

**SUPREME COURT OF INDIA**

New Okhla Industrial Development Authority

Vs.

Sarvpriya Sehkar Avas

C.A.No.3265 of 2013

(Chandramauli Kr.Prasad and Fakkir Mohamed Ibrahim Kalifulla JJ.)

11.04.2013

**JUDGMENT**

**CHANDRAMAULI KR. PRASAD, J.**

1. New Okhla Industrial Development Authority, hereinafter referred to as “NOIDA”, in these special leave petitions filed under Article 136 of the Constitution of India impugns the order dated 20th of June, 2008 passed by the Allahabad High Court in Civil Misc. Writ Petition No. 41065 of 2003 (Sarvpriya Sahakari Avas Samiti Limited v. State of U.P. through Special Secretary Anr.) and order dated 15th of July, 2010 passed in Civil Misc. Writ Petition No. 67362 of 2005 (Shivalik Sahakari Avas Samiti through Secretary v. State of U.P. through Principal Secretary Ors.). By those orders NOIDA has been directed to give benefit of Government Order dated 22nd of October, 2002 to each of the writ petitioners, respondent no. 1 herein i.e. Sarvpriya Sahakari Avas Samiti Limited, hereinafter referred to as “Sarvpriya” and Shivalik Sahakari Avas Samiti, hereinafter referred to as “Shivalik”.

Leave granted.

2. As direction given in both the appeals is identical and facts are similar, both have been heard together and are being disposed of by this common judgment.

3. For the purpose of these appeals we have taken the facts from the appeal arising out of Special Leave Petition No. 1343 of 2009. Sarvpriya is a registered Housing Cooperative Society and its claim is that most of its members are from the Indian

Army, Border Security Force, Air Force, Central Reserve Police Force, Delhi Police and other Government Departments. The object of the Sarvpriya is to provide residential accommodation to its members. It was registered in the year 1981. Sarvpriya purchased land from the land holders during the period 1981 to 1985 in the Village Wazidpur within Tehsil Dadri in the District of Ghaziabad from the funds contributed by its members. During that period neither Ghaziabad Development Authority nor NOIDA were in existence and, as such, the layout plan prepared by Sarvpriya was approved on 3rd of December, 1982 by the Chief Town and Country Planner. Later, an agreement was entered into between Sarvpriya and the District Magistrate, Ghaziabad, whereby Sarvpriya was allowed to carry out the development activities as per the layout plan within a period of two years.

4. While the aforesaid development activities were going on, the State Government, in exercise of its power under Clause (d) of Section 2 of the U.P. Industrial Area Development Act, 1976 declared an area of 748 acres of land in Village Wazidpur as industrial development area, which was to form part of the New Okhla Industrial Development Area. It included land belonging to Sarvpriya. But, it seems that despite the aforesaid area having been declared as an industrial development area, Sarvpriya continued to carry on the activities of colonization and illegal plotting. Accordingly, by notice dated 21st of September, 1994, NOIDA called upon Sarvpriya to remove the unauthorized construction within a stipulated time. Sarvpriya replied to the aforesaid notice inter alia stating that it had developed the land and asserted its right for further development on the basis of the sanction order and terms of agreement between it and the District Magistrate. Sarvpriya also chose to challenge the aforesaid notice in a writ petition filed before the High Court but the challenge has ultimately failed.

5. Sarvpriya thereafter wrote to the State Government to either permit it to develop residential plots or to allot a suitable developed plot. Sarvpriya also resorted to a proceeding before the Monopoly Restrictive Trade Practices Commission but the same was dismissed. While the request of Sarvpriya for allotment of a suitable developed plot was pending, in response to a notice dated 24th of July, 1999, Sarvpriya by its representation dated 28th of July, 1999 requested to settle the dispute outside the court by either allowing it to retain the present site or to allot a suitable alternative developed piece of land to enable its members to raise housing colony for their residence. It seems that thereafter Sarvpriya wrote to NOIDA, from time to time, for allotment of a suitable alternative developed piece of plot relying on the recommendation of a Committee known as Khodaiji Committee as also the order of the State Government in the Department of Housing dated 22nd

of October, 2002. When all these did not yield any result, it filed CMWP No.45613 of 2002 (Sarvpriya Sahakari Avas Samiti Ltd. v. Chairman, NOIDA Authority) and the High Court by its order dated 25th of October, 2002 directed NOIDA to dispose of its representation within a stipulated time. The NOIDA by its order dated 4th of July, 2003 rejected Sarvpriya's representation and, while doing so, observed that it had purchased the land in the year 1981- 1982 and on the recommendation of Khodaiji Committee lands were allotted to societies which were in existence till the year 1976 in the area and, accordingly, it was observed that the recommendation made by the Khodaiji Committee shall not be applicable to Sarvpriya.

6. Being unsuccessful in persuading the NOIDA to provide it alternative suitable plot, it filed a writ petition, which has given rise to the impugned order, for quashing the order dated 4th of July, 2003 and further for the issuance of a writ in the nature of mandamus commanding NOIDA to allot 40% of the land acquired from Sarvpriya to it in Sector Nos. 134-135 or in any nearby sector of NOIDA.

7. NOIDA contested the claim of Sarvpriya inter alia stating that the benefit of Government Order dated 22nd of October, 2002 applies to Avas Vikas Parishad and Development Authority constituted under the provisions of U.P. Urban Planning and Development Act, 1973. It was further pointed out that the NOIDA has been constituted under the provisions of U.P. Industrial Area Development Act, 1976 and, hence the Government Order referred to above shall not enure to the benefit of Sarvpriya. The submission of NOIDA did not find favour and the High Court by the impugned order in the case of Sarvpriya quashed the order dated 4th of July, 2003 and remitted the matter back to NOIDA with direction to give the benefit of the Government Order dated 22nd of October, 2002 to Sarvpriya within a stipulated time. While doing so, the High Court observed as follows:

“.....The further explanation of the respondents are that Khodaiji Committee, which is constituted for the purpose, submitted the report that the benefit of re-allotment or fresh allotment of the land to such societies will be available to the societies which were registered before 1976. The argument is that benefit of Khodaiji Committee report, which is otherwise available to the Co-operative Housing Societies, cannot be given to the petitioner-society only because the petitioner- society is not registered before 1976. We have gone through the report of Khodaiji Committee and we do not find any such observation as is attributed by the respondent to the aforesaid report. The report simply talks about the Co-operative Housing

Societies irrespective of the year of registration. The petitioner's society is definitely a registered Housing Co-operative Society. Therefore, the denial of benefit of Khodajji Committee report to the petitioner is wholly arbitrary and discriminatory in as much as the benefit of this report have been extended by the respondent to other Housing Co-operative Societies.....”

Shivalik claims to have been registered as Housing Cooperative Society on 24th March, 1982. It asserts that it had purchased the land by registered sale deeds between the years 1990 to 1996 in Village Chhajarsi within Tehsil Dadri in the District Of Gautam Budh Nagar.

8. In the case of Shivalik, the High Court directed to consider its claim observing that the Government Order dated 22nd of October, 2002 shall be applicable to NOIDA. While doing so, it observed as follows:

“A perusal of Section 12 aforesaid shows that Section 41 has been adopted in toto and adoption of Section is by incorporation. Clause (c) of Section 12 clarifies that in a reference to the Vice-Chairman of the authority shall be deemed to be a reference to the Chief Executive officer of the authority (created under the U.P. Area Development Act). The impugned Government Order dated 22.10.2002 has been issued after the enforcement of both the above Acts. The Government Order has been addressed to the Vice-Chairman of the Development Authorities U.P. That will mean that the reference is itself also addressed to the Chief Executive Officer of the New Okhla Industrial Development Authority by virtue of clause (c) of Section 12 of U.P. Industrial Area Development Act, 1976. Thus it is beyond doubt that the Government Order is applicable to the New Okhla Industrial Development Authority. The Government Order in which various reasons have been given for holding that the Government Order is not applicable to New Okhla Industrial Development Authority is contrary to the provisions of clause (c) of Section 12 of the U.P. Industrial Area Development Act, 1976. Therefore, the order dated 14/8/2005 is quashed. The Government Order dated 22.10.2002 is held to be applicable on the New Okhla Industrial Development Authority, created under the U.P. Industrial Area Development Act if it is subsisting.....”

(underlining ours)

9. As regards claim of Sarvpriya and Shivalik that Government Order dated 22nd of October, 2002 shall also govern their case, the plea of the State Government is that there are two kinds of authorities which are constituted under two different enactments, namely, the U.P. Urban Planning and Development Act, 1973 and the U.P. Industrial Area Development Act, 1976. According to the State Government, the authorities constituted under U.P. Urban Planning and Development Act function under the overall administrative control of the Department of Housing and Urban Planning whereas the Industrial Development Authorities like NOIDA are constituted under the U.P. Industrial Area Development and it is not within administrative control of the Department of Housing and Urban Development. In fact, the Industrial Development Department of the State Government is its administrative department.

10. Mr. L.N. Rao, Senior Advocate appearing on behalf of the appellant submits that neither Khodaiji Committee's recommendation nor the order of the State Government dated 22nd of October, 2002 govern the case of Sarvpriya and Shivalik and, therefore, the order passed by the High Court is vulnerable. Mr. A.K. Ganguli, Senior Advocate, Mr. Jitendra Mohan Sharma, Advocate representing Sarvpriya and Shivalik respectively, however, contend that the functions of the Development Authority and the Industrial Development Authority being the same, the notification of the State Government in the Department of Housing dated 22nd of October, 2002 shall also apply to NOIDA and the High Court did not commit any illegality by directing for consideration of their case in the light of the aforesaid order. They also submit that there is no justification to deny the benefit of Khodaiji Committee's recommendation to both the societies. Mr. S.R. Singh, Senior Advocate appearing on behalf of the State of U.P. is emphatic that neither Khodaiji Committee's recommendation nor the Government Order dated 22nd of October, 2002 issued by the Housing Department shall have any bearing for deciding the claim of both the societies.

11. In view of the rival submissions, the first question falling for our determination is as to whether the Khodaiji Committee's Report covers the case of the two societies herein. It seems that various cooperative housing societies which had purchased land falling in the industrial development area of NOIDA represented for allotment of land. NOIDA in its 15th Meeting held on 19th June, 1977 resolved to constitute a sub-Committee to negotiate with the representatives of the various cooperative housing societies. Mr. B.J. Khodaiji, the then Commissioner and Secretary, Housing and Urban Development Department of the State Government besides other officers constituted the said Committee. The report of the Khodaiji

Committee has been placed before us. From the report, it appears that sub-Committee held several meetings and made various recommendations including the following, with which we are concerned in the present appeals. The recommendations so made read as follows:

“2. Only one plot per member should be given to members of these sixteen Cooperative Housing Societies.

3. Only those members of Cooperative Housing Societies will be entitled to get plots in NOIDA who were bonafide members as on 1.5.1976 which shall be duly certified by a competent Authority in this respect i.e. Dy. Registrar, Co-operative Housing Societies, Meerut Division.”

12. From the aforesaid it is evident that the Committee made recommendation for allotment of one plot per member to the members of sixteen specified cooperative housing societies and, while doing so, it further observed that only those members shall be entitled to get plots who were bonafide members as on 1st of May, 1976. Both the societies with which we are concerned in the present appeals do not find place in the recommendation of the Khodaiji Committee and further, it is not their case that they were even existing on 1st of May, 1976. It seems that the attention of the High Court was not drawn to the aforesaid paragraphs of the Report of the Khodaiji Committee and, therefore, the High Court fell into error in observing that the “report simply talks about the Cooperative Housing Societies irrespective of the year of registration”. The passage from Khodaiji Committee Report quoted above makes it abundantly clear that “only those members of Cooperative Housing Societies will be entitled to get plots in NOIDA who were bonafide members as on 1.5.1976”. If the society did not exist on that date there is no question of their being members of the society on the date specified. In that view of the matter, there is no escape from the conclusion that the recommendation of Khodaiji Committee shall not enure to the benefit of the two societies. Hence, we are of the opinion that the High Court erred in holding that the denial of benefit of Khodaiji Committee’s Report to Sarvpriya is arbitrary and discriminatory. We, thus, have no option but to disapprove this line of reasoning of the High Court.

13. Now we proceed to consider the second question required to be answered in these appeals i.e. whether NOIDA is bound by the Government Order dated 22nd of October, 2002. To answer this question it shall be appropriate to examine the scheme of Uttar Pradesh Urban Planning and Development Act, 1973 (President’s Act No. 11 of 1973) and Uttar Pradesh Industrial Area Development Act, 1976

(U.P. Act No. 6 of 1976). NOIDA is an industrial development authority constituted by the State Government of Uttar Pradesh in exercise of its powers under Section 3 of U.P. Act No. 6 of 1976. Authority under this Act can be constituted for any industrial development area and such areas would be those which have been declared as such by notification by the State Government. The object of the industrial development authority, as is evident from Section 6 of the Act, is to secure planned development of the industrial development areas. Its functions include providing infrastructure for industrial, commercial or residential purposes as also to allocate and transfer either by way of sale or lease or otherwise, plots of land for the aforesaid purposes. President's Act No. 11 of 1973 is another Act aimed to provide for the planned development of certain areas of the State and Section 3 and 4 thereof confer power on the State Government to declare an area to be developed as a development area and constitute development authority for that area. Section 41 of this Act vests power on the State Government to issue direction for "efficient administration of the Act" and casts duty upon the development authority, its Chairman or the Vice- Chairman to carry out such direction. It reads as follows:

“41. Control by State Government.-

(1) The Authority, the Chairman or the Vice-Chairman shall carry out such directions as may be issued to it from time to time by the State Government for the efficient administration of this Act.

(2) If in, or in connection with, the exercise of its powers and discharge of its functions by the Authority, the Chairman or the Vice-Chairman under this Act any dispute arises between the Authority, the Chairman or the Vice-Chairman and the State Government, the decision of the State Government on such dispute shall be final.

(3) The State Government may, at any time, either on its own motion or on application made to it in this behalf, call for the records of any case disposed of or order passed by the Authority or Chairman for the purpose of satisfying itself as to the legality or propriety of any order passed or direction issued and may pass such order or issue such direction in relation thereto as it may think fit:

Provided that the State Government shall not pass an order prejudicial to any person without affording such person a reasonable opportunity of being heard.

(4) Every order of the State Government made in exercise of the powers conferred by this Act shall be final and shall not be called in question in any court.”

Section 12 of U.P. Act No. 6 of 1976 provides for application of certain provisions of President’s Act No. 11 of 1973, including Section 41 and same reads as follows:

“12. Applications of certain provisions of President’s Act XI of 1973.- The provision of Chapter VII and Sections 30, 32, 40, 41, 42, 43, 44, 45, 46, 47, 49, 50, 51, 53 and 58 of the Uttar Pradesh Urban Planning and Development Act, 1973 as re-enacted and modified by the Uttar Pradesh President's Act (Re-enactment with Modifications) Act, 1974, shall mutatis mutandis apply to the Authority with adaptation that-

- (a) any reference to the aforesaid Act shall be deemed to be a reference to this Act;
- (b) any reference to the Authority constituted under the aforesaid Act shall be deemed to be a reference to the Authority constituted under this Act; and
- (c) any reference to the Vice-Chairman of the Authority shall be deemed to be a reference to the Chief Executive Officer of the Authority.”

It is relevant here to state that in order to come to the conclusion that the order of the State Government in the Housing Department dated 22nd of October, 2002 would apply to the NOIDA, it has been observed that such an order has been passed by the Housing Department in exercise of the power under Section 41 of the President’s Act No. 11 of 1973 and in view of its adaption by section 12 of U.P. Act No. 6 of 1976, the Government Order shall apply to NOIDA. President’s Act No. 11 of 1973 is an earlier Act whereas U.P. Act No. 6 of 1976 is a later Act. As is well known, incorporation of the provisions of the earlier Act into a later Act is a legislative device adopted for the sake of convenience and in order to avoid verbatim reproduction of the provisions of the earlier Act into the later Act.

When such a legislation is made by incorporation, the provisions so incorporated become part and parcel of the later Act. In other words, those provisions are considered bodily transposed into it. Its legal effect is that those sections which have been incorporated in the later Act had been actually written in it with pen. In view of the aforesaid, Section 41 of President's Act No. 11 of 1973 shall be deemed to have been incorporated in U.P. Act No. 6 of 1976 with adaptation and the authority constituted under President's Act No. 11 of 1973 shall be deemed to be in reference to an authority constituted under U.P. Act No. 6 of 1976 and the Vice-Chairman of the authority under President's Act No. 11 of 1973 would be the Chief Executive Officer of the Authority under the U.P. Act No. 6 of 1976. But will that mean that the order of the State Government in exercise of the power under Section 41 of President's Act No. 11 of 1973 shall apply to the Industrial Development Authorities constituted under Section 6 of U.P. Act No. 6 of 1976? In our opinion, the power exercised under Section 41 of President's Act No. 11 of 1973 shall not be deemed to be an order under Section 12 of the U.P. Act No. 6 of 1976 merely on the ground that Section 41 has been included in the Act by incorporation which, as observed earlier, is a device adopted for the sake of convenience. The order dated 22nd of October, 2002 has been issued by the Housing Department of the State Government and it has been addressed to Housing Commissioner, U.P. Awasthi Vikas Parishad, Vice-Chairman of all Development Authorities and Managing Director of the U.P. Cooperative Awasthi Sangh but not addressed to the Industrial Development Authorities. The Vice-Chairman of the Development Authorities cannot be read to mean the Chief Executive Officer of the Industrial Development Authority constituted under U.P. Act No. 6 of 1976. It needs no emphasis that such an order can be passed in respect of the Industrial Development Authority in view of Section 12 of U.P. Act No. 6 of 1976 by such Departments of the State Government which have administrative control over the Industrial Development Authority. However, we hasten to add that in case such a power is exercised by such a Department of the State Government it shall have no bearing on the Development Authorities constituted under the President's Act No. 11 of 1973. The decision taken by one administrative department concerned with Industrial Development Authority shall not apply to the Development Authorities within administrative control of another Department of the State Government or vice versa unless a conscious decision is taken to apply the same to both the categories of authorities in case the rules of executive business of the State so permits.

In view of what we have observed above there is no doubt in our mind that the Government Order referred to above shall not be applicable to the appellant authority.

Both the grounds given by the High Court while issuing the impugned direction, in our opinion, being unsustainable in law, same can not be allowed to stand.

In the result, we allow these appeals, set aside the impugned judgments and orders of the High Court and dismiss the writ petitions, but without any order as to costs.