Ghaziabad Development Authority And ... vs Delhi Auto & General Finance Pvt. Ltd. ... on 31 March, 1994

Equivalent citations: AIR1994SC2263, JT1994(3)SC275, 1994(2)SCALE357, (1994)4SCC42, [1994]3SCR248, 1994(2)UJ497(SC), (1994)2UPLBEC1373, AIR 1994 SUPREME COURT 2263, 1994 (4) SCC 42, 1994 AIR SCW 2135, (1994) 3 SCR 248 (SC), 1994 (2) UPLBEC 1373, 1994 (2) UJ (SC) 497, (1994) 3 JT 275 (SC), (1994) 2 UPLBEC 1373

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Bench: J.S. Verma, R.M. Sahai

ORDER

J.S. Verma, J.

1. These appeals are disposed of by this common judgment since the points for decision are common. Writ petition No. 16382 of 1992 - Delhi Auto & General Finance Pvt. Ltd. v. State of U.P. and Anr. - filed in the Allahabad High Court was allowed by the judgment dated 22.12.1992 and for the same reasons Writ Petition No. 25461 of 1992 Maha Maya General Finance Co. Ltd. v. State of U.P. and Anr., was allowed by the High Court by its judgment dated 21.5.1993. Civil Appeal Nos. 4384 and 4385 of 1993 are separate appeals by special leave by the two respondents in the Writ Petition No. 16382 of 1992 while similar Civil Appeal No. 634 of 1994 is by one of the respondents in Writ Petition No. 25461 of 1992. The material facts may now be briefly stated.

2. The Master Plan (Annexure I) was prepared under Section 8 of The Uttar pradesh Urban Planning and Development Act, 1973 (hereinafter referred as 'U.P. Act') for development of the area shown therein on 1.6.1986 for the period upto 2001 A.D. In this Master Plan certain lands in Villages Makanpur, Mohiuddinpur Kanauni, Chhajarasi and Lalpur were set apart and shown for use for 'recreational' purposes. This area indicated for recreational use in the Master Plan included certain lands of two private colonisers, namely, Delhi Auto & General Finance Pvt. Ltd. (hereinafter referred as 'Delhi Auto') and Maha Maya General Finance Co. Ltd. (hereinafter referred as 'Maha Maya'). Maha Maya as well as Delhi Auto applied to the Ghaziabad Development Authority constituted under the U.P. Act, for permission to develop and construct on their lands according to their lay-out plan, in accordance with Section 15 of the U.P. Act. The plan submitted by Maha Maya was granted conditional permission on 22.6.1991/11.7.1991. The application of Delhi Auto being found to be defective was returned for correction and was then presented again after removal of the

defects on 20.7.1991. It appears that by a Notification dated 22.4.1991 the Government of Uttar Pradesh had amended the land use of the area indicated originally in the Master Plan for 'recreational' use and converted it to 'residential' use. On 3.7.1991 the National Capital Region Planning Board constituted under the National Capital Region Planning Board Act, 1985 declined to approve the change of land use of that area from 'recreational' to 'residential' made by the State Government, on the ground that it was not in conformity with the policy decision of the State Government. Accordingly the Government of Uttar Pradesh reviewed its earlier decision and by order dated 24.9.1991 directed the Ghaziabad Development Authority not to sanction the lay-out plan of any person or any coloniser in respect of that area which was originally meant for recreational use. This action was taken to effectuate the purpose of the National Capital Region plan in the larger public interest for the plan development of that area. The State Government ultimately restored the original position indicated in the Master Plan of use of that area for recreational purposes. On 23.4.1992 Delhi Auto was refused the permission it had sought under Section 15 of the U.P. Act. The same was the effect of the communication to Maha Maya which amounted to revocation of the earlier permission. On facts, the only difference between Delhi Auto and Maha Maya is that in the case of Maha Maya a conditional permission had been granted by the Ghaziabad Development Authority prior to restoration of the land use to the original 'recreational' purpose, while in the case of Delhi Auto the pending application was rejected after restoration of the original position.

3. As earlier stated, the writ petitions filed in the Allahabad High Court by Delhi Auto and Maha Maya challenging the refusal of permission sought by them under Section 15 of the U.P. Act have been allowed. The reasons given by the High Court for deciding in favour of the two private colonisers are the following :

> 1. By virtue of bye law 7.2 of the Ghaziabad Development Authority it would be deemed that the plan of the writ petitioners stood sanctioned on 22.11.1991. Not-withstanding the fact that the bye-laws have not been approved by the State Government, this consequence follows since the Ghaziabad Development Authority has been following the bye-laws in practice. There is deemed approval of the bye-laws by the State Government under Section 57 of the U.P. Act;
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> 2. After conversion of the land use of the area, including the land of the writ petitioners, from 'recreational' as shown in the master plan to 'residential', the writ petitioners had a legitimate expectation that they can construct a housing colony according to their plans. Accordingly amendment of the master plan under Section 13 of the U.P. Act to restore the original land use, in the absence of any scheme to meet strong public necessity, is arbitrary and illegal.
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> 3. The Ghaziabad Development Authority has merely followed the order of the State Government dated 24.9.1991 which has changed the land use from 'recreational' to 'residential' and back again to 'recreational' within a short period.

4. Sanction of the lay-out plan of Maha Maya while refusing the permission to Delhi Auto is discriminatory.

However, in view of the revocation of permission given to Maha Maya this ground does not survive.

4. On behalf of appellants the learned Counsel appearing for the State of Uttar Pradesh and the Ghaziabad Development Authority have assailed the High Court's judgment on several grounds. The arguments advanced to support the High Court's judgment, as finally crystallised in the submissions of Shri Soli J. Sorabjee appearing for Delhi Auto may be summarised, thus :

1. The change of land use from 'recreational' to 'residential' was not prohibited in the master plan; and it was also proper and reasonable in the facts and circumstances of the case.

2. 'Indirapuram' housing project covered at least 1626 acres which includes the lands of Delhi Auto and Maha Maya and not merely 1288 acres excluding the lands of these two private colonisers.

3. There was violation of Article 14 of the Constitution inasmuch as there is no rational basis for distinguishing between the lands of Ghaziabad Development Authority and those not of Ghaziabad Development Authority belonging to private colonisers. It is urged that the object of housing is equally met by the Ghaziabad Development Authority as well as private colonisers and, there fore, the private colonisers also should be permitted to build houses in that area.

4. There are planning commitments made by the private colonisers and expenses incurred for that purpose which have to be taken in conjunction with de facto operation of bye-laws in the practice followed. Thus fair treatment to Delhi Auto and Maha Maya required grant of permission and sanction of their lay-out plans on that basis.

5. Shri C.S. Vaidyanathan learned Counsel for Maha Maya also advanced the same arguments and submitted further that the right of Maha Maya was greater in view of the permission accorded to it earlier under Section 15 of the U.P. Act before the directions given by the State Government not to grant such permission. Learned Counsel submitted that the planning commitment made by Maha Maya was much more in view of the investments made by it because of the permission accorded to it. He also submitted that the reason for change of land use back to 'recreational' from 'residential' was never disclosed and no notice or hearing was given to Maha Maya which had already been granted permission. He also submitted that private colonisers alone being excluded while Ghaziabad Development Authority was permitted to construct in a part of that area, the action was discriminatory.

6. We may first dispose of the point relating to deemed approval of the bye-laws by the State Government under Section 57 of the Act and the deemed sanction of the plans of respondents under bye-law 7.2 as held by the High Court. Learned Counsel for the respondents rightly made no serious attempt to support this untenable view. Section 57 of the U.P. Act provides for the making of bye-laws and says that "the authority may, with previous approval of the State Government, make bye- laws...". It is obvious that the provision empowers the authority to make bye-laws only with the previous approval of the State Government. This being so, there can be no question of any deemed previous approval of the bye-laws. Merely because the authority chooses to follow certain procedure in the absence of any bye-laws which happens to correspond with the draft bye-laws awaiting approval of the State Government, the draft bye-laws do not become those framed under Section 57 of the Act with the express approval. The basic premise on which the High Court proceeded to assume the existence of any bye-laws, is clearly non-existent. The further question of a deemed sanction under bye-law 7.2 which has not come into operation does not, therefore, arise. It is unnecessary to discuss this point any further., Suffice it to say that the view taken by the High Court on the basis of bye-laws and particularly bye-law 7.2, is wholly untenable.

7. The next ground to legitimate expectation, on which the High Court's conclusion is based, is equally tenuous. That view results from a misreading of the decision of this Court in F.C.I. v. Kamdhcnu Cattle Peed Industries . It was clearly indicated in that decision that non-consideration of legitimate expectation of a person adversely affected by a decision may invalidate the decision on the ground of arbitrariness even though the legitimate expectation of that person is not an enforceable right to provide the foundation for challenge of the decision on that basis alone. In other words, the plea of legitimate expectation relates to procedural fairness in decision making and forms a part of the rule of non-arbitrariness; and it is not meant to confer an independent right enforceable by itself. That apart, the manner in which legitimate expectation has been relied on by the High Court in the present case, is difficult to appreciate. The High Court on this aspect has stated as under :

After the notification of the State Government dated 22.4.1991 converting the use of petitioners' land from recreational to residential the petitioners had a legitimate expectation that they can construct the colony and submitted plans. They have invested substantial amounts and people have made investments. They acted on the assurance of the State Government and have altered their position. This legitimate expectation of the petitioners has to be balanced with the general public interest. In the instant case it is admitted that the authority has not made any plans or scheme for the use of this vast land for recreational purpose and no proposals to this effect had been sent to the State. The State has not disclosed the reasons for which the user of the land is again being changed. In the absence of any scheme to meet strong public necessity, the present exercise of power under Section 13 of the Act is arbitrary and illegal.

8. It is difficult to appreciate how the change of land use of the area in the Master Plan from 'recreational' to 'residential' could give rise to a legitimate expectation in a private coloniser owning land in that area that he could construct a housing colony therein simply because he had submitted some plan for approval, when grant of the permission under Section 15 of the U.P. Act is not automatic and the statute permitted amendment of the Master Plan by change of the land use even thereafter. The mere fact that the area was shown originally as meant for 'recreational' use, shows that reversion to the original land use is equally permitted by the statute. No legitimate expectation of the kind claimed by these private colonisers could arise on these facts and in a situation like this clearly contemplated by the Statute itself.

9. It is for this reason that learned Counsel for the respondents modified their argument to contend that the planning commitments and incurring of expenses together with the de facto operation in practice of the bye-laws for grant of the permission gave rise to the legitimate expectation that their lay-out plans would be sanctioned. In the case of Maha Maya it was urged by Shri Vaidyanathan that the planning commitments were much more on account of permission being granted earlier under Section 15 of the U.P. Act. The question, therefore, is whether even this modified argument merits acceptance. In our opinion, it does not.

10. As earlier indicated, the decision in FCI v. Kamdhenu Cattle Peed Industries, (supra) clearly says that legitimate expectation does not form an enforceable right to provide an independent ground of challenge. The modified stand taken by the learned Counsel for respondents on this aspect is equally met by this proposition. In substance the contention of learned Counsel for the respondents is that the planning commitments and the investments made by the two private colonisers confer on them or at least on Maha Maya the indefeasible right to grant of the permission and sanction of their lay-out plan which cannot be defeated by exercise of the power of amendment of the master plan under Section 13 of the U.P. Act. The fallacy in this contention is that it upgrades the so called legitimate expectation, assuming it to be so in the present case, to a legally enforceable right which a legitimate expectation is not, it being merely a part of the rule of non-arbitrariness to ensure procedural fairness of the decision. It is clear that the requirements of public interest can out weigh the legitimate expectation of private persons and the decision of a public body on that basis is not assailable. This contention of learned Counsel for the respondents fails.

11. Before dealing with the remaining submissions, it would be appropriate to refer to certain provisions of the Uttar Pradesh Urban Planning and Development Act, 1973 and the National Capital Region Planning Board Act, 1985 (referred hereafter as "NCR Act").

12. The UP Act is made to provide for the development of certain areas of Uttar Pradesh according to plan and for matters ancillary thereto. In the developing area of

the State of Uttar Pradesh the problems of town planning and urban development need to be tackled resolutely, the existing local bodies and other authorities being unable to cope with the problems to the desired extent. In order to improve the situation, the State Government considered it advisable that in such developing areas, Development Authorities on the pattern of Delhi Development Authority be established.

13. Section 3 of the U.P. Act provides for declaration of development areas for this purpose. Section 4 provides for Constitution of a development authority for any development area declared under Section 3 of the Act. The Ghaziabad Development Authority is one such authority and the lands in question in the present case are within the development area declared under Section 3 of the Act. Chapter III contains Sections 8 to 12 relating to preparation, approval and commencement of master plan and zonal development plan. Chapter IV contains Section 13 which relates to amendment of the master plan and the zonal development plan. Chapter V relates to development of lands. Therein, Section 14 provides that after the declaration of any area as development area under Section 3, no development of land shall be undertaken or carried out or continued in that area by any person or body unless permission for such development has been obtained in writing in accordance with the provisions of the Act. It also provides that no development shall be undertaken or carried out or continued in that area unless the same is also in accordance with such plans. Section 15 deals with the application for permission referred to in Section 14. It contemplates making of the requisite enquiry before making an order refusing or granting such permission. Section 16 prohibits use of any land or building in contravention of the plans. Chapter VI relates to acquisition and disposal of land required for the purpose of development. The remaining provisions relate to ancillary matters. Section 56 empowers the development authority to make regulations with the previous approval of the State Government for the administration of the affairs of the authority. Section 57 empowers the authority to make bye-laws with the previous approval of the State Government for carrying out the purposes of the said Act.

14. It is by virtue of the provisions of the U.P. Act that the two private colonisers, Delhi Auto and Maha Maya, in the present case applied for permission of the authority under the Act for the development of their lands and making construction therein. Those lands were within the area set apart originally in the master plan for recreational' use, to which it reverted finally on amendment in accordance with Section 13 of the Act.

15. Some provisions of the National Capital Region Planning Board Act, 1985 (hereinafter referred as "NCR Act") may now be referred. The enactment is 'to provide for the Constitution of a Planning Board for the preparation of a plan for the development of the National Capital Region and for co-ordinating and monitoring the implementation of such plan and for evolving harmonized policies for the control of land-uses and development of infrastructure in the National Capital Region so as

to avoid any haphazard development of that region and for matters connected therewith or incidental thereto.' Section 2 contains the definitions. Clause (j) therein defines "Regional Plan" to mean the plan prepared under this Act for the development of the National Capital Region and for the control of land-uses etc., Clause (m) defines "Sub-Regional Plan" to mean a plan prepared for a sub-region. Section 3 provides for Constitution by the Central Government of the National Capital Region Planning Board, in the manner provided therein. Section 7 specifies the functions of the Board which include preparation of the Regional Plan and to arrange for the preparation of Sub-Regional Plans and Project Plans by each of the participating States. Section 10 indicates the contents of the Regional Plan which include the manner in which the land in National Capital Region shall be used and the policy in relation to land use and the allocation of the land for different uses. Section 14 deals with modification of the Regional Plan and Section 15 provides for review and revision of the Regional Plan. Section 17 requires each participating State to prepare a sub-regional plan for the sub-region within that State. It has also to indicate the specified elements including the reservation of areas for specific land-uses. Section 19 requires that before publishing any Sub-Regional Plan, each participating State shall refer such plan to the Board to enable the Board to ensure that such plan is in conformity with the Regional Plan. Section 20 lays down the obligation of each participating State for the implementation of the Sub-regional plan, as finalised. Section 27 provides for the overriding effect of this Act notwithstanding anything in consisting there-with contained in any other law, instrument, decree or order etc. Section 28 empowers the Central Government to give directions to the board for the efficient administration of the Act, which the Board is bound to carry out. Section 29 expressly provides that on coming into operation of the finally published Regional Plan, no development shall be made in the region which is inconsistent with the Regional Plan as finally published. Thus the overriding effect of the Act by virtue of Section 27 and total prohibition of any activity of development in violation of the finally published Regional Plan provided in Section 29 of the Act is sufficient to indicate that any claim inconsistent with the finally published Regional Plan in the area cannot be sustained on any ground.

16. The four villages in question in which the lands of Delhi Auto and Maha Maya are situate form part of the U.P. Sub-Region of the National Capital Region. In the Master Plan of 1986 operative till 2001 A.D.(An-nexure I) the lands of Delhi Auto and Maha Maya are included in the area set apart for 'recreational' use only. On this basis the Regional Plan was prepared and approved under the NCR Act on 3.11.1988 and finally published thereunder on 23.1.1989 according to which the area in question was set apart for 'recreational' use only. Admittedly no change in this Regional Plan to alter the land use of that area to 'residential' purpose was made any time thereafter in accordance with the provisions of NCR Act. The overriding effect of the NCR Act by virtue of Section 27 therein and the prohibition against violation of Regional Plan contained in Section 29 of the Act, totally excludes the land use of that area for any purpose inconsistent with that shown in the published Regional Plan. Obviously, the

permissible land use according to the published Regional Plan in operation throughout, of the area in question, was only 'recreational' and not residential since no change was ever made in the published Regional Plan of the original land use shown therein as 'recreational'. This being the situation by virtue of the overriding effect of the provisions of NCR Act, the amendment of land use in the Master Plan under U.P. Act from 'recreational' to 'residential' at an intermediate stage, which is the main foundation of the respondents' claim, cannot confer any enforceable right in them. However, if the first amendment in the Master Plan under the U.P. Act altering the land use for the area from 'recreational' to 'residential' be valid, so also is the next amendment reverting to the original land use, i.e., recreational'. Intervening facts relating to the private colonisers described as planning commitments, investments, and legitimate expectations do not have the effect of inhibiting the exercise of statutory power under the U.P. Act which is in consonance with the provisions of the NCR Act, which also has overriding effect and lays down the obligation to each participating State to prepare a Sub-Regional Plan to elaborate the Regional Plan at the Sub-Regional level and holds the concerned State responsible for the implementation of the Sub-Regional Plan. The original land use of the area shown as 'recreational' at the time of approval and publication of the Regional Plan under the NCR Act having remained unaltered thereafter, that alone is sufficient to negative the claim of Delhi Auto and Maha Maya for permission to make an inconsistent land user within that area.

17. The only surviving point is, whether change permitted by the NCR Planning Board for the 'Indirapuram' project in that area by conversion of the land use form 'recreational' to residential' is of the whole 1626 acres including the respondents' land as claimed by them or only of 1288 acres which does not include the respondents' land, and its effect?

18. In a letter dated March 10, 1992 of Secretary, Housing & Urban Planning Department, Government of Uttar Pradesh to the Secretary, Ministry of Urban Development, Government of India there is a denial of violation of NCR plan in the U.P. Sub- Region. To the letter is annexed a note in the form of clarification and justifiction. Reliance is placed on this document and particularly on the portion at pages 234 to 236 of the paper book. The documents says that in Master Plan for the Ghaziabad Development Area, an area of about 2880 acres was reserved for recreational activities and this was incorporated as such in the NCR plan. Then it says "a land use of a part of this area (1288.0 acres) has been changed to residential use by U.P. Government Gazette notification dated 22.4.1991."...." Out of the total area of 2880 acres proposed in Ghaziabad Master Plan only 1288.0 acres are being now developed as residential. While rest around 1500 acres are still under recreational land-use."...."Of this 1288.0 acres an area of about 328.0 acres is still undeveloped and 125.0 acres is under Village abadi. Hence only about 835.0 acres is actually being developed for residential use and 1920.0 acres is available for recreational use." In between these extracts are given the details of planned regional recreational facilities,

in which at Sl. No. 1 is 'Indirapuram' against which the area shown as 1592 acres. Deducting 1592 from the total area of 2880 acres, the remaining area left is only 1288 acres which is indicated throughout as the area of which the change of land use to 'residential' was made by the State Government. Reading this document as a whole there is no inconsistency therein and the area consistently shown as altered to 'residential' use by the State Government is only 1288 acres and not 1626 acres. Admittedly, the lands of Delhi Auto and Maha Maya are not within this area of 1288 acres. This being so, it is unnecessary to discuss at length the permission for alteration of land use of the smaller area given by the Board under the NCR Act which does not include the respondents' lands.

19. However, reading all the related documents together, it would appear that the NCR Planning Board finally permitted conversion of land-use from 'recreational' to 'residential' at 'Indirapuram' of an area lesser that even 1288 acres confining it only to that part which was shown in Govt. of U.P.'s letter dated 10.3.1992 and its enclosure (P.231-236 of Paper Book) as already utilised for 'residential' use. This area was mentioned as 835 acres only by saying (at page 236) 'only about 835 acres is actually being developed for residential use and 1920 acres is available for recreational use'. The NCR Planning Board, on 3.6.1992 approved the Sub-Regional Plan for U.P. Sub-region (P. 118 of the Paper Book) clearly stating as under :

2. The land use changes made vide Government of Uttar Pradesh Gazette Notification dated 22.4.1991 in respect of Indirapuram at Ghaziabad from 'recreational' to 'residential' use may be confined only to those ??? parts where planning commitments have already been made.

3. Any further major land use change in Ghaziabad may not be effected without consultation NCR Planning Board.

Learned Counsel for the respondents relied on the expression 'planning commitments' in the above extract to support thier modified argument of legitimate expectation, rejected by us earlier. We may add that the expression in the above extract has to be read with the particulars given in Government of U.P.'s letter dated 10.3.1992 wherein (at page 236) that area is reduced clearly from 1288 acres to 835 acres only. Admittedly, the respondents' lands are not even within 1288 acres. It is clear that the NCR Planning Board did not at any time permit the change of land use of lands belonging to Delhi Auto and Maha Maya from 'recreational' to 'residential'. In such a situation there is no foundation for their claim for the permission sought under Section 15 of the U.P. Act for development of their lands and making any constriction therein.

20. The argument of discrimination between the development authority constituted under the U.P. Act and a private coloniser does not arise for serious consideration on the above view. It is the approval of the Board under the NCR Act of conversion of land use to 'residential' of a smaller area and not the larger area including the respondents' lands which results in this consequence. Unless the approval of the Board can be successfully assailed, this point does not merit any serious

consideration. This point was neither urged before the High Court nor relied on for allowing the writ petitions. Even before us there is no direct challenge to the same. Moreover, assailing the approval of conversion of land use of a part of that area by the Board under the NCR Act would not benefit the respondents by giving them the same approval. We do not find any merit in the challenge made on behalf of the respondents on the basis of Article 14 of the Constitution.

21. For the aforesaid reasons these appeals are allowed with costs. The impugned judgments of the High Court are set aside resulting in the dismissal of the two writ petitions, namely, Writ Petition No. 16382 of 1992 - Delhi Auto & General Finance Pvt. Ltd. v. State of U.P. and Anr., and Writ Petition No. 25461 of 1992 - Maha Maya General Finance Co. Ltd. v. State of U.P. and Anr. The appellants are to get the costs form respondent No. 1. Costs fixed at Ra. 10,000 in each appeal.