

A.F.R.
Reserved

Court No. - 1

Case :- MISC. BENCH No. - 9591 of 2018

Petitioner :- Lucknow Omaxe City Residents & Allottees Association
& 2 Ors

Respondent :- State Of U.P. Thru.Prin.Secy.,Housing & Urban
Planning Devel

Counsel for Petitioner :- Mudit Agarwal,Nidhi Agarwal

Counsel for Respondent :- C.S.C.,Anilesh Tiwari,Ashish
Chaturvedi,Dr,V.K.Singh,Kuldeep Pati Tripathi,Namit
Sharma,Ratnesh Chandra,Shailendra Singh Chauhan

Hon'ble Ritu Raj Awasthi, J.

Hon'ble Dinesh Kumar Singh,J.

(Delivered by Hon'ble Dinesh Kumar Singh, J.)

1. The present writ petition has been filed by Lucknow Omaxe City Residents & Allottees Association, a Society registered under the Societies Registration Act, 1860 (hereinafter referred to as 'The Act, 1860') and its two office bearers, who are also the residents of Housing Complex developed by M/s Omaxe Limited, respondent no. 6 named as 'Omaxe City' and its subsidiary companies (collectively called as 'Developer'). The housing complex has been developed by the M/s Omaxe in an area of around 140 acres at Village Aurangabad Khalsa, Raebareli Road, Lucknow, Near Amar Shaheed Path.

2. The State Government took a policy decision vide Government Order dated 25th January, 1996 in order to mitigate difficulties faced in integrated development of an area/project due to location of parcels of land belonging to Gram Samaj etc. around the area proposed to be developed. It was felt that if such parcels of land were consolidated, then the utility of such land and its value would get substantially increased and, there would not be any impediment to sanction the layout and development plan for such an area. In view of the

aforesaid, it was directed that if in any layout plan of any area, for development, the parcels of land of Gram Samaj are situated within the layout plan, then the sanctioning agency of the layout plan would be empowered to consolidate such parcels of land of Gram Samaj and, secure an undertaking from Developer to leave the consolidated land which should have approach road. It was also provided that if providing approach road was not feasible at all, then the value of such parcels of land belonging to Gram Samaj be charged from the Developer. The outlay plan would only be passed, if the Developer would agree to such a condition.

3. On applications filed under Section 161 of the U.P. Z.A. and L.R. Act, 1950 by the Developer for exchange of Gram Samaj land, which was in different parcels, total area 4.5422 hectares, these lands were ordered to be exchanged with the same amount of land which was offered by the Developer vide order dated 14th December, 2006 passed by the Sub-Divisional Magistrate, Sadar, Lucknow in Case No.03/12/06-07 and two other cases. It was specifically recorded in the said order(s) that the land of Gram Samaj was not the land of public utility and, for the land offered in exchange of the land of Gram Samaj, an approach road was proposed, which would be available for the exchanged land.

4. The land of Gram Samaj subsequently vested in Lucknow Nagar Nigam, Lucknow after issuance of the relevant notification by the State Government under Section 3 of the U. P. Municipal Corporation Act, 1959 (hereinafter referred to as 'The Act, 1959') as is provided under Section 126 of the Act, 1959. Initially, in the layout plan submitted by the Developer, they proposed 12 meters wide approach road. The Nagar Nigam granted 'no objection certificate' for the housing project proposed to be developed by the Developer on 24th November, 2002. In the said 'no objection certificate' it was

specifically provided that instead of 12 meters wide approach road, 18 meters wide approach road would be constructed. It was further provided that a case regarding exchange of Gram Samaj land to the extent of 24566.62 square meter was pending before the Municipal Corporation, Lucknow and, therefore, till the final decision was taken on the aforesaid subject, the Developer would be allowed to carry out the development work in the proposed layout plan. The affidavits dated 13th April, 2006 on behalf of the Developer were submitted, stating therein that the Developer would provide approach road to the land given in exchange to the Lucknow Nagar Nigam in lieu of the land of Gram Samaj. In pursuance of the aforesaid 'no objection certificate' submitted by the Developer, a revised layout plan was submitted by the Developer before the Lucknow Development Authority, providing therein 18 meters approach road to the land offered to the Municipal Corporation in exchange of the Gram Samaj land.

5. The Lucknow Development Authority approved the layout plan for the housing project of 'Omaxe City' vide Permit No.208280 with certain conditions. One of the conditions i.e. condition no. 6 provided that the Developer should abide by all the conditions mentioned in the 'no objection certificate' given by the Lucknow Nagar Nigam.

6. A perusal of sanctioned layout plan of the housing project, 'Omaxe City' would reveal that at the end of 24 meters wide road connecting to Amar Shaheed Path, 18 meters wide road was provided towards the eastern side running parallel to the side of primary school and thereafter inter college towards the east of the primary school. This road runs parallel to the land given out by the Developer to the Lucknow Nagar Nigam as a measure of exchange value of the land belonging to erstwhile Gram Samaj, Aurangabad Khalsa. This 18 meters wide road provides approach road to the educational

institutions, hospital and commercial establishments as well. The Lucknow Nagar Nigam has proposed construction of housing project on the area given by the Developer in exchange of the Gram Samaj land.

7. It appears that the Developer constructed the boundary wall on the approach road, blocking access to the chunk of land, now in possession of the Lucknow Nagar Nigam, which was given in exchange of the Gram Samaj land by the Developer. The Lucknow Nagar Nigam has planned a colony for lower income group, middle income group and high income group on the said land. The development plan under Section 14 of the U.P. Urban Planning and Development Act, 1973 (hereinafter referred to as 'The Act, 1973'), has been sanctioned on 21st March, 2017. A building plan has also been sanctioned by the Lucknow Development Authority on the same day i.e. 21st March, 2017. As per the sanctioned building plan for the land of the Lucknow Nagar Nigam, a gate, measuring 22.460 meters wide from 18 meters wide approach road on the land of the Lucknow Nagar Nigam is provided.

8. As per the petitioners, the Developer aggressively marketed the project 'Omaxe City' in the year 2005-2006 and issued several advertisements, invited booking from the prospective home buyers, offering a closed township with a boundary wall running around it with only one main entrance. The home buyers, who bought the flats, (around 750) got attracted to the facilities offered by the Developer, besides safety and of a closed township. The Developer offered plots, villas and residential houses in the said township and the members of the petitioner no.1 bought the plots, villas and houses. The Lucknow Nagar Nigam started developing its project for construction of LIG, MIG and HIG flats (500) on the land which it was given by Developer in exchange of the Gram Samaj land. Finding 18 meters wide

approach road, leading to the land of the Lucknow Nagar Nigam having been closed by constructing a boundary wall, on 18th March, 2017, a portion of 25 meters wide boundary wall was demolished by the Lucknow Nagar Nigam. However, the boundary wall, which was demolished by the Lucknow Nagar Nigam, was re-constructed by petitioner no.1 on the intervention of the authorities and the police.

9. Aggrieved by the demolition of the boundary wall by the Lucknow Nagar Nigam, the petitioners have filed the present writ petition with the following reliefs:-

"(i) Issue a writ, order or direction in the nature of mandamus directing the respondent No. 2 not to break the boundary wall of the Omaxe City township and create Entry and/or exit for the residential project being developed on its land in village - Aurangabad Khalsa between the Omaxe City Township and SGPGI, through the Omaxe City township.

(ii) Such other/further relief as may be deemed to be just and appropriate in the facts and circumstances of the case may also be granted in favour of the petitioners as against the respondents.

(iii) Costs..... against the respondents."

10. Heard Mr. J.N. Mathur, learned Senior Advocate assisted by Mr. Mudit Agarwal, learned counsel for the petitioners, Mr. L.P. Mishra assisted by Mr. Namit Sharma, learned counsel on behalf of the opposite party no.2/Nagar Nigam, Mr. Ratnesh Chandra, learned counsel for opposite party no. 3/Lucknow Development Authority, learned standing counsel for opposite parties no. 1, 4 and 5 and Mr. N.K. Seth, learned Senior Advocate assisted by Mr. Ashish Chaturvedi, learned counsel for the opposite party no.6.

Judgment reserved.

11. Shri J.N. Mathur, learned Senior Counsel, appearing for the petitioners has submitted that there is already an approach road, leading to the land of the Lucknow Nagar Nigam. This approach

connects the road below Shaheed Path. It is submitted that the 18 meters wide approach road from 24 meters wide road was made only for the residents of the petitioners-society, which is a gated community. It is not a thoroughfare. It is further submitted that if the 18 meters wide road is allowed to be used by the Lucknow Nagar Nigam or the residents of the proposed project of the Lucknow Nagar Nigam, privacy of the petitioner no. 1's members shall be affected and, it would be against the building and layout plans sanctioned for construction of the housing project, 'Omaxe City'. It is further submitted that at present 30 feet wide public road, which directly connects to the land of the Lucknow Nagar Nigam, is being used for transporting construction material to the side of the Lucknow Nagar Nigam. It is further submitted that the Government Order dated 25th January, 1996 provides only a safeguard for the land offered in exchange of the Gram Samaj land as it should not be a land locked. It never obligated the builder or any person, exchanging the land to provide a road despite there being a pre-existing public road leading to the land given in exchange of Gram Samaj land. In respect of undertaking given by the Developer in the proceedings under Section 161 of the Act, 1950, it has been submitted that the said undertaking was given without disclosing the same to the members of the petitioner no.1 and such an undertaking would be in violation of the contract entered into between the members of the petitioner no 1 and the Developer and, it amounts to an illegal and void undertaking. It is further submitted that providing access to the residents in the proposed project of the Lucknow Nagar Nigam through 18 meters wide road, approaching to the "Omaxe City" would destroy the concept of a gated township and the roads of the colony would become a thoroughfare. It is further submitted that an agreement or undertaking of the Developer to the Lucknow Nagar Nigam, which

affects the vested right of the members of the petitioner no. 1, is not binding on them and, it would be void as the petitioner no. 1 and its members were not party to such undertaking or any agreement which was entered into between the Lucknow Nagar Nigam and the Developer. It is further submitted that since the petitioners were promised a gated colony/housing project/township and providing access to the Lucknow Nagar Nigam from 18 meters wide road to the proposed project of the Lucknow Nagar Nigam would violate the fundamental promise made by the Developer of exclusive a gated township.

12. On the other hand, Mr. L.P. Mishra, learned counsel for the Lucknow Nagar Nigam, has submitted that the conditions of exchange of the land specifically provided that the Developer would ensure an approach road to the land offered in exchange. The land of the Gram Samaj was exchanged under this policy and, therefore, neither the Developer nor the petitioner no. 1 or its members, who are assignee/transferee/successor of the Developer can plead anything contrary to the policy decision dated 25th January, 1996. It is further submitted that the petitioners are bound by the terms and conditions under which the housing project of the 'Omaxe City' was sanctioned and the land was given in exchange. The transferee/assignee/successor steps into shoes of the predecessor and is entitled and bound by the rights and obligations of the predecessor-in-interest. When 18 meters wide approach road was agreed by the Developer and, it was a condition for the exchange as well as one of the conditions of 'no objection certificate' issued by the Lucknow Nagar Nigam, then the Developer or its assignee/transferee/successor cannot wriggle out of this obligation. The Developer as well as its transferee, assignee or successor is under obligation to maintain 24 meters wide approach road from the Shaheed Path and thereafter 18 meters approach road,

leading to the land of the Lucknow Nagar Nigam, Lucknow, a condition of exchange, as mentioned in the sanctioned plan, free from encroachment so that the Lucknow Nagar Nigam has access to its land without any obstacle. It is further submitted that under Section 14 of the Act, 1973, the terms and conditions of the sanctioned layout plan are binding on the Developer as well as its assignee/transferee/successor, which specifically provided 18 meters wide approach road, running parallel to the land given by the Lucknow Nagar Nigam in exchange and, it was their duty to maintain 24 meters wide road and thereafter 18 meters wide approach road till such housing project of the Developer is handed over to the Lucknow Nagar Nigam. After handing over the said road, it would be the responsibility of the Lucknow Nagar Nigam to maintain the same. It is also submitted that 18 meters wide approach road from 24 meters wide approach road leads to the public utility facilities such as the educational institution, hospital, market and other commercial establishments earmarked as such in the sanctioned plan and, therefore, the submission made on behalf of the petitioners that the 18 meters wide approach road is exclusively meant for use of residents of the housing project of the 'Omaxe City' gets falsified. The learned counsel for the Lucknow Nagar Nigam, has submitted that the Nagar Nigam will construct such a gate where boundary wall on 18 meters wide approach road is existing, blocking access to its land, so that the area of Omaxe City and the residential complex constructed by the Lucknow Nagar Nigam are separated. The petitioners or the Developer should not have any objection for constructing the gate as proposed by the Lucknow Nagar Nigam, which is also shown in the sanctioned building plan of the Lucknow Nagar Nigam.

13. Mr. N. K. Seth, learned Senior Counsel, appearing for the Developer, besides raising a preliminary objection regarding

maintainability of the writ petition against a private person i.e. respondent no. 6, has submitted that providing 18 meters wide approach road to the Lucknow Nagar Nigam from 24 meters wide approach road was a pre-condition of exchange of land of Gram Samaj and the Developer was bound to provide 18 meters wide approach road, leading to the land of the Lucknow Nagar Nigam. The learned counsel has further submitted that if the Developer did not agree with providing 18 meters wide approach road to the land of the Lucknow Nagar Nigam, the exchange was not possible. The learned counsel has further submitted that the boundary wall was subsequently constructed so that the encroachment could be avoided. The learned counsel has further submitted that the residents or the petitioners are not correct to say that the 18 meters wide approach road was exclusively meant for their use. The learned counsel has further submitted that the Developer is bound by the sanctioned building plan, the condition of 'no objection certificate' and the condition of exchange. The learned counsel has further submitted that the petitioners cannot claim a better right or title than of the Developer. The learned counsel has further submitted that in the layout plan, in respect of the housing complex 'Omaxe City', condition no. 6 specifically provided that the Developer would be bound by the conditions as mentioned in the 'no objection certificate' issued by the Municipal Corporation, Lucknow. The allottees/petitioners being fully aware of the conditions of the sanctioned plan had entered into the agreement after due verification of all facts. The allotment letter, sale-deed etc. specifically mentioned that the allottees had confirmed that they had seen and understood the tentative plans, designs and specifications of the project and, they agreed to the same. The Developer has developed and completed the housing project in accordance with the sanctioned plans and completion certificate dated

21st April, 2010 was issued in respect of Phase-I and a separate completion certificate dated 24th April, 2010 was issued in respect of Phase-II by the Lucknow Development Authority. The learned counsel has further submitted that the petitioners have filed Writ Petition No.1366 (M/B) of 2015 before this Court, challenging the issuance of completion certificates, as mentioned above, and for issuance of a direction to the Developer to complete development work of the housing project as per the bylaws and the sanctioned plan. The learned counsel has, therefore, submitted that once the petitioners have come before this Court, asking a direction for completion of the housing project in accordance with the sanctioned plan, they cannot, in the present petition, be allowed to say that they are not bound by the sanctioned plan or they were not aware of the sanctioned plan. The learned counsel has further submitted that since no effective relief has been sought against the respondent no. 6/Developer, the writ petition against the respondent no. 6 is liable to be dismissed. The subject matter of the writ petition pertains to the contractual obligations of the parties, therefore, the writ petition is liable to be dismissed.

14. We have considered the submissions advanced by the learned counsel appearing for the parties.

15. Under the policy decision dated 25th January, 1996 under which exchange of the land was permitted, it was provided that order of exchange would be passed only after the Developer agreed to provide approach road to the land offered in exchange of Gram Samaj land. The Developer had agreed to provide 18 meters wide approach road from the 24 meters road running parallel to the land given to the Nagar Nigam in exchange of the Gram Samaj land. The sanctioned layout plan of the Developer regarding the housing project, namely, 'Omaxe City' also would indicate that 18 meters wide approach road from 24 meters road, running parallel to the land of the Lucknow

Nagar Nigam was provided. In the sanctioned plan of the Lucknow Nagar Nigam for its housing project on the exchanged land, 18 meters wide approach road is proposed. The counsel for the Developer has specifically stated that they had agreed to provide 18 meters wide approach road leading to the land of the Lucknow Nagar Nigam and, it was a condition precedent for exchange, otherwise exchange was not possible. With respect to the boundary wall constructed over the 18 meters wide approach road, blocking access to the land of Lucknow Nagar Nigam, it has been submitted that the boundary wall was reconstructed only for a purpose to protect it from encroachment, but it was never meant that the Lucknow Nagar Nigam would not be provided access through 18 meters wide approach road.

16. It is well settled that any allottee, assignee or transferee would be having the same rights and obligations as the Developer and bound by the terms and conditions, as applicable to the Developer. The Supreme Court in the case of ***Satya Pal Anand Vs. State of Madhya Pradesh, (2016) 10 SCC 767*** in paragraph-31 has held as under:-

"31. The aforementioned reported decision has noted the subtle distinction between ultra vires act of the statutory authority and a case of a simple infraction of the procedural Rule. The question, whether the Society was competent to unilaterally cancel the allotment of a plot given to its member and to cancel the membership of such member due to default committed by the member, is within the purview of the business of the Society. Any cause of action in that regard must be adjudicated by the procedure prescribed in that behalf. It is not open to presume that the Society had no authority in law to take a decision in that behalf. The right of the appellant qua the plot of land would obviously be subject to the final outcome of such action. The appellant being the legal representative of the original allottee, cannot claim any right higher than that of his predecessor qua the Housing Society, which is the final authority to decide on the issue of continuation of membership of its member. The right of the member to remain in occupation of the plot

allotted by the Society would be entirely dependent on that decision."

17. There is sanctity to the sanctioned building plan. Neither the Developer nor its allottees, assignees or transferees are entitled to deviate from the sanctioned building plan. The Supreme Court in the case of **R.K. Mittal and others Vs. State of U.P. and others, (2012) 2 SCC 232** has held in paragraphs 56, 58, 68 and 72 as under:-

"56. The running of a bank or a commercial business by a company in the residential sector is certainly not permissible. In fact, it is in patent violation of the Master Plan, Regulations and the provisions of the Act. We see no power vested in the Development Authority to permit such user and ignore the misuse for such a long period.

58. The conduct of the authorities, prior to institution of the writ petitions in the High Court, showed uncertainty and wavering of mind in its decision-making processes. In fact, it was expected of the Development Authority to take a firm and final decision and put at rest the unnecessary controversy raised by its proposal. However, once the writ petitions were filed, thereafter, the stand of the Development Authority has been consistent and unambiguous. In the counter-affidavit filed in this Court, it has been stated that even in case of grant of permission to the abovestated two banks, no extension was granted and in fact show-cause notices have been issued to all the banks in the residential sector to wind up their activities and move out of the residential sector. It is the definite case of the Development Authority that banking activity is a commercial activity and therefore, cannot be carried on in the residential sector, more particularly on the plots in question. In regard to Sector 19, a specific averment has been made in the affidavit of the Development Authority that the land use is residential alone and is neither commercial nor mixed. As per the Master Plan, its primary use is "residential" where plots are planned for residential purpose alone. It is, therefore, abundantly clear from the pleadings on record that commercial activity of any kind in the residential sector is impermissible. These pleadings are in conformity with the statutory provisions and the Master Plan.

68. The Master Plan and the zonal plan specify the user as residential and therefore these plots cannot be used

for any other purpose. The plans have a binding effect in law. If the scheme/master plan is being nullified by arbitrary acts and in excess and derogation of the power of the Development Authority under law, the Court will intervene and would direct such authorities to take appropriate action and wherever necessary even quash the orders of the public authorities.

72. From the above dictum of this Court, it is clear that environmental impact, convenience of the residents and ecological impact are relevant considerations for the courts while deciding such an issue. The law imposes an obligation upon the Development Authority to strictly adhere to the plan, regulations and the provisions of the Act. Thus, it cannot ignore its fundamental duty by doing acts impermissible in law. There is not even an iota of reason stated in the affidavits filed on behalf of the Development Authority as to why the public notice had been issued without amending the relevant provisions that too without following the procedure prescribed under the law."

18. The similar view has been taken in the case of ***Machavarapu Srinivasa Rao and another Vs. Vijavawada, Guntur, Tenali, Mangalagiri Urban Development Authority and others, (2011) 12 SCC 154*** in paragraph 20, which is extracted herein below:-

20. An analysis of the abovenoted provisions shows that once the master plan or the zonal development plan is approved by the State Government, no one including the State Government/Development Authority can use land for any purpose other than the one specified therein. There is no provision in the Act under which the Development Authority can sanction construction of a building, etc. or use of land for a purpose other than the one specified in the master plan/zonal development plan. The power vested in the Development Authority to make modification in the development plan is also not unlimited. It cannot make important alterations in the character of the plan. Such modification can be made only by the State Government and that too after following the procedure prescribed under Section 12(3)."

19. If the Developer has made a false promise to its allottees or the petitioners, they may seek appropriate remedy against the Developer, but they cannot encroach upon the rights of the Nagar Nigam of using 18 meters wide approach road, leading to 24 meters wide road which connects to Amar Shaheed Path. In view of the specific stand of the Developer, the petitioners cannot claim a higher right than what the Developer has. The sanctioned building plan specifically provided 18 meters wide approach road from 24 meters wide road, running parallel to the land of the Lucknow Nagar Nigam. Any obstruction created either by the Developer or the petitioners is illegal and would amount unauthorized encroachment. The writ petition, therefore, lacks merit and is liable to be dismissed.

20. With the aforesaid observations/directions, the present writ petition is hereby **dismissed**.

[D.K. Singh, J.] [R.R. Awasthi, J.]

Order Date :-2nd July, 2021

MVS/-