

NEW INDIA PUBLIC SCHOOL AND ORS. ETC.

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v.

HUDA AND ORS. ETC.

JULY 15, 1996

[K. RAMASWAMY AND G.B. PATTANAIK, JJ.]

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Haryana Urban Development Authority Act, 1977 : Section 15.

Haryana Urban Development (Disposal of Land and Buildings) Regulations 1978 : Regulations 3, 4, 5 and Proviso.

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Haryana Urban Development Authority—Power to dispose land—Applications for allotment of sites to establish schools—Allotment to some persons and denial to others—Challenge to validity of allotment procedure by non-allotees—Single Judge found fault with allotment but dismissed the writ petition taking into account the fact that some allottees had already constructed buildings on sites allotted and schools were being run there—Division Bench quashed the allotment as it doubted the bona fides of the allotments in question—Directions issued by Division Bench—Appeal before Supreme Court—Contention that the Division Bench was not right in its conclusion that allotment by public auction is the only mode of allotment—Held the directions issued by the Division Bench broadly cannot be found fault with—Several modes of disposal of property are available to development authority—One of the modes is public auction, allotment or otherwise—When public authority discharges its public duty the word "otherwise" would be construed to be consistent with the public purpose—Clear and unequivocal guidelines or rules are necessary and not the whim and fancy of the public authorities—In all cases relevant criterion should be pre-determined by specific rules or regulations and published for the public—Therefore, the public authorities are required to make necessary specific regulations or valid guidelines to exercise their discretionary powers; otherwise, the salutary procedure would be by public auction—The Division Bench was right in holding that in the absence of such statutory regulations exercise of discretionary power to allot sites to private institutions or persons was not correct in law.—Order of Division Bench upheld subject to further directions issued by Supreme Court.

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A CIVIL APPELLATE JURISDICTION : Special Leave Petition (C)
Nos. 12256-59 of 1996 Etc. Etc.

From the Judgment and Order dated 1.3.96 of the Punjab & Haryana High Court in L.P.A. Nos. 1368-69/92, 1320 and 1319 of 1992.

B P.P. Rao, Gopal Subramaniam, Ms. Charu Tuli, Ms. Suruchi Aggarwal, Mrs. Rekha Palli, A.V. Palli, Atul Sharma, Neeraj Kr. Jain and Ms. Abha R. Sharma for the Petitioners.

Arun Jaitely and P.N. Puri for the Respondents.

C The following Order of the Court was delivered :

In SLPs. except SLP Nos. 12720-23/96

We have heard the counsel on both sides. These Special Leave Petitions have been filed against the order of the Division Bench of the Punjab & Haryana High Court in L.P.A. No. 1368/92 and batch, dated March 1, 1996. The Haryana Urban Development Authority (HUDA) had invited applications for allotment of sites to establish the high schools, primary schools or nursery schools in the zone earmarked for the schools in Panchkula. Pursuant thereto, several institutions/persons including the petitioners had applied for allotment of sites. HUDA had allotted, out of 23 plots available, sites to 11 persons and denied allotment to eight persons. The non-allottees filed the writ petitions in the high Court challenging the validity of the procedure adopted by the HUDA in allotting sites to the schools. Though the learned single Judge found fault with the allotment, on finding and taking into consideration that pending writ petitions, the petitioners and some of the respondents had constructed buildings and schools were being run at the allotted plots, he upheld their actions and dismissed the writ petitions with the observations mentioned therein. On appeal, the Division Bench set aside the order of the learned single Judge and while quashing the allotments made, issued directions as enumerated thus :

G "(a) All the school sites required to be allotted or sold shall be notified afresh strictly in accordance with the provisions of the Act and the Regulations. All the petitioners, the private respondents and all other eligible persons shall be permitted to participate in the process of sale or allotment;

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- (b) preference shall be given for sale or allotment by open auction; A
- (c) In case, the respondent authority decides not to resort to the method of open auction, it may invite applications in accordance with the provisions of Regulation 5 and on the prescribed proforma; B
- (d) The tentative price/premium of each site shall be pre-determined and proportionate earnest money received alongwith the applications, if filed;
- (e) appropriate reasonable uniform criterion for making the allotments, if so desired, be notified in advance; -C
- (f) before initiating action for sale or allotment of the school sites, value of the construction/building raised by the private respondents herein shall be got determined by the Committee of experts headed by a Chief Engineer; D
- (g) The intending allottees would be intimated that if they succeed in getting the school sites allotted in their favour, they will take its possession alongwith the building, staff and the students who offer to remain in their employment/institutions; E
- (h) In case it is decided to transfer the land by open auction it shall specifically be mentioned in the notice that in case the present allottee succeeds in such auction, they shall be given the benefit of 10 percent of the bid amount offered by them; F
- (i) Out of the amount realised by sale or lease on account of the price-premium, the erstwhile allottees shall be paid the amount spent by him/it in raising construction of the building at his own risk and responsibility during the pendency of the writ petition, as calculated by Expert Committee alongwith the amount already paid to the HUDA such a provision would not be applicable where the allottee exercises his option to remove the construction raised by him/it at his/its own risk and responsibility; G
- (j) The process be initiated within two months and completed within four months; H

A (k) Till the process of fresh allotment is completed, the private respondents shall be permitted to remain in possession of the school sites allotted to them. The appellants are held entitled to the payment of costs which are assessed at Rs. 2,000 per appeal."

B Shri P.P. Rao, Shri Gopal Subramaniam, learned senior counsel appearing for the petitioners and Shri Arun Jaitley, learned senior counsel appearing for the HUDA contended that the HUDA had laid the criteria for allotment of the sites; invited applications, prescribed the pre-conditions for compliance laid down therein; a Committee was constituted to go into the credentials of the applicants; and after close scrutiny of those applications the HUDA had allotted these sites to the petitioners in total to 11 applicants. Therefore, the procedure adopted by the HUDA cannot be found fault with. Shri Rao and Gopal Subramaniam further contended that allotment by auction is not the only criteria provided in Section 15 of the Haryana Urban Development Authority Act, 1977 (for short, the D "Act"). The Haryana Urban Development (Disposal of Land and Buildings) Regulations 1978 (for short, the Regulations) do indicate the provision for allotment by modes other than public auction. Proviso to regulation 5(3) itself gives power for allotment to groups or individuals or persons practicing any profession or carrying on any occupation, trade or business or for any such categories of persons or government department E or institution or charitable institutions or other organisations for public welfare as may be decided by the authority from time to time. Therefore, the Division Bench was not right in its conclusion that allotment by public auction is the only mode of allotment.

F It is also further contended that pending writ petitions the petitioners have constructed the buildings at a huge cost. Compliance of the directions of the Division Bench would put them to great disadvantage and that, therefore, the relief should be suitably moulded. Having given consideration to the respective contentions, we think that the directions issued by the Division Bench broadly cannot be found fault with. It is seen that G Section 15 of the Act gives power to the authority for disposal of the land as under:

H "15. Disposal of land : (1) Subject to any directions given by the State Government under this Act and to the provisions of sub-section (5), the Authority may dispose of -

(a) any land acquired by it or transferred to it by the State Government without undertaking or carrying out any development thereon; or A

(b) any such land after undertaking or carrying out such development as it thinks fit, to such persons, in such manner and subject to such terms and conditions, as it considers expedient for securing development. B

(2) Nothing in this Act shall be construed as enabling the authority to dispose of land by way of gift but subject to this condition, reference in this Act to the disposal of land shall be construed as reference to the disposal thereof in any manner, whether by way of sale, exchange or lease or by the creation of any easement, right or privilege or otherwise. C

(3) Subject to the provisions hereinbefore contained, the Authority may, sell, lease or otherwise transfer whether by auction, allotment or otherwise any land or building belonging to it on such terms and conditions as it may, by regulations, provide. D

(4) The consideration money for any transfer under Sub-section (1) shall be paid to the Authority in such manner as may be provided by regulation. E

(5) Notwithstanding anything contained in any other law, for the time being in force, any land or building or both, as the case may be, shall continue to belong to the Authority until the entire consideration money together with interest and other amount, if any, due to the Authority, on account of the sale of such land or building or both is paid. F

(6) Until the conditions provided in the regulations are fulfilled, the transferee shall not transfer his rights in the land or building except with the previous permission of the Authority, which may be granted on such terms and conditions as the Authority may deem fit." G

Regulation 3 provides the mode of disposal thus :

"Mode of disposal - Subject to any direction issued by the State H

A Government under the Act and to the provisions of sub- section (5) of section 15 of the Act :

(a) the Authority may dispose of any land belonging to it in developed or an undeveloped form;

B (b) any land or building of the Authority may be disposed of by Authority by way of sale or lease or exchange or by the creation of any easement right or privilege or otherwise;

C (c) the Authority may dispose of its land or building by way of sale or lease either by allotment or by auction, which may be by open bid or by inviting tenders.

SALE OR LEASE OR LAND/BUILDING BY ALLOTMENT.

4. Fixation of tentative price/premium -

D (1) The tentative price/premium for the disposal of land or building by the Authority shall be such as may be determined by the authority taking into consideration the cost of land, estimated cost of development, cost of buildings and other direct and indirect charges, as may be determined by the Authority from time to time.

E (2) An extra 10% and 20% of the price/premium shall be payable for "preferential" and Special preferential" Plots respectively.

F 5. Procedure in case of sale or lease of land or building by allotment-(1) In the case of sale or lease of residential and industrial land or building by allotment the intending purchaser shall make an application to the Estate Officer concerned in the prescribed form (annexed to these regulation) as given in forms 'A' and 'B' respectively.

G (2) No application under sub-regulation

H (1) shall be valid unless it is accompanied by such amount as may be determined by the Authority , which shall not be less than ten per cent of the price/premium in the form of a demand draft payable to the Estate Officer, and drawn on any scheduled bank situated at the local place of the Estate Officer concerned or any

other such place as the Estate Officer may specify. A

(3) In the case of residential plot/building when the application has been so tendered, the Estate Officer or such other office as may be empowered, shall subject to such directions as may be issued by the Authority in this behalf consider the applicant for allotment of a plot or building of the size applied for. The allotment may be on 'first come first served' basis or by draw of lots, as may be determined by the Authority and the successful applicant shall be sent allotment letter, in form 'C' or 'CI' by registered post; B

Provided that for the purposes of proper planning and development of an urban estate, mine or building may be reserved for groups or individuals or for persons practicing any profession or carrying on any occupation, trade or business or for such other category of persons, Government Departments and institutions, charitable institutions and other organisations of public welfare, as may be decided by the Authority from time to time." C D

A reading thereof, in particular Section 15 (3) read with Regulation 3(c) does indicate that there are several modes of disposal of the property acquired by HUDA for public purpose. One of the modes of transfer of property as indicated in sub-section (3) of Section 15 read with sub-regulation (c) of Regulation 5 is public auction, allotment or otherwise. When public authority discharges its public duty the word "otherwise" would be construed to be consistent with the public purpose and clear and unequivocal guidelines or rules are necessary and not at the whim and fancy of the public authorities or under their garb or cloak for any extraneous consideration. It would depend upon the nature of the scheme and object of public purpose sought to be achieved. In all cases relevant criterion should be pre-determined by specific rules or regulations and published for the public. Therefore, the public authorities are required to make necessary specific regulations or valid guidelines to exercise their discretionary powers; otherwise, the salutary procedure would be by public auction. The Division Bench, therefore, has rightly pointed out that in the absence of such statutory regulations exercise of discretionary power to allot sites to private institutions or persons was not correct in law. E F G

The Division Bench has doubted the *bona fides* in the allotments in question, as expressly found in the Judgment. Since the learned single Judge had accepted the averments, but the Division Bench was not inclined H

A to accept the same and doubted the *bona fides* of the actions of the authorities and resultant allottees, due to absence of any strong material we cannot lightly brush aside or disagree with the observations made by the learned Judges of the Division Bench. Under those circumstances, we are inclined to uphold the order of the Division Bench subject to the following further directions:

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While accepting the directions given by the Division Bench we further add that the Committee would, as suggested by the Division Bench, in evaluating the property, determine the market value of the sites allotted prevailing as on September 11, 1992 in the light of the directions issued in the judgment. After the determination so made, an option would be given

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only to the petitioners, i.e., Ajay Memorial School, Ashok Trehan Memorial Charitable Trust and Manav Mangal Society and Lt. Col. Y.P. Mahindru, for payment of the market price in lumpsum. In the event of their accepting the offer the same shall be laid before the first court of the High Court to obtain the approval thereof. The High Court, before giving

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approval, would consider the valuation and other relevant material. The HUDA also is directed to frame an appropriate scheme for allotment of the sites under discretionary power or other made otherwise than by public auction and then place the scheme before the first court of the High Court and obtain approval of the validity and correctness of the scheme and would thereafter proceed with the disposal of properties in future. As far

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as allotment to the petitioners, viz., Ajay Memorial School, Ashok Trehan Memorial Charitable Trust and Manav Mangal Society and Lt. Col. Y.P. Mahindru, in these special leave petitions is concerned, the same will be subject to the above directions and in the event of their non- acceptance, the properties should be put to public auction along with other sites and buildings. The plots allotted to the rest of the petitioners other than these

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cases where notices were issued, will be subject to the directions issued by the Division Bench. The other unallotted plots also should be put to public auction as ordered by the Division Bench.

The Special Leave Petitions are accordingly ordered.

G *SLP Nos. 12720-23 of 1996*

Issue notice returnable within four weeks. In addition dasti service also is permitted. In respect of the plot covered in these petitions, it would be subject to orders after service of notice.

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Petitions ordered.