NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 7384 OF 2013
(Arising out of SLP (C) No.24415 of 2009)

Delhi Union of Journalist Cooperative
House Building Society Ltd. and others …Appellants

versus

Union of India and others …Respondents

J U D G M E N T

G.S. SINGHVI, J.

1. Leave granted.

2. Whether the amendment made in the Master Plan of Delhi vide Notification dated 20.9.1995 permitting utilization of the sites earmarked for Nursery Schools for other purposes is *ultra vires* the provisions of the Delhi Development Authority Act, 1957 (for short, 'the Act') or is otherwise arbitrary and whether allotment of 1000 sq. yards (in some paragraphs of the special leave petition and the documents annexed with it the size of the plot has also been mentioned as 1200 sq. yards) of land earmarked in

Gulmohar Park for Nursery School to respondent No.4 – Kala Ashram, School of Dance and Drama, New Delhi is violative of the provisions of the Constitution and/or the Act are the questions which arise for consideration in this appeal filed against judgment dated 24.10.2008 of the Division Bench of the Delhi High Court.

3. Appellant No.1 is a cooperative housing society, appellant No.2 is a body representing four cooperative house building societies which have land in and around the area known as 'Gulmohar Park' and appellant No.3 is a society formed for establishing a Nursery School in Gulmohar Park.

4. The site in question was initially allotted to Bethal Education Society for construction of a Nursery School but the same was not utilized for long time. In 1989, the appellants made representations to the DDA for allotment of the land in question, but could not persuade the concerned authorities to entertain their prayer. Therefore, they filed CWP No.1185/1998 for issue of a mandamus to the Delhi Development Authority (for short, 'the DDA') to allot the site to them for establishing a Nursery School. When the writ petition was taken up for hearing, it was noticed that the appellants had not challenged the notification by which the Master Plan had been amended. Faced with the possibility of dismissal of the writ petition on that ground, learned counsel for the appellants made a request for permission to withdraw the same with liberty to file a fresh one. The learned Single Judge accepted the request and passed order dated 27.1.2000, the relevant

portions of which are extracted below:

> "I have perused the contents of the aforesaid amendment application. It transpires therefrom that the petitioner seeks to make the said petition, a public interest litigation. In that view of the matter, the petition would be required to be heard by the Division Bench, if the said amendment is allowed.
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> Counsel for the petitioner seeks permission to withdraw the present petition in order to enable the petitioner to file a consolidated writ petition before the Division Bench with a further order that the interim order passed on 9.3.1998 be continued for another ten days. Permission granted.
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> The petition stands dismissed as withdrawn with a liberty to the petitioner to file a consolidated petition before the Division Bench. Pending applications stand disposed of accordingly. The interim order passed by this Court on 9.3.1998 shall continue to operate for another ten days."

5. After few days, the appellants filed CWP No.662/2000 for quashing notification dated 20.9.1995 issued by the Government of India, Ministry of Urban Affairs and Employment (Delhi Division) for modification of the Master Plan and the allotment made in favour of respondent No.4. The Division Bench of the High Court referred to the nature of amendment made in the Master Plan and observed:

> "However, thereafter the purpose came to be amended by issuing a notification dated 20.9.95, a copy of which is produced as Annexure-7. The modification reads as under:-"At page 157 of the Gazette of India Part-II Section 3 sub-section (ii) dated 1.8.1990 under heading Nursery School and Kindergarten School (080) the following is added:
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> "The following neighbourhood facilities are permissible in nursery school sites according to the layout plan, where no such facility is available in the vicinity:

i) post office
ii) community hall cum library
iii) Dispensary
iv) Health Centre
v) Creche and Day care centre
vi) Electric sub-station
vii) Cooperative store
viii) Milk booth
ix) Fine arts school
x) Maternity home
xi) Child Welfare Centre (Charitable)

It is pointed out by the petitioner that if there is a Fine Art School in neighbourhood, then a plot reserved could not have been allotted for another Fine Art School.

It is required to be noted that in the instant case, according to the petitioner he has been trying his level best to get the plot of land for the purpose of nursery school and he has been writing for a long time. Copies of such correspondence are placed on record. It is contended that a wrong has been done to the petitioner by not allotting the plot for nursery school. It is pointed out in para no. 11 of the affidavit sworn by Ms. Asma Manzar, Director (Lands), DDA, that the petitioner was advised vide letter-dated 25.10.1989 to get its case sponsored from the Director of Education, Delhi Administration for taking further action, while informing that the earlier allotment to Bethal Education Society had been cancelled.

In view of this, the petition is not required to be entertained. However, if the petitioner approaches the DDA with the requisite recommendation/sponsorship, the DDA shall consider its case in accordance with law. The petition is dismissed."

6. Special Leave Petition (C) No. 18712/2004 filed by the appellants was dismissed by this Court vide order dated 27.1.2006.

7. Unfazed by dismissal of the writ petition and the special leave petition, the appellants made representation dated 10/13.2.2006 to the

Chairman, DDA for cancellation of the allotment made in favour of respondent No.4 and for allotment of the site to them for establishing a Nursery School. Soon thereafter, they filed Writ Petition Nos.3192-3194/2006 with similar prayer. The writ petitions were disposed of by the learned Single Judge by taking cognizance of the statement made by the counsel for the DDA that the Vice-Chairman would take appropriate decision on the appellants' representation keeping in view note dated 2.12.1990 recorded by the Minister for Urban Development.

8. In furtherance of the undertaking given by the counsel, Vice-Chairman, DDA considered the representation of the appellants and passed order dated 3.4.2006 whereby he rejected the appellants' prayer for cancellation of the allotment made in favour of respondent No.4 on the ground that the writ petition and the special leave petition filed by the appellants for quashing the allotment had already been dismissed by the Delhi High Court and the Supreme Court, respectively.

9. The appellants challenged the order of the Vice-Chairman in Writ Petition (C) Nos.12122-12124/2006. They relied upon note dated 2.12.1999 recorded by the then Minister, Urban Development incorporating therein his views against the allotment of Nursery School sites for any other purpose.

10. The learned Single Judge referred to order dated 24.3.2004 passed by the Division Bench in WP(C) No.662/2000 and held that it was not

permissible for the appellants to resurrect their challenge to notification dated 20.9.1995 or the allotment made in favour of respondent No.4. As regards the Minister's noting, the learned Single Judge observed that it was a general note and had nothing to do with notification dated 20.9.1995 issued by the Central Government. Paragraphs 9 to 11 of the order passed by the learned Single Judge, which contain the reasons for rejection of the appellants prayer are extracted below:

> "To this Court it appears that the Respondents are justified in contending that the prayers made by the writ petitioners here already stand rejected by the Division Bench of this Court by the order-dated 24.3.2004 in Writ Petition (Civil) No.662/2000. The rejection of the said writ petition meant that the Division Bench of this court had negatived the Petitioners' challenge to both the notification dated 20.9.1995 of the Central Government as well as the challenge to the allotment in favour of Respondent No.4 pursuant to the said notification. The last line of that order, which permitted the Petitioners to make a representation to the DDA for considering its case in accordance with law, was not meant to permit the Petitioners to raise the very contentions, which had been rejected by the court by the dismissal of the writ petition in Writ Petition (Civil) No.662/2000. It only meant that the Petitioners could have sought for the allotment of some other land, if available and subject to the requirements of the law. Instead, what the Petitioners appear to have done, is to re-agitate the issue which already stood covered by the Order dated 24.3.2004 of the Division Bench of this Court. This was clearly impermissible and not intended by the said order.
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> The order dated 3.3.2006 of the learned Single Judge of this Court requiring the DDA to take into account the note dated 2.12.1999 of the minister of Urban Development, has to be seen in the light of the fact that the said note was not specific to the allotment of the Respondent No.4. Moreover, the said note was issued more than 2 years after the allotment made in favour of Respondent No.4. That note is of a general nature and does not advert to the notification dated 20.9.1995 issued by the Central government, the challenge to the validity of which was negatived

by this Court and which has not been withdrawn or cancelled by the Central Government, at least till such time the allotment was made in favour of Respondent No.4.

The mere fact that the impugned order dated 3.4.2006 passed by the DDA does not refer to the note dated 2.12.1999 of the Minister of Urban Development, cannot make any difference to the fact that the challenge to the validity of allotment in favour of Respondent No.4 already stood negatived by this Court by its Order dated 24.3.2004 rejecting the Writ Petition (Civil) No.662/2000. The order dated 3.3.2006 certainly does not permit the Petitioner to re-agitate the same issue all over again either before the DDA or before this court."

11. The Letters Patent Appeal filed by the appellants was dismissed by the Division Bench of the High Court. Some of the observations made by the Division Bench are extracted below:

"14. We are further constrained by the result of the earlier litigation initiated by the appellants and the challenge of the appellants having been rejected. The principal plea of there being another Fine Arts School in the vicinity and, thus, the notification dated 20.9.1995 itself providing that in such a case there was no need for making another allotment formed subject matter of the first round of litigation. The appellants, unfortunately, did not succeed and that SLP was also rejected by the Supreme Court. That issue cannot be re-agitated again.

15. In the second round of litigation, all that could have been done was that the effect of the note of the then Minister for Urban Development to be considered. As to what would be the result of such consideration is itself a moot point in view of the challenge rejected in the first round of litigation. It is true that the note dated 2.12.1999 of the then Urban Development Minister has not been specifically mentioned in the decision taken by the Vice Chairman, DDA on 3.4.2006. However, an important aspect is that the note is general in nature and cannot really be stated to constitute a substratum for giving rights to the appellants to agitate the matter in Court. It was the view of the then Minister of Urban Development arising from a problem which was noticed by a certain members of Parliament. Not only

> that the most important aspect of the note is that the note itself makes it clear that the allotment should "cease forthwith". The note as made could, at best, have a future impact while the allotment in favour respondent No. 4 stood crystallized on the same being made, payment being accepted and the possession having been handed over and much prior in time."

12. Shri Ranjit Kumar, learned senior counsel appearing for the appellants argued that the impugned judgment and the order passed by the learned Single Judge are liable to be set aside because the High Court committed serious error by invoking the doctrine of *res judicata* for non-suiting the appellants. Learned senior counsel emphasised that order dated 3.4.2006 passed by the Vice-Chairman gave fresh cause to the appellants to seek intervention of the Court and the High Court could not have dismissed the writ petition and the appeal on the premise that the earlier writ petition had been dismissed. Shri Ranjit Kumar then submitted that even though the note recorded by the Minister, Urban Development was not translated into a formal order of the Government, Vice-Chairman, DDA was duty bound to consider the same and cancel the allotment made in favour of respondent No.4 because the amendment made in the Master Plan was totally arbitrary and unjustified. Learned senior counsel further argued that the disputed allotment was ex-facie arbitrary and violative of Article 14 of the Constitution because the same was not preceded by an advertisement inviting applications from the eligible persons for allotment of the site.

13. Shri L.N. Rao, learned Additional Solicitor General appearing for the

Union of India and Shri Atual Y. Chitale, learned senior counsel appearing for respondent No.4 supported the impugned judgment and argued that the appellants' challenge to the allotment of site to respondent No.4 was rightly rejected because CWP No.662/2000 filed by them for quashing notification dated 20.9.1995 was dismissed by the Division Bench of the High Court and the special leave petition was dismissed by this Court. The learned Additional Solicitor General relied upon the judgment in Shanti Sports Club and another v. Union of India and others (2009) 15 SCC 705 and argued that note dated 2.12.1999 recorded by the then Minister, Urban Development cannot be enforced because the same had not been translated into an order of the Government of India. Shri Atul Y. Chitale argued that the High Court rightly refused to entertain the appellants' challenge to the order of Vice-Chairman, DDA because the principal grievance made by them in the matter of allotment of site to respondent No.4 had already been negatived.

14. 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.

15. 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.

16. The note recorded by the Minister, Urban Development on 2.12.1999 did not have any legal sanctity and the same could not have been relied

upon by the appellants for seeking cancellation of the allotment made in favour of respondent No.4 in 1997 because no order was issued on the basis of that note and no notification was issued withdrawing the amendment made in the Master Plan vide notification dated 20.9.1995.

17. In Shanti Sports Club and another v. Union of India and others (supra), a similar question was considered in the context of noting recorded by the then Minister, Urban Development for release of the acquired land in favour of the appellant. While rejecting the appellants' prayer, this Court referred to the earlier judgments and held:

> "All executive actions of the Government of India and the Government of a State are required to be taken in the name of the President or the Governor of the State concerned, as the case may be [Articles 77(1) and 166(1)]. Orders and other instruments made and executed in the name of the President or the Governor of a State, as the case may be, are required to be authenticated in such manner as may be specified in rules to be made by the President or the Governor, as the case may be [Articles 77(2) and 166(2)]. Article 77(3) lays down that:
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> > "77. (3) The President shall make rules for the more convenient transaction of the business of the Government of India, and for the allocation among Ministers of the said business."
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> Likewise, Article 166(3) lays down that:
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> > 166. (3) The Governor shall make rules for the more convenient transaction of the business of the Government of the State, and for the allocation among Ministers of the said business insofar as it is not business with respect to which the Governor is by or under this Constitution required to act in his discretion."
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> This means that unless an order is expressed in the name of the

President or the Governor and is authenticated in the manner prescribed by the rules, the same cannot be treated as an order on behalf of the Government.

A noting recorded in the file is merely a noting simpliciter and nothing more. It merely represents expression of opinion by the particular individual. By no stretch of imagination, such noting can be treated as a decision of the Government. Even if the competent authority records its opinion in the file on the merits of the matter under consideration, the same cannot be termed as a decision of the Government unless it is sanctified and acted upon by issuing an order in accordance with Articles 77(1) and (2) or Articles 166(1) and (2). The noting in the file or even a decision gets culminated into an order affecting right of the parties only when it is expressed in the name of the President or the Governor, as the case may be, and authenticated in the manner provided in Article 77(2) or Article 166(2). A noting or even a decision recorded in the file can always be reviewed/reversed/overruled or overturned and the court cannot take cognizance of the earlier noting or decision for exercise of the power of judicial review."

(emphasis supplied)

18. By applying the ratio of the aforesaid judgment to the facts of this case, we hold that note dated 2.12.1999 recorded by the Minister, Urban Development cannot be made basis for quashing the allotment made in favour of respondent No.4.

19. In the result, the appeal is dismissed.

……..J.
(G.S. SINGHVI)

…….J.
(V. GOPALA GOWDA)

New Delhi;
September 6, 2013.