

(2010) 01 AHC CK 0002

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 23579 of 1997

Yamaha Vihar Sahkari Avas Samiti Ltd., Gautam Budh Nagar
and Another

APPELLANT

Vs

Chief Executive Officer, New Okhla Industrial Development
Authority, Administrative Bhavan, Noida, Gautam Budh Nagar
and Another

RESPONDENT

Date of Decision : 25-01-2010

Acts Referred:

Land Acquisition Act, 1894 — Section 4, 6

Citation : (2010) 01 AHC CK 0002

Hon'ble Judges : Sunil Ambwani, J and Virendra Singh, J

Final Decision : Disposed Of

Judgement

Sunil Ambwani, and Virendra Singh, JJ

1. Heard Shri Pradeep Kumar, learned counsel for the petitioner. Shri Ramendra Pratap Singh appears for New Okhla Industrial Development Authority.

2. The petitioner is a cooperative housing society, registered with Housing Commissioner U.P. Awas Evam Vikas Parishad Lucknow with registration No.1786 dated 1.9.1992. It is stated that the society has 250 members joined together for providing residential houses to them. The society has allotted the land to provide housing facilities to its 200 members working in the Yamaha Motor Company Ltd. situate in Surajpur Tehsil Dadri Distt. Gautam Budh Nagar. The land was purchased by initially entering into an agreement of sale dated 31.7.1992 with Bhim Singh, Dharmvir Singh and Dharpal Singh sons of Bhura Singh and Badlu son of Thana Singh of Village Barola, Pargana and Tehsil Dadri, Distt. Ghaziabad, Gautam Budh Nagar for sale of their ? share in Khasra No.1142 to 1154 measuring 3 bigha 10 biswa and 6 biswansis for a sum of Rs.26,90,250/. Similar agreement was also entered into with one Rishal son of Hari Ram for 3 bigha 6 biswa pakka in Khasra Nos.1114, 1115, 1116 and 1117 in Village Barola, Tehsil Dadri, Distt. Gautam Budh Nagar adjacent to plot Nos.1142 to 1154 for

Rs.2,40,975/. The entire sale consideration was paid and the land owners executed sale deeds in the year 1995/96 on which the petitioner society became owner and got its name entered into revenue records. The land is recorded as residential in revenue records with some existing old constructions.

3. The petitioner society had earlier filed Writ Petition No.37058 of 1992 for a direction to the Noida not to interfere in its rights to develop the land. The writ petition was disposed of with following directions:

"Petitioner has submitted a lay out plan. Since no order has been passed, petitioner rushed to this Court by means of this petition. Since considerable time has elapsed, respondents are directed to consider the matter of the petitioner within one month from the date of service of a certified copy of this order upon him.

With the above direction the petition is disposed of.

Dt. 22.10.92

sd/D.P.S.C.?

sd/D.P.S.C."

4. The Officer on Special Duty Noida informed the petitioner in response to their application dated 28.10.1992 under Chapter II Regulation 5 of Noida Building Regulations that the petitioner's application has been rejected on the ground that the plots in dispute have also been acquired by Noida, and that the land is in the possession of the authority and Noida authority had paid total compensation to the District Magistrate/ Administration, Ghaziabad.

5. The Society again filed a Writ Petition No.666 of 1993 challenging the decision of Noida dated 1.12.1992 rejecting the building plan. The writ petition was dismissed on the ground of alternative remedy to file an appeal under Regulation 17 of the Noida Building Regulations. In the meantime, the petitioner was informed by the CEO, Noida that in the letter dated 1.12.1992 in reply to the petitioner's application Khata Nos./1142 to 1154 and 1114 to 1117 in Village Barola, Tehsil Dadri were wrongly mentioned to be acquired. The land falls within the notified area of the Government authority and as such the petitioner society cannot be permitted to change the land use. The letter was incorporated in appeal filed by the society. At the time of hearing of the appeal the Executive Officer, Noida was required to give a complete report to the actual position of the land purchased by the society. The Executive Officer, Noida issued certificates stating that plot Nos.1114 to 1117, 1136/1, 1137/2 and half of plot No.1142 and 1154 are not acquired nor there is any proposal to acquire the land. The plots are situated in old abadi of village and that there are some old and new constructions on the land. It is stated in para 24 of the writ petition that after receiving letter of the Administrative Officer dated 31.12.1994 as aforesaid the society carved out and allotted the plots to its members. They withdrew the money from their provident fund account and constructed their houses. Out of

200 allottees about 40 members have completed constructions and 50 had partly completed constructions in the year 1997, when the writ petition was filed. The notice dated 13.3.1996 was received by the Secretary of the Society from the Secretary, Noida as a surprise to show cause as to why the constructions raised by the society on plot Nos.1150, 1152, 1153 and 1154 area 9 bigha 4 biswa 10 biswansis has been covered by illegal constructions. The land falls in the notified area of Noida on which no permission was given by the authority for raising constructions. The petitioner filed a third writ petition No.19284 of 1996 with a prayer to issue writ of mandamus restraining the respondents from demolishing the constructions on 11.6.1996. During vacations an order was passed as follows:

"Issue notice.

Until further orders of this court the petitioner construction if they exist over plot Nos.1114 to 1117 and half shares of plot Nos.1142 to 1154 over which there is abadi situated in village Baraula Tehsil Dadri District Ghaziabad shall not be demolished provided the notifications for acquisition of these plots have not already been issued. In case the plots have been acquired by the respondents, this order shall not be operative.

Sd/S.C. Verma

11.6.1996"

6. On 23.7.1996 a Division Bench disposed of the writ petition restraining the respondents from taking any coercive steps until the petitioners' representation dated 15.4.1996 and 3.5.1996 are decided. The order is quoted as below:

"The petition is taken up in the revised list. None appears to press petition. By this petition, the petitioners seek a writ of mandamus directing the respondents not to demolish any construction of member of the petitioner's society existing on plot Nos.1114 to 1117 and ? shares of plot Nos.1142 to 1154 situated in village Baraula Tehsil Dadri, District Ghaziabad.

The petitioners have already submitted their representation dated 15.4.1996 and 3.5.1996. thus it is directed that before taking any coercive steps for demolition the representations submitted by the petitioners be decided in accordance with law and only thereafter necessary steps be taken, if need be for demolition.

With the direction, this petition is disposed of finally.

Interim order if any stand vacated.

Sd/ B.M. Lal

Sd/ J.S. Sidhu

23.7.96"

7. The Noida authorities verified from the Yamaha Motors and were informed that constructions of the members of the society were raised by taking loans from

their provident fund accounts. The Noida authorities, however, passed an order on 23.6.1997 that the land is not only situate in notified area of Noida but that proposals for acquisition of the land have also been sent to the A.D.M. (Land Acquisition), Noida to acquire the land for planned development and to carve out Sector 49. In the revenue records nature of the land is agriculture and that any other activity is prohibited under the provisions of U.P. Industrial Area Development Act, 1976. The land is earmarked for planned industrial development by NOIDA. The society has purchased agricultural land and not abadi land on which the constructions are not permissible under law. The representation was accordingly rejected giving rise to this writ petition. On 23.3.1996 this Court passed following order:

"Until further orders of this Court members of the petitioner No.1 society shall not be dispossessed from the land in dispute."

8. The New Okhla Industrial Development Authority filed Special Leave Petition (Civil) No.6842 of 1999. It was withdrawn by Noida on 12.5.1999. The order of the Supreme Court is quoted as below:

"Learned counsel for the petitioner states that he will apply to the High Court by separate application praying for stay of the construction activities being carried on by the members of respondent Society. The petitioner is accordingly permitted to adopt that course.

The SLP is dismissed as withdrawn."

9. A stay modification application was filed by the Chief Executive Officer, Noida to restrain the petitioner from raising constructions over the plots in dispute. The application is still pending and has not been decided. The matter went out of the list from 11.3.1999 for 9 years upto 18.2.2008 and was thereafter dismissed for want of prosecution on 4.5.2009 and restored on 09.10.2009. On 24.11.2009 the counsel for the petitioner sent illness slip and that on 1.12.2009 after hearing learned counsel for the parties, the judgment was reserved.

10. The supplementary counter affidavit of Shri R.N. Srivastava was filed on 21.5.2002 stating therein that the disputed land is sought to be acquired for planned industrial development/ commercial development by Noida for which a notification under Section 4 (1) read with Section 17 (1) has been published on 17.4.2002 for an area of 111.847 hecets. of agricultural land of village Barola including khasra Nos.1142 to 1154 area 3 bigha 10 biswa and 6 biswansis and khasra Nos.1114, 1115, 1116 and 1117 area 3 bigha 6 biswa. In the supplementary rejoinder affidavit filed on 8th July, 2008 it is stated that the notification under Section 6 has not been issued. There are applications filed in the year 1997 and an expedite application filed in 1999 by Noida to expedite the hearing of the writ petition. The counsel appearing for petitioners and office was not in a position to explain as to why the matter has not been listed for almost 9 years. Shri Ramendra Pratap Singh appearing for Noida is also not in a position to explain the Court as to why in spite of a request made to him to find out

status of the land acquisition proceedings on 24.11.2009. We are, therefore, proceeding to decide the case on the basis of the material available on record.

11. In the counter affidavit of Shri Praveen Singh, Naib Tehsildar, Noida Authority, Noida it is stated that Writ Petition No.37058 of 1992 was disposed of with directions to decide petitioner's representation and that Writ Petition No.666 of 1993 was dismissed on the ground of alternative remedy of filing an appeal under Section 17 of the Building Regulations applicable to Noida. The petitioners filed third writ petition No.19284 of 1996, which was disposed of with directions to decide the representation dated 15.4.1996 and 3.6.1996. The petitioners have also filed civil suit No.1288 of 1996, which is pending disposal in respect of same land. It is stated by him that the land falls within the area notified for industrial development under the U.P. Industrial Area Development Act, 1976 and falls in Sector 49 Noida. In the revenue records the land is entered as agricultural land. No one is permitted to change the nature of the land. The petitioners illegally purchased it for residential purposes. The petitioner society was never granted permission to raise constructions. The lay out plan was rejected and no individual plan has been submitted or sanctioned by Noida. The building regulations have no application in the area, which has been notified. These regulations are applicable only in respect of plots allotted to the allottees by Noida. The Officer on Special Duty has corrected the error in his letter dated 30.4.1993, and had informed the petitioner that the plots have not been acquired but that no development was possible and thus the plots as they were included in the notified development area vide notification dated 17.4.1976 (para 17 of the counter affidavit).

12. In para 22 of the counter affidavit it is stated that proposal for acquisition of 254.92 acres of land was sent on 29.6.1994 and that the letter dated 31.12.1994 for the same proposal appears to be forged document. The letter dated 31.12.1993 of the Administrative Officer cannot be treated as no objection certificate.

13. The factual position emerging from the affidavits on record is that the land in dispute is recorded in the revenue records as agricultural land. There is no material to show that the petitioner society had applied and was recorded as owner of the land in revenue records. The application for permission for development of the land with lay out plan was rejected on 23.6.1997 in pursuance to the directions of this Court. There is nothing on record to show that any appeal was filed or that the building regulations are applicable to the agricultural area. The land in dispute falls in the notified development area of the New Okhla Industrial Development Authority constituted under the U.P. Industrial Area Development Act, 1976. The constructions have not been raised by the petitioner society or its members after sanction of lay out plan and individual plan for construction of houses under Section 9 of the Act. The land was proposed to be acquired by including the plots in the total area of 111.84 7 hect. for which notification under Section 4 (1) read with Section 17 (1) and 4

was published on 17th April, 2002. There is nothing on record to demonstrate that this land was, thereafter, acquired by the State for Noida by issuing notification under Section 6 of the Act.

14. The petitioners have prayed for directions to quash the order dated 23.6.1997 and for further directions not to demolish the constructions existing on the plots. We do not find any error of fact or law in the order dated 23.6.1997 passed by Shri Ravi Mathur, Chief Executive Officer, Noida rejecting the representation dated 15.4.1996 and 3.6.1996 of the petitioner society. We also do not find any good ground to justify to issue writ of mandamus directing the respondents not to demolish any constructions of members of the petitioner society on the land in dispute. Even if the land was not acquired by the State, the constructions were raised without seeking permission. The petitioner has no right to claim any protection for such illegal constructions.

15. The writ petition is dismissed.