

PETITIONER:
HIRALAL CHAWLA & ANR.

Vs.

RESPONDENT:
STATE OF U.P. & ORS.

DATE OF JUDGMENT 13/02/1990

BENCH:
MISRA RANGNATH
BENCH:
MISRA RANGNATH
PUNCHHI, M.M.
AGRAWAL, S.C. (J)

CITATION:
1990 SCR (1) 325 1990 SCC (2) 149
JT 1990 (1) 194 1990 SCALE (1) 161

ACT:

Land Acquisition Act, 1894: Section 4(1)--NOIDA--Land acquired by cooperative housing societies prior to notification in favour of Development Authority--Validity of.

HEADNOTE:

Certain cooperative housing societies comprising of the petitioners and others had acquired lands in the trans-Jamuna area of Uttar Pradesh prior to the setting up of the New Okhla Industrial Development Authority in 1976. When the said lands came to be notified for the Development Authority writ petitions were filed in 1983 under Article 32 of the Constitution for quashing the acquisition. In its order dated January 14, 1985 the Court had directed the Authority to hand over actual possession of plots to allottees involved in the dispute. Since a dispute had arisen as to the eligibility of a large number of applicants who had failed to keep to the time schedule in the matter of payment the Court in its interim order dated September 2, 1983 had directed the Authority to reserve 269 acres of land in addition to the land already allotted. The petitioners in the instant case belong to this category.

The total number of persons entitled to allotment has been determined at 2,380. The Authority's scheme for the petitioners had stipulated four sizes of plots viz. 112.5 sq. metres, 162 sq. metres, 202.5 sq. metres and 250 sq. metres. They, therefore, claimed an area of 130 acres out of the 269 acres set apart for them. The Authority, however, sought to reduce this area to 90 acres and the plot area to 77.73, 112.3, 140.45 and 173.53 sq. metres respectively. Disposing of the petitions, the Court.

HELD: If the scaling down from 130 acres to 90 acres is to be done the plots are bound to be of odd sizes and working out may be difficult. Therefore, instead of 90 acres of land the total area to be released on that account should be 96.29 acres and the different sizes of plots as provided in the scheme shall stand reduced to 100 sq. metres, 326 130 sq. metres, 150 sq. metres and 180 sq. metres respectively. 71 decimals of land should also be set apart for the other applicants being dealt with separately. The plots are

to be developed by the Authority in accordance with the norms laid down, and allotted within a period of nine months beginning from 1st of March, 1990. [329H-330F, 331F]

Prices have gone up in every sphere. To bind the Authority by the terms of its scheme at this point of time would not at all be fair. These 2,380 persons have already deposited huge amounts of money said to be about five crores of rupees with the Authority and the money has been held on account without utilisation, as no final decision had been taken. The current rate per square metre is Rs.1,200. Taking into consideration the fact that the members have waited too long for allotment of their plots, the Authority should be permitted to charge Rs.1,000 per square metre. Every member who has deposited any sum of money with the Authority against proposed allotment shall be entitled to 12% interest on such amount from the date of deposit till the actual allotment and such interest accrued in favour of the person shall be entitled to adjustment against actual price of land to be worked out @ Rs. 1,000 per square metre. Balance amount, if any, shall have to be paid by every person included in the figure of 2,380 within three months from the date of the order in monthly instalments. Failure to pay any of the instalments within the time limit indicated shall disqualify such person from allotment. The terms in regard to allotment for the remaining few persons shall also be the same. [330G-331E]

JUDGMENT:

ORIGINAL JURISDICTION: Writ Petition No. 975 of 1986.

(Under Article 32 of the Constitution of India).

D.D. Thakur, V.C. Mahajan, S. Markandaya, G.S. Rao, Sreepal Singh and Ms. Kusum Chowdhary for the Petitioners.

R N. Trivedi, S.C. Batra and Raju Ramachandran for the Respondents.

The Judgment of the Court was delivered by

RANGANATH MISRA, J. The dispute in this group of writ petitions under Article 32 of the Constitution relates to allotment of land for residential purposes by New Okhla Industrial Development Authority (shortly known as 'NOIDA'). NOIDA is a trans-Jamuna housing project set up by the Uttar Pradesh Government in the year 327

1976. Prior to the setting up of the NOIDA, the Defence Services Cooperative Housing Society Ltd. and other societies had acquired lands in the area for purposes of housing of their members and when the same came to be notified for acquisition for NOIDA, writ petition No. 9034 of 1983 was filed challenging the acquisition; the federation also filed a separate writ petition being 1588 of 1984. Some other writ petitions by the different parties were also filed. On 14th January, 1985, after hearing parties a Bench of this Court inter alia made the following directions:

"Both sides presented a fair and nearly accurate picture of the present situation. Spirit of re-conciliation rather than confrontation prevailed all throughout. All reasonable suggestions emanating from both sides either accepted or seriously considered by both sides with a view to implementing the scheme under which plots were to be allotted. Only three points remain which necessitated court's intervention. Having examined them we direct:

(1) NOIDA shall hand over actual possession of plots to each allottee of each society involved in the dispute. To identify them a list setting out their names has to be supplied

within six weeks from today.

(2) Mr. G.L. Sanghi, learned counsel urged that NOIDA will be entitled to escalation charges for the year 1981 and 1982 which works out at the rate of Rs.20 per square metre. He repeatedly pointed out that the NOIDA would be entitled to the same under the scheme. May be there was substance in the submission. However, having regard to the fact that a sum of Rs.5.50 crores has already been deposited by the allottees with the NOIDA for some time and as the scheme had not been implemented as per time schedule provided in the scheme itself, to meet possession of plot to each allottee had to be handed over some where in 1982 and which would be now done in 1985 pursuant to the directions yet without setting a precedent and having regard to the facts of this case and special circumstances pointed out to this Court with regard to the present position, we are of the opinion that the NOIDA is not entitled to escalation charges for the year 1981 and 1982.

(3) The third point of a minor difference was that a special
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charge has to be paid by all allottees whose plots are said to be situated at a comparable advantageous position, such as, corner plots, plots abutting to the main road or both etc. There may be advantage in taking the corner plot or a plot abutting on the road, but that is fortuitous and not be one's volitional selection. Having regard to the special facts of this case and the element of luck in getting a particular plot we direct that the NOIDA would not be entitled to collect special charge or anything extra for such plots. We order accordingly.

It was further pointed out that there were some applicants who applied for the plots but who failed to keep to the time schedule in the matter of payment. If the number of such applicants had not been very large, the Court would have examined each case. But the number of such applicants appears to be quite big.

Mr. Soli Sorabjee, learned counsel, in this connection pointed out that under the interim order of this Court dated September 3, 1988, amongst others NOIDA was directed to reserve 269 acres of land in sectors 41 and 42 or in adjoining sectors in addition to the land already allotted to the petitioners. Therefore, their cases deserve consideration as requisite area of land is available.

At the suggestion of the Court Mr. G.L. Sanghi, learned counsel agrees to appoint Shri Z.H. Kazmi, Law Assistant Registrar (Housing), Lucknow who would be specifically directed to look into the case of each such applicant and decide whether any one deserves allotment avoiding technical approach and by approaching the matter from the angle of social justice with broad vision. If there is any dispute which cannot be resolved liberty to move this Court "

On 16th December, 1985, the following order was made:

"The parties are agreed that the dispute in regard to payment of interest and the eligibility for allotment of plots may be decided by Shri D.A. Desai, Chairman, Law Commission, as mediator and not as Arbitrator. The parties agree that whatever decision is given by Shri D.A. Desai

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will be accepted by them as binding and there will be no question of challenging it in any form whatsoever. The parties also agree that simultaneous with the execution of documents possession of the plots shall be forthwith handed over to those who are admitted as eligible for allotment and interest shall be paid by them at the rate of 15% per annum

from the date of the order made by this Court, namely, 2.4.1985, subject to adjustment one way or the other according to the decision which may be given by Shri D.A. Desai."

The decision contemplated by the December order took some time to be given and the report furnished to this Court came to be hotly debated. More than three years have been taken on that account. It is unnecessary to deal with the different problems which arose in the proceedings before this Court after submission of the report till the matter has been heard in the third week of January this year.

We suggested to Mr. Thakur, learned counsel appearing for the Federation of Co-operative Housing Societies and Mr. Trivedi, learned Additional Advocate General of Uttar Pradesh appearing for NOIDA and counsel appearing for the different parties to sit across the table and work out an acceptable modality by which the problem could be best answered and we are happy to note that their efforts have been to a large extent successful and the scope of what at one time appeared to be an unending dispute had now been substantially reduced and confined to certain issues which require to be dealt with by this order of ours.

It is agreed that the total number of persons who are entitled to allotment is 2,380 and the Federation representing the various cooperative societies has drawn up the particulars of these 2,380 applicants. At the hearing, counsel and NOIDA authorities present in Court had agreed to allotment of 90 acres out of the 269 acres set apart by this Court's earlier order. In a written note submitted by Mr. Thakur it has been brought to our notice that if their initial requirement of 130 acres is reduced to 90 acres, a plot of 112.5 square metres will have to be scaled down to 77.73; similarly a plot of 162 square metres will have to be reduced to 112.3 square metres; a plot of 202.5 square metres will have to be reduced to 140.45 square metres; and a plot of 250 square metres will have to be reduced to 173.59 square metres. It has not been disputed that the four categories of plots were stipulated in the scheme. If this scaling down is to be done the plots are

bound to be of odd sizes and working out may be difficult. We have, therefore, decided that instead of 90 acres of land the total area to be released on that account should be 96.29 acres in all and different sizes of plots as provided in the scheme shall stand reduced to the sizes indicated below:

S. No.	As per scheme (Sq. metres)	Plots now to be allotted (Sq. metres)
1.	112.5	100
2.	162	130
3.	202	150
4.	250	180

Apart from 2,380 eligible allottees there are separate applications which are before the Court already and are being dealt with separately. To meet their claims we are of the view that 71 decimals should also be set apart and the same would be subject to such orders as the Court may ultimately make in these cases. In the event of any area being unallotted the same would revert back to NOIDA.

The plots to be allotted are to be developed by NOIDA. While the federation and the other petitioners wanted that a three months' limit should be fixed it has been pleaded on behalf of the NOIDA that the time limit should be two years. There is a limit to waiting and human patience and the span of the life of the applicants is not available to be extended by NOIDA. Taking an overall picture of the matter we

direct that a period of nine months beginning from 1st of March, 1990, is the limit within which developed plots shall be allotted to the 2,380 entitled persons now represented by the Federation and such other persons as referred to above.

The next relevant point for consideration is what should be the price to be paid. We have already indicated that this Court in its order dated 14th January, 1985, had not agreed for any escalation charges. More than five years have since been rolled by. Turn of events have taken an unwieldy course. Prices have gone up in every sphere and the rupee has lost its value over the years. To bind NOIDA by the terms of its scheme at this point of time would not at all be fair. We may point

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out at this stage that these 2,380 persons have already deposited huge amounts of money said to be about five crores of rupees with NOIDA and the money has been held on account without utilisation, as no final decision had been taken. Undoubtedly this money must be fetching interest. Mr. Ramachandran learned counsel appearing for NOIDA has indicated that current rate per square metre is Rs. 1,200. Taking into consideration the fact that these 2,380 members have waited too long for allotment of their plots, we are of the view that NOIDA should be permitted to charge @ 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% interest on such amount from the date of deposit till the actual allotment and such interest accrued in favour of the person shall be entitled to adjustment of such interest against actual price of land to be worked out @ Rs. 1,000 per square metre. Balance amount, if any, shall have to be paid by every person included in the figure of 2,380 within three months from now in monthly instalments. The 1st instalment is to be paid on or before 31st March, 1990; the 2nd instalment to be paid on or before 30th April, 1990; and the 3rd instalment to be paid on or before 31st May, 1990. It shall be the obligation of the Federation to duly notify every member of the direction 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 would thereafter be only obliged to refund the money lying to the credit of the defaulter with bank rate of interest. The terms in regard to allotment for the remaining few persons as stated above shall also be the same.

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 federation of the different societies would cooperate with NOIDA in this regard.

The order reserving 269 acres of land is vacated, subject to the allotments indicated. The writ petition is disposed of with these directions. There shall be no order as to costs.

P.S.S.

Petitions

disposed of.

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