

(2015) 07 AHC CK 0043

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 38817 of 2015

Windsor Park Residents Welfare Association

APPELLANT

Vs

Ghaziabad Development Authority and Others

RESPONDENT

Date of Decision : 24-07-2015

Acts Referred:

Uttar Pradesh Apartment (Promotion of Construction, Ownership and Maintenance) Act, 2010 — Section 27

Citation : (2015) 7 ADJ 69

Hon'ble Judges : Dilip Gupta, J; Vinod Kumar Misra, J

Bench : Division Bench

Advocate : Prashant, for the Appellant; R.B. Yadav, Advocates for the Respondent

Final Decision : Disposed off

Judgement

1. Windsor Park Residents Welfare Association, Indirapuram in District Ghaziabad has filed this petition for a direction upon the Ghaziabad Development Authority (the Development Authority) to ensure that a correct deed of declaration in the format prescribed under the provisions of the U.P. Apartment (Promotion of Constructions, Ownership and Maintenance) Act, 2010 (the Act) and the U.P. Apartment (Promotion of Constructions, Ownership and Maintenance) Rules, 2011 (the Rules) is filed by M/s. Assotech Reality Private Limited, which has been impleaded as respondent No. 3, in regard to Plot No. 5, Vaibhav Khand, Indirapuram. The second relief that has been sought is that the Development Authority should restrain respondent No. 3 from disposing of the common areas pursuant to the public notice dated 29 March 2015 and to make good all the losses caused to the petitioner Association because of the delay in handing over common areas and facilities. It is stated that the Vice-Chairman of the Development Authority passed an order on 7 June 2012 directing respondent No. 3 to file a deed of declaration and hand over the common areas and facilities to the petitioner-Association by 30 June 2012, but as the direction was not complied with, another order dated 3 September 2013 was passed directing

respondent No. 3 to file a deed of declaration.

2. In the meantime, a Division Bench of this Court by its common judgment dated 14 November 2013 disposed of Civil Misc. Writ Petition No. 33826 of 2012, M/s. Designarch Infrastructure Pvt. Ltd. and Another Vs. Vice Chairman, Ghaziabad Development Authority and Others, (2013) 9 ADJ 594 , Abhinav Jain v. State of U.P. and others; Civil Misc. Writ Petition No. 15782 of 2010, Sun Tower Residents Welfare Association v. Ghaziabad Development Authority and others; and Civil Misc. Writ Petition No. 12110 of 2013, Olive County Apartment Owners' Association v. State of U.P. and others, that had been filed in connection with the Act and the Rules framed there-under with certain directions.

3. The Vice-Chairman of the Development Authority, therefore, again directed respondent No. 3 to file a deed of declaration. According to the petitioner-Association, incomplete and defective deed of declaration was filed on 12 June 2014 and as soon as the petitioner-Association came to know about the filing of the aforesaid deed, it filed written objections before the Vice-Chairman of the Development Authority in which it was also pointed out that the declaration was not in conformity with the judgment dated 14 November 2013 passed by the Division Bench in the writ petitions referred to above.

4. Learned counsel appearing for the petitioner-Association has submitted that the objections filed by the petitioner have not been considered till date by the Vice-Chairman of the Development Authority. It is his submission that the judgment dated 14 November 2013 had taken into consideration the relevant requirements of the Act and the Rules but respondent No. 3 has filed a deed of declaration not only contrary to the provisions of the Act and the Rules but also contrary to the directions issued by the Division Bench of this Court.

5. Sri Shivam Yadav has appeared for respondent No. 1-Development Authority with Sri Pavan Kumar Yadav. Learned Standing Counsel appears for respondent No. 2. In view of the order that we propose to pass, it will not be necessary to issue notices to respondent Nos. 3 and 4.

6. Sri Shivam Yadav, learned counsel appearing for the Development Authority has stated that under Section 27 of the Act, the Competent Authority has to carry out such directions as have been issued for the efficient administration of the Act and under the notification issued by the State Government, it is the Vice-Chairman of the Development Authority who is the Competent Authority. It is, therefore, his submission that in the first instance the Vice-Chairman of the Development Authority shall examine the grievances raised by the petitioner.

7. Learned counsel for the petitioner has stated that the petitioner may be given liberty to file fresh objections before the Vice-Chairman of the Development Authority for him to examine the same in accordance with the provisions of the Act and the Rules.

8. We, accordingly, dispose of the petition with a direction that in the event the

petitioner files objections before the Vice-Chairman of the Development Authority regarding the declaration submitted by respondent No. 3, the same shall be examined in accordance with the provisions of the Act and the Rules framed thereunder, after hearing the parties concerned, including respondent No. 3 expeditiously and preferably within a period of six weeks from the date of filing of the objections with a certified copy of this order before the Vice-Chairman of the Development Authority. It is made clear that the Court has not expressed any opinion on the merits of the objections filed by the petitioner and it will be for the Vice-Chairman of the Development Authority to examine the same and take a considered decision in accordance with law.