

(2017) 08 CAL CK 0015
In the Calcutta High Court
Case No : 2603 (W) of 2015

Uday Sankar Roy & Anr.

APPELLANT

Vs

State of West Bengal & Ors.

RESPONDENT

Date of Decision : 11-08-2017

Acts Referred:

Urban Land (Ceiling and Regulation) Act, 1976, Section 33, Section 9, Section 6(1), Section 10(3), Section 10(6), Section

Citation : (2017) 08 CAL CK 0015

Hon'ble Judges : Arijit Banerjee

Bench : SINGLE BENCH

Advocate : Atarup Banerjee, Debabrata Sardar, ?Pranab Kumar Dutta, ?Ayan Banerjee

Judgement

(1) In this writ application the petitioner challenges an order dated 3 December, 2014 passed by the Appellate Authority in Appeal Case No. 5 of 2014 under Sec. 33 of the Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter referred as "ULCRA").

Brief facts of the case:-

(2) The predecessors in interest of the writ petitioners owned vast landed property in different Mouzas in and around Kolkata. A proceeding was initiated in the year 1987 in respect of such property under ULCRA.

(3) A notification dated 7 July, 1989 was issued under ULCRA for determination of the excess land held by the owners thereof over and above the ceiling limit. Objection was filed on behalf of the owners and a hearing was

fixed on 23 December, 1987. However, on that date nobody appeared on behalf of the owners. A "return" under Sec. 6(1) of ULCRA in respect of Prativa Chandra Roy being the petitioner's predecessor-in-interest was received from the Competent Authority, Alipore, on 1 February, 1989. The "return" and objection filed thereto was finally heard on 16 March, 1989 and the objection was rejected. Order was passed for preparation of final statement under Sec. 9 of ULCRA. The final statement was served upon the persons filing the returns on 16 June, 1989. A notification under Sec. 10 of the ULCRA was published in the Official Gazette on 7 July, 1989.

(4) A writ petition being CR No. 6364 of 1990 was filed in this Court challenging the notification dated 7 July, 1989 which was disposed of by Amitava Lala, J. (as His Lordship then was) by an order dated 19 February, 2003, the operative portion whereof reads as follows:-

"Thus, the writ petition is disposed of upon quashing the impugned notification dated 7th July, 1989, issued by the competent authority under the aforesaid Act. Therefore, a fresh notification, if any, will be issued by the respondent authority calling upon the heirs and legal representatives to raise their objection and finally decide the matter within a period of 3 months from the date of communication of this order."

(5) Thereafter a fresh draft statement was prepared and served upon the owners/their legal heirs on 12 May, 2003 inviting objection, if any, within 30 days from the date of receipt of the draft statement.

(6) The present petitioner no. 1 prayed for three months' time to file objection. Such prayer was rejected since the Learned Single Judge had issued a time bound direction on the respondent authorities for deciding the matter finally within three months. The fact remains that no objection was filed.

(7) On 11 June, 2003 the matter was finally decided and the final statement was prepared. The final statement was served on the owners/their legal heirs on 20 June, 2003. Notification under Sec. 10(1) of the ULCRA was published in the Official Gazette (Extraordinary) on 30 June, 2003. No claim under Sec. 10(1)(ii) of ULCRA was filed by any one. Thereafter, declaration under Sec.

10(3) of the ULCRA was published in the Official Gazette on 6 August, 2003.

(8) Challenging the aforesaid actions, another writ petition being WP 12728 (W) of 2003 was filed by the heirs of Prativa Chandra Roy including the present petitioners wherein both the draft statement and the final statement were questioned. By a judgment and order dated 24 November, 2003, Arun Kumar Mitra, J. (as His Lordship then was) dismissed the said writ application. An appeal preferred against such dismissal order being MAT No. 3451 of 2003 was also dismissed by the Hon''ble Division Bench by an order dated 17 March, 2004. A Special Leave Petition preferred against the order of the Division Bench was dismissed by the Hon''ble Apex Court by an order dated 18 February, 2005.

(9) In the meantime, since possession of excess vacant land as determined by the authorities was not made over by the petitioners/their predecessor-in-interest in spite of notice under Sec. 10(5) of the ULCRA, an order under Sec. 10(6) of the ULCRA was passed on 20 May, 2004 and possession of excess vacant land measuring about 9899.73 sq. mts. was taken by the authorities on 21 May, 2004 at premises no. 63 Sridhan Roy Road, Kolkata and 20 Ganesh Chandra Lane, Kolkata.

(10) Against the aforementioned orders, the writ petitioners/their predecessor-in-interest filed another writ application being WP 2040(W) of 2005 in this Court. This writ petition was dismissed by Jayanta Kumar Biswas, J. (as His Lordship then was) by an order dated 15 February, 2005.

(11) Thereafter, yet another writ application being WP No. 5488(W) of 2005 was filed by the petitioners/their predecessor-in-interest challenging the draft statement dated 2 May, 2003 prepared under Sec. 8(1) of the ULCRA, the final statement dated 13 June, 2003 prepared under Sec. 9 of the said Act, the notification under Sec. 10(3) of the Act as also the notice dated 13 November, 2003 under Sec. 10(5) of the said Act. Ashok Kumar Dasadhikari, J. (as His Lordship then was) dismissed the said writ petition by a judgment and order dated 28 September, 2012. Against the said order of dismissal the petitioners

preferred an appeal being FMA 1246 of 2013. The said appeal was dismissed by the Hon''ble Division Bench by an order dated 24 November, 2013. The

relevant portion of the said order reads as follows:-

"After disposal of the appeals, Mr. Lakshmi Kumar Gupta, learned senior advocate appearing for the appellants in M.A.T. 2308 of 2012, prays for leave to file a representation to point out to the authorities that the ponds were included in the final statement and possession of such ponds were taken.

It shall be open to the writ petitioners in both the matters to make a representation to the authorities and the authorities shall consider the same in accordance with law. We express no opinion."

(12) Pursuant to the liberty granted by the Hon''ble Division Bench the petitioners made a representation dated 16 December, 2013 before the competent authority under the ULCRA. The competent authority duly heard the petitioners and by an order dated 1 August, 2014 rejected the representation of the petitioners holding that since the proceeding has been completed up to the stage of Sec. 10 (5) and Sec. 10 (6) of the ULCRA, the competent authority was unable to pass any order. Liberty was granted to the petitioners to move the appropriate authority.

(13) Being aggrieved, the petitioners preferred an appeal under Sec. 33 of the ULCRA before the appellate authority which was numbered as Appeal No. 5 of 2014. By an order dated 3 December, 2014 the appellate authority dismissed the appeal. It is this order that is under challenge in this present writ application. There is also a prayer in the writ petition for an interim order of stay of operation of the Gazette Notification being Declaration No. 51/DUL (CAL)/6(1)/247/V-22/82 dated 4 August, 2003 and notice number 967(10)/6(1)/247/V-22/82 dated 13 November, 2003 issued under Sec. 10(3) of the ULCRA.

Petitioner''s contention:-

(14) Mr. Atarup Banerjee, learned Counsel for the petitioners submitted that from the order dated 1 August, 2014 passed by the competent authority it would appear that admittedly notice under ULCRA was not served upon all the legal heirs of the original owners in spite of specific direction to that effect by this

Hon"ble Court in the order dated 19 February, 2003 passed in WP No. 6364(W) of 1990. Hence, even after coming to such finding, it was wrong on the part of the competent authority not to pass any order and the appellate authority failed to appreciate such error on the part of the competent authority.

(15) Learned Counsel then submitted that the appellate authority should have considered the case of the petitioners in accordance with law but the same was not done. Ignoring the spirit of the order of the Division Bench in FMA 1246 of 2013, the appellate authority passed the impugned order. "In accordance with law" means "due process of law". Learned Counsel submitted that the observation of the Hon"ble Division Bench in the said order i.e., "We express no opinion" means that the Hon"ble Division Bench gave complete liberty to the competent authority and while considering the issues in question the said authority should not have been influenced by the order of the Hon"ble Division Bench. Learned Counsel submitted that a blatant wrong has been done to the petitioners and they are entitled to seek mandamus invoking the high prerogative writ jurisdiction of this Court. In this connection Learned Counsel relied on a decision of the Hon"ble Apex Court in the case of Natural Resources Allocation, In Re, Special Reference No. 1 of 2013, (2012) 10 SCC 1, and in particular learned Counsel relied on paragraphs 109 to 111 of the reported judgment which read as follows:-

"109. Secondly, a constitutional mandate is an absolute principle that has to be applied in all situations; it cannot be applied in some and not tested in others. The absolute principle is then applied on a case-by-case basis to see which actions fulfil the requirements of the constitutional principle and which do not.

110. Justice K. Subba Rao in his lectures compiled in a book titled Some Constitutional Problems, critically analysing the trends of Indian constitutional development, stated as follows:- "If the courts, instead of limiting the scope of the articles by construction, exercise their jurisdiction in appropriate cases, I have no doubt that the arbitrariness of the authorities will be minimised. If these authorities entrusted with the discretionary powers, realise that their illegal orders infringing the rights of the people would be quashed by the appropriate authority, they would rarely pass orders in excess of their powers. If they knew that not only the form but the substance of the orders would be scrutinised in open court, they would try to keep within their bounds. The fear

of ventilation of grievance in public has always been an effective deterrent. The apprehension that the High Courts would be swamped with writs has no basis." 111. Similar sentiments were expressed by Justice K.K. Mathew in a series of lectures incorporated in the form of a book titled Democracy, Equality and Freedom in which it is stated that "the strength of judicial review lies in case-to-case adjudication". This is precisely why this Court in *Kesavananda Bharati v. State of Kerala*, (1973) 4 SCC 225, quoting from an American decision, observed as follows: (SCC p. 873, para 1695) "1695..... The reason why the expression "due process" has never been defined is that it embodies a concept of fairness which has to be decided with reference to the facts and circumstances of each case and also according to the mores for the time being in force in a society to which the concept has to be applied. As Frankfurter, J. said, "due process" is not a technical conception with a fixed content unrelated to time, place and circumstances. (See. *Joint Anti-Fascist Refugee Committee v.- McGrath*, 96 L Ed 817)

(16) In the context of dismissal of the Special Leave Petition, preferred against the judgment and order passed by the Hon''ble Division Bench in MAT 3451 of 2003, Learned Counsel submitted that an order rejecting a Special Leave Petition at the threshold without recording any reason therefor does not constitute any declaration of law by the Hon''ble Apex Court nor constitutes a binding precedent. In this connection Learned Counsel relied on a decision of the Hon''ble Apex Court in the case of *Union of India & Ors.-vs.-Jaipal Singh*, (2004) 1 SCC 121, wherein at paragraph 4 of the Hon''ble Apex Court observed that it is well accepted that an order rejecting a Special Leave Petition at the threshold without detailed reasons therefor does not constitute any declaration of law or a binding precedent. Learned Counsel also relied on a decision of the Hon''ble Apex Court in the case of *Narcotics Control Bureau-vs.-Dilip Pralhad Namade*, (2004) 3 SCC 619, wherein at paragraph 13 of the judgment the Apex Court observed as follows:-

"13. Coming to the plea regarding long passage of time it is to be noted that the two orders passed by this Court in SLP (crl.) Nos. 1136/2002 and 434/2003 referred to above do not lay down any principle of law of invariable nature to be universally applied. Furthermore, disposal of SLP against a judgment of the High Court does not mean that the said judgment is affirmed by such dismissal. The order passed in any SLP at threshold without detailed reasons does not constitute any declaration of law or constitute a binding precedent. (see *Union of India and others vs. Jaipal Singh* 2003(7) Supreme 676). This court cannot and

does not reverse or modify the decree or order appealed against while deciding the petition for special leave to appeal and that too when the SLP was being dismissed. What is impugned before this Court can be reversed or modified only after granting leave and then assuming appellate jurisdiction over it. If the order impugned before this Court cannot be reversed or modified at the SLP stage obviously that order cannot also be affirmed at the SLP stage (see Kunhayammed and others vs. State of Kerala and another (2000)6 SCC 359) and Sri Ramnik Vallabhdas Madhvani vs. Taraben Pravinlal Madhvani 2003 (8) Supreme 208)."

Contention of the State:-

(17) Mr. Pranab Kr. Dutta, learned Senior Counsel assisted by Mr. Ayan Banerjee, learned Advocate appearing for the State made detailed submission regarding the scheme of ULCRA. Learned Counsel submitted that the petitioners did not file the statement under Sec. 6 of the ULCRA. A detailed procedure is laid down in ULCRA which has to be followed before the excess land vests in the State. Such procedure was duly followed in this case culminating in acquisition of the land in question by the State under Sec. 10(3) of the ULCRA.

(18) Learned Counsel took me through the writ petition and submitted that the factum of filing of two earlier writ petitions has been suppressed by the petitioners. The writ petition refers to two of the four earlier writ petitions, viz, CR No. 6364 (W) of 1990 and WP No. 5488 (W) of 2005. But the filing of WP No. 12728 (W) of 2003 and WP No. 2040 (W) of 2005 (AST No. 60 of 2005), has been suppressed by the petitioners. On the ground of suppression alone the writ petition should be dismissed.

(19) Learned Counsel then submitted that the ULCRA is a self-contained Code having several layers of protection for the land owners. Sec. 6 provides that all persons shall file their respective statements specifying all vacant lands as well as the land with building held by them with the specification of the lands within the ceiling limits which they desire to retain. Thus, an opportunity is given at the threshold to bring all facts to the notice of the authorities. Under Sec. 8, after preparation of draft statement on the basis of the statements filed under Sec. 6, the competent authority is required to prepare a draft statement

which is to be served upon the persons concerned, with a notice inviting objections thereto. After considering the objections and disposing of the same, final statement is required to be published under Sec. 9. Thereafter, under Sec. 10(1) claims are again invited from all persons interested which are to be decided in accordance with law. Only thereafter, a declaration under Sec. 10(3) is published in the Official Gazette declaring that the excess vacant land and the notified land shall be deemed to be acquired by the State and deemed to be vested in the State absolutely. Thus, at every stage, opportunity was provided to the petitioners to urge their case. However, in spite of direction passed by Amitava Lala, J. (as His Lordship then was) the petitioners failed to file any objection against the draft statement and final statement was published under Sec. 10(3) of the ULCRA which was upheld by this Court. The writ petitioners cannot take out fresh objections at this stage as the proceeding has attained finality long ago.

(20) Learned Counsel then submitted that the urban land ceiling proceeding in respect of lands held by Prativa Chandra Roy was commenced and concluded in accordance with law. The proceeding was challenged by the petitioners and/or their predecessors-in-interest at various stages but all such writ petitions failed. Therefore, the present writ application is barred by the principle of res judicata as the petitioners have challenged the self-same land ceiling proceeding in the present writ application.

(21) Learned Counsel then submitted that the judgment and order of the Hon''ble Division Bench in FMA 1246 of 2013 did not give rise to a fresh cause of action in favour of the petitioners as contended by them. Mere liberty was granted to the petitioners to make a representation on a specific point and the same cannot be construed as reopening of a concluded land ceiling proceeding which has been affirmed up to the Hon''ble Apex Court.

(22) It was further submitted that the liberty that the Hon''ble Division Bench granted was to make representation in respect of certain ponds only. However, the representation was not restricted to the ponds and thus the writ petitioners

travelled beyond the liberty granted by the Hon''ble Division Bench.

(23) Learned Counsel then submitted that even if there were certain mistakes in the land ceiling proceeding such proceeding has been upheld again and again by this Court. Even assuming that the proceeding was wrongly upheld, the principle of res judicata will apply unless the petitioners can show that the previous orders were obtained by fraud. No case of fraud has been made out by the petitioners. In the affidavit-in-reply, a vague statement has been made regarding fraud but no pleading in respect thereof has been made. Further, following the principle of constructive res judicata, all points which could have been taken by the writ petitioners in the earlier proceedings are also considered as matters in issue in the earlier proceedings and hence, such points shall also be barred by the principle of constructive res judicata.

(24) Learned Counsel relied on the following four decisions of the Hon''ble Apex Court on the points of res judicata, fraud and the effect of dismissal of Special Leave Petition by the Hon''ble Apex Court:-

(i) R. Unnikrishanan-vs.-VK Mahanudevan, (2014) 4 SCC 434.

(ii) Shrisht Dhawan (Smt)-vs.-M/s. Shaw Brothers, (1992) 1 SCC 534.

(iii) Delhi Union of Journalists Cooperative House Building Society limited-vs.-Union of India, (2013) 15 SCC 614.

(iv) Belgaum Gardeners Cooperative Production Supply and Sale Society Ltd.-vs.-State of Karnataka, (1993) Supp. 1 SCC 96.

(25) Learned Counsel finally submitted that in the judgment of Arun Kumar Mitra (as His Lordship then was) delivered in WP No. 12728 (W) of 2003, the learned Judge came to a finding that since the original owner was alive when ULCRA came into force, the land in question would be treated as one unit. Hence, notices were not required to be given to anyone else. The appeal against the learned Single Judge's order was dismissed by the Hon''ble Division Bench and the Special Leave Petition preferred therefrom was also dismissed. Hence, there is no scope for reopening this issue.

Court's View:-

(26) This writ application has a chequered history which I have noted in brief above. I have carefully considered the facts and circumstances of the case and the submissions made by learned Counsel for the parties. In my opinion, this writ petition is a hopeless and desperate attempt on the part of the petitioners to reopen a concluded proceeding under ULCRA. There are more than one reasons why this writ application must be dismissed.

(27) The ULCRA lays down a detailed procedure regarding acquisition by the Government of land held by a person in excess of the prescribed limit. Upon issuance of the notice of acquisition under Sec. 10(3) of the Act, the land is deemed to have vested absolutely in the State Government. In the present case, the entire procedure prescribed by the Act has been scrupulously followed by the Authorities as I have noted above. It is not that the petitioners/their predecessors-in-interest did not get an opportunity of putting their case before the Authorities. Principles of natural justice were duly observed by the Authorities. A proceeding that has been concluded by following due process of law should not be reopened at the instance of the petitioners. The proceeding has attained finality and several attempts of the petitioners/their predecessors-in-interest at challenging the proceeding have failed. The second writ petition, after being dismissed by the Learned Single Judge and the Hon"ble Division Bench was carried to the Hon"ble Apex Court but the said Special Leave Petition was dismissed. The petitioners have made out no case as to why such a proceeding which has become final should be reopened now.

(28) Secondly, in my opinion, the present writ petition is also hit by the principles of actual and/or constructive res judicata. The same proceeding and the notices issued/orders passed therein were challenged by the petitioners/their predecessors-in-interest by filing four earlier writ petitions. The first writ petition succeeded in the sense that the notification under Sec. 10 of the ULCRA was quashed by the Learned Judge by an order dated 19 February, 2003. Thereafter, fresh draft statement was prepared and served on the petitioners who failed to file objection. Accordingly, the proceeding took its

due course and declaration under Sec. 10(3) of the ULCRA was published in the Official Gazette. Three further writ petitions were filed by the petitioners as noted above challenging the proceeding and the issue involved in all the writ petitions were substantially the same. All the three writ petitions failed.

On the fourth writ petition being WP 5488 (W) of 2005, a learned Single Judge in His Lordship's order dated 28 September, 2012 observed that the allegations of the writ petitioners were considered and rejected by three Learned Single Judges of this Court on three occasions as well as by the Hon''ble Division Bench and the Hon''ble Apex Court. The matter has reached its finality. There is no question of re-adjudication and/or reopening the issue.

(29) The issues involved in the present writ application are substantially similar to the issues involved in the earlier writ petitions and hence, such issues are res judicata. As observed by the Hon''ble Apex Court in the case of R. Unnikrishnan-vs.-V.K. Mahanudevan (supra), the Rule of Law favours finality to binding judicial decisions pronounced by Courts that are competent to deal with the subject matter. The binding character of judgment pronounced by the Courts of competent jurisdiction has always been treated as an essential part of the Rule of Law which is the basis of the administration of justice in this country. Even erroneous decisions can operate as res judicata. As observed by the Hon''ble Apex Court in the case of State of West Bengal-vs.-Hemant Kumar Bhattacharjee, AIR 1966 SC 1061, a wrong decision by a Court having jurisdiction is as much binding between the parties as a right one and may be superseded only by appeals to higher Courts or other procedure like review which the law provides. In my opinion, if the parties are allowed to re-agitate issues which have been decided by a Court of competent jurisdiction then all earlier litigation relevant thereto would always remain in a state of flux and will never attain finality.

(30) The decision of the Hon''ble Apex Court in the case Natural Resources Allocation, In Re, Special Reference No. 1 of 2013 (supra), relied upon by learned Counsel for the petitioners has no manner of application to the facts of

the present case. There is no doubt that the Writ Court should exercise its jurisdiction in appropriate cases and the same is also necessary to make the authorities entrusted with discretionary powers realise that if they pass illegal orders infringing the rights of the citizens, the same would be quashed. There also cannot be any doubt that an Authority has to conduct a proceeding following due process of law. However, the facts of the instant case do not warrant the exercise of power under Art. 226 of the Constitution of India in favour of the petitioners. No right of the petitioners has been infringed by the Authorities arbitrarily or illegally. The entire proceeding under ULCRA was conducted by observing due process of law.

(31) As regards the decision in the Union of India-vs.-Jaipal Singh (supra) and in Narcotics Control Bureau-vs.-Dilip Pralhad Namade (supra), the same also do not advance the petitioners' case to any extent. It is not anybody's case that the order of the Hon'ble Apex Court rejecting the SLP against the Division Bench order in MAT 3451 of 2003 constitutes any declaration of law or a binding precedent. It has not been argued on behalf of the respondents that the said order of the Apex Court considered and rejected the petitioners' case on merits nor have I proceeded on that basis. However, the fact remains that the Hon'ble Apex Court was of the opinion that the said order of the Hon'ble Division Bench did not warrant interference and hence, special leave to appeal was declined.

(32) The third reason why I am inclined to dismiss this writ application is that in my opinion, the petitioners have not approached this Court with clean hands. They have suppressed the factum that two writ petitions have failed earlier i.e. WP No. 12728(W) of 2003 and WP No. 2040(W) of 2005. The order of Jayanta Kumar Biswas, J. (As His Lordship then was) passed in WP 2040 (W) of 2005 has been suppressed by the petitioners. The fact that those writ petitions were filed challenging the same proceeding are very relevant for the purpose of deciding the present writ application. The petitioners are guilty of suppressing material facts. In Black's Legal Dictionary, "fraud" has been

defined as an intentional perversion of truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him or surrender a legal right; a false or misleading allegation, or concealment of that which should have been disclosed, which deceives and is intended to deceive another so that he shall act upon it to his legal injury (emphasis is mine).

Deliberate concealment of a material fact before a Court of Law surely amounts to perpetrating fraud on Court. The Writ Court is a Court of equity. A person seeking equitable relief must approach the Court with clean hands, utter frankness and with full disclosure of all relevant facts. The approach must be honest and not tainted with the unholy motive of stealing a ride. On the ground of suppression also the petitioners are not entitled to any relief.

(33) The contention of the petitioners that the Division Bench judgment and order dated 24 November, 2013 delivered in FMA 1246 of 2013 furnished a fresh cause of action to the petitioners, is utterly misconceived. By the said order the Hon''ble Division Bench granted liberty to the petitioners to make a representation to the authorities limit to a point namely that some pond were included in the final statement and possession thereof was erroneously taken by the authorities. The representation that was in fact made by the petitioners was not restricted to the said issue but sought to reopen the entire issue of acquisition by and vesting of land in the State Government which stood concluded. I have gone through the order dated 1 August, 2014 passed by the Competent Authority as well as the order dated 3 December 2014 passed by the Appellate Authority and I can find no fault with the said orders. The Appellate Authority correctly rejected the petitioners'' appeal and prayer for further review of the entire case. There is no infirmity in the order impugned which warrants interference by the Writ Court. In any event, the High Court exercising jurisdiction of judicial review is not concerned with the decision but with the decision making process. So long as the procedure adopted by the Authorities in taking a decision is in accordance with due process of law and is in consonance with the principle of natural justice, in the absence of

arbitrariness, patent illegality, Wednesbury unreasonableness or perversity on the face of the decision, the Writ Court would not interfere. Neither the procedure adopted by the Authorities in the present case nor the order impugned suffers from any such vice.

(34) I am also of the view that after the second writ petition being WP No. 12728 (W) of 2003 was dismissed by a learned Single Judge and the Hon''ble Division Bench and the SLP arising therefrom was also dismissed, further writ petitions relating to the same subject matter are not maintainable. In this connection reference may be had to the Hon''ble Apex Court's decision in Delhi Union Of Journalists Cooperative House Building Society Limited (supra) and in particular to paragraphs 15 and 16 of the reported judgment which read as follows:-

"15. We have considered the respective arguments and scrutinized the record. It is not in dispute that the writ petition filed by the appellants for quashing notification dated 20.9.1995 by which the Master Plan had been amended permitting use of Nursery School sites for other purposes was dismissed by the Division Bench of the High Court and their challenge to the allotment made in favour of respondent No.4 was also rejected. It is also not in dispute that the appellants carried the matter to this Court but could not succeed and the special leave petition filed by them was dismissed after hearing counsel for the parties. Therefore, the representation made by them to the Chairman, DDA for withdrawing the allotment made in favour of respondent No.4 was clearly misconceived and the High Court did not commit any error by refusing to entertain the appellants' prayer for quashing the allotment of the site to respondent No.4.

16. The appellants got an opportunity to indulge in another round of litigation because the advocate who appeared on behalf of DDA before the High Court volunteered to make a statement that the Vice- Chairman would take necessary decision in the light of note dated 2.12.1999 of the Minister of Urban Development. It is impossible for any person of ordinary prudence to accept the suggestion that the counsel appearing for the DDA was unaware of the fate of the writ petition and the special leave petition filed by the appellants questioning notification dated 20.9.1995 and the allotment made in favour of respondent No.4. This being the position, there is no escape from the conclusion that the undertaking given by the learned counsel was totally uncalled for and the order passed by Vice-Chairman, DDA did not entitle the appellants to file fresh writ petition for questioning the rejection of their representation or for quashing notification dated 20.9.1995 and the allotment made in favour of

respondent No.4." (35) For the reasons aforesaid, this writ application fails and is dismissed. In

my opinion, this is a completely meritless and dishonest writ petition and hence the petitioners shall pay costs of this application assessed at Rs. 25,000/- to the respondents.

(36) Urgent certified photocopy of this judgment and order, if applied for, be given to the parties upon compliance of necessary formalities.