
(2016) 07 AHC CK 0173
In the Allahabad High Court
Case No : C.M.W.P. No. 16066 of 2015.

Nehru International Public School (NIPS) And Another - Petitioners
@HASH New Okhla Industrial Authority (NOIDA) And 2 Ors

Date of Decision : 08-07-2016

Acts Referred:

Citation : (2016) 11 ADJ 706 : (2016) 119 ALR 215

Hon'ble Judges : Arun Tandon and Sunita Agarwal, JJ.

Bench : Division Bench

Advocate : P.H. Vashistha, Advocate, for the Petitioner; Shivam Yadav, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

Arun Tandon and Mrs. Sunita Agarwal, JJ. - These two writ petitions have been filed challenging the two orders of the New Okhla Industrial Development Authority (hereinafter referred to as "NOIDA") dated 24.2.2015 and dated 18.3.2015.

2. By means of the first order dated 24th February, 2015, the National Secretary, Jawaharlal Nehru National Youth Centre, New Delhi and the President of Jawaharlal Nehru National Youth Centre, NOIDA have been informed that plot no. U-01, Sector 11, NOIDA was allotted in favour of the Jawaharlal Nehru National Youth Centre for the purposes of establishing an "Institute to organise the youth of India". A lease deed for the purpose was executed on 12.2.1990 between the parties. Under the lease deed, it was contemplated that the demised land would be utilised for the purposes of "Construction of the Office Complex" (reference Clause XVII of the lease) but in fact the land was being used for other purposes and that unauthorised constructions were also being raised. A notice dated 13th January, 2015 was issued for stopping the wrongful use of plot as well as for unauthorised construction being removed. No reply has been filed.

3. Therefore, in exercise of powers conferred under Clauses I (XVII) and II (VIII) of the lease deed read with Clause I (XVI), a decision has been taken to cancel

the lease and to resume possession of the plot after forfeiting the money deposited by the aforesaid Jawaharlal Nehru National Youth Centre. For the purposes of demolition of unauthorised construction made over the premises, the same shall be sealed on 16.3.2015. The recipients of the letter were required to remove their affects and belongings from the premises.

4. By means of the subsequent letter dated 18th March, 2015, the aforesaid recipients were informed that the sealing of the premises could not take place on the date fixed i.e. 16th March, 2015. The sealing shall now be affected on 25th March, 2015.

5. In Writ Petition No. 15949 of 2015 (Jawaharlal Nehru National Youth Centre v. New Okhla Industrial Authority), it has been contended that reply to the notice dated 13.1.2015 referred to above was forwarded to the NOIDA authorities followed by letter dated 3.3.2015 for which receipts were issued on the same date i.e. 3.3.2015. Letters dated 11.3.2015 and 13.3.2015 were also forwarded in reply to the allegations made. Without considering the reply so submitted by the petitioner, the impugned order has been made wrongly stating that reply has not been filed. It is also submitted before us that over the plot construction, where raised by the NOIDA itself and money was charged from the petitioners for such constructions. It is also stated that the petitioners were permitted to use the premises for the purposes of running of the school which will including other activities which are being run from the centre. The crust was taken through the letter of the NOIDA authorities dated 6.4.1994 page "97" of the writ petition and the minutes of the meeting dated 29.8.1989 as well as the approval granted by the Central Board of Secondary Education under the letter dated 23.11.2004 enclosed as page "105" of the paper book.

6. Sri Shashi Nandan, learned Senior Advocate suggested before us that the running of the institution/school along with other activities was always in the knowledge of the NOIDA authorities and, therefore, their consent in the manner of use of such premises was established, although there may not have been any specific order in writing in that regard.

7. Reference has also been made to the letters and the correction incorporated at internal page "20" of the lease deed whereby in Clause (viii), words "Office" as recorded earlier has been deleted and substituted by "Institution" and the expression "for the office purpose" has been deleted and be replaced as "for the purpose of running youth centre".

8. We may record that the writ petition filed by Jawaharlal Nehru National Youth Centre is completely silent about any arrangement/agreement with M/s Atari Educational and Technological Society (AETS) for any of the public school from the centre. The writ petition does not make mention of any written agreement entered into with the said society for running of the institution in the name and style of "Nehru International Public School (NIPS)", NOIDA.

9. Writ Petition No. 16066 of 2015 Nehru International Public School (Nips) And

Another v. Noida And 2 Ors. has been filed by Nehru International Public School (NIPS), through Ex-President of the Executive Committee as well as Atari Educational and Technological Society (AETS) through its Secretary AETS. In this writ petition, Jawaharlal Nehru National Youth Centre has been impleaded as respondent no. 3.

10. It has been stated that Atari Educational and Technological Society (AETS) is a society registered under the Societies Registration Act, 1860. The society was registered on 13.11.2001 for running of the various training institute/centre and for the purpose it shall be affiliated to appropriate authority so as to give proper certification to the beneficiaries of various training and educational programme which were being conducted at the NOIDA centre of respondent no. 3 i.e. Jawaharlal Nehru National Youth Centre in the name and style of the "Nehru International Public School (NIPS)" namely the petitioner no. 1. It has been then stated that the programme and training institute were being run at the centre under the banner of NIPS. It is then stated that affiliation with Central Board of Secondary Education was applied for by Nehru International Public School (NIPS) on 28th June, 2004 and it was granted on 23.11.2004.

11. In paragraph "14", it is stated that between 2004-2014 petitioner no. 1 and respondent no. 3 continued to impart quality education to the youth and children.

12. In paragraph "15", it is stated that on 10th May, 2014 a joint venture agreement was executed between the petitioner no. 2 and respondent no. 3 for running of the institution i.e. petitioner no. 1.

13. Rest of the paragraphs are more or less repetition of the facts qua use of the land being in conformity with the lease deed. Unauthorised construction having not been raised and that reply having been submitted to the notice dated 13.1.2015 by Jawaharlal Nehru National Youth Centre and lastly the reply having not been considered before passing of the order impugned.

14. This Court vide order dated 26.3.2015 required the NOIDA authorities to respond to the allegations made in the writ petition that on that date, NOIDA was represented by an Advocate. Writ Petition No. 16066 of 2015 (Nehru International Public School (NIPS) And Another v. Noida And 2 Ors.) was connected with Writ Petition No. 15949 of 2015 (Jawaharlal Nehru National Youth Centre v. New Okhla Industrial Authority) on 1st April, 2015 time was granted to the counsel for the respondents to file reply to the second petition.

15. Even after more than one year and three months NOIDA has not been able to file response to the petitions. Such uncaring attitude of NOIDA authorities of not responding in the matter by filing the counter affidavit for over a year cannot be approved of. Because of non-filing of counter affidavit the Court is not able to examine the correctness/veracity of the statement of facts made in the petition specifically those pertaining to submission of reply to the notice dated 13.1.2015 and the same being not considered by the authorities and that a wrong factual recital has been made in the orders impugned.

16. We direct that the copy of this order, must be placed before the Secretary of the concerned department who must take action against all those responsible for not responding to the notice within reasonable time. The practise must stop and the authorities must be asked in no uncertain terms to file their response in writ petitions within reasonable time.

17. Now turning to the merits of the order that has been challenged before us, we find that there is a serious dispute qua the particular purpose for which the land was let out under the lease deed.

18. It is not disputed that under Clause XVII and VIII of the lease deed, the land could be utilised for the purpose of construction of office complex only with a further condition that if the land is to be used for any other purpose then the consent of the lessor would be a must.

19. We may also refer to the Clause VII (internal page "19") of the lease deed which mentions that powers to be exercised by the lessor under the lease shall be exercised by the Chief Executive Officer or an officer nominated by him.

20. At least on record of both the writ petitions, there is no order in writing of the Chief Executive Officer permitting the change in the user of the land. What has been referred to us is the correction in Clause VII (as already noticed above), the authenticity of the said correction has to be ascertained after reference to the original lease deed.

21. Sri Umesh Narain Sharma, learned Senior Advocate for the petitioners referred to us Clause VII of deed and stated that it provides, the Chief Executive Officer may authorise any other person to exercise the powers which were exercisable by him. The contention has been raised without any pleading in any of the two writ petitions, to the effect that the Chief Executive Officer had delegated his powers under the lease deed upon any other officer at any point of time.

22. The issue as to whether Jawaharlal Nehru National Youth Centre had submitted its reply to the notice dated 13.1.2015 and as to whether the use of demised land for running of the public school affiliated to CBSE is in conformity with the terms and conditions of the lease deed or not are basically issues of fact.

23. Since no counter affidavit has been filed on behalf of the NOIDA despite time being granted as early as in the month of March/April 2015, we for the present accept that reply had been submitted by the petitioner to notice dated 13.1.2015 and that there has been non-consideration of the reply by the NOIDA Authority while passing the orders impugned. But the dispute does not end here inasmuch as some authority must examine.

(a) as to whether the use of the land for running of a public school affiliated to CBSE is in conformity with the terms and conditions of the lease deed as executed between the parties or not.

(b) as to whether under the terms of the lease the Jawaharlal Nehru National Youth Centre could enter into any agreement with a private society for running of the institution in terms of the lease or not.

(c) as to whether there has been any unauthorized constructions over the premises in question and if so to what extent.

24. The aforesaid issues must be resolved by the an authority under the U.P Industrial Development Act, 1976 after affording opportunity to the petitioners.

25. We, therefore, direct that the petitioners must submit there response to the aforesaid three issues by means of the representation preferably within a period of ten days along with certified copy of this order before the Chief Executive Officer, NOIDA.

26. If the petitioners file their representation before the Chief Executive Officer as directed above within the time provided, the officer shall decide the same within eight weeks of its receipt.

27. We make it clear that the time schedule must be adhered in letter & spirit and no unnecessary adjournment shall be granted.

28. All consequential action shall be taken accordingly.

For a period of ten weeks from today, the orders impugned shall remain in abeyance and shall abide by the order of the officer concerned as indicated above.

29. In case representation is not filed within time permitted, the petitioners shall not be entitled to the benefits of this protection.

30. The Chief Executive Officer NOIDA as aforesaid shall decide the issues after summoning the original records from the NOIDA by means of a reasoned speaking order after affording opportunity of personally hearing to both the parties to the joint venture agreement.

31. Supplementary Affidavit has been filed today making allegations against Chief Executive Officer NOIDA. These allegations of mala fide need not be gone into by us as the Chief Executive Officer has not impleaded by name as one of the respondents to any of these petitions.

32. The Apex Court has held that allegations of mala fide need not be examined in absence of person against whom allegations are made being impleaded as party.

33. We, however, in the interest of justice provide that if the petitioners so desire, they may approach the State Government under Section 41(3) of the U.P Urban Planning and Development Act which stands incorporated by adoption under Section 12 of U.P. Industrial Development Act, 1976.

34. Sri Shivam Yadav learned counsel for the respondent has raised a preliminary

objection with reference to the right of the petitioners of Writ Petition No. 16066 of 2015 to maintain the present writ petition. As according to him, they had entered into a mutual agreement with the lease holder without the consent of NOIDA.

35. We need not enter into the said issue and leave the same to be examined by the Chief Executive Officer as directed above.

36. With the above observations and directions the writ petitions are disposed of. Interim orders are discharged.