the need as was originally envisaged for the schools do not hold good today and the requirement has increased manifold. Land is something, which cannot increase in quantity and,

thus, it is only the available land which has to be dealt with.

26. Education does not imply only four corners of the building. An overall development of personality forms an important part of education, which requires various other activities to be carried out like sports and cultural activities. The provision of playground has been made to encourage such activities, especially sports activities. It was, thus, not permissible in case the respondent authorities chose tomorrow to say that the school should not have any playground at all. The provision of playground is a necessity. However, the extent of the playground has to be examined by the authorities taking into consideration the shortage of land. The respondent authorities have, in fact, proposed a reduction in the playground area and not elimination of the same. It has been stated in the counter affidavit and the written submissions as also by the learned counsel at the bar that the constructed area permissible shall not be decreased by reduction of the total allotted area from 4 acres to 2 acres. Thus, the constructed area would remain the same, though the open area would decrease.

27. The CBSE and the Directorate of Education, who are the concerned educational authorities, have also discussed these aspects and come up with their own suggestions for recognition of a school. Thus, the playground areas have been decreased to accommodate the growing need of the population. This aspect cannot be ignored.

28. The unfortunate part is that it has taken so much of time on the part of the respondents and even today there is no final approval of these norms.

29. The question, which will arise, is as to what will be the consequence of non-modification of the Master Plan.

30. The Full Bench judgment of this Court in Ramanand's case (Supra) has held that rule 4 of the Rules confers a discretionary power on the respondent to allot land to any named category of persons and it does not confer a right of allotment of any particular person. There is an Institutional Allotment Committee, which makes recommendation. However, this has to be followed up by actual allotment. The respondent authorities keeping into consideration the ground realities, but found it difficult to allot land in terms of the parameters originally envisaged under the Master Plan since those parameters were required to be changed. It was, thus, open to the respondent authorities to have made no allotment of land. The earmarking of a particular area as a block of land would not imply that a person had a right to such allotment. Thus, the respondent however, chose to give allotment of a lesser area of land.

31. In my considered view, the respondent cannot be compelled to allot 4 acres of land, even though the same are the norms set out in the layout plan. If the contention of the petitioners was to be accepted, then it is only 4 acres of land, which should be allotted, while, on the other hand, the respondent was not willing to allot 4 acres of land, the consequence would be that the allotment itself could be quashed, but no Writ of Mandamus would lie to allot the balance 2 acres

of land as claimed for by the petitioners. The petitioners will not be interested in the same as it would deprive them of even the said 2 acres of land.

32. In this behalf, the observations made in Ramniklal N. Bhutia's case (Supra) by the Supreme Court have also to be kept in mind, though the same dealt with the issue arising under the Land Acquisition Act, 1894. The power under Article 226 of the Constitution of India is discretionary and has to be exercised in furtherance of the interest of justice. If the very basis, on which the Master Plan was made, has changed and the area to be allotted was calculated on the said basis, the absence of the new Master Plan or modification in the earlier Master Plan will not result in a right being created in favor of any of the petitioners to seek allotment of the 4 acres of land. It would not be a fit case where the discretion under Article 226 of the Constitution of India should be exercised specially taking into consideration the ground realities of scarcity of land, increase in population and the growing demand for the school education.

33. It is also to be noted that the present cases are not where the land is being put to a different use, i.e., the land user has been changed. What has been done is that the area earmarked for playground has been cut with the object of making provisions for more number of schools.

34. I am, thus, of the considered view that even though the Master Plan is statutory and prescribes the norms, the absence of modification of the same will not result in a right being created in favor of the petitioners for allotment of 4 acres of land. If the petitioners are not desirous of taking 2 acres of land, it is open to them to surrender the same to the respondent and the amount deposited in such a case would be liable to be refunded by the respondent forthwith.

35. Another issue linked with the aforesaid is one of bifurcation of plots.

36. Learned counsel for the petitioners have contended that the concerned plots earmarked are of 4 acres. This aspect is, in fact, covered by the aforesaid observations in view of the fact that the land use is not being changed and the buildable area is also not to be changed.

37. The next issue to be considered is relating to the cost of the land and the land rate to be applied. The rules prescribed the manner of fixation of premium for allotment of Nazul land. Rule 5 is as under :-

"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 organisations and local bodies for remunerative, semi-remunerative or unremunerative 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."

38. Thus, the land to be allotted to the schools are to be at rates determined from

time to time by the Central Government. This is different from the concept of pre-determined rates under rule 6, which applies to certain category of cases mentioned under the said rule. To this extent, there is no dispute between the parties. The dispute arises as a consequence of the contention of the petitioners that the rates had to be fixed by the Central Government which had not been so fixed in the present case. The petitioners have laid great emphasis on the manner prescribed under rule 5 of the Rules, which requires the rates to be determined by the Central Government. It was, thus, contended that the rates cannot be fixed by the DDA and only approved by the Central Government, since the rates have to be fixed by the Central Government itself. It has, thus, been contended that if the rates have to be fixed in a particular manner, then they must be so fixed only in that manner. It was held as far back as in AIR 1936 253 (Privy Council) that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all. This principle has been held good even thereafter and referred to in various judgments of the High Courts and the Supreme Court.

39. Learned counsel for the petitioners referred to the Full Bench judgment of the Punjab High court in *M/s. Oberoi Motors & Anr. v. Union Territory of Administration, Chandigarh & Ors* AIR 1978 P H 294 , where it was held while dealing with Section 5 of the Essential Commodities Act, 1955 that the Chief Commissioner is a delegate of the Central Government for framing of the orders and could not have delegated the said power further. This was so in view of the established principles of law that further delegation cannot be made by a delegate in view of the doctrine of delegates non posttest delegare. Learned counsel also referred to the judgment of the Supreme Court in *A.K. Roy and Another Vs. State of Punjab and Others*, where a passage from Craies on Statute Law, 6th Edn., page 263 was cited with approval as under :-

"If the requirements of a statute which prescribe the manner in which something is to be done are expressed in negative language, that is to say, if the statute enacts that it shall be done in such a manner and in no other manner, it has been laid down that those requirements are in all cases absolute, and that neglect to attend to them will invalidate the whole proceedings."

40. Learned counsel further referred to the judgment of the Supreme Court in *Sahni Silk Mills (P) Ltd. and Another Vs. Employees' State Insurance Corporation*, , wherein it was observed as under :-

"5. The courts are normally rigorous in requiring the power to be exercised by the persons or the bodies authorised by the statutes. It is essential that the delegated power should be exercised by the authority upon whom it is conferred and by no one else. At the same time, in the present administrative set-up extreme judicial aversion to delegation cannot be carried to an extreme. A public authority is at liberty to employ agents to exercise its powers. That is why in many statutes, delegation is authorised either expressly or impliedly. Due to the enormous rise in the nature of the activities to be handled by statutory

authorities, the maxim *delegatus non potest delegare* is not being applied specially when there is question of exercise of administrative discretionary power.

6. By now it is almost settled that the legislature can permit any statutory authority to delegate its power to any other authority, or course, after the policy has been indicated in the statute itself within the framework of which such delegatee is to exercise the power. The real problem or the controversy arises when there is a sub-delegation. It is said that when Parliament has specifically appointed authority to discharge a function, it cannot be readily presumed that it had intended that its delegate should be free to empower another person or body to act in its place. In *Barium Chemicals Ltd. v. Company Law Board*, this Court said in respect of sub-delegation :

"Bearing in mind that the maxim *delegatus non potest delegare* sets out what is merely a rule of construction, sub-delegation can be sustained if permitted by express provision or by necessary implication."

7. Again in *Mangulal Chunilal V. Manilal Maganlal*, while considering the scope of Section 481(1)(a) of the Bombay Provincial Municipal Corporation act (59 of 1949) this Court said that Commissioner of the Ahmedabad Municipal Corporation had delegated his power and function under the aforesaid section to a Municipal Officer to launch proceedings against a person charged with offences under the Act or the rules and that officer to whom such functions were delegated could not further delegate the same to another.

8. In Halsbury's Laws of England, 4th Edn., Vol.I, in respect of sub-delegation of powers it has been said :

"In accordance with the maxim *delegatus non potest delegare*, a statutory power must be exercised only by the body or officer in whom it has been confided, (*H. Lavender & Son Ltd. V. Minister of Housing and Local Government*) unless sub-delegation of the power is authorised by express words or necessary implication (*Customs and Excise Comrs. V. Cure and Deeley Ltd.* and *Mungoni V. Attorney General of Northern Rhodesia*). There is a strong presumption against construing a grant of legislative, judicial, or disciplinary power as impliedly authorising sub-delegation; and the same may be said of any power to the exercise of which the designated body should address its own mind. *Allam & Co. V. Europa Poster Services Ltd.* ...".

41. It may be relevant to note that the allotment letter issued to the societies provided that the same was provisional. A specific clause was also inserted stating that the cost of the land as demanded was provisional. Learned counsel for the petitioners, however, referred to the letter dated 12.08.1997 of the DDA stating that the land rates mentioned therein for 1996-97 and 1997-98 are on provisional basis and subject to the final notification of the Ministry of Urban Affairs and Employment and requiring an undertaking to be taken from the allotted institutions to pay the differential cost of land if land rates subsequently notified are higher. The said letter is as under :-

" DELHI DEVELOPMENT AUTHORITY

(LANDS FINANCE WING)

No. F.2(4)96/AO(P)/53 Dt.: 12.8.97 Sub : Institutional rates for the year 1996-97 and 1997-98 respectively

The institutional rates under different categories were last notified by the then Ministry of UD vide its No. J-22011/3/93-LD dated 11.11.94. These rates were valid from 1.4.94 to 31.3.96. Since then no revision has taken place and the cases of allotment of lands to various institutions are being decided by enhancing some percentage over the rates shown in the above mentioned notification. In order to maintain uniformity in deciding the cases of institutional allotments, Vice-Chairman, DDA is pleased to approve the institutional rates charged/to be charged during the year 1996-97 and 1997-98 in respect of institutional allotments as under :-

Year Enhancement of percentage Annexure with over the rates notified by the sample calcula- Min. in its cir. dt. 11.11.94 tions _____

1996-97 30% `A"

1997-98 69% `B" The above rates of 1996-97 and 1997-98 are on " provisional basis" and subject to final notification of the Ministry of UAE.

While deciding the cases of allotments, an undertaking may also be obtained from the allottee institutions to pay the differential cost of land if the rates finally notified by the Ministry are higher than the above percentage. Other terms and conditions of the above mentioned notification dt. 11.11.94 will remain unchanged.

Encl. : Annex. `A" & `B" (P.R. DEVI PRASAD) DIRECTOR (LAND COSTING)

42.A letter dated 18.05.1998 was also issued in the same terms as letter dated 12.08.1997 for the land rates of 1998-99. It may be noticed that undertakings have been given by the various petitioners, though it is stated to be under protest. A letter dated 16.04.1999 was issued by the Ministry of Urban Affairs and Employment regarding the issue of fixation of the prices of the Government land and stating that the issue of the revisional land rates w.e.f. 01.04.1996 had been under consideration of the Government and keeping in view the various factors, it has been decided that the land rates announced by the Government vide letter dated 11.11.1994 will remain in force and up to 31.03.1999. It was further stated that the sanction of the President was being conveyed to recover the premium and ground rent for institutional allotment in terms specified in the said letter. It was further stated in para 3 of the said letter that these rates are effective from 01.04.1998 to 31.03.2000. However, soon thereafter on 22.04.1999, the same Ministry issued another letter stating that the

implementation of the orders of the Ministry dated 16.04.1999 in respect of the schedule of the market rates is kept in abeyance till further orders. This was once again withdrawn vide letter dated 25.05.1999 stating that the land rate notified vide Order dated 16.04.1999 would continue to have force. It is stated no land rates had been fixed after 31.03.2000.

43.A letter dated 30.06.1999 was issued by the Ministry of Urban Development to the DDA in response to the letter dated 02.06.1999 of the DDA regarding revision of land rates to the following effect :-

"1. "Kindly refer to your D.O. Letter No. 100(5)99-RN/1039/5969 dated 2nd June, 1999 regarding revision of land rates as notified by this Ministry.

2. On the issue relating to charging the institutional land rates and the process of allotment by auction or competitive tendering, this Ministry is of the view that DDA is free to take an appropriate decision on both the issues at their end with the approval of the competent authority.

3. In view of the aforesaid, you may like to direct DDA to take appropriate action in the matter."

44.The DDA issued a letter dated 6/8.12.1999 to the Ministry of Urban Development proposing that the provisional rates of institutional land premium charged by the DDA for the period of 01.04.1996 to 31.03.2000 be also treated as final rates. The said letter is as under :-

"1. As you may be aware, the rates of land premium on which allotment may be made to the institutions are required to be fixed by the Central Govt. under Nazul Rules, 1981. Since 1.4.96 in the absence of revision of the rates by the Central Govt. at the time, DDA has been revising the rates fixed for the period 1994-96 upwards @ 30% per annum on a provisional basis.

2. Subsequently, in view of the considerations brought out by DDA, the Ministry has permitted DDA to levy its own rates for institutional purposes vide d.o. No. J-22011/4/95-LD dated 30.6.99. However, a Committee has been formed for rationalising the institutional rates to be effective from 1.4.2000.

3. Now, the issue is as regards finalisation of rates for allotment of institutional land for the period from 1.4.96 to 31.3.2000. In view of the directions of the Govt. vide their d.o. Letter dated 30.6.99 referred to above, it is proposed that the provisional rates of institutional land premium charged by the DDA for the period 1.4.96 to 31.3.2000 be also treated as final rates."

45.A further letter was issued on 14.12.2000 by the DDA in the following terms:-

"Please refer Secretary (UD)"s DO No. J-22011/4/95-LD dated June 30, 1999 wherein it was stated that on the issue relating to charging the institutional land rates and the process of allotment by auction or competitive tendering, DDA is free to take an appropriate decision on both the issues at their end with the approval of the competent authority. Subsequently, Ministry vide their order No.

J-22011/4/95-LD (Vol II) dated August 6, 1999 constituted a committee under the chairmanship of Addl. Secretary (Finance) with a view to further rationalize the prices of the Government land. It is understood that whatever decision is taken now would apply to the land rates with effect from 1.4.2000 or thereafter.

2. As you are aware the Ministry had, vide their letter dated 11.11.94 fixed the rates of institutional land which were valid up to 31.3.96. Thereafter, until the letter dated April 16, 1999, the Ministry had not indicated what are the rates to be charged for allotment of institutional land. In the absence of the rates of institutional land DDA could not have operated in a vacuum. Therefore, taking into account the general rates of increase in the real estate sector, DDA enhanced the premium of institutional land by 30% per annum with effect from 1.4.1996 on a provisional basis.

3. In the light of the letter dated 30.6.99 from the Secretary, Ministry of Urban Development, the matter was further examined. Finance Member vide his DO of even number dated December 8, 1999 to Director (DD), MOUD proposed that in view of the letter from Secretary (UD) dated 30.6.99 the provisional rates charged by DDA may be treated as final rates. This was followed up by another DO letter from FM number PA/FM/2000/178 dated March 1, 2000. However, there has been no communication from the Ministry so far.

4. I am accordingly enclosing herewith the schedule of land premium for institutional land charged by DDA from 1.4.96 to 31.3.97. The notes to schedule also indicate that rates for 1.4.97 to 31.3.98 will be enhanced by 30% over the rates in the schedule and the rates for 1.4.98 onwards will be enhanced by 30% over the rates for the year 1.4.97 to 31.3.98.

5. It is understood that in terms of the letter dated 30.6.99, DDA can charge rates of institutional premium as determined in the manner stated above. However, if in the view of the Ministry the premium charged by DDA for institutional lands from 1.4.96 onwards needs further approval of the Ministry for the rates of premium to be treated not as provisional but final rates the same may kindly be communicated at the earliest."

46. The Ministry of Urban Development issued a letter dated 15.12.2000 stating that the matter has been considered and the final approval of the Ministry has been accorded to the rates of the premium for institutional lands in DDA area enacted in the Schedule annexed to the aforesaid letter, which were to continue to operate till further directions are issued. The said letter is as under:-

" This is in continuation of the D.O. Letter of the Secretary, Urban Development No. J- 22011/4/95-LD dated 30.6.1999, and refers to your proposal conveyed vide your D.O. Letter No. F2(4)/96/AO(P) dated 14.12.2000 regarding rates of premium for institutional lands being charged by the DDA w.e.f. 1.4.1996 to 1.4.1998. The matter has been considered and final approval of the Ministry is hereby accorded to the rates of premium for institutional lands in DDA area included in the schedule annexed to your above mentioned letter.

It is also directed that these rates will be applicable till further directions of the Ministry as to the rates or the method of disposal of lands, for which a detailed proposal may be sent to the Ministry by 15.1.2001."

47. It is in the aforesaid factual context the learned counsel for the petitioners contended that what has been really done is not the land rates determined by the Central Government, but land rates determined by the DDA on which the seal of approval has been put by the Central Government. Learned counsel for the respondent has referred to the aforesaid factual matrix as also to the undertakings filed by the petitioners. The example of one such undertaking is as undertaking :-

" UNDERTAKING

I, D.N.ARORA S/O Late Shri Tulsi Das, R/O BC-40, Shalimar Bagh, Delhi and President of Mount Abu Education Society having the registered address of BJ (West), Shalimar Bagh do hereby affirm and declare as under:-

1. That the terms and conditions mentioned in the allotment-cum-demand letter dated 23.11.2001 from S. No. 1 to 24 are acceptable to the society.
2. That the differential amount on account of finalisation of rates of allotted land at the end of Govt. of India and D.D.A. Will be paid by the society.
3. That the cost of boundary well/fencing at site if any will be paid by the society whenever is demanded by the D.D.A.

Executant

Verification :

It is certified that the contents mentioned above are true and correct to the best of my knowledge and faith.

Executant"

48. Learned counsel for the respondents referred to the fact that the letters in question referred to the previous rates and the mere fact that in between notification and withdrawal would not have any effect in view of the subsequent letter dated 30.06.1999 of the Ministry of Urban Development directing the DDA to fix the rates but with the approval of the competent authority. The final approval was accorded on 15.12.2000. It is, thus, contended that though the Central Government has to determine the rates from time to time, it is open to the Central Government to seek the assistance of the DDA. The DDA suggested that land rates and the Central Government applied its independent mind and approved the land rates. It is, thus, contended that no fault can be found with the said process. It has been further clarified by reference to the letter dated 25.05.1999 that the same refers to the letter dated 22.04.1999 requiring the land rates, which were notified vide order dated 15.04.1999, to be kept in abeyance. The said letter is as under :-

"Subject : Fixation of prices of Government land for allotment to various social cultural, charitable and other organisations in Delhi/New Delhi.

Sir,

I am directed to say that the instructions contained in this Ministry's letter No. J-22011/4/95-LD dated 22nd April, 1999 to the effect that the land rates notified vide this Ministry's order of even No. dated 15.4.99 are kept in abeyance, are hereby withdrawn. The land rates notified vide order 16.4.1999 may be implemented immediately."

49.It is contended by reference to rule 5 of the Rules that there is no requirement of any notification under rule 5 and such notification is only required in respect of land in L&DO's jurisdiction. Thus, reference even to this withdrawal is to the notified rates, which are in respect of L&DO.

50.Learned counsel for the petitioners have, thus, contended that the Central Government has abdicated its statutory duty by not fixing the premium of land for institutional allotment itself and has illegally permitted the DDA to fix the said charges. The allegation has also been made of concealment on the ground that while DDA disclosed the letter dated 22.04.1999 whereby implementation of the notification dated 16.04.1999 was kept in abeyance, the letter dated 25.05.1999 was not disclosed whereby the notification was implemented.

51.Learned counsel for the respondent has raised a plea of estoppel based on the undertaking furnished while the same is disputed by the learned counsel for the petitioners on the ground that the petitioners had approached this Court immediately after taking possession of land and, thus, there was no question of estoppel.

52.Learned counsel for the respondent has referred to the letter dated 16.04.1999 to contend that the same does not relate to the land in question, which is Nazul land. These land rates were kept in abeyance vide letter dated 22.04.1999, but were made applicable vide letter dated 25.05.1999 only to the L&DO. This is sought to be explained on the basis of the subsequent notification dated 30.06.1999 of the Ministry directing the respondent to convey its rates, the subsequent communication 08.12.1999 whereby DDA suggested the rates and the approval was granted on 15.12.2000. Strong reliance has been placed on the fact that in the letter dated 15.12.2000, it has been stated that the Central Government informed that the matter had been considered and finally approved by the Ministry and this is stated to be a valid decision by the Central Government as required under rule 5 of the Rules.

53.Learned counsel has referred to various judgments to contend that there is limited scope of judicial review in matters of price fixation. In Bareilly Development Authority and Another Vs. Ajay Pal Singh and Others, , the Court held that in matters of non- statutory contract, the rights of the parties inter-se are governed by the terms of the contract and not by constitutional provision.

The matter related to costing of dwelling houses by the DDA.

54. In *Delhi Development Authority Vs. Pushpendra Kumar Jain*, it was held that the right to allotment of a flat under new pattern scheme arose only on communication of the letter of allotment to the intending purchasers and the mere identification or selection of allottee including in the draw of lots would not give the cut off date for price fixation.

55. The Full Bench of this Court in *Sheelawanti and Another, Retired/Retiring Public Servants Forum, Joginder Kumar Sharma, Alam Singh and Others, Gurpiari Jolly, Prem Chopra, Dwarka Dass and Ravi Kher Vs. Delhi Development Authority and Another*, once again dealt with the issue of pricing / costing of flat and escalation of land. It was held that the transaction in question being contractual, the Court would not go into the issues of pricing under Article 226 of the Constitution of India except to satisfy itself that there was material, which was considered by the concerned authorities before fixation of the rate. The SLP against this judgment was dismissed by the Supreme Court.

56. Learned counsel further referred to the fact that there was a uniform policy in this behalf implemented in respect of the rates and no special favor was shown to any person so as to call for interference by this Court. Learned counsel relied upon the Division Bench of this Court in *N.J. Contractors & Engineers & Anr. v. Mahanagar Telephone Nigam Ltd. & Ors.* 1995 3 AD 992. Learned counsel referred to the judgment of the Division Bench of this Court in *R.K. Kawatra, etc. Vs. D.S.I.D.C., etc.*, whereby the Court held that price fixation is a matter of policy and not within the province of the Court, once there is found to be a rational basis for the conclusion reached by the concerned authorities.

57. Learned counsel further contended that it is for the Government to formulate a policy and principles on which fixation of ratio between the area of the building and the playground has to take place. The area given for playground is at a nominal rate. Learned counsel referred to the Division Bench judgment of this Court in *Little Angles Public School Society and Others Vs. Union of India (UOI) and Others*, where an undertaking was filed and the cost of land rates were revised subsequently by the Central Government. It was held that such a policy could not be challenged. It was further held that the change of policy of fixation ratio between the area for the building and the playground cannot also be entertained and it is for the Government to formulate the policy and the principle on the basis of which the policy has been formulated, unless there is some material to show that the policy is against the provisions of the Constitution of India. It is, thus, submitted that what is sought to be done by reducing the area from 4 acres to 2 acres is that the playground area is being reduced.

58. Lastly, a reference was made to the judgment of the Supreme Court in *The Oil and Natural Gas Commission and another Vs. The Association of Natural Gas Consuming Industries of Gujarat and others, etc. etc.*, where it was held that price fixation was a matter of general legislative function and public interest is to

be considered by the Government. It is contended by learned counsel for the respondents that the land allotted for playground component is at a nominal fixed rate, which is not even equivalent to the bare acquisition and development cost and, Therefore, public interest and equity mandate that the petitioners have no legal right whatsoever to claim entitlement to allotment of huge amount of land at any particular rate for private commercial exploitation. It is submitted that these are schools which are run on commercial lines and yet land is made available at concessional cost to these institutions.

59.I have considered the submissions advanced by the learned counsel for the parties in this behalf.

60.The relevant documents referred to above and discussed do show that there were previous rates fixed vide letter dated 12.08.1997 and 18.05.1998. The basis was a periodic increase of ad hoc amount of 30%. The letter dated 16.04.1999 conveyed sanction for fixation of price of Government land for allotment to various social cultural charitable and other organisations. This letter was directed to be kept in abeyance vide letter dated 22.04.1999. The letter dated 22.04.1999 was withdrawn vide letter dated 25.05.1999, but to the extent that the land rate notified vide order dated 16.04.1999 are kept in abeyance. There is, thus, some flip flop flip by these communications, but the letter dated 30.06.1999 of the authorities clearly indicated that the DDA should fix the rates and convey the same for approval of the competent authority. These rates were duly communicated and were finally approved on 15.12.2000. The wording of the said letter is very clear, which state that the matter has been considered and final approval of the Ministry has been accorded. Thus, the rates have been finally fixed.

61.The question is whether there was any breach of the mode prescribed under rule 5 of the Rules for fixation of the rates since such rates are to be fixed by the Central Government. There is no doubt about the proposition laid down in Nazir Ahmad's case (Supra) that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all.

62.However, in Sahni Silk Mills (P) Ltd.'s case (Supra), it has been held that a public authority is at liberty to employ agents to exercise its powers. However, in the present case, there is no delegation of the power which has taken place. In matters of fixation of land rates in Delhi, it is the respondent DDA which is concerned on day-to-day basis and is aware of the ground realities. Thus, in the decision-making process, the assistance was sought of the DDA to suggest the land rates in terms of the parameters. This does not imply that the power has been delegated to be exercised by the DDA. There is, thus, no violation of the maxim delegatus non posttest delegare. The Central Government has applied its own mind and merely because the Central Government adopted the suggestion of the DDA will not imply that there is no independent application of mind by the Central Government in this behalf.

63.The original records have also been produced of the Ministry of Urban Development dealing with the communications of the DDA. The nothings in the file show that recommendations of the DDA have been considered and in the facts and circumstances the same have been made applicable.

64.I am, thus, of the considered view that no infirmity can be found with the process of fixation of the land rate. This is also to be considered in view of the fact that the Court does not sit in appeal over the issue of fixation of land rates, as held in the aforesaid judgments of the Supreme Court and this Court including Pushpendra Kumar Jain's case (Supra) and Sheelawanti's case (Supra). In fact, there is no dispute about the rate, but it is the dispute of manner of fixation of the rate which has been raised in this matter. Once the rates had been fixed in a manner, which are not found to be contrary to the methodology provided under rule 5 of the Rules, no infirmity can be found with the same.

65.It is also relevant to note that the petitioners have furnished undertakings for taking possession of the land. The mere fact that the petitioners challenge the same soon thereafter is not material. The petitioners knew that they were getting land at particular rate(s), which were originally provisional and subject to final revision. The petitioners were also aware about how much area of the land was being allotted to them. It was up to the petitioners to accept or refuse to accept the same. However, it is not the prerogative of the petitioners to seek allotment of larger areas at a particular rate(s), which they want. No infirmity can, thus, be found with the process of fixation of cost.

66.The plea has been raised in civil writ petitions No. 2631/2001 and 3293/1001 alleging that the bifurcation of the plots allotted in the ratio of 75% : 25% for school building and playground area respectively is arbitrary, unreasonable and discriminatory. It is stated that the same is only a disproportionate requirement of the children of the senior secondary school and also ensures that the total price realisation in respect of allotment of 4 acres of land is only marginally diminished in case of allotment of 2 acres of land. The issue of playground and the requirement thereof has, however, been considered aforesaid. The parameters have been laid taking into consideration the availability of the land and the area to be made available for playground. Merely because the consequence of the total area being reduced from 4 acres to 2 acres is not depressing the cost proportionately in view of the fact that it is primarily the area of playground, which is reduced, cannot be a ground to challenge the said ratio. The said contention is, thus, rejected.

67.In civil writ petition No. 5841/2001, it has also been contended that a bank guarantee was taken for a sum of Rs.10 lakhs by the Directorate of Education on 14.10.1999 and was in consideration of the Director of Education having agreed for allotment of land to the petitioner society in response to the application submitted by the petitioner. The sponsorship certificate is stated to have been issued on receipt of the said bank guarantee. It is, thus, stated that the respondents are estopped from changing area of the land as also the rates.

68.I am unable to accept the aforesaid contention since the bank guarantee itself is stated to have been issued to the Directorate of Education as a condition for essentiality certificate. The allotment was made by the DDA. The essentiality certificate is prior in stage to the issue of the allotment letter and submitting of the bank guarantee for the same would not entitle the petitioner to claim allotment of 4 acres of land as a matter of right.

69.The petitioner in civil writ petition No. 5973/2000 has also filed additional written submissions raising the plea that in the circular dated 16.04.1999 the institutional rates have been prescribed separately for different societies. It is contended that the petitioner, who is located at Dwarka, would not fall in Zone III (West Delhi), but in Zone VI comprising of Narela and other outlying colonies.

70.In my considered view, the aforesaid submission cannot be accepted more so in view of the fact that the rates finally approved and as made applicable are in terms of the letter dated 15.12.2000. Further, it cannot be appreciated as to how the petitioner would fall in the category of "Other Outlying Colonies" in Zone VI as the same would apply to Narela and other outlying colonies thereafter while the petitioner is located in Dwarka.

71.In civil writ petition No. 5717/2001, it has been contended that the case of the petitioner was considered in the Institutional Allotment Committee meeting held on 26.02.1999 and the case of the petitioner was recommended for allotment of 1.6 hectares of land. Such a case was recommended also for Lord Krishna Educational Society (Regd.) and Shri Venkateshwar Education Society. The said two societies were allotted land, but the petitioner was asked to furnish re-sponsorship vide letter dated 20.05.1999. This requirement was thereafter waived because of further change in policy and ultimately letter was issued on 12.06.2000 for 2 acres of land. The re-sponsorship letter was asked for since it was required in all cases which were more than 5 years old. This is stated to be in terms of the decision of the Lieutenant Governor and was so communicated vide letter dated 20.05.1999. It is stated that the same was not given effect to in view of the waiver of the requirement and further change in the policy.

72.In my considered view, this aspect would again not make any difference in view of the aforesaid findings. The respondent acted in terms of the stipulated requirement of re-sponsorship letter in cases more than 5 years old and the same was waived only in pursuance to the change in policy having taken place thereafter. Thus, by the time the allotment letter was issued only 2 acres of land was being allotted.

73.In some of the writ petitions including civil writ petitions No. 5379/1999, 3067/2000, 420/2001, 1761/2001, 5841/2001 and 647/2003, the amounts are stated not to have been deposited by the petitioner societies or only part amounts have been deposited. In these petitions or any other petitions where the full amount has not been deposited, the petitioners are permitted to deposit the balance amount with interest as per specified rates of the DDA within a

maximum period of one month from today.

74. In view of the aforesaid, I find no merit in the writ petitions and the same are dismissed leaving the parties to bear their own costs, but subject to the directions in respect of the payment to be made by the petitioners who have not deposited the full amount.