

I. L. Dhingra

Vs

State of U. P. and Others

Writ Petitions Nos. 2293-97 And 3798-3822 of 1982

S. P. Dhyani and Others

Vs

State of U. P. and Others

Writ Petition No. 228 of 1981

(G. L. Oza, V. Khalid JJ)

06.04.1987

ORDER

CHINNAPPA REDDY, J. -

1. The Uttar Pradesh legislature enacted the Uttar Pradesh Industrial Area Development Act, 1976 for the constitution of an authority for the development of certain areas in the State into industrial and urban townships and for matters connected therewith. The New Okhla Industrial Development Area Authority (NOIDA) was constituted under the provisions of this Act. NOIDA acquired vast extents of land in the outskirts of Delhi for the purpose of developing an industrial and urban township. NOIDA announced two schemes called LIG-EWS and MIG schemes and invited applications for allotment of houses constructed and proposed to be constructed by them. Several thousand applications were received and NOIDA announced closure of the schemes on December 11, 1980. Though in the original advertisement relating to the LIG-EWS scheme, there was no reservation of allotment in favour of any class of persons, it appears that later on NOIDA decided to reserve a certain percentage of houses for some categories of persons in the following manner :

#(1) Persons whose land has been acquired by NOIDA for the development of NOIDA .. 2 per cent(2) Entrepreneurs of NOIDA and their employees .. 17 per cent(3) Employees of NOIDA, U.P. State Government undertakings, U.P. State Development authorities and U.P. Government .. 15 per cent(4) Employees of Central Government, Government of India, Public Undertakings, International Organisations .. 5 per cent(5) Political Sufferers .. 5 per cent(6) Nominees of HUDCO .. 20 per cent##

So far as the MIG houses are concerned, the reservation was mentioned even in the original advertisement inviting applications for allotment of houses.

2. Forty disappointed applicants for allotment of LIG-EWS houses filed Writ Petition No. 228 of 1981 primarily questioning the reservation in favour of entrepreneurs and seeking a direction that

the claims of the petitioners for allotment should be considered in any future scheme. A rule nisi was issued by the court on April 4, 1981 and on May 8, 1981, an interim order was also made restraining NOIDA from making any fresh allotment of houses without obtaining the previous order of the court. Another group of six persons who had applied for allotment of MIG houses filed Writ Petition Nos. 2292-97 of 1982 and a similar interim order was made in these petitions also on March 12, 1982. On the same day, that is, March 12, 1982 the application for interim directions in Writ Petition No. 228 of 1981 came up before another Bench and an order was made therein permitting NOIDA to assign numbers to houses which had already been allotted but directing NOIDA to reserve 40 houses, so that the petitioners could be accommodated if they succeeded in the writ petition. What is important to be noted here is that by March 1982, only 40 persons had approached this Court in the matter of allotment of houses under the LIG-EWS scheme and 6 persons in the matter of allotment of houses under the MIG scheme. Thereafter there appears to have been several hundred petitions of each category. On April 30, 1984 all the petitions were heard together and an order was made by this Court consisting of D. A. Desai and R. B. Misra, JJ. in the following terms :

Mr. A. M. Srivastava, the Court Master is appointed as court officer to do the following things :

By our order dated March 12, 1982 this Court directed that respondents will not allot 40 houses till the disposal of the writ petition. Mr. O. P. Rana, learned counsel states that this order was understood by the respondents to mean that 40 houses shall be kept vacant both in EWS Group and LIG Group. These 40 house are available for allotment in each of the aforementioned groups.

We direct that the petitions in each EWS and LIG group who are desirous of having allotment of 'one of the houses reserved fro the group shall immediately give their names with registration numbers latest by May 31, 1984 to Mr. A. M. Srivastava, the court officer appointed by the court. He shall keep a register in which he will register the name of each such intending original applicant with the registration number. Each such applicant shall also state that he will abide by the order of this Court with respect to interest and incidental management charges that the court may determine in case of EWS and LIG allotments. In respect of these 40 houses in each group the price will be the old price at which the house in each group was advertised.

The respondent shall submit a statement within four weeks from today specifying the split-up of the amount worked out as price of each house in EWS group ranging from Rs. 27,000 to Rs. 35,000 specifically referring to the component of price of the land included in the computation.

The respondents shall submit a statement specifying how cost of construction per sq. metre in respect of EWS and MIG is determined. If houses in any group is subsidised without disclosing the names and nature of the subsidies, the same shall be disclosed. Only the original applicants for the EWS and LIG group will be entitled for allotment but no one is entitled to cross the group in which registration was obtained.

Mr. O. P. Rana, learned counsel for the respondents states that respondents have 347 houses of Type III which could be provided to applicants in MIG group and 621 quarters in Type II which could be allotted to applicants in LIG group. It appears that LIG and MIG have acquired new designation as Type III and Type II group. It is, therefore, desirable to permit applicants registered in MIG to be grouped together with Type III group and LIG with Type II group.

Fair play and justice demands subject to just exception applicants registered in MIG and LIG groups

must be allowed to participate in draw of lots for houses in Type III and Type II houses with this reservation that each of the applicants in either LIG or MIG shall undertake to pay price as now fixed namely Rs. 1,52,000 for MIG house each and Rs. 59,000 for LIG house (Type III and Type II respectively). It is hereby clarified that those who had registered in MIG group earlier shall be entitled to participate for the allotment of Type III quarters and those who had applied for LIG group shall be entitled to participate for allotment of Type II quarters. Each one of the applicants who desires to participate shall follow the same prescribed procedure as herein indicated giving the necessary undertaking that he will abide by the direction of the court. The applicants will give their names and registration numbers latest by May 31, 1984. Six weeks thereafter the respondents shall proceed to draw the lots for allotment if there are more applications than the available number of quarters in the presence of the court officer who shall hold and supervise the draw with the assistance of the NOIDA authorities and each one who succeeds in the draw of lot shall be put in actual possession within four weeks thereafter.

The NOIDA authorities will give wide publicity to this order.

Learned counsel on either side will exchange the responses to various proposals mooted out within two or three days from today and the matters will be listed after summer vacation.

On July 17, 1984, the earlier order was clarified in the following manner :

(1) Pursuant to the order dated March 12, 1982 the NOIDA authorities were directed not to allot 40 houses to anyone so that the petitioners if they succeed in the writ petition, will not be denied houses for want of sufficient number of houses. Therefore 40 houses were reserved in W.P. No. 228 of 1981. The lot to be drawn in this case is amongst the 40 petitioners with regard to which houses should be given not to anyone else but to those who are entitled to participate in the lots for these 40 houses.

(2) When we refer to the petitioners applicants in our order dated April 30, 1984, it is clarified that all these persons who have moved either by way of appellants or writ petitioners and who had deposited the amount and those who had re-deposited the amount under the orders of this Court and accepted by the NOIDA authorities in consonance with the order of this Court, all of them shall form one class for participating in the lot. Mr. A. M. Srivastava, Court Master should carry out the directions as herein directed to supervise the draw of the lot by the NOIDA authorities and complete the draw within one month from today.

We are satisfied that the persons who have made the applications within the time-bound programme shall be entitled to participate in the proceedings in the draw of the lot.

It will be noticed that though there was an order in favour of the 40 petitioners in Writ Petition No. 228 of 1981 that 40 LIG-EWS houses may be released to them, there was no similar order in favour of the petitioners in Writ Petition Nos. 2292-97 of 1982 to release MIG houses in their favour, notwithstanding that they stood on the same footing. This question was considered on March 25, 1985 and an order was made directing the release of five MIG houses to I. L. Dhingra, H. K. Bhatia, C. S. Tomar, Jagan Nath and Gian Chand (petitioners in Writ Petition Nos. 2293-97 of 1982). The stay granted by the court earlier which prevented delivery of the possession of houses to persons to whom houses were originally allotted was vacated. It will thus be seen that as a result of the various orders made by the court from time to time, the 40 petitioners in Writ Petition No. 228 of 1981 and

5 petitioners in Writ Petition Nos. 2293-97 of 1982 were accommodated in the two schemes and all those who took advantage of the order of the court dated April 30, 1984 were also accommodated. We do not think that it is either possible or permissible for this court to give any further direction in these matters. The orders made at several stages of these petitions should really conclude the matter.

3. Shri Markandeya, learned counsel for the petitioners, urged that the reservation made by NOIDA in favour of some of the categories of persons above mentioned was bad. Keeping in view the object of the Act under which NOIDA was constituted, prima facie, the reservation in favour of political sufferers and employees of Central Government, Government of India Public Undertakings and International Organisations appears to us to be bad, while reservation in favour of persons whose land has been acquired, entrepreneurs and NOIDA employees and employees of NOIDA appears to be sound. Reservation in favour of persons belonging to scheduled castes, scheduled tribes and backward classes was not questioned before us. Reservation in favour of nominees of HUDCO was questioned but it appears to us to be prima facie justifiable as HUDCO is the principal financier of the schemes. However, in the circumstances of these cases, we do not propose to probe further into the question of the validity of the reservations as we think that the petitioners in the writ petitions other than Writ Petition Nos. 228 of 1981 and 2293-97 of 1982 are not entitled to any relief as they cannot be said to have acted with that degree of promptitude which is expected in matters of this nature where apart from the fact that rights of other parties intervene straightway when allotment is made in their favour, it is not in the public interest that housing schemes etc. such as the present schemes should be kept in abeyance or handing fire when the need is urgent. However by virtue of the orders made by the court from time to time, some of them have been benefited by allotment houses which were available and such benefits as have accrued to them will stand. The petitioners in Writ Petition No. 228 of 1981 and Writ Petition Nos. 2293-97 of 1982 have been allotted houses pursuant to the interim orders of this Court and no further orders are necessary in their case. All the writ petitions are, therefore, dismissed but subject to the allotments made from time to time pursuant to the orders of this Court.

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