MORADABAD DEVELOPMENT AUTHORITY

v.

SAURABH JAIN AND ORS.

SEPTEMBER 28, 2007

[DR. ARIJIT PASAYAT AND LOKESHWAR SINGH PANTA, JJ.]

Urban Land (Ceiling and Regulation) Act, 1976:

s. 34 and proviso—Revision—Reasonable time limit for filing of—Land declared as surplus—Possession taken—After about 20 years State Government, on a revision petition, holding land not covered under the Act and directing to release it—Meanwhile land developed as residential colony and houses and flats constructed thereon—HELD: For exercising revisional power, Government has to examine why applicant has not availed remedy of filing the appeal—It is also necessary to examine whether after a long lapse of time any action is warranted—Besides, the proviso to s.34 mandates grant of reasonable opportunity of being heard to any person who is likely to be affected by the order—Natural justice.

U.P. Urban Planning and Development Act, 1973:

ss. 17 and 34—Restoration of land on payment of development charges etc.—On land declared as surplus under 1976 Act, houses and flats for a residential colony constructed thereon—In revision after 20 years Government holding land not covered by 1976 Act—Some portion of land directed to be returned to land owners on payment of development charges etc.—HELD: Development charges and construction charges are statutorily imposable under the Act—ss. 17 and 34 of the Act are not dependent on the proceedings under 1976 Act—On land-owners agreeing to pay development and other charges as payable in law, direction given to release the unutilized vacant land as specified in the judgment—Urban Land (Ceiling and Regulation)

A *Act, 1976—s.34.*

Land admeasuring 8116.89 sq. mtrs. belonging to the respondents was declared surplus under the Urban Land (Ceiling and Regulation) Act, 1976 in the year 1977. But, by order dated 9.7.1998, passed by the B State Government in a revision petition, the land was held to be agricultural land and beyond the purview of the 1976 Act, and, as such, was directed to be released. However, meanwhile the land was developed as a residential colony and flats and houses constructed thereon were allotted to various allottees. On the application for C restitution by the respondents, the Government agreed to return 3605 sq. mtrs. of land subject to payment of development charges and cost of construction. The High Court, in the writ petition filed by the respondents, held that the demand for development charges was illegal, arbitrary and unjustified, and directed the State Government and the D appellant to return to the respondents 4511 sq. mtrs. of land in the vicinity of the land in dispute or to pay compensation at full market value. Aggrieved, the Development Authority filed the instant appeal.

Disposing of the appeal, the Court

E **HELD: 1.1. The High Court failed to notice that after 20 years from the date when the declaration of surplus land was made, the petition under Section 34 of the Urban Land (Ceiling and Regulation) Act, 1976 was filed without explaining as to what was the cause for inaction for two decades. For the exercise of revisional power it is open to the State F Government to examine a petition and on the basis of material indicated therein to decide whether any action in terms of Section 34 is called for. If the State Government decides to act on the basis of petition filed by any person, it has to examine as to why the person has not availed the remedy of filing an appeal. It is also necessary to examine whether after G a long lapse of time any action is warranted. In this exercise, filing of petition within a reasonable time is inbuilt. Besides, the petition for revision u/s 34 of the Act filed by the respondents was disposed of without notice to the appellant. Though the appellant had the title over the land, the name of the appellant was not included in the plaint as a**

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party. Thus the appellant was not heard by the revisional authority. The proviso to Section 34 mandates grant of reasonable opportunity of being heard to any person who is likely to be affected by the order. A

[Paras 9, 16, 19 and 20] [448-D, E; 450-C-D; 449-E; 450-E]

Pune Municipal Corporation **v.** *State of Maharashtra and Ors.*, **[2007] 5 SCC 211, relied on.** B

1.2. The development charges and construction charges are statutorily imposable under the U.P. Urban Planning and Development Act, 1973. At the request of the respondents 1-3, the State Government did not take steps for acquiring the land. There was a clear agreement to pay the development charges and other charges on the condition that there was no need for acquiring the land. Sections 17 and 34 of the Development Act are not dependant on the proceedings under the Ceiling Act. The High Court was not justified in ignoring this vital aspect. It is clear that the High Court has not really considered the true import of the concession made for payment of development charges. There was no illegal use and, therefore, the question of any compensation payable as directed by the High Court does not arise. C D

[Paras 11, 12 and 15] [448-G; 449-A, B, D, E]

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1.3. The impugned conclusions of the High Court are not sustainable. Normally, the Court would have set aside the impugned order and remanded the matter to the High Court to decide the same afresh. But since respondents 1-3 agree that 3570 sq. mtrs. of land may be returned to them on payment of development charges and other charges, as payable in law, the appeal is disposed of with the following directions: F

(1) The appellant authority shall release 3570 sq. mtrs. of unutilized vacant land on payment of development charges and other charges payable under the Development Act. G

(2) Respondents 1-3 shall not be entitled for any land beyond 3570 sq.mtrs relatable to the present dispute.

[Paras 21 and 22] [450-F, G; 451-A-B]

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A CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4329 of 2003.

From the Judgment and Order dated 12.5.2003 of the High Court of Judicature at Allahabad in C.M.W.P. No. 30433/2002.

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Contempt Petition (C) No. 239/2005.

Sharan Amarendera, M.P. Shorawala, Vipin K. Saxena, Jyoti Saxena, Shashi Kiran and Amit Tiwari for the Appellant.

C Shail Kumar Dwivedi, A.A.G., Rakesh Dwivedi, Prashant Kumar, Mukti Chowdhary, Shantanu Krishna, Arvind Mohan, Amit Singh, Raj Kumar Gupta, G. Venkateswar Rao, Kamlendra Mishra and Anuvrat Sharma for the Respondents.

D The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J. 1. Challenge in this appeal is to the judgment of a Division Bench of the Allahabad High Court allowing the Writ Petition (CMWP No.30433/2002) filed by respondents 1, 2 and E 3.

2. Challenge in the writ petition was to the order passed by the State Government dated 23.11.2001 Annexure-6 to the writ petition and orders dated 11.12.2001 and 15.4.2002 Annexures 7 and 8 respectively passed by the appellant-Moradabad Development Authority. The writ petitioners F had also prayed for a mandamus to direct the respondents in the writ petition to forthwith return to the writ petitioners possession of the land measuring 8116.65 sq. mtrs. of plot No.454 situated in village Harthala Mustahkam Tehsil, District Moradabad.

G 3. Background facts as highlighted in the writ petition were that the proceedings under the Urban Land (Ceiling and Regulation) Act, 1976 (in short the 'Act') were initiated and in the connected proceedings the land in question was declared to be surplus land by the competent authority, Moradabad by order dated 29.8.1977. A Revision was filed H against the said order and the State Government in exercise of power

under Section 34 of the Act by order dated 9.7.1998 held that the land in dispute was agricultural land and was thus outside the purview of the Act. Hence, land was directed to be released in favour of the land holders. The matter was referred to the State Government. Restoration of possession was demanded since the appellant authority had taken possession of the land in dispute and had developed a residential colony. The State Government had detailed deliberation with the appellant authority which informed that it had developed a residential colony called Ram Ganga Vihar Colony and had allotted the flats and houses to the allottees. The appellant authority sent proposal for acquisition of the land but it was not acceptable to the Government. However, the appellant authority proposed to return 3605 sq.mts. of land which had not still been transferred. By order dated 23.11.2001 the State Government directed the appellant authority to return the land in question. However, it directed that the development charges and cost of construction over the area were to be charged from the writ petitioners. But the State Government did not give any direction regarding the balance 4511 sq. mtrs. out of the total land.

4. Appellant authority on the basis of the aforesaid order of the Government demanded Rs.62,24,534/- as development charges and cost of construction in respect of the area measuring 2312-82 sq. mtrs.

5. Stand in the writ petition was that in view of the order of the State Government dated 9.7.1998, the decision of the appellant authority could not claim any lawful title. The appellant authority it was contended was duty bound to restore the possession of the land to the respondents, and since it did not do so the respondents were suffering huge losses.

6. Stand of the appellant in the writ petition was that possession of the land was delivered to it in June 1989 and at that time it was surplus land under the Act. In the intervening period residential colony was developed and many flats and houses have been allotted and transferred to various persons.

7. The High Court had held that submissions of respondents 1, 2 and 3 regarding the consent for the development charges were not

A believable. There was no specific reference to this aspect in the counter affidavit filed. If it was really so, it should have found place in the counter affidavit. It was held that demand for development charges was illegal, arbitrary and unjustified. Accordingly, the writ petition was allowed. The State Government and the appellant authority were directed to give B possession of the land measuring 4511 sq. mtrs. in the vicinity of the land in dispute or to pay compensation at full market value. In addition, respondents in the writ petition were directed to pay compensation for illegal use of the land since the date they took possession. The compensation was directed to be determined by the District Judge, C Moradabad.

8. In support of the appeal, learned counsel for the appellant submitted that the High Court's order suffers from various infirmities.

9. The High Court failed to notice that after 20 years from the date D when the declaration of surplus land was made, the petition under Section 34 of the Act was filed without explaining as to what was the cause for inaction of two decades. Section 34 petition filed by the respondents 1, 2 and 3 was disposed of without notice to the appellant. Though the appellant had the title over the land, the name of the appellant was not E included in the plaint as a party.

10. It is submitted that the proviso to Section 34 of the Act is equally applicable and that has not been considered. The High Court also did not take note of a letter written by the predecessor-in-interest of the F respondents 1, 2 and 3 on 28.12.2000 for release of 3598 sq.mtrs. of unutilized vacant land in their favour in lien of the entire claim and there was agreement to pay the development charges and betterment charges.

11. In terms of the State Government's directions the appellant authority at the most has to release 3605 sq.mtrs. of land on payment of G development charges and construction of cost at prevalent market rate. The High Court was not justified in ignoring this vital aspect.

12. The inaction nearly for two decades was not explained. A statutory time limit is fixed for appeals. Only in case appeals are not filed, H the revisional jurisdiction can be resorted to. That does not allow a party

to move for relief without taking any action for nearly two decades. The development charges and construction charges are statutorily imposable under the U.P. Urban Planning & Development Act, 1973 (in short the 'Development Act'). At the request of the respondents 1, 2 and 3 the State Government did not take steps for acquiring the land. There was a clear agreement to pay the development charges and other charges on the condition that there was no need for acquiring the land. Sections 17 and 34 of the Development Act are not dependant on the proceedings under the Act.

13. It is pointed out that there was no illegal use by the appellant authority and, therefore, the question of compensation does not arise.

14. Learned counsel for the respondents 1, 2 and 3 on the other hand submitted that without any authority of law use of the land was deprived of them for nearly two decades. The High Court, it was submitted, was justified giving the directions and coming to the impugned conclusions.

15. It is clear that the High Court has not really considered the true import of the concession made for payment of development charges. As rightly contended by learned counsel for the appellant there was no illegal use and, therefore, the question of any compensation payable as directed by the High Court does not arise.

16. Undisputedly also the revision before the State Government was made nearly after two decades. In the instant case the appellant was not heard by the revisional authority.

17. Section 33 of the Act relates to an appeal by a person aggrieved by any order made by the competent authority under the Act not being an order under Section 11 or an order under sub-section (1) of Section 30. The appeal is to be filed within 30 days from the date on which the order is communicated to him. Under the proviso to Section 33 the Appellate Authority may entertain the appeal after the expiry of 30 days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time. Every order passed by the Appellate Authority under the statute is final.

A 18. Section 34 deals with revision by the State Government. Under the said provision, the State Government may on its own motion call for and examine the record of any order passed or proceeding taken under the provisions of the Act and against which no appeal has been preferred under Section 12 or Section 30 or Section 33 for the purpose of satisfying B himself as to the legality or propriety of such order or as to the regularity of such procedure and pas such order as it may deem fit.

19. As a bare reading of the provision shows that it relates to *suo motu* action on the part of the State Government. In that sense, a person C aggrieved who had a remedy of appeal under Section 33 has no statutory right to move in revision. However, for the exercise of revisional power by the State Government it is open to the State Government to examine a petition and on the basis of material indicated therein to decide whether any action in terms of Section 34 is called for. If the State Government D decides to act on the basis of petition filed by any person, it has to examine as to why the person has not availed the remedy of filing an appeal. It is also necessary to examine whether after a long lapse of time any action is warranted. In this exercise, filing of petition within a reasonable time is inbuilt. What would be reasonable time would depend upon the facts of E each case and no straight jacket formula can be adopted or applied.

20. There is another statutory requirement under Section 34. The proviso to Section 34 mandates grant of reasonable opportunity of being heard to any person who is likely to be affected by the order. These aspects have been highlighted in *Pune Municipal Corporation* v. *State* F *of Maharashtra and Ors.*, [2007] 5 SCC 211.

21. In view of the aforesaid, the impugned conclusions of the High Court are not sustainable. Normally, we would have set aside the order and remanded it to the High Court to decide the matter afresh. But the G learned counsel for respondents 1, 2 and 3 on instructions stated that they agree that 3570 sq.mtrs. of land may be returned to the respondents 1, 2 and 3 and development charges and other charges, as payable in law, shall be paid by the said respondents.

22. In view of the aforesaid statement of learned counsel for the

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respondents 1, 2 and 3, we dispose of the appeal with the following directions: A

(1) The appellant authority shall release 3570 sq.mtrs of unutilized vacant land on payment of development charges and other charges payable under the Development Act.

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(2) The respondents 1, 2 and 3 shall not be entitled for any land beyond 3570 sq. mtrs relatable to the present dispute.

23. The appeal is disposed of accordingly with no order as to costs.

Contempt Petition 239 of 2005 C

24. In view of disposal of Civil Appeal No.4329 of 2003, contempt petition is also disposed of.

R.P. Appeal and Contempt Petition disposed of.