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DATE OF DECISION: 17-04-2006

CORAM:

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Hon'ble Mr. Justice Pradeep Nandrajog

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether judgment should be reported in Digest?

:

PRADEEP NANDRAJOG, J.

For orders see WP(C) No.16691-92/2004.

April 17, 2006

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P. Nandrajog
(PRADEEP NANDRAJOG)
JUDGE

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IN THE HIGH COURT OF DELHI AT NEW DELHI

WP(C) No.16691-92/2004

Society for Employmnet & Career
Counselling (Regd.) & Anr. Petitioner

VERSUS

\$ Chairman, DDA & Ors. Respondent

WP(C) No.18504/2004

Mother Teresa institute of
Management (Regd.) Petitioner

VERSUS

\$ D.D.A. Respondent

WP(C) No.18506/2004

Kalka Educational Society Petitioner

VERSUS

\$ D.D.A. Respondent

WP(C) No.18507/2004

Kamal Educational & Welfare
Society (Regd.) Petitioner

VERSUS

\$ D.D.A. Respondent

WP(C) No.18728/2004

Seth Pokhar Mal
Educational Society Petitioner

VERSUS

\$ Union of India & Ors. Respondents

WP(C) No.19642/2004

Rohini Educational
Society (Regd.) Petitioner

VERSUS

\$ D.D.A. Respondent

WP(C) No.3183-84/2006

Central Education Society
& Anr. Petitioner

VERSUS

\$ D.D.A. Respondent

WP(C) No.3188/2006

Association of Self Financing
Institutions Petitioner

VERSUS

\$ D.D.A. & Ors. Respondent

WP(C) No.3715/2006

Doctors Education Society
(Regd.) Petitioner

VERSUS

\$ Union of India & Ors. Respondents

WP(C) No.3848-49/2006

Swarn Jayanti Educational
Society (Regd.) & Anr. Petitioner

VERSUS

\$ D.D.A. Respondent

Through :

Mr. Ravinder Sethi, Sr. Adv. with Mr. Rajiv Kumar for
petitioner in WP(C) 3188/06 & 18728/04

Ms.Geeta Luthra with Mr.B.Devasekhar for petitioner in
WP(C) 16691-92/04.

Mr.P.V.Kapoor, Sr. Adv. with Mr.Ravi Gupta, Mr. Manu
Bansal, Mr. Ankit Jain for petitioner in WP(C) 18504/04.

Mr.Ravi Gupta, Mr. Manu Bansal, Mr. Ankit Jain, Adv. for
petitioner in WP(C) 3848-49/06, 18506/04 & 18507/04.

Mr.P.P.Tripathi, Sr. Adv. with Mr.R.K. Saini, Mr. Abhay
Chouhan for petitioner in WP(C) 19642/04.

Mr.Atul Y.Chitale with Mrs.Suchitra A.Chitale,

Ms.Sujeeta Srivastava, & Mr.Madhup Singhal, Adv. for
petitioner in WP(C) 3183-84/06 & 3224/05.

Mr.Amarendra Saran, ASG with Mr.Anil Sapra and

Mr.Rajesh Pathak for DDA in WP(C)3183-84/06, 3188/06,
3715/06, 3848-49/06, 18504/04,18506/04,16691-92/04

Mr.Sudhir Kumar Sharma for R-2/UOI in WP(C) 3188/06

Mr.Amjet Andley for R-3 in WP(C) 3188/2006.

Ms.Sujata Kashyap for DDA in WP(C)S 18504/04,
18506/04, 18507/04 & 18728/04,

Mr.Y.P.Narula, Sr.Adv. with Ms.Kimmi Brara for UOI in
WPC 8728/04.

Ms.Manpreet Kaur for Mr. V.K. Tandon for R-3/GNCT in
WP(C) No18504/04

Mr. P. S. Bindra for R-1 in WP(C) 3715/06.

RESERVED ON: 20-03-2006

% DATE OF DECISION: 17-04-2006

CORAM:

* Hon'ble Mr.Justice Pradeep Nandrajog

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether judgment should be reported in Digest?

: PRADEEP NANDRAJOG, J.

1. Common questions of law arise for consideration in the present set of writ petitions and by and large facts are near identical. I would be referring to additional facts qua petitioners of WP(C) No.16691-92/04 as some additional facts need to be stated for adjudication of said writ petition.

2. For most of the petitioners this is the third round of litigation. Earlier two rounds were fought when firstly the sponsoring authority i.e. Department of Higher

Education, Govt. of NCT of Delhi withdrew sponsorship and the second round was when DDA refused to consider the societies for allotment of land. Needless to state, petitioners won the first two rounds. Consequence is that aforesaid events have delayed consideration of case of petitioners for allotment of a plot of land.

3. The writ petitioner of WP(C) No.3188/06 has brought a representative action for its members and as such is not claiming any specific relief for itself. A declaratory relief is prayed that societies which have established technical institutes or higher education institutes or are desirous of establishing one be held entitled to Nazul Land at predetermined rates.

4. I need not note the pleadings of the parties in great detail for the reason, as would be evident from what I note hereunder, final battle fought was on a very different issue than what was expected to be fought.

5. Apart from land which had been placed at the

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disposal of DDA when DDA was incorporated in the year 1957; lands being under the ownership, management and control of the erstwhile Delhi Improvement Trust or the Notified Area Committees, (normally referred to as Nazul-I Lands); post acquisition by the Central Government, lands were placed at the disposal of DDA upon such terms and conditions as were agreed upon between the Central Government and DDA. (These lands are normally referred to as Nazul-II Lands). These lands were placed at the disposal of DDA by and under a notification issued under Section 22 of the Delhi Development Act, 1957, which reads as under :-

"22. Nazul Lands.-(1) The Central Government may, by notification in the Official Gazette and upon such terms and conditions as may be agreed upon between that Government and the Authority, place at the disposal of the Authority all or any developed and undeveloped lands in Delhi vested in the Union (known and hereinafter referred to as "nazul lands") for the purpose of development in accordance with the provisions of this Act.

(2) No development of any nazul land shall be undertaken or carried out except by,

or under the control and supervision of, the Authority after such land has been placed at the disposal of the Authority under sub-section (1).

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

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

6. A bare perusal of Section 22 of the Delhi Development Act, 1957 shows that it regulates development and disposal of Nazul land. Sub-section (1) authorises the Central Government to place at the disposal of DDA Nazul lands for the purposes of development. Sub-section (2) prohibits development of Nazul lands except by or under the control and supervision of DDA. Sub-section (3) stipulates

that after the said land has been developed, it shall be dealt by DDA in accordance with rules made and directions given by the Central Government.

7. Section 56 of Delhi Development Act, 1957 empowers the Central Government to make rules to carry out the purposes of the Act. Inter alia, Section 56(2) provides that the Central Government may make rules stipulating the manner in which Nazul lands shall be dealt with after development.

8. In the year 1981, the Central Government notified the Delhi Development Authority (Disposal of Developed Nazul Land) Rules, 1981. (Hereinafter referred to as the Rules). Rule 2(i) of the Rules define "Nazul land" as under :-

"Nazul land means the land placed at the disposal of the authority and developed by or under the control and supervision of the Authority under Section 22 of the Act."

9. Rule 4 of the Rules specifies the category of persons to whom Nazul land could be allotted. Following are entitled to Nazul land in terms of Rule 4: (a) individuals, (b)

body of persons, (c) public and private institutions, (d) cooperative house building societies, (e) other cooperative societies of individuals, (f) cooperative societies of industrialists, (g) departments of the Central Government, State Government and Union Territories, (h) company, (i) firm and (j) trust.

10. Rule 5 of the Rules requires the authority to allot Nazul land at a premia which may be determined by the Central Government from time to time.

11. Rule 20 stipulates the condition precedent to be complied with before Nazul land could be allotted under Rule 5.

12. On 15.12.2003, D.D.A. decided that henceforth no allotment of land would be made for setting up a higher/technical education institute or hospital at rates notified by the Central Government and all allotments would be made through auction. Probably realising that the field was occupied by legislation i.e. the Rules, steps were

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initiated to amend the Rules.

13. On 9.12.2004, amendments were carried out to the Nazul Land Rules, 1981. Inter alia, an explanation was inserted to Rule 5 and an amendment was incorporated in Clause (b) and the proviso to Clause (e) of Rule 20. As amended on 9.12.2004, Rule 5 and Rule 20 of the Nazul Land Rules 1981 read 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 organizations and local bodies for remunerative, semi-remunerative or unremunerative purposes at the premia and ground rent in force immediately coming into force of these rules, or at such rates as the Central Government may determine from time to time.

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

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

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

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

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

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

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

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

(d) it is in possession of sufficient funds to meet the cost of land and the construction of

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buildings for its use; and

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

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

(Note : The amendments incorporated are shown in italics.)

14. From a perusal of Rule 5 and Rule 20 as they existed prior to the amendment on 9.12.2004, it is evident that societies registered under the Societies Registration Act, companies, firms or trust were eligible for allotment of Nazul land if they intended to set up schools, colleges, universities, hospitals, social or charitable institutions. They continue to be eligible post amendment to the Rules on 9.12.2004.

15. From the pleadings of DDA it is evident that large scale complaints were being received pertaining to misuse of land. As a regulatory body, DDA was feeling helpless. Probably, the feeling was that why should these persons get land at cheap rates when they fail to discharge their social obligations of providing services to the society at cheap rates. Somebody thought that where hospitals, dispensaries, higher and technical education institutes are intended to be established, the allotment should be through tender or auction. For these purposes, amendments were made in Clause (b) of Rule 20, proviso to Clause (e) of Rule 20 and an explanation was added to Rule 5. But, as was very fairly conceded by Shri Amarendra Saran, learned ASG, who appeared for DDA, the amendment has left untouched the societies registered under the Societies Registration Act 1860. Counsel conceded that the amendment affects only a company, firm or a trust which seeks land for establishing a hospital, dispensary, higher or technical education institute.

Counsel conceded that though the intent of the amendment was not to make allotment of land for setting up hospitals, dispensaries, higher or technical education institutes at predetermined rates and charge for land at a price determined through tender or auction, but the rule making authority lost sight of the various categories of persons entitled to Nazul land. Counsel conceded that the amendment affects only companies, firm or a trust. Counsel further conceded that societies registered under the Societies Registration Act remain unaffected by the amendment.

16. Indeed, the golden rule of interpretation is that unless literal meaning leads to anomaly or absurdity, plain meaning of the words in a Statute must be adhered to. (See *Compac (P) Ltd. Vs. CCE* (2005) 8 SCC 300; *Gurudevdatla VKSSS Maryadit Vs. State of Maharashtra* (2001) 4 SCC 534 and *Swedish Match AB Vs. Securities and Exchange Board of India* (2004) 11 SCC 641).

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17. Since claim in all the writ petitions is by societies registered under the Societies Registration Act, 1860 or for benefit of such societies, entitlement of the petitioners has to be determined as per the Nazul Land Rules, 1981, taking note that the amendment incorporated on 9.12.2004 has left untouched the societies registered under the Societies Registration Act.

18. Writ petitioners of WP(C) 18504/04, 18728/04, 19642/04, 18506/04 and 18728/04 have established institutions which are affiliated with Guru Gobind Singh Indraprastha University. Affiliation is for conducting BIS and/or BCA courses. These petitioners have set up the respective institutes by taking premises on hire or by utilizing existing premises already available with them. These premises are on land allotted by DDA for establishing senior secondary school.

19. Petitioners of WP(C) 3848-49/06 have established the Delhi Technical Management Institute with the approval

of AICTE. The institute imparts higher education.

20. Petitioners of WP(C) 3183-84/06 have likewise established an International Management Centre with necessary approval from AICTE.

21. Petitioner of WP(C) 3715/06 intends to set up an Engineering College.

22. Petitioner of WP(C) 3188/06, as noted above, is an Association of self-financing institutes. It has brought a representative action for benefit of all its members.

23. All writ petitioners who claim land in their individual names have got the necessary sponsorship from the concerned department of the Government of NCT of Delhi and are fully eligible under Rule 5 of the Nazul Land Rules to be allotted land. It may be noted for record that it is not the case pleaded by DDA that petitioners have not complied with Rule 20 of the Nazul Land Rules.

24. As far as petitioners of WP(C) No.18728/04, 3715/06, 18507/04, 18506/04, 19642/04, 18504/04 and

3848/06 are concerned, it may be noted that after initial hick ups, finally D.D.A. held them eligible for allotment of Nazul Land and placed their case for identification of a specific plot before the Institutional Allotment Committee. The Committee considered the case of 291 applicants in its meeting held on 13.2.2003 and 17.2.2003. A 3 acres plot at Sector 26, Rohini was identified for petitioner of WP(C) 18728/04. A 3 acre plot at Sector 23, Dwarka, Phase-I, was identified for petitioner of WP(C) 3715/06. A 4678.2 sq.mtr. plot at Sector-11, Dwarka was identified for petitioner of WP(C) 18507/04. Qua petitioner of WP(C) 18506/04, case was recommended but subject to area of the land to be decided by the Planning Department. Similar was the position of the writ petitioner in WP(C) 19642/04. A plot admeasuring 1850 sq.mtrs. At FC-18, Karkardooma was decided to be allotted to writ petitioner of WP(C) 18504/04. A plot measuring 4000 sq.mtrs. being No.A-19, Lawrence Road Industrial Area was identified for allotment

to the writ petitioner of WP(C) 3849/06.

25. Writ petitioners of WP(C) 16691-92/04 have a somewhat chequered history. The first writ petitioner, Society For Employment And Carrier Counselling established the second petitioner namely, New Delhi Institute of Management. They obtained necessary recommendation/sponsorship from the concerned department of the Government of Delhi. The aim of the petitioners is to promote educational standards for members of the Scheduled Castes, Schedules Tribes and other backward classes as also minorities. Department of Social Welfare, Government of NCT of Delhi recommended that 3000 sq. yards of land be allotted for setting up the institute keeping in view the activities of the institute. Processing the case, in the year 1996, DDA allotted a plot of land ad-measuring 2000 sq. yards at Tughlakabad Institutional Area. As the second petitioner grew in strength, it added further courses. The growing activity

required additional built up space, which in turn require additional land. Petitioners took up the matter for further sponsorship for further land with the Department of Higher Education, Government of Delhi. On 22.12.2000, Government of Delhi recommended allotment of further 0.5 acres land to the petitioners. Petitioners claim that DDA decided to allot 1479 sq.mtrs land comprised in plot No.50, Tughlakabad Institutional Area, but the same did not fructify in a formal allotment. Petitioners took up the issue before various forums but did not succeed. Claim is that DDA be directed to honour recommendation of Government of Delhi to allot it further land ad-measuring 0.5 acres.

26. Stand of all petitioners is that a right crystalized in their favour when Director of Education sponsored their names for allotment of land and proceeded to consider their application, DDA found the petitioners entitled for allotment of Nazul land at predetermined rates. According to the petitioners, way back in the year 2003, either specific plots

were earmarked for allotment by the Land Allotment Committee of DDA or entitlement was held in favour of the petitioners by the Land Allotment Committee and, therefore, a vested right has accrued in their favour to be allotted institutional land at predetermined rates. That policy decision dated 15.12.2003 is illegal being hit by Rule 5. That amendment to the Rules on 09.12.2004 has left untouched the societies registered under the Societies Registration Act 1860.

27. Stand taken by DDA was that a policy decision was taken somewhere on 15.12.2003 that henceforth land for establishing technical/higher institutes would be allotted only through the process of tender/auction. That petitioners are free to participate as and when DDA offers for allotment institutional land through the medium of auction or tender. That under the Rules it was permissible to fix the premium through auction or tender.

28. On the issue of a vested right having accrued in

their favour, Shri Ravinder Sethi and Shri P.V.Kapur, learned senior counsel appearing for the petitioners urge that when DDA found petitioners entitled to institutional land in the year 2003, allotment has to be made as per practice and policy of DDA as of said year. Since, DDA was allotting institutional land at predetermined rates, petitioners would be entitled to land at predetermined rates. As a limb of this argument, it was urged that similar situated societies which had made applications along with the petitioners in the year 2000 were allotted Nazul Land at predetermined rates and petitioners could not be discriminated. It was urged that all applicants who submitted applications in the year 2000 form a homogenous category.

29. Opposing the aforesaid submissions, Shri Amarendra Saran, learned Additional Solicitor General appearing for DDA urged that a right vests in an applicant when DDA issues demand-cum-allotment letter. No such

demand-cum-allotment letter having been issued, no vested right had accrued. Question, therefore, of infringement of a vested right did not arise. In respect of the recommendation of the Land Allotment Committee, counsel urged that recommendations remained on the file and till they were not formally communicated to the party concerned, no right could be claimed on the basis of the said notings. Counsel urged that distinction has to be drawn viz-a-viz. the point of time when a vested right accrues and the point of time when pursuant to the procedure to be followed for making allotment, certain decisions are taken which ultimately lead to the final decision where under allotment is formally made. Counsel urged that procedural steps taken and decisions taken in furtherance of the procedure which remain in the files of DDA, without formal communication to the applicants would at best create an inchoate right and not a crystalized right. On the plea of discrimination, learned ASG urged that till applications are processed and final

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decision taken, applicants have an equal right of consideration and no more. Counsel urged that DDA had no role to play in the sponsorship granted by the Director (Higher Education), Government of NCT of Delhi and if petitioners had problems with said department, DDA could not be faulted. Counsel urged that it was not the case pleaded by the petitioners that officers of DDA, with malafide intent, picked and chose from the applications received in the year 2000 to confer benefit on a few to the exclusion of the others. Counsel urged that matter could be looked at from another angle. DDA was free to determine the premium at which land had to be allotted for establishing higher/technical institutes and this could be determination of premium by action.

30. In support of the aforesaid stands projected, petitioners relied upon the following decisions :

- (i) (1992) 4 SCC 477, Navjyoti Group Housing Society Vs. UOI & Ors.
- (ii) (2005) 4 SCC 154, Secretary A.P. Public Service

Commission Vs. B.Swapna & Ors.

- (iii) 2003 I AD (Delhi) 490, Holistic Farms P.Ltd. Vs. MCD & Ors.
- (iv) 2003 II AD (Delhi) 594, Deepak Malhotra Vs. MCD & Anr.
- (v) (2003) 6 SCC 659, Shiv Shakti Coop. Housing Society Nagpur Vs. Swaraj Developers & Ors.
- (vi) (1997) 6 SCC 623, Chairman, Railway Board & Ors. Vs. C.R. Rangadhamaiah & Ors.
- (vii) AIR 1990 Madras 33, Y.Arul Nadar Vs. The Authorised Officer, Land Reforms, Thanjavur.

31. In support of DDA's defence, Shri Amarendra Saran, learned ASG cited the following :

- (i) 67 (1997) DLT (SC) 774, DDA Vs. Ambitious Enterprises.
- (ii) JT 1994 (6) SC 292, DDA Vs. Pushpendra Kumar Jain.
- (iii) AIR 1994 Delhi 29 (FB), Ramanand Vs. Union of India.
- (iv) 2004 (1) SCC 663, Howrah Municipal Corporation Vs.
- (v) 68 (1997) DLT 62, Devraj Gupta Vs. New Delhi Municipal Committee.

32. Rule 2(l) of the DDA (Disposal of Developed Nazul Land) Rules, 1981 define predetermined rates as under :-

"Predetermined rates means the rates of premium chargeable from different categories of persons and determined by notification from time to time, by the Central Government, having regard to;

- (a)
- (b)
- (c)"

33. Rule 6 of the Rules require DDA to allot Nazul land at predetermined rates to the persons listed in Clause (i) to (vi) of Rule 6. Learned counsel for the parties admit that Rule 6 does not apply to the petitioners.

34. Rule 4 lists the persons to whom Nazul Land can be allotted and includes societies registered under the Societies Registration Act. Rule 5, as noted above, requires allotment of land to the class of persons specified therein at a premium in force immediately before coming into force of the Rules or at such rates as the Central Government may determine from time to time.

35. Rule 7 provides for allotment of land to certain

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licensed industrialists and requires allotment at prevailing market price.

36. Rule 8 of the Rules reads as under :

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

37. A perusal of Rules 5 to 8 makes it clear that save and except manner of allotment govern by rules 5, 6 and 7, allotment of Nazul land has to be at a premium determined under Rule 8 i.e. by auction or by tender. Allotments under Rule 6 have to be at the predetermined rates determined as per Rule 2(l). Allotment to certain licensed industrialists under Rule 7 has to be at the prevailing market price. Allotment of land under Rule 5 has to be at a premium in force immediately before coming into force of the Rules or at

such rates as the Central Government may determine from time to time. Submission made by learned ASG Shri Amarendra Saran that DDA was justified in taking a policy decision that premium would be determined as per auction is therefore not acceptable. The same runs contrary to the rules. As per Rule 5, the premium has to be the one which is notified and determined by the Central Government.

38. The aforesaid view gets fortified if one looks to Clause (e) of Rule 20. The proviso to said clause requires determination of premium where land is allotted to a company, firm or trust through process of a tender or an auction. Obviously, legislative intent is to provide different consequences where beneficiary is a society viz-z-viz a company, firm or trust.

39. Where a statute makes a distinction between two phrases or two categories of persons, it would be contrary to the cardinal principle of construction to interpret a statute in a manner which does away with the distinction.

40. I accordingly hold that policy decision taken by DDA on 15.12.2003 in so far it applies to societies registered under the Societies Registration Act, being contrary to Rule 5 of the Nazul Land Rules is illegal and void.

41. I need not, therefore, deal with the submissions made by learned counsel for the petitioners and case law cited on the issue that an authority vested with a discretion, cannot frame a guideline which takes away its discretion. Needless to state, said issue becomes irrelevant once it is held that the policy decision dated 15.12.2003 in so far it is applied to societies registered under the Societies Registration Act is void.

42. It is trite that notings on a file and recommendations made on the file, unless communicated to the party concerned do not bind the Government nor do they create a right in favour of a person. (See 1962 (Suppl.) 3 SCR 713, Bachhittar Singh Vs. State of Punjab, (1987) 3 SCC 34, State of Bihar Vs. Kripalu Shankar, (2003) 5 SCC

413, Laxminarayan R.Bhattad Vs. State of Maharashtra and (2004) 2 SCC 65, Bahadursinh Lakhubhai Gohil Vs. Jagdishbhai M. Kamalia). Thus, petitioners cannot claim any enforceable right pursuant to the recommendations made by the Land Allotment Committee of DDA. On the issue of a vested right, none of the decisions cited by counsel for the petitioners is of any help as the said decisions were rendered on the specific facts of each case. Generally speaking, law in force as on date of its applicability determines the rights and liabilities of a party. If between date of application and decision by the Statutory Authority, law changes, law applicable as on date of decision governs the field. Exception to the aforesaid is the dictum of the Supreme Court in the decision reported as (1996) 2 SCC 439, S.B.International Ltd. Vs. Assistant Director General of Foreign Trade wherein their Lordships held that unless established that the authority dealing with the application was acting malafide and was delaying taking

decision and, therefore, could not benefit due to its own wrong, i.e. could not apply the law in force when decision was taken, normal rule that law in force as on date of decision, must govern.

43. But that would not mean that DDA can chose not to make any allotment to the petitioners. As long as, while framing the Master Plan and the Zonal Development Plans, land stands ear marked for higher/technical education, the same has to be allotted by DDA as per the Nazul Land Rules 1981. Since, societies desirous of establishing said institutes, subject to compliance with Rule 20, would be entitled to Nazul Land at the rates determined by the Central Government and since companies, firms and trusts would have to pay the premium determined at an auction, DDA would be obliged to specify the plots available to societies at the rates determined by the Central Government and the plots available to companies, firms and trusts at a price to be determined in a public auction. Petitioners

would be entitled to be considered for allotment of land for setting up higher/technical institutes at rates determined by the Central Government, as they have been found to be eligible and they have complied with Rule 20 of the Nazul Land Rules.

44. Plea of the petitioners that other societies who applied in the year 2000 and have got land requires DDA to allot land to them as non-allotment would result in discrimination has to be rejected for the reason each applicant suffered scrutiny and there is no policy of first come first served, except for cooperative group housing evidenced by language of Rule 6(vi). Further, petitioners ought to have come to the Court when persons who had applied after them got land.

45. To sum up, entitlement of the petitioners for allotment of Nazul Land under Rule 5 requires DDA to identify the sites which it intends to allot to societies for setting up higher/technical institutes. This would include a



decision to identify the sites for setting up higher/technical institutes to be established by companies, firms or trusts to whom allotment has to be made at a premium determined at auction. Further, fairness in action would require that if number of plots identified for allotment to societies is less than the number of existing societies whose entitlement has been scrutinized, allotment be made by draw of lots or any other reasonable criteria. If number of plots available exceed the number of societies, DDA would be obliged to forthwith allot specific plots to the petitioners and charge premium as per rates determined by the Central Government.

46. Writ petitions stand disposed of declaring that the petitioners would be entitled to be considered for allotment of Nazul Land under Rule 5 of the DDA (Disposal of Developed Nazul Lands) Rules, 1981 for setting up higher/technical institutes at a premium determined by the Central Government. Policy decision dated 15.12.2003 in so

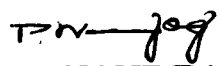
far it requires allotment of Nazul land to societies for setting up high/technical institutes at a premium determined through auction is quashed. Mandamus is issued to DDA to identify available plots for setting up higher/technical institutes and apportion the same for allotment to societies (falling in one class) and companies, firms and trusts (falling in second class); simultaneously, DDA would identify the societies whose entitlement has been cleared. If plots to be allotted to societies are more than the number of eligible societies, specific plot be allotted within a period of 3 months from today and premium charged as determined by the Central Government. If number of societies exceed the number of available plots, DDA is directed to evolve a reasonable criteria and as per criteria allot the specified listed plots to the eligible societies within 3 months.

47. Needless to state, petitioners would be treated as eligible societies.

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48. No costs.

April 17, 2006
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(PRADEEP NANDRAJOG)
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