

New Okhla Industrial Development Authority (Noida) Vs. Kendriya Karamchari Sehkari G.N. Samiti & Ors.

Civil Appeal No. _____ of 2022 @ Special Leave Petition (C) No. 25485 of 2014
2022-01-01 | Indira Banerjee · K.M. Joseph
Repository ID: F2J-C-1980

Full judgment text

New Okhla Industrial Development Authority (Noida) Vs. Kendriya Karamchari Sehkari G.N. Samiti & Ors.

[Civil Appeal No. _____ of 2022 @ Special Leave Petition (C) No. 25485 of 2014]

[Civil Appeal Nos. _____ of 2022 @ Special Leave Petition (C) Nos. 32861-32862 of 2017]

[Civil Appeal No. _____ of 2022 @ Special Leave Petition (C) No. 25488 of 2014]

[Civil Appeal No. _____ of 2022 @ Special Leave Petition (C) No. 25487 of 2014]

Uday Umesh Lalit, CJI

1. Leave granted.

2. The present appeals at the instance of New Okhla Industrial Development Authority ('NOIDA', for short) take exception to the interim order dated 19.11.2013 passed by the High Court of Judicature at Allahabad ('the High Court', for short) in Civil Miscellaneous Writ Petition Nos. 58555 of 2005, 58702 of 2005 and 61630 of 2005; and in First Appeal No.790 of 2008.

Said Writ Petitions were filed by Kendriya Karamchari Sahkari Grih Nirman Samiti Limited ('Respondent-Society', for short) challenging the orders passed in Ceiling proceedings holding that there were excess lands in the hands of said Respondent-Society which vested in the State.

3. Certain parcels of land were purchased by Respondent-Society from some individual land holders. According to the authorities, the transfers in favour of Respondent-Society were illegal on two counts.

i) Such transfers were effected in violation of the provisions of Section 154 of the U.P. Zamindari Abolition and Land Reforms Act, 1950 ('U.P. Act', for short) and, therefore, the lands vested in the State Government.

ii) The second objection pertains to the applicability of Ceiling Law in terms of which any holding greater than 12.5 acres would vest in the State Government.

4. The submission on behalf of Respondent-Society, on the other hand, was that in keeping with the recommendations made by Khodaiji Committee constituted by the concerned respondents, whenever any land held by a Cooperative Society was acquired by NOIDA, 40% of the acquired land would be allocated to the members of such Cooperative Society by way of plots. In the exercise so undertaken, 1754 persons, who were members of the Respondent-Society were found eligible and land admeasuring 3,23,650 sq.ft. was directed to be allocated by NOIDA to said 1754 members. Accordingly, allotment letters were also issued by NOIDA in favour of said 1754 members, who, in turn, deposited Rs.19 crores constituting 40% towards down payment, followed by three equal half yearly instalments along with interest totalling to Rs.17 crores. Thus, Rs.36 crores in all were deposited by said 1754 members.

5. There were numerous complaints about fake membership of Respondent-Society. An enquiry was therefore undertaken by Dr. Prabhat Kumar, Deputy Chief Executive Officer of NOIDA, who recommended cancellation of allotment made in favour of said members of Respondent-Society. Consequently, after issuance of show cause notice dated 08.07.1997, NOIDA issued letter dated 05.05.1998 cancelling all such allocations. This, in turn, resulted in a challenge which was initially accepted by the High Court vide its decision in Writ Petition No.39842 of 2001. The decision was, however, reversed by this Court in New Okhla Industrial Development Authority vs. Kendriya Karamchari Sahkari

Grih Nirman Samiti. It was held by this Court that the High Court could not have gone into issues of fact in Writ Jurisdiction.

6. Around the same time, in three Ceiling Proceedings initiated concerning lands held by Respondent-Society, it was concluded by the authorities that there were excess lands which vested in the

State Government. Three Writ Petitions were, therefore, filed by Respondent-Society before the High Court being Writ Petition Nos. 58555 of 2005, 58702 of 2005 and 61630 of 2005 challenging said decisions rendered under the Ceiling Law.

7. A Civil Suit being Original Suit No. 273 of 2006 was also filed by Respondent-Society as a sequel to the decision rendered by this Court in NOIDA case¹, challenging the letter dated 05.05.1998 issued by NOIDA cancelling the allocations made in favour of said 1754 members. Said Suit was allowed by the Trial Court setting aside the letter dated 05.05.1998 issued by NOIDA. It was, however, held that the Respondent-Society could not have acquired any land after 27.02.1988 i.e., after the issuance of Notification for acquisition. It was, therefore, held by the Trial Court that no right with respect to lands purchased by the Respondent-Society after 27.02.1988 could arise in favour of the Respondent-Society.

This judgment of the Trial Court is under challenge in First Appeal No.790 of 2008 at the instance of NOIDA in the High Court. Cross objections filed by Respondent-Society in the Appeal are numbered as First Appeal No. 412 of 2013.

8. In these circumstances, all the aforesaid three Writ Petitions and First Appeal No. 790 of 2008 came up before the Division Bench of the High Court, which by its interim Order dated 19.11.2013 dealt with some of the issues as under:-

"..... Therefore, we have no hesitation to hold that all transfers affected between 1958 till the introduction of U.P. Act No. 35 of 1976, in violation of Section 154, in favour of a cooperative society by Bhumdihar are not to be treated to be void and the land does not vest in the State Government automatically. Only a suit for ejectment from the land covered by such provisions in violation of Section 154 could be maintained by the Gaon Sabha for eviction. Our finding is supported by Section 166, as it then stood, which declared the transfers by Sirdar and Asami in violation of the Act, 1950 only as void. The transfers affected by bhumidhar in terms of the Act had not been so declared as void under Section 166.

We further record that for the period covered by U.P. Act No. 37 of 1958 till introduction of U.P. Act No. 20 of 1982 i.e. 3rd June, 1981, unless there was a declaration by the Assistant Collector in exercise of powers under Section 163 declaring the transfers to be void being contrary to Section 154 (1), the land shall not be deemed to have vested in the State Government under Section 163 (2). No declaration of the Assistant Collector declaring any of the sale-deeds executed in favour of the petitioner Kendriya Karamchari Sahkari Grih Nirman Samiti Ltd. during the period when the provisions of U.P. Act No. 35 of 1976 were in force, has been brought to our notice nor it is the case of the State Government or the NOIDA that any such orders were ever issued by the Assistant Collector, at least there is no material on record in that respect. Therefore, we have no hesitation to record that the land in respect of sale-deeds which have been executed in favour of the petitioner Kendriya Karamchari Sahkari Grih Nirman Samiti Ltd. between 13th November, 1976 to 3rd June, 1981 in violation of Section 154 as alleged by the State Government and the NOIDA, shall continue to be properties of the housing society and shall not be deemed to have vested in the State Government.

So far as the transfers affected between 3rd June, 1981 to 27th February, 1988 are concerned, there is an issue between the parties as to whether retrospective introduction of the "cooperative society" within the meaning of a "person" under Section 154 is valid or not. It is submitted that settled rights cannot be unsettled by introduction of a provision with retrospective effect. We shall examine this issue at the appropriate stage and no final opinion is being expressed by us at this stage.

We further finds that in respect of sale-deeds executed subsequent to 27th February, 1988, no benefit has been granted to the housing society by the Civil Judge (Senior Division), Gautam Budh Nagar under the order impugned in the first appeal. The merits of the cross-appeal shall be considered at the stage of hearing of the first appeal and the issues in that regard are also left open to be examined then.

Since under the orders subject matters of challenge in Writ Petition No. 58555 of 2005, Writ Petition No. 58702 of 2005 and Writ Petition No. 61630 of 2005, the aforesaid legal aspects have not been examined. The facts with regard to the date of sale-deeds subject matter of consideration and the law applicable on that date as noticed above, needs to be considered afresh.

It has become necessary for us to obtain a report from the District Magistrate, Gautam Budh Nagar to disclose the exact date of the sale-deeds giving rise to Case Nos. 22 of 1994, 29 of 2004 and 43 of 1992 subject matter of challenge in writ petition no. 58702 of 2005, writ petition no. 61630 of 2005 and writ

petition no. 58555 of 2005 respectively. The District Magistrate shall summon the original records and shall submit a report with regard to the exact date of the sale-deeds subject matter of proceedings of the aforesaid three cases separately. He shall also indicate as to whether in light of what has been recorded above, any suit was filed by the Gaon Sabha for eviction under Section 167 as per the provisions of U.P. Act No. 37 of 1958 or any declaration was issued by the Assistant Collector under Section 163 referable to the provisions as were introduced under U.P. Act No. 35 of 1976 in respect of the said land covered by the sale-deeds of the relevant period or not. If any such suit/declaration had been made, a copy of the plaint/order of declaration shall be enclosed by the District Magistrate along with his report. The report shall be submitted by 19th December, 2013."

9. The aforesaid order is presently under challenge in these appeals.

10. Thus, the challenge to the determination that there were lands in excess of ceiling limits and that said excess lands vested in the State Government, is still under consideration in aforesaid three Writ Petitions in the High Court. Civil Court has already held that the cancellation of allotments made by NOIDA in its communication dated 05.05.2008 is invalid and incorrect. The First Appeal arising therefrom is also pending consideration before the High Court.

11. In the circumstances, when the matters were taken up for hearing, an attempt was made to see if the parties could arrive at an understanding and settle the matter. With this view following observations were made by this Court in its Order dated 23.08.2021.

"Mr. Kavin Gulati, learned Senior Advocate appearing for the Kendriya Karamchari Sehkari Grih Nirman Samiti ("the Society", for short) submits inter alia:

(a) The extent of land acquired by the Society prior to 03.06.1981 was 99.28 bigas though after 03.06.1981 the holding of the Society as on 27.02.1988 had risen to the level of 202.04 bighas.

(b) The Society is willing to restrict its entitlement in respect of the holding of 99.28 bighas as on 03.06.1981.

(c) Going by the Khodaiji Committee Report in terms of which 40% of the developed land would be made over, the entitlement of the Society will translate to 39.71 bighas = 24.82 acres.

(d) Though the initial membership of the Society was stated to be 2149 members, after process of verification and re-verification the list of 1053 members was finalized as disclosed in letters dated 08.07.2019 and 27.02.2021 addressed to the Assistant Registrar (Co-operatives).

Even out of 1053 members 76 members had encashed their cheques while 133 persons had sold their interest in favour of transferees.

(e) Thus as against the entitlement of 24.82 acres, the interest of 977 members may need to be taken care of.

Mr. Ravindra Kumar, learned advocate appearing for NOIDA on the other-hand submits:

(a) Initially, allotment letters were issued to 1754 members of the Society, based on the premise that the entitlement of the Society governed by Khodaiji Committee formula would be in respect of 299 bighas.

(b) However, after certain complaints were received, Prabhat Kumar Committee was constituted which went into the issues of membership as well as holding of the Society. Various show cause notices were issued to the concerned persons whereafter the allocation made to 1754 persons was cancelled.

(c) 133 persons having sold away their interest without taking due permission from NOIDA, their transferees cannot claim any benefit. Thus only 844 members of the Society would be considered for appropriate allocation/allotment, in case the submission of Mr. Gulati is to be accepted.

Mr. Tanmay Agrawal, learned Advocate appearing for the State submits that if the entitlement is restricted to 99 bighas which the Society has purchased upto 03.06.1981, prima facie, the State would not have any objection.

In order to give a quietus to the instant matter, we call upon NOIDA as well as State of U.P. to make their position clear by filing appropriate affidavits within three weeks from today in respect to the submissions advanced by Mr. Kavin Gulati, learned Senior Advocate.

In the affidavit to be filed on behalf of NOIDA, it shall also be indicated;

(1) Will it be possible for NOIDA to allot the land which has been set-apart for the society in Sectors 42, 43 and nearby Sectors of NOIDA to be used for Multi-storeyed Group Housing Project.

(2) If the very same land cannot be used for such Project, whether any other suitable land can be made available to the Society.

(3) If interest of 844 members is to be taken care of, what shall be the maximum extent of land which must be earmarked for the Society.

Let appropriate affidavits be filed within three weeks.

The Society shall have opportunity to respond to these affidavits within a week thereafter."

12. Accordingly, an affidavit has been filed on behalf of the NOIDA submitting as under: -

"(i) Subject to procedural formality at the level of the Petitioner and the orders, which this Hon'ble Court may please to pass, the Petitioner Authority can carry out a relaying of a part of Sector 43, so as to demarcate and develop a Group Housing plots in the said Sector, wherein multi-storeyed flats can be constructed for allotment and construction by and for the Members of the said Samiti, at their own cost and subject to obtaining sanction of the Building Plan from the Petitioner in accordance with law.

(ii) In view of the fact that the Samiti is agreeable that the total number of Members, who are eligible for allotment of the multistoreyed flats to be constructed is now limited to 844, which suffice it to say that for construction of multi-storeyed flats having an area of about 1800 sq. ft. per flat, the area of the Group Housing plot, that is required is about 40,000 sq. mtrs.

(iii) It is respectfully submitted that in case the submissions made in Sub Para (i) and (ii) of para 3 above is approved by this Hon'ble Court, then all claims whatsoever by the said Samiti and / or any one claiming to be its member shall stand extinguished and no one claiming through the said Samiti shall be entitled to seek allotment, either on individual basis or for another Group Housing plot or for construction of flats in excess of 844."

It is, therefore, clear that NOIDA is agreeable to re-lay part of Sector 43 and to make allotments of multi-storeyed flats in favour of 844 persons; with each of those flats admeasuring about 1800 square feet.

An appropriate area can thus be carved out from Sector 43 of NOIDA and provision can be made for multi-storeyed complex as suggested in the affidavit. As the submission of Mr. Kavin Gulati, learned senior counsel, which was recorded in the order dated 23.8.2021 would show the claim was restricted to 977 members. Further, out of said 977 members, 133 persons had sold away their interest without taking due permission from NOIDA and as such, the transferees of said 133 persons, according to NOIDA, cannot lay any claim.

13. The litigation in the instant case started way back in 1990s and since then the matters have been pending in Courts of law. Three writ petitions and a first appeal are still pending consideration before the High Court. In the fitness of things, in our considered view, the entire controversy can be set at rest on the understanding that 844 members of the Respondent-Society shall be provided with apartments, admeasuring about 1800 square feet, as stated by NOIDA in its affidavit filed pursuant to the order dated 23.8.2021 passed by this Court. This direction will not only give quietus to the pending litigation between the parties but will also provide homes to said 844 persons and satisfy their long-standing needs.

14. In the premises, we exercise our jurisdiction and power to do complete justice in the matter and direct NOIDA to extend to said 844 persons the benefit, as indicated in the affidavit filed on behalf of NOIDA. Needless to say that the price of said apartments shall be fixed by NOIDA purely in accordance with its extant policy and the applicable norms. The list of said 844 persons shall be furnished by Respondent-Society within two weeks from today under an authenticated certificate by Respondent-Society. Such list shall be taken to be final and conclusive and consequential exercise shall be undertaken by NOIDA within three months and appropriate allotment letters be issued to the concerned 844 persons. Upon issuance of such allotment letters, Writ Petition Nos. 58555/2005, 58702/2005 and 61630/2005; and First Appeal No. 790/2008 pending before the High Court, shall be withdrawn by the concerned parties and all claims raised by Respondent-Society or could be raised by anyone claiming under Respondent-Society, shall stand extinguished.

15. At this stage we must also deal with the claim of 133 persons who have acquired by transfer, the interest of the erstwhile members. NOIDA shall look into their claims and if satisfied, may grant them similar benefit as would be extended to 844 members.

16. The appeals are, thus, disposed of in aforesaid terms without any order as to costs.

1 (2006) 9 SCC 524 - Civil Appeal No. 1569 of 2004

Source disclosure: Complete sanitized public judgment text retained for research. Official-primary replacement and later-history closure remain pending.

Disclaimer: This material is for general information and legal research. It is not legal advice. Verify current law, the operative order and later history, and consult a qualified professional before acting.