

Neutral Citation No. - 2024:AHC-LKO:9090-DB

[A.F.R.]

[Reserved]

Court No. - 2

Case :- WRIT - C No. - 9211 of 2011

Petitioner :- M/S Sundaram Developers Pvt. Ltd. A Comp. Incorporated

Respondent :- State Of U.P.Through Its Prin. Secy. Housing Lko.And
Ors.

Counsel for Petitioner :- Sachin Garg,Jaspreet Singh,Sachin Garg

Counsel for Respondent :- C.S.C.,Rajesh Singh Chauhan,Shailendra
Singh Chauhan,Shashi Prakash Singh

with

Case :- WRIT - C No. - 5539 of 2013

Petitioner :- M/S Sundaram Developers Pvt.Ltd. Lucknow

Respondent :- State Of U.P.Thr.Prin.Secy.Housing Civil Sectt.Lko.And
Anr.

Counsel for Petitioner :- Sachin Garg,Jaspreet Singh,Sachin Garg

Counsel for Respondent :- C.S.C.,Amit Kumar Dwivedi,Shailendra
Singh Chauhan,Shashi Prakash Singh

with

Case :- WRIT - C No. - 5591 of 2013

Petitioner :- Eldeco Housing And Industries Ltd. Thru. Its Auth.
Signatory

Respondent :- State Of U.P. Thru. Prin. Secy. Housing And Anr.

Counsel for Petitioner :- Sachin Garg,Anurag Singh,Gaurav
Mehrotra,Ishita Yadu,Jaspreet Singh,Utkarsh Kumar

Counsel for Respondent :- C.S.C.,Shailendra Singh Chauhan,Shashi
Prakash Singh,Surendra Kumar Singh

Hon'ble Vivek Chaudhary,J.

Hon'ble Manish Kumar,J.

1. Heard Sri N.K. Seth, learned Senior Advocate assisted by Sri Sachin Garg, learned counsels for petitioner in Writ Petition No.9211 (M/B) of 2011 & Writ Petition No.5539 (M/B) of 2013, Sri Sachin Garg, learned counsel for petitioner in Writ Petition No.5591 (M/B) of 2013 and Sri Shailendra Singh Chauhan, learned counsel for Lucknow Municipal Corporation, Sri Puneet Chandra, learned counsel for Lucknow Development Authority and learned Additional Chief Standing Counsel for State-respondents. The arguments were made by Sri N.K. Seth, learned Senior Advocate assisted by Sri Sachin Garg, learned counsel for petitioner in Writ Petition No.5539 (M/B) of 2013. Sri Sachin Garg, Advocate appearing in connected Writ Petition No.5591 (M/B) of 2013 has adopted all the arguments of Writ Petition 5539 (M/B) of 2013.
2. These three writ petitions being Writ Petition No.9211 (M/B) of 2011, Writ petition no. 5539 (M/B) of 2013 and Writ C No. 5591 (M/B) of 2013 are being heard and decided together by a common judgment. Writ Petition No.9211 (M/B) of 2011 filed by Ms. Sundaram Developers Pvt. Ltd. Lucknow could have been decided on the very first date itself, however, an order of status-quo was passed in the same on 16.09.2011 which continues till date. By way of Writ Petition No.9211 (M/B) of 2011, petitioner approached this Court claiming that, though, land in dispute bearing plot nos. P-9, P-10, P-12, P-13 (Part of Khasra Plot Nos. 209, 220, 221, 223 & 224) situated at Village Jiamau, Ward Vikrmaditya, Lucknow is not notified for acquisition but still in the garb of acquisition respondents are trying to interfere in possession of petitioner and thus got an

order of status-quo. In the counter affidavit, respondents accepted that the land in dispute is not under acquisition and they have no claim but, still the writ petition was never disposed of and was got connected with the other two aforesaid writ petitions which are on entirely different causes. Writ Petition No.5539 (M/B) of 2013 and Writ Petition No.5591 (M/B) of 2013 challenge order dated 01.06.2013 passed by respondent no.2 cancelling lease deed dated 24.06.1995 executed in favour of M/s Mansarover Sahkari Awas Samiti Ltd. (M/s MSAS). Further, a mandamus is sought directing respondents not to interfere in their peaceful possession over the property in dispute. Facts of both Writ Petition No.5539 (M/B) of 2013 and Writ Petition No.5591 (M/B) of 2013 are nearly same and thus, are being heard and decided together. No stay order was granted in the aforesaid two writ petitions which had entirely separate cause of action, however, in view of status-quo order passed in Writ Petition No.9211 (M/B) of 2011, respondents did not take any steps to take possession of the property in dispute through-out the last ten years.

3. The order dated 01.06.2013 cancels the lease deed executed in favour of M/s Mansarover Sahkari Awas Samiti Ltd. (M/s MSAS) on the grounds that as per the terms of lease internal or external development is not effected and even the layout plan of the land is not presented before the Municipal Corporation, despite specific order of High Court dated 30.11.2002, which provided for submission of layout plan within ten days of handing over of possession; though the land was to be developed for the members of cooperative society but neither the list of members of cooperative society, nor any intimation of transfer of land to its members was provided and, in fact, the entire land was sold for earning profits; and further details were

not provided to the Municipal Corporation which were repeatedly asked for by the Municipal Corporation.

4. Facts of case are that Municipal Corporation Lucknow in its meeting held on 05.01.1995 passed a resolution No.70 whereby it provided for execution of a lease for 30 years of property bearing Khasra No.209, 220, 221, 222, 224 total area 4 Bigha, 12 Biswa, 2 Biswansi situated at Village Jiamau, Pargana and Tehsil-Lucknow at the rate of Rs. 2,50,000/- per bigha (Total Rs. 11,51,250/-) in favour of M/s MSAS. After a period of 30 years, the lease could be renewed for further two term of 30 years each, with enhancement of 50% of lease rent. In furtherance of said resolution, a lease deed was executed on 24.06.1995 by the Mukhya Nagar Adhikari, Municipal Corporation Lucknow in favour of M/s MSAS. The lease deed in addition to the aforesaid terms provided that the lessee can transfer lease land or any part of it and for the same, it would not require any prior permission from the lessor. The lessee shall make internal and external development as per the master plan. It appears that the land was neither demarcated by Municipal Corporation nor possession thereof was given to M/s MSAS, hence, it filed a Writ Petition No.7060 (M/B) of 2002 before this Court. The said writ petition was disposed of on 30.11.2002 with the following order:-

Heard the learned counsel for the petitioner and St Anand Swaroop Rai, Advocate, who has put in appearance on behalf of the opposite parties.

The petitioner has alleged that the lease deed dated 24.6.1995 was executed by the then Lucknow Nagar Nigam in favour of the petitioner's society for the Group Housing. The grievance of the petitioner is that the opposite parties have not demarcated the area on the spot in spite of their repeated requests and they have also not put the society in possession of the property.

The learned counsel appearing on behalf of the opposite

parties submits that the petitioner has not submitted the lay out plan.

We have considered the arguments of the learned counsel for the parties and gone through the record. There is no dispute that lease deed dated 24.6.1995 was executed in favour of the petitioner's society by the Lucknow Municipal Corporation. The petitioner has approached to the opposite parties for the demarcation of the area on the spot and for the physical possession.

Without entering into the merits of the case, the writ petition is finally disposed of with a direction to the opposite parties to demarcate the area in pursuance of the lease deed dated 24.6.1995 on the spot within four weeks from the date a certified copy of this order is produced and as soon as the area is demarcated and the petitioner is put in possession, the petitioner shall furnish the lay out plan to the opposite parties within ten days thereafter.

Dt: 30.11.2002.

Sks

The office is directed to issue a certified copy of this order to the learned counsel for the petitioner within two days on payment of necessary charges.

Dt: 30.11.2002

sks

5. In furtherance thereof, possession of the land was handed over to the M/s MSAS. Though the order directed M/s MSAS to furnish the lay out plan to the opposite party within ten days thereafter, however, no such plan was ever handed over by the M/s MSAS to the Municipal Corporation. The entire land was transferred to the petitioners by M/s MSAS in the following manner:-

Writ Petition No.5539 (M/B) of 2013

1.	Plot No.9 consisting of part of Gata Nos.220, 221 & 223, area 3100 sq. meter	By sale deed dated 25.05.2004 M/s MSAS sold to Sri Vishwajeet Singh s/o Batukeshwar Dutt Singh	By sale deed dated 04.06.2004 Sri Vishwajeet Singh sold to M/s Sunderam Developers Pvt. Ltd. (Petitioner)
2.	Plot No.10 consisting of part of Gata Nos.220, 221 and 223, area 3000 sq. meter	By sale deed dated 25.05.2004 M/s MSAS sold to Sri Narendrajeet Singh s/o Batukeshwar Dutt	By sale deed dated 04.06.2004 Sri Narendrajeet Singh sold to M/s Sunderam Developers Pvt. Ltd. (Petitioner)

3.	Plot No.12 consisting of part of Gata No.220, 221, 222, 223 & 224, area 394 sq. meter	By sale deed dated 29.05.2008 M/s MSAS sold to Sri Arjun Singh s/o Sri S.P. Singh	By sale deed dated 16.06.2008 Sri Arjun Singh sold to M/s Sunderam Developers Pvt. Ltd. (Petitioner)
4.	Plot No.13 consisting of part of Gata No.220, 221, 222, 223 & 224, area 206 sq. meter	By sale deed dated 18.06.2009 M/s MSAS sold to Sri Arjun Singh s/o Sri S.P. Singh	By sale deed dated 25.06.2009 Sri Arjun Singh sold to M/s Sunderam Developers Pvt. Ltd. (Petitioner)

Writ Petition No.5591 (M/B) of 2013

1.	Plot No.6 consisting of part of Gata Nos. 206, 207 & 209, area 3840 sq. meter	By sale deed dated 30.04.2002 M/s MSAS sold to Sri Dhruv Singh s/o Sri Seeta Saran Singh	By sale deed dated 03.08.2004 Sri Dhruv Singh sold to M/s Eldeco Housing and Industries (Petitioner)
2.	Plot No.7 consisting of part of Gata Nos. 206, 207, 208 & 209, area 2760 sq. meter	By sale deed dated 03.05.2002 M/s MSAS sold to Sri Arjun Singh s/o Sri S.P. Singh	By sale deed dated 03.08.2004 Sri Arjun Singh sold to M/s Eldeco Housing and Industries (Petitioner)
3.	Plot No.8 consisting of part of Gata Nos. 207, 208, 209 and 221, area 2395 sq. meter	By sale deed dated 20.05.2002 M/s MSAS sold to Sri Veerendra Singh s/o Sri Nepal Singh	By sale deed dated 03.08.2004 Sri Veerendra Singh sold to M/s Eldeco Housing and Industries (Petitioner)
4.	Plot No.11 consisting of part of Gata Nos. 202, 209 and 221, area 1574 sq. meter	By sale deed dated 29.05.2008 M/s MSAS sold to Sri Veerendra Singh s/o Sri Nepal Singh	By sale deed dated 05.07.2008 Sri Veerendra Singh sold to M/s Eldeco Housing and Industries (Petitioner)
5.	Plot No.14 consisting of part of Gata Nos. 220, 221, 222,223 and 224, area 826 sq. meter	By sale deed dated 18.06.2009 M/s MSAS sold to Sri Veerendra Singh s/o Sri Nepal Singh	By sale deed dated 25.06.2009 Sri Veerendra Singh sold to M/s Eldeco Housing and Industries (Petitioner)

No sanctioned map is filed by petitioners and thus it is not clear how said plot numbers were given. But, it is apparent that entire lease land stood transferred from M/s MSAS through only five persons to petitioners.

6. Meanwhile, State of U.P. on 09.04.2010 and 02.06.2010 issued notifications under Section 4 and Section 6 of Land Acquisition Act, 1894 for the surrounding areas. The land in dispute was not covered by the said notifications. The award of the said acquisition was also issued but the land in dispute was not

included in the said award also and thus it remained unacquired. Petitioner, M/s Sundaram Developers Pvt. Ltd., claimed interference was being made by the State authorities in its possession of the property in dispute and allegedly a boundary wall of petitioner was also demolished. M/s Sundaram Developers Pvt. Ltd. thus, filed a Writ Petition No.9211 of 2011 and in the same an order of status-quo was passed on 16.09.2011. No such writ petition was filed by M/s Eldeco Housing and Industries Pvt. Ltd. or M/s MSAS. On 28.07.2012 Additional Municipal Commissioner, Municipal Corporation, Lucknow issued a show cause notice to the M/s MSAS pointing out violation of conditions of lease deed dated 24.06.1995 and therefore for cancellation of lease deed. M/s MSAS submitted its reply on merits to the Additional Municipal Commissioner on 14.08.2012. In its reply, amongst other things, it stated that some of the leased lands have been transferred to some of its members, but, neither any details were provided nor it claimed that notice should also be given to them. Having considered the reply of the M/s MSAS, by impugned order dated 01.06.2013, the lease deed executed in favour of MSAS was cancelled. Challenging the said show cause notice and impugned order dated 01.06.2013 cancelling the lease deed, petitioners have filed other two writ petitions.

7. Sri N.K. Seth, learned Senior Advocate assisted by Sri Sachin Garg, learned counsel for petitioners emphatically submits that there is no notice or opportunity of hearing given to the petitioner before passing the impugned order, even though the property had vested in the petitioner. It is claimed that it is only the petitioner who had right to contest the proceedings. He further submits that there is a specific clause in the lease deed that transfer of lease land can be made by the lessee without

any prior permission of the lessor and in fact such transfer had taken place. He further submits that Municipal Corporation could have taken the stand that the lease deed is not in accordance with law in the earlier Writ Petition No.7060 (M/B) of 2002 but it never took any such stand. His next submission is that there can not be a unilateral cancellation of lease deed and in fact the Municipal Corporation somehow wanted to occupy the said land and since it could not do so it cancelled the lease deed and this amounts to malice in law. Learned counsel for the petitioner further submits that respondent Municipal Corporation is estopped from cancelling the lease deed after such a long delay. He submits that since the resolution was passed, lease deed was executed and thereafter it was also sold, therefore, the same can not be cancelled at all. To buttress his submissions reliance is placed by petitioners upon the following judgments:-

on opportunity of hearing:-

- (i) (2020) 18 SCC 550; *'M/s Daffodills Pharmaceuticals Ltd. And Others Vs. State of U.P. and another;*
- (ii) (2021) 19 SCC 706; *Civil Appeal No.3498 of 2020; 'State of U.P. Vs. Sudhir Kumar and Others;*
- (iii) (2023) 6 SCC Page 1; *'State Bank of India Vs. Rajesh Agarwal and Others';*

on unilateral cancellation of allotment:-

- (i) (2007) 10 SCC 674; *'Sunil Pannal Banthia & Others Vs. City & Industrial Development Corporation of Maharashtra Ltd. and Another.*
- (ii) (2011) 7 SCC 493; *ITC Ltd. Vs. State of U.P. and Others.*

on estoppel:-

- (i) (2003) 2 SCC 355; *B.L. Sreedhar & Others Vs. K.M. Munireddy (Dead) & Others*
- (ii) (2014) 16 SCC 472; *Kamaljit Singh Vs. Sarabjit Singh.*

8. On the other hand, Sri Shailendra Singh Chauhan, learned

counsel for Lucknow Municipal Corporation strongly submits that the very purpose of providing the land to a housing cooperative society was to provide housing facility to the residents of the Lucknow Municipal Corporation. M/s MSAS violated the conditions of the lease deed and neither got any map sanctioned from the Lucknow Development Authority nor got the said land developed to fulfill the housing needs of the residents of the city. The land was parked for availing better prices in future and in fact the manner in which it was sold to the petitioners, private developers, proves the same. Even petitioners, till date, have not utilized the said land for its original intended purpose. The land till date is lying undeveloped, unutilized, as it was given to M/s MSAS under the order of High Court dated 30.11.2002. Thus, the benefits which were to be given to the residents of Lucknow city in the year 1995 are not provided till now, despite nearly 28 years having passed. He states that amongst other grounds, since the very purpose of the lease is violated, thus, there is no illegality in the impugned order. He further submits that since a reply on merits was filed by M/s MSAS the same was duly considered and since the Lucknow Municipal Corporation was not informed that petitioners had purchased the property, there was no occasion to grant any opportunity of hearing to the petitioners. Even otherwise, petitioners can not have any better case than the case set up by M/s MSAS.

9. Learned Additional Chief Standing Counsel and Sri Puneet Chandra, learned counsel for respondent development authority also adopt the submissions made by the learned counsel for Municipal Corporation.
10. We have considered the submissions of learned counsels for

parties and perused the records with their assistance.

11. Admittedly, land in dispute was owned by the Municipal Corporation. The Municipal Corporation in its meeting dated 05.01.1995 by resolution no.70, resolved for execution of a lease deed in exercise of power under Section 129 of the U.P. Municipal Corporation Act 1959 (hereinafter referred to as 'Act of 1959'). The proposal and resolution reads as follows:-

"अध्यक्ष की अनुमति से ग्राम-जयामऊ की खसरा संख्या- 209, 220, 221, 222 व 224 की कुल 04 बीघा 12 बिस्वा 02 बिस्वांसी भूमि जिला अधिकारी लखनऊ द्वारा निर्धारित कृषिक भूमि की दर रु0 2,50,000.00 प्रति बीघे की दर से आवंटित की जाने वाली उक्त भूमि का मूल्य रु0 11,51,250.00 होता है। पट्टा 30 वर्ष की अवधि उपरान्त 30-30 वर्ष के दो नवीनीकरण इस प्रतिबन्ध के साथ कि प्रत्येक नवीनीकरण के समय लीज रेंट में 50 प्रतिशत वृद्धि हो जायेगी, रु0 11,51,250.00 वार्षिक लीज रेंट में 50 प्रतिशत वृद्धि हो जायेगी। रु0 11,51,250.00 वार्षिक लीज रेंट पर मानसरोवर सहकारी आवास समिति लि0 लखनऊ के पक्ष में विनियमितीकरण किये जाने का प्रस्ताव मुख्य नगर अधि कारी की संस्तुति दिनांक 03.01.1995 के तहत कार्यकारिणी के समक्ष विचारार्थ प्रस्तुत।

संकल्प सं0 (70): सर्व सम्मति से उपरोक्तानुसार प्रस्ताव स्वीकृत हुआ तथा सदन के द्वारा प्रतिनिधायन के तहत धारा 129 की शक्तियों का प्रयोग करते हुये सदन के अधिकारों का प्रयोग करते हुये अनुमोदिन एवं स्वीकृत किया गया।'

12. On the basis of the said resolution, a lease deed was executed on 24.06.1995. A perusal of the minutes of the meeting dated 05.01.1995 filed by respondent Municipal Corporation through an affidavit dated 04.08.2023 show that the proposal to allot the land in question was not on the day's agenda and was brought to agenda by permission of the President. Resolution No. 70 is silent as to why allotment is being made in favour of M/s MSAS, instead of allotting the land to the highest bidder through an open bidding system. During arguments, a question arose as to whether such a resolution can be passed and lease deed be executed by the Municipal Corporation. Counsel for the petitioner states that the Municipal Corporation has full power to dispose of its property by way of sale or lease.

Reliance for the said purposes is placed upon Section 129(4) of the Act of 1959. The same reads as follows:-

“129. Provisions governing disposal of property. - With respect to the disposal of property belonging to the Corporation the following provisions shall have effect, namely:

(4) The Municipal Commissioner may with the sanction of the Corporation lease, sell, let out on hire or otherwise convey any property, movable or immovable belonging to the Corporation. ”

13. No doubt Municipal Corporation has power to dispose of its property by executing lease deed but the same has to be done for the purposes of the Act. There is no absolute power in the Municipal Corporation to simply sell or lease its land beyond the purposes of the Act. The power of the Municipal Corporation is not absolute and unrestricted but it has to be exercised within the four corners of express legislative consent given by the Act of 1959. Sections 114 and 115 provides obligatory duties and discretionary duties of the Municipal Corporation. Municipal Corporation can work and utilize its properties, both movable and immovable, for achieving the said objects only. The corporation holds the property as a trustee on behalf of people living within its limits. It is not the absolute owner of the property to use or abuse it on its whims. The resolution and the lease deed are absolutely silent as to the purpose for which the land is provided to M/s MSAS. The lease deed merely states that M/s MSAS does not require any prior sanction from the Municipal Corporation for selling or transferring the entire land or any part thereof to third parties. Learned counsel for the petitioner states that from the bare perusal of the resolution, the lease deed and from the fact that the land was given to M/s MSAS, a Sahakari Awas Samiti, it can be inferred that the land was to be developed for a

residential housing scheme for the residents of Lucknow Municipal Corporation. Petitioners in both the writ petitions are developers and would use the land for the same purposes. Learned counsel for the petitioner was asked if the said purpose is covered under Section 114 or 115 or any other provisions of the Act of 1959. Reference is made by learned counsel for petitioner to Clause 33 of Section 114 of the Act of 1959 which reads:-

"(xxxiii) town planning and improvement, including slums clearance and preparation and execution of housing scheme and laying out new streets."

14. Counsel for the petitioner states that it is within the power of Corporation to prepare and execute housing scheme. Thus, it can also transfer land for the purpose of a housing scheme. Other than aforesaid, no other provision could be placed by the counsel for petitioner to support his submissions.
15. The term "*preparation and execution of a housing scheme*" only empower the Corporation to itself prepare and execute the housing scheme. For the said purposes, the Municipal Corporation is first to prepare a housing scheme and thereafter to take steps for its execution. Municipal Corporation can not transfer duties/obligations casted upon it by legislation in toto to private players. It ought to have first framed a housing scheme, identified if any assistance in its execution is required from private players and only thereafter, the Municipal Corporation should have taken steps as permissible in law. In the present case the decision to allot the Municipal land to M/s MSAS was not even on agenda in the meeting of Executive Committee dated 05.01.1995. It was added very hastily in a very questionable manner, with the permission of chairman. The entire land was leased out without reference to any housing

scheme of the Municipal Corporation or even providing as to how the land is to be developed or utilized and the time period for such utilization. It is not clear till date as to how and why M/s MSAS was chosen for allotment of land. The manner in which subsequent transactions took place also create serious doubts. The land allotted to M/s MSAS was artificially carved into different smaller plots of varying length, some close to about 3100sq.m., without getting any map sanctioned from any authority. As per the petitioner, these plots were allotted to members of the M/s MSAS, however, no list of members was ever provided. As noted in the chart above, the alleged five members of the Society after buying plots from the society sold the entire land to petitioner-developers within a short period. There is not a word about any housing scheme either in the resolution or in the lease deed. Even the requirement to have a sanctioned map and to submit it to the corporation appeared for the first time in the order of High Court dated 30.11.2002. It is admitted that no housing scheme was ever prepared by the Municipal Corporation. In fact the lease deed specifically states that lessee M/s MSAS shall get the internal and external development of the land made on its expense as per the master plan of Lucknow urban area and as per the rules. In the judgment dated 30.11.2002 passed in Writ Petition No.7060 (M/B) of 2002, the High Court had also directed that as soon as the area is demarcated and M/s MSAS is put in possession, M/s MSAS shall furnish the lay out plan to the Corporation within ten days thereafter. The aforesaid facts clearly establish that there was no housing scheme prepared by the Municipal Corporation and even the said duty was outsourced to M/s MSAS. Thus, from the facts and records of the case, this Court is unable to agree with the submission of counsel for petitioner

that the land was given for achieving any purpose prescribed by Section 114 or 115 of Act of 1959. The claimed purpose "*preparation and execution of housing scheme*" is only an after-thought for the purposes of the present case developed during course of arguments. Therefore, the resolution No. 70 and lease deed dated 24.06.1995 executed by the Municipal Corporation to M/s MSAS does not fall within the duties of the Municipal Corporation and is, therefore, beyond the powers of the Municipal Corporation vested in it by the Act of 1959.

16. Learned counsel for petitioner places reliance upon the communication dated 17.02.1997 made by U.P. Awas Evam Vikas Parishad to the Secretary of M/s MSAS that it has granted sanction for group housing/multi-story building on the property in dispute. The said communication is filed as annexure no.6 to the writ petition. There is no sanctioned map filed along with the said communication. Even during the long course of argument no such sanctioned map was placed by the petitioners before this Court. Even otherwise the said communication dated 17.02.1997 on the face of it appears to be doubtful as in the Writ Petition No.7060 (M/B) of 2002 filed before this Court the stand of M/s MSAS was that the land is not yet demarcated and its possession is not given to the petitioners and, therefore, no layout plan as yet could be prepared and M/s MSAS would take ten days time, from date of possession, to submit proposed layout plan to the Municipal Corporation. Thus, there is no question that any map was sanctioned on 17.02.1997 by Awas Evam Vikas Parishad. Even otherwise, admittedly, the land always was within the limits of Lucknow Development Authority. It is the Lucknow Development Authority which had power to sanction map for any development of the said land, either for residential or multi-

story housing society, and no such sanctioned map of Lucknow Development Authority is filed before this Court. Learned counsel for the petitioner also could not show the provision of law under which U.P. Awas Evam Vikas Parishad could sanction a map with regard to the land in dispute. In the aforesaid background, the said communication is not reliable and is also without any authority of law and can not support the case of petitioner in any manner.

17. In the aforesaid facts we are to consider the submission of petitioner on opportunity of hearing being granted to them. No doubt normally an opportunity of hearing ought to be given to a party against whom an order is being passed, but, the same is not an absolute right. Suffice would be to referred to a three judges bench of Supreme Court in case of ***'State of U.P. Vs. Sudheer Kumar Singh; AIR 2020 SC 5215'***, where Supreme Court had occasion to consider the said submission. It referred to large number of judgments on the issue and, thereafter, in paragraph-39 of the judgment laid down the following guiding principles.

“39. An analysis of the aforesaid judgments thus reveals:

(1) Natural justice is a flexible tool in the hands of the judiciary to reach out in fit cases to remedy injustice. The breach of the audi alteram partem Rule cannot by itself, without more, lead to the conclusion that prejudice is thereby caused.

(2) Where procedural and/or substantive provisions of law embody the principles of natural justice, their infraction per se does not lead to invalidity of the orders passed. Here again, prejudice must be caused to the litigant, except in the case of a mandatory provision of law which is conceived not only in individual interest, but also in public interest.

(3) No prejudice is caused to the person complaining of the breach of natural justice where such person does not dispute the case against him or it. This can happen by

reason of estoppel, acquiescence, waiver and by way of non-challenge or non-denial or admission of facts, in cases in which the Court finds on facts that no real prejudice can therefore be said to have been caused to the person complaining of the breach of natural justice.

(4) In cases where facts can be stated to be admitted or indisputable, and only one conclusion is possible, the Court does not pass futile orders of setting aside or remand when there is, in fact, no prejudice caused. This conclusion must be drawn by the Court on an appraisal of the facts of a case, and not by the authority who denies natural justice to a person.

(5) The "prejudice" exception must be more than a mere apprehension or even a reasonable suspicion of a litigant. It should exist as a matter of fact, or be based upon a definite inference of likelihood of prejudice flowing from the non-observance of natural justice." (emphasis added)

18. As per the aforesaid principles, the natural justice is flexible tool in the hands of judiciary to be applied in fit cases to remedy injustice. The mere breach of principle of opportunity of hearing by itself, without more, can not lead to the conclusion that prejudice thereby is caused. A litigant is bound to show the prejudice caused to it. It further states that no prejudice is caused to the persons complaining of breach of natural justice where such persons does not dispute the facts. This can happen amongst other reason by way of non-challenge or non-denial or admission of fact. In cases where facts can be stated to be admitted or undisputed, and only one conclusion is possible, the Court does not pass futile orders of setting aside or remand. This conclusion must be drawn by the Court on the appraisal of the facts of the case, and not by the authority who denies natural justice to persons. Applying principle 3 & 4 to the facts of the present case, on admitted facts it is proved that the land is transferred by the Municipal Corporation to M/s MSAS for the purposes not covered by the Act of 1959 and, thus, without authority of law. Once the same is not in dispute,

the said resolution or lease deed or any deed thereafter can not stand in the eyes of law. The resolution no.70 of the Municipal Corporation is without any authority of law and in fact is a fraud upon the law. The Municipal Corporation could not have passed the said resolution and, therefore, all consequential acts become illegal. By giving any opportunity of hearing the said admitted facts would not change and thus no prejudice is caused to the petitioners by not remanding the matter. It is not in dispute that till date the land is not developed in any manner whatsoever and it is lying as it did at the time the resolution was passed. Petitioners land developer companies are well aware of law and have invested in land after due diligence. Court can fairly assume that its legal team must have conducted a due diligence of the property and, thus, they were fully aware of all facts, including validity of resolution of Municipal Corporation. The law does not permit them to take a stand that after execution of sale deeds to petitioners, land would devolve upon them free from all encumbrances. If the title of earlier owner is defective consequence would fall upon petitioners also in accordance with law. The land which is bound to be utilized for the public of Lucknow Municipal Corporation can not be usurped in the aforesaid unauthorized, illegal manner and transferred to private developers. It is the duty of the constitutional Courts to safeguard the rights of people at large. Since, there is no dispute on facts and only one conclusion is possible, there is no reason to issue a futile writ and remand the matter back to the Municipal Corporation. Even otherwise, looking into the conduct of petitioner as well as of the Municipal Corporation, this Court does not find it a fit case to remand it back to the Municipal Corporation. The lease was cancelled on 01.06.2013. No stay order was passed by this

Court in any of the writ petitions challenging the same. But, on the basis of the status-quo order passed in Writ Petition No.9211 (M/B) of 2011, which was for restraining respondents from interfering in possession of only M/s Sundaram Developers Pvt. Ltd. as their land is not acquired, neither petitioners handed over possession of land to Municipal Corporation nor respondents took any steps for possession of the land. Both of them very conveniently got Writ Petition No.9211 (M/B) of 2011 connected with the later two writ petitions and permitted benefit of status-quo order. Writ Petition No.9211 (M/B) of 2011 was on entirely different issue and had become futile, once the lease deed was cancelled and the cancellation was not stayed by the Court. Respondents wrongly permitted the earlier acquisition writ petition to remain pending and connected to later writ petitions challenging cancellation of lease deed, only to give benefit of status-quo order to petitioners. Thus, in this background also this Court does not find it in public interest to remand the matter to such respondents. So far as the submission with regard to malice of Municipal Corporation is concerned, suffice is to say that no malice either in law or in facts could be proved by the petitioner against the Municipal Corporation. Rather, it is the Municipal Corporation which had acted without jurisdiction in passing the resolution in the year 1995 which resulted in wrongful and unauthorized gain to M/s MSAS and thereafter to petitioners. The law referred to by the petitioners is not applicable in the facts of the case.

19. The facts of the present case are a glaring example as to how public purpose is defeated to extend unjustified benefits to private parties. From the very beginning, the Municipal

Corporation and its officers appear to be hand in gloves with private persons, to allot a public land belonging to the residents of the city of Lucknow and kept in trust with Municipal Corporation, in such clandestine manner. As held above the resolution is without any authority of law. Further, the haste with which the resolution to allot the said land was brought without being on agenda, with the permission of Chairman, though, there was no urgency and passed in violation of the well established procedures of disposal of public property, which can only be through bidding/auction, renders the resolution invalid. The way the said land was subsequently carved into plots without any approval and first allegedly sold to five members of the society, who in turn sold the entire land to private developers in surreptitious manner, just to clothe the whole transaction with some semblance of legitimacy, while disregarding the legal purpose for which such a land could be allotted by the Municipal Corporation, makes the whole transaction illegal, arbitrary and malafide. Supreme Court has time and again deprecated such malafide exercise of power against the interest of public and has called such actions void ab initio.

20. In the case of *Uddar Gagan Properties Ltd. v. Sant Singh*, (2016) 11 SCC 378, Supreme Court has come down heavily on colourable and malafide exercise of power by authorities and termed such actions as void. Paragraph 23 of the said judgment reads-

“23. It is well settled that use of power for a purpose different from the one for which power is conferred is colourable exercise of power. Statutory and public power is trust and the authority on whom such power is conferred is accountable for its exercise. Fraud on power voids the action of the authority [State of Punjab v. Gurdial Singh,

(1980) 2 SCC 471] · [Greater Noida Industrial Development Authority v. Devendra Kumar, (2011) 12 SCC 375, para 39 : (2012) 2 SCC (Civ) 591] . Mala fides can be inferred from undisputed facts even without naming a particular officer and even without positive evidence [State of Punjab v. Ramjilal, (1970) 3 SCC 602, paras 9-10; Express Newspapers (P) Ltd. v. Union of India, (1986) 1 SCC 133, paras 119-20] . In the present case, abuse of power in dealing with the matter by the functionaries of the State is more than clear as rightly found by the High Court. Challenge to acquisition may not be confined to those who have not accepted the amount of compensation or consideration. Once such order/transaction is vitiated there could be no estoppel on the ground that compensation/consideration has been received, as the land loser has little choice in the face of acquisition [Greater Noida Industrial Development Authority v. Devendra Kumar, (2011) 12 SCC 375, para 43] .”

Again in the case of **NOIDA Entrepreneurs Assn. v. NOIDA, (2011) 6 SCC, 508** Supreme Court has termed haste without urgency as the clear sign of malafide and colourable exercise of power and cautioned authorities against nepotism and favoritism while dealing with public land. Relevant paragraphs of the said judgment reads:

“26. In Jagir Singh v. Ranbir Singh [(1979) 1 SCC 560 : 1979 SCC (Cri) 348 : AIR 1979 SC 381] this Court has observed that an authority cannot be permitted to evade a law by “shift or contrivance”. While deciding the said case, the Court placed reliance on the judgment in Fox v. Bishop of Chester [(1824) 2 B&C 635 : 107 ER 520] , wherein it has been observed as under : (Jagir Singh case [(1979) 1 SCC 560 : 1979 SCC (Cri) 348 : AIR 1979 SC 381] , SCC p. 565, para 5)

“5.... ‘To carry out effectually the object of a statute, it must be so construed as to defeat all attempts to do, or avoid doing, in an indirect or circuitous manner that which it has prohibited or enjoined.’ [Ed. : As observed in Maxwell on the Interpretation of Statutes, 11th Edn., p. 109. See SCC p. 565, para 5 of Jagir Singh case, (1979) 1 SCC 560.] ”

27. The second work had been allotted to M/s Techno Construction Co. worth Rs. 1.00 crore without inviting

fresh tenders, etc. on the ground that earlier a contract for execution of similar work i.e. construction of road had been awarded to it. In view of the fact that there was no urgency, such a contract should not have been awarded. Undoubtedly, Respondent 4 is guilty of proceeding in haste and that amounts to arbitrariness.

28. *While dealing with the issue of haste, this Court in Bahadursinh Lakhubhai Gohil v. Jagdishbhai M. Kamalia [(2004) 2 SCC 65] , referred to S.P. Kapoor (Dr.) v. State of H.P. [(1981) 4 SCC 716 : 1982 SCC (L&S) 14 : AIR 1981 SC 2181] and held that : (Jagdishbhai M. Kamalia case [(2004) 2 SCC 65] , SCC p. 75, para 25)*

25. ... when a thing is done in a post-haste manner, mala fides would be presumed....”

29. *In Zenit Mataplast (P) Ltd. v. State of Maharashtra [(2009) 10 SCC 388] this Court held : (SCC p. 399, para 39)*

“39. Anything done in undue haste can also be termed as arbitrary and cannot be condoned in law....”

30. *Thus, in case an authority proceeds in undue haste, the Court may draw an adverse inference from such conduct. It further creates a doubt that if there was no sufficient reason of urgency, what was the occasion for Respondent 4 to proceed in such haste and why fresh tenders had not been invited.*

.....

.....

38. *The State or the public authority which holds the property for the public or which has been assigned the duty of grant of largesse, etc. acts as a trustee and, therefore, has to act fairly and reasonably. Every holder of a public office by virtue of which he acts on behalf of the State or public body is ultimately accountable to the people in whom the sovereignty vests. As such, all powers so vested in him are meant to be exercised for public good and promoting the public interest. Every holder of a public office is a trustee.*

39. *State actions are required to be non-arbitrary and justified on the touchstone of Article 14 of the Constitution. Action of the State or its instrumentality must be in conformity with some principle which meets the test of reason and relevance. Functioning of a “democratic form of Government demands equality and absence of arbitrariness and discrimination”. The rule of*

law prohibits arbitrary action and commands the authority concerned to act in accordance with law. Every action of the State or its instrumentalities should neither be suggestive of discrimination, nor even apparently give an impression of bias, favouritism and nepotism. If a decision is taken without any principle or without any rule, it is unpredictable and such a decision is antithesis to the decision taken in accordance with the rule of law.

40. *The public trust doctrine is a part of the law of the land. The doctrine has grown from Article 21 of the Constitution. In essence, the action/order of the State or State instrumentality would stand vitiated if it lacks bona fides, as it would only be a case of colourable exercise of power. The rule of law is the foundation of a democratic society. [Vide Erusian Equipment & Chemicals Ltd. v. State of W.B. [(1975) 1 SCC 70 : AIR 1975 SC 266] , Ramana Dayaram Shetty v. International Airport Authority of India [(1979) 3 SCC 489 : AIR 1979 SC 1628] , Haji T.M. Hassan Rawther v. Kerala Financial Corpn. [(1988) 1 SCC 166 : AIR 1988 SC 157] , Shrilekha Vidyarthi v. State of U.P. [(1991) 1 SCC 212 : 1991 SCC (L&S) 742 : AIR 1991 SC 537] and M.I. Builders (P) Ltd. v. Radhey Shyam Sahu [(1999) 6 SCC 464 : AIR 1999 SC 2468] .]*

41. *Power vested by the State in a public authority should be viewed as a trust coupled with duty to be exercised in larger public and social interest. Power is to be exercised strictly adhering to the statutory provisions and fact situation of a case. “Public authorities cannot play fast and loose with the powers vested in them.” A decision taken in an arbitrary manner contradicts the principle of legitimate expectation. An authority is under a legal obligation to exercise the power reasonably and in good faith to effectuate the purpose for which power stood conferred. In this context, “in good faith” means “for legitimate reasons”. It must be exercised bona fide for the purpose and for none other. [Vide Commr. of Police v. Gordhandas Bhanji [1951 SCC 1088 : AIR 1952 SC 16] , Sirsi Municipality v. Cecelia Kom Francis Tellis [(1973) 1 SCC 409 : 1973 SCC (L&S) 207 : AIR 1973 SC 855] , State of Punjab v. Gurdial Singh [(1980) 2 SCC 471 : AIR 1980 SC 319] , Collector (District Magistrate) v. Raja Ram Jaiswal [(1985) 3 SCC 1 : AIR 1985 SC 1622] , Delhi Admn. v. Manohar Lal [(2002) 7 SCC 222 : 2002 SCC (Cri) 1670] and N.D. Jayal v. Union of India [(2004) 9 SCC 362 : AIR 2004 SC 867] .]*

21. We have also considered the submission of counsel for petitioner on estoppel. Admittedly, since the year 1995 till date no development on the land in dispute has taken place. It is not the case of petitioners or M/s MSAS that they have invested or changed the nature of property. The property is lying as it did on 05.01.1995, when the resolution was passed. Thus, no case of estoppel is made out. Even otherwise, once it is proved that the resolution itself is without any authority, no case for estoppel is made out. The law relied upon by the petitioners is not applicable to the facts of the case.
22. In view of the aforesaid, it is apparent that even the very resolution of the Municipal Corporation is illegal, without any authority of law and is a fraud upon the statute. The Municipal Corporation could not have passed the said resolution. Therefore, since the resolution itself is found without any authority of law, consequential lease deed also can not stand. Thus, no case for interference with the impugned order cancelling the lease deed is made out.
23. The Writ Petition No.5539 (M/B) of 2013 and Writ Petition No.5591 (M/B) of 2013 are **dismissed**. The Writ Petition No.9211 (M/B) of 2011 has become infructuous as petitioner of the same, now after cancellation of lease deed, has no right over the land in dispute. Interim orders are discharged.

Order Date :- 05.02.2024
Arti/-

[Vivek Chaudhary,J.]

[Manish Kumar,J.]