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Court : Allahabad

Decided On : Jul-22-2003

Reported in : (2003)3UPLBEC2049

Judge : M. Katju and ;R.S. Tripathi, JJ.

Acts : [Uttar Pradesh Urban Planning and Development Act, 1973](#) - Sections 41(1) and 41(3); Uttar Pradesh State Control Over Public Corporations Act, 1975 - Sections 2(1); [Constitution of India](#) - Article 226

Appeal No. : Civil Misc. Writ Petition No. 6644 of 1989

Appellant : Ugrasen

Respondent : Ghaziabad Development Authority and ors.

Advocate for Def. : A.N. Bhargava, ;S. Prakash, ;Rajiv Gupta, ;V.K. Jaiswal, ;Pankaj Mithal, ;M.K. Gupta, ;V.N. Sharma, ;H.R. Misra, ;T.P. Singh and ;Rohit Agarwal, Advs. and ;S.C.

Advocate for Pet/Ap. : V.K.S. Chaudhary, ;A.K. Sharma, ;V. Nath, ;Y. Singh and ;S. Singh, Advs.

Disposition : Petition allowed

Judgement :

M. Katju, J.

1. This Writ Petition has been filed for quashing the impugned order dated 27.3.1989 (Annexure-1 to the petition) and for a mandamus directing the respondent Nos. 1 and 2 not to execute the lease deed in respect of the plots in dispute in favour of the respondent No. 3.

2. We have heard learned Counsel for the parties.

3. By the impugned order dated 27.3.1989, the Ghaziabad Development Authority (G.D.A.) has allotted the plots in question in favour of the respondent No. 3 vide Annexure-1.

4. The background of this case is that in 1962 a notification under Section 4 of the Land Acquisition Act was issued for acquiring the land for the purposes of planned development in Ghaziabad. Thereafter, on 24.5.1965 a notification under Section 6 of the Land Acquisition Act was also issued and the land acquisition proceeding became final.

5. In Para 4 of the petition, it is stated that the State Government has laid down a broad policy according to which the land falling within Ghaziabad Municipality was to be acquired. Copy of this policy is Annexure-10 to the rejoinder affidavit in reply to the counter affidavit of respondent No. 3. As per this policy, the landowners were classified in three categories:

(i) those who held an area of less than 2 Acres;

(ii) those having are of more than 2 Acres but less than 20 Acres;

(iii) those having an area of 20 Acres or more.

6. It has been stated in Para 5 of the petition that the petitioner falls within the second category. The land policy has provided that persons belonging in category (i) shall be paid compensation in cash according to the provisions of the Land Acquisition Act, while persons falling in category (ii) shall be given an option either to accept cash compensation or to get back 40% of their land as developed plotted

area after paying the cost of external and internal development. The said 40% of the land was to be given to the landowner on lease for 90 years. The policy also gave the facility of payment by instalments to the landowner of the second and third categories.

7. Various other features of the land policy are mentioned in Paragraphs 6 and 7 of the petition.

8. It is alleged in Para 8 of the petition that the petitioner did not choose to collect money compensation for the acquisition as he was interested in getting 40% of his land as he was in the second category. With this intention the petitioner filed an application on 31.12.1966 with the concerned Authority. It is alleged in Para 10 that the respondent No. 3 under political pressure got some land of the petitioner allotted in his favour. Thereafter the State Government by order dated 12.12.1980 directed the Vice Chairman of the G.D.A. that the petitioner should be given 40% of his own land vide Annexure-2 to the petition. Being aggrieved, the respondent No. 3 filed a Writ Petition No. 4159 of 1980 in this Court and an interim order was obtained which stated that the respondent should not allot the disputed plots to anyone. It may be mentioned that allotment of the disputed plots in favour of the respondent No. 3 was cancelled by the order dated 7.3.1989 (vide Annexure RA-13 to the rejoinder affidavit in reply to the counter affidavit of respondent No. 3) but the same was again allotted by the impugned order dated 27.3.1989 to respondent No. 3. It is alleged that the petitioner alone is entitled to allotment of the disputed plots, as these plots form part of his original holding.

9. In Paragraphs 16 to 19 of the petition it is stated that the petitioner earlier filed a Writ Petition No. 1932 of 1980 to challenge the order dated 12.11.1979 by which the State Government directed the G.D.A. to allot the disputed plots to respondent No. 3. It is alleged by the petitioner that the petitioner withdrew the petition on the assurance given by the G.D.A. that the plot would be allotted to him.

10. When the petitioner came to know that the G.D.A. is going to execute the lease deeds of the plots in question in favour of the respondent No. 3, he made a representation on 3.4.1989 to the Vice Chairman of the G.D.A. vide Annexure-7, but it is alleged that no order has been passed on the same. Being aggrieved this

petition has been filed in this Court.

11. In this case counter affidavits have been filed both by the G.D.A. and respondent No. 3. In Paras 3 and 4 of the counter-affidavit of the G.D.A., it is stated that the land policy was declared by the State Government but it was subject to certain conditions contained in the relevant Government Order vide Annexure CA-1. The claim of the petitioner was alleged to be time barred and hence it was rejected by the G.D.A. against which the petitioner filed a Writ Petition No. 1932 of 1980 which was subsequently withdrawn by him.

12. Thus, it is alleged that the petitioner failed to object within the stipulated time for getting back 40% of the land. It was only after the time limit that he represented twice i.e., in the years 1971 and 1977 claiming to get 40% of the land, and on both occasions the State Government rejected the petitioner's representation.

13. It is alleged that the petitioner made a false allegation that he made an application within time, which was inquired into by the Vice Chairman, G.D.A., and the claim of the petitioner was found to be incorrect and that was reported to the Government.

14. The State Government by order dated 12.11.1979 directed the G.D.A. to make reservation of the plots in dispute in favour of respondent No. 3. The petitioner challenged the order of the State Government through Writ Petition No. 1932 of 1980. The same was dismissed as withdrawn on 6.3.1981 and hence, it is alleged that the order of the State Government dated 12.11.1979 became final.

15. In Para 7 of the counter affidavit, it is stated that the petitioner applied for benefit of the land policy for the first time only on 7.9.1971, which was beyond the stipulated time. In Para 8, it is denied that the allotment in favour of the respondent No. 3 was made under political pressure. It is alleged that in fact the petitioner was given some benefit although he was not entitled to it. The disputed plots have been allotted to respondent No. 3 and the petitioner has no right to claim allotment of the said land. It is stated in Para 17 that the plots in dispute have been allotted in favour of respondent No. 3, and an agreement to that effect has been duly executed and registered. In Para 19, it is stated that the Government directed the

G.D.A. to decide the dispute and accordingly the same has been decided and the G.O. dated 12.12.1980 has been superseded by G.O. dated 8.4.1983 vide Annexure CA-3. In Para 20, it is stated that there is no illegality in the allotment made in favour of respondent No. 3. The petitioner had declined to accept the offer as is obvious from Annexure CA-II and therefore, he has no right to claim the disputed plots and the G.D.A. is at liberty to allot the same to respondent No. 3. In Para 21 it is stated that the claim of the petitioner has been allowed by the State Government under the land policy, and he will be allotted land. However, he cannot claim a particular land of his choice and it is open to the Authority to allot such land subject to availability provided the petitioner deposits the development costs as per the rules, but he has not deposited the same despite requests and reminders.

16. A counter affidavit has also been filed on behalf of respondent No. 3 and we have perused the same. In Para 4(a), it is stated that the fact that the landowner is entitled to 40% of the total land acquired, does not mean that the land should be allotted on the land which is part of the original plots of the owners. The petitioner did not claim the benefit of the land policy for a long time. For the first time in the year 1980 he made a representation claiming the benefit of that land policy. It is alleged that the petitioner made false allegations in 1980 that he had made application dated 31.12.1966 claiming the benefit of the land policy, and an enquiry was held by the Vice Chairman of the G.D.A. who submitted a report to the State Government that it appears that the petitioner made no representation on 31.12.1966, and the entry in the relevant register is dubious. True copy of the report of the Vice Chairman of the G.D.A. is Annexure CA-1.

17. Respondent No. 3 also claimed the benefit of the land policy and he was allotted Plot No. III-N-5/7 to 16 and 25 vide Annexure CA-II. In pursuance of this allotment the respondent No. 3 deposited the sum of Rs. 42,000 and respondent No. 1 executed an agreement with regard to Plot Nos. 25 to 33 in favour of respondent No. 3. The respondent No. 3 also deposited Rs. 1,22,000/- as development charges. Respondent No. 1 without giving the opportunity of hearing to respondent No. 3 cancelled the allotment vide Annexure CA-III. Respondent No. 3 filed a Writ Petition No. 4159 of 1980 in which an interim order was passed

restraining the respondent from allotting the disputed plots to anyone.

18. In Para 4 (d), it is alleged that the petitioner filed an application dated 1.1.1981 requesting that he be allotted plots in Block-N, Sector III, Nehru Nagar, Ghaziabad. The petitioner was allotted plots Nos. 42 to 43 and subsequently he was allotted plots Nos. 36, 38, 39, 44, 46 and 47 by order dated 2.1.1985 vide Annexure-CA-VI. The details are given in Paragraph 4(d) to the counter affidavit of respondent No. 3.

19. In Para 6, it is stated that the petitioner never filed an application dated 31.12.1966, and the said application is a forged document.

20. In Para 17 it is stated that the petitioner's claim is made out of total area 2796.98 sq. meters under the Land Policy and he has already been allotted an area of 2210.97 sq. meters. It is denied that he has right to claim the plot allotted to respondent No. 3. It is stated that petitioner has no right to claim Plots Nos. III, 5, 7 to 16 and 35 after giving up all his right by the application dated 1.1.1981.

21. We have also perused the rejoinder affidavit in this case. On the facts of this case, we are of the opinion that this petition deserves to be allowed.

22. The petitioner has prayed for enforcing the Government Order dated 12.12.1980 vide Annexure-2 to the petition and the Government Orders dated 27.2.1981 (Annexure-16 to the rejoinder affidavit in reply to the counter affidavit of respondent No. 3) and the order dated 8.4.1983 (Annexure-CA-III to the counter affidavit of G.D.A.). The Government Orders dated 27.2.1981 and 8.4.1983 merely reiterate the G.O. dated 12.12.1980. A perusal of the G.O. dated 12.12.1980 (Annexure-2 to the petition) shows that the said G.O. notices that the respondent No. 3 Manohar Lal as well as his brother Sundar Lal had each been allotted 8 plots in Nehru Nagar, Sector-III already. Out of the remaining plots the claim of the petitioner Ugrasen should be satisfied first and the remaining plots should then be auctioned. The G.O. directed that the petitioner should be given allotment on his own original land as per the land policy. This same directive was reiterated in subsequent GO. of 27.2.1981 and 8.4.1983.

23. After the G.O. dated 12.12.1980, the G.D.A. issued letters dated 22.12.1980 (Annexure-4 to the petition), 23.12.1980 (Annexure-3 to the petition) and 24.12.1980 (Annexure-5 to the petition). In these letters, the G.D.A. stated that since the petitioner has filed a Writ Petition No. 1932 of 1980 in the High Court against the reservation of the land in dispute in favour of Manohar Lal, respondent No. 3, and has obtained an interim order he should withdraw this petition and only then allotment can be made in his favour, because as long as the interim order in that petition continued, no allotment can be made. These orders of the G.D.A. also state that as per the G.O. dated 12.12.1980 Plot Nos. 5 to 16 of Sector III-N area approximately 4400 square meter has been reserved for the petitioner and this land will be allotted to the petitioner when he withdrew the writ petition. In the order dated 12.12.1980, the G.D.A. stated that the petitioner should deposit the compensation because the allotment can only be subsequent to such deposit. Hence, the petitioner deposited the amount demanded on 3.3.1981 (Annexure-6 to the petition) and he also withdrew the Writ Petition No. 1932 of 1980 on 6.3.1981.

24. Despite all this, the G.D.A. did not make allotment of the land in question in favour of the petitioner and instead it allotted the same to respondent No. 3 by the impugned order dated 27.3.1989 (Annexure-1 to the petition) in gross violation of the G.O. dated 12.12.1980.

25. It may be mentioned that the G.O. dated 12.12.1980 was never challenged by any party, and hence its validity cannot be gone into now.

26. It may be noted that the land of respondent No. 3 which was acquired was situated elsewhere and respondent No. 3 had been thrice allotted the land over/near his acquired land vide letters dated 23.12.1974, 22.12.1975 (Annexure 17 to the rejoinder affidavit in reply to the counter affidavit of Manohar Lal, respondent No. 3) and 25.1.1978 (Annexure-18 to the same rejoinder affidavit) but he did not accept the same.

27. In our opinion, the G.D.A. was bound by the G.O. dated 12.12.1980 and we cannot understand why and how it has flouted the said G.O. particularly when it was reiterated by the G.O. dated 27.2.1981 and 8.4.1983. It seems to us that respondent No. 3 in connivance with the G.D.A. manipulated to get the impugned

order dated 27.3.1989 issued in his favour.

28. Under Sections 41(1) and 41(3) of the U.P. Urban Planning and Development Act, 1973 the G.D.A. is under control and supervision of the State Government. Also, the State Government has power to issue directions to the G.D.A. under Section 2(1) of the U.P. State Control Over Public Corporations Act, 1975 which states;

'Every statutory body (by whatever name called), established or constituted under any Uttar Pradesh Act, excepting Universities governed by the Uttar Pradesh State Universities Act, 1973 as re-enacted and amended by the Uttar Pradesh Universities (Re-enacted and Amendment) Act, 1974, shall, in the discharge of its functions, be guided by such directions on questions of policies, as may be given to it by the State Government, notwithstanding that no such power has expressly been conferred on the State Government under the law establishing or constituting such statutory body.'

29. We may now consider the contention of the respondents that the claim of the petitioner was time barred. Annexure-13 to the rejoinder affidavit in reply to the counter affidavit of respondent No. 3 is the letter of the State Government dated 1.4.1980 to the Vice Chairman, G.D.A. In this letter it is mentioned that entry No. 15498 of the receipt register of the G.D.A. shows that the petitioner made his application on 31.12.1966. This letter also mentions that the petitioner has submitted photocopy of his application dated 31.12.1966 bearing signature of the receipt clerk of the G.D.A. However, the State Government wanted the G.D.A. to clarify certain points, and hence it directed the Vice Chairman to come with the record and the concerned official, so that the matter may be expeditiously disposed off.

30. It has been stated in Paragraph 4(a) of the counter affidavit of respondent No. 3 that the petitioner did not claim the benefit of the land policy within time, and he made representation claiming the same for the first time in 1980. It is alleged in the said Paragraph that a false allegation was made by the petitioner that he made an application on 31.12.1966 claiming benefit of the land policy. In this connection the respondent has referred to the letter of the Vice Chairman, G.D.A. to the Joint

Secretary of the State Government dated 19.4.1980 vide Annexure-CA-1 to the counter affidavit of respondent No. 3. This letter begins with the statement that it is not proper for the Joint Secretary of the State Government to write such letters to the Vice Chairman, G.D.A. We cannot understand why the Vice Chairman, G.D.A. took umbrage on receiving the letter of the Joint Secretary of the State Government. It may be that the then Vice Chairman, G.D.A., Shri Desh Raj Singh was senior in the I.A.S. to the then Joint Secretary, State Government, Smt. Madhuri Srivastava who wrote the letter dated 19.4.1980 but there was no occasion for him to have got upset. The Joint Secretary of the State Government represents the State Government, while the Vice Chairman, G.D.A. represents the G.D.A., Under Section 41 of the U.P. Urban Planning and Development Act, 1973 as well as Section 2(1) of the U.P. State Control Over Public Corporations Act, 1975 the State Government can issue directions to the G.D.A., and for this purpose it can also make queries to the G.D.A.

31. The Vice Chairman, G.D.A. then mentioned various points which, according to him, threw doubts on the authenticity of the alleged letter of the petitioner dated 31.12.1966. Having said so, the Chairman in his letter dated 19.4.1980 once again lashed out at the Joint Secretary to the State Government alleging that her letter was trying to create confusion and was highly improper and detrimental to the interest of the G.D.A,

32. From the tone of the letter of the Vice Chairman, G.D.A. dated 19.4.1980 it almost seems that he had a personal pique or grudge against Smt. Madhuri Srivastava, Joint Secretary of the State Government.

33. However, in continuation of its earlier letter dated 1.4.1980, the State Government issued the directive dated 12.12.1980 (Annexure-2 to the writ petition) to the Vice Chairman, G.D.A. in which the petitioner's claim under the land policy was accepted. This letter dated 12.12.1980 mentions that in continuation of letter dated 1.4.1986 the State Government had considered the matter after proper consideration, and had decided to allot 40% of his land to the petitioner under the policy.

34. In our opinion though no doubt the letter of the State Government dated 12.12.1980 does not specifically deal with the question whether the petitioner's claim was within time, but when the State Government has allowed the said claim it is implicit that the State Government regards the claim within time, or else has condoned the delay. The G.D.A. is bound by the directives of the State Government vide Section 41(1) of the U.P. Urban Planning and Development Act, 1973 which states :

'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.'

35. We may also refer to Section 41(3) of the Act, which states:

'The State Government may, at any time, either on its own motion or on an application made to it in this behalf, call for the records of any case disposed of or order passed by the (Authority or the 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.'

36. Thus, it is evident that the State Government can issue a direction to the Vice Chairman of the G.D.A. Under Section 41(3) the State Government can also call for the record of any case disposed of or order passed by the Authority for satisfying itself as to the legality or propriety of the order or direction, and the State Government may itself pass such order as it may deem fit.

37. It may be noted that Section 41(3) uses the words 'legality or propriety'. Thus, the State Government is not limited to questions of law, it can even go into questions of fact because the word 'propriety' implies that it can even go into factual matter also. Thus, under Sections 41(1) and 41(3) of the said Act the State Government can overrule the Vice Chairman of the G.D.A. and/or issue a directive to him.

38. This power of the State Government also emanates from Section 2(1) of the U.P. State Control Over Public Corporation Act, 1975 which we have already

quoted above.

39. In the circumstances, we are of the view that the opinion of the State Government will prevail over the opinion of the Vice Chairman of the G.D.A. Since the State Government has accepted the claim of the petitioner this directive will prevail over the view of the Vice Chairman of the G.D.A. Since the question whether the petitioner applied within time or not is a question of fact we cannot go into this question of fact in writ jurisdiction. Moreover, the G.O. dated 12.12.1980 was never challenged by anyone, and hence is final. Hence, we hold that the petitioner is entitled to the benefit of the land policy.

40. As regards the withdrawal of Writ Petition No. 1932 of 1980, this was done pursuant to the letter of the G.D.A. dated 24.12.1980 (Annexure-5 to the Writ Petition) in which it was stated that if the petitioner withdraws his writ petition he will get the benefit of the land policy. Hence, the respondents cannot derive any benefit from the order dismissing the said Writ Petition as withdrawn. The petitioner acted upon the aforesaid letter and withdrew the writ petition.

41. As regards the contention of the respondents that the petitioner had declined to accept the offer of plots vide (Annexure-CA-II of the counter affidavit of respondent No. 3), the petitioner has stated in Para 4 of the supplementary rejoinder affidavit that the plots offered to the petitioner were either those whose sale deeds had already been executed in favour of a third party or there was encroachment upon them, and hence the petitioner did not accept the same.

42. As regards the contention of the respondents that the petitioner cannot claim a particular land of his choice, we find that there is no merit in this submission.

43. It is mentioned in Para 6 of the land policy (Annexure-10 to the rejoinder affidavit in reply in reply to the counter affidavit of respondent No. 3), that the applicant will be entitled to get back 40% of their land as developed plotted area. Para 6 states:

'Those in category No. (ii) may be given an option either to accept cash compensation for their land under the Land Acquisition Act or to get back 40% of

their land as developed plotted area after paying the cost of external and internal development. In the latter case, the premium will be equal to the compensation payable for the land.'

44. A perusal of the above clause shows that the applicant who comes within the second category of the land policy has to be given 40% of his own land and not some other person's land. As regards the contention that the petitioner did not deposit the developed costs, this is not correct because the petitioner deposited the compensation on 3.3.1981 as stated in Para 6 of the petition and thereafter no other demand was issued to him.

45. As regards the allegation in Para 4(d) of the counter affidavit of respondent No. 3, a perusal of Annexure 4 to the said counter affidavit, which is the petitioner's letter 1.1.81 to the G.D.A. shows that the petitioner had alleged therein that he was claiming benefit of the land policy but he was being denied this claim and was being harassed, and in these circumstances he requested for the plot No. 17. In our opinion, this letter does not mean that the petitioner had given up his claim under the land policy, rather he reiterated his claim in this letter dated 1.1.81. In Para 6 of the rejoinder affidavit the petitioner has clarified the matter in great detail, and it is expressly mentioned in clause (6) of this Paragraph that the petitioner had reserved his right to the plots in dispute.

46. In these circumstances, we are of the opinion, that the respondents have clearly flouted the G.O. dated 12.12.1980 and the subsequent G.Os. which have reiterated the same. The impugned order dated 27.3,1989 was issued in gross violation of the G.O. dated 12.12.1980 and the subsequent G.Os. Hence, the impugned order dated 27.3.1989 is quashed and if any, lease/sale deed/agreement has been executed in respect of the land in dispute in favour of respondent No. 3 the same will be cancelled forthwith and instead lease deed will be issued in favour of the petitioner forthwith over the land in dispute and he will be handed over the possession of the said land forthwith.

47. Petition is allowed.

