

CASE NO.:
Appeal (civil) 1569 of 2004

PETITIONER:
New Okhla Industrial Development Authority

RESPONDENT:
Kendriya Karamchari Sahkari Grih Nirman Samiti

DATE OF JUDGMENT: 24/04/2006

BENCH:
ARIJIT PASAYAT & TARUN CHATTERJEE

JUDGMENT:
J U D G M E N T

ARIJIT PASAYAT, J.

Challenge in this appeal is to the legality of judgment rendered by a Division Bench of the Allahabad High Court allowing the writ petition filed by the respondent.

Background facts in a nutshell are as follows:

Appellant - New Okhla Industrial Development Authority (in short the 'NOIDA') was constituted under the provisions of Section 3 of the Uttar Pradesh Industrial Area Development Act, 1976 (in short the 'Act'). The main object of the Act was planned development of an industrial development area. For the said purpose State of Uttar Pradesh acquired lands falling in various villages by invoking the provisions of the Land Acquisition Act, 1894 (in short the 'LA Act') by issuing various notifications. This Court in *Kendriya Karamchari Sahkari Nirman Samiti Ltd. & Anr. v. The New Okhla Industrial Development Authority & Ors.* (AIR 1988 SC 1) held that lands belonging to cooperative societies are not exempt from acquisition by the State for the purpose of planned development of Noida area. Since the land of a number of Co-operative Societies were compulsorily acquired, a decision was taken by the NOIDA that land equivalent to 40% of the land holding of such societies would be made available for allotment to the members of the societies whose land was acquired. The respondent - society represented vide its letter dated 30th April 1994 that it owned 292 bighas of land and on that basis moved for allotment of land for the benefit of its members. In response a letter dated 14.6.1994 was written by NOIDA that the respondent's request for allotment of residential plots is under consideration and as soon as the decision is taken necessary information shall be given. By letter dated 8.8.1994 appellant asked the respondent - society to send a list of its members duly verified by the District Assistant Registrar Cooperative Societies, Ghaziabad. A list was sent purportedly verified by the Assistant Registrar of Cooperative Societies. Acting on the basis of representation made by the Society and believing the same to be correct, appellant proceeded to allot land equivalent to 40% of 292 bighas. The respondent wrote a letter dated 9.9.1994 indicating details of such 292 bighas. In February and March, 1995 allotment letters were issued to individual members totaling 1754 for land measuring 3,23,650 sq.m. In paragraph 21 of the allotment letter it was stipulated as follows :

"21. CONSEQUENCES OF MIS-

REPRESENTATION:

If the allotment/lease of the plot is obtained by any misrepresentation, suppression of material fact, mis-statement of fraud, allotment/lease may be cancelled/determined and the possession of the plot and building thereon (if exists) may be resumed by the Chief Executive Officer or his duly authorized representative and the allottee/lessee will not be entitled to any compensation. Entire money deposited will also be forfeited in favour of the authority. Besides, Authority will be at liberty to initiate legal action against such allottee/lessee."

Accordingly, payments in respect of such allotments to 1754 persons were accepted. Complaints were received from various persons who alleged that they were in fact members of the respondent-society, but their names were not forwarded by the Society for allotment of plots. In view of these complaints and with a view and intent to check correctness of the membership list, appellant requested Secretary of the respondent-Society on 1.5.1996 to give the following details :

1. Year-wise detailed information of members enrolled by the society;
2. Year-wise membership fees deposited by the members to obtain membership of the society and further year-wise details regarding deposit of such an amount by the society.
3. Year-wise details of pass book containing entries deposit of membership fees.
4. Details of cash book, balance sheet etc. from the inception of the society till 1988.

On 15.5.1996 President of the respondent-Society Sh. Balbir Singh informed the appellant that he had asked the Secretary to place relevant records before him. But no documents were forwarded. Letter dated 1.5.1996 was followed by another letter dated 21.6.1996 reiterating that if documents asked for were not furnished, allotments would be cancelled. Public notice was given on 22.6.1996 and 25.6.1996 as no documents were furnished. On 26.7.1996 the President of the respondent-Society requested grant of further 15 days' time to furnish the documents. On 4.10.1996 a letter was received from the office of the Governor, Uttar Pradesh along with complaints from various persons who claimed to be members of the respondent-Society and whose names were not forwarded by the respondent-society for allotment of plots. A list of membership of the respondent-society duly authenticated by the Registrar, Uttar Pradesh Housing and Development Board, Lucknow indicated that only 546 members were enrolled by the Society upto 27.4.1987.

Name of many persons mentioned in this list and those who had sent complaints regarding exclusion were not found in the list purported to have been verified by Sh. Balbir Singh, president of the respondent-Society, who had earlier claimed to have verified the membership as Assistant Registrar-Cooperative societies. In these circumstances an enquiry was

conducted by the Deputy Chief Executive officer of the appellant. In this enquiry on the basis of the information collected, award given by the Additional District Magistrate on 17.8.1996 and the report of the District Magistrate, Ghaziabad dated 24.1.1997 it was revealed that the Society had made gross misrepresentation that 292 bighas of land had been acquired and a false claim for allotment of 40% of the said areas was set up. It was further revealed that Society had received compensation for land acquisition in respect of only 34 bighas of land. Interestingly 65 bighas of land recorded in the name of the Society had vested in the State Government in terms of Section 154 of the Uttar Pradesh Zamindari Abolition and Land Reforms Act. More curiously, in respect of 118 bighas of land from the remaining 192 bighas of land compensation had been taken by the farmers and not by the respondent-Society. Therefore, a show cause notice was issued on 8.7.1997 requiring the respondent specifically to furnish the following documents:

1. Year-wise details of payments made for purchase of land and concerned sale deeds.
2. Year-wise details of receipt of compensation for the land.
3. Year-wise detailed information of members enrolled by the society with their full particulars name, age, parentage and address.
4. Year-wise membership fees deposited by the members to obtain membership of the society and further yearwise details regarding deposit of such an amount by the society.
5. Year-wise details of pass book containing entries depot of membership fees.
6. Details of cash book, balance sheet etc. from the inception of the society till 1988.
7. Copies of proceedings of the Annual General Meeting for the each year since inception.
8. List of original members, if any, submitted at the time of registration to the housing commissioner/Registrar.
9. Annual audit report for each year of the society from the beginning.

Thirty days' time was given to furnish the document so that allotment to the extent of 40% of the land acquired from the society in case of its genuine members could be granted. It was clearly indicated that in case the details were not furnished, all the allotments made to the members of the society would be cancelled and money deposited forfeited. Legal proceedings were contemplated against office bearers of the society for playing fraud.

In response, the respondent-Society furnished a list of

members enrolled between 1.4.1987 to 31.5.1987 and stated that the remaining documents would be sent soon. On 4.10.1997 the respondent-Society sent another letter alongwith which another list of members enrolled between 1.6.1987 to 31.10.1987 was annexed. Again time was asked for and assurance was given to furnish other documents. Despite grant of opportunities and the assurances made, nothing concrete was placed by the respondent-Society to substantiate the genuine membership. In these circumstances cancellation letter was issued on 5.5.1998 indicating that in view of non-submission of relevant documents and the malpractice adopted, the allotments were cancelled. Although according to the appellant, it was entitled to forfeit the amount in deposit yet a decision was taken to refund the same to the members who had earlier been allotted plots.

Questioning correctness of the cancellation, certain members of the respondent-society filed a petition before the MRTD Commission. The Association was titled as "Noida Sector 43 Allottees Welfare Association". Initially by order dated 15.5.1988 MRTD Commission granted an order of status quo. Subsequently another petition was filed before the MRTD Commission. Counter Affidavit was filed by present appellant before the Commission indicating as to how massive fraud have been practiced by the respondent. A rejoinder was filed by the appellant. During pendency of the matter before the Commission, a Writ Petition was filed on 19.11.2001 before the Allahabad High Court questioning the decision dated 5.5.1998. On 15.1.2002 the petition before the Commission was withdrawn by the respondent. In the writ petition counter affidavit was filed. Attention was drawn to order dated 7.3.2003 passed by this Court in I.A. No. 18 of 2002 in Civil Appeal No. 5502 of 1983. This court directed the NOIDA to comply with the direction dated 4.4.1991 and to develop and bring before this court a housing scheme for 242 members of the U.P. Residents Society. Rejoinder was filed on 20.7.2003. Though appellant requested for time to file further affidavit and documents prayer was not granted. The High Court reserved judgment on that date and by order dated 5.8.2003 the writ petition was allowed. The judgment is under challenge in this Appeal.

Learned counsel for the appellant inter alia submitted that the High Court entered into disputed questions of fact. It was specifically brought to the notice of the High Court that dispute relating to 64 bighas of land was pending before the Board of Revenue and that in respect of 118 bighas of land compensation had been taken by the farmers and the factual scenario clearly indicated as to how fraud was practiced by the respondent-Society. The High Court not only nullified the effect of the proceedings before the Board of Revenue, but also gave findings to the effect that fraud was committed by the farmers and also directed payment of interest. According to learned counsel principles of Promissory Estoppel had no application to the facts of the case, though the High Court founded its conclusions on those principles.

In reply, learned counsel for the respondent submitted that there was no dispute regarding membership which could be adjudicated by the appellant. It was a matter for the Co-operative Societies Authorities. Even if it is accepted that some matters were pending before the Board of Revenue that area can be at the most excluded. But denying entitlement of 40% on that ground is not proper. Even if the farmers had taken the compensation, it is a matter between the society and

the farmers and that had no relevance so far as the present dispute is concerned. The report of the Tehsildar clearly indicated that 292 bighas of land had been acquired from the society.

Though it is claimed by the respondent that there was no dispute that 292 bighas of land had been acquired by the Society, on verification of records the position appears to be entirely different. It has been all through the stand of appellant that the Society had misrepresented to be the owner of 292 bighas of land. This is a disputed question of title which was to be established in an appropriate court of law and the writ petition was not the proper remedy. Further as rightly contended by the learned counsel for the appellant, the High Court's order practically renders the proceedings before the Board of Revenue redundant. Findings recorded about the merits of the proceedings before the Board of Revenue when the State was not a party in the writ petition is an impermissible course adopted by the High Court. Even otherwise, the finding that farmers have practiced fraud is without any foundation since farmers were not parties in the writ petition. The appellant's effort was to verify genuineness of the members who were claimed by the Society to be its genuine members. Interestingly at the initial stage the list was verified by Sh. Balbir Singh who undisputedly was President of the respondent-Society. In spite of several opportunities the details regarding membership were not furnished. Obviously it cannot be said that the appellant was bound to allot land, even if the membership was not established and it was established that large number of people were not genuine members. Allotment in the manner desired by the respondent-Society would be against the very purpose of allotment flowing from the scheme in question. In any event highly disputed questions of fact were involved. The High Court did not examine that issue in its proper perspective. It only referred to some decisions which noted that the High Court is not deprived of its jurisdiction to entertain a petition under Article 226 of the Constitution, merely because in considering the petitioner's right to relief, questions of fact may fall to be determined. These judgments have been read out of context. It is fairly well settled that disputed questions of fact should not be gone into by the High Court in writ proceedings.

A High Court is not deprived of its jurisdiction to entertain a petition merely because in considering petitioner's right to relief question of fact may fall to be determined as pointed out in *Gunwant Kaur v. Municipal Committee* (AIR 1970 SC 802). In a petition under Article 226, the High Court has jurisdiction to try issues of law and fact. Where, however, the petition raises complex question of fact, the Court should not entertain the petition. In *Mahanta Moti Das v. S.P. Sahid* (AIR 1959 SC 942) the High Court refused to go into the question as to whether Trusts were public or private trusts as the question had involved investigation of complicated facts and recording of evidence. The view was upheld. Thus, if there is a question on which there is a serious dispute which cannot be satisfactorily decided without taking evidence, it should not be decided in a writ proceeding (See *Union of India v. T.R. Verma*, AIR 1957 SC 882). If disputed questions of fact arise and the High Court is of the view that those may not be appropriately tried in a writ petition, the High Court has jurisdiction to refuse to try those questions and relegate the party to his normal remedy to obtain redress in a suit.

In a petition under Article 226, the High Court has

jurisdiction to try issues both of fact and law. When the petition raises complex questions of fact which may, for their determination, require oral evidence to be taken and on that account the High Court is of the view that the disputed statement may not be appropriately tried in a writ petition, the High Court should ordinarily decline to try the petition.

Thus, a High Court is not deprived of its jurisdiction to entertain a petition under Article 226 merely because in considering the petitioner's right, question of fact may fall to be determined. Ultimately, the question is one of discretion which is to be exercised in conformity with judicial principles.

The High Court entertained the writ petition on the ground that the present appellant by acting wholly arbitrarily and illegally had discrimination against the writ petitioner. These conclusions were based on no material. On the contrary, the factual scenario as described above goes to show that the respondent-Society was not entitled to maintain a writ petition. Further there was no claim for interest made in the writ petition but the High Court granted interest. Looked at any angle the High Court's order is clearly unsustainable and is set aside. The Writ Petition (Civil) No. 39842 of 2001 filed before the High Court is dismissed.

The appeal is allowed but in the circumstances without any order as to costs.