A UTTAR PRADESH RESIDENTS EMPLOYEES CO-OPERATIVE HOUSE BUILDING SOCIETY AND ORS.

v.

NEW OKHLA INDUSTRIAL DEVELOPMENT AUTHORITY AND ANR.

B MAY 3, 1990

[K.N. SAIKIA AND K. RAMASWAMY, JJ.]

U.P. Industrial Area Development Act, 1976: NOIDA—Co-operative Housing Societies—Land acquired under Land Acquisition Act—Allotment of land in lieu thereof—Directions issued.

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The appellant, a registered Housing Co-operative Society, acquired about 70 acres of land during the period 1973 to 1975.

After the enactment of U.P. Industrial Area Development Act, D **1976, the State Government constituted an Industrial Development Authority called NOIDA. Soon after the constitution of the said authority, notifications were issued under the Land Acqusition Act acquiring certain lands including that of the appellant Society.**

The appellant and several other societies demanded land in lieu of E **the land acquired. A sub-Committee was constituted and it was proposed to offer developed plots to the *bona fide* members of the societies whose lands were acquired. An approximate rate of Rs.130 per square metre was fixed. It was also stipulated that 30% of the price would have to be deposited before a tripartite agreement between NOIDA, Co-operative Societies and individual members is made after** F **finalisation of lay-out plan.**

The appellant society filed a Writ Petition in the High Court alleging that the action taken by NOIDA was arbitrary and challenging the notifications issued under Sections 4 and 6 of the Land Acquisition Act. Meanwhile, the authority had intimated the appellant society that G **it was finally decided to offer lands, and that 20% of the amount had to be deposited within a stipulated time. The Society requested for extension of time. Time was not extended and the Society was not allotted the land.**

It was contended before the High Court that the authority acted H ***mala fide*, and its not extending the time was arbitrary and discrimi-**

natory. The land price fixed by the authority was also challenged. The High Court dismissed the Writ Petition, holding that the appellants Society had no legal right to get a particular land and that it did not avail the concession granted by the authority. This appeal by special leave is against the order of the High Court.

Disposing of the appeal, this Court,

HELD: 1. The interim orders of this court dated 30.5.83, 19.3.84, 30.4.84 and 8.5.85 will merge in this Order. [70B]

2. The Judgment of the High Court dated 6.5.83 is set aside. The total number of persons entitled to allotment will be confined to those persons who were eligible members of the Society on 1st May, 1976 not exceeding 600. The total area to be allotted to the members of the Society will be 28.8 acres in the form of developed plots. This amounts to 40% of the total 72 acres of land acquired by the Society in the villages Chhalera Bangar and Suthari between January, 1973 and September, 1975. The allotment shall be made in Sectors 40, 41 and 42 and if sufficient number of plots are not available in these Sectors, then from the adjacent sectors. The plots to be allotted are to be developed by NOIDA within a period of nine months beginning from 1st May, 1990 and ending on 31st January, 1991 by which date the plots shall be allotted to the entitled members of the Society. NOIDA shall be permitted to charge the price of the allotted plots at the rate of Rs.1,000 per square metre. Every member who has deposited any sum of money with NOIDA against proposed allotment shall be entitled to 12 per cent interest on such amount from the date of deposit till the actual allotment and such interest accrued in favour of the persons shall be entitled to adjustment of such interest against actual price of the land to be worked out at the rate of Rs.1,000 per square metre. Balance amount, if any, shall have to be paid by every eligible member of the Society as on1.5.76 not exceeding 600 in all, within three months from now in three equal monthly instalments. The 1st instalment will be paid on or before May 31, 1990. The second instalment to be paid on or before June 30, 1990 and the third instalment to be paid on or before July 31, 1990. It shall be obligation of the Society to duly notify every member of these directions and the time factor forthwith as failure to pay any of these instalments within the time limit indicated above shall disqualify such person from allotment and NOIDA will thereafter be only obliged to refund the money lying to the credit of the defaulter with bank rate of interest. In case the Review Petition in *Hiralal Chawla's* case is allowed, the parties herein shall be at liberty to apply for review of this judgment

to similar extent. Each allottee shall furnish an affidavit to the effect that neither he/she or spouse, nor dependent children owns any other plot or house or flat within NOIDA. All the norms laid down by NOIDA in the matter of development shall be strictly followed. Supervision of this operation of course shall be by NOIDA. The society would co-operate with NOIDA in this regard. [70B-H; 71A-B]

Hiralal Chawla and Anr. v. *State of U.P. & Ors.*, [1990] 1 JT SC 194, **applied.**

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 5502 of 1983.

From the Judgment and Order dated 6.5.1983 of the Allahabad High Court in C.M.W.P. No. 6563 of 1980.

S.S. Ray, D.D. Thakur, Mrs. C. Markandeya, S. Markandeya, W.A. Nomani, G.S. Giri Rao, R.K. Raina and J.M. Khanna for the Appellants.

B.D. Agarwal, Mrs. S. Ramachandran, R. Ramachandran, H.K. Puri, Mrs. S. Dikshit and A.K. Gupta for the Respondents.

The Judgment of the Court was delivered by

K.N. SAIKIA, J. Appellant No. 1 is a registered Housing Co-operative Society registered under the U.P. Co-operative Societies Act, bearing registration No. 2130 dated 27.3.1973, hereafter referred to as 'the society', and appellant Nos. 2, 3 and 4 are respectively the President, Secretary and Treasurer of the Society. The object of the Society is to acquire lands for its members for constructing residential houses for them. The members are Central and State Government employees and public sector employees; and more than 70 acres of land situated in villages Chhalera Bangar and Suthari were acquired by the Society between January, 1973 and September, 1975.

For development of certain areas in the State of U.P. into industrial and urban township and for matters connected therewith, the U.P. Industrial Area Development Act, 1976, hereafter referred to as 'the Act', was enacted and thereafter the U.P. Government by a Notification dated 17.4.1976 declared the villages named in the schedule annexed to the Notification to be an Industrial Development Area within the meaning of the Act, to be called "NOIDA".

Soon after constituting this Authority a Notification under ss. 4 and 17 (sub-s. (1) of s. 4 and sub-s. (4) of s. 17) of the Land Acquisition Act was published in the U.P. Extra Ordinary Gazette dated 30.4.1976 stating that the land in village Chhalera Bangar was needed for the planned industrial development. The land of the appellant society was included in the Notification. In continuation of Notification dated 30.4.1976, another Notification under s. 6 dated 1.5.1976 was issued stating that the land mentioned in the schedule (i.e. village Chhalera Bangar) was needed for a public purpose and under s. 7 of that Act to direct the Collector of Bulandshahar to take order for the acquisition of the said land.

A Notification under sub-s. (1) of s. 4 of the Land Acquisition Act was issued on 1.6.1976 notifying that the land mentioned in the schedule (i.e. land in Suthari village etc.) was needed for a public purpose and that the case was of urgency and as such the provisions of sub. section (1) of s. 17 of the said Act were applicable to the land Notification under s. 6 of that Act was issued on 16.9.1976 notifying that the land mentioned in the schedule (i.e. Suthari village etc.) was needed for public purpose and under s. 7 of that Act it directed the Collector to take order for acquisition of the said land.

The appellant society and the other registered co-operative societies demanded land in lieu of the land acquired in the NOIDA complex and after several representations and correspondence a sub-committee was constituted under the chairmanship of Sri B.J. Khadaiji, Commissioner and Secretary, Housing and Urban Development, Government of Uttar Pradesh to look into the matter. In a meeting held on 19.10.1979 it was decided that sites would be given to various co-operative societies nearest to Delhi on the basis of the NOIDA Master Plan which was under consideration. It was also clarified in that meeting that 35 per cent of the area offered to the members of the Society will be plotted area out of the total acquired area of the Society. The Executive Officer NOIDA vide his letter dated 21.4.1980 informed that it was proposed to offer developed plots to the *bona fide* members of the co-operative societies whose lands were acquired. An approximate rate was offered at Rs.130 per square metre in sectors 30, 31, 34, 39 and 40. Certain conditions were also laid down in that letter and one of the conditions was that amount equal to 30 per cent of the price of the area of developed plots computed at Rs.130 per square metre should have to be sent in favour of NOIDA and thereafter tripartite agreement shall have to be made between NOIDA, Co-operative Societies and individual members after finalisation of lay out plan.

A Alleging that arbitrary action taken by the NOIDA that far was not acceptable to the appellant Society, it filed Civil Misc. Writ Petition No. 6563 of 1980 on 29.7.1980 challenging the notifications issued under ss. 4 and 6 of the Land Acquisition Act. The writ petition was admitted by the Allahabad High Court but stay was refused. The Society insisted on rehabilitation of the members on the original land B on the basis of the policy of the Government. The Chief Executive Officer intimated the Society that the authority had finally decided to offer lands in sectors 30, 31, 36 and 40 and that 20 per cent of the amount had to be deposited, but the Society did not deposit the amount by the stipulated time. The Society requested for extension of time, but the NOIDA did not extend it and the appellant Society had not been allotted any land. As the writ petition was filed in the year C 1980 i.e. more than three years after publication of the notifications, the impugned Notifications had been upheld by a Division Bench of the Allahabad High Court by the impugned Judgment dismissing the writ petition. The appellant-Society argued before the High Court that the action of the Authority in not allotting land to the appellant- D Society was *mala fide* and also that action of the Authority in not extending the time as prayed for was arbitrary and discriminatory. It was submitted by the respondents that offer to give developed plots to the appellant-Society was only as a concession and not as a legal right; the Authority was not bound to extend the time. The appellant-Society also challenged the price fixed by the authority and the appellant's E counsel had not been able to show that anybody was offered developed plots for a price less than Rs.130. The High Court held that appellant-Society had no legal right to get a particular land and that the Society did not avail of the concession granted by the authority.

Hence this appeal by Special Leave from the impugned F Judgment and Order dated 6.5.1983 of the Allahabad High Court passed in Civil Misc. Writ Petition No. 6563 of 1980.

While granting Special Leave on 30.5.1983 there was an order of *ex-parte* stay of dispossession pending notice; but the execution proceedings were allowed to go on. On 19.3.1984 in C.M.P. No. 16786 G of 1983 it was ordered that Mr. Markandeya, Advocate on behalf of the petitioners would make a representation to the respondent New Okhla Industrial Development Authority (NOIDA) for the allotment of a suitable site and the representation would be considered on its own merits and a decision taken thereon by the respondent within two months from the date of that order. On 30.4.1984 Mr. G.L. Sanghi H appearing for NOIDA had made a statement before the Court that

NOIDA undertook that in the event of this appeal being allowed NOIDA would give to the appellants such areas as this Court might specify from sectors 40 and 41 at prices to be determined in accordance with the Judgment of this Court. Undertaking given by Mr. G.L. Sanghi was limited to NOIDA giving areas from sectors 40 and 41 to the appellants and to those persons who were eligible members of the Society on 1st May, 1976. These orders were said to be without prejudice to the rights and contentions of both the parties in this appeal.

On 8.5.1985 the order dated 30.4.1984 was modified by this Court directing that NOIDA would give to the appellants such areas as this Court might specify from sectors 40, 41 as also from sector 42 at price to be determined in accordance with the Judgment of this Court. If any of the petitioners could not be accommodated in any of these sectors, the NOIDA would give them sites or areas which were contiguous to sectors 40, 41 and 42. On 18.1.1990 this appeal was delinked from the group of NOIDA cases.

By Judgment and Order dated 13.2.1990 the main Writ Petition No. 975 of 1986—*Hiralal Chawla & Anr.* v. *State of U.P. & Ors.*, reported in [1990] 1 Judgments Today SC 194 was disposed of stating the total number of persons entitled to allotment and sizes of the plots to be allotted and directing that the sites be developed by NOIDA within a period of nine months beginning from 1st of March, 1990 and allot them by charging the agreed price at the rate of Rs.1,000 per square metre and paying 12 per cent interest on the amount deposited till the actual allotment; and that the interest would be adjusted against the price payable on the allotted land. The dates for payment of the 1st, 2nd and 3rd instalments were also agreed. It was observed that the Town Planning in NOIDA was said to be in accordance with the norms laid down by itself and the same are prescribed by the Board of which the Chief Town and Country Planner of Uttar Pradesh was a member. It was accordingly directed that all the norms laid down by NOIDA in the matter of development shall be strictly followed. Supervision of this operation should be by NOIDA and the appellants would co-operate with NOIDA in that regard.

When this appeal was heard on 5.4.1990 there was a consensus that justice would be done to the parties, if this appeal is also disposed of on similar terms as in *Hiralal Chawla & Anr.* v. *State of U.P. & Ors.*, (supra). However, the parties were allowed to file written submissions. Written submissions were accordingly filed by the res-

A pondents, in reply thereto by the appellants, and for the intervener.

Taking into consideration the earlier interim orders, the consensus arrived at the hearing and the written submissions, it is ordered in line with *Hiralal* (supra) that the interim orders dated 30.5.83, 19.3.84, 30.4.84 and 8.5.85 will merge in this Order. The impugned Judgment of the High Court is set aside and it is ordered: (A) That the total number of persons entitled to allotment will be confined to those persons who were eligible members of the Society on 1st May, 1976 not exceeding 600 (six hundred). (B) The total area to be allotted to the members of the Society will be 28.8 acres in the form of developed plots. This amounts to 40% of the total 72 acres of land acquired by the C Society in the villages Chhalera Bangar and Suthari between January, 1973 and September, 1975. (C) The allotment shall be made in Sectors 40, 41 and 42 and if sufficient number of plots are not available in these Sectors, then from the adjacent Sectors. (D) The plots to be allotted are to be developed by NOIDA within a period of nine months beginning from 1st May, 1990 and ending on 31st January, 1991 by D which date the plots shall be allotted to the entitled members of the Society. (E) The NOIDA shall be permitted to charge the price of the allotted plots at the rate of Rs.1,000 per square metre. (F) Every member who has deposited any sum of money with NOIDA against proposed allotment shall be entitled to 12 per cent interest on such amount from the date of deposit till the actual allotment and such E interest accrued in favour of the person shall be entitled to adjustment of such interest against actual price of the land to be worked out at the rate of Rs. 1,000 per square metre. Balance amount, if any, shall have to be paid by every eligible member of the Society as on1.5.76 not exceeding 600 in all, within three months from now in three equal monthly instalments. The 1st instalment will be paid on or before May F 31, 1990, the 2nd instalment to be paid on or before June 30, 1990 and the 3rd instalment to be paid on or before July 31, 1990. (G) It shall be the obligation of the Society to duly notify every member of these directions and the time factor forthwith as failure to pay any of these instalments within the time limit indicated above shall disqualify such person from allotment and NOIDA will thereafter be only obliged to G refund the money lying to the credit of the defaulter with bank rate of interest. (H) It is stated by the parties that a Review Application in *Hiralal Chawla's* case is pending. As agreed by the parties in case that Review is allowed, the parties herein shall be at liberty to apply for review of this judgment to similar extent. (I) Each allottee shall furnish an affidavit to the effect that neither he/she or spouse, H

nor dependant children owns any other plot or house or flat within NOIDA. A

Town Planning in NOIDA is said to be in accordance with the norms laid down by itself and the same are prescribed by the Board of which the Chief Town and Country Planner of Uttar Pradesh is a member. We direct that all the norms laid down by NOIDA in the matter of development shall be strictly followed. Supervision of this operation of course shall be by NOIDA but we hope and trust that the Society would cooperate with NOIDA in this regard. The appeal is disposed of with these directions without any orders as to costs. B

G.N. Appeal disposed of.