

(2016) 10 AHC CK 0039

ALLAHABAD HIGH COURT

Case No: Writ C No. 10008 of 2012

Rama Krishna Sahkari Avas
Samiti Ltd.

APPELLANT

Vs

The State of U.P. Thru Secy

RESPONDENT

Date of Decision: Oct. 18, 2016

Acts Referred:

- Constitution of India, 1950 - Article 226

Citation: (2017) 2 ADJ 120 : (2016) 6 AllWC 6459 : (2017) 120 ALR 108 : (2017) 134 RD 484

Hon'ble Judges: Arun Tandon and Naheed Ara Moonis, JJ.

Bench: Division Bench

Advocate: "R.D. Tiwari and M.D. Singh ""Shekhar""", Advocates", for the Petitioner; C.S.C. and Ramendra Pratap Singh, Advocate, for the Respondent

Final Decision: Dismissed

Judgement

Arun Tandon and Naheed Ara Moonis, JJ. - Heard learned counsel for the petitioner, Sri Ramendra Pratap Singh learned counsel for the Greater Noida and the learned standing counsel.

2. The record of the present writ petition reflects that the petitioner's Housing Co-operative society was registered on 12.11.1988 and through various sale deed, it had purchased properties from the farmers. With reference to policy, resolution passed in the meeting of Board of Secretary Greater Noida dated 20.2.1993. The petitioner's Society is stated to have made an application on 10.11.1991 for a memorandum of understanding being executed which would entitle the society to certain percentage of developed plots, in case the land holding of the society is acquired. The petitioner's society was informed vide letter dated 3.12.1993 that appropriate action shall be taken on receipt of complete documents from the society. The society is stated to have supplied the information vide letter dated 13.10.1994. Subsequent thereto vide letters dated 5.2.1995 and dated 28th July

1995, certain other information was asked for by the Greater Noida authorities from the petitioner. By means of letter dated 16th August 1996, list of office bearers of petitioner's society was called for so that further action may be taken in the matter of execution of memorandum of understanding.

3. In the meantime on 27th July 1996 in the meeting of the Board, a decision was taken to do away with the policy of execution of memorandum of understanding with Housing Co-operative Societies in the back ground that in most of the cases, land was not being made available to the Greater Noida because of litigation and further in view of section 154 U.P.Z.A. & L.R. Act wherein it is provided that purchase of land by the Societies in excess of 12.5 acres would be illegal and such transaction shall be void.

4. In view of the decision of the Greater Noida authority, no memorandum of understanding was ever executed between the petitioner and the Greater Noida authorities.

5. Record of the present writ petition further reflects that the petitioner had approached this Court by means of Civil Misc. Writ Petition No. 5000 of 1999 wherein one of the relief prayer for was that a writ of mandamus may be issued directing the respondent Greater Noida authorities to sign memorandum of understanding. While the writ petition was pending, the petitioner filed another Civil Misc. Writ Petition No. 29678 of 2006 claiming a direction upon Greater Noida authorities to provide developed land to the petitioner's society strictly in accordance with the direction contained in the Government order dated 2nd June 1998. This writ petition was decided on 24.5.2005.

6. In compliance of the order of this Court, the claim of the petitioner was considered by the Chief Executive Officer Greater Noida vide order dated 9th June 2006. After noticing the prayer which were made in the Civil Misc. Writ Petition No.5000 of 1998 and Civil Misc. Writ Petition No.29698 of 2006. It is specifically recorded that the prayers were more or less identical but in the subsequent writ petition no.29678 of 2006, there has been no mention about the earlier writ petition no.5000 of 1998.

7. Greater Noida authority having regard to the provisions of section 154 U.P. Zamindari Abolition and Land Reforms Act and section 77 of the Co-operative Societies Act held that Co-operative Society cannot hold land in excess of 12.5 acres. It has further been held that provisions of the Government order so heavily relied upon by the petitioner dated 2nd June 1998 have no applicability as it was for development authorities under the U.P. Urban Planning & Development Act 1973. The Chief Executive Officer proceeded to reject the representation made by the petitioner for the land being allotted in terms of the Government order dated 2nd June 1998.

8. The petitioner at this stage filed third Civil Misc. Writ Petition No.51304 of 2006 for quashing of the order passed by the Chief Executive Officer with a direction to the respondents to release 60% developed land in favour of the petitioner within a specified period in terms of the Government order dated 2nd June 1998 and dated 22.10.2002.

9. The Civil Misc. Writ Petition No. 51304 of 2006 and Civil Misc. Writ Petition No.5000 of 1998 were clubbed together and decided by means of a common judgment by a Division Bench of this Court vide order dated 24.2.2009. The Division Bench amongst other recorded that the Government order dated 2nd June 1998 was not applicable to the Greater Noida constituted under U.P. Industrial Area Development Act 1977, it had no application qua with the land within the territorial limit of such Industrial Development Authorities. The Division Bench went on to hold that the land in question has already been acquired by the Greater Noida in accordance with the provisions contained in Land Acquisition Act. The notification for acquisition has become final and the petitioner has already been dispossessed.

10. At that stage of the proceedings, the petitioner came up with a plea that discrimination has been practised as some other housing co-operative societies have been provided developed land by the Greater Noida therefore, benefit of Article 14 of the Constitution of India was prayed for. The Division Bench after taking note of the said contention as well as to the fact that the petitioner has submitted memorandum of understanding during the pendency of the Civil Misc. Writ Petition No. 5000 of 1998 permitted the Greater Noida authorities to re-examine the issue on the plea of discrimination only.

11. The Chief Executive Officer vide order impugned dated 22nd September 2011 has specifically recorded that no memorandum of understanding was ever executed between the petitioner and the Greater Noida authorities for the various reasons which have been discussed here in above by us. In absence of any memorandum no benefit can be claimed by the petitioner.

12. The petitioner has chosen to file this 6th writ petition challenging the order dated 22.9.2011 passed by the Greater Noida authorities. It is submitted that non-execution of memorandum of understanding if any in the fact of the case was because of the fault of the Greater Noida authorities, the petitioner cannot be penalized.

13. In our opinion, the contention advanced by the learned counsel for the applicant has no substance. We have already dealt in detail the correspondence made between the petitioner and the Greater Noida authorities in the matter of submission of document pertaining to memorandum of understanding till 27.7.1996 when the policy was withdrawn. In Civil Misc. Writ Petition No. 5000 of 1998 one of the prayer made by the petitioner was for execution of memorandum of understanding in his favour which relief has not been granted therefore, the relief is

deemed to have been rejected.

14. In the totality of the facts and circumstances of the case, we see no cogent and justifiable reason to interfere with the order refusing to grant benefit to the petitioner in the absence of memorandum of understanding having been executed prior to the policy decision of the Greater Noida authorities withdrawing the policy vide resolution dated 27.7.1990. The learned counsel for the petitioner failed to point out any discrimination vis-a-vis any other co-operative societies with which no Memorandum of Understanding was executed for the allotment of the developed plots by the Greater Noida authorities out of the total land acquired.

15. Sri M.D. Singh "Shekhar" learned Senior Advocate submits that till date no award has been made in respect of the acquired land nor any compensation has been paid to the petitioner's land owners. On behalf of the respondents, it is submitted that award in respect of the acquired land has already been made long back. If the petitioner approaches before the Special Land Acquisition Officer, his grievance shall also be considered like other tenure holders who have been paid compensation after preparation of the award.

16. It is provided that it shall be open for the petitioner to agitate his claim in the matter of payment of compensation before the concerned authority who shall consider and decide the same in accordance with law at the earliest possible. This Court is not expressing any opinion on the right of the petitioner in the matter of payment of compensation.

17. Writ petition is dismissed subject to the observations made.