*Before M.M. Kumar & Jora Singh, JJ.*

**APEEJAY EDUCATION SOCIETY AND ANOTHER,—** *Petitioners*

*versus*

**HARYANA URBAN DEVELOPMENT AUTHORITY AND OTHERS,—** *Respondents*

C.W.P. No. 10749 of 2007

4th November, 2008

***Constitution of India, 1950—Art. 226—Haryana Urban Development Authority Act, 1977—S. 17(3)—Allotment of plot on lease hold basis for running a 'school'—Whether running a primary/nursery class in school building would amount to misuse of plot—Held, no-Allotment letter as well as terms and conditions of lease deed do not contemplate any classification—Word 'school' would naturally include classes at all levels like Pre-nursery/Nursery/ K.G/Middle/Secondary/Senior Secondary—No infringement of any clause of lease deed—Petition allowed, order passed by estate Officer quashed.***

*Held,* that the allotment letter dated 3rd December, 1973 in categorical terms has stated in the opening line that the Government has decided to allot the petitioners 8.68 acres of land in Sector 15, Faridabad 'for construction of school building on 99 years lease.' The allotment letter as well as terms and conditions of the lease deed do not contemplate any classification which is sought to be invoked by respondent No. 2 in support of the allegations of misuser. The word 'school' would naturally include the classes at all levels like Pre-nursery/Nursery/K.G/Middle/Secondary/Senior Secondary.

(Paras 13 & 14)

*Further held,* that a perusal of provisions of S,17(3) of the Haryana Urban Development Authority Act, 1977 would show that it is attracted only in case there is a breach of any condition of sale. In such like cases, the Estate Officer would be entitled to issue show case

notice to the allottee for resumption of site. However, in the present case, no infringement of any clause of the lease deed has been highlighted. On the basis of imaginary classification, which was not even in sight in 1973, no violation could be alleged. The order dated 5th July, 2007 is wholly illegal and unwarranted.

(Paras 16)

H.L. Tikku, Sr. Advocates, with Sumeet Goel, Advocate and Ms. Yashmeet, Advocate, Aashish Chopra, Advocate *for the petitioner(s).*

Ajay Nara, Advocate *for the respondents.*

***M.M. KUMAR, J.***

(1) In this group of five petitions (details of which have been given in the footnote*) filed under Article 226 of the Constitution common question of law and fact has been raised, namely :—

> "Whether running a primary/nursery class in a school building would amount to misuse of plot allotted to the petitioner for running a 'school' or educational institution without any prohibition ?"

(2) The facts are being referred from CWP No. 10749 of 2007.

(3) The petitioners have approached this Court with a prayer for quashing order dated 5th July, 2007 (Annexure P-I) passed by the Estate Officer, Haryana Urban Development Authority, Faridabad-respondent No. 3. The Estate Officer has concluded that petitioner No. 2 has been running the primary/nursery classes which was alleged to be misused of the allotted site. Accordingly, a direction was issued to stop the misuse within a period of 15 days failing which the site in question was to be resumed. A further prayer has been made for issuing direction to the respondent to permit the petitioners to run the school in terms of the allotment letter and the lease dead (Annexures P-2 & P-3).

(4) Brief facts of the case which have led to the filing of the instant petition are that petitioner No. 1 Apeejay Education Society is

a Society registered under the Societies Registration Act, 1860 (Act No. XXI of 1860) and it has been running Apeejay School, Faridabad, who is petitioner No. 2 in the instant petition. The aim of the Society is to provide social service and upliftment amongst others. The primary object for setting up of the Society is to provide education to the general public irrespective of their sex, caste, creed and to start, establish, manage, maintain and/or have managed and/or maintain educational institutions through out the territory of India.

(5) In pursuance of the afore-mentioned objective, the society applied to the Administrator, Urban Estate, Haryana, for allotment of land for establishing a school, way back in 1973. It is appropriate to mention that the Urban Estate, Haryana after enactment of the Haryana Urban Development Authority Act, 1977 (for brevity 'the Act') is known as the Haryana Urban Development Authority (for brevity, 'HUDA'). On the basis of the application, the society was informed on 3rd December, 1973 that the Government of Haryana has decided to allot approximately 8.68 acres land in Sector 15, Faridabad, for construction of a school building on 99 years lease (Annexure P-2). The lease deed was executed on 8th April, 1974 by the Governor of Haryana and registered on 26th March, 1977 in favour of the society for the purpose of running 'a school'. The petitioners have claimed that the lease deed categorically records that the Lessee-society would be entitled to hold the plot from 3rd December, 1973 for a period of 99 years. Clause 2 of the lease deed provides that the Lessee-society would be entitled to raise construction on the plot for the purpose of running 'a school' after getting the building plans approved from the Administrator, Urban Estate, Faridabad, as required by law. The lease deed dated 8th April, 1974 as registered on 26th March, 1977, has been placed on record (Annexure P-3). The petitioner raised the construction of the building after seeking permission and approval from the competent authorities. The school-petitioner No. 2 has been running classes for nursery/pre-primary to class 12th i.e. Senior Secondary level since 1975. The school is affiliated with Central Board of Secondary Education (C.B.S.E.). The petitioners have claimed that there was no statutory classification with regard to nursery/primary/middle/secondary and senior secondary level of classes in the respondent-State of Haryana

when the land was allotted to the petitioners-society and for running 'a school' lease deed was executed. The classification for the first time was made by the Haryana School Education Rules, 2003 (for brevity, 'the Rules'), which were enforced on 30th April, 2003. The aforementioned classification in respect of schools is contained in Chapter II Rules 4 of the Rules.

(6) On 22nd January, 2007, the petitioners school received a show cause notice purported to have been issued under Section 17(3) of the Act alleging that the petitioners school has violated the terms and conditions of the allotment letter, in as much as, it has misused the property by running a nursery school which is impermissible and illegal (Annexure P-4). On 20th February, 2007, the petitioners sent reply to the show cause notice pleading that there was no violation of the terms and conditions of the allotment letter nor there was any misuser (Annexure P-5). The afore-mentioned reply was found to be unsatisfactory by respondent No. 2, as per the communication dated 23rd March, 2007. The petitioner-society was asked to appear before respondent No. 2 for personal hearing on 26th March, 2007 (Annexure P-6). However, the hearing was given to the petitioner on 16th April, 2007 by respondent No. 2 and the petitioner also submitted detailed arguments in writing (Annexure P-7).

(7) The petitioners have claimed that the basis of show cause notice issued to them and other schools is the judgment delivered by the District Consumer Disputes Redressal Forum, Faridabad dated 7th November, 2005, on a complaint filed by one Disha Education Society (Annexure P-9). The other basis for issuance of show cause notice to them disclosed by the petitioners is the purported reliance of the respondents on a Public Interest Litigation filed in this Court by way of C.W.P. No. 4434 of 2007 (Comprehensive Child Development and Welfare Society and another *versus* The Administrator, HUDA). It is claimed that this Court had directed the respondents to examine each individual case and to pass speaking order. The petitioners have also relied upon the terms and conditions of the lease deed which postulate that the petitioners were requird to establish 'a school' without restricting the operation of the school to pre-nursery/nursery/primary/middle/ secondary and senior secondary classes.

(8) No written statement has been filed in C.W.P. Nos. 12305, 11372, 18315 and 13030 of 2007. Mr. Ajay Nara, learned counsel for the respondents has stated that the written statement filed in C.W.P. No. 10749 of 2007 may also be read as written statement in other cases as well.

(9) In the written statement filed on behalf of respondents in C.W.P. No. 10749 of 2007 although an arbitration clause has been pleaded but at the hearing Mr. Ajay Nara has conceded that there is no such clause in the letter of allotment or in the lease deed. There is no clause no 29 in the letter of allotment to which reference has been made in para 2 of the preliminary submissions in the written statement. It has further been conceded by Mr. Ajay nara, learned counsel for the respondents that the school site allotted to the petitioners has not restricted the operation of the school to prenursery/nursery/primary/ middle/secondary and senior secondary classes. It is, however, claimed that for the first time, the respondent came to know about the violation of the lease deed/allotment letter when they were supplied a copy of CWP No. 4434 of 2007 *(supra)*. Other broad facts have not been disputed although it has been claimed in a blanket manner that the impugned order dated 5th July, 2007 does not suffer from any legal infirmity.

(10) Mr. H.L. Tikku, learned Senior counsel and Mr. Ashish Chopra, learned counsel have vehemently argued that there is no misuse of the site allotted to the petitioners nor there is any violation of terms and conditions of allotment letter dated 3rd December, 1973 or the terms and conditions of the lease deed dated 8th April, 1974 (Annexure P-3). Learned counsel have drawn our attention to clause (ii) of the lease deed, which uses the word 'school' without quantifying the same with any further restriction. According to the learned counsel, the petitioners have complied with each and every terms and conditions of the lease deed and have erected the building more than 30 years ago after obtaining necessary approval to the site plans. Learned counsel has maintained that provisions of Section 17(3) of the Act are neither attracted nor applicable to the case in hand and resumption order dated 5th July, 2007 (Annexure P-1) is wholly without jurisdiction, illegal and is liable to be set aside.

(11) Mr. H. L. Tikku, learned counsel has further argued that at the time of allotment of plot to the petitioners, the Rules were apparently nor enforced and the classification between pre-nursery/ nursery/primary/middle secondary and senior secondary have been made for the first time by the Rules. According to the learned counsel, the Rules can not be applied retrospectively so as to divest the petitioners of their vested rights, primarily for the reason that the petitioners have not only been allotted the plot, they have raised construction and have been running classes at all levels. The argument seems to be that the petitioners have completely change their position to their detriment 30 years ago and it does not lie in the mouth of respondent No. 2 at this stage to resume the site merely on the ground that it has been running pre-nursery or nursery classes.

(12) Mr. Ajay Nara, learned counsel for the respondents has raised an adventurous arguments by stating that order dated 5th July, 2007 passed by respondent No. 2 can not be assailed being illegal. According to the learned counsel, the word 'school' will not include pre-nursery/nursery and K.G. Classes.

(13) Having heard learned counsel at a consideration length, we are of the view that the instant petitions deserve to be allowed and the impugned order dated 5th July, 2007 is liable to be set aside. The allotment letter dated 3rd December, 1973 in categorical terms has stated in the opening line that the Government has decided to allot the petitioners 8.68 acres of land in Sector 15, Faridabad 'for construction of school building on 99 years lease'. Out of the total land area measuring about 3.62 acres, which is shown as open piece in the lay out plans, was to be left for play ground and no construction was to be allowed on it. The approval to the building plans was required to be obtained from the Administrator, Urban Estate, Faridabad according to the building by-laws applicable. In sub-paras (iv) and (v) of para 3 of the petition, categorical averments have been made that the building plans were got approved from the competent authorities before raising the construction. The afore-mentioned averments have not been denied by the respondents in the corresponding para of the reply of the written statement. The only assertion made by the respondents is that the petitioners have been running nursery and primary school/wing in the

school premises, which is impermissible. In the lease deed the first para recites that 'whereas the Lessor has agreed to grant on lease the plot of the land belonging to the Lessor for construction of School on the terms and conditions' mentioned therein. Accordingly, in clauses (ii) of the lease deed the word 'school' has been used. It is appropriate to read clause (ii) which is as under :—

> "(ii) This Lessee shall have the right to raise the constructionn on the plot for the purpose of 'running school' after getting the building plans approved from the Administrator Urban Estates, Faridabad as required under the law."

(14) The allotment letter as well as the terms and conditions of the lease deed do not contemplate any classification which is sought to be invoked by respondent No. 2 in support of the allegations of misuser. The word 'school' would naturally include the classes at all levels like pre-nursery/nursery/K.G./middle/secondary/senior secondary.

(15) We are further of the view that Section 17(3) of the Act which provide for resumption of the site is not attracted to the facts of the present case. Section 17(3) of the Act reads as under :—

> "(3) If the transferee fails to pay the amount due together with the penalty in accordance with the order made under sub-section (2), or commits a breach of any other condition of sale, the Estate Officer may, by notice in writing, call upon the transferee to show cause within a period of thirty days, why an order of resumption of the land or building, or both, as the case may be, and forfeiture of the whole or any part of the money, if any, paid in respect thereof which in no case shall exceed ten percent of the total amount of the consideration money, interest and other due payable in respect of the sale of the land or building, or both, should not be made."

(16) A perusal of the afore-mentioned provision would show that it is attracted only in case there is a breach of any condition of

sale. In such like cases, the Estate Officer would be entitled to issue show-cause-notice to the allottee for resumption of the site. However, in the present case, no infringement of any clause of the lease deed has been highlighted. On the basis of the imaginary classification, which was not even in sight in 1973, no violation could be alleged. The order dated 5th July, 2007 is wholly illegal and unwarranted.

(17) For the reason afore-mentioned, this petition succeeds. The order dated 5th July, 2007 (Annexure P-I) passed by respondent No. 2 is hereby quashed. The petitioners shall have their costs, which is quantified at Rs. 10,000.

(18) Photocopy of this order be placed on the file of each connected case.

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***R.N.R.***

***Before Mehtab S. Gill & K. Kannan, JJ.***

**PREM CHAND MANCHANDA AND OTHERS,—*Petitioners***

***versus***

**STATE OF HARYANA AND ANOTHER,—*Respondents***

CWP No. 4563 of 2007

9th January, 2009

***Constitution of India, 1950—Art. 226—Department wrongly stepping up pay of petitioners and ordering recovery from date of issue of instructions by Finance Department-None of petitioners could be imputed with any fraud or any voluntary act that had resulted in payment of higher pay—No fault with withdrawal of benefit of higher scale by stepping up of their pay-Petition allowed, order of recovery modified—No recovery at all for any excess amount paid to petitioners.***

*Held,* that whatever the petitioners had not been apprised of, would be really irrelevant so long as the mistake which the Department had committed, was found later and all the petitioners had been granted