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

Judgment Reserved on: April 21, 2014

% *Judgment pronounced on: April 30, 2014*

\+ **LPA 107/2014**

DELHI DEVELOPMENT AUTHORITY
& ANR ..... Appellants
Represented by: Mr.Ajay Verma, Advocate for DDA

Versus

JAGAN NATH MEMORIAL
EDUCATIONAL SOCIETY ..... Respondent
Represented by: Mr.R.K.Saini, Advocate with Mr.Kamal Gupta, Ms.Ridhima Bansal and Mr.Mohit Chadha, Advocates

W.P.(C) 7921/2012

VED EDUCATIONAL WELFARE SOCIETY ..... Petitioner
Represented by: Mr.R.K.Saini, Advocate with Mr.Kamal Gupta, Ms.Ridhima Bansal and Mr.Mohit Chadha, Advocates

Versus

DELHI DEVELOPMENT AUTHORITY & ORS ..... Respondents
Represented by: Mr.Rajiv Bansal, Advocate with Ms.D.Ray Chaudhary, Advocate for DDA

W.P.(C) 1327/2013

TRIVENI EDUCATIONAL AND SOCIAL
WELFARE SOCIETY ..... Petitioner
Represented by: Mr.R.K.Saini, Advocate with Mr.Kamal Gupta, Ms.Ridhima Bansal and Mr.Mohit Chadha, Advocates

Versus

SOUTH DELHI MUNICIPAL CORPORATION AND ANR ..... Respondents

Represented by: Ms.Mini Pushkarna, Advocate with Mr.Rushil Srivastava, Advocate for SDMC
Mr.Ajay Verma, Advocate for DDA

W.P.(C) 915/2014

INTERNATIONAL MANAGMENT INSTITUTE ..... Petitioner

Represented by: Mr.R.K.Saini, Advocate with Mr.Kamal Gupta, Ms.Ridhima Bansal and Mr.Mohit Chadha, Advocates

Versus

UNION OF INDIA & ORS. ..... Respondents

Represented by: Mr.Jaswinder Singh, Advocate for Mr.Amit Kumar, Advocate for UOI
Mr.Ajay Verma, Advocate for DDA
Ms.Mini Pushkarna, Advocate with Mr.Rushil Srivastava, Advocate for R-3

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

PRADEEP NANDRAJOG, J.

1. The respondent of LPA No.107/2004 and the writ petitioners of the three captioned writ petitions are societies/institutions and as per the charter/memorandum of their incorporation are non-profit bodies. All are

engaged in imparting education i.e. have establish Educational Institutes in Delhi. They have obtained exemption under Section 80G of the Income Tax Act. They were allotted land by Delhi Development Authority on perpetual lease-hold basis at a premium determined by the Authority for institutional land. Buildings were constructed after sanction obtained.

2. Under the Master Plan for Delhi, the extent of plot coverage and area of building which can be constructed on a plot of land, in the parlance of architectural and building science, called Floor Area Ratio (FAR), is stipulated in the relevant chapters of the Master Plan dealing with different kinds of plots uses such as Residential, Commercial, Industrial, Institutional etc. Land being scarce in Delhi and there being a demand for built-up area, the representations received from various bodies and institutes for either allotting more land to them or permit them an additional FAR were given due attention to by the concerned bodies of the Government resulting in a decision taken to enhance the FAR. The terms on which the benefit of additional FAR could be availed of were notified by a Notification dated December 23, 2008, which reads as under:-

"DELHI DEVELOPMENT AUTHORITY
NOTIFICATION
New Delhi, the 23rd December, 2008

Fixation of rates to be applied for use conversion, mixed land use and other charges for enhanced FAR arising out of MPD 2021.

S.O. 2955(E) – In exercise of power conferred by Section 57 of the Delhi Development Act, 1957 (61 of 1957), the Delhi Development Authority with the previous approval of the Central Government, hereby makes the following Regulations in pursuance to Notification No.s.O.3432(E) dated 10th October, 2008:

S.No.	*Item*	*Recommendation of the Ministry*	*Rates worked out on the basis of the recommendations of the Ministry (Rates in `per sqm)*
6.	*(g) Additional FAR charges for institutional Plots i.e. including hospital plots.*	*@ 50% of the undated zonal market rate of institutional properties for those disposed by auction as well as for those properties which were allotted to private parties. This is not applicable to those institutions which were allotted land @ ₹1/- for whom no such charges is recommended.*	*South & Dwarka ₹29525/- North, East, West & Rohini ₹13008/- Narela ₹9691/-* *This is not applicable to those institutions which were allotted land @ ₹1/- for whom no such charge is recommended.*

3. A perusal of the notification dated December 23, 2008 would evidence that concerning institutional plots in South Delhi and Dwarka, for the additional FAR the owner of the land was required to pay additional premium/charge @ ₹29,525/- per sqm. For the institutional plots in North Delhi, East Delhi, West Delhi and Rohini the additional premium/charge payable was @ ₹13,008/- per sqm. For the institutional plots in Narela the additional premium/charge payable was @ ₹9691/- per sqm.

4. Various representations were made by many non profit bodies to whom institutional land had been allotted by Delhi Development Authority. They pleaded that so steep were the charges that what was given by the right hand was taken away by the left hand. To put it in simple language, they prayed that benefit of additional FAR should be made available to them at no extra cost. In the representations these bodies highlighted that if required to pay the charges as per the notification they would not be able to expand their activities keeping in view the meagre resources with them. These representations were duly considered by a special committee constituted; and as we find in India, wheels in the Government Departments move excruciatingly slowly. The wheels of consideration in the instant case also move slowly. As time passed by, some institutions/bodies approached this Court by filing writ petitions in the Year 2009 laying a challenge to the notification dated December 23, 2008. In the said writ petitions, a prayer was made that by way of interim orders the writ petitioners may be permitted to avail the benefit of the additional FAR. Interim orders were passed that subject to the writ petitioners depositing additional FAR charges or furnishing bank guarantee the building plans may be sanctioned so that the writ petitioners could affect further construction on the existing lands owned by them. The respondent of LPA No.107/2014 and the writ petitioners in the three captioned petitions chose to deposit the additional FAR charges with Delhi Development Authority, albeit under protest, and obtain sanction for the building plans so that they could construct additional floors on the existing buildings owned by them. In the letters under which they tendered the additional FAR charges they clearly indicated that since a committee had been constituted to revisit the issue of additional charges,

payment tendered by them should be treated as subject to the decision taken by the committee or the decision by this Court in the writ petitions filed by a few similarly situated bodies/institutions.

5. For record, the respondent of LPA No.107/2014 deposited ₹3,02,91,764/- (Rupees Three Crores Two Lacs Ninety One Thousand Seven Hundred and Sixty Four only). The petitioner of W.P.(C) No.7921/2012 deposited ₹1,46,48,700/-(Rupees One Crore Forty Six Lakhs Forty Eight Thousand and Seven Hundred only). The petitioner of W.P.(C) No.1327/2013 deposited ₹43,85,931/- (Rupees Forty Three Lacs Eighty Five Thousand Nine Hundred and Thirty One only) and the petitioner of W.P.(C) 915/2014 deposited ₹2,86,54,308/- (Rupees Two Crores Eighty Six Lacs Fifty Four Thousand Three Hundred and Eight only).

6. The committee constituted took a decision that those bodies which were having an income-tax exemption and were engaged in the activity of education, health care and social welfare should be exempted from paying any additional charges to avail the benefit of additional FAR. The recommendation of the committee was sent for approval to the Central Government and upon approval being granted a notification dated July 17, 2012 was promulgated which reads as under:-

"DELHI DEVELOPMENT AUTHORITY
LAND COSTING WING
VIKAS SADAN INA
NEW DELHI
NOTIFICATION

Subject:- Exempting additional FAR charges in respect of Educational institutions/Trusts, Health-care and other social welfare societies etc. having exemption from income-tax.

In exercise of powers conferred by section 57 of the Delhi Development Act, 1957 (No.61 of 1957), the Delhi Development

Authority with the previous approval of the Central Government hereby makes the following modification to Notification S.O.2432 (E) dated 10.10.2008 and S.O. 2955 (E), dated 23.12.2008 published in the Gazette of India, Part II, Section 3, Sub-Section (ii) with regard to fixation of rates to be applied for additional FAR charges for Institutional plots. 6(g) for Educational Societies/ Health-care, Social Welfare societies etc. where mode of disposal of land is still allotment.

Accordingly Para 6(g) of these notifications dated 10.10.2008 and 23.12.2008 shall be amended by the following:

Sl.No.	*Item*	*Modified Rates approved by the Ministry*
1.	*Additional FAR charges for Institutional plots. 6(g)*	*No additional FAR charges to be recovered from Educational societies/Health care and Social welfare societies having Income Tax Exemption.*

The other contents of the notification dated 23.12.2008 will remain unchanged.

The exemption of additional FAR charges will remain in force till further modification and notification by the Government of India.

File No.F2[163] 07/AO(P)/Pt-II/Dated 17 July, 2012.

D Sarkar
Commissioner-cum-Secretary
Delhi Development Authority"

7. A perusal of the notification dated July 17, 2012 would evidence that, using the expression "*modification",* it amended the notification dated

December 23, 2008 and the modification was that no additional FAR charges would be recovered from Educational Societies and Health Care as also Social Welfare societies having Income Tax exemption.

8. As regards such institutions/bodies which has filed writ petitions, when the notification dated July 17, 2012 was brought to the notice of the Court, the writ petitions were disposed of vide order dated July 20, 2012. After noting the notification dated July 17, 2012, the Division Bench of this Court held 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.*
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> *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.*
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> *With these observations and directions, the writ petition stands disposed of. This order is being made only with regard to the petitioners before us.*
>
> *Dasti"*

9. It is apparent that the Division Bench, while not deciding on the constitutionality of the notification dated December 23, 2008, treated the notification dated July 17, 2012 as having retrospective operation, notwithstanding the same not being expressly stated in the order/decision because of the fact that the final direction was that since a new notification had come into being during the pendency of the writ petitions the issue was no longer required to be adjudicated upon. It has to be kept in mind that the writ petitioners before the Court had availed, under orders of the Court, benefit of additional FAR upon paying additional FAR charges on furnishing bank guarantees. This is the only way the decision of the Division Bench can be read, for otherwise the relief as granted could not have flown to the petitioner unless the notification dated December 23, 2008 was quashed.

10. For record we may note that Delhi Development Authority challenged the decision of the Division Bench of this Court before the Supreme Court which refused to grant leave to appeal.

11. The respondent of LPA No.107/2014 as also the three writ petitioners of the three captioned writ petitions made representations to the Delhi Development Authority from time to time praying that the amounts deposited by them under protest when they submitted applications for grant of approval to the building plans for making additional constructions as per additional FAR be refunded to them with interest. The representations were rejected. The respondent of LPA No.107/2014, filed WP(C) 1149/2013 and the three other writ petitioners filed the above captioned writ petitions. WP(C) 1149/2013 has been allowed by the learned Single Judge vide order dated November 22, 2013 which is challenged in LPA No.107/2014. The

successor learned Single Judge has referred the three captioned writ petitions to the Division Bench for the obvious reason that as regards a learned Single Judge of this Court the issue has attained finality in view of the decision dated November 22, 2013 passed in WP(C) 1149/2013. Needless to state, if LPA No.107/2014 is allowed the three captioned writ petitions would have to be dismissed and vice versa if the intra-court appeal is dismissed the three captioned writ petitions would have to be allowed.

12. The respondent in the intra-court appeal and the writ petitioners in the three captioned writ petitions had a two-fold point to urge. The first was that the doctrine of fairness required it to be held that the respondent in the intra-court appeal and the three writ petitioners should be entitled to the same benefit which enured to the writ petitioners of the batch of writ petitions which were allowed by a Division Bench of this Court as per the order dated July 20, 2012. It was urged that merely because the said writ petitioners had filed a writ petition challenging the notification dated December 23, 2008 but the respondent of the intra-court appeal and the three writ petitioners had not burdened this Court with litigation and had paid the additional charges under protest and with an express stipulation that the payment would be subject to a decision either taken by the committee or by this Court, made no difference in the status of the writ petitioners who had succeeded in this Court and they. The second contention urged was that the notification dated July 17, 2002 amending the notification dated December 23, 2008 was retrospective because it conferred a benefit.

13. Per contra, learned counsel who appeared for Delhi Development Authority vehemently urged that the notification dated July 17, 2002 did not contain a whisper of it being retrospective; the rule of interpretation being to

presume against retrospectivity. It was urged that those who approached a Court cannot be equated with those who are fence sitters.

14. It is trite that a legislation has effect as law: (i) in the territory to which it extends (its territorial operation), (ii) while it is in force in that territory (its temporal operation), and (iii) in relation to the persons to which it applies (its personal operation).

15. A legislation, be it a statutory Act or a statutory Rule or a statutory Notification, may physically consists of words printed on papers and bound up as a booklet, but conceptually it is a great deal more than an ordinary prose. There is a special peculiarity in the mode of verbal communication by a legislation. A legislation is not just a series of statements, such as one finds in a novel. There is a technique required to understand a legislation and this technique is to be found in the various theories of *'Interpretation of Statutes'*. Vis-a-vis ordinary prose, a legislation differs in its provenance, lay-out and features as also in the implication as to its meaning that arise by presumptions as to the intent of the maker thereof.

16. Of the various rules guiding how a legislation has to be interpreted, is the rule, that unless a contrary intention appears a legislation is presumed not to be intended to have a retrospective operation. The idea behind the rule is that a current law should govern current activities. If we do something today, we do it keeping in view the law of today and in force and not tomorrow's backward adjustment of it. Our belief in the nature of the law is founded on the bed rock that every human being is entitled to arrange his affairs by relying on the existing law and should not find that his plans have been retrospectively upset. The principle of law is *lex prospicit non respicit* : law looks forward not backward. As was observed in the decision

reported as (1870) LR 6 QB 1 *Phillips vs. Eyre,* a retrospective legislation is contrary to the general principle that legislation by which the conduct of mankind is to be regulated when introduced for the first time to deal with future acts ought not to change the character of past transactions carried on upon the faith of the then existing law.

17. To put in layman's language, the basis of the principle against retrospectivity is no more than *'simple fairness'* , which must be the basis of every legal rule as was observed in the decision reported as (1994) 1 AC 486 *L'Office Cherifien des Phosphates vs. Yamashita-Shinnihon Steamship Co.Ltd.*

18. Thus, the rule against presumption against a retrospective operation : *It is a fundamental rule of law that no statute shall be construed to have a retrospective operation unless such a construction appears very clearly in the terms of the Act, or arises by necessary and distinct implication.* Dogmatically framed, the rule is no more than a presumption, and thus could be displaced by out weighing factors.

19. Thus, legislations which modify accrued rights or which impose obligations or impose new duties or attach a new disability have to be treated as prospective unless the legislative intent is clearly to give the enactment a retrospective effect; unless the legislation is for purpose of supplying an obvious omission in a former legislation or to explain a former legislation. We need not note the cornucopia of case law cited on the subject because aforesaid legal position clearly emerges from the decisions which were cited at the Bar by learned counsel who appear for Delhi Development Authority.

20. But where a benefit is conferred by a legislation, the rule against a

retrospective construction is different. If a legislation confers a benefit on some persons but without inflicting a corresponding detriment on some other person or on the public generally, and where to confer such benefit appears to have been the legislators object, then the presumption would be that such a legislation, giving it a purposive construction, would warrant it to be given a retrospective effect.

21. This appears to be the justification to treat procedural provisions as retrospective.

22. In the decision reported as (2005) 7 SCC 396 *Government of India & Ors. vs. Indian Tobacco Association,* the doctrine of fairness was held to be a relevant factor to construe a statute conferring a benefit, in the context of it to be given a retrospective operation. The same doctrine of fairness, to hold that a statute was retrospective in nature, was applied by the Supreme Court in the decision reported as (2006) 6 SCC 289 *Vijay vs. State of Maharashtra & Ors.* It was held that where a law is enacted for the benefit of community as a whole, even in the absence of a provision the statute may be held to be retrospective in nature.

23. The decisions pertaining to Municipal statutes in the context of permissible utilizable FAR that the law applicable would be when a building plan is submitted for sanction to be obtained, or as of the date when revalidation is sought for, are thus explainable on the reasoning that society i.e. public generally is affected by the extent of permissible construction and retrospective application would be to the detriment of the public generally and hence a statute not to be applied retrospectively. The same principle explains the decision that where a retrospective operation inflicts a corresponding detriment on some other person or casts an obligation or takes

away a vested right the rule against retrospectivity has to be applied.

24. In the instant case the moment the notification dated December 23, 2008 was promulgated, representations were made to do away with the condition of paying extra premium for the extra FAR. A committee was constituted to look into the issue, which decided that for three category of bodies : (i) Educational, (ii) Health Care and (iii) Social Welfare, the additional charges need to be withdrawn. The Central Government accepted the same. The notification dated July 17, 2002 was promulgated. The object of the legislation is to confer a benefit without taking away anybody's vested right and without inflicting a corresponding detriment on some other person or on the public generally. To confer a benefit is the express object of the legislation. The presumption thus would be that the intent was to give a retrospective effect.

25. We have already reasoned above that the decision of the Division Bench of this Court dated July 20, 2012, though not so expressly stating, meaningfully read, has treated the notification dated July 17, 2002 as retrospective and thus the respondent in LPA No.107/2014 and the writ petitioners in the three captioned writ petitions would be entitled to succeed on three distinct and independent reasons. Firstly, parity with the writ petitioners of the various writ petitions which were allowed on July 22, 2012, which decision was affirmed by the Supreme Court. Secondly, on the doctrine of fairness adopted by the Supreme Court in *Indian Tobacco Association's* case (supra) and *Vijay's* case (supra). Thirdly that the notification dated July 17, 2012 has to be given a retrospective operation.

26. LPA No.107/2014 is accordingly dismissed. WP(C) 7921/2012, WP(C) 1327/2013 and WP(C) 915/2014 are allowed. Delhi Development

Authority is directed to refund to the petitioner of W.P.(C) No.7921/2012 ₹1,46,48,700/- (Rupees One Crore Forty Six Lakhs Forty Eight Thousand and Seven Hundred only), the petitioner of W.P.(C) No.1327/2013 ₹43,85,931/- (Rupees Forty Three Lacs Eighty Five Thousand Nine Hundred and Thirty one only) and the petitioner of W.P.(C) 915/2014 ₹2,86,54,308/- (Rupees Two Crores Eighty Six Lacs Fifty Four Thousand Three Hundred and Eight only) within eight weeks from today failing which the said sums shall be paid/refunded with interest @ 12% per annum reckoned from eight weeks hereinafter.

27. No costs.

(PRADEEP NANDRAJOG)
JUDGE

CHIEF JUSTICE

APRIL 30, 2014
rb/skb