



2025:AHC:163969-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT – C No. - 9968 of 2017

Deepak Bansal Petitioners(s)

Versus

State Of U.P. And 3 Respondents(s)
Others

Counsel for Petitioners(s)	: Amit Shukla, Nisheeth Yadav, Tarun Agrawal
Counsel for Respondent(s)	: C.S.C., Ravindra Pratap Singh, Shivam Yadav

CONNECTED WITH **WRIT - C No. - 37617 of 2023**

Deepak Bansal Petitioners(s)

Versus

State Of U.P. And 3 Respondents(s)
Others

Counsel for Petitioners(s)	: Nisheeth Yadav
Counsel for Respondent(s)	: Ankur Agarwal, C.S.C., Kaushalendra Nath Singh

Court No. - 29

HON'BLE MAHESH CHANDRA TRIPATHI, J.

HON'BLE ANISH KUMAR GUPTA, J.

1. Heard Shri C.B.Yadav, learned Senior Counsel assisted by Sri Nisheeth Yadav, learned counsel for the petitioner; Ms.Uttara Bahuguna, learned Additional Chief Standing Counsel for the State respondents and Shri M.C.Chaturvedi, learned Senior Counsel assisted by Sri Shivam Yadav and Sri Ankur Agarwal, learned counsel for the NOIDA.

2. Since the controversy involved in both the writ petitions are identical in nature, the same are heard and decided by this common order.

3. The leading Writ Petition No. 9968 of 2017 has been preferred for a mandamus directing the Chief Executive Officer, New Okhla Industrial Development Authority (respondent no.4) to remove the encroachment as made over Khasra Nos.8, 34, 38, 178 and 194 situated at Gram Nagli Wazidpur and return the land of the petitioner. Alternative prayer is made to direct the respondent no. 4 to allocate the same area of land, as has been utilized by the development authority over the aforesaid Khasras without adopting the recourse as of either acquisition or purchasing the land through mutual agreement.

4. The connected Writ Petition No.37617 of 2023 has been preferred for a mandamus directing the respondent authority to allocate equal size of land in village Sadarpur, Tehsil Sadar in lieu of the fact that the petitioner land bearing an area of 10,433 square meter of Khasra No.39, village Wajidpur, Gautam Budh Nagar has been utilized/encroached by the authority without due process of law, giving identical relief as in the case of Indrapal Singh and others v. State of U.P. and others (Writ C No. 47873 of 2010).

5. The petitioner herein claims to be owner of the land bearing Khasra nos. 8, 34, 38, 178, 194 and 39 situated at Village-Wazidpur, Pargana-Dadri, Tehsil-Sadar, District Gautam Buddh Nagar by virtue of the registered sale deeds dated 26.7.2011, 26.7.2011, 26.7.2011, 13.7.2011, 13.7.2011 and 31.3.2018 respectively. It is stated in the writ petition that the said plots have been utilized by NOIDA without adopting due process of law.

6. Sri C.B.Yadav, learned Senior Counsel for the petitioner submits that while entertaining the leading writ petition at the admission stage, contention of the petitioner had been taken care of and the Division

Bench vide order dated 6.3.2017 had also shown displeasure against the NOIDA Authority to the following effect:-

"The facts stated in the writ petition reveal a very disturbing situation. The officers of New Okhla Industrial Development Authority (hereinafter referred to as the 'NOIDA') have unauthorisedly taken possession of about 3.0052 hectares of land situated in Khasra Nos.8, 34, 38, 178 and 194 at village Nagli Wazidpur, District Gautam Budh Nagar in 2016 and have carried out developments as is clear from the notings which have been enclosed with the writ petition.

The specific case of the petitioner is that the aforesaid land was neither acquired under the provisions of the Land Acquisition Act, 1894 or Right to Fair Compensation and Transparency in Land Acquisition (Rehabilitation and Resettlement) Act, 2013 nor any settlement had been arrived at between the petitioner and the Authority.

We would, therefore, require the Chief Executive Officer, NOIDA to file his personal affidavit within a period of two weeks from today to explain under what circumstances the possession of the land was taken without resorting to any of the procedures known to law.

Place this petition as fresh on 21 March 2017. "

7. Learned Senior Counsel for the petitioner vehemently contended and placed reliance on the initial compliance affidavit, which had been filed by the then Chief Executive Officer, NOIDA namely Shri Amit Mohan Prasad in response to the order dated 06.03.2017, wherein the sale deeds of the petitioner were duly acknowledged but inspite of the said affidavit, the NOIDA Authority had not ensured to allocate the same area of land, which belonged to the petitioner and utilised by the NOIDA in the name of development. Even in para-13 of the affidavit it had also been acknowledged that the petitioner's holding in Khasra No.38 of Village Nagli Wazidpur had been utilised by the Authority but since then no sincere effort was made to rectify the discrepancies, even though the same had been acknowledged.

8. Learned Senior Counsel further submitted that later on, in response to the Division Bench order dated 20.02.2020 the then Chief Executive Officer Mrs. Ritu Maheshwari had filed the compliance affidavit with certain discrepancy. The said discrepancy had also been highlighted by the petitioner through rejoinder affidavit but since then no

sincere effort was made by the NOIDA to file any rebuttal. In the rejoinder affidavit, precise case had been set up by the petitioner that in both the compliance affidavits, there are certain discrepancies and it cannot be ruled out that the petitioner's land had been utilized by the NOIDA Authority without following due process of law.

9. He vehemently argued that under the facts and circumstances, no further indulgence can be accorded to the NOIDA Authority for illegal deprivation of the petitioner from his land without taking recourse to either acquisition or purchase by consent. He submits that a categorical case had been set up by the petitioner that certain land of the petitioner had been utilized by the NOIDA Authority for development, which is situated in urbanized area. He submits that even though at this stage, it is not in dispute that the petitioner's holding had been utilised by the NOIDA without taking recourse of the Right To Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (in short, Act, 2013). The said factual aspect can be ascertained by the Committee constituted under the Government order dated 21.03.2016 but the compensation is to be determined in the spirit of the Act, 2013. In support of his submissions, he has also placed reliance upon super-imposed Plan, wherein, it is also claimed that the Authority had not only utilised the property in question but later on, the third party interest had also been created and the lease deed had also been executed by NOIDA in favour of the allottees. The lease deed and the possession memo had also been brought on record in the connected matter.

10. Per contra, Shri M.C. Chaturvedi, learned Senior Counsel for the NOIDA vehemently opposed the writ petitions and submits that in the instant matter, the NOIDA, which is constituted under U.P. Industrial Area Development Act, 1976, had initially made an acquisition and no substantial part of the petitioner's land had ever been utilised by the NOIDA Authority. It is also pressed that at no point of time, the petitioner had made any effort for actual demarcation of the land in question on the spot and purchased the property, even though recourse

under the U.P. Revenue Code 2006 is available for actual demarcation. He submits that the said disputed fact cannot be pressed in the writ jurisdiction under Article 226 of Constitution of India without actual demarcation of holdings. He further submits that the State Government has already issued Government Order dated 12.5.2016 to reprieve tenure holders whose certain land had been allegedly utilised by the Authority. He has no objection, in case the matter is relegated to the District Level Committee headed by the Collector for redressal of the grievance of the petitioner and actual demarcation of the land. He submits that in absence of any fact finding report of the District Level Committee, the NOIDA Authority is not in a position to redress the grievance of the petitioner and definitely in the light of the report of the Committee, the grievance of the petitioner shall be examined by the NOIDA Authority.

11. In rejoinder, Shri C.B.Yadav, learned Senior Counsel for the petitioner has placed reliance upon the judgment and order dated 17.02.2016 passed by the Apex Court in Civil Appeal No.1748-1749 of 2005 (**Ireshappa (Dead) by Lrs v. State of Maharashtra & others**), wherein, it was held by the Apex Court that *"the State shall take steps for acquisition of land under the provisions of the Act, 2013 by following the procedure therein, in case, it wishes to keep the land. For the unauthorized possession of the State w.e.f. from the year 1970, the appellants were held entitled to rent, which was to be computed at the rate of 10% of the amount awarded for the acquired land. However, it was kept open for the State to return possession of the land to the appellant therein, in case it did not wish to retain the same."*

12. He further submits that in the similar facts, daughter of the petitioner, namely, Shagun Bansal had also instituted Writ C No. 11390 of 2022, wherein she had alleged that she is owner of the land bearing Khasra No.196, area 0.4680 hectare, which was purchased by her through registered sale deed dated 21.6.2012. It had also been alleged that the said plot had been utilized by NOIDA without adopting due process of law. The Division Bench vide order dated 13.1.2023 had

disposed of the writ petition with detailed observations. He submits that in the instant matter, at no point of time the Authority had taken recourse either under the old acquisition Act, 1894 or new acquisition Act, 2013. Admittedly, the land in question had been utilised by NOIDA. The recourse is available to the respondents to initiate the proceeding under the Act, 2013 and placed reliance upon paragraph 50 in **Shagun Bansal** (supra), wherein, the Division Bench has determined two ways of compensation of the land in question. For ready reference, paragraph 50 of Shagun Bansal (supra) is reproduced herein below.

"50. Under the order passed by this Court and the Apex Court in the first round of litigation, the NOIDA was under obligation to determine the compensation payable to the petitioner in relation to the land in question, strictly in accordance with law.

As per law, there are only two ways of determination of compensation of the land in question:-

(i) By fixing the market value of the land treating it to be acquired land under the Land Acquisition Act considering the principle of determination of market value, i.e. the factors to determine compensation namely the potential value of the land as building sites, rising trend in the market price etc. In the event of fixation of compensation treating the land in question to be an acquired land, the date of the acquisition notification or the notification of proposal of acquisition would be relevant. No such date can be found in this case as there is no acquisition.

(ii) Another method is to purchase the land by execution of the sale deed. In that eventuality, the date of registration of the sale deed would be relevant to determine the market value as per the circle rate assessed by the Collector for the purpose of registration of the instrument of sale. The circle rate of the land in question for imposing the stamp duty which is the minimum statutory valuation of the property would be relevant for determination of market value."

13. Shri C.B. Yadav, learned Senior Advocate submits that he has no objection, in case the matter is relegated to the District Level Committee in order to verify the factual aspect as to how the compensation is to be paid as per Act, 2013. So far as non-utilised land is concerned, the same may be restored to the petitioner or alternatively the NOIDA Authority may purchase the land through mutual agreement or alternatively provide an alternative land.

14. We have proceeded to examine the record and also carefully examined the affidavits filed by the previous CEOs and the rejoinder affidavit filed by the petitioner.

15. In order to appreciate the facts of the instant case, relevant paragraphs of the compliance affidavit dated 08.08.2017 are extracted herein under:-

"8. That in order to provide a clear picture of the land of the Khasra number and land purchased by both of the parties i.e NOIDA and the petitioner, the deponent is also bringing on record a tabular chart for kind consideration of this Hon'ble Court, the same is given herein below.

S.N	Plot no.	Total Area	Area Purchased by NOIDA	Remaining Area	Area purchased by petitioner
1	8	17,710	15,254	2,456	2,446
2	34	19,480	16,221	3,259	3,380
3	38	14,170	Nil	14,170	14,170
4	178	24,020	19,599	4,421	6,008
5	194	4,040	Nil	4,040	4,048

9. That from the above table it is very clear that apart from Khasra Nos. 38 and 194 rest of the Khasra plot numbers bearing plot no. 8, 34 and 178 a major chunk of land has been purchased by NOIDA and same is in the possession of the NOIDA the rest of the land of the aforesaid plots are still lying vacant and NOIDA has not encroached upon the land which has been purchased by the petitioner in the aforementioned three Khasra Plot nos. 8, 34 and 178.

11. That Khasra No.8 of village Nagli Wazidpur is having a total area of 17,710 sq.mtr. of land and out of which a total of 15,254 sq.mtr. of land has been purchased by NOIDA directly from the tenure holders of the land vide sale deeds dated 31.12.2008, 29.01.2009, 25.03.2009, 02.04.2009, 25.01.2014 and 13.07.2015. The aforesaid land which was purchased by NOIDA has been subsequently developed in the form of Sector-136 of NOIDA. The aforesaid Sector has been carved out on 13.06.2008 and developed in the year 2011-2012. The NOIDA has only utilized the land purchased i.e 1.5254 Hectares, and rest of the land i.e 2,456 sq.mtr. is still lying vacant on the spot and NOIDA or its allottee is not in possession of the same, the aforesaid fact has been verified by the concerned work circle and also by the concerned revenue circles, the photographs of the vacant land of Khasra No.8 Is also placed on record and is marked as Annexure No.CA-1 to the present affidavit.

12. That Khasra No.34 of village Nagli Wazidpur is having a total area of 19,480 sq.mtr. of land and out of which a total of 16,221 sq.mtr. of land has been purchased by NOIDA directly from the tenure holders of the land vide sale deeds dated 03.11.2008, 19.12.2008, 16.04.2010, 12.11.2010, and

31.01.2011 the aforesaid land which was purchased by NOIDA and has been subsequently developed in the form of Sector-136 of NOIDA. The aforesaid Sector has been carved out on 13.06.2008 and developed in the year 2011-2012. The rest of the land which has not been purchased by NOIDA is still lying vacant on the spot, the same has been subsequently verified by work circles and revenue/tehsil division of NOIDA, the photographs of the aforesaid left over vacant land of Khasra No.34 is annexed herewith and is marked as Annexure No.CA-2 to the present affidavit.

13. That Khasra No. 38 of village Nagli Wazidpur is having a total area of 1.417 Hectare of land, the aforesaid Khasra plot fall in Sector-91 of NOIDA and the same has been carved out on 28.04.2010 and subsequently developed in the year 2011-12. That in the year 2010-11 a Scheme has been launched by NOIDA for allotment of plots for Hospital and the planning division has carved out a plot bearing Hospital Plot No.H-1 of Sector-91, having a total area of 12 Hectares, the aforesaid plot did carry the aforementioned plot no.38, in the anticipation of it being acquired or purchased by NOIDA, because majority of the land which form Plot No.H-1, Sector-91 has been acquired or purchased by NOIDA, but when the same was not purchased or acquired by NOIDA then physical possession was not transferred to the allottee namely M/s. V.C. Infracon Pvt. Ltd. To which the allotment was made vide order dated 26.04.2011.

14. That the Khasra No.38 is still lying vacant since majority of the land holding has been still in possession of the tenure holders/farmers, therefore the possession was not transferred to the aforesaid allottee, the aforesaid fact can be corroborated from the fact that M/s. V.C. Infracon Pvt. Ltd. Has also filed a Writ petition bearing Writ No. 1454/2014 for delivery of possession and considering the facts this Hon'ble Court has disposed of the writ petition with direction to the NOIDA to decide the representation of the allottee. The aforementioned fact clearly shows that the land is still under possession of the tenure holders/farmers or may be with the petitioner and NOIDA is not in possession of the aforesaid land, the petitioner appears to be fighting a battle of possession from private persons through this Hon'ble Court, which cannot be allowed by this Hon'ble Court. The copy of the recent photographs of the aforesaid Khasra plot no.38 which is shown to be vacant on the spot is annexed herewith and is marked as Annexure No. CA-3 to the present affidavit.

15. That Khasra No. 178 of village Nagli Wazidpur is having a total area of 24,020 sq.mtr. of land and out of which a total area of 13,274 sq.mtr. Has been purchased by the NOIDA and a total area of 6325 sq.mtr. was also acquired by the State government and subsequently transferred to NOIDA in the year 2003. From the above facts it is clear that out of 24,020 sq.mtr. of land a total area of 19,599 sq.mtr. is in possession and occupation of NOIDA and the land has been subsequently developed in the form of Sector-135 of NOIDA.

17. That Khasra No. 178 of village Nagli Wazidpur, has been developed, since majority of the land has been purchased/acquired by NOIDA, it ascertained as to which portion of the land has been purchased by the

petitioner and since the land which has been purchased by NOIDA is prior to the purchase of the petitioner, therefore the petitioner cannot claim over the part over which the NOIDA is in possession or it has been developed by NOIDA. A total of 6,008 sq.mtr. of land which has been purchased by the petitioner appears to have been purchased by him out of the "acquired land and therefore maximum what can be claimed by the petitioner is 4,421 sq.mtr. and that too in the absence of the proper demarcation of land cannot be claimed by the petitioner, which can only be done by the competent court of civil jurisdiction.

18. That Khasra No. 194 of village Nagli Wazidpur, is having a total area of 4,040 sq.mtr. of land which has been purchased by the petitioner vide sale deed dated 13.07.2011, the aforesaid land falls in Sector-130 of NOIDA. A total area of 2400 sq.mtr. falls in the 30mtr. Wide road and Green Belt which was constructed in the year 2009-2010 and rest of the land falls in the residential plot allotments made by NOIDA which was also made in the year 2009-10. So far as the purchase of the land by the petitioner is concerned the petitioner has purchased a land already utilised for the public purpose for which the original tenure holder/predecessor in interest has never made any complaint before any competent forum.

22. That the present writ petition cannot be used for the purposes of establishing any civil rights over the land as the land which is not acquired land and serious disputes of boundaries have been raised by the petitioner and also by NOIDA, the present writ petition may be dismissed and the matter may be relegated back to the competent civil court so that justice may be made. However, in order to put rest to the long drawn litigation the NOIDA is ready to purchase the land which is claimed by the petitioner by way of mutual settlement and agreement."

16. In response to the order dated 20.02.2020, another compliance affidavit dated 13.07.2021 had been filed, which was sworn by Mrs. Ritu Maheshwari, the then Chief Executive Officer, NOIDA, wherein it has been stated that the land of Khasra No.194 has been utilized by NOIDA for road, green belt and abadi plots. For ready reference, paragraph nos. 4, 5 and 6 of the said affidavit are reproduced herein below:-

"4. That in compliance to the direction passed by this Hon'ble Court on 20.2.2020, a team of officials was constituted to examine the relevant records in regard to Khasra Nos. 8, 34, 38, 178 and 194, Village Nagli Wajidpur and to carry out physical inspection / demarcation of the land comprising of the aforementioned Khasra numbers. The area of each of the aforesaid 5 khasra nos. has been taken from the Form CH-41 and the Revenue Khatauni which is maintained by the Office of the Collector, Gautam BudhNagar. Upon examination of the said records and physical inspection by the said team, the factual position that emerges is placed hereafter for the kind consideration of this Hon'ble Court:

- (i).Reg. Khasra No. 38: The entire area of Khasra No. 38, having an area of 1.4170 hectares, as per Form CH-41, is lying vacant.
- (ii).Reg. Khasra No 8: This Khasra No., as per form CH-41, has an area of 1.7700 hectares. Out of the said area, NOIDA, purchased an area of 1.5254 hectares by 6 nos. of separate sale deeds, details where are set out in a Chart No. 1. Noida Purchased the land after due verification from the record that the seller was the recorded owner of the area being sold to NOIDA. Thus, NOIDA is in possession of only 1.5254 hectares which has been purchased by separate sale deeds. The balance area of (1.7700-1 (1.7700-15254-0.2446) 0.2446 hectares is lying vacant and is not in possession of the NOIDA. The petitioner, on the other hand contends that he has purchased land measuring 0.2446 hectares in Khasra No. 8. The available vacant land of Khasra No. 8 is 0.2446 hectares.

CHART 1.

(Reg. Khasra No.8)

A. Land purchased by NOIDA

Sr.No.	Name of seller	Date of sale deed	Area purchased (in hect).
1	Krishnapal s/o khachedu	03.01.2008	0.1220
2	Jaipal s/o Harkaran	29.01.2009	0.5940
3	Karam Singh s/o shiba	26.03.2009	0.1221
4	Ravindra and Devendra s/o Mange Ram	02.04.2009	0.2443
5	Sanjay Singh s/o Likhhi	25.01.2014	0.2953
6	Nitin Kumar s/o Mahesh Kumar	13.07.2015	0.1477
Total Area purchased by NOIDA			1.5254 hect.

B. Land purchased by the petitioner

Sr. No	Name of seller	Date of sale deed	Area purchased (in hect)
1	Umesh Chand s/o Bulaki	26.7.2011	0.2446

It is, therefore, clear that NOIDA is not in occupation of any portion of the land of the writ petitioner in Khasra No. 8 and the same is lying vacant at site.

- (iii). Reg. Khasra No. 34: This Khasra No., as per form CH-41, has area of 1.9470 hectares. Out of the said area, NOIDA. Purchased an area of 1.6221 hectares by 5 nos. of separate sale deeds, details whereof are set out in a Chart No. 2. Noida Purchased the land after due verification from the record that the seller was the recorded owner of the area being sold to NOIDA. NOIDA is in possession of only 1.6221 hectares which has been purchased by separate sale deeds executed between the 3.11.2008 and 31.1.2011, leaving a balance of only 0.3259 hectares. The petitioner alleges that he, vide sale deed dated 26.7.2011 purchased an area of 0.3380 hectares. The sale deeds executed in favour of NOIDA are prior in point of time. When the balance area after execution of the sale deeds in favour of NOIDA was only

0.3259 hect. then it is not known how the petitioner could have purchased an area of 0.3380 hect. The balance area of (1.9470-1.6221-0.2456) 0.2456 hectares is lying vacant and is not in possession of the NOIDA.

CHART 2.

(Reg. Khasra No. 34)

A. Land purchased by NOIDA

S.n.	Name of seller	Date of sale deed	Area purchased (in hect)
1	Ram Kumar, Ram karan etc	19.12.2008	0.2590
2	Aman Singh Chauhan etc Prempal ,Rohtash etc.	3.11.2008	0.6490
3	Dharampal s/o Singhpal	16.4.2010	0.1948
4	Smt. Sushma w/o Bharat Singh etc.	12.11.2010	0.3245
5	Shiv Dutt s/o Rajendra	31.01.2011	0.1948
Total Area purchased by NOIDA			1.6221 hect.

B. Land purchased by the petitioner

S.n.	Name of seller	Date of sale deed	Area purchased (in hectares)
1	Ramesh Chand s/o Bulaki	26.07.2011	0.3380

It is, therefore, submitted that NOIDA is not in occupation of any portion of the balance portion of the land Khasra No. 34 after deducting the land purchased by NOIDA from the total area recorded In the revenue records and the same is lying vacant at site.

(iv).Reg. Khasra No. 178: This Khasra No., as per form CH -41, has an area of 2.4020 hectares. Out of the said area, NOIDA, Acquired an area of 0.6325 hectare vide notification date 04.07.2003 issued under section 4 and Notification dated 19.07.2003 issued under section 6 of Land Acquisition Act, 1894 and also directly purchased an area of 1.3274 hectares by 2 nos. of separate sale deeds, details where are set out in a Chart No. 3. Noida Purchased the land after due verification from the record that the seller was the recorded owner of the area being sold to NOIDA. NOIDA is in possession of only 1.9599 hectares (0.6325+1.3274=1.9599hect.) which has been acquired/ purchased as aforesaid thus leaving a balance area of only 0.4421 hectares. The acquirement and sale deeds executed in favour of NOIDA are prior in point of time. The petitioner alleges that, vide two separate sale deeds, both dated 13.7.2011, he purchased an area of 0.6008 hectares. When the balance area after execution of the sale deeds in favour of NOIDA was only 0.4421 hect. (2.4020-1.9599-0.4421hectare) then it is not known how the petitioner could have purchased an area of 0.6008 hect. The balance area of 0.4421 hectares has been used for Road and green belt.

CHART 3.

(Reg. Khasra No. 178)

A. Land purchased by NOIDA

S.n.	Source	Date of sale / deed/ acquired year	Area purchased (in hectares)
1	By acquisition	2003	0.6325

By sale deed			
I	Jagdish thakari, s/o lajja	19.02.2010	0.4424
II	Ved Prakash s/o richpal	19.02.2010.	0.8850
	Bhajanlal s/o sunhari		
Total area purchased by NOIDA			1.9599 hect.

B. Land purchased by the petitioner

S.n.	Name of seller	Date of sale deed	Area purchased (in hectares)
1	Sarvapriya sehkari Awas Samiti	13.07.2011	0.3004
2	Sarvapriya sehkari Awas Samiti	13.07.2011	0.3004

(v).Reg Khasra No. 194: NOIDA has not purchased any land in Khasra No. 194, which Khasra No., as per Form CH-41, has an area of 0.4048 hectares. However, on the basis of Survey so conducted by a team of officials of NOIDA it is submitted that the land of Khasra No. 194 has been utilized by NOIDA for Road, Green belt and abadi Plots.

6. That from the details set out in para 5 above, **it appears that NOIDA has utilized an area 0.4421 hect in Khasra No. 178 and an area of 0.4048 hect in Khasra No. 194 i.e. a total of 0.9469 hect."**

17. A tabular chart has been given in para-8 of the aforesaid affidavit, wherein the petitioner's land has been averred in detail. In para-13 of the said affidavit, it is also admitted position that in the year 2010-11 a Scheme was launched by the NOIDA for allotment of plots for hospital and the Planning Division had carved out a plot bearing Hospital Plot No.H-1 of Sector-91, having a total area of 12 hectares. The then CEO had duly acknowledged and accepted that the petitioner's plot had also been carved out by the NOIDA Authority in anticipation of it being acquired or purchased by the NOIDA, because majority of the land, which forms Plot No.H-1, Sector-91 has been acquired or purchased by NOIDA, but when the same was not purchased or acquired by NOIDA then physical possession was not transferred to the allottee namely M/s V.C. Infracon Pvt. Ltd. to which the allotment was made vide order dated 26.04.2011. In the rejoinder affidavit, it has also been disputed by the petitioner that not only the plot was allotted to M/s V.C. Infracon Pvt.

Limited but the sale deed had also been executed. This clearly shows that the petitioner's holding had been utilized by the NOIDA Authority without taking recourse of either acquisition or purchase.

18. Surprisingly, in the compliance affidavit dated 08.08.2017 filed by the NOIDA, even though plot Nos.8, 34, 38, 178, & 194 had also been considered in detail and simultaneously, the NOIDA had also acknowledged that most part of the said holding had been utilized by the NOIDA either through direct purchase or through acquisition. Qua the petitioner's holding conveniently it had been expressed that the said lands are vacant. We also take note of the said affidavit and find that the NOIDA Authority had either acquired the land or subsequently transferred to NOIDA through direct sale, which is for planned development or it had been averred in the affidavit that the petitioner's land had been left over. As it is alleged by the petitioner that on the spot the entire land of the petitioner had been utilized by the NOIDA Authority. Later on, another affidavit dated 13.07.2021 was also filed by Ms. Ritu Maheshwari, the then CEO, NOIDA, wherein on the similar line of the previous affidavit, the affidavit was sworn by her. Qua Khasra No.178, the NOIDA had itself accepted. Even though, we find certain discrepancies in both the affidavits but this much has been acknowledged by the NOIDA Authority that the balance area of 0.4421 hectares land had been used for road and green belt. The NOIDA Authority had not only utilized the land of Khasra No.178 but it had also been acknowledged that the petitioner's holding in Khasra No.194 area 0.4048 hectares has been utilized by the NOIDA for road, green belt and abadi plots.

19. We find that it is a sheer co-incidence that in identical matter, the daughter of the petitioner namely Shagun Bansal had instituted a Writ C No.11390 of 2022, wherein she claimed to be owner of land of Gata No.196 area 0.4680 hectares situated at Village Wazidpur, Pargana Dadri, District Gautam Buddh Nagar and the said plot had been utilized by NOIDA without adopting due process of law. The said writ petition

was disposed of vide judgment and order dated 22.3.2018 with direction to refer the matter to the Committee constituted under the Government order dated 21.03.2016, in the following manner:-

“i. The Committee constituted under the aforesaid Government Order shall determine the amount of compensation payable to the petitioner within a period of two months from the date a certified copy of this order is filed by either of the parties before the Collector, Gautam Budh Nagar.

ii. However, as NOIDA has taken illegal possession of the aforesaid land, we direct that by way of interim compensation, Rs.5 crores shall be paid to the petitioner within a period of one month from today. The balance amount, if any, shall be payable within two months after it is determined by the Committee.

iii. If the Committee determines compensation amount that is less than Rs.5 crores, then the petitioner shall refund the same within one month.”

20. Later on, the NOIDA had preferred two review applications, which were rejected vide an order dated 29.05.2018 with observation that once the possession of the land had been taken, the Committee constituted under the Government Order dated 21.3.2016 was competent to determine the compensation to be paid to the petitioner. The NOIDA had challenged the same in Special Leave Petition No.31312 of 2018 and Hon’ble Apex Court vide an order dated 12.12.2018 had passed an order with following effect:-

"Having regard to the peculiar facts of this case, we direct the petitioner, ie New Okhla Industrial Development Authority (NOIDA) to determine the compensation payable to the respondents in relation to the land in question strictly in accordance with the law within a period of two months from today.

In the meantime, the petitioner shall pay by way of interim compensation amount of Rs.2,00,00,000/- (Rs.2 crores) to the respondents. This amount shall be adjusted against the final determination of the compensation once made by the petitioner as directed above."

21. The Division Bench had considered the claim of Shagun Bansal in the light of the judgment passed by Hon’ble Apex Court in **Sukh Dutt Ratra & another vs. State of Himanchal Pradesh & others** 2022 SCC (7) 508, wherein while concluding that the forcible dispossession of appellant therein in the year 1972-73 was without following due process of law, violative of their human rights, and constitutional right under Article 300-A, the Apex Court directed that the State Government shall

treat the subject lands as a deemed acquisition. The compensation was directed to be computed in terms of the order of the reference court dated 04.10.2005 pertaining to the acquisition of neighboring lands acquired vide acquisition notifications issued in the year 2001. The direction was issued to the State to ensure that for appropriate land acquisition the Collector computes the compensation and disburse it to the appellants with all consequential benefits of solatium, and interest on all sums payable under law w.e.f. the year 2001 till the date of the judgement, besides providing cost and expenses of the legal proceedings undertaken by the appellants.

22. Thereafter, the Division Bench had also considered the judgments of this Court as well as the Apex Court and held that the NOIDA was under obligation to determine the compensation in relation to the land of the petitioner strictly in accordance with law and had opined that there are only two ways of determination of compensation of the land in question:-

“i) By fixing the market value of the land treating it to be acquired land under the Land Acquisition Act considering the principle of determination of market value, i.e. the factors to determine compensation namely the potential value of the land as building sites, rising trend in the market price etc. In the event of fixation of compensation treating the land in question to be an acquired land, the date of the acquisition notification or the notification of proposal of acquisition would be relevant. No such date can be found in this case as there is no acquisition.

(ii) Another method is to purchase the land by execution of the sale deed. In that eventuality, the date of registration of the sale deed would be relevant to determine the market value as per the circle rate assessed by the Collector for the purpose of registration of the instrument of sale. The circle rate of the land in question for imposing the stamp duty which is the minimum statutory valuation of the property would be relevant for determination of market value.”

23. In **Shagun Bansal** (supra) the Division Bench had also taken note of dictum of the Apex Court in **D.B. Basnett v. LAO** reported in (2020) 4 SCC 572 in which it was held that the Apex Court gave option to the State, who had illegally dispossessed the land owner therein, either to acquire the land through proper notification so as to enable it to keep the land or to surrender possession of the land, and the judgment in Civil Appeal No.1748-1749 of 2005 (**Ireshappa (Dead) by Lrs Vs. State of Maharashtra & others**), decided on 17.02.2016 in which it was held

that the State shall take steps for acquisition of land under the provisions of the Act' 2013 by following the procedure therein, in case, it wishes to keep the land. For the unauthorized possession of the State w.e.f. from the year 1970, the appellants were held entitled to rent, which was to be computed at the rate of 10% of the amount awarded for the acquired land. However, it was kept open for the State to return possession of the land to the appellant therein, in case it did not wish to retain the same.

24. In **Shagun Bansal** (supra) the Division Bench had also taken note that the land in question was an agricultural land. The said land was the source of livelihood of the person who owned it and was deprived of her right to livelihood by deprivation from her agricultural property without any authority of law. The Division Bench had also considered that in case the compensation would have been paid to the petitioner in time, she would have been able to utilize the money for her rehabilitation, by purchasing any other land or immovable property or utilize the amount of compensation for doing any business or occupation. Only with this intent, the legislature also provides for making of award without any unnecessary delay and payment of compensation without loss of time. Relevant paragraph nos.59 to 69 are reproduced herein below:-

“59. Taking all these circumstances into consideration, the Apex Court in the above noted decisions had determined the rate of acquired land as per the market value prevailing either on the date of the subsequent acquisitions or the rate of the adjoining lands determined in any subsequent award. In *Vidya Devi* (supra), where there was instances of subsequent acquisition of the adjoining land, the payment of compensation in accordance with the Land Acquisition Act based on the subsequent award made therein had been directed in order to indemnify the un-acquired land alongwith all statutory benefits including solatium interest etc and the remedy of filing appeal. In *Tukaram* (supra), the State itself came forward with the proposal to notify the land under the Land Acquisition Act. It was, thus, held that the market value of the land will be assessed as it prevailed on the date on which Section 4 notification was published in the official gazette, treating it as deemed acquisition proceedings, though dispossession of the appellant therein was made as early as in the year 1966.

60. Similarly, in *Sukh Dutt Ratra* (supra) decided in the year 2022, the State was directed to treat the subject land as the deemed acquisition and the rates prevailing on the date of subsequent acquisition of the neighbouring land was directed to be applied to compute the compensation.

61. In Revenue Divisional Officer Kurnool District Vs. M. Ramakrishna Reddy (dead) 2011 (11) SCC 648, is a case where dispossession of the land owner was prior to acquisition by issuance of primary notification under Section 4(1) of the Act' 1894, it was held that the land owners were entitled to damages for wrongful use and occupation of the lands from the date of possession till the date of notification under Section 4(1) of the Act (preliminary notification) besides the benefits of compensation under the Act.

62. In D.B. Basnett (supra), the Apex Court gave option to the State who had illegally dispossessed the land owner therein, either to acquire the land through proper notification so as to enable it to keep the land or to surrender possession of the land. However, in either eventuality, the payment for use and occupation of the land with mesne profits was directed to be determined.

63. In Civil Appeal No.1748-1749 of 2005 Ireshappa (Dead) by Lrs Vs. State of Maharashtra & others, decided on 17.02.2016 with a view to rectify the wrong done to the appellant therein, it was held by the Apex Court that the State shall take steps for acquisition of land under the provisions of the Act' 2013 by following the procedure therein, in case, it wishes to keep the land. For the unauthorized possession of the State w.e.f. from the year 1970, the appellants were held entitled to rent, which was to be computed at the rate of 10% of the amount awarded for the acquired land. However, it was kept open for the State to return possession of the land to the appellant therein, in case it did not wish to retain the same.

64. In light of the above, only option before the respondent NOIDA is to request the State to issue notification for compulsory acquisition of un-acquired land of the petitioner under the existing provisions of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 since the land owner has refused to give consent for sale of her land at the rates offered by the Committee, in view of the Government order dated 21.03.2016, as the return of land as per own contention of the NOIDA is not possible because of the development work carried out on the spot. Admittedly because of the construction raised thereon, the land of the petitioner is not identifiable (being part of the developed area). The second option still open before NOIDA is to purchase the land at the market value of the developed land of urban area as on date of the registration of the sale deed, which obviously has to be executed with the consent of the land owners.

65. In either eventuality, the market value of the land has to be determined on the date of the preliminary notification of acquisition in accordance with the Act' 2013 or as per the market value on the circle rate fixed by the Collector on the date of the registration of the sale deed. In any case, respondents-NOIDA cannot force the petitioner to enter into a settlement or to give consent on the rates of un-acquired land, undeveloped land of the village in question or the land of adjoining villages, on which it is purchasing the land of farmers i.e. the rates approved by the Board of development authority.

66. In the facts and circumstances of the case, as NOIDA has failed to comply with the direction of the Apex Court dated 12.12.2018 to determine

the compensation in accordance with law and has proceeded in the matter in the year 2021 only after the notice was issued in the contempt application filed by the petitioner by the Apex Court, the claim of NOIDA that it is entitled to retain possession of the un-acquired land of the petitioner and the petitioner cannot agitate the determination made by it in the meeting of the committee dated 12.12.2021 is liable to be rejected.

66. We, therefore, dispose of the present petition with the directions as follows:-

(i) The State of U.P., on the request of NOIDA, if any, shall ensure to take measures/steps for acquisition of land under the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 within a period of three months from today, by issuing proper notification, in the event the NOIDA desires to retain possession of the land. The proceedings under the 2013' Act for determination and disbursement of compensation to the petitioner following the publication of the relevant notifications, shall be completed within the time given above.

(ii) In case, NOIDA wishes to retain the possession of the land without adhering to the acquisition proceedings, it is open for it to execute the sale deed at the prevailing market value of the land as per the circle rate fixed by the Collector under the Stamp Act, on the date of the registration of the sale deed.

(iii) We are making it clear that we are not providing damages to the petitioner for illegal use and occupation of the land by NOIDA since the year 2013 as we have directed to determine the market value of the land at the current circle rate/market value under the Act' 2013 or by consent.

(iv) However, having regard to the manner in which NOIDA has proceeded in this matter for deprivation of petitioners right and remedy, which has caused her to approach this Court in the second round of litigation, we also deem it appropriate to direct NOIDA to pay legal costs and expenses of Rs.5 lacs to the petitioner which shall be paid within a period of four weeks from the date of this order.

(v) The amount paid to the petitioner towards the interim compensation as per the order dated 22.03.2018 passed by this Court in the previous writ petition filed by the petitioner, as modified under the order dated 12.12.2018 passed by the Apex Court in Special Leave to Appeal no.31312 of 2018, shall be adjustable towards the compensation or the sale consideration for acquisition or purchase of the land in question, as the case may be, under the above directions.

67. Before parting with this judgement, we further find it appropriate in the interest of justice that an enquiry be initiated by the State Government, i.e. the Secretary, Department of Industrial Development, Government of U.P. to enquire about the involvement of erring officers of NOIDA or State at whose instance possession of the land of the petitioner has been forcibly taken in the year 2013. The Officials of NOIDA who were sitting at helm of the affairs at the relevant point of time would be answerable in the said enquiry.

68. It would be open for the concerned disciplinary authority to make recovery of the financial loss caused to NOIDA, if any, on account of the illegal act of its officials, by deprivation of the petitioner of her landed property without any authority of law.

69. The enquiry fixing the liability of erring officials shall be completed within a period of four months from today and the compliance report be submitted to this Court through the Registrar General, High Court, Allahabad.”

25. It has been informed by the parties that the Division Bench judgment in **Shagun Bansal** (supra) had also been approved by the Apex Court. We find that the instant matter is also on the similar footing as was the case of Shagun Bansal.

26. In the instant matter, in view of successive affidavits, which had been filed by the NOIDA, relevant paras of which are already enumerated above, we find that at this stage, it is not in dispute that the petitioner's land had been utilized by the NOIDA without taking recourse of Act, 1894 or Act, 2013 and even the third party interest has also been created. The NOIDA has acted illegally in utilizing the land of the petitioner for the purpose of development work without there being any acquisition proceedings. The State Government had issued the Government order dated 21.03.2016 with a view to enable the development authorities, Awas Vikas Parishad, the bodies constituted to make development, to create their land bank for fulfilling their object of providing residences and industrial development to the public at large and to purchase land from the farmers/land owners by consent. The Committee constituted under the Government Order dated 21.03.2016 is required to determine the market value, i.e. the rate at which the land is to be purchased. Clause 2(10) provides that in case the efforts to seek consent of the land holders for purchase of the land directly fail, the acquisition proceedings can be initiated by the development authority/U.P. Awas Vikas Parishad in accordance with the Act' 2013 and the Government orders.

27. It is not in dispute that on the spot, the petitioner's 30052.00 sq.m land of Khasra Nos.8, 34, 38, 178, & 194 and 10,433 sq.m. land of Khasra No.39 situated at Village-Wazidpur, Pargana-Dadri, Tehsil-Sadar,

District Gautam Buddh Nagar, which he had purchased by separate sale deeds, had already been utilised by the NOIDA Authority without taking recourse of either acquisition or purchase. In order to verify this factual aspect, we find it appropriate that at the first instance, the matter is to be referred to the District Level Committee constituted under the Government order dated 21.03.2016.

28. In view of the aforesaid facts and circumstances, both writ petitions are disposed of with the following directions:-

(i) The instant matter is to be settled by the District Level Committee constituted under the Government order dated 21.03.2016 within a period of four weeks from today. In case the District Level Committee finds that the subject land had been utilized and the NOIDA desires to retain the possession of the land, it is open to the NOIDA to request the State to either issue notification for compulsory acquisition of un-acquired land of the petitioner under the existing provisions of the Act, 2013 within a period of three months.

(ii) In case the NOIDA wishes to retain the possession of the said land without adhering to the acquisition proceedings, it is open for the parties to settle the matter through mutual agreement/negotiation and accordingly, the sale deeds are to be executed at the prevailing market value of the land as per circle rate fixed by the Collector under the Stamp Act, on the date of registration of the sale deed or else the NOIDA Authority may provide the alternative plot to the petitioners.

(iii) In view of the affidavits filed by the then CEOs, we are not providing any damages to the petitioner for illegal use and occupation of the land by the NOIDA since 2011.

(Anish Kumar Gupta,J.)

(Mahesh Chandra Tripathi,J.)

September 15, 2025

RKP