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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Pronounced on: 26.05.2023*

+ **LPA No. 140/2021 & CM Nos.12990, 12992 of 2021**

DELHI DEVELOPMENT AUTHORITY Appellant

Through: Mr. Sanjay Jain, Senior Advocate
(ASG) with Mr. Nitin Mishra,
Mr. Nishank Tripathi, Mr. Arkaj
Kumar, Ms. Harshita Sukhija,
Advocates with Mr. Kamal Gupta,
Director, DDA.

versus

ACTION COMMITTEE, UNAIDED RECOGNIZED
PVT SCHOOLS Respondent

Through: Mr. Amit Sibal, Senior Advocate with
Mr. Kamal Gupta, Mr. Sparsh
Aggarwal and Mr. Yash Yadav,
Advocates.

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI
HON'BLE MR. JUSTICE VIKAS MAHAJAN

J U D G M E N T

NAJMI WAZRI, J.

The hearing has been conducted through hybrid mode (physical and virtual hearing).

1. This appeal impugns the judgment dated 24.01.2020 passed in W.P.(C) No.10451/2015, wherein the learned Single Judge has held:

“126. Following on the above discussions, it is hereby declared that the members of the petitioner-Association/Society, which are entitled to income tax



exemption, would be also entitled to run their schools at the senior secondary level, without having to pay any additional charges to the DDA, whether by way of additional FAR charges, or otherwise. The DDA is also directed to modify the lease deeds, executed with the individual societies, to the said effect; however, it is clarified that the right of the societies to run their institutions at the senior secondary level would not be conditional, or dependent, upon such modification.”

Facts:

2. In terms of the Master Plan for Delhi, 2001 ('MPD-2001'), which came into force on 01.08.1990 lands were allotted by DDA to various societies/entities for running Nursery, Primary and Senior Secondary schools. Recognition of schools is granted by Department of Education, GNCTD, under the Delhi School Education Act, 1973. Accreditation for higher secondary course is granted by CBSE/ICSE. For the land allotted to the schools, premium was charged by the Delhi Development Authority ('DDA') for the entire land and not on the basis of category of schools as mentioned in the allotment letter. The premium was linked to the area where the land was located and irrespective of the category of the school. Over the ensuing decades, the population of Delhi grew manifold. The city planners cognized the need for more schools and/or augmentation of the capacity of the existing schools to cater to more school-going children. Since land in the NCT of Delhi is limited, the growing needs could be met by letting the existing educational institutions/schools grow vertically, by increasing the Floor Area Ratio ('FAR'). It is in this background that the Master Plan for Delhi, 2021 ('MPD-2021') which came into effect from 07.02.2007, reduced the minimum required land area for various



categories of schools and increased the FAR for schools on the allotted lands. A notification was issued permitting the schools to construct more classrooms and/or provide additional infrastructure at their campuses. The FAR for Nursery, Primary and Senior Secondary schools was increased to 100%, 120% and 150% respectively. However, DDA sought to capitalize on enhanced FAR by asking the allottee/Society/school through an Office Order dated 29.08.2008, to pay “premium at the rate applicable when the plot was allotted with 10% upto date annual increase”. The Office Order reads as under:

“

Dated: 29.08.2008

OFFICE ORDER

As per decision of the Authority, the Primary School/Middle School plots having 0.8 hec. of land or more can be converted into Sr. Secondary School, if a formal request is received from the Society. Such converted plots shall be treated as one unit as applicable to Sr. Secondary Schools and will be allowed over all 35% ground coverage, 150 FAR and 18 meters height as prescribed for Sr. Secondary Schools under the Development Control Norms of MPD-2021.

For additional FAR, Societies shall have to pay premium at the rate applicable when the plot was allotted and with 10% upto date annual increase.

The lease deed shall be amended by the Lands Disposal Wing to Sr. Secondary School from Primary School on specific request of the Society.

The conversion will be totally optional and will be considered only on a specific request of the society.

Sd/-
(Asma Manzar)
Commissioner (LD)”



3. This was followed by two notifications of the DDA dated 10.10.2008 and 23.12.2008 issued under section 57 of the Delhi Development Act, 1957 (the DDA Act), wherein the percentage of levy and the increased FAR rates were specified. The learned Single Judge has noted that the DDA's notification dated 10.10.2008 was recommendatory in nature while the latter Notification dated 23.12.2008 merely specified the premium rates which would be applicable for different areas of Delhi. The said notifications were challenged in a batch of writ petitions. During the pendency of this petition, the DDA issued another notification dated 17.07.2012, whereunder it specified that additional FAR charges will not be recovered from Educational Institutions/Trusts, Health-care and other Social Welfare Societies etc. having exemption from Income-Tax.

4. A Division Bench of the court vide its order dated 20.07.2012 passed in *South Delhi Educational Society vs. DDA and Anr.* (W.P (C) 9572/2009), held *inter-alia* as under:

“... In view of the above notification it is absolutely clear that no additional FAR charges are to be recovered from the Educational societies/ Health care and Social welfare societies having income tax exemption. As such no additional FAR charges would therefore be recoverable from the present petitioners. If any of the petitioners have made deposits in this court pursuant to any order passed by this court the same shall be returned to the respective petitioners. In case of any Bank Guarantees that may have been furnished on account of directions of this court in view of the additional FAR charges, the petitioners concerned would also be entitled to have the same revoked.

In view of the fact that now no FAR charges are to be



recovered from the Educational societies/ Health care and Social welfare societies having income tax exemption, any action which may have been made conditional on the payment of the additional FAR charges would now not have the said condition. In other words, the non-payment of the FAR charges will not come in the way of the petitioners to proceed with their release of sanctioned building plans, occupancy certificates, extension of time and NOCs etc. if the other conditions prescribed in law are fulfilled...”

5. The same view and order was followed in two Division Bench orders namely *DDA vs. Jagan Nath Memorial Education Society*, (2014) 210 DLT 750-DB and *Rohini Educational Society vs. D.D.A*, (2014) 143 DRJ 94-DB. The order of *South Delhi Educational Society (supra)* has attained finality as DDA’s SLP against it was dismissed. However, the issue of demand raised by the Office Order dated 29.08.2008 remained. The learned Single Judge held that the Office Order cannot overreach the statutory benefit extended to schools by way of increase of the FAR. He rejected DDA’s contention that there is a distinction between the “upgradation charges” and “additional FAR charges”. It has held *inter-alia* as under;

“...77. The distinction between “upgradation charges” and “additional FAR charges” has, therefore, no legs to stand on. In fact, para 3 of the affidavit, filed by the DDA, on 19th November, 2018 itself states that “it was decided that Educational Societies/Trust should not be exempted from additional FAR/upgradation charges as the land allotted to Societies by DDA is already less than the market rates...” In a similar vein, the office noting, dated 9th May, 2018, of the DDA, placed, by the DDA, on record under cover of an affidavit dated 19th November, 2018, records that “it was also expressed by officials present in the meeting that Educational Societies/Trust should not be exempted from



additional FAR/upgradation charges...” This, too, goes to indicate that there is no distinction between charges for upgradation and charges for being allowed for additional FAR.

Right to seek modification of lease deeds

78. Referring to the prayer, of the petitioner, for a mandamus, to the DDA, to modify the lease deeds, executed by them, with the members of the petitioner society, upgrading the level of school stipulated therein, to “senior secondary”, Mr. Bansal has, while seeking to submit that this would amount to novation of the lease deed, also gone on to submit that the DDA had no objection to modifying the lease deeds, as sought by the petitioner, provided the petitioners were agreeable to paying the amounts claimed by the DDA in return therefor. In view of this submission, the right of the members of the petitioner to modification of the lease deeds, executed by them, with the DDA, by upgrading the category of school, as stipulated therein, is not seriously open to question.”

6. He held that the Office order cannot travel beyond the statutory notification issued under section 57 of the DDA Act wherunder the FAR was enhanced. Another Office Order issued on 21.02.2014, sought to resuscitate the order of 29.08.2008, however, the impugned judgment has held that it would be a futile endeavour to resuscitate the order, because the same would be deemed to be subsumed in an earlier notification of 24.01.2014.

7. Office Orders cannot whittle down a notification, which has a character of statutory regulation and the same would remain in force till they are amended by the competent authority, which in this case is the Government of India. In this regard, the learned Single Judge has



held as under:

101. The Notification, dated 17th July, 2012, was by way of an exception, carved out, in the case of educational institutions/health-care and welfare societies, having income tax exemption, from the normal requirement of having to pay additional FAR charges, as stipulated by Regulation 6(g), applicable to institutional plots/allotments.

102. Similarly, the Notification, dated 24th January, 2014, too, excepted, from the normal requirement of payment of additional FAR charges, as applicable to institutional plots administered by educational societies/trusts, health-care and social welfare societies, having income tax exemption.

103. The beneficial dispensation, conferred by the Notifications, dated 17th July, 2012, and 24th January, 2014, therefore, extended only to educational, healthcare, and social welfare societies having income tax exemption.

104. As against this, there is no reference to such societies, in the Office Orders dated 29th August, 2008, and 21st February, 2014.

105. Indeed, if one were to read the judgment dated 20th July, 2012, in WP 9572/2009 (South Delhi Educational Society supra), the Division Bench of this Court has noticed precisely this.

... ”

8. The conclusion of the learned Single Judge were on the basis of the extensive analysis of MPD-2021, effect of statutory Notifications issued under the DDA Act. According to the learned Single Judge, the enhancement of FAR was to be enjoyed by the parties without levy of any charge. The writ petition was allowed holding that: i) there can be no additional FAR charges or upgradation charges and ii) appellant's right to run the educational institutions would not be conditional or



dependent upon modification of their lease deeds.

Contentions on behalf of the appellant-DDA:

9. The learned ASG appearing for the DDA submits that: i) the said judgment has erred because the Perpetual Lease Deed dated 06.08.2004 has to be strictly interpreted inasmuch as it has been executed under section 3 of the Government Grants Act, 1895 and the same would prevail, irrespective of any statutory prescription or order to the contrary, ii) the lay-out plan annexed with the lease deed would require changes and upgradation, therefore, upgradation charges are leviable, iii) the upgradation requires multi level planning of all areas under exclusive jurisdiction of DDA and the same cannot be taken away by any Notification or by mere increase in the FAR. He says that although the FAR charges/upgradation charges are to facilitate the allottees to enjoy the increase in the FAR and the same was specifically clarified in DDA's Office Order dated 29.08.2008, which stipulates that *"...For additional FAR, societies shall have to pay premium at the rate applicable when the plot was allotted and with 10% upto date annual increase."*

10. However, after some arguments, the learned ASG had submitted, upon instructions, that DDA is in the process of formulating a policy as regards the nature, scope and implementation of Proviso to clause II(13) of the Perpetual Lease Deed dated 06.08.2004, concerning institutional plots allotted for primary and middle schools, keeping in mind the MPD-2021, which provides for integrated schools as well as in view of the mandate of Articles 21 A and 45 of the Constitution of India, 1949, Delhi School Education Act,



1973 and the Right of Children to Free and Compulsory Education Act, 2009. He submits that in view of the same, DDA was willing to withdraw its office order dated 29.08.2008 and Notifications dated 10.10.2008, 21.12.2008, 17.07.2012, 24.01.2014 and 21.02.2014 and issue appropriate Office Order or Notification in terms of the New Policy. Therefore, the DDA requests that the observations contained in paragraphs 119, 120 and 126 of the impugned order be set aside.

11. The court is of the view that for DDA's intention, contemplation or proposal to withdraw the impugned Office Orders and Notifications is of no consequence, after the same have been adjudicated upon and it having been held that the respondent Association/Society, which are entitled to income tax exemptions, would not be required to pay any additional charge to DDA, whether by way of any additional FAR charges or otherwise. The issue was examined in great detail by the learned Single Judge in the context of MPD-2021. Therefore, there is no occasion at this stage, for acceding to the aforesaid request. Moreover, if the impugned Office Orders and Notifications are allowed to be withdrawn after about a decade and a half, it would cause irreparable prejudice to the respondent Association/Society, as well as to entities having claims like the respondent i.e. those who are seeking or hopeful for a similar relief under the enhanced FAR allowed by MPD-2021. If the DDA's belated request is even considered or allowed then Notifications/ Office Orders, may be notified, which could well be the subject matter of further litigation, thus further defeating the objective of the increased FAR i.e. to accommodate more students in the existing schools, etc.



The prudence, foresight and wisdom of the city planners to provide for the growing need for schools to accommodate more students in the future is embodied in the adaptive modification of MPD-2021 *vis-a-vis* the previous MPD. The vision needs to be given full effect as it seeks to provide for the much needed infrastructure for education to generations of school children. By a Notification dated 21.02.2014, the benefits were extended to the educational trusts as well.

Respondent's contention

12. Mr. Amit Sibal, the learned Senior Advocate for the respondent submits that: i) there is no error in the impugned order, the appeal is without basis and should be dismissed, ii) there is no basis for DDA's insistence or demand for additional FAR charges or upgradation charges because the nature of activities carried out by the respondent is in terms of the MPD-2021, which itself, does not contemplate any additional FAR charges and iii) therefore, the relevant lease deeds will have to be interpreted, in terms of what the law prescribes and permits.

13. The MPD is a statutory document. It is the law concerning the extent to which building can be constructed on lands allotted by DDA for setting up schools/educational institutions. The law has changed in favour of the schools. The Master Plan has increased the FAR without levy of charges. The rationale for the increase in FAR and for encouraging integrated schools from pre-primary to higher secondary, is articulated in clauses 13.2 and 13.3 of MPD-2021. The same are reproduced hereunder:

•13.2 **EDUCATION**

“...The literacy rate in Delhi has increased from 75.3% in the



year 1991 to 81.82% in the year 2001. In overall terms Delhi has a fairly elaborate network of educational institutions from the pre-primary / primary to the higher education and professional education levels. At present there are 2416 primary schools, 755 middle schools, and 1576 secondary / senior secondary schools. At the higher/ professional education levels, there are 114 colleges for general education, 8 engineering colleges, 4 universities, 7 deemed universities one Open University.

However, there is a deficiency in few planning zones, particularly in the field of school education. Further, keeping in view the fast changing national and global economic scenario, the employment and educational requirements are also undergoing a rapid change involving the development of new professional and vocational avenues for specialised education. A number of coaching centres, computer training institutes and language/ training classes are opening up. However, these are mainly operated by the private sector. Suitable provision for such centres in commercial areas is desirable with a view to enhancing the financial resources of the concerned land owning agency.

With the consequent potential for availability of financial resources for this purpose, involvement of the private sector in the development of educational facilities is growing. Keeping the, need for expansion and diversification as brought out above, the availability of land could become a major constraining factor. It has, therefore, become necessary to develop policies and norms, which would enable optimal utilisation of land and available, educational infrastructure. As far as school education is concerned, the policy should be geared to encourage integrated schools from the pre-primary to the higher secondary level, rather than allocating space separately for Nursery Schools, Primary Schools and Middle Schools. Primary Schools may specifically be set up by the Delhi Government or the Local Civic Bodies.



Following planning policy parameters are proposed:

- i) Differential norms and standards for various educational institutes / institutions shall be applicable in the light of the norms of the concerned controlling authorities, e.g. University Grants Commission (UGC) / All India Council for Technical Education (AICTE) / Directorate of Education, GNCTD / Central Board of Secondary Education (CBSE) etc.*
- ii) Coaching centres / vocational training centres would be permissible in school classes after school hours with (a) prior approval of Competent Authority in the case of schools run by GNCTD or local body and (b) with prior intimation to lessor and payment of fee to be prescribed in the case of schools run privately on leased land. Structured courses leading directly to degree / diploma shall however not be permitted.*
- iii) The educational institution premises may be permitted to function in two shifts, subject to statutory approvals and any other conditions that may be stipulated by the relevant competent authority.*
- iv) Nursery School may function as part of Primary School /Secondary School / Senior Secondary School, wherever needed. Separate / exclusive Nursery Schools are permitted in residential premises as per the Mixed-use policy.*
- v) Requirement of schools and training centres for mentally and physically challenged with differential development norms are given.*



Table 13.3: Planning Norms and Standards for Education Facilities

Sl. No.	Category	Population/unit (approx)	Plot Area
1.	Primary School	10,000	0.2 - 0.4 ha
2.	Sr. Secondary School	10,000	0.6 - 0.8 ha
3.	School for Mentally challenged	10.0 lakh	0.2 ha
4.	School for Physically challenged	10.0 lakh	0.2 ha

14. The vision and hope of the city planners reflected in MPD-2021 is to be given full-effect lest the NCT suffer from lack of educational facilities. Interestingly, the impugned judgment has also observed that this is a case where the DDA seems to be working in cross-purpose with the DoE/CBSE. It has held as under:

“ ...
 117. This case highlights, unfortunately, a situation in which the DDA and the DoE/CBSE are working at cross purposes. Admittedly, pursuant to recognition having been granted, to them, for the said purpose, the affected institutions of the petitioner-Society are functioning at the senior secondary level. In fact, submits Mr. Sibal, the issue of permission to function at the senior secondary level does not, in view of this fact, survive for consideration. A reading of the various file notings, which have been placed on record, indicates that the opinion, of the Hon“ble LG, while examining the issue of grant of recognition, to the institutions, and recommended permitting of the institutions to function at one level higher than that stipulated in the lease deeds executed by the DDA, was that the policy of the DDA was essentially with respect to allotment, and not recognition. This view, though superficially in order, however, effectively misses the wood for the trees, as is apparent from the controversy that has arisen in the present case, in which the institutions have been permitted, by the CBSE and the DoE, to function at senior secondary level, and are so functioning, but are being inhibited from doing



so, by the DDA, by the demand for exorbitant additional FAR charges.

118. It would be wise to remember that, in cases dealing with educational institutions, there is an overwhelming element of public interest. Education, earlier a directive principle of State policy, contained in Article 45 of the Constitution of India has, with the insertion of Article 21A by the 86th Amendment to the Constitution in 2002, been elevated to the status of a fundamental right, relatable as much to Article 21 of the Constitution of India, as to Article 21A. The right to education also stands statutorily sanctified in what has come, popularly, to be known as the Right to Education Act. Maximising the reach of education is therefore, not only an avowed constitutional objective but is, indeed, a treasured constitutional imperative. Every effort has to be made towards achieving this end, and financial considerations of the Government, though undoubtedly entitled to their due weight, have to cede place to the right to education.

119. I am constrained to enter these observations in view of the somewhat unsettling submission, advanced by Mr. Bansal on behalf of the DDA, that the DDA was willing to allow additional FAR to the petitioner, but, if the petitioner desired to have its lease deeds amended, it would have to pay the charges, demanded by the DDA therefor. To my mind, this stand is completely unreasonable, and amounts to an attempt to take away, with the left hand, that which is given with the right. As the Office Order, dated 29th August, 2008, issued by the DDA itself, clearly demonstrates, modification of the lease deeds is but a procedural sequitur, to the upgradation of the institutions to senior secondary level, which entails, in its wake, right to additional FAR and extra ground coverage. In fact, the said Office Order makes it clear that the petitioners would be entitled to such upgradation, as well as to the additional FAR and additional ground coverage which follows as a consequence



thereto. I am in agreement with the submission, of Mr. Sibal, that entitlement to additional FAR and ground coverage are statutory sequiturs, granted by the MPD 2021, to the grant of permission to the schools to function at the senior secondary level, and cannot, therefore, be made dependent on payment, to the DDA, of any additional amount. The Office Order also makes it clear that the DDA would be obliged to amend the concerned lease deeds appropriately – as is manifested by the use of the word “shall”. The only covenant, in the said Office Order, with which the petitioners are aggrieved, is the stipulation that, in order to be able to enjoy the additional FAR, additional FAR charges would have to be paid by the concerned societies. Today, before this Court, the contention of Mr. Bansal is that the DDA has no objection to allowing additional FAR to the petitioner, and its member-Societies, but that, if the lease deeds have to be modified or amended, that would be allowed at a price. This stand, in my view, is directly contrary even to the Office Order dated 29th August, 2008, and is unavailable to the DDA. Once this Court has held that additional FAR charges would not have to be paid by the members of the petitioner-Society, all other stipulations, in the Office Order dated 29th August, 2008, would kick in, and modification/amendment of the lease deeds – which, in the peculiar circumstances of this case, is only a procedural requirement – would necessarily have to be effected by the DDA.

120. For the same reason, I am of the opinion that the layout plan, annexed to the lease deeds, cannot affect the right of the petitioners to function as senior secondary schools, without having to pay any additional FAR charges, or, indeed, any other additional charges, to the DDA.

...”

15. In view of the above reasoning and conclusion, with which we concur, the contentions raised on behalf of DDA are untenable and



rejected. The statutory notifications under sections 57 and 58 of the DDA Act, would prevail over the lease deeds, which at the relevant time when they were executed, was on the basis of the then prevailing Master Plan. However, now the Master Plan permits enhanced FAR and a lesser requirement of land area for running schools in Delhi. It encourages creation of integrated schools. The statutory effect of the MPD cannot be denied to the schools/Societies. The perpetual Lease Deeds/Allotment Letters would have to be read meaningfully along with statutory/vision document *viz* the Master Plan-2021. Not doing so would tantamount to denying a statutory right created in favour of the schools. The statutory notifications cannot be over-ridden by way of an Office Order issued by DDA.

16. What emerges from the preceding discussion is that the upgradation of schools from one category to other i.e. from Primary to Senior Secondary is neither the domain nor the jurisdiction of the DDA. This is to be done by the Directorate of Education, GNCTD and CBSE. The lands were allotted to schools in Delhi on the basis of the size of the plot of the land and the premium of that location/area. Now that the schools have been permitted, by way of statutory notification, an enhancement of FAR as per MPD-2021, no upgradation charges are leviable because the land already stands allocated and only the additional FAR is to be utilized. The notifications dated 17.07.2012 and 24.01.2014 have been issued by the Central Government under sections 57 and 58 of the DDA Act. They are not something from which the DDA can withdraw or resile from. These statutory notifications are to be applied in full measure to optimize the benefit



envisaged therein, for the larger public good.

17. In view of the above, we see no reason to interfere with the findings and directions of the impugned judgment. The appeal is without merit and is accordingly dismissed, alongwith pending applications.

18. Applications for NOC/Sanction for utilisation of the additional FAR shall be addressed by the DDA within four weeks of receipt of the same.

NAJMI WAZIRI, J

VIKAS MAHAJAN, J

MAY 26, 2023
SB/SS

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