

U. P. Residents Employees Co-Op. House Building Society and Others

Vs

New Okhla Industrial Development Authority and Another

Contempt Petition No. 259 of 1991 with I. A. Nos. 3, 6, 7, 10, 11 and 12

(A.M. Ahmadi, K. Ramaswamy JJ)

15.01.1992

ORDER

1. By order dated May 3, 1990 this Court merged all the earlier interim orders and passed a composite order to the effect that the total number of persons entitled to allotment will be confined to those who were eligible members of the society as on May 1, 1976 not exceeding 600 in number. The allotment was directed to be made from sectors 40, 41 and 42 and if the number of plots in these sectors were not sufficient, then from the adjacent sectors. These plots were to be developed by NOIDA within a period of nine months from May 1, 1990 and ending on January 31, 1991 and were to be allotted to the eligible members of the society at the price of Rs. 1,000 per square metre. It appears that at the relevant point of time when this order was made, it was with reference to a plan which was produced on the records of the case. Now, prior to the making of this order, counsel for NOIDA had on April 30, 1990 stated before the Court that "NOIDA undertakes that in the event of this appeal being allowed, NOIDA will give to the appellant such areas as this Court may specify from sectors 40 and 41 at prices to be calculated in accordance with the judgment of this Court". It was further clarified that the said undertaking was limited to giving areas from sectors 40 and 41 to those who were eligible members of the society as on May 1, 1976. Thereafter, a modification was made which has been extracted in the letter of May 8, 1985 of Mr. Subodh Markandeya, advocate, addressed to the Chairman of NOIDA. This modification was to the effect that instead of sectors 40 and 41, the undertaking will include sector 42 also. It was further stated that if any of the petitioners cannot be accommodated in any of these sectors, NOIDA will give them sites or areas which are contiguous to sectors 40, 41 and 42. It was on this basis that this Court in its order dated May 3, 1990 referred to sectors 40, 41 and 42. It appears from the affidavit filed in the present proceedings by D. B. Malik, Development Manager, NOIDA, that reference to sectors 40, 41 and 42 in the Court's order dated May 3, 1990 was with reference to an old plan which had undergone a change on February 22, 1983. The affidavit does not disclose what were the sector numbers allotted to the land which bore sectors 40, 41 and 42 under the old plan, in the plan of February 22, 1983. In any event, it is an admitted fact that this plan of February 22, 1983 was not before the Court. This draft master plan of February 22, 1983 underwent a further change in 1989 and it is also not known what sector numbers were given to sectors 40, 41 and 42 referred to by the Court in its order dated May 3, 1990. We, therefore, call upon the respondent to file an affidavit clarifying this position.

2. The grievance of the petitioners is that the choice of land to be allotted to the petitioners was made on the basis of the old plan which was very much before the court. The land chosen for allotment was sectors 40, 41 and 42 under that plan. Thus, the land was identified and what the petitioners contend is that even if the numbers of the sectors have undergone a change, the respondents ought to have identified the land and allotment of reconstituted plots should have been made from that identified land itself, because it is on the basis of the physical condition of that land,

that the price was determined at Rs. 1,000 per square metre and NOIDA cannot be allowed to get away by offering any other land on the basis of the shifting of plot numbers which may be of inferior quality. There is some substance in this contention but before we give further directions we would like to make sure as regards the identity of the plots in regard to which we are making these directions. We would, therefore, await the filing of the affidavit and the affidavit will also disclose the area of land available in the revised sectors, whatever be their numbers, corresponding to the sectors 40, 41 and 42 referred to in this Court's order dated May 3, 1990.

3. The second grievance is in regard to non-compliance of the direction "every member who has deposited any sum of money with NOIDA against proposed allotment shall be entitled to 12 per cent interest on such amount from the date of deposit till actual allotment and such interest accrued in favour of the person shall be entitled to adjustment of such interest against actual price of land to be worked out at the rate of Rs. 1,000 per square meter". Balance amount, if any, had to be refunded to the eligible members of the society not exceeding 600 in number as on May 1, 1976 within three months in three equal monthly instalments. Indisputably, this direction has not been complied with on the specious plea that the relevant claim in the present proceedings is by the society and not the members. This ignores the fact that the payment was made by the society on behalf of the members. We are, therefore, of the opinion that NOIDA has failed to abide by this direction and must therefore be visited with further obligation of paying interest on the instalment amount as 15 per cent annum from the date on which each installment became due and payable. This should be done within four weeks from today.

4. Counsel for NOIDA has given a list of members who have not been considered for allotment of plots and the reasons therefor. Category 'D' refers to cases of 10 members and they have not been considered as their names were not included in the original list submitted by the society and the first installment was not received by due date, that is July 31, 1990. There is no mistake on the part of the members and they cannot be penalised for the lapse on the part of the society. The society has since forwarded their names and we direct that they should be allotted plots as per the original order on their clearing the fee, if any, within four weeks from today. Category 'C' is in respect of disputed cases of which some have since been allotted plots and their numbers are shown as 11, 13 and 14. The members shown at numbers 12 and 15 have not been allotted plots as there is some discrepancy about the name of the member and the person who has deposited the amount. This could have been easily clarified because it appears that Shyam Prakash was the members and the payment was made on his behalf by Dr Kulshrestha. The society may clarify this position by writing a letter. Similarly, in the case of Vishal Agarwal also, it appears that he had deposited the amount on behalf of Mr. M. P. Agarwal, his father. This position may also be clarified by the society and thereupon NOIDA may make the allotment. Category 'B' are cases where the members had suggested reduction in the size of their plots after the first instalment was paid. Out of them, cases of members shown as serial Nos. 16 to 19 have already been cleared. The case of the member at serial No. 20 shows that there was a variation in the size of the plot which was reduced from 162 sq. metres to 120 sq. meters and on account of that the third instalment was not paid as the adjustment in regard to the first two instalments had to be made. The NOIDA has not made the allotment as the instalment has not yet been received or paid. Having regard to these circumstances, we direct that on the member making the payment within four weeks from today, if not already made, the allotment should be made. That brings us to Category 'A' which concerns members who have defaulted in payment of instalments. Of these, serial Nos. 21 to 26 have been cleared as the short deposit of the second instalment was made good in the third. The rest of the members have been considered ineligible on the ground that they have not cleared the shortfall and/or not paid the third instalment. To give these persons a last opportunity, we direct that they should make good the outstanding instalments with interest at 12

per cent per annum from the respective date of default within four weeks from today, if not already made, whereupon allotments will be made. In cases, where the instalment amount is paid but the interest at 12 per cent has not been paid, the members may make good the same within four weeks from today.

5. Let the matter come up after three weeks.

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