

(2012) 11 AHC CK 0009

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 25091 of 2008

M/s. Gaursons India Limited

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 08-11-2012

Acts Referred:

Uttar Pradesh Avas Evam Vikas Parishad Adhiniyam, 1965 — Section 28, 32(1), 38, 38(1), 92

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 117(6)

Citation : (2013) 2 ADJ 584

Hon'ble Judges : Amitava Lala, Acting C.J.; Ashok Srivastava, J

Bench : Division Bench

Advocate : M.D. Singh Shekhar, Sanjay Misra, Arvind Kumar Shukla, Kundan Rai, Rahul Sahai, S.K. Mishra and A.K. Mishra, for the Appellant; R.N. Singh, Madan Mohan, A.S. Rana, Madhav Jain, P.C. Shukla and Ramanand Pandey, S.C. and C.S.C., for the Respondent

Final Decision : Disposed Of

Judgement

Amitava Lala, A.C.J.

1. By means of the present writ petition virtually the petitioner seeks relief for directing the Uttar Pradesh Avas Evam Vikas Parishad, respondent No. 3 herein, (in short called as the "Parishad") to transfer the usable, clean and undisputed suitable land measuring an area of 12.047 acres situated in Vasundhara Scheme at Ghaziabad free from all encumbrances in favour of the petitioner in the place and instead of the land of Khasra Nos. 948 (part) and 1454 (part), area 3.238 acres and 8.809 acres respectively, situated in Village Arthala, Ghaziabad (in short called as the "land in question") and to grant all necessary permissions and sanction map/ plans etc. as per the approved Floor Area Ratio (FAR). Petitioner has also challenged the order passed by the Parishad dated 27th July, 2006, whereby the representation of the petitioner for transfer of the land in question has been rejected. Other incidental reliefs have also been sought for. Briefly stated facts of the case, according to the petitioner, are that the Parishad issued

a notification dated 17th June, 1982 u/s 28 of the Uttar Pradesh Avas Evam Vikas" Parishad Adhiniyam, 1965 (hereinafter in short called as the "Act") for the purpose of a residential scheme also known as "Vasundhara Scheme", wherein land of certain khasras measuring 12.047 acres situated in Village Arthala, Ghaziabad belonging to M/s. National Cereal Products Ltd., Mohan Nagar, Ghaziabad and M/s. Mohan Meakins Ltd., Mohan Nagar, Ghaziabad, the respondent Nos. 8 and 9 respectively in this writ petition, were also included. On 19th February, 1987 notification u/s 32(1) of the Act was also issued. Such notifications were challenged by the respondent Nos. 8 and 9 by means of Civil Misc. Writ Petition Nos. 17372 of 1987, "17373 of 1987 and 17374 of 1987, which were allowed by a Division Bench of this Court by judgment and order dated 18th March, 1993, thereby quashing the said notifications-insofar as they related to the land claimed by the respondent Nos. 8 and 9. Subsequently, a compromise was entered into between Parishad and respondent Nos. 8 and 9 on 26th October, 1993, wherein it was agreed between the parties that total land measuring 12.047 acres of the respondent Nos. 8 and 9 will be adjusted in the said scheme of Parishad with the condition that the said land will be used by the respondent Nos. 8 and 9 for the construction related with water treatment plant and the rest of the land will be kept open. It was further agreed that if the Parishad will deem proper, it will take over the said land of the respondent Nos. 8 and 9 adjusting the same in the one corner of the layout plan according to the convenience of the parties. For the exchange, an exchange deed will be executed between the parties. The judgment dated 18th March, 1993 was challenged by the Parishad before the Supreme Court in SLP No. 22015 of 1994 (U.P. Avas Evam Vikas Parishad and another v. Special Land Acquisition Officer and others), which was disposed of on 20th March, 1995 in terms of the aforesaid compromise. After about nine years of the order of the Supreme Court, an exchange-deed was executed between Parishad and respondent Nos. 8 and 9 on 15th June, 2004, whereby the acquired land of the respondent Nos. 8 and 9 was agreed to be adjusted in the Vasundhara Scheme of the Parishad and was to be used for water treatment plant and it was further agreed that Parishad will provide the land in question to the respondent Nos. 8 and 9 in the Vasundhara scheme at one corner free from all disputes and encumbrances. Accordingly, the land in question was given to the respondent Nos. 8 and 9. On 28th March, 2005 Regional Office of Uttar Pradesh Pollution Control Board, Ghaziabad declined to give permission to the respondent Nos. 8 and 9 to install effluent treatment plant or Ferti-irrigation on the ground that the land is situated in residential area.

2. On 01st August, 2005 the petitioner purchased the land in question from the respondent Nos. 8 and 9 for a sale consideration of Rs. 12,50,00,000/- and paid stamp duty of Rs. 1,25,00,000/-. Thereafter the petitioner stepped into the shoes of the respondent Nos. 8 and 9. It has categorically been mentioned in the sale-deed that the respondent Nos. 8 and 9 are exclusive owner of the land in question, which came to them by way of registered exchange-deed; the land in question is free from all disputes and encumbrances and they have every right to

sell the same; and further if for any legal impediment or any other unknown reason the seller (respondent Nos. 8 and 9) has no right to sell the land in question and on that count entire or some part of the land in question goes out of the possession of the purchaser (the petitioner), then the petitioner will be entitled to recover the amount for such land from the seller.

3. After purchase of the land in question, when the Forest Department started claiming the land in question (exchanged land), the petitioner came to know that such land belongs to Forest Department. The petitioner has also come to know that the land in question alongwith some other land, which was vested in the concerned Gram Sabha, was resumed by the order of the District Magistrate, Ghaziabad dated 21st March, 1994 in exercise of the powers conferred u/s 117(6) of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 for the purpose of making Bird sanctuary/Pakshi Vihar. Pursuant to such order, the Office In-charge (Resumption) by his order dated 04th March, 1995 directed the Tehsildar, Dadri, Ghaziabad to get the resumed land recorded in the records after handing over its possession to the Forest Department, Ghaziabad. According to the petitioner, such resumption order dated 21st March, 1994 was challenged by the Parishad before the Commissioner, Meerut Division, Meerut in Revision No. 48 of 2007, which was dismissed by order dated 30th March, 2009 and thereafter a recall application was filed, which has also been rejected by order dated 22nd June, 2009. The said orders are stated to have never been challenged by the Parishad, therefore, the same have attained finality.

4. As per annexure-10 to the amended writ petition which is a letter of the Additional District Magistrate (Administration), Ghaziabad dated 27th September, 2005, a meeting of various departments was called by the City Magistrate, Ghaziabad, wherein the petitioner was also called upon. Finally the Additional District Magistrate, under the direction of Collector, Ghaziabad, through its letter dated 27th September, 2005 informed the conclusion of meeting to the Additional Commissioner of Parishad, Nagar Ayukta, Nagar Nigam, Ghaziabad and concerned officer of Forest Department. It was concluded in the meeting that the land in question (exchanged land) does not belong to the Parishad as the same was resumed for the purpose of bird sanctuary on 21st March, 1994 and possession of the same was also handed over to the Forest Department on 04th March, 1995. Thus, the exchanged land belongs to Forest Department. Khasra No. 943 of the exchanged land was shown as "Jheel" (pond/lake) in the revenue records. The title of the said land was not with the Nagar Nigam, therefore, the Parishad was not having title over the land in question given under exchange.

5. On 19th March, 2006 the petitioner made a detailed representation ventilating its grievance before the concerned authorities alongwith the Parishad claiming another clean and undisputed land in lieu of the land in question given under exchange. Such representation was followed by the reminder dated 29th March, 2006. When no heed was paid on such representation, the petitioner for redressal of its grievance filed Civil Misc. Writ Petition No. 31871 of 2006 (M/s.

Gaursons India Ltd. v. State of U.P. and others), wherein on 13th June, 2006 an interim order, was passed by this Court directing the Parishad to entertain the representation dated 19th March, 2006 and take appropriate decision. After the direction of this Court, representation of the petitioner was rejected by the Parishad vide order dated 27th July, 2006. According to the petitioner, information of such order dated 27th July, 2006 was never given to the petitioner but it came to the notice of the petitioner for the first time when it was filed alongwith the counter-affidavit of Parishad in the aforesaid Writ Petition No. 31871 of 2006. Thereafter, the petitioner filed a withdrawal application on the ground that that some relevant facts necessary for adjudication were not incorporated in the said writ petition, on which this Court by order dated 24th April, 2008 and 07th May, 2008 dismissed the Writ Petition No. 31871 of 2006 as withdrawn with liberty to file afresh.

6. It has also been stated by the petitioner that respondent Nos. 5 and 6 started harassment of the petitioner. The respondent No. 5-Divisional Director, Social Forestry Department, Ghaziabad lodged a Criminal Case No. 69 of 2007-08 against the "petitioner under the Wild Life Protection Act and the Forest Act. That apart, the respondent No. 6-District Magistrate, Ghaziabad is trying to dispossess the petitioner from the land in question but still proceedings for recovery of Rs. 3,18,75,400/- have been imposed in terms of deficiency of stamps and penalty, regarding which the petitioner has obtained the stay by depositing Rs. 2,43,37,872/- on 07th November, 2007 from the Board of Revenue in Stamp Appeal No. 39/M/2006-07.

7. Against this background, the petitioner has filed the present writ petition and also challenged the order dated 27th July, 2006 by way of amendment of writ petition.

8. In the present writ petition, initially an interim, order of status quo was passed on 22nd May, 2008, Subsequently, a Division Bench of this Court by order dated 26th August, 2011 directed the parties to resolve the dispute out of the Court with the direction to give another clean and undisputed land to the petitioner. This order dated 26th August, 2011 was challenged by the Parishad before the Supreme Court by means of SLP No. 27343 of 2011 (U.P. Avas Evam Vikas Parishad v. M/s. Gaursons India Limited and others), which was disposed of by order dated 02nd November, 2011 requesting the High Court to finally dispose of the present writ petition as early as possible and till the disposal of writ petition, the operation of the order dated 26th August, 2011 has been stayed.

9. Learned Senior Counsel appearing for the petitioner has submitted before this Court that neither respondent Nos. 8 and 9 nor the petitioner could proceed with the constructions over the land in question since the Parishad has transferred such a piece of land which was neither the land of Parishad nor it was in their possession by legal means. The Parishad, being public authority, was required to act strictly in accordance with the law but it had transferred the land in exchange which was recorded in the revenue records as Jheel/Pakshi Vihar. Thus, by

transferring such land in exchange pursuant to the settlement of the matter pending before the Supreme Court, the Parishad has played fraud and committed contempt of the order of the Supreme Court, to which the comprise was also a part. The petitioner is a bona fide purchaser and being successor in interest of respondent Nos. 8 and 9 has each and every right to enforce the effective compliance of mutual settlement in letter and spirit. Since there was no restraint over the sale of land in question by any means either in the agreement or in the order of the Supreme Court or even in the law of exchange, no consideration and restriction can be imposed. The Parishad was and is legally bound to transfer usable, clean and undisputed freehold land measuring 12,047 acres situated at Vasundhara Scheme at Ghaziabad to the petitioner free from all disputes and encumbrances. It is further submitted on behalf of the petitioner that there are several lands in Sectors 7 and 8 of Vasundhara Scheme of the Parishad in the Ghaziabad, where the petitioner can be given land in lieu of the land in question. The Parishad being a public authority has to act fairly with the petitioner and cannot adopt the illegal and arbitrary attitude to deprive the petitioner's right. Transfer of land in question under exchange deed, which does not belong to Parishad, is not only illegal but also a fraudulent act.. It has also been submitted that the order impugned dated 27th July, 2006 has been passed by misconstruing the exchange deed, penning down certain irrelevant and non-existing facts in order" to create confusion as the right, title and interest which was transferred from Parishad to the respondent Nos. 8 and 9, that was purchased by the petitioner and, as such, the petitioner stepped in the shoes of the previous owners.

10. Controverting the submissions made on behalf of the petitioner, the Parishad has filed a counter-affidavit. Reiterating the averments made in the counter-affidavit, it has been submitted by the learned Senior Counsel appearing for the Parishad that the writ petition is not maintainable as it is, at best, breach of private agreement between the parties. It is not a statutory contract. Therefore, the writ petition to enforce such a contract is not maintainable. The agreement entered into between the concerned parties after having been approved by the Supreme Court, amounts to a decree of compromise with the seal of the Court as the order of the Supreme Court is after grant of leave and hence the agreement or the order of the High Court merges in the order of the Supreme Court. It has also been stated that the remedy lies against the vendor, who falsely concealed the restrictions that land in question will be kept open and no constructions will be made on that. The petitioner has purchased the litigation and the remedy of the petitioner lies against the vendor who has been impleaded later on in the writ petition. The writ petition, which is an equitable remedy, cannot be used by the parties to resile from the agreement, which is binding upon the parties. There is no land available with the Parishad to be given in the place of the land in question. With regard to Plot Nos. 948 and 1454 i.e. the land in question the matter is under active consideration before the State Government for setting aside the order of the District Magistrate, Ghaziabad dated 21st March, 1994.

However, in the meantime, the petitioner in connivance with some persons got filed a public interest litigation, being Civil Misc. Writ Petition (PIL) No. 54096 of 2010, before this Court and obtained an order of stay maintaining status quo. Such writ petition is collusive one filed at the instance of the petitioner and respondent Nos. 8 and 9.

11. It has further been submitted that in the compromise deed it was agreed that certain land situated at the end of the scheme (now part of Sector 2A) will be transferred to the respondent Nos. 8 and 9 for construction of a water treatment plant. Such compromise was part of the order of the Supreme Court. Accordingly, under the exchange deed land in question was transferred to the petitioner and possession was given on 24th September, 2004 which was to be used only for water treatment plant and for no other use as per Clause 4 of the exchange deed. At the time of acquisition, the land in question was recorded as Banjar and Jheel in the revenue records and was with the Nagar Nigam, Ghaziabad. Nagar Nigam, Ghaziabad on 16th April, 2002 handed over the physical possession of the same to the Parishad upon receipt of compensation. By virtue of Section 38(1) of the Act the land in question had vested in the Parishad free from all encumbrances, therefore, any ex parte order of the District Magistrate cannot supersede the provisions of the Act. When the land in question was transferred to the respondent Nos. 8 and 9, the same was in actual physical possession of the Parishad. The Parishad at no point of time concealed any material but only acted in consonance with the law and the revenue records, which were available. At the time of acquisition and handing over physical possession by Nagar Nigam to the Parishad, the revenue records did not disclose that the said land was being specifically marked as Pakshi Vihar. Once the land had been acquired by the Parishad, it could not have been resumed by the District Magistrate for some other purpose that too without calling upon the Parishad. Accordingly, the land in question was transferred to the respondent Nos. 8 and 9, who took actual physical possession thereof without any complaint. Therefore, the petitioner, who happens to be subsequent purchaser of the land in question, cannot at this stage raise objections regarding the title of the land in question. Parishad is not responsible for any unilateral act of the District Magistrate, Ghaziabad. Moreover, no sooner the Parishad came to know about the resumption order of the District Magistrate, concerned Superintending Engineer of the Parishad wrote a letter dated 12th August, 2005 to the District Magistrate, Ghaziabad for solving the matter amicably as-provided under the law in the circumstances-when there is a dispute inter se the State departments. Thereafter, the Housing Commissioner vide its letter dated 06th January, 2006 again requested the District Magistrate for an amicable solution. The order of the District Magistrate dated 04th March, 1995 is wholly without any authority. and as such is non est. It has further been stated that the land in question cannot be sold by the respondent Nos. 8 and 9 to the petitioner in view of the agreement that the same was to be used for a specific purpose only i.e. water treatment plant. Since the dispute is between the private parties, the writ petition is not

maintainable and if the petitioner has any complaint about the land, he can very well raise the same before the competent Court of civil jurisdiction. The petitioner is bound to follow the terms of the compromise and order of the Supreme Court. The Parishad has transferred usable, clean and undisputed land in favour of the respondent Nos. 8 and 9 free from all encumbrances in compliance of the direction of the Supreme Court and, as such, he has neither committed contempt of the order of the Supreme Court nor flouted the same. The petitioner is not a party to the compromise, as such, he has no right to raise any objection with regard to compromise. The petitioner has no concern with the land of the Parishad except the land in question which he has purchased. The Pollution Control Board raised the objection on 28th March, 2005 and the petitioner purchased the land on 01st August, 2005 from the respondent Nos. 8 and 9 knowing very well. The proceedings have already been undertaken on the part of the Parishad and now the matter is pending before the State Government and High Level Committee has been constituted to resolve the dispute and it is expected that the matter shall soon be resolved. The order impugned dated 27th July, 2006 is perfectly just and based on the materials and has been passed in accordance with the compromise deed and directives of the order of the Supreme Court.

12. Upon hearing the learned Counsel appearing for the parties and going through the record, we find that admittedly the petitioner is a subsequent purchaser of the land in question and has purchased the same from the respondent Nos. 8 and 9, who were given the land in question in exchange by the Parishad in the place of their original land acquired by the Parishad, as per the exchange deed dated 15th June, 2004. Thus, the petitioner is successor-in-interest of the respondent Nos. 8 and 9 and has every right over the land in question as was earlier with the respondent Nos. 8 and 9. Therefore the petitioner cannot be restricted from pursuing any remedy with regard to the land in question. The petitioner has purchased the land in question, after investing huge amount of money in crores, therefore, a right has been created in favour of the petitioner. The land in question was given to the respondent Nos. 8 and 9 by the Parishad under the exchange deed dated 15th June, 2004, executed pursuant to the compromise deed dated 26th October, 1993 which formed part of the order of the Supreme Court dated 20th March, 1995. It has clearly been mentioned in Paragraph-3 of the exchange deed that as per the compromise entered into between the Parishad and respondent Nos. 8 and 9, the original land of the respondent Nos. 8 and 9, which was acquired measuring 12.047 acres, will be taken by the Parishad by adjusting the same in one corner of the scheme in the layout. It is further mentioned in Paragraph-4 that the respondent Nos. 8 and 9 will use the adjusted land only for the purpose of water treatment plant and remaining land will be kept open. Importantly, it has also been mentioned in paragraph-5 of the exchange deed that respondent Nos. 8 and 9 will get their original land handed over to the Parishad and the Parishad will provide the land in question to the respondent Nos. 8 and 9 free from all disputes. Therefore, it is

clear that the land in question was given to the respondent Nos. 8 and 9 by the Parishad under exchange deed free from all disputes. From the counter-affidavit filed by the Pollution Control Board, it is not clear as to for which land the permission was sought for construction of water "treatment plant, either it is the original land of the respondent Nos. 8 and 9, which was acquired by the Parishad and adjusted in the scheme, or it is the land in question which has been given to the respondent Nos. 8 and 9 in exchange. The acquisition was started in the year 1982 and resumption of the land in question was done in the year 1994. The dispute appears to have arisen subsequent to resumption of the land in question and handing over the same to the Social Forestry Department for the purpose of bird sanctuary. In its counter-affidavit the Parishad has admitted that at the time of acquisition the land in question was with the Nagar Nigam, Ghaziabad and the same was given to the Parishad by the Nagar Nigam, Ghaziabad after receipt of compensation. Therefore, it appears that the land in question came to the Parishad after following the process of law. If it is so, the land in question was to vest in the Parishad as per Section 38(1) of the Act, which provides that whenever any building or land or any street, or any part thereof, vested in a local authority lies within the area comprised in any housing or improvement scheme, the Board may give notice to that authority that the same is required for the purposes of the scheme, and thereupon such building, land or street, or part thereof, shall vest in the Board. Sub-section (5) of Section 38 of the Act also provides that if any question arises as to whether any building, land or street, or any part thereof, is required for the purposes of the scheme or as to whether compensation, the matter shall be referred to the State Government whose decision thereupon shall be final. With regard to nature of the land in question, here the dispute is basically between two departments of the State Government, which are instrumentalities of the State. Therefore, for the dispute and confusion of two Government departments, no third party or individual should be made scapegoat who has invested huge sum and has purchased the land in question under a bona fide belief, otherwise the people will be hesitant in purchasing the lands even in the schemes of the Governmental authorities, which will not be a good state of affairs. Be that as it may, if even by mistake or for any other reason, any Governmental authority has allotted a disputed land to any person and it is ultimately detected, the land should be adjusted to some other place, as far as possible. From Section 92 of the Act, we find that there is control of the State Government over the Parishad and other local authorities. Section 92(3) of the Act speaks that without prejudice to the other provisions of this Act, and notwithstanding anything contained in any other law for the time being in force, the State Government may give any local authority such directions as in its opinion are necessary or expedient for enabling the Board to carry out the purposes of this Act; and thereupon it shall be the duty of the local authority to comply with such directions. Here, it is admitted case of the Parishad that at the end of the Parishad, the proceedings have been undertaken and now the matter is pending before the State Government and a High Level Committee has been constituted to resolve the dispute.

13. Against this background, we are of the view that when at the instance of the Parishad the matter is already pending before the State Government and a High Level Committee has been constituted to consider and resolve the dispute and further the Act provides control of the State Government over the Board and other local authorities, then to avoid the multiplicity of proceedings it would be proper and in the interest of justice if the petitioner is directed to approach the State Government for the purpose of redressal of its grievance. Therefore, we direct the petitioner to approach the State Government by making a representation ventilating its grievances within a period of seven days from the date of obtaining a certified copy of this order. For the purpose of effective adjudication a copy of the writ petition as well as other affidavits alongwith annexures can also be treated as part and parcel of such representation. If such representation is made by the petitioner, the same shall be considered and disposed of by State Government upon giving fullest opportunity of hearing to the petitioner and all other concerned parties. It is expected that the matter will not be delayed beyond a period of three months from the date of making such representation. In view of the above, when the matter with regard to the land in question is under consideration before the State Government/High Level Committee and the decision of the State Government will be ultimate over other authorities of the State Government, we are of the view that the order impugned dated 27th July, 2006 passed by the respondent No. 3 should not stand in the way of consideration, therefore, it is hereby quashed.

14. Accordingly, the writ petition is disposed of. Interim order, if any, is merged in the final order.

No order is passed as to costs.

Ashok Srivastava, J.

I agree.