Neutral Citation No. - 2024:AHC-LKO:77492

Reserved

A. F. R.

Case :- WRIT - C No. - 3944 of 2024
Petitioner :- Kapil Misra And Another
Respondent :- State Of U.P. Thru. Addl.Chief Secy. Deptt.Of Infrastructure Industrial Development Lko And Another
Counsel for Petitioner :- Sunil Kumar Chaudhary,Abhishek Khare,Rajendra Kumar Dubey
Counsel for Respondent :- C.S.C.,Waseeq Uddin Ahmed

Hon'ble Alok Mathur,J.

1. Heard Sri Jaideep Narain Mathur, learned Senior Advocate assisted by Sri Sunil Kumar Chaudhary, Sri Abhishek Khare and Ms. Aishvarya Mathur, Advocate for the petitioners as well as learned Standing Counsel for the State respondents and Sri Sanjeev Sen, learned Senior Advocate assisted by Sri Waseequddin Ahmed, learned counsel appearing for New Okhla Industrial Development Authority (hereinafter referred to as “NOIDA”).

2. The petitioner has challenged the correctness of the order dated 11/09/2023 passed by the Chief Executive Officer, “NOIDA” whereby he has declined to sanction the map submitted by the petitioner for group housing, as well as the order dated 10/04/2024 passed by the State Government in exercise of power under section 41 (3) of the U.P. Urban Planning and Development Act, 1973 wherein the validity of the order dated 11/09/2023 has been upheld and the revision of the petitioner has been dismissed.

3. The brief facts involved in the present controversy are that the petitioners were joint owners of land measuring 10,870 sq.mtrs situated at khata No. 7 khasra No. 2, Village Rohillapur, sector 132, NOIDA, District Gautam Buddha Nagar. The said land was sought to be acquired by the State Government and notification under section 4 (1) read with section 17 (4) of the Land Acquisition Act, 1894 was issued on 13/02/2006 while the notification under section 6 read with section 17 (1) of the Act of 1894 was issued on 12/06/2006. The aforesaid acquisition proceedings were challenged by the petitioners by filing writ petition No. 18009/2008 before this Court at Allahabad and the aforesaid writ petition which was allowed

by means of judgement and order dated 10/08/2009 and the notifications under section 4 and section 6 of the Act of 1894 were quashed.

4. The petitioner filed another writ petition being writ C No. 47873 of 2010 alleging that despite setting aside of the land acquisition proceedings, the NOIDA had started illegal encroachment over the petitioner's land. In the aforesaid circumstances, a prayer was made by the petitioner that in case the removal of the encroachment over the aforesaid land is not possible then the NOIDA may consider allotment of alternative land in lieu of petitioner's land. Considering the rival contentions, this Court by means of judgement and order dated 26/11/2010 had disposed of the said petition with a direction to the NOIDA to decide the representations of the petitioner dated 26/06/2010 and 16/07/2010 and pass speaking orders within a period of 6 weeks from the date of receipt of the order.

5. It is in pursuance of the directions of this Court, a decision was taken by the NOIDA in its 171th Board Meeting and resolved to execute a registered "deed of exchange" by means of which the petitioners would transfer the ownership of their land of sector 132 to NOIDA and in lieu of the same NOIDA will transfer their ownership of its acquired land of the same size to the petitioner situated at village Sadarpur Sector 45 NOIDA, District Gautam Buddha Nagar.

6. Accordingly, a deed of exchange was executed between the petitioner and NOIDA on 26/03/2011 and from the said date the parties became absolute owners of the land given to them by way of deed of exchange with absolute rights to enjoy the said property.

7. The controversy in the present case has arisen when an application was given by the petitioner for sanction of the map on 05/04/2021 in accordance with New Okhla Industrial Development Area Building Regulations, 2010 (hereinafter referred to as "Regulations of 2010") to the Chief Executive Officer NOIDA along with requisite fees. It was further submitted that all the necessary documents along with a copy of the deed of exchange was filed. On 28/07/2021 the opposite party No. 2 informed the petitioners that the Proforma submitted along with the application by the petitioner was

incomplete and also that they have not submitted the copies of the plan. Accordingly, the petitioner submitted the plan on 09/08/2021.

8. Despite competing of the formalities, the opposite party No. 2 did not sanction the map, and, therefore, a writ petition was filed by the petitioner being writ petition No. 13466 of 2022 which was disposed of by means of an order dated 11/05/2022 directing the opposite party No. 2 to pass appropriate orders on the application for sanction of map within a period of 45 days. Subsequently due to non-compliance of the order of the court contempt petitioners filed, which led to passing of the order dated 11/09/2023 refusing to grant the building permit to the petitioner. Aggrieved by the order dated 11/09/2023 the petitioner preferred a revision under section 41 (3) Of the Uttar Pradesh Urban Planning and Development Act Read with Section 12 of the Uttar Pradesh Industrial Area Development Act, 1976 and rejected his revision by means of order dated 10/04/2024. The orders dated 11/09/2023 and 10/04/2024 have been impugned by the petitioner present writ petition.

9. While rejecting the application of the petitioner 3 grounds were cited, namely:-

> (i) the land is initially acquired by the NOIDA, and is subsequently allotted for the particular use, which is also mentioned in the lease deed, and thereafter the map is sanction as per the building bye laws of 2010, and all the documents as mentioned in the rules have to be submitted by the applicant.
>
> (ii) The NOIDA after acquisition of land, proceeds to develop the said land and it is only after lease deed is executed the building plan is sanctioned and the purpose of submission of lease deed is that it can be verified that the plan has been submitted by the authorised allottee.
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> (iii) The applicant, namely Kapil Mishra has not submitted the lease deed but a deed of exchange which is not an authorised document according to the building Regulations 2010 and therefore his papers are not complete and consequently his application for sanction of building plan is rejected.

10. The State Government while passing the order dated 10/04/2024 rejecting the revision of the petitioner and held that in the rules of 2010, in chapter 2 clause 5 (i) provides for submission of documents as per the form given in appendix 1 including possession certificate, lease deed and transfer date. It was held that it is imperative that a lease deed be submitted along with the application for sanction of map along with a transfer memorandum as provided in the Appendix I, which have not been provided by the petitioner and accordingly his revision was rejected.

11. It has been submitted by Sri Jaideep Narain Mathur learned Senior Advocate for the petitioner that the application of the petitioner for sanction of the map has been rejected by the NOIDA on the ground that as per clause 5 of regulations, 2010 read with checklist 1-B of the Appendix it is necessary that a lease deed has to be filed along with the application for sanction of map as per the list of documents required under Check List 1-B, and the petitioner having filed only a deed of exchange and not the lease deed as prescribed, the application was rejected. It was submitted that the land was transferred to the petitioner by exercising the power given under section 6 (f) of the Act, 1976 wherein NOIDA is vested with the power to transfer land not only by selling or executing a lease deed but also it has the power to transfer the land even otherwise, and hence respondent No. 2 while exercising its power as per the said provision has passed the order dated 28/01/2011 for execution of deed of exchange which is a transfer deed in the eyes of law especially in view of the provisions contained in section 118-120 of The Transfer of Property Act in the case of the petitioner was fully covered under checklist 1-B (i) of appendix 1 and hence the respondents have illegally and arbitrarily rejected the application of the petitioner.

12. With regard to the dispute pertaining to the nature of the land, it was submitted that the respondents themselves admitted in the order dated 11/09/2023 and 10/04/2024 that the plot in question is situated in sector 45 NOIDA, and is a residential area as per the master plan which was acquired and owned by NOIDA and has been transferred in favour of petitioner by a registered deed of exchange in compliance of the orders passed by this

court, and therefore such a deed of exchange would qualify to be treated as a transfer deed as per the provisions of Transfer of Property Act, 1882.

13. It was further submitted that the term lease defined under section 105 of The Transfer of Property Act, 1882 and the exchange is defined under section 118 of The Transfer of Property Act, 1882 both deal with the transfer of right of ownership and both the sections refer to the word "transfer" which creates the right of ownership of the property transferred from one party to the other with only difference that under lease, deed limited to the extent defined in the lease deed which is not so in the case of exchange. In Exchange, the rights are transferred absolutely. In this regard it was submitted that any interpretation taken to exclude the deed of exchange demonstrating title was clearly illegal and arbitrary and contrary to the statutory provisions.

14. It was also submitted that the action of the respondents is contrary to the doctrine of "promissory estoppel" and legitimate expectation. The right to property under Article 300A of the Constitution of India having been elevated to the status of human rights is inherent in every individual and thus has to be acknowledged and by no means be belittled by adopting unconcerned nonchalant, malafide and discriminatory action by the respondents which is a state instrumentality. It was further submitted that section 19 of the Act of 1976 confers power of the Authority to make regulations with previous approval of the State Government, but the regulations cannot be read in a manner so as to deprive the petitioner of the lawful use of the land on ground that they are not referable to any provision of the UP Industrial Area Development Act, 1976.

15. It was finally submitted that the respondents have acted in the most illegal and arbitrary manner, and interpreted the provisions of The U.P. Industrial Area Development Act, 1976 and the regulations made thereunder erroneously, thereby depriving the petitioner of his valuable right protected under Article 300A of the Constitution of India and merely because the checklist does not include a deed of exchange the respondents have illegally and arbitrarily rejected the application of the petitioner. It was submitted that the petitioner is a solitary case for such a rejection of the map, and accordingly in this regard the respondents have adversely discriminated the

petitioner and the action is clearly violative of article 14 of the Constitution of India.

16. Sri Sanjiv Sen, learned Senior Advocate appearing on behalf of NOIDA has vehemently opposed the writ petition. It has been submitted that the previous land was held by the petitioner in village Rohillapur on which agricultural activity was being carried out, and similar land at Sardarpur was given to the petitioner by NOIDA in exchange for land originally held by them. It was contended that the petitioner could not have been sanctioned map for any building on their original land situated at village Rohillapur because the same was a private land, and also because it was unplanned and undeveloped, and it had to be acquired by the NOIDA first, subsequent to which a development would have to be sanctioned, and therefore for the same reason, no sanction can be granted to the land subsequently allotted to him in Sardarpur.

17. With regard to the argument of the petitioner that Village-Sardarpur falls within sector 45 where the predominant land use is marked as residential, it was submitted by the respondents that land use is designated for a parcel of land only once it is acquired by NOIDA and development is planned on it. It was further submitted that the land currently owned by the petitioner is raw, unplanned, underdeveloped and no land use has been designated to it and therefore cannot be said to be residential in nature.

18. Much emphasis was laid by the respondents on the interpretation of 'The U.P Industrial Area Development Act, 1976' And the 'NOIDA Building Regulations' to canvass the issue that the transfer of land in favour of the petitioner by means of a deed of exchange would not be sufficient in itself to sanction the map, in as much as the mandatory requirement would be a lease deed executed by the NOIDA , and only thereafter, the map can be sanctioned.

19. It was submitted that as per section 6 of the Act of 1976 the object of the authorities to secure the planned development of the industry development area for which purposes the NOIDA has to firstly acquire the land as per section 6(2)(a) of the said Act, and subsequently to prepare a plan for planned development of the industrial development area which involves

demarcating parcels of land to be developed in accordance with the plan, and therefore it was submitted that sanction of building plans over land on which no planning has taken place cannot be granted.

20. It was further submitted that according to section 9 of Act of 1976 no person can erect any building in the industry developing area in contravention of any building regulation. The entire area of land acquired by NOIDA so far stands at 12460 ha, while the master plan for 2031 envisages the acquisition of entire developable land of 15280 ha, therefore the remaining 2820 ha of land is yet to be acquired. It was stated that the petitioners land is not part of 2820 ha and is therefore not eligible to be developed at this point of time. It was lastly submitted that the nature of petitioner's land was that of a private land and as such map cannot be sanctioned on a private land by the NOIDA authorities. Reliance was placed upon the judgement of this court in the case of Paradise developer vs Chief Town & Country planner and others reported in 2017 SCC online ALL 2744

21. Rebutting the contention of the petitioner it was contended that the petitioner is not a "transferee" under the Act of 1976. As per section 2 (f) of the act of 1976 has been defined as follows:-

> *'Transferee' means a person (including a firm or other body of individuals whether incorporated or not to whom any land or building is transferred in any manner whatsoever, under this act and includes his successors and assigns*,

22. It was submitted that the functions of the authority as provided in section 6 will also clearly indicate that the object of the authorities is to secure planned development of the industrial development area for which purpose the authority can transfer land as per subclause (f) which is as follows :-

> "6(2)(f) *to allocate and transfer either by way of sale or lease or otherwise plot of land for industrial commercial or residential purposes"*

23. Apart from the above it was submitted that as per section 7 of the act of 1976 provides specific power to transfer the land in the following terms:-

> *"7. The authority may sell, lease or otherwise transfer whether by auction, allotment or otherwise any land or building belonging to the Authority in the industrial development area on such terms and conditions as it may, subject to any rules that may be made under this Act think fit to impose"*

24. Considering the aforesaid provisions of the Act of 1976 it was submitted that the plain reading of section 7 implies that NOIDA can sell, lease or otherwise transfer by auction, allotment or otherwise any land or building belonging to the authority. Thus, NOIDA cannot transfer land which it does not own. The exchange, which was entered into, in the present case, was in accordance with the powers conferred upon the NOIDA under section 7 as NOIDA transferred the land which belonged to it in village Sardarpur. It was emphasised that after the exchange, the land is in exclusive ownership of the petitioners.

25. It was further submitted that the words "transfer" or "transferee" have to be read in terms of the Act of 1976, as referring to transfer of secondary rights by an allottee/Lessee of NOIDA to third party, with the prior approval of NOIDA through tripartite agreement to which NOIDA is a party. Therefore, according to the respondents transfer can only have a limited connotation for the purposes of the Act of 1976, and hence no private development can be sanctioned in NOIDA.

26. Lastly, it was submitted that NOIDA does not levy property tax on land falling within NOIDA and the NOIDA is wholly dependent upon lease rentals, lease premium, transfer charges (where applicable) and other charges levied through the terms of its lease deed for allotted properties, for revenue to maintain civil services and amenities. This model of revenue collection necessitates that all of the development in NOIDA be carried out under the aegis of NOIDA on the land owned by NOIDA. In case the petitioner is permitted to develop the land as prayed by him then exchequer would suffer substantial loss.

27. We have heard the rival submissions at length. The dispute in the present case relates to the right of the petitioner to get the map sanctioned

pertaining to the land which was given to the petitioner situated at village Sardarpur in exchange of the land purchase by the petitioner in village Rohillapur.

28. The facts in the present case are not in dispute, inasmuch as the petitioner was the owner of the land situated at village-Rohillapur which was sought to be acquired by the State Government and given to NOIDA for development. The said acquisition proceedings were set aside, and the ownership of the land came to be vested in the petitioner alone. Despite acquisition proceedings having been set aside, it seems that detrimental activities are carried on by the NOIDA contrary to the judgement of the High Court, and therefore another writ petition was filed by the petitioner in this regard being writ petition No. 47873 of 2010, and noticing that the said land was in fact been utilised by the NOIDA authorities for development option has been given to them to give an equivalent land to the petitioner and accordingly decide the representation in this regard.

29. The NOIDA authorities in their 171st board meeting held on 25/02/2011 resolved to execute a registered deed of exchange by which the petitioners were to transfer the ownership of the land of sector 132 NOIDA (Rohillapur) and in lieu of the same, the NOIDA were to transfer the ownership of the acquired land of the same size situated at village Sardarpur, Sector 45 NOIDA. In light of the said board resolution, a deed of exchange was executed on 26/03/2011.

30. The petitioners submitted an application for sanctioning of map on 05/04/2021 which was rejected on the ground that the said application did not include the lease deed which is an essential document as per the list 1-B of Appendix 1 of the Regulations of 2010. The revision before the State Government was also rejected by means of order dated 10/04/2024. It is the case of the respondents that in the present case after execution of a deed of exchange in favour of the petitioners, the status of the land of the petitioners is akin to a private holding on which no map can be sanctioned.

31. Accordingly, the question for this Court for consideration is as to whether the map of the petitioner was wrongly rejected, or whether he fulfilled all

the conditions prescribed under the U.P Industrial Area Development Act, 1976 and regulations framed so that his map can be sanctioned.

32. To consider the aforesaid question, it has also to be considered whether the ownership documents as provided for in checklist 1-B of appendix 1 of the regulation of 2010 would include a deed of transfer, or in absence of lease deed the NOIDA would be within its competence to reject the application for sanction of map.

33. NOIDA is an industrial development authority constituted by the State Government of Uttar Pradesh in exercise of its powers under Section 3 of U.P. Act No. 6 of 1976. Authority under this Act can be constituted for any industrial development area and such areas would be those which have been declared as such by notification by the State Government. The object of the industrial development authority, as is evident from Section 6 of the Act, is to secure planned development of the industrial development areas. Its functions include providing infrastructure for industrial, commercial or residential purposes as also to allocate and transfer either by way of sale or lease or otherwise, plots of land for the aforesaid purposes.

34. To consider the rival contentions it is necessary to bear in mind that on one hand is right of an individual to make the most profitable use of his property, is a right which is protected under article 300A of the Constitution of India, and on the other hand is the claim of the development authority for a planned development and also to prevent a haphazard development and accordingly the competing rights have to be interpreted in relation to each other. The courts must make an endeavour to strike a balance between public interest on one hand and protection of constitutional rights of an individual to hold property on the other. The aspect of balancing of both the rights was duly considered by the Supreme Court in the case of ***T. Vijayalakshmi v. Town Planning Member*, (2006) 8 SCC 502** when it was observed as under:

> **"15.** *The law in this behalf is explicit. Right of a person to construct residential houses in the residential area is a valuable right. The said right can only be regulated in terms of a regulatory statute but unless*

there exists a clear provision the same cannot be taken away. It is also a trite law that the building plans are required to be dealt with in terms of the existing law. Determination of such a question cannot be postponed far less taken away. Doctrine of legitimate expectation in a case of this nature would have a role to play."

35. Undoubtedly, where in any area the Act of 1976 comes into operation and notification ensues bringing the said area within the development area, the right of the owner to use the property stands restricted, and would be subject to the provisions of the Act of 1976 along with New Okhla Industrial Development Area Building Regulations, 2010. Whenever an interpretation is being made with regard to the provisions of an expropriatory legislation it would be subject to strict interpretation. This aspect of the matter was dealt at length of the Supreme Court in the case of ***Indore Vikas Pradhikaran v. Pure Industrial Coke & Chemicals Ltd.*, (2007) 8 SCC 705:**

Interpretation of the Act

57. *The Act being regulatory in nature as by reason thereof the right of an owner of property to use and develop stands restricted, requires strict construction. An owner of land ordinarily would be entitled to use or develop the same for any purpose unless there exists certain regulation in a statute or statutory rules. Regulations contained in such statute must be interpreted in such a manner so as to least interfere with the right to property of the owner of such land. Restrictions are made in larger public interest. Such restrictions, indisputably must be reasonable ones. (See Balram Kumawat v. Union of India [(2003) 7 SCC 628] ; Krishi Utpadan Mandi Samiti v. Pilibhit Pantnagar Beej Ltd. [(2004) 1 SCC 391] and Union of India v. West Coast Paper Mills Ltd. [(2004) 2 SCC 747]) The statutory scheme contemplates that a person and owner of land should not ordinarily be deprived from the user thereof by way of reservation or designation.*

58. *Expropriatory legislation, as is well-known, must be given a strict construction.*

59. *In Hindustan Petroleum Corpn. Ltd. v. Darius Shapur Chenai [(2005) 7 SCC 627] construing Section 5-A of the Land Acquisition Act, this Court observed: (SCC pp. 634-35, para 6-7)*

"6. It is not in dispute that Section 5-A of the Act confers a valuable right in favour of a person whose lands are sought to be acquired. Having regard to the provisions contained in Article 300-A of the Constitution, the State in exercise of its power of 'eminent domain' may interfere with the right of property of a person by acquiring the same but the same must be for a public purpose and reasonable compensation therefor must be paid.

7. Indisputably, the definition of public purpose is of wide amplitude and takes within its sweep the acquisition of land for a corporation owned or controlled by the State, as envisaged under sub-clause (iv) of Clause (f) of Section 3 of the Act. But the same would not mean that the State is the sole judge therefor and no judicial review shall lie. (See Jilubhai Nanbhai Khachar v. State of Gujarat [1995 Supp (1) SCC 596] .)"

It was further stated: (SCC p. 640, para 29)

"29. The Act is an expropriatory legislation. This Court in State of M.P. v. Vishnu Prasad Sharma [AIR 1966 SC 1593] observed that in such a case the provisions of the statute should be strictly construed as it deprives a person of his land without consent. [See also Khub Chand v. State of Rajasthan [AIR 1967 SC 1074] and CCE v. Orient Fabrics (P) Ltd. [(2004) 1 SCC 597]]There cannot, therefore, be any doubt that in a case of this nature due application of mind on the part of the statutory authority was imperative."

In State of Rajasthan v. Basant Nahata [(2005) 12 SCC 77 : JT (2005) 8 SC 171] it was opined: (SCC p. 102, para 59)

"In absence of any substantive provisions contained in a parliamentary or legislative act, he cannot be refrained from dealing with his property in any manner he likes. Such statutory interdict would be opposed to one's right of property as envisaged under Article 300-A of the Constitution."

In State of U.P. v. Manohar [(2005) 2 SCC 126] a Constitution Bench of this Court held: (SCC p. 129, paras 7-8)

"7. Ours is a constitutional democracy and the rights available to the citizens are declared by the Constitution. Although Article 19(1)(f) was deleted by the Forty-fourth Amendment to the Constitution, Article 300-A has been placed in the Constitution, which reads as follows:

'300-A. Persons not to be deprived of property save by authority of law.—No person shall be deprived of his property save by authority of law.'

8. This is a case where we find utter lack of legal authority for deprivation of the respondent's property by the appellants who are State authorities."

In Jilubhai Nanbhai Khachar v. State of Gujarat [1995 Supp (1) SCC 596] the law is stated in the following terms: (SCC p. 622, para 34)

"34. The right of eminent domain is the right of the sovereign State, through its regular agencies, to reassert, either temporarily or permanently, its dominion over any portion of the soil of the State including private property without its owner's consent on account of public exigency and for the public good. Eminent domain is the highest and most exact idea of property remaining in the Government, or in the aggregate body of the people in their sovereign capacity. It gives the right to resume possession of the property in the manner directed by the Constitution and the laws of the State, whenever the public interest requires it. The term 'expropriation' is practically synonymous with the term 'eminent domain'."

It was further observed: (SCC p. 627, para 48)

"48. The word 'property' used in Article 300-A must be understood in the context in which the sovereign power of eminent domain is exercised by the State and property expropriated. No abstract principles could be laid. Each case must be considered in the light of its own facts and setting. The phrase 'deprivation of the property of a person' must equally be considered in the fact situation of a case. Deprivation connotes different concepts. Article 300-A gets attracted to an acquisition or taking possession of private property, by necessary implication for public purpose, in accordance with the law made by Parliament or a State Legislature, a rule or a statutory order having force of law. It is inherent in every sovereign State by exercising its power of eminent domain to expropriate private property without owner's consent. Prima facie, State would be the judge to decide whether a purpose is a public purpose. But it is not the sole judge. This will be subject to judicial review and it is the duty of the court to determine whether a particular purpose is a public purpose or not. Public interest has always been considered to be an essential ingredient of public purpose. But every public purpose does not fall under Article 300-A nor every exercise of eminent domain an acquisition or taking possession under Article 300-A. Generally speaking preservation of public health or prevention of damage to life and property are considered to be public purposes. Yet deprivation of property for any such purpose would not amount to acquisition or possession taken under Article 300-A. It would be by exercise of the police power of the State. In other words, Article 300-A only limits the powers of the State that no person shall be deprived of his property save by authority of law. There has to be no deprivation without any sanction of law. Deprivation by any other mode is not acquisition or taking possession under Article 300-A. In other words, if there is no law, there is no deprivation. Acquisition of mines, minerals and quarries is deprivation under Article 300-A."

Rajendra Babu, J. (as the learned Chief Justice then was) in Sri Krishnapur Mutt v. N. Vijayendra Shetty [(1992) 3 Kar LJ 326] observed: (Kar LJ p. 329, para 8)

"8. The restrictions imposed in the planning law though in public interest should be strictly interpreted because they make an inroad into the rights of a private person to carry on his business by construction of a suitable building for the purpose and incidentally may affect his fundamental right if too widely interpreted."

60. *The question has also been addressed by a decision of the Division Bench of this Court in Pt. Chet Ram Vashist v. Municipal Corpn. of Delhi [(1995) 1 SCC 47] , wherein R.M. Sahai, J., speaking for the Bench opined: (SCC p. 54, para 6)*

"6. Reserving any site for any street, open space, park, school, etc. in a layout plan is normally a public purpose as it is inherent in such reservation that it shall be used by the public in general. The effect of such reservation is that the owner ceases to be a legal owner of the land in dispute and he holds the land for the benefit of the society or the public in general. It may result in creating an obligation in nature of trust and may preclude the owner from transferring or selling his interest in it. It may be true as held by the High Court that the interest which is left in the owner is a residuary interest which may be nothing more than a right to hold this land in trust for the specific purpose specified by the coloniser in the sanctioned layout plan. But the question is, does it entitle the Corporation to claim that the land so specified should be transferred to the authority free of cost. That is not made out from any provision in the Act or on any principle of law. The Corporation by virtue of the land specified as open space may get a right as a custodian of public interest to manage it in the interest of the society in general. But the right to manage as a local body is not the same thing as to claim transfer of the property to itself. The effect of transfer of the property is that the transferor ceases to be owner of it and the ownership stands

transferred to the person in whose favour it is transferred. The resolution of the Committee to transfer land in the colony for park and school was an order for transfer without there being any sanction for the same in law."

36. In the present case, the petitioner claims that his application for sanction of a building map has been wrongfully rejected by the respondent authority. The reason for rejection is that the petitioner is not entitled for being sanctioned the said map as per the regulations of 2010, and specially that he could not produce the lease deed which according to the respondents is mandatory condition for sanctioning of the map. There is no dispute that the petitioner is the owner of the property, the same having been transferred in his favour by the respondents by means of a deed of exchange executed between them on 26/03/2011. By the said deed of exchange the petitioners became the absolute owners of the property. The property which is transferred to the petitioner was previously acquired by the State Government for the NOIDA, and as the original land of the petitioner was utilised by the NOIDA for its development purposes.

37. Right to property includes right to construct on the property owned by him subject to the applicable regulations made in this regard. In **T.Vijayalakshmi and others vs. Town Planning Member and another (2006) 8 SCC 502** it was held by the Apex Court that the right to property would include right to construct a building. Such a right, however, can be restricted by legislation, which must stand test of reasonableness. The right to property has also been included as human right and is part of right to development, which is in turn has been held to be right to life guaranteed under Article 21 of the Constitution of India. To enjoy property is a right which is protected under article 300-A of the constitution of India, and denial of sanction of map, is depriving an individual of his right of property, and the same can be done only with the sanction of law.

38. To determine the legality and validity of the impugned orders passed by NOIDA as well as the State Government, the provisions of law which are applicable for sanction of the map deserves scrutiny to examine the reasons given for rejection of the map and to determine whether the same are supported by the statutory and regulatory provisions.

39. According to section 2(f) of The U.P. Industrial Area Development Act, 1976, transferee has been defined to mean a person (including a firm or other body of individuals whether incorporated or not to whom any land or building is transferred in any manner whatsoever, under this Act and includes his successors and assigns). Section 6 provides for the functions of the authority which include acquisition of land in the industry development area, to prepare a plan for development of the industrial area, to demarcate and develop sites for industrial, commercial and residential purpose according to the plan and sub clause (f) provides to allocate and transfer either by way of sale or lease or otherwise plots of land for industry, commercial or residential purposes.

40. Section 7 of the Act provides for the power to the authority in respect of transfer of land according to which the authority may sell, lease or otherwise transfer, whether by auction, allotment or otherwise any land or building belonging to the authority in the industrial development area on such terms and conditions as it may, subject to any rules that may be made under the Act think fit to impose.

41. A conjoint reading of the aforesaid provisions indicate that the authority has been given sufficient powers and discretion to sell the land to the transferee either through a lease or by an auction, allotment any other method any land belonging to the authority in the industry area. The arguments of the respondents that the land belonging to the authority can be transferred only by a lease deed is clearly not supported by the aforesaid statutory provisions. Section 7 is very clear in its terms which gives wide power to the authority to “transfer” the land of the authority. The transfer of land can be effected by selling, leasing or otherwise transferring the land of the authority, through the process of auction, allotment or otherwise. Therefore on careful examination of the words is used in section 7 we do not find that they restrict the authority to transfer the land of the authority to any individual or corporate by only leasing the said land, but it can transfer the land in any other manner possible because the words “otherwise transfer” used in section 7 will have to be liberally interpreted as it unequivocally indicates the intention of the legislature which is to provides for transfer of the land by “sell or “lease”. In case the intention of the legislature was to

restrict the transfer of the land through “lease” only, as vehemently argued by Senior counsel for the respondent, then the words “otherwise transfer” would be rendered meaningless and redundant. While interpreting any statute the intention of the legislature must be gathered from all the words used in the enactment, and all the words have to be given it’s due and proper meaning in the context they have been used. Accordingly, the authority was within its competence to “transfer” the land through a deed of exchange.

42. The action of the respondents in rejecting the application for sanction of map may amount to deprivation of the right to enjoy the property which according to the petitioner is his Constitutional right as per article 300-A of the Constitution of India. In this regard it would be relevant to consider that deprivation is to be distinguished from restriction of the rights following from ownership. The Hon'ble Apex Court in the case of **State of Bombay Vrs. Bhanji Munji & Anr**., reported in (1954) 2 SCC 386, has observed that substantial deprivation is meant the sort of deprivation that substantially robs a man of those attributes of enjoyment which normally accompany rights to, or an interest in, property. The form is unessential. It is the substance that [one] must seek, for the ready reference, paragraph-6 & 7 of the said judgment is being referred as under:-

> *"6. In State of W.B. v. Subodh Gopal Bose [State of W.B. v. Subodh Gopal Bose, (1953) 2 SCC 688 : 1954 SCR 587] and Dwarkadas Shrinivas v. Sholapur Spg. & Wvg. Co. Ltd. [Dwarkadas Shrinivas v. Sholapur Spg. & Wvg. Co. Ltd., (1953) 2 SCC 791 : 1954 SCR 674] the majority of the Judges were agreed that Articles 19(1)(f) and 31 deal with different subjects and cover different fields. There was some disagreement about the nature and scope of the difference but all were agreed that there was no overlapping. We need not examine those differences here because it is enough to say that Article 19(1)(f) read with clause (5) postulates the existence of property which can be enjoyed and over which rights can be exercised because otherwise the reasonable restrictions contemplated by clause (5) could not be brought into play. If there is no property which can be acquired, held or disposed of, no restriction can be*

placed on the exercise of the right to acquire, hold and dispose of it, and as clause (5) contemplates the placing of reasonable restrictions on the exercise of those rights it must follow that the article postulates the existence of property over which these rights can be exercised. In our opinion, this was decided in principle in Gopalan case [A.K. Gopalan v. State of Madras, 1950 SCC 228 : 1950 SCR 88] where it was held that the freedoms relating to the person of a citizen guaranteed by Article 19 assume the existence of a free citizen and can no longer be enjoyed if a citizen is deprived of his liberty by the law of preventive or punitive detention. In the same way, when there is a substantially total deprivation of property which is already held and enjoyed, one must turn to Article 31 to see how far that is justified.

7. It was argued as against this that this rule can only apply when there is a total deprivation of property and Article 19(1)(f) cannot be excluded if there is the slightest vestige of a right on which the article can operate. This has also been answered in substance in Dwarkadas Shrinivas v. Sholapur Spg. & Wvg. Co. Ltd. [Dwarkadas Shrinivas v. Sholapur Spg. & Wvg. Co. Ltd., (1953) 2 SCC 791 : 1954 SCR 674] These articles deal with substantial and substantive rights and not with illusory phantoms of title. When every form of enjoyment which normally accompanies an interest in this kind of property is taken away leaving the mere husk of title, Article 19(1)(f) is not attracted. As was said by one of us in Dwarkadas Shrinivas v. Sholapur Spg. & Wvg. Co. Ltd. [Dwarkadas Shrinivas v. Sholapur Spg. & Wvg. Co. Ltd., (1953) 2 SCC 791 : 1954 SCR 674] at SCC p. 831, para 44:

"44. ... By substantial deprivation [is meant] the sort of deprivation that substantially robs a man of those attributes of enjoyment which normally accompany rights to, or an interest in, property. The form is unessential. It is the substance that [one] must seek."

43. In light of the aforesaid discussion the other question which arises for determination is as to whether a deed of exchange would be a transfer deed

as provided for in checklist-1B of the regulations of 2010 as a valid document of ownership.

44. A transfer deed has not been defined either in the Act of 1976 or in the regulations of 2010. Checklist 1-B (i) provides for submission of ownership documents which is followed by semi colon, and further provides details or lists of the instruments of ownership like copies of allotment letter, possession certificate, the lease deed (transfer deed case of transfer), and dimension plans issued by the authority which have to be submitted along with application of sanction of map. The respondents have urged that the aforesaid provisions should be interpreted in a manner where only a lease deed would be the only relevant document pertaining to the ownership of the property which necessarily has to be submitted before consideration of the application for sanction of map. The counsel for the petitioner on the other hand has submitted that the provisions with regard to the sanction of map have to be liberally interpreted in sync with the object of the legislation which is to secure a planned development and not to deprive any individual of his rights over the property.

45. In this regard it is necessary to take into account the judgments of the Supreme Court:-

45.1 The Hon'ble Apex Court in the case of ***Edukanti Kistamma (Dead) through LRs & Ors. Vrs. S. Venkatareddy (dead) through LRs. & Ors [(2010) 1 SCC 756],*** at paragraph 26 held as under:

> *"26. ..... Interpretation of a beneficial legislation with a narrow pedantic approach is not justified. In case there is any doubt, the court should interpret a beneficial legislation in favour of the beneficiaries and not otherwise as it would be against the legislative intent. For the purpose of interpretation of a statute, the Act is to be read in its entirety. The purport and object of the Act must be given its full effect by applying the principles of purposive construction. The court must be strong against any construction which tends to reduce a statute's utility. The provisions of the statute must be construed so as to make it effective and operative and to further the ends of justice and not to frustrate the same. The court has the duty*

to construe the statute to promote the object of the statute and serve the purpose for which it has been enacted and should not efface its very purpose....."

45.2 Similarly, the Hon‟ble Apex Court in the case of ***Executive Engineer, Southern Electricity Supply Company of Orissa Limited (Southco) & Anr. Vs. Sri Seetaram Rice Mill [(2012) 2 SCC 108],*** at paragraph 46 and 49 has been pleased to hold as under:

> *"46. "Purposive construction" is certainly a cardinal principle of interpretation. Equally true is that no rule of interpretation should either be overstated or overextended. Without being overextended or overstated, this rule of interpretation can be applied to the present case. It points to the conclusion that an interpretation which would attain the object and purpose of the Act has to be given precedence over any other interpretation which may not further the cause of the statute. The development of law is particularly liberated both from literal and blinkered interpretation, though to a limited extent.*
>
> *49. Once the Court decides that it has to take a purposive construction as opposed to textual construction, then the legislative purpose sought to be achieved by such an interpretation has to be kept in mind……..”*

46. It is evident from the provision as contained under Article 300-A, whereby and whereunder, no person shall be deprived of his property save by authority of law. The word 'deprive' as contained therein and for the purpose of depriving a person from the property right, the same can only be done under the authority of law.

47. In the present case, the right to occupy the premises has gone as also the right to transfer, assign, let or sub-let. What is left is but the mere husk of title in the leasehold interest : a forlorn hope that the force of this law will somehow expend itself before the lease runs out."

48. Article 31(1) [the "Rule of law" doctrine] and not Article 31(2) [which had embodied the doctrine of Eminent Domain]. Article 300A enables the State

to put restrictions on the right to property by law. That law has to be reasonable. It must comply with other provisions of the Constitution. The limitation or restriction should not be arbitrary or excessive or what is beyond what is required in public interest. The limitation or restriction must not be disproportionate to the situation or excessive. The legislation providing for deprivation of property under Article 300A must be "just, fair and reasonable" as understood in terms of Articles 14, 19(1)(g), 26(b), 301, etc. Thus, in each case, courts will have to examine the scheme of the impugned Act, its object and purpose.

49. Keeping in view the judgement of the Supreme Court, at the very outset it is noticed that The Uttar Pradesh Industrial Area Development Act, 1976 by which the NOIDA has been created does not place any restriction of the nature is sought to be imposed on the petitioner. Section 8 of the said act gives the power to the authority to issue directions for the purposes of proper planning and development of the industry development area. For convenience section 8 is reproduced hereunder:-

> *Power of issue directions in respect of creation of building*
>
> *8. (1) For the purposes of proper planning and development of the industrial development area, the authority may issue such direction as it may consider necessary, regarding. Chief Executive Officer Staff of the or Authority Function of the Authority Power to the Authority in respect of transfer of land Power of issue directions in respect of creation of building*
>
> *(a) architectural features of the elevation or frontage of any building;*
>
> *(b) the alignment of buildings on any site;*
>
> *(c) the restrictions and conditions in regard to open spaces to be maintained in and around buildings and height and character of buildings;*
>
> *(d) the number of residential buildings that may be erected on any site;*
>
> *(e) Regulations of erections of shops, workshops, warehouses, factories or buildings;*

(f) maintenance of height and position of walls, fences, hedges or any other structure or architecture constructions;

(g) maintenance of amenities;

(h) restrictions of use of any site for a purpose other than that for which it has been allocated;

(i) the means to be provided for proper

(i) drainage of waste water

(ii) disposal of industrial waste, and

(iii) disposal of town refuse.

(2) Every transferee shall comply with the directions issued under sub-section (1) and shall as expeditiously as possible erect and building or take such other steps as may be necessary to comply with such directions.

50. From a bare perusal of the above it is clear that the subjects on which directions can be passed by the authority have been delineated in clause (a) to (h) which are confined to the details of the buildings proposed and the features which would be essential for such building. There is no reference in section 8 to any essential attributes pertaining to the ownership of property or the type of document which must be presented to demonstrate title. In subclause (2) it has been provided that the transferee must comply with the directions issued by the authority.

51. Section 9 of the act of 1976 provides for injunction against the individuals from erecting or buying any building in the area in contravention of the building regulations made under subsection (2), which in turn provides for framing of the regulations by the authority with the prior approval of the State Government, and the matters on which such regulations can be made have also been provided. For ready reference section 9 is quoted hereinbelow: -

Ban on erection of building in contravention of regulations

9. (1) No person shall erect or occupy any building in the industrial development area in contravention of any building regulation made under sub-section (2).

(2) The Authority may by notification and with prior approval of the State Government make regulations to regulate the erection of buildings and such regulations may provide for all or any of the following matters, namely

(a) The materials to be used for external and partition walls, roofs, floors and other parts of a buildings and their position or location or the method of construction;

(b) Lay out plan of the building whether industrial, commercial or residential;

(c) the height and slope of the roofs and floors of any building which is intended to be used for residential or cooking purposes;

(d) the ventilation in, or the space to be left about any building or part there of to secure circulation of air or for the prevention of fire;

(e) the number and height of the storeys of any building;

(f) the means to be provided for the ingress and egress to and form any building;

(g) the minimum dimensions of rooms intended for use as living rooms or sleeping rooms and the provisions of ventilation;

(h) any other matter in furtherance of the proper regulation of erection, completion and occupation of buildings and

(i) the certificates necessary and incidental to the submission of plans amended plans and completion reports.

52. It is an exercise of powers conferred under section 9 (2) of Act of 1976 the New Okhla Industrial Development Area Building Regulations, 2010 were framed and were notified on 30/11/2010. Clause 2.4 defines an applicant to mean:-

2.4 'Applicant' means the person who has legal title to a land or building and includes,

(i) An agent or trustee who receives the rent on behalf of the owner;

(ii) An agent or trustee who receives the rent of or is entrusted with or is concerned with any building devoted to religious or charitable purposes;

(iii) A receiver, executor or administrator or a manager appointed by any Court of competent jurisdiction to have the charge, or to exercise the rights of the owner; and

(iv) A mortgagee in possession

53. The relevant provisions pertaining to layout/building permit and occupancy are provided for in clause 4.0 and 5.0 which are as follows:-

4.0 Building permit -- No person shall erect any building or a boundary wall or fencing without obtaining a prior permit thereof, from the Chief Executive Officer or an Officer authorized by the Chief Executive Officer for this purpose.

5.0 Application for building permit –

(1) Every person who intends to erect a building within the Industrial Development Area shall give application in the Form given at Appendix –

(2) The application for building permit shall be accompanied by documents as mentioned in checklist annexed to Appendix – 1.

(3) Such application shall not be considered until the applicant has paid the fees mentioned in Regulation no. 10.

54. In appendix -1 contains the checklist 1-B which provides for application for buildings other than those on individual residential plots, the relevant extract of which is as follows:-

CHECKLIST -1 B (For buildings other than those on individual residential plots)

(i) Ownership documents; copies of allotment letter, possession certificate, the lease deed (transfer deed in case of transfer), and dimension plan issued by the authority.

55. In the present case the reasons for rejection of the application of the petitioners for sanction of the map is that no lease deed has been provided by the petitioner to demonstrate his title and he has submitted a deed of exchange entered between the petitioners and the NOIDA is which demonstrates that the petitioners are in exclusive ownership of the property. This according to the respondents disentitles him from raising any construction on the disputed property.

56. The petitioners undoubtedly would be included in the definition of "applicants" as per clause 2.4 of the regulations of 2010 as they have a legal title to the property in dispute, and this fact is not contested by the respondents. Once the petitioners are held to be applicants, as per regulations of 2010, then they have a right to submit the application for sanction of the building plan. The documents which accompany the application are firstly the ownership documents as provided for in checklist 1-B of appendix 1 and apart from other documents an applicant has to submit lease deed (transfer deed in case of transfer). The petitioner has submitted a deed of exchange along with the application. It has been submitted on behalf of the respondents that the NOIDA in the usual course of business execute lease deed in favour of the allottee, and any subsequent transaction is only through a transfer deed if permitted by NOIDA.

57. A transfer deed is a legal document that is used to transfer ownership of a property from one person to another. The NOIDA executed a deed of exchange in favour of the petitioner in exercise of power under section 6 (f) of the Act of 1976 to transfer the disputed property in favour of the petitioner in 2011. The transfer of land by through a deed of exchange is undisputed and even otherwise the NOIDA was competent to execute and transfer land as per the Act of 1976 in as much as it was within their competence to transfer either by be of sale or lease or otherwise plots of land for industrial, commercial or residential purposes. We do not find any restriction on limitation on the right of the NOIDA to transfer the land in the development area only through the lease deed and not any other transfer

deed including deed of exchange. Once the land has been transferred favour of the petitioner, they become the transferee and entitled for making an application for sanction of map. We even find that as per regulation 2.4 the petitioner would be included in the definition of an "applicant", and accordingly this would also entitle him to prefer an application for sanction of map. The arguments of the respondents to the contrary seeking to deny status of transferee to the petitioner, are not supported by the by statutory provisions, and accordingly rejected.

58. While interpreting the provisions of regulations of 2010, the objective would be to make it effective and operative and to further the ends of justice and not to frustrate the same. The court has the duty to construe the statute to promote the object of the statute and serve the purpose for which it has been enacted and should not efface its very purpose. It has fairly been submitted by the learned counsel for the respondent that this is the only case so far for the NOIDA where an application has been rejected only because it is not accompanied by lease deed. The regulations of 2010 contain machinery provisions which have been framed by the NOIDA for the effective discharge of duties vested under the Act of 1976, and to promote the objects delineated therein. The regulations cannot create or extinguish a substantial vested right of any individual which is not relatable to any of the matters provided for under section 9(2) of Act of 1976. Merely because regulations can be framed to provide for the documents necessary and incidental for submission of plans as per sub clause (i) of section 9(2), cannot be interpreted or utilised to efface the vested right of an individual of his right of property to get his map sanctioned. The regulations will have to be interpreted having due consideration to the substantial provisions contained in the parent legislation, which is the Act of 1976, and in any case no interpretation can be made which runs counter to the special provisions of the parent legislation. Once we have already held that the deed of exchange was validly executed by NOIDA, though in the discretion they could have transferred it through lease deed, or a Sale deed etc., but their wisdom they resolved to execute a deed of exchange cannot be questioned. The land which was transferred to the petitioner was the acquired land, and not any land which was purchase by the petitioner from a private party.

Whatever rights vest in the disputed land with the petitioner, have been granted by NOIDA. Once the land has been transferred by the NOIDA in exercise of powers under Act of 1976, then the transferee would be entitled to have a map sanctioned as per regulations of 2010. Merely because the instrument by which the land has been vested in the petitioner is not a lease deed, cannot be a ground for rejection of the application for sanction of map.

59. The respondents have relied upon the judgement of division bench of this court in the case of **P*aradise Development versus Chief Town & Country planner*** reported in ***2017 SCC online All 2744.*** The grievance of the petitioners in the said case was with regard to the rejection of the layout plan on the ground that the land on which the layout plan was being sought to be approved, was shown as "industrial and partly green" in the master plans, and accordingly the 1st issue decided by the division bench was that even if the land has been declared to be "abadi" still it does not in any manner permit the tenure holder to use such land for development of residential colony unless the same has been shown in a master plan as such.

60. The land in the said case was situated in village Illabas which was shown as "agriculture" in the master plan – 2001, master plan – 2011 and master plan – 2021 and accordingly the Division bench of the was of the view that the land falls in the agricultural land use zone as per map in which development of residential colony was not permissible and accordingly he dismiss the writ petition.

61. The learned Senior Advocate appearing on behalf of the respondents has placed reliance on the observations of the Division bench in paragraph, 29 of the said judgement the Act of 1976 does not permit acquisition of land and its development straight away by a private builder.

62. In the case of Paradise Development, the petitioner therein had purchased land in dispute under different sale deeds during the year 1979 –89, and submitted its layout plan in the name of Vikrant Vihar. The grievance raised by the petitioners therein was with regard to the communication dated 18/04/1990 informing the petitioner that the said village has been notified to be part of NOIDA and accordingly a no objection certificate regarding the

development could not be given by the Chief Town & Country planner. Subsequently the NOIDA was also directed to consider the plan submitted by the petitioner therein, which was also rejected on 17/12/2004 on the ground that the land in question was shown as "industrial and partly green" in the master plan and accordingly on such a land of residential building could not be sanctioned.

63. The other ground on which the NOIDA had rejected the application for sanction of the building plan in the said case was that by implication, the provisions of the said Act do not permit acquisition of land and its development directly by "Private builder".

64. The Division bench duly considered the arguments of NOIDA and accepted its order of rejection of the application for sanction of building plan holding that the land on which the plan was sought to be sanctioned is recorded as agriculture on which no residential colony was permissible.

65. The facts in the present case are clearly distinguishable, inasmuch as the land on which the petitioner is seeking sanction of the building plan has been shown as "residential" in the Master Plan as distinguished from "industrial or greenbelt" in the case of paradise development where the application for sanction of map was rejected on the ground that the land use was not "residential" on which no group housing scheme could be approved.

66. The petitioner cannot be called a "private developer" in as much as the land was transferred in his favour by the NOIDA. The instrument by which the land was transferred was the sole choice and prerogative of the NOIDA as per their 171st Board resolution. No reasons have been given by NOIDA for entering into a deed of exchange and not a lease deed. In any view of the matter in the present case the land has been transferred by the NOIDA into the hands of the petitioner and they have not acquired the same from any private individual. There is no dispute that for the purposes of construction/ development of the plots allotted private developer, who purchase the land from NOIDA after paying premium for the land which is equivalent to the cost of the land are permitted to raise construction as per law after approval of map. We see no difference between a person who has been allotted land

by NOIDA and the petitioner who has been given land through a deed of exchange for raising construction.

67. In the present case there is no dispute that in the master plan the land of the petitioner has been shown as land reserved for residential purposes, and therefore the facts of the instant case are clearly distinguishable from the facts in the case of Paradise Development where approval of map was sought on green belt.

68. It was submitted on behalf of the respondents that the lease deed should provide the details of the nature of the land as to whether it is residential, commercial or green area while in the case of the petitioner there is no mention about the nature of land in the deed of exchange, and therefore, the disputed land cannot be held to be residential. Though this aspect was not dealt with or considered in the impugned order, but as it is argued by the learned Counsel for the respondents it deserves consideration. The instrument of transfer of immovable property may be lease deed or a sale deed should contain essential features and details including the purpose of the deed, the details of the parties involved in the agreement, description of property, consideration, signatures of the parties and finally the instrument is registered. We do not find that there is any mandatory or statutory requirement about there being any recital mentioning about the nature of land in the said deeds as to whether it is residential, commercial or a green area. Even the relevant Act and regulations of the respondents are silent in this regard and therefore it cannot be said that because the deed of exchange does not mention the nature of land, the petitioners cannot claim the status of the said land to be residential. The nature of land is provided in the master plan prepared for development as per Act of 1976. We do not find merit in the arguments of the respondents and is accordingly rejected.

69. It was further argued that as only lease rent is recovered from the lessees, and the NOIDA authorities do not levy any property tax, and therefore they do not have any other source of income to maintain the NOIDA area, and therefore the petitioner cannot be permitted to raise any construction, as it would cause huge financial loss to the NOIDA in case there are directed to sanction the building map.

70. To consider the arguments of the learned Senior Advocate appearing for the respondents, we have perused the provisions of U.P Industrial Area Development Act, 1976. Section 11 of the Act of 1976 which provides for levy of tax, and the authority with the previous approval of the State Government has the power of levy such taxes as it may consider necessary in respect of any site of building on the transferee or occupied thereof provided that the total incidence of such tax shall not exceed 1% of the market value of such site including the site of the building. Section 13 provides for imposition of penalty and mode of recovery of arrears of rent or any other amount due on account of the transfer of the site of building by the authority. Therefore, sufficient powers have been vested with the NOIDA to levy tax with the prior approval of the State Government, and therefore the argument of the learned counsel for the respondent seems to be incorrect to the extent that only lease rent can be levied and collected by NOIDA. The Act of 1976 provides sufficient powers to levy taxes, and as it by the learned counsel the respondent that the only income of the authority is through realisation of the lease deed and in case they are directed to sanction the map in absence of the property having been transferred on lease they will incur huge loss, seems to be incorrect. We find the substantial powers have been vested in the authority to levy and realised tax, and in case they have not levied any other tax, is as per their discretion, but it cannot be a ground for non-consideration of an application for sanction of map that a lease deed has not been entered into by the NOIDA, and they will incur huge loss in case there are directed to sanction such a map. Accordingly, merely because NOIDA has have not entered into a lease deed with the petitioner, cannot be a ground for denial of permission to raise construction. The said reason though not recorded in the impugned order is illegal and arbitrary and contrary to provisions of Act of 1976 and therefore rejected.

71. The functions of the authority as stated in Section 6 of the Act of 1976 are to secure a planned development of the industrial development area. To achieve planned development, they have been given the power to acquire land, prepare a plan, to demarcate and develop sites for various purposes, to provide infrastructure, to allocate and transfer the land, to regulate the

erection of buildings and to lay down the purpose for which particular site of plot shall be used.

72. The functions as provided for under Section 6 have to be carried out over the "industrial development area" which has been defined under section 2(d) of the Act of 1976 to mean an area declared as such by the State Government by notification. Once the area has been notified to be an industrial development area by the State Government and the powers and functions of the NOIDA as provided in section 6 of the said Act comes into operation and it is only land in the notified area which can be acquired, and plans made for proper and planned development of the said area.

73. To make the provisions of the Act of 1976 more effective and to secure its objects of a planned development in the development area the authority has a right to issue directions in respect of erection of buildings as provided in section 8, and further as per section 9 no person shall erect or occupy any building in the industry development area in contravention of any building regulations. Section 6A further empowers the authority to authorise any person to provide or maintain or continue to provide or maintain any infrastructure amenities under the Act and to collect tax or fee, levied. Accordingly, they have been given the power to authorise collection of tax or fee.

74. Therefore, the scheme of the Act indicates that the authority has been given wide powers akin to a local/municipal authority. The powers of the authority would run as per the provisions of Act of 1976 within the confines of the area notified by the State Government as "industrial development area". It is within the development area that land can be acquired by the authority and the buildings have to be constructed as per the provisions contained in the regulations made thereunder. We do not find that authority is under any obligation to acquire the entire notified industrial development area, but from the date of notification any buildings proposed or made in the development area would be subject to the building bye-laws framed by the authority under section 9 (2). Though we find substance in the arguments of the respondents to the extent that for proper development the land has to be acquired and developed according to the master plan and Zonal plan prepared by the authority. Considering the fact that land parcels owned by

marginal farmer are small in size and scattered, after the acquisition they have to be consolidated and after the process of rectangulation a proper development scheme is to be framed otherwise it will lead to haphazard development, which will be contrary to regular and planned development. For the said purpose the land must be acquired by the authority, followed by the preparation of development plan, and subsequently allotted after realising the development charges and the cost of land etc. We are concerned by the fact that even after the passage of more than 4 decades the entire land in the notified area has not been acquired, and on the other hand the authority would not sanction the building plans in the areas where the land has not been acquired. In fact, the area in which the development is proposed by the authority in the notified area ought to be acquired within a reasonable period of time. During this period the authority would be justified in not sanctioning the building plans on the ground that the said areas are proposed to be developed as per the plans prepared by the authority. But in case the land in the notified area is not acquired within a reasonable period, the rejection of the building plans would clearly be illegal and arbitrary and would be violative of Article 300A of the Constitution of India.

75. In the present case, the facts are peculiar and probably the only solitary instance, as stated by the respondents, where, by a deed of exchange, the land has been allotted to the petitioner. Prior to allotment to the petitioner, the said land was acquired by the authority, and also shown in the master plan for residential purposes. It is only after following the entire procedure, the land was allotted, and it is on the said land that an application for sanction of the building plan was made by the petitioners. In the aforesaid circumstances, we do not find any reason for the authority not to consider the application of the petitioner for sanction of the building plan, and the reasons for rejection, as already discussed, are clearly illegal and arbitrary.

76. Accordingly, for the reasons stated herein-above, the writ petition is **allowed.** The impugned orders dated 11.09.2023 and 10.04.2024 are quashed.

77. The matter is remitted to respondent No.2 to pass a fresh order considering the application for sanction of map on merits in light of the Regulations of

2010 treating the petitioner to be eligible for due consideration and sanction of the map, in accordance with law. Let the fresh exercise be carried out expeditiously, but not later than 4 weeks from the date a certified copy of this order is produced before him.

Dt.22.11.2024 **(Alok Mathur, J.)**

RKM./A.Verma