

CASE NO.:
Appeal (civil) 4732 of 2007

PETITIONER:
M/s Vishal Properties Pvt. Ltd

RESPONDENT:
State of U.P. & Ors

DATE OF JUDGMENT: 09/10/2007

BENCH:
Dr. ARIJIT PASAYAT & D.K. JAIN

JUDGMENT:
J U D G M E N T
(Arising out of S.L.P. (C) No. 12531 of 2005)
[With T.P. (C) No.846 of 2005]

Dr. ARIJIT PASAYAT, J.

1. Leave granted.

2. Challenge in this appeal is to the order passed by a Division Bench of the Allahabad High Court dismissing the writ petition filed by the appellant questioning correctness of the orders dated 27.10.2004 and 31.3.2005 passed by the officers of New Okhla Industrial Development Authority (in short \021NOIDA\022) and praying for a direction to the respondents not to interfere with the possession of the appellant with plot no.P-1, Sector -18, NOIDA.

3. The notice in question was issued for unauthorized additional construction and change of user of land. The notice dated 21.4.2004 was issued by NOIDA under Section 10(1) of the U.P. Industrial Development Act, 1976 (hereinafter referred to as the \021Act\022). It was indicated in the notice that at the time of inspection on 21.4.2004 it was found that the appellant had violated the building bye-laws and directions and terms and conditions in the lease deed which act prejudicially affected the proper planning and amenities of the industrial development area which was against interest of general public. Therefore, appellant was required to remove the unauthorized construction within a period of 15 days and bring the construction in conformity with the sanctioned plan so that interest of the general public was not adversely affected. It was subsequently pointed out that the appellant was not using the ground floor as per the rules and conditions imposed. It was also mentioned that in the event the appellant failed to do the needful, NOIDA was to get the illegal construction removed at the cost of the appellant. Since there was no compliance with the direction, another notice dated 23.8.2004 was sent to the appellant. He was again required to comply with the directions contained in the earlier notice as the ground floor and service floor were not being used as per the conditions of the lease deed. Reply dated 23.9.2004 was submitted by the appellant. It was pointed out that the appellant had completed the construction on 9.10.1992 and completion certificate was issued thereafter. The appellant had not made any construction and the allegations contained in the notice were incorrect. The letter was followed by another letter dated 7.10.2004 in which the request was made by the appellant for changed user of ground floor and upper ground floor. This request of the appellant was rejected by the NOIDA

in terms of the communication dated 27.10.2004. It was pointed out that the ground floor was required for exclusive use for parking, but it was being used otherwise and even the basement was being used as office.

4. Challenging the order dated October 27, 2004, the appellant filed writ petition before the Allahabad High Court which was disposed of on December 23, 2004, with direction that the appellant's reply dated December 8, 2004 should be decided if not already done by a speaking order. On 31.3.2005, representation filed by the appellant was rejected. The appellant took the stand that he should be permitted to use these floors as was done in the cases of lessees of plot nos. P-4 and P-5 and P-6. The High Court found that appellant made a bare denial relating to allegations contained in the notices that ground floor and the service floors were not being used in accordance with the terms and conditions.

5. Stand of the appellant that there was no contravention was also turned down. The High Court also noted that there was no question of any advantage being granted by the appellant for the purpose of permission granted to the lessor in respect of some other plots. Even in case of allotment of plot No.P-2 and P-3 a departure was made. The writ petition was accordingly dismissed.

6. Stand of the appellant in the appeal was that discrimination is being made vis-à-vis some others. It is stated that change of policy on the question of regularization was done and the benefit which has been extended to others should be allowed to the appellant.

7. It is stated that there is nothing sacrosanct about clause 10(a) upon which the respondents have relied. The same can be modified by the Chief Executive Officer, NOIDA.

8. Learned counsel for the respondents submitted that there is no question of any discrimination. In fact, the NOIDA have already issued notice to the persons to whom certain benefits as claimed by the appellant were purportedly given. There is no dispute that unauthorized additions have been made. It is submitted that construction was completed in 1990. The completion certificate was issued on 19.4.1993. The representations were made on 11.5.1993 and 5.7.1993. In 1995-96 a new scheme with fresh policy was introduced which was made applicable to all adjoining plots P-3, P-4, P-5 and P-6. Additional affidavit has been filed on behalf of the respondents 2, 3 and 4, inter alia, stating that on 29.6.2004, the Chairman of the Industrial Committee vide communication to the Chief Secretary, Industrial Development, Government of U.P., and others informed that irregularities have been committed by NOIDA during the period from 20.5.2002 to 29.8.2003 in the construction of the plot nos.P-5 and P-6. Further action has also been taken against allottees in respect of plot nos.P-5 and P-6 for violating the norms/conditions of the allotment/lease. It is also stated that the notice has been issued/is being issued to find out the irregularities, if any, committed in respect of other plots.

9. When the representation was made by the appellant in 1993 there was no policy in question. In fact, the change of policy came subsequently. The authorities may have acted in an irregular manner in case of some others. That does not confer any legal right on the appellant to claim a similar benefit. So far as the allotment of plot nos.P-5 and P-6 are concerned, they stand on different footing. The conditions in

the brochure issued in the year 1995-96 were different.
Relevant Clause of the aforesaid scheme reads as follows:

\023\005.Use/Uses: The basement and ground floor may be used for shops/showrooms, subject to the conditions that the activities considered to be a public nuisance/hazard shall not be out and that on all other floors the commercial activities institutional/residential use shall be allowed got the act to the condition that no public nuisance is caused.\024

10. Immediately, after completion of the commercial building appellant submitted letters dated 1.5.1993 and 5.7.1993 for change in user of ground floor from parking place to shops. No approval was granted for such change or user and change the user for which notices were issued. The relevant terms and conditions contained in the brochure in question read as follows:

6. \023Approval of drawings

(a) The successful bidder will start the construction after obtaining due approval of building plans by competent authority.

(b) The architectural control drawings for the plot shall be exhibited at the time of auction. The successful bidder shall have to purchase the architectural control drawings from New Okhla Industrial Development Authority on payment. Thereafter the allottee shall get the plans prepared from the architects on the basis of the architectural control drawings received from New Okhla Industrial Development Authority and obtain sanction of the same from New Okhla Industrial Development Authority as per Building Regulations and Directions and procedures laid down by the Authority. The allottee will then carry on the construction of the building strictly in accordance with the sanctioned plans obtained from New Okhla Industrial Development Authority. On completion of the building, the allottee shall obtain completion certificate from New Okhla Industrial Development Authority as per the procedure laid down by the Authority before occupying the building. The notes, specifications and other stipulations mentioned in the architectural control drawings shall be strictly adhered to. No addition/alteration shall be carried out by the allottee or the purchasers of floor area after obtaining completion certificate, without getting necessary permission and sanction from the Authority.

6. (c)(i) The Ground floor (of the building constructed on the allotted commercial office plot) will be exclusively used for parking and no temporary or permanent construction of any sort would be allowed in any circumstances.

6. (c)(ii) Construction of basement is optional and if constructed shall be as per architectural control drawings and building plans approved by the Authority. The basement shall be strictly used for services and storage purpose.

6. (c)(iii) No barricade or boundary wall will be permitted on any side on the plot and there will be free access from one plot to another on the ground floor.

6. (c)(iv) The first floor of the building constructed on the allotted plot will be used for showroom cum-office only.

6. (c)(v) The remaining upper floor\022s constructed will be exclusively used for offices only and for no other purpose.

6. (c)(vi) The area on each floor includes area of balcony also. No projection on any side will be allowed beyond proposed plot line.\023 (Emphasis Supplied)

11. Subsequently the lease deed dated 8th August, 1990 was executed between the appellant and NOIDA. The terms and conditions contained in the brochure were repeated in the lease deed. The relevant clauses of the lease deed are quoted below:

\023X(A). The ground floor (of the building constructed on the allotted office plot) will be exclusively used for parking and no temporary or permanent construction of any sort would be allowed in any circumstances.

X(B). Construction of basement is optional and if constructed, shall be as per architectural control drawing and building plans approved by the lessor.

X(C). No barricade or boundary wall will be permitted on any side of the plot and there will be free access from one plot to another on the ground floor.

X(D). The first and above floors of the building constructed on the allotted plot will be exclusively used for showroom-cum-office only. The above floors of the building constructed on the allotted plot will be exclusively used for office only and for no other purpose.

XI. - That the lessee shall obey and submit the rules, building regulations and directions of the lessor, and proper municipal or other authority now existing or hereinafter to exist, so far as the same relate to the immovable property in the said area so far as they affect the health, safety and convenience of the other inhabitants of the place.

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XIV. (A) The plot or building thereon shall not be used for a purpose other than that specified in the lease deed and architectural control drawings prescribed by the lessor. The architectural control drawings will be supplied by the lessor on payment of the prescribed fee by the allottee who shall carry out construction of the plot strictly in accordance with the same after the approval from the lessor.

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XXI. If the lessee does not abide by the terms and conditions and building rules or any other rules framed by the Authority, the lease may be cancelled by the lessor and the lessee in such event will not be entitled to claim any compensation in respect thereof.\024 (Emphasis Supplied)

12. Even otherwise, Article 14 is not meant to perpetuate an illegality. It provides for positive equality and not negative

equality. Therefore, we are not bound to direct any Authority to repeat the wrong action done by it earlier. In *Sushanta Tagore & Ors. Vs. Union of India & Ors.*, (2005 (3) SCC 16), this Court rejected such a contention as sought to be advanced in the present case by observing:-

\023Only because some advantages would ensue to the people in general by reason of the proposed development, the same would not mean that the ecology of the place would be sacrificed. Only because some encroachments have been made and unauthorised buildings have been constructed, the same by itself cannot be a good ground for allowing other constructional activities to come up which would be in violation of the provisions of the Act. Illegal encroachments, if any, may be removed in accordance with law. It is trite law that there is no equality in illegality.\024

13. This view also finds support from the judgments of the this Court in *Snehprabha v. State of U.P. & Ors.*, (AIR 1996 SC 540); *Secretary, Jaipur Development Authority, Jaipur v. Daulat Mal Jam & Ors.*, (1997 (1) SCC 35), *State of Haryana & Ors. v. Ram Kumar Mann*, (1997 (3) SCC 321), and *Faridabad C.T. Scan Centre v. D.G. Health Services & Ors.* (1997 (7) SCC 752).

14. In *Finance Commissioner (Revenue) v. Gulab Chandra & Anr.* (2001 AIR SCW 4774) this Court rejected the contention that as other similarly situated persons had been retained in service, persons senior to the petitioner could not have been discharged during the period of probation observing that even if no action had been taken in similar situation against similarly situated persons then too it did not confer any legal right upon the petitioner.

15. In *Jalandhar Improvement Trust v. Sampuran Singh*, (AIR 1999 SC 1347) and *Union of India & Ors. v. Rakesh Kumar* (AIR 2001 SC 1877), this Court held that Courts cannot issue a direction that the same mistake be perpetuated on the ground of discrimination or hardship.

16. Any action/order contrary to law does not confer any right upon any person for similar treatment. (See: *State of Punjab & Ors. v. Dr. Rajeev Sarwal*, (1999 (9) SCC 240); *Yogesh Kumar & Ors. v. Government of NCT Delhi & Ors.*, (2003 (3) SCC 548); *Union of India & Anr. v. International Trading Company & Anr.*, (2003 (5) SCC 437) and *M/s Anand Button Ltd. v. State of Haryana & Ors.* (2005 AIR SCW 67).

17. Recently in *State of Kerala v. K. Prasad & Anr.* (JT 2007 (9) SC 140), it was inter alia held as follows:

\02314. Dealing with such pleas at some length, this Court in *Chandigarh Administration & Anr. v. Jagjit Singh & Anr.* has held that if the order in favour of the other person is found to be contrary to law or not warranted in the facts and circumstances of his case, it is obvious that such illegal or unwarranted order cannot be made the basis of issuing a writ compelling the authority to repeat the illegality or to pass another unwarranted order. The extraordinary and discretionary power of the

High Court under Article 226 cannot be exercised for such a purpose. This position in law is well settled by a catena of decisions of this Court. [See: Secretary, Jaipur Development Authority, Jaipur v. Daulat Mal Jain & Ors. and Exta Shakti Foundation v. Govt. of N.C.T. of Delhi. It would, thus, suffice to say that an order made in favour of a person in violation of the prescribed procedure cannot form a legal premise for any other person to claim parity with the said illegal or irregular order. A judicial forum cannot be used to perpetuate the illegalities.\024

18. In view of the factual position, the actions of the respondents are not without sanction of law. Appeal is sans merit, deserves dismissal, which we direct.

T.P. (C) No.846 of 2005

19. In view of our order in Civil Appeal No. _____ of 2007 (Arising out of S.L.P. (C) No. 12531 of 2005), no further order is necessary to be passed in Transfer Petition.