

Kendriya Karamchari Sahkari Grih ... vs New Okhla Industrial Development ... on 28 October, 1987

Equivalent citations: 1988 AIR, 1 1988 SCR (1) 662, AIR 1988 SUPREME COURT 1, 1988 (1) SCC 63, 1987 ALL. L. J. 1429, 1988 (1) LANDLR 226, 1988 21 REPORTS 42, (1987) 4 JT 194 (SC), 1987 5 JT 194, 1988 UPLBEC 86

Author: B.C. Ray

Bench: B.C. Ray

PETITIONER:

KENDRIYA KARAMCHARI SAHKARI GRIH NIRMAN SAMITI LTD. &ANR.

Vs.

RESPONDENT:

NEW OKHLA INDUSTRIAL DEVELOPMENT AUTHORITY & ORS.

DATE OF JUDGMENT 28/10/1987

BENCH:

RAY, B.C. (J)

BENCH:

RAY, B.C. (J)

VENKATACHALLIAH, M.N. (J)

CITATION:

1988 AIR 1 1988 SCR (1) 662

1988 SCC (1) 63 JT 1987 (4) 184

1987 SCALE (2) 856

ACT:

U.P. Industrial Development Act, 1976: Secs. 3, 6, 8 and 12-New okhla Industrial Development Area-Development of Acquisition of lands owned by Group Housing Societies-G.O. dated 9.4.1980-Nature and effect of-Lands of Cooperative House Building Societies not to be acquired 'as far as may be'-Whether directory/mandatory-Building Bye-Laws 1977-New Okhla Industrial Development Authority Refusal of permission for development of land of Housing Society-Validity of.

HEADNOTE:

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The U.P. Industrial Development Act, 1976 was enacted to provide for the constitution of an Authority for

development of certain areas in the State into industrial and urban township. By a notification dated 17.4.1976 the "New Okhla Industrial Development Authority was established and "New Okhla Industrial Development Area" was declared.

New Okhla Industrial Development Authority made the Building bye-laws, 1977, and the Authority in 1978 prepared a plan wherein the land of the Society was earmarked as 'low density residential area'.

The appellant-Society submitted an application on March 14, 1978 with a plan for approval and permission to develop its land. By letters dated 12th June/3rd July, 1978 and 22.11.1978, Respondent No. 1 intimated the appellants that permission had been refused for development of the land and that the entire land of the Society had not been acquired.

The appellants filed a writ petition before the High Court, assailing refusal of permission without recording proper and germane reasons, and praying for direction to respondents not to acquire the lands belonging to the Society, and to permit its development according to the lay out plan submitted by it.

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The High Court granted an interim order of stay of dispossession.

During the pendency of the writ petition a G.O. dated 9.4.1980 was issued intimating that the Government had decided that the lands acquired by those Co-operative House Building Societies, which satisfied the conditions laid down therein should not be acquired as far as may be.

The appellants' representation for reconsideration of the matter in the light of the above Government order was rejected, on the ground that the G.O. was an administrative instruction and could not be construed as mandatory, that the Government's power to acquire land for public purposes under the Land Acquisition Act, 1894 was not prohibited, and that the object of the Act, to ensure planned development of the area for industrial and urban township would be frustrated, if individual societies were permitted to develop their lands themselves.

The High Court dismissed the writ petition holding that the Government's orders dated July 27, 1967 and April 9, 1980, having not mentioned the Chief Executive officer, New Okhla Industrial Development Authority, the intention of the State Government was to exclude the Chief Executive officer, New Okhla Industrial Development Authority from its application, that on the basis of these G. Os. the appellants could not claim exemption from acquisition by New Okhla Industrial Development Authority under the provisions of U.P. Act VI, 1976.

Aggrieved by the order of the High Court, the appellants filed a special leave petition before this Court, and also a writ petition challenging the validity of the change made by New Okhla Industrial Development Authority during the pendency of the Writ Petition in the Master Plan

by showing the appellant's land as Regional Park.

Dismissing the appeal by special leave, and the writ petition,

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HELD: 1.1 The sole object of the 1976 Act is to develop certain areas in the State into industrial and urban township in a planned way by the Authority constituted under the Act and as such the cooperative societies cannot be permitted to develop their lands for the purpose of building houses haphazardly. This will frustrate the entire object of the Act. The Government has power to acquire land for public purposes under the Land Acquisition Act, 1894. [669B-D]
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1.2 The application of the appellant-Society was duly considered and the Authority refused permission on their application for relevant and cogent reasons. [670B]

1.3 The G.O. dated 9.4.1980 merely states that the lands of Co-operative House Building Societies are not to be acquired "as far as may be". Hence the order is only directionary and cannot be considered to be mandatory. Moreover, this order is not a statutory one, being not issued under any statutory provision. It is at best an administrative instruction. It does not create an express bar on the power of the Government to acquire the land for public purposes under the Land Acquisition Act. [669A-B]

1.4 The Authority, which has been given the power under the Statute to prepare the development plan demarcating therein the sites to be developed for development of industrial, residential and other purposes for planned development of the industrial and urban townships, has necessarily the implied power to alter or modify the Plan showing the land meant for the particular user. Change of user of the land by altering the plan is not arbitrary because it is for the Authority to determine and demarcate the site to be developed and used for a particular purpose to secure planned development of the industrial township. The plan was based on the recommendations of the Expert Committee which were approved by the State Government. The alteration in the user of appellant's land does not lead to any hostile discrimination. [670E-H]

1.5 A proposal for acquisition of 325-353 acres of land in the village in which the appellant Society's land is situated was sent to the Collector, who agreed to it and after approval from Government, sent a notification under section 4(1) of the Land Acquisition Act to Government Press for publication. A Draft for Rs. 70 lakhs, being the approximate amount of 20% of compensation, has been sent to Collector by the Authority. In the circumstances, it cannot be said that no steps have been taken by the New Okhla Industrial Development Authority to acquire the Society's land. The question of allotment of alternative sites to the members of the society does not arise as the lands of the society have not yet been acquired. [671C-F]

JUDGMENT :

ORIGINAL/CIVIL APPELLATE JURISDICTION: Writ Petition No. 557 of 1983 etc. (Under Article 32 of the Constitution of India) V.M. Tarkunde, A.K. Sen, S. Markandeya and N.D.B. Raju for the Petitioners.

S.N. Kacker, Raju Ramachandran and Mrs. Shobha Dikshit for the Respondents.

The Judgment of the Court was delivered by B.C. RAY, J. This civil appeal by special leave is directed against the judgment and order passed by High Court, Allahabad dismissing the writ petition filed by the Co-operative Housing Society formed as Kendriya Karamchari Sahkari Grih Nirman Samiti Ltd. and its President challenging the order of refusal of permission to the lay out plan submitted by them to the New Okhla Development Authority to be hereinafter referred in brief as NOIDA and also refusing to exempt the lands belonging to the Society falling within NOIDA Area from acquisition. The facts giving rise to this appeal are shortly as follows:-

The U.P. Industrial Development Act, 1976 was enacted with the object to provide for the constitution of an Authority for development of certain areas in the State into industrial and urban township. This Act came into operation from April 16, 1976. A notification No. 4157- HX/XVIII-II dated 17.4.1976 was published constituting under Section 3 of the said Act the "New Okhla Industrial Development Authority" and declared the industrial development area comprising of 37 villages mentioned in the schedule to be "New Okhla Industrial Development Area". In the said schedule item No. 16 referred to village Chhalera Bangar wherein the Society's lands are situated. Section 6(2) of the said Act empowers NOIDA to acquire land in the industrial development area either by agreement or through proceedings under the Land Acquisition Act, 1894. It also confers powers on the Authority to prepare a plan for the development of industrial development area and to lay down the purpose for which a particular site on plot of land shall be used namely for industrial, commercial or residential purpose or any other specified purpose in the area. Section 8 confers power on the Authority to issue directions in respect to matters specified therein for erection of building. The NOIDA made certain directions under the nomenclature of Building bye-laws, 1977. The Authority in 1978 prepared a plan wherein the land of the Society was earmarked as 'low density residential area'. The ap-

pellant society submitted an application on March 14, 1978 with plan for approval and permission to develop the land to NOIDA in accordance with the provisions of Building Bye-laws. The Society on June 14, 1978 has sent a letter to NOIDA intimating that no order was made in respect of the development plan submitted by them till that date and if no order is made by the Authority within a period of 20 days of this letter the Authority shall be deemed to have permitted the proposed work in accordance with Bye-law No. 8.2 framed by the Authority. On 12th June/3rd July,

1978 the respondent No. 1, the Chief Executive officer, NOIDA intimated the appellant No. 2, President of the Society that permission has been refused for development of the land by the Society according to the plan submitted as it is the function of the Authority to prepare plan for development of its industrial development area, to demarcate and develop sites for industrial, commercial and residential purposes according to the plan and to provide amenities for planned development of the area. On 22.11.1978 NOIDA replied to the letter of the appellants dated 19.11.1978 stating that the entire land of the Society has not been acquired. The area falling within the urbanised limits is to be acquired to check the unauthorised development on either side of the DSC road and to have land for widening of the DSC. For these reasons, it is not possible to approve the lay out plan submitted by the appellant society.

The appellants on April 28, 1979 filed a writ petition before the High Court, Allahabad assailing the refusal of permission as contained in letters dated 3.7.1978 and 22.11.1978 without recording proper and germane reasons and praying for a writ or order or direction quashing the said letters and for a suitable writ or order or direction commanding the respondents not to acquire the lands belonging to the Society. The petitioners further prayed for issue of a writ or order or direction directing the respondent No. 1, NOIDA to permit the Society to develop its land according to lay out plan submitted by it.

On 3.7.1979, the High Court granted an interim order of stay of dispossession. By order dated 23.8.1979, the Court directed that the said interim order would continue until further orders.

During the pendency of the writ petition the G.O. No. 1634/37-2-8a29 H.B./79 dated 9.4.1980 has been issued intimating the authorities mentioned therein that the Government after reconsidering the question of acquisition of the lands acquired by the Co- operative House Building Societies has decided that it is not desirable that the lands of such Co-operative House Building Societies are acquired by the U.P. Housing and Development Board, Development Authorities etc. It has also been stated therein that keeping in view the above factors the lands of the Co-operative House Building Societies who satisfy the conditions laid down therein should not be acquired as far as may be. The petitioner made a representation to the Chief Executive officer, NOIDA to take into consideration the above government order and to sanction the plan for development submitted by them. A supplementary affidavit has also been filed in the writ petition. The High Court on 22.12.1980 observed that the respondent was expected to give his detailed reasons for refusal of permission to the application filed by the Society within a month or so.

Pursuant to the above order the Chairman and Chief Executive officer, NOIDA by its letter dated 23.1.1981 intimated the President of the Society that it was not possible to sanction the Society's lay out plan. NOIDA published a notification in Newspapers including "Nav Bharat Times" in its issue dated June 4, 1980 stating that there is total prohibition of sale or purchase of land acquired in favour of NOIDA and any construction work is totally prohibited. It was further mentioned that in the notified area the building construction must be in accordance with the rules made and directions

issued by NOIDA and not otherwise.

On August 13, 1981, NOIDA sent a letter to the President of the petitioner Society stating that the o dated 9.4.1980 is an administrative instruction and it cannot be construed as mandatory. Upon its basis it cannot be said that the Government's power to acquire land for public purposes under the Land Acquisition Act, 1894 is prohibited. The object of the Act is to ensure planned development of the Area for industrial and urban township. If individual societies are permitted to develop their lands themselves there shall be chances of haphazard growth in the area and it will not be possible to ensure a proper industrial and urban township in the different sectors according to Master Plan. For these reasons, it is not possible for the Authority to permit the Society to develop its land for residential purposes. The application has therefore, been rejected.

After hearing the parties the said writ petition was dismissed with costs by the High Court, Allahabad holding inter alia that the H Government orders dated July 27, 1967 and April 9, 1980 having not mentioned the Chief Executive officer, NOIDA, the intention of the State Government was to exclude the Chief Executive officer, NOIDA from its application, that on the basis of these G.Os. the petitioners could not claim exemption of their land from acquisition by NOIDA under the provisions of U.P. Act VI of 1976, that the permission was clearly refused by NOIDA to the plan submitted by the petitioner with his application for permission and there was no scope for deemed sanction. It was further held that there was no promissory estoppel.

The appellants feeling aggrieved by this judgment and order preferred the instant application for special leave to appeal before this Court. During the pendency of the writ petition before the High Court NOIDA made a change in the Master Plan by showing the area in which petitioner's land is situated as agricultural land i.e. Regional Park. The appellants filed a writ petition No. 557 of 1983 in this Court challenging the validity of the plan and for a writ or order or direction for quashing the revised "Master Plan".

From the arguments advanced by the learned counsels for the parties the following points arise for consideration of this Court:-

The first point urged before this Court is that the G.O. dated July 27, 1967 and the G.O. dated 9.4.1980 which was in continuation of the earlier G.O. dated 27.7.1967 imposes a ban on NOIDA to acquire the land of the Co- operative House Building Societies who satisfy the conditions mentioned in the G.O. dated 9.4.1980. It has been submitted that under section 12 of the said Act No. IV of 1976, the provisions of certain sections including Section 41 of the U.P. Urban Planning and Development Act, 1973 as re-enacted and modified shall mutatis mutandis apply to the Authority. Clause (c) of Section 12 specifically states that any reference to the Vice-Chairman of the Authority shall be deemed to refer to the Chief Executive officer of the Authority. The said Government order will apply to NOIDA and the lands of the appellant society which is a co-operative house building society, cannot be acquired in view of the said Government orders. This contention is not sustainable for the reasons stated hereinafter. Under Section 12(c) of the said Act the Government order is to be

deemed to have been addressed to the Chief Executive officer, NOIDA as the same was addressed to all Vice-Chairmen, Development Authorities, U.P. Section 41 enjoins the Authorities to comply with the directions contained in the Government order. The G.O. dated 9.4.1980 merely states that the lands of Co-

operative House Building Societies are not to be acquired "as far as may be". This Government order cannot be considered to be mandatory but directory in as much as it merely says that the lands of co-operative house building societies should not be acquired as far as may be. Moreover this order is not a statutory one being not issued under any statutory provision. It is at best an administrative instruction. The contention that this order creates an express bar on the power of the Government to acquire lands of co-operative house building societies is without any substance. The sole object of the 1976 Act is to develop certain areas in the State into industrial and urban township in a planned way by the Authority constituted under the Act and as such the co-operative societies cannot be permitted to develop their lands for the purpose of building houses haphazardly. This will frustrate the entire object of the Act. The contention that the lands of the societies are exempted from acquisition cannot be sustained being devoid of any merit. The Government has power to acquire land for public purposes under the Land Acquisition Act, 1894.

It has been urged that in accordance with bye-law 5.2 framed by the Authority under Section 8 of the said Act, the appellant society submitted an application on March 14, 1978 for development of their land to the Authority to accord sanction to the lay out plan and to permit the Society to develop the land. As no order was communicated the appellants sent a notice to the Authority drawing the attention of the Authority that if no order was made within 20 days of this letter then the Authority would be deemed to have permitted the proposed work. This letter was dated 14.6.1978 and the Authority by its letter dated 3.7.1978 intimated the appellant society that since NOIDA has been empowered to prepare a plan for planned development of its industrial development area by demarcating sites for industrial, commercial and residential purposes according to plan and to provide for infrastructures for these purposes to secure planned development, permission cannot be granted to the application for development of the area by the society. The Deputy Chief Executive officer also sent another letter to the President of the Society on 22.11. 1978 intimating that the Society had already been informed that the case submitted by it for sanction of the scheme for development of land in village Challera Bangar cannot be entertained. Again pursuant to the order of court made in writ petition No. 4220 of 1979, the respondent Authority by letter dated August 13, 1981 intimated the Society the detailed reasons for refusal of permission to the plan submitted by the appellant society to develop its land as it will frustrate planned development of the industrial development area into industrial and urban townships. The contention of the appellants that their application for permission to develop has been rejected on extraneous consideration and not for germane reasons is not at all tenable. The application was duly considered and the Authority refused permission on their application for relevant and cogent reasons.

It has been contended that in the first Master Plan the lands of the appellant's society were shown to be situated in low density residential area. This Plan has been altered unilaterally by showing it as agricultural land. Thereafter this land was shown as Regional Park in the Master Plan. It has been submitted that this alteration or modification in the Plan has been made with a view to defeat the

petitioners' claim for immunity from acquisition. This alteration in the Plan is arbitrary in as much as the appellants have not been given any opportunity to file objections against such alteration. In no other area the NOIDA Authority has altered its plan. The appellants have been singled out for hostile discrimination contrary to Article 14 of the Constitution. Under Section 6(2) of the Act the Authority has to prepare a plan for the development of the industrial development area and to demarcate and develop sites for industrial, commercial and residential purposes, to lay down the purpose for which a particular site or plot of land shall be used namely for industrial, commercial and residential purpose or any other specified purpose in such area. The Authority prepared the Plan showing therein the sites for residential and other purposes. The Authority which has been given the power under the Statute to prepare the development plan demarcating therein the sites to be developed for development of industrial, residential and other purposes for the planned development of the industrial and urban townships has necessarily the implied power to alter or modify the Plan showing the land meant for the particular user. The submission that the change of user of the land by altering the plan is arbitrary is without any substance in as much as it is for the Authority to determine and to demarcate the site to be developed and used for a particular purpose to secure planned development of the industrial township. It appears from the counter affidavit filed on behalf of the respondents to the writ petition that the Plan was formulated and it was approved by the Authority in 1979. The Plan was based on the recommendations of the Expert Committee and the recommendations were approved by the State Government. The other submission that this alteration in the user of appellants' land in Plan leads to hostile discrimination is also without any substance as we have held herein before that the G.O. dated 9.4.1980 does not in any way create any embargo on the power of the Government to acquire the land for public purposes under the Land Acquisition Act.

It has been submitted in this connection that the Authority (NOIDA) has not taken any steps to acquire their land and also has not taken any steps to provide their members with alternative sites. This submission also has got no merit in as much as the appellants filed a writ petition before the High Court on April 28, 1979 praying for a writ or order or direction commanding the respondents not to acquire the land belonging to them. An interim order of stay was obtained from the Court and it continued till the dismissal of writ petition. A special leave petition out of which this appeal arises has been filed and an order of stay of dispossession has been obtained from this Court. The stay is continuing. It is pertinent to mention in this connection that a proposal for acquisition of 325.353 acres of land in village Challeria Bangar, Pargana and Tehsil Dadri, District Gaziabad was sent by NOIDA to the Collector, Gaziabad on 11.2.1985. The Collector after examining the proposal agreed to the same and requested the Government, Industries Department to issue notification under Sections 4, 5 and 17 of Land Acquisition Act, 1894. The Government however, felt that there was no necessity to issue notification under Section 17 of the Land Acquisition Act. Accordingly, notification under section 4(1) was prepared and sent to Government Press, Lucknow on 11.3.1987. The Authority has sent a sum of Rs. 70 lakhs by draft to the Collector being 20% of the approximate amount of compensation. On 3 1.7.1987 NOIDA sent a letter requesting the Government Press to expedite publication of Notification issued by the Collector, Gaziabad. This is evident from the counter- affidavit of Tehsildar, Udai Singh. In these circumstances it is futile to contend before this Court that no steps have been taken by NOIDA to acquire appellants' land. The question of allotment of alternative sites to the members of the Society does not arise as their lands have not yet

been acquired.

For the reasons aforesaid, the appeal and the writ petition are dismissed with costs.

N.P.V.

Appeal & Petition dismissed.