2024 INSC 33

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 3659-3660 OF 2023

DELHI DEVELOPMENT AUTHORITY **...APPELLANT(S)**

VERSUS

HELLO HOME EDUCATION SOCIETY **...RESPONDENT(S)**

J U D G M E N T

VIKRAM NATH, J.

1. These appeals by the Delhi Development Authority assail the correctness of the judgment and order dated 12.11.2021 passed by the High Court of Delhi in L.P.A. No.224 of 2019, whereby the appeal filed by the appellant was dismissed and the judgment of the learned Single Judge dated 15.11.2018 in Writ Petition (Civil) No.4459 of 2014 allowing the writ petition was confirmed. Further challenge is to an order dated 22.02.2022 passed in Review Petition No. 15 of 2022, by which the review petition was

effectively dismissed except for a clarification that in the main judgement, in place of 'Jasola' with respect to the resolution of Institutional Allotment Committee[1] and the approval of Lieutenant Governor, the word 'Vasant Kunj' be read.

Brief facts:

2. Hello Home Educational Society[2] desired to establish a new Junior High School (Class I to Class VIII) in Jasola area, New Delhi. For the said purpose, the Society was required to obtain an Essentiality Certificate, Sponsorship Letter and also the necessary recommendation from the appropriate authority. On 27.12.2000, an Essentiality Certificate was issued by the Deputy Director of Education. Thereafter, on 08.01.2002, Sponsorship Letter was issued by the Estate Branch, Lucknow Road, Delhi for setting up the Middle School in Jasola, District South Zone. It is after the fulfilment of these two conditions that the Land Allotment Committee recommends for allotment of the land.

[1] IAC
[2] The Society

3. According to paragraph 4 of the Sponsorship Letter, the same was valid for five years and the allotment of land would be made subject to Essentiality Certificate being valid and only for the area recommended. It further provided that in case land is not available in that area, the Society could approach the Land Allotment Committee for fresh sponsorship in areas where the land is available.

4. Having obtained necessary permissions, the Society applied on 09.09.2002 vide Form No.3124 for allotment of one acre of land in the following three areas namely: Jasola, Sarita Vihar and Vasant Kunj.

5. The IAC made recommendation for allotment of land to the Society in Vasant Kunj vide letter dated 23.01.2004. It appears that this letter recommending allotment of land in Vasant Kunj was issued under some mis-conception. The Sponsorship Letter and Essentiality Certificate had been issued for Jasola area only and there was no Essentiality Certificate or Sponsorship Letter for Vasant Kunj area. Vasant Kunj area was in Zone 20, whereas Jasola in Zone 25 at the relevant time and now it is in Zone 29.

6. A complaint was made by one Mr. Sukhbir Singh, who was a resident of Vasant Kunj on 21.02.2003, stating that the Society was trying to illegally get an allotment in Vasant Kunj area for establishing a school whereas the sponsorship letter was issued by the Directorate of Education for Jasola area. Despite the said objection, being on record and also the fact that the Society was not entitled to any allotment in any area other than for which the Essentiality Certificate and Sponsorship Letter had been issued, the file for allotment of land measuring 0.54 hectares in Pocket 6 & 7, Sector-B, Vasant Kunj was prepared and submitted for approval. The said file was also placed before the Lieutenant Governor who had in turn granted the in-principle approval for the same on 24.03.2003.

7. Despite the in-principle approval of the Lieutenant Governor, no allotment letter was issued to the Society. A note was made on the same day for verification of the complaint before proceeding any further. The Director of Education was required to give a clarification as to how the land was

recommended for allotment in Vasant Kunj area, in place of Jasola. These communications are dated 31.03.2003 and 03.04.2003. The note regarding verification of the complaint was made on the same file in which in-principle approval was granted by the Lieutenant Governor and it was recorded that only after verification, the matter was to be proceeded further.

8. In the meantime, a resolution was passed on 15.12.2003 by the competent body of the appellant that allotment of land to Educational Institutions running on commercial lines should be made through auction including the cases where the allotment was yet to be made. As no allotment had been made in favour of the Society, any further allotment would be covered by the policy decision dated 15.12.2003. A second complaint dated 19.01.2004 was made by one Mr. A.B. Gour on similar lines as the complaint dated 21.02.2003. Several other complaints were received with respect to allotment of public land for educational sites to establish institutions on commercial basis.

Considering the seriousness of complaints, a CBI enquiry was directed to be conducted.

9. In the meantime, the Society applied for Essentiality Certificate for establishing Junior High School (Class I to Class VIII) for Vasant Kunj area. The Competent Authority i.e. the Deputy Director of Education, vide letter dated 29.01.2004, issued the Essentiality Certificate for Vasant Kunj area. Once again it was limited for a period of five years subject to obtaining all other necessary permissions and fulfilment of all conditions. The Central Government, in consultation with the appellant amended the Delhi Development Authority (Disposal of Developed Nazul Land) Rules, 1981[3] vide Delhi Development Authority (Disposal of Developed Nazul Land) Amendment Rules, 2006, dated 19.04.2006 making it mandatory that allotment of land could be made either through Auction or by Tender.

10. The appellant, vide communication dated 19.06.2008, rejected the request for allotment in view of the changed policy and required the Society to

[3] For short, "1981 Rules"

participate in public auction of school sites, if it was so interested. The appellant again, vide letter dated 18.05.2012 in response to request letter of the Society dated 30.01.2011, informed that the request for allotment letter had been examined and duly rejected by the competent authority.

11. The Society, in the meantime, approached the High Court of Delhi by way of W.P.(Civil) No.4459 of 2014 on 19.07.2014 praying for a writ of Mandamus directing the respondent therein to implement the decision already taken for allotment of institutional plot to the appellant in view of the approval granted for Vasant Kunj area. Parity was also claimed with one Jyotika Education Society decided by the Delhi High Court in L.P.A. No.1670-71 of 2006. Relief claimed in the writ petition is reproduced hereunder:

i) To issue a writ in the nature of Mandamus or any other appropriate order or direction directing the respondents to implement the decision already taken for allotment of an institutional plot to the petitioner for establishment of a middle school in Vasant Kunj pocket 6&7 Sector B and at par with

Jyotika Education society and other matter decided by the Hon'ble Court decided in LPA No. 1670-71/2006.

ii) Quash the impugned letter dated 19/06/2003 and 18/05/2012 as the allotment to establish the middle school was approved by the Hon'ble on 24/03/2003 much prior to the notification of change in policy i.e. 19/04/2006 hence both the impugned letter against the natural principle of justice.

iii) Restore the letter of sponsorship issued by the Directorate of Education in 2003.

iv) Any other relief as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case may, also be granted.

12. The appellant filed its counter affidavit and additional affidavit. After exchange of pleadings, the learned Single Judge, vide judgment dated 15.11.2018, quashed the communications dated 19.06.2008 and 18.05.2012 and further directed the appellant to issue allotment letter forthwith. The

learned Single Judge allowed the writ petition on the following findings:

i) The complaint made was with respect to the allotment in Jasola and not Vasant Kunj;
ii) Vasant Kunj and Jasola fall in the same zone;
iii) Change in policy cannot be made retrospectively;
iv) Doctrine of legitimate expectation should have been invoked in favour of the Society;
v) The right to allotment had accrued to the Society in March, 2003 and the same could not be nullified.

13. The appellant was aggrieved by the judgment of the learned Single Judge as, according to it, the judgment was both factually and legally incorrect and as such unsustainable. It preferred an intra-Court appeal before the Division Bench which was registered as L.P.A. No.224 of 2019. The Division Bench, by the impugned order dated 12.11.2021, dismissed the appeal on the reasoning that change of policy from allotment to auction could not have any retrospective effect, and therefore, the rejection of

allotment was illegal. The appellant filed a Review Petition before the Division Bench registered as R.P.No.15 of 2022, which was disposed of, vide order dated 22.02.2022 without interfering with the main order, except for a clarification. It is against these two orders that the present appeals have been filed.

14. This Court, while issuing notice on 13.07.2022, passed an interim order staying the operation and effect of the impugned orders. The fact thus remains that till date no allotment has been made in favour of the respondent Society.

15. We have heard Ms. Madhavi Divan, learned Additional Solicitor General for the appellant and Dr. Abhishek Manu Singhvi, learned senior counsel for the respondent.

ARGUMENTS BY APPELLANT

16. The arguments advanced by Ms. Divan may be briefly summarised as under:

i) The respondent had no vested right conferred upon them as no allotment had taken place in their favour at any time. It was merely a

noting in the office file and in-principle approval of the Lieutenant Governor. However, with a rider that the complaint already made by Mr. Sukhbir Singh on 21.02.2003 was to be verified and thereafter further process was to take place. Subsequently, the Society had been duly communicated that the request for allotment had been rejected which was communicated twice; firstly, on 19.06.2008 and later on 18.05.2012.

ii) The internal notings are not decisions and do not confer any right, till such time, the decision taken on file is translated into allotment order and duly communicated to the allottee. Mere internal notings and approval cannot form a basis for claiming a right. Reliance was placed upon the following judgments:

a. **Bachhittar Singh vs State of Punjab**[4]

b. **Sethi Auto Service Station vs DDA**[5]

[4] AIR 1963 SC 395
[5] (2009) 1 SCC 180

c. **Mahadeo vs Sovan Devi**[6]**.**

iii) Once there is a change in law, a policy decision taken by the competent authority, where allotment was replaced by 'public auction' or 'tender' and such policy decision also providing that this change would apply to even pending cases, no claim could be set up by the Society contrary to the said change in policy. The Society was duly communicated that as and when auction for educational sites is held, it was at liberty to participate in the same. Reliance was placed upon the following judgement for this preposition:

a. **Howrah Municipal Corporation & Ors. Vs. Ganges Rope Co. Ltd. & Ors**.[7].

iv) It was mandatory to possess an Essentiality Certificate and the Sponsorship Letter from the competent authority for specific zones where the institution was to be set up or

[6] Civil Appeal No. 5876 of 2022 (decided on 30.08.2022)
[7] (2004) 1 SCC 663

established. In the present case, initially the Society had the Essentiality Certificate and the Sponsorship Letter for Jasola area. Later on it only had obtained an Essentiality Certificate for Vasant Kunj area. It admittedly till date has no Sponsorship Letter for Vasant Kunj area. As such also the Society was not eligible for any allotment of educational site or for that matter even eligible for applying for setting up an educational institution in Vasant Kunj area.

v) The claim of the Society that allotments had been made in favour of the Vikram Shilla Education Society, High Brow Education Society and M/s Jyotika Education Welfare Society would not be of any help for two reasons. Firstly, all these Societies possessed the Essentiality Certificate and the Sponsorship Letters for the specific areas where allotment was sought. Secondly, if any wrong had been committed in allotting educational sites to these three Societies, no negative parity could be claimed on its basis.

vi) The plea of a legitimate expectation raised by the Society on the basis of the in-principle approval of the Lieutenant Governor also was unfounded in law. The said doctrine of legitimate expectation would not be affected in the present case, for the reason that once a policy decision had been taken in larger public interest and also to maintain transparency in dealing with land belonging to the State, to be settled by way of auction or tender, the liberty was also given to the Society to apply and participate.

vii) The request for allotment was made as far back as March, 2003. The policy had changed on 15.12.2003, the 1981 Rules had also been amended later on in April 2006, the rejection for allotment was made in 2008 and 2012, the Society for the first time challenged the rejection only in July 2014. It never challenged the change in the policy decision nor the amendment to the 1981 Rules. As such there was an inordinate delay of 10

years on the part of the Society in filing the writ petition. Today after 20 years, there can be no justification for making any such allotment.

viii) Learned Single Judge as also the Division Bench committed factual and legal error in allowing the writ petition and dismissing the appeal of the appellant respectively. It was thus prayed that the appeal be allowed and the impugned order be set aside and the writ petition filed by the Society be dismissed.

ARGUMENTS BY RESPONDENT

17. On the other hand, Dr. Abhishek Manu Singhvi, learned senior counsel, defended the impugned orders while making the following submissions:

i) The appellant had been continuously changing its stand in the pleadings filed before the High Court and before this Court. Most of the arguments advanced before this Court were not pleaded or raised before the High Court. This Court may, therefore, not

consider such pleadings, documents and arguments which are not available before the High Court.

ii) In particular, it was pointed out that the fact regarding the CBI enquiry was never raised before and was being raised for the first time before this Court. The fact that there was no need for a school in Vasant Kunj area is also being raised for the first time before this Court. The fact that Vasant Kunj and Jasola fall in different Zones has also been raised for the first time before this Court.

iii) The Lieutenant Governor being the highest executive authority and having approved in-principle allotment in favour of the Society in Vasant Kunj area on 24.03.2003, nothing further was required to be deliberated upon and it was just a ministerial act of issuing the allotment letter pursuant to the said approval which was required. The appellant for reasons best known to it delayed the issue of allotment letter and over a period of time have

been raising all kinds of frivolous pleas to deprive the Society from the allotment and establishing an educational institution in Vasant Kunj area.

iv) The change in policy could not be given retrospective effect. The in-principle approval was granted on 24.03.2003, whereas the change in policy came in December, 2003. The 1981 Rules were much later amended in April 2006. The Society would be entitled to be dealt with the practice and procedure existing at the time when the request was made and in-principle approval was granted by the Lieutenant Governor.

v) Lastly it was submitted that in similar facts and circumstances, the appellant had allotted land to different Societies even after the change of policy and the amendment in the 1981 Rules without holding public auction or by tender process.

ANALYSIS

18. Having considered the submissions advanced, our analysis on the various issues is as under:

18.1 Taking up the last point first as raised by the appellant that there was inordinate delay in approaching the Court, we find much substance in the same. It is well settled that the litigant who is not diligent cannot invoke the extraordinary jurisdiction of the High Court under Article 226 of the Constitution of India. The in-principle approval having been granted on 24.03.2003, there was no justification for the Society to wait for 11 years to file a writ petition in the year 2014 on the basis of the said in-principle approval of the Lieutenant Governor. The Society ought to have exercised due diligence and should have claimed its rights within a reasonable time from the date of said in-principle approval if the same was not being implemented and the allotment letter was not being issued. There is no justifiable or satisfactory explanation for the said period of

inordinate delay of 11 years. The writ petition ought to have been dismissed on this ground alone. Reference can be made to a recent judgment of this Court in **State of Orissa & Anr. vs. Laxmi Narayan Das (Dead) thr. LRs & Ors**.[8] Paragraphs 25, 30, 32, 33 and 34 are extracted hereunder:

> "25. In New Delhi Municipal Council v. Pan Singh and others, (2007) 9 SCC 278, this Court has opined that though there is no period of limitation provided for filing a writ petition under Article 226 of the Constitution of India, yet ordinarily a writ petition should be filed within a reasonable time. In the said case the respondents had filed the writ petition after seventeen years and the court, as stated earlier, took note of the delay and laches as relevant factors and set aside the order passed by the High Court which had exercised the discretionary jurisdiction.
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> 30. Subsequently, a Constitution Bench of this Court in Senior Divisional Manager, Life Insurance Corporation of India Ltd. and others v. Shree Lal Meena, (2019) 4 SCC 479, considering

[8] 2023 INSC 619 paras 23-34

the principle of delay and laches, opined as under:- "36. We may also find that the appellant remained silent for years together and that this Court, taking a particular view subsequently, in Sheel Kumar Jain v. New India Assurance Company Limited, (2011)12 SCC 197 would not entitle stale claims to be raised on this behalf, like that of the appellant. In fact the appellant slept over the matter for almost a little over two years even after the pronouncement of the judgment. 37. Thus, the endeavour of the appellant, to approach this Court seeking the relief, as prayed for, is clearly a misadventure, which is liable to be rejected, and the appeal is dismissed." 31. In Bharat Coking Coal Ltd. and others v. Shyam Kishore Singh - (2020) 3 SCC 411, the issue regarding the delay and laches was Civil Appeal No.8072 of 2010 Page 27 of 51 considered by this Court while dismissing the petition filed belatedly, seeking change in the date of birth in the service record.

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32. The issue of delay and laches was considered by this Court in Union of India and others vs. N. Murugesan and others, (2022) 2 SCC 25. Therein it was observed that a neglect on the part of a party to do an act which law requires

must stand in his way for getting the relief or remedy. The Court laid down two essential factors i.e. first, the length of the delay and second, the developments during the intervening period. Delay in availing the remedy would amount to waiver of such right. Relevant paras 20 to 22 of the above mentioned case are extracted below: "20. The principles governing delay, laches, and acquiescence are overlapping and interconnected on many occasions. However, they have their distinct characters and distinct elements. One can say that delay is the genus to which laches and acquiescence are species. Similarly, laches might be called a genus to a species by name acquiescence. However, there may be a case where acquiescence is involved, but not laches. These principles are common law principles, and perhaps one could identify that these principles find place in various statutes which restrict the period of limitation and create non-consideration of condonation in certain circumstances. They are bound to be applied by Civil Appeal No.8072 of 2010 Page 28 of 51 way of practice requiring prudence of the court than of a strict application of law. The underlying principle governing these concepts would be one of estoppel. The question of prejudice is also an important issue to be taken note

of by the court. 21. The word “laches” is derived from the French language meaning “remissness and slackness”. It thus involves unreasonable delay or negligence in pursuing a claim involving an equitable relief while causing prejudice to the other party. It is neglect on the part of a party to do an act which law requires while asserting a right, and therefore, must stand in the way of the party getting relief or remedy. 22. Two essential factors to be seen are the length of the delay and the nature of acts done during the interval. As stated, it would also involve acquiescence on the part of the party approaching the court apart from the change in position in the interregnum. Therefore, it would be unjustifiable for a Court of Equity to confer a remedy on a party who knocks its doors when his acts would indicate a waiver of such a right. By his conduct, he has put the other party in a particular position, and therefore, it would be unreasonable to facilitate a challenge before the court. Thus, a man responsible for his conduct on equity is not expected to be allowed to avail a remedy.” Civil Appeal No.8072 of 2010 Page 29 of 51

33. Finally, in paras 37 and 38, it was observed as under : “37. We have already dealt with the principles of law that may have a bearing on this case. …

> there was an unexplained and studied reluctance to raise the issue .... 38. ....Hence, on the principle governing delay, laches ... Respondent No. 1 ought not to have been granted any relief by invoking Article 226 of the Constitution of India."
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> 34. If the aforesaid principles of law are applied in the facts of the case in hand from the table of list of dates as available in para no. 12, it is evident that there is huge delay on the part of the respondents to avail of their appropriate remedy."

18.2 It may also be noticed that the original Essentiality Certificate and Sponsorship Letter were with respect to setting up an educational institution in Jasola Area. The said certificates and the requirements were area specific. On the basis of an Essentiality Certificate and Sponsorship Letter for Jasola Area, no allotment could have been proposed for Vasant Kunj area. Complaint had already been made prior to the in-principle approval and had substance. Apparently for the same reason, the note was made below the in-principle approval that further process to

take place after verification of the complaint. It may be noted here that the Essentiality Certificate, the Sponsorship Letter and the allotment letter are to be carried out by three different authorities. The last of the three stages i.e. allotment was to be carried out by appellant. However, only upon fulfilment of the conditions as provided under the relevant rules and the policy. The appellant could not be compelled to make an allotment where the essential and mandatory conditions were not fulfilled, as in the case at hand. The High Court fell in error in not correctly appreciating this aspect of the matter.

18.3 The fact that Jasola and Vasant Kunj fall in different areas or zones is admitted by the Society in as much as it had separately applied for Essentiality Certificate for Vasant Kunj, which was also granted in 2004. The appellant has specifically stated that Jasola area was in Zone 25 (now Zone 29) whereas Vasant Kunj area was in Zone 20. The High Court thus committed an error in treating

them to be in the same Zone without any basis.

18.4 The policy decision taken on 15.12.2003 clearly mentioned that allotment of land would be made through auction and also included those cases where allotment was yet to be made. Subsequently the 1981 Rules were amended in April 2006, whereby also the provision for allotment was replaced by auction or by tender. There was no challenge either to the policy decision of December, 2003 or to the amendment of 2006 to the 1981 Rules. Merely seeking a Writ of Mandamus on the strength of the in-principle approval given by the Lieutenant Governor would not be maintainable in view of the change situation which had arisen much earlier to the filing of the writ petition.

18.5 The arguments advanced by Dr. Singhvi that the appellant had been changing its stand continuously is no help as the facts of the case which are on record and which are not

disputed, need to be accepted, even if they are raised at a later stage. The respondents have not been able to establish or even prima facie establish that the facts as narrated by the appellant and as recorded above were incorrect.

18.6 The issue relating to the CBI enquiry being raised before this Court as also the other facts like Vasant Kunj area did not require a school, or that Vasant Kunj and Jasola fall in different zones being raised for the first time before this Court also do not have any bearing on the merits of the matter in view of the conduct of the respondent Society which approached the Court after 11 years.

18.7 The issue relating to internal notings as to whether it would confer any right or not has been adequately dealt with and settled by series of judgements of this Court. It is well settled that until and unless the decision taken on file is converted into a final order to be communicated and duly served on the

concerned party, no right accrues to the said party. Mere notings and in-principle approvals do not confer a vested right. Relevant extracts from judgments of this Court in this regard are being reproduced hereunder:

a) **Bhachhittar Singh** (supra):

> "9. The question, therefore, is whether he did in fact make such an order. Merely writing something on the file does not amount to an order. Before something amounts to an order of the State Government two things are necessary. The order has to be expressed in the name of the Governor as required by clause (1) of Article 166 and then it has to be communicated. As already indicated, no formal order modifying the decision of the Revenue Secretary was ever made. Until such an order is drawn up the State Government cannot, in our opinion, be regarded as bound by what was stated in the file…..
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> [Emphasis supplied]
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> 10. ……Thus it is of the essence that the order has to be communicated to the person who would be affected by that order before the State and that person

can be bound by that order. For, until the order is communicated to the person affected by it, it would be open to the Council of Ministers to consider the matter over and over again and, therefore, till its communication the order cannot be regarded as anything more than provisional in character."

[Emphasis supplied]

b) **Sethi Auto Service Station** (supra)

"14. It is trite to state that notings in a departmental file do not have the sanction of law to be an effective order. A noting by an officer is an expression of his viewpoint on the subject. It is no more than an opinion by an officer for internal use and consideration of the other officials of the department and for the benefit of the final decision-making authority. Needless to add that internal notings are not meant for outside exposure. Notings in the file culminate into an executable order, affecting the rights of the parties, only when it reaches the final decision-making authority in the department, gets his approval and the final order is communicated to the person concerned."

[Emphasis supplied]

"22. From the afore-extracted notings of the Commissioner and the order of the Vice Chairman, it is manifest that although there were several notings which recommended consideration of the appellants' case for relocation but finally no official communication was addressed to or received by the appellants accepting their claim. After the recommendation of the Technical Committee, the entire matter was kept pending; in the meanwhile, a new policy was formulated and the matter was considered afresh later in the year 2004, when the proposal was rejected by the Vice Chairman, the final decision making authority in the hierarchy. It is, thus, plain that though the proposals had the recommendations of State Level Co-ordinator (oil industry) and the Technical Committee but these did not ultimately fructify into an order or decision of the DDA, conferring any legal rights upon the appellants. Mere favourable recommendations at some level of the decision making process, in our view, are of no consequence and shall not bind the DDA. We are, therefore, in complete agreement with the High Court that the notings in the file did not confer any right upon the appellants, as long as they remained as such. We do not find any infirmity in the approach adopted by the learned Single

Judge and affirmed by the Division Bench, warranting interference."

[Emphasis supplied]

c) **Mahadeo** (supra),

"14. It is well settled that inter-departmental communications are in the process of consideration for appropriate decision and cannot be relied upon as a basis to claim any right. This Court examined the said question in a judgment reported as 3Omkar Sinha v. Sahadat Khan3 . Reliance was placed on Bachhittar Singh v. State of Punjab4 to hold that merely writing something on the file does not amount to an order. Before something amounts to an order of the State Government, two things are necessary. First, the order has to be expressed in the name of the Governor as required by clause (1) of Article 166 and second, it has to be communicated. As already indicated, no formal order modifying the decision of the Revenue Secretary was ever made. Until such an order is drawn up, the State Government cannot, in our opinion, be regarded as bound by what was stated in the file.

[Emphasis supplied]

18.8 Reference can also be made to another judgment of this Court in **Municipal Committee, Barwala, District Hisar, Haryana trough its Secretary/President v. Jai Narayan and Company and Another**[9], wherein this Court took a similar view.

18.9 Whether the change in policy was retrospective or not is not an issue here. The change in policy decision taken on 15.12.2003 clearly mentions that even pending allotment matters were to be dealt with according to said change i.e. of holding auctions. This decision of change in policy brought about on 15.12.2003 was never challenged as is apparent from the relief claimed in the petition. Therefore, the settled procedure to be followed on or after 15.12.2003 was only to provide land by way of auction of educational sites and not by way of any allotment. Before that date there was no allotment of land in favour of the respondent. Even otherwise it is the settled

[9] (2022) SCC Online SC 376

position of law that whenever the State intends to transfer any land resort should be by public auction or inviting tenders.

18.10 Another argument raised by Dr. Singhvi regarding allotment having been made in favour of other Societies is also of no help. In the present case, the Society did not have the necessary Sponsorship Letter for establishing the school in Vasant Kunj area, and therefore, it was not even eligible to apply for procuring a site in Vasant Kunj area under the original rules. Further it is well settled that if any allotment had been made contrary to the existing policy and rules, the same would not form a basis of benefit being extended to another society as under law negative parity is not recognised or approved rather it is disapproved.

19. For the reasons recorded above, we are convinced that the only outcome of the writ petition was dismissal. The Single Judge and Division Bench fell in serious error while granting relief to the

respondent Society. Accordingly, the appeals are allowed, the impugned orders passed by the Division Bench and Single Judge are set aside. The writ petition is dismissed.

20. There shall, however, be no order as to costs.

.....J.
(VIKRAM NATH)

.....J.
(RAJESH BINDAL)

NEW DELHI
JANUARY 11, 2024