

SUPREME COURT OF INDIA

Chairman & Chief Executive Officer, NOIDA

Vs.

Mange Ram Sharma (D) through LRs.

C.A.No.10535 of 2011

(Swatanter Kumar and Ranjana Prakash Desai JJ.)

04.05.2012

ORDER

1. By judgment and order dated 5/12/2011, this Court disposed of Civil Appeal No.10535 of 2011 and issued following directions:

(1) That banking or nursing homes or any other commercial activity is not permitted in Sector 19 and for that matter, in any sector, in the development area earmarked for residential use.

(2) That the 21 banks and the nursing homes, which are operating in Sector 19 or any other residential sector, shall close their activity forthwith, stop misuse and put the premises to residential use alone, within two months from the date of pronouncement of this judgment.

(3) That lessees of the plots shall ensure that the occupant banks, nursing homes, companies or persons carrying on any commercial activity in the residential sector should stop such activity and shift the same to the appropriate sectors i.e. commercial, commercial pockets in industrial/institutional area and specified pockets for commercial use within the residential sector, strictly earmarked for that activity in the development plan, the Regulations and provisions of the Act.[pic] (4) That the Development Authority shall consider the request for allotment of alternative spaces to the banks and the persons carrying on other commercial activities, with priority and expeditiousness.

(5) That the doctors, lawyers and architects can use 30% of the area on the ground floor in their premises in residential sector for running their clinics/offices.

(6) That for such use, the lawyers, architects and doctors shall be liable to pay such charges as may be determined by the Development Authority in accordance with law and after granting an opportunity of being heard. The affected parties would be at liberty to raise objections before the Development Authority that no charges are payable for such users as per the law in force.

(7) In the event the lessee or the occupant fails to stop the offending activity and/or shift to alternate premises within the time granted in this judgment, the Development Authority shall seal the premises and proceed to cancel the lease deed without any further delay, where it has not already cancelled the lease deed.

(8) Wherever the Development Authority has already passed the orders canceling the lease deeds, such orders shall be kept in abeyance for a period of two months from today. In the event the misuse is not stopped within a period of two months in terms of this judgment, then besides sealing of the premises, these orders of cancellation shall stand automatically revived and would come into force without further reference to any court. In the event the misuse is completely stopped in all respects, the orders passed by the authorities shall stand quashed and the property would stand restored to the lessees.

(9) These orders shall apply to all cases, where the order of termination of lease has been passed by the Development Authority irrespective of whether the same has been quashed and/or writs of the lessees dismissed by any court of competent jurisdiction and even if such judgment is in appeal before this Court.

(10) The orders in terms of this judgment shall be passed by an officer not below the rank of Commissioner. This order shall be passed after giving an opportunity to the parties of being heard by such officer. This direction shall relate only to the determination of charges, if any, payable by the lessee or occupant for the period when the commercial activity was being carried on in the premises in question.

2. On 23/1/2012, it was pointed out to us that 30% of the ground floor area permitted to be used under Direction (5) above is contrary to the bye- laws and master plan of NOIDA. It was urged before us that the expression ground floor used in the same clause may be clarified as any floor because somebody may be having a two-storeyed house and may himself be living on the first floor only. In the circumstances, we modified Direction (5) quoted above and clarified that 25% of the permissible FAR is allowed to be used for their professional purposes by doctors, lawyers and architects. We also modified paragraphs 54 and 55 of our judgment as follows:

That the doctors, lawyers and architects can use 25 per cent of the permissible FAR of any floor in their premises in the residential sector but only for running their personal office or personal clinic in its restricted sense as clarified in the judgment.

3. By the said order dated 23/1/2012, we have issued the following further directions:

(i) The NOIDA Authorities shall, within one week from today, issue a final notice to all the owners of the residences requiring them to stop use of the premises for banking or any other commercial activity and requiring them to shift from the residential areas.

(ii) The NOIDA Authority shall also issue an advertisement stating therein the premises which can be offered to the banks as per the policy of the NOIDA Authority. This policy shall clearly state the terms and conditions for allotment and the manner in which the allotment of the alternative site/land would be made to the banks and/or other commercial activities in appropriate sectors i.e. commercial, institutional or industrial-commercial.

We make it clear that such policy should be fair and transparent.

(iii) Within one week thereafter the banks and other persons carrying on the commercial activities shall respond to the advertisement given by the NOIDA Authority or the circular issued by them.

Their allotment should be finalized immediately thereafter.

(iv) The entire process should be completed within six weeks from today. After six weeks the NOIDA Authority shall be entitled to cancel the lease

deed as well as take other permissible steps in accordance with law to prevent commercial users in the residential sectors. We also make it clear that the NOIDA Authority will be at liberty to consider the request of the nursing homes, clinics or other commercial activities carrying on the residential areas for allotment of an alternative site in accordance with its policy, if any. The NOIDA Authority shall be entitled to fix present day rates or impose such other terms and conditions as is considered appropriate by them. This we leave to the discretion of the authorities concerned.

(v) Any branches that have opened in NOIDA after the pronouncement of the judgment of this Court shall not be entitled to any of the benefits of the judgment and this order.

(vi) We make it clear that the directions contained in this order should be complied with by all concerned and within the time stipulated. In the event of default, this court shall be compelled to take proceedings under the Contempt of Courts Act, 1971 against the erring or defaulting officers/officials.

4. In the abovementioned applications, some applications have been filed by the doctors, who were running nursing homes in the residential areas with a prayer that they should be provided alternate land/premises by NOIDA, as it has been done in the case of banks as per the judgment of this court. It is averred in these applications that Dr. Rashmi Gupta and others were running nursing homes in the residential areas with differing capacity, which have now been closed. They are prepared to pay the reasonable cost of land/premises which the NOIDA may now allot to them for running their nursing homes. There are other applications also with similar prayers. As we had heard the applicants as intervenors/impleaders, their applications for intervention do not survive for consideration any further.

5. As far as formulation of Scheme by the NOIDA for allotting the land/premises to such applicants is concerned, the stand of the NOIDA is that it had already taken out a Scheme especially for nursing homes.

However, no applicant applied for allotment of such land and thus, the NOIDA had not allotted any plot to the persons running nursing homes in the residential areas.

6. The NOIDA Master Plan, 2031, in Chapter 7, deals with Use Zones and Use Premises Designated. Under Serial No.87 of Chapter 7.30, while referring to

Clause 5.22, it has been stated that a premises having medical facilities for indoor and outdoor patients having upto 30 beds is a nursing home and would be managed by a doctor on commercial basis. A clinic is stated to be a premises with facilities for treatment of outdoor patients by a doctor. In case of a polyclinic, it shall be managed by a group of doctors.

7. After hearing learned counsel appearing for different parties, we are of the view that NOIDA can be directed to make a provision under this policy for allotment of land/premises to nursing homes and invite applications for allotment of land for the same. The NOIDA has given precedence, under their previous Schemes for allotment, to such applicants who are running nursing homes of more than 10 beds and less than 30 beds and the same would apply under this direction. They shall be given land/premises at reasonable rates as may be determined by the competent authority in NOIDA. This exercise of inviting applications and allotting such land/premises should be completed within three months from today. The applicants have stated that their nursing homes have already been closed, but we make it absolutely clear that no nursing home shall run from a residential area henceforth.

8. Coming to the applications made by individual doctors, we direct that individual doctors would not be entitled to any benefit under the Scheme that the NOIDA will declare under this order. A clinic simplicitor can be run by a doctor within such area as already specified, of his or her residence. This clinic would mean one as per the bye-laws. To put the matters beyond ambiguity, we clarify that the doctor can have his clinic with a table, a bed to examine the patient and such facilities which may be necessary to provide first aid. A dentist may have a dental chair in his clinic. Under this head, neither a polyclinic nor a nursing home can be run in the residential area.

9. We also direct that no doctor would be permitted to run a polyclinic or a nursing home in the garb of a clinic. Therefore, the question of keeping the patients in the clinic overnight would not arise. The purpose of permitting a clinic is strictly in accordance with the directions of this court as already issued as well as the bye-laws. The doctors will be permitted to run a clinic to provide personal service to the outdoor patients and nothing more. The doctors would be permitted to conduct professional practice, by the resident doctor alone, within the scope of the directions already issued by this court.

10. We have heard the applicants, at length. There is no occasion for this court to review/alter its judgment dated 5/12/2011 and further order dated 23/1/2012. Consequently, the applications for intervention and Impleadment do not survive.