(2017) 01 AHC CK 0161

In the Allahabad High Court

Case No : Writ-C No. 39259 of 2015

Karuna Shankar Shukla APPELLANT

Vs

State of Uttar Pradesh RESPONDENT

Date of Decision : 25-01-2017

Acts Referred:

Uttar Pradesh Urban Planning and Development Act, 1973 — Section 13(3)

Citation : (2017) 3 ADJ 118 : (2017) 2 AllWC 1899 : (2017) 121 ALR 320

Hon'ble Judges : V.K. Shukla and Mahesh Chandra Tripathi, JJ.

Bench : Division Bench

Advocate : K. Ajit and Pooja Srivastava, Advocates, for the Petitioner; C.S.C., R.K. Srivastava, Advocate, for the Respondents

Final Decision : Dismissed

Judgement

M.C. Tripathi, J.—Heard Sri K. Ajit, learned counsel for the petitioners, Sri Shashi Nandan, learned Senior Counsel, Sri C.B. Yadav, learned Additional Advocate General assisted by Sri Y.K. Srivastava.

2. Karuna Shankar Shukla and 22 others are before this Court assailing the notification dated 07.04.2015 issued by the State Government under Section 13(3) of the U.P. Urban Planning and Development Act, 1973 (hereinafter referred to as ''Act, 1973'')and has further prayed for commanding the respondent to revive the Rampur Unit of U.P. Sugar Corporation Limited under the Government Order 2005.

3. The brief matrix of the case are as follows:-

4. All the petitioners are employees of the erstwhile Rampur Unit of U.P. Sugar Corporation Limited and they claim that the matter against retrenchment and for their rehabilitation and revival of the Unit is pending consideration before the Hon''ble Apex Court and as such the present matter is sub-judice before the Hon''ble Apex Court thus the entire action under Section 13(3) of the U.P. Urban Planning and Development Act, 1973 for acquiring and changing the land use of

Rampur Unit of U.P. Sugar Corporation Ltd., and the subsequent notification dated 658/8-3-15-36 L.U.C./14 Lucknow dated 07.04.2015 is unsustainable and liable to be set aside.

5. Record in question reflects that the Sugar Manufacturing Unit Rampur was established by the two British persons namely Goven Brothers in the year 1935. Later on, the Dalmia Group purchased the Unit and renamed as Raza Buland Sugar Factory, Rampur. Finally, the Raza Buland Sugar Company, Rampur stood acquired by U.P. Sugar Corporation Ltd. vide the U.P. Sugar Corporation Act, 1971. The U.P. Act No.23 of 1971 was enacted in the interest of general public, for the acquisition and transfer of certain sugar undertaking and for matters connected therewith or incidental thereto. In the said Act, the name of Raza Buland Sugar Company Ltd., Rampur figures at Serial No.8 to the Schedule of the Act. It appears that the State Government had taken a policy decision vide the Government Order dated 02.02.2005 to accord financial assistance to 5 sugar mills including Rampur Unit so that Unit can be revived. It is an admitted fact that despite substantial investment, the sugar mill did not run and the operation of the sugar mill remained unfeasible. Consequently, the services of the employees, who were temporarily engaged for the season, were dispensed with.

6. Meanwhile, the State Government brought an amendment in the Act No.23 of 1971 vide Amendment Act of 2009 (U.P. Sugar Undertakings (Acquisition) (Amendment) Act, 2009 adding Section 3-C in Principal Act empowering the State Government to change the land use of the land belonging to schedule undertakings of the Corporation or in relation to the land belonging to Sugar Mills acquired or established by the Corporation.

7. The object of 1971 Act was to acquire the sugar mills for rehabilitating and renovating the said sugar mills and the object and purpose of the 2009 Amendment Act is to sell and close the mills. To appreciate various submissions of the learned counsel for the parties, it is relevant to refer to the Amendment Act, 2009. The amendment was effected by the State Legislature to further amend the 1971 Act to provide for disinvestment and sale of the scheduled undertakings and sugar mills of the U.P. State Sugar Corporation Ltd. and its subsidiaries and matters connected with and incidental thereto. The statements and object of the Amendment Act provide as follows:

"Prefatory Note- Statement of Objects and Reasons.- The serious problems created by owners of certain sugar mills were adversely affecting the producers, labourers and general economy of the areas where they situated. Therefore, with a view to ensuring the running of such mills properly they were vested in the Uttar Pradesh State Sugar Corporation Limited established under section 617 of the Companies Act,1956 by the State Government by enacting the Uttar Pradesh Sugar Undertakings (Acquisition) Act, 1971 (U.P. Act No. 23 of 1971). There were 33 units of the said Corporation for the time being which were very old and of less capacity of which many were closed and being of less utility in financial aspect they were not crushing sugarcane. Consequently, they were running in loss. Many efforts were made to bring such sugar mills to run in profit but in spite of such efforts they could not be caused to run properly and continued to run in loss and the possibility of their reform in future was very thin. In view of the above circumstances it was decided to amend the said Act mainly to provide for,-

(a) authorising the State Government to divest, sell off, or otherwise part with any of its shares in the Corporation.

(b) authorising the Corporation or any of its subsidiaries to sell or transfer any of its assets and liabilities vested in the Corporation,

(c) empowering the State Government to change the land use or to issue directions for the change of land use with respect to the land belonging to the scheduled undertakings of the Corporation or to the sugar mills acquired or established by the Corporation or the subsidiaries thereof,

(d) validating certain government orders, notifications or policy statements.

Since the State Legislature was not in session and immediate legislative action was necessary to implement the aforesaid decision the Uttar Pradesh Sugar Undertakings (Acquisition) (Amendment) Ordinance, 2008 (U.P. Ordinance No. 6 of 2008) was promulgated by the Governor on September 29,2008".

This Bill is introduced to replace the aforesaid Ordinance."

8. By Section 2 of the Amendment Act, 2009, Sections 3-A, 3-B, 3-C, 3-D and 3-E have been inserted in 1971 Act, which are to the following effect.

"3-A. Notwithstanding anything to the contrary contained in any other provision of this act,the State Government may, if it considers necessary or expedient in public interest, divest, sell off, transfer or otherwise part with all or any of its shares in the Corporation at any time.

3-B. Notwithstanding anything to the contrary contained in any other provision of this Act, the Corporation or any of its subsidiaries may, in public interest, in public interest, sell or transfer any of its assets and/or liabilities or part thereof which have vested in the Corporation in accordance with the provisions of this Act, of in any other manner.

3-C Notwithstanding anything to the contrary contained in any other law for the time being in force it shall be lawful for the State Government, if it is satisfied that in the public interest it is necessary to do so, to change the land use of to issue directions for change of land use in relation to the land belonging to the scheduled undertakings of the Corporation or its subsidiaries at any time.

3-D The Government Order No. 1215S.C./18-2-07-56T.C., dated June 4, 2007 and all subsequent Government Orders, notification of policy statements issued and action taken in relation to disinvestment, privatization, sale, transfer in any form or closure of the scheduled undertaking or sugar mills of the Corporation and its subsidiaries or in relation to the Corporation itself shall stand validated.

3-E Power to remove difficulties.- If any difficulty arises in giving effect to the provision of this Act, the State Government may, by notified order make provisions not inconsistent with the provisions of this Act as may appear to in to be necessary or expedient for removing such difficulty.

Provided that no order under this section shall be made after expiration of a period of two years from the commencement of the Utter Pradesh Sugar Undertakings (Acquisition) (Amendment) Act,2009."

9. Record in question reflects that Chini Mill Karmachari Sangh of the State of U.P. had assailed the validity of the Amendment Act, 2009 by preferring a Civil Misc. Writ Petition No.39850 of 2009 and Civil Misc. Writ Petition No.47934 of 2008 precisely on the ground of legislative competence of the State and closure of Sugar Mills of the Corporation and its subsidiaries. Finally, a Division Bench of this Court vide order dated 01.04.2010 had partly allowed the writ petition and Section 3-C and Section 3-D of the Amendment Act, 2009 to the extent that it provides "closure of scheduled undertakings or sugar mills of the Corporation and its subsidiaries or in relation to the Corporation itself" is struck down as lacking legislative competence and consequential auctions to the above extent shall automatically fall on the ground that the other provisions of the Amendment Act, 2009 and the action taken therein are held to be intra-vires. The order passed by this Court was assailed by the Chini Mill Karmchari Sangh by preferring Special Leave Petition before the Hon''ble Apex Court as Civil Appeal No.6654 of 2010 and the State Government has also preferred Special Leave to Appeal (Civil No.22165 of 2010) before the Hon''ble Apex Court.

10. Record in question reflects that there is no stay order and both the special leave to appeals are pending consideration and as such it is sought to be contended that once the Division Bench of this Court has struck down Section 3-C and 3-D of the Amendment Act, 2009, then neither the land of the U.P. Sugar Mill Corporation Ltd. can be acquired nor the land use of the Sugar Corporation Unit can be changed.

11. The petitioners at this juncture are aggrieved with the notice dated 07.04.2015 issued by the State Government under Section 13(3) of the ''Act, 1973'', whereby the objections/suggestions had been invited in respect of the proposed amendment to be made with regard to the land use under the Master Plan, 2005 for the development area under the ''Rampur Development Authority'' (in brevity RDA).

12. Sri K. Ajit, learned counsel for the petitioners, in support of his submission has vehemently contended that once the Division Bench of this Court has already declared the amendment in Section 3-C and 3- D of the Amendment Act, 2009 as ultra-vires, even though, the said order has been assailed by the State Government as well as the Chini Mill Karmchari Sangh before the Apex Court and

the matter is pending consideration, as such, for all practical purpose, Section 3-C and 3-D of the Amendment Act, 2009 are not in force, which are already declared as ultra-vires. Hence, meanwhile the property of the U.P. Sugar Corporation can neither be acquired nor the land use can be changed.

13. As such, there is no rationale in transferring the jail which is presently situated at the outskirts of Rampur City and to place it on the land of Rampur Sugar Mill, which is situated in the heart of the city. Moreover by shifting the jail the public interest would seriously be prejudiced for various reasons, whereas, the present district jail is already away from the residential area. Whereas, sugar mill compound is situated in the heart of the city, especially in Civil Lines area of Rampur city, one of its boundary faces Mohd. Ali Jauhar Road in front of Collectorate of Rampur and other boundary touches the Rampur Distillery (now Radico Khetan Distillery). The distance between the Railway Station and Sugar Mill is 1 km and the bus stand is approximately 0.5 km away from the proposed site.

14. He has further apprised that such action is also against public interest as in the proximity of the proposed site, there are premier institutions e.g. The Government Polytechnic, Vidyapeeth Inter College, Maharshi Vidya Mandir and Indira Junior High School etc.

15. Sri K. Ajit, learned counsel for the petitioners has vehemently submitted that even though the detailed objections were filed by the petitioners as well as other residents of Rampur city but at no point of time their view points had ever been considered in true perspective. Even though the petitioners have raised their objections regarding the declaration of ultra vires of Section 3-C and 3-D of the Amendment Act, 2009 but the same has never been considered by the respondent and as such, the amendment is per-se bad.

16. He has vehemently submitted that the entire action so initiated is on the whims and fancies of local Member of Legislative Assembly (MLA) who enjoys a powerful portfolio in the State Ministry and all his executive orders are orally implemented and the State Government has immediately cleared all the necessary files including, financial assistance and as such, no rule or procedure has been followed. He had also tried to impress the Court by submitting that at present various flyovers are being constructed through existing jail area just to facilitate the lifetime Chancellor of the Johar University so that he may have direct access to University from his residence. At the time of submission of his argument, Sri K. Ajit has also placed the google map by which he tried to impress the Court that the proposed site is in the heart of the city and as such, the proposed master plan is per-se bad. As such, entire action is colourable exercise of power and as such, this Court should come for rescue and reprieve of the petitioners.

17. Per contra, Sri Shashi Nandan, learned Senior Counsel assisted by Dr. Y.K. Srivastava has submitted that the entire action so initiated by ''RDA'' is strictly in

consonance with the provisions of Act, 1973, whereby, objections were invited as per provisions contained under Section 13(3) of the Act, 1973. Total 37 objections were received and after according due opportunity including hearing to every objector, only then the committee consisting of District Magistrate/Vice Chairman and other revenue officials had finalized the amendment.

18. It has also been submitted that the petitioners have no locus standi to file the present writ petition as no prejudice to their public cause or to any legal rights have been infringed, in fact the same has been filed with the narrow objective so that they may not evicted from the property in question. Whereas the notices under Section 6(N) of the U.P. Industrial Disputes Act, 1947 were issued to the Employees of Sugar Unit. Majority of retrenched employees have received the compensation amount. Only those who are illegally retaining accommodation are resisting such action including petitioners. In fact they have filed the present writ petition with ulterior motive so that the entire amendment made in the master plan may be jeopardized and the shifting of jail may be derailed. There is no infirmity or illegality in the said action or in procedure, whereas the entire action is in consonance with the provisions contained in Section 13 of the Act, 1973. So far as their dispossession is concerned, the same is engaging attention at various forums and the same is entirely different proceeding. In the garb of proceeding under Section 13 of the Act, 1973, the present writ petition cannot be entertained and as such the entire claim is to be tested, whether, the authority on spot has adhered the procedure enshrined in the Act, 1973 or not.

19. In support of submission, Sri Shashi Nandan, learned Senior Counsel, has also placed the entire record pertaining to objections/ suggestions. As such, it is sought to be contended that each and every objection/suggestion has been considered in detail and only after assessment of every pros and cons of the matter, only then the Committee had made recommendation in the amendment in master plan.

20. Sri C.B. Yadav, learned Additional Advocate General, has also vehemently opposed the writ petition and in support of his submission he apprised the ground realities, precisely the present existing status of the jail qua the proposed site. It is submitted that the State Government had taken a policy decision to provide better infrastructure to all the jails. He further apprised that most of existing jail across the State of U.P. are very old and are in very critical shape, therefore, various steps have been undertaken either to strengthen the infrastructures at the existing places or to shift to other suitable places. In support of his submission he has apprised that the existing jail is very old, constructed in the year 1884 having area 7.69 hectares and having 10 barracks, which can hardly accommodate 450 prisoners but at present there are 960 prisoners, whereas, the proposed site having area 41.74 hectares can accommodate more than 1330 prisoners in 13 barracks.

21. Sri C.B. Yadav, learned Additional Advocate General, further informed to the

Court that so far as the cost/compensation of the land in question is concerned, the entire compensation to the tune of Rs.66 crore has already been handed over to the sugar mill. As such, in the aforementioned circumstances there is dire need of shifting the jail building and the entire action is in consonance with the Act, 1973. In support of his submission, he has placed reliance on the judgment of M.C. Mehta v. Union of India, 2006(7) SCC 456, Sunil Kumar v. State of U.P., 2015(9) SCALE 595.

22. Heard rival submissions and perused the record.

23. Record in question reflects that the State Government has taken a policy decision vide the Government Order dated 12.11.1999 wherein various sugar mills have been closed down including the Rampur Unit of U.P. State Sugar Corporation Ltd., Consequently, notices were issued under Section 6(N) of the U.P. Industrial Disputes Act, 1947 to the employees of the sugar mill. This much is admitted situation that most of the employees had accepted the compensation but few of them have challenged the said action by way of writ petitions. The leading writ petitions being Writ Petition No.17847 of 2003 (Amar Nath & others v. State of U.P. & others), Writ Petition No.15125 of 2003 (Kamar Khan v. State of U.P. & others) and Writ Petition No.19043 of 2003 (Karuna Shankar Shukla v. State of U.P. & others) were decided by a common judgment and order dated 12.12.2003, holding that in so far as the validity of retrenchment notices were concerned, it was held that remedy of high prerogative writ was not the appropriate forum for settling such controversial issue.

24. Aggrieved with the said order, Special Leave to Appeal was preferred by the petitioners which was also rejected vide order dated 10.03.2011. This fact was first time brought through counter affidavit, nowhere, in the writ petition there is any whisper that the petitioners had also assailed the retrenchment proceeding. This much is also reflected that 21 out of 23 petitioners had also preferred Public Interest Litigation No.11784 of 2014 (Raza Ali & 86 others v. State of U.P. & others) for a relief that they may not be evicted from the quarters of the sugar mill. The aforementioned PIL was disposed of by a coordinate Bench of this Court vide judgment and order dated 23.04.2014 with a direction that petitioners would not be evicted except in accordance with law and procedure prescribed under law. Pursuant to the aforesaid directives, the proceedings were initiated under the U.P. Public Premises (Eviction of Unauthorized Occupant) Act. It is not disputed that the order of eviction had been passed against the petitioners therein.

25. As per the averment contained in the counter affidavit, it is admitted position that the statutory appeal under the U.P. Public Premises (Eviction of Unauthorized Occupant) Act had also been preferred, which are pending consideration. Statement at bar had been given that no stay order are in favour of the petitioners in pending appeals.

26. Record in question further revealed that 15 out of 23 petitioners had also

proceeded to file Civil Misc. Writ Petition No.52004 of 2015 (Rajesh Sharma & 96 others v. State of U.P. & others), wherein, the proposed amendment in Rampur Master Plan and the subsequent notice dated 07.04.2015 are under challenge, wherein no interim order has been passed in favour of the petitioners.

27. It is relevant to indicate that the retrenched employees of U.P. State Sugar Corporation Ltd., had also sought for absorption in the government department as per provision contained in the Uttar Pradesh Absorption of Retrenched Employees of Government or Public Corporations in Government Service Rules, 1991 which was finally rescinded on 8th April, 2003 by Recession Rules, 2003. Record is silent whether few of them have been absorbed by the State Government or not. But most of the retrenched employees have accepted retrenchment compensation/award.

28. Just to appreciate the arguments advanced by Sri K. Ajit, it would be relevant to consider the judgment of the Division Bench of this Court in Chini Mill Karmchakari Sangh (supra), which had proceeded to consider the object of the Act, 1971 as well as the Amendment Act, 2009 and finally struck down Section 3-C and 3-D being as ultra-vires. At this stage, it is relevant to consider that by Section 2 of the Amendment Act, 2009, Sections 3-A, 3-B, 3-C, 3-D and 3-E have been inserted in 1971 Act, which are to the following effect.

"3-A. Notwithstanding anything to the contrary contained in any other provision of this act,the State Government may, if it considers necessary or expedient in public interest, divest, sell off, transfer or otherwise part with all or any of its shares in the Corporation at any time.

3-B. Notwithstanding anything to the contrary contained in any other provision of this Act, the Corporation or any of its subsidiaries may, in public interest, in public interest, sell or transfer any of its assets and/or liabilities or part thereof which have vested in the Corporation in accordance with the provisions of this Act, of in any other manner.

3-C Notwithstanding anything to the contrary contained in any other law for the time being in force it shall be lawful for the State Government, if it is satisfied that in the public interest it is necessary to do so, to change the land use of to issue directions for change of land use in relation to the land belonging to the scheduled undertakings of the Corporation or its subsidiaries at any time.

3-D The Government Order No. 1215S.C./18-2-07-56T.C., dated June 4, 2007 and all subsequent Government Orders, notification of policy statements issued and action taken in relation to disinvestment, privatization, sale, transfer in any form or closure of the scheduled undertaking or sugar mills of the Corporation and its subsidiaries or in relation to the Corporation itself shall stand validated.

3-E Power to remove difficulties.- If any difficulty arises in giving effect to the provision of this Act, the State Government may, by notified order make provisions not inconsistent with the provisions of this Act as may appear to in to be necessary or expedient for removing such difficulty.

Provided that no order under this section shall be made after expiration of a period of two years from the commencement of the Utter Pradesh Sugar Undertakings (Acquisition) (Amendment) Act,2009."

29. We find that Section 3-A provides for divesting, selling off, transferring or otherwise parting with all or any of its shares of shares of the State Government in the Corporation at any time. Section 3-B provides that Corporation or any of its subsidiaries may sell or transfer any of its assets or liabilities or part thereof which have vested in the Corporation in accordance with the provisions of this Act. Sections 3-A and 3-B thus confine to divest, sell off, transfer of the shares of the State Government as well as of the Corporation. Whether the aforesaid provisions can be legitimately inserted in the parent Act in exercise of the legislative power of the State under Entry 42 List III, is a question to be answered but the same has been answered by the Division Bench in Chini Mill Karmchari Sangh (Supra). Since the parent Act, 1971 has been upheld as having sufficient legislative competence under Entry 42. List III, the issue to be considered is as to whether the amendments and specially Section 3-A and 3-B inserted by the Amendment 2009 Act are referable to exercise of legislative power under Entry 42 List III. For answering the aforesaid issue, we proceed to examine each of the amended provisions separately and as such we are of the considered opinion that Section 3-A and 3-B have not been struck down in Chini Mill Karmchari Sangh (supra) and the same is part of the U.P. Sugar Undertakings (Acquisition) (Amendment) Act, 2009.

30. Record in question further reveals that being aggrieved with the order of the Division Bench passed in Chini Mill Karmachari Sangh (supra) the State Government as well as the petitioners challenged the same and the Hon''ble Apex Court in Special Leave Petition No.16362 of 2010 (Rajiv Kumar Mishra v. State of U.P. & others) had proceeded to pass order on 28.05.2010 with following effect.

"Leave granted.

Hearing expedited.

Any action taken by the respondents in furtherance of the U.P. Sugar Undertakings (Acquisition) Act, 2009 shall remain subject to final adjudication of the appeal."

31. At this stage, it is relevant to mention that, thereafter, an application for modification of the said order was moved. The Hon''ble Apex Court vide order dated 14.07.2010 had modified the order dated 28.05.2010 with following effect:-

"These applications have been filed for modification of order dated 28.05.2010.

We have heard Ms. Tulika Prakash, learned counsel for the appellant and perused the records.

In our view, the condition incorporated in order dated 28.05.2010 adequately protect the interest of the appellant. Any person who purchases the sugar mills in furtherance of the action conducted by the State Government will be bound by that order.

With the above observations, I.As are disposed of."

32. In view of the above, it is reflected that the action of respondents in furtherance to Amendment Act, 2009 would always be subject to final adjudication by the Apex Court.

33. In view of the aforementioned facts and circumstances, we are of the considered opinion that the entire action so initiated by the respondents are to be tested only on the parameters and provisions contained under Act, 1973, and further, whether, the entire action is in consonance of the provisions contained under the Act, 1973 or not. Otherwise, there is no other impediments to the respondents not to proceed in the matter.

34. The other provisions of the Act, 1973 relevant for resolving the issue involved are:

"Section 7. Objects of the Authority.- The objects of the Authority shall be promote and secure the development of the development area according to plan and for that purpose the Authority shall have the Power to acquire, hold, manage and dispose of land and other property, to carry out building, engineering, mining and other operations, to execute works in connection with the supply of water and electricity to dispose of sewage and to provide and maintain other services and amenities and generally to do anything necessary or expedient for purposes of such development and for purposes incidental thereto:

Provided that save as provided In this Act nothing contained in this Act shall be construed as authorising the disregard by the Authority of any law for the time being in force."

35. Section 8 of the Act, 1973 contemplates the preparation of the master plan for the development area and Section 9 of the Act, 1973 provides for the Zonal development plans. The sections read as follow:-

"8. Civil survey of, and master plan for the development area:-

(1) The Authority shall, as soon as may be, prepare a master plan for the development area.

(2) The master plan shall-define the various zones into which the development area may be divided for the purposes of development and indicate the manner in which the land in each zone is proposed to be used (whether by the carrying out thereon of development or otherwise) and the stages by which any such development shall be carried out; and serve as a basic pattern of framework

within which the Zonal development plans of the various zones may be prepared.

(3) The master plan may provide for any other matter which may be necessary for the proper development of the development area.

9. Zonal Development plans.-

(1) Simultaneously with the preparation of the master plan or as soon as may be thereafter, the Authority shall proceed with the preparation of a zonal development" plan for each of the zones into which the development area may be divided.

(2) A zonal development plan may-

(a) contain a site-plan and use-plan for the development of the zone and show the approximate locations and extents of land uses proposed in the zone for such things as public buildings and other public works and utilities, roads, housing, recreation, industry, business, markets, schools, hospitals and public and private open spaces and other categories of public and private uses;

(b) specify the standards of population density and building density;

(c) show every area in the zone which may, in the opinion of the Authority, be required or declared for development or re-development; and

(d) In particular, contain, provisions regarding all or any of the following matters, namely-

(i) the division of any site into plots for the erection of buildings;

(ii) the allotment or reservation of land for roads, open spaces, gardens, recreation-grounds, schools, markets and other public purposes:

(iii) the development of any area into a township or colony and the restrictions and conditions subject to which such development may be undertaken or carried out,

(iv) the erection of buildings on any site and the restrictions and conditions in regard to the open spaces to be maintained in or around buildings and height and character of buildings:

(v) the alignment of buildings of any site;

(vi) the architectural features of the elevation or frontage of any building to be erected on any site,

(vii) the number of residential buildings which may be erected on plot or site;

(viii) the amenities to be provided in relation to any site or buildings on such site whether before or after the erection of buildings and the person or authority by whom or at whose expense such amenities are to be provided:

(ix) the prohibitions or restrictions regarding erection of shops. workshops, warehouses of factories or buildings of a specified architectural feature or buildings designed for particular purposes in the locality,

(x) the maintenance of walls, fences, hedges or any other structural or architectural construction and the height at which they shall be maintained:

(xi) the restrictions regarding the use of any site for purposes other than erection of buildings;

(xii) any other matter which is necessary for the proper development of the zone or any area thereof according to plan and for preventing buildings being erected haphazardly, in such zone or area."

36. Section 10 of the Act, 1973 contemplates submission of the plans to the State Government and its power to issue directions in the matter of the modification etc. of such plans.

37. Section 11 of the Act, 1973 provides for the approval of the plans by the State Government.

38. Section 12-A. Maintenance and Improvement of facade of certain buildings abutting arterial roads.-

(1) Where in any developments area, any building occupied wholly for nonresidential purposes or partly for residential and partly for non-residential purposes abuts an arterial road, the occupier of such building, shall be bound to repair whitewash, colour-wash or paint the facade of such building at his OM cost in accordance with any bye laws made in that behalf.

(2) Where the authority. with a view to ensuring symmetry with any'' colour-scheme or other specification made in that behalf considers it necessary or expedient so to do, or where any occupier fails to repair, white-wash, colour wash or paint the facade of any building in accordance with Sub-section (1), it may by order require that the said work sh.9.11 Le carried out by the Authority itself or under Its direction, and may accordingly, also require the occupier to pay the cost of such work to the Authority.

(3) The cost of any work referred to in Sub-section (2) shall be calculated on profit, no loss basis, and in case of any dispute about the reasonableness of the amount required to be deposited, the same shall be decided by the State Government, and subject thereto,. the order of the Authority shall be final and shall not be called in question in Court.

(4) In case of non-payment by an occupier of the whole or part of the cost of any work referred to in Sub-section (2), it shall, on the certificate of the Vice-Chairman, be recoverable from the occupier as arrears land revenue.

39. Section 13. Amendment of Plan.-

(1) The Authority may make any amendments in the master plan or the zonal development plan as it thinks fit, being amendments which, in its opinion do not

effect important alteration in the character of the plan and which do not relate to the extent of land uses or the standards of population density.

(2) The State Government may make amendments in the master plan or the zonal development plan whether such amendments are of the nature specified in Sub-section (1) or otherwise.

(3) Before making any amendments in the plan, the Authority, or as the case may be, the State Government shall publish a notice in at least one newspaper having circulation in the development area inviting objections and suggestions from any person with respect to the proposed amendments before such date as may be specified in the notice and shall consider all objections and suggestions that may be received by the Authority or the State Government.

(4) Every amendment made under this section shall be published in such manner as the Authority or the State Government, as the case may be, may specify, and the amendments shall come into operation either 3n the date of the first publication or on such, other date as the Authority or the State Government, as the case, may be, may fix.

(5) When the Authority makes any amendments in the plan under Subsection (1) it shall report to the State Government the full particulars of such amendments within thirty days of the date c)n which such amendments come into operations.

(6) If any question arises whether the amendments proposed to be made by the authority are amendments which effect important alterations In the character of the plan or whether they relate to the extent of land-uses or, the standards of population density, it shall be referred to the State Government whose decision, thereon shall be final.

Any reference in any other Chapter, except Chapter III, to the master plan or the zonal Development plan shall be construed as a reference to the master plan or the zonal development plan as amended under this section.

40. Section 14 of the Act, 1973 deals with the development of land in the development area and prohibits any development activities being undertaken or continued except in accordance with the plans and without approval of the development authority.

41. Section 15 of the Act, 1973 provides for making of an application in writing before the Vice-Chairman for permission under Section 14 in such manner, as may be prescribed by bye-laws and has to contain such particulars, as may be prescribed by rules. Sub-section (2-A) of Section 15 permits levy of development fees, mutation charges, stacking fees and water fees in such manner and at such rates as may be prescribed.

42. Relevant portion of Section 15 (2-A) of Act, 1973 is quoted below:-

"15. Application for permission.--(1) Every person or body (other than any department of Government or any local authority) desiring to obtain the permission referred to in Section 14 shall make an application in writing to the [Vice-Chairman] in such form and containing such particulars in respect of the development to which the application relates as may be prescribed by (bye-laws].

(2) Every application under sub-section (1) shall be accompanied by such particulars as may be prescribed by rules.

[(2-A) The Authority shall be entitled to levy development fees, mutation charges, stacking fees and water fees in such manner and at such rates as may be prescribed :

Provided that the amount of stacking fees levied in respect of an area which is not being developed or has not been developed, by the Authority, shall be transferred to the local authority within whose local limits such area is situated.]

(3) On the receipt of an application for permission under sub-section (1), the [Vice-chairman] after making such inquiry as it considers necessary in relation to any matter specified in clause (d) of sub-section (2) of Section 9 or in relation to any other matters, shall, by order in writing either grant the permission, subject to such conditions, if any, as may be specified in the order or refuse to grant such permission:

Provided that before making an order refusing such permission, the applicant shall be given a reasonable opportunity to show cause why the permission should not be refused :

Provided further that the [Vice-Chairman] may before passing any order of such application give an opportunity to the applicant to make any correction therein or to supply any further particulars of documents or to make good any deficiency in the requisite fee with a view to bringing it in conformity with the relevant rules or regulations :

[Provided also that before granting permission, referred to in Section 14, the Vice-chairman may get the fees and the charges levied, under sub-section (2-A) deposited;] ...."

43. In our considered opinion under Section 13(1) of the Act, 1973 it is manifest that the authority may make only those amendments which do not affect and alter any character of the plan. It means that the respondent authority do not have any absolute right of amending the master plan or the zonal plan. The basic characteristic of such plan cannot be altered by the authority. Only that amendment is permissible under Section 13(1) which does not affect the basic character of the plan.

44. In the present matter, we are moreover concerned with the notice dated 07.04.2015 issued by the State Government, exercising power conferred under Section 13(3) of the Act, 1973, whereby, the objections/suggestions were invited in the proposed amendment in Rampur Master Plan, 2005 and as such, we are of the view that the notice so invited under Section 13 of the Act, 1973 may not be

mixed up with the issue that in case there is any land use change, especially in Rampur Master Plan would have any bearing in the proceeding pending before the Apex Court relating to Amendment Act 2009. So far as the Rampur Chini Mill is concerned, most of the retrenched employees have accepted the award/ compensation and against few employees proceedings under the U.P. Public Premises (Eviction of Unauthorized Occupant) Act are underway, wherein the Prescribed Authority has already passed an order for eviction, the said action are assailed in Appeal and the Appellate Authority had not passed any interim order in their favour. As such they cannot say that the authorities may be restrained under the present facts and circumstances and more so not to initiate any amendment in the Rampur Master Plan, 2005.

45. The land in question is situated under the development area which is notified under Section 13(3) of the Act, 1973 and in respect of amendment in Rampur Master Plan, 2005 the notice was made on 07.04.2015 inviting objections in the proposed amendment in Rampur Master Plan. At this stage, it would be relevant to mention that the Public Interest Litigation No.38869 of 2014 (Dr. Tanveeer Ahmad v. State of U.P. & others) had been preferred challenging the proposed action/amendment in master plan and the Division Bench of this Court vide order dated 01.08.2014 had dismissed with following observations:-

"At this stage, the Court has been informed during the course of the hearing, on instructions, that the State Government will necessarily have to follow the due process of law by altering the land use under the provisions of the U.P. Urban Planning and Development Act, 1973 which is still to take place. When the said proposal will be implemented, objections would have to be invited on which the petitioner, among other residents, would also be entitled to object.

Since at the present stage, only a proposal for the shifting of the jail is under consideration and as stated before the Court, the actual shifting and construction for the purpose thereof cannot begin until a change of land use has been made in accordance with law, it is not necessary to entertain the petition presently. However, though we are inclined to dispose of the petition as premature, we record the statement which has been made on behalf of the State Government, as noted above.

In this view of the matter, it would not be necessary to consider the locus of the petitioner, which is kept open to be considered in future if it is necessary for the Court to do so.

The petition is, accordingly, dismissed."

46. So far as the status of the petitioners are concerned, admittedly they are retrenched employee of Rampur Unit of U.P. Sugar Corporation Ltd., and no doubt they are retaining possession of various dwelling units. For their ousters, being as illegal and unauthorized occupant, the proceeding under the U.P. Public Premises (Eviction of Unauthorized Occupant) Act is in full progress and the appeal is also pending consideration before the Appellate Authority. As such, we

are refraining ourselves in making any comments in on going proceedings. The relevant material has also been placed that the unit is absolutely defunct building and is in dilapidated condition and full and final payment towards land cost/ compensation is being paid to the sugar mill.

47. It is paramount responsibility of the State Government to ensure proper infrastructure in every jail. We have also noticed as indicated above regarding the infrastructure available in the existing jail premises, where meager land is available, excess prisoners are languishing in most critical and unhygienic situation. Whereas at the proposed site approximately more than 5 times of the land is available which may accommodate more than 1230 prisoners in 13 barracks, therefore, construction of modern jail is also the demand of the hour and the same is public purpose.

48. The authorities while considering the amendment in master plan have contended that such matters are expected to act reasonably and cautiously. They deal with larger public interest and, therefore, have a responsibility to act with greater degree of sensitivity and proper application of mind. If the Development Authority aids the violation of the statutory provisions, it will be a perversity in the discharge of statutory obligations on the part of the Development Authority. The public interest, as codified in the statutory regulations and the provisions of the Act, should control the conduct of the Development Authority and its decision making process, rather than popular public demand guiding the exercise of its discretion, that too, in a somewhat arbitrary manner. To illustrate the dimensions of exercise of such powers, we may refer to the judgment of Hon''ble Apex Court in the case of Bangalore Medical Trust v. B.S. Mudappa & Ors. [(1991) 4 SCC 54].

49. In all the cases, where such an exercise is required to be undertaken by the Development Authority, there also it is expected of the Development Authority to act for the betterment of the public and strictly in accordance with the Plans and the statutory provisions. It cannot take recourse to its powers and use its discretion contrary to such provisions and that too, to frustrate the very object of the Act. Exercise of power ought not to be destructive of the provisions of the Act and the Plans, having the force of law. We would hasten to add that even where the requisite prescribed procedure is followed, still the discretion should be exercised sparingly for achieving the object of the statute and not to completely vary or destruct the purpose for which the sector has been earmarked.

50. A decision which is sought to be taken by the Development Authority in the garb of a policy decision matter, if not in conformity to the Master Plan, the Regulations and provisions of the Act in force, would be an action extra jus. The Development Authority is to act in adherence to the provisions of the law regulating such user or construction. The laconic result of a collective reading of the afore-referred statutory provisions is that the Development Authority or its officers, have no power to vary the user and spaces prescribed in the Master Plan, except by amending the relevant laws and that too, for a proper object and purpose. Any decision, as a policy matter or otherwise, for any extent of public

convenience, shall be vitiated, if it is not supported by the authority. The Courts would examine as to what is the sensible way to deal with this situation, so as to give effect to the presumed purpose of the legislation. The provisions in question should be construed on their plain reading, supporting the structure of the legislative intent and its purpose. The rule of schematic interpretation would come into play in such situations and the concerned Development Authority cannot be permitted to overreach the procedure prescribed by law, with designs not acceptable in law.

51. The Development Authority is inter alia performing regulatory functions. There has been imposition of statutory duties on the power of this regulatory authority exercising specified regulatory functions. Such duties and activities should be carried out in a way which is transparent, accountable, proportionate and consistent. It should target those cases in which action is called for and the same be exercised free of arbitrariness. The Development Authority is vested with drastic regulatory powers to investigate, make regulations, impute fault and even to impose penalties of a grave nature, to an extent of cancelling the lease. The principles of administrative justice squarely apply to such functioning and are subject to judicial review. The Development Authority, therefore, cannot transgress its powers as stipulated in law and act in a discriminatory manner. The Development Authority should always be reluctant to mould the statutory provisions for individual, or even public convenience as this would bring an inbuilt element of arbitrariness into the action of the authorities.

52. From the above it is clear that environmental impact, convenience of the residents and ecological impact are relevant considerations for the Courts while deciding such an issue. The law imposes an obligation upon the Development Authority to strictly adhere to the plan, regulations and the provisions of the Act. Record in question reflects that once the Development Authority had found that the amendment in master plan is required then they proceeded to issue a public notice as per law and in response to the said notice 37 objections were received and the same were dealt with strictly in accordance with law. The necessary record was also produced by the learned counsel for the Development Authority and after perusal of record we are of the considered opinion that no deviation has been made and the entire action is in consonance with the provisions contained under the Act, 1973.

53. The writ petition sans merit and it is, accordingly, dismissed.

54. No order is passed as to cost.

