

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

Civil Appeal Nos 5287-5288 of 2022
(Arising out of SLP (C) Nos 12902-12903 of 2020)

Ashish Kochhar and Others

Appellants

Versus

State of Uttar Pradesh and Others

Respondents

W I T H

Civil Appeal No 3622 of 2020

ORDER

- 1 Leave granted.
- 2 The appellants state that they are home buyers of Towers 7 and 8 in a group housing project known as Lotus Zing which was being developed by Three C Projects Private Limited (the third respondent) on plot No GH 01/A in Sector 168 at Noida, Uttar Pradesh. The second respondent (New Okhla Industrial Development Authority¹) proposed to acquire a block of land including land ad-measuring 0.8470 hectares of Khasra No 87 in 2003 for a group housing

1 "NOIDA"

scheme. In 2010, NOIDA leased out a part of the acquired land to the third respondent for the development of the project. Provisional allotment letters were issued by the third respondent. Builder-buyer agreements were executed between the third respondent and the home buyers in respect of the units in the project. According to the builder-buyer agreements, the Project was to be completed by 2013.

- 3 In 2012, it was discovered that a portion of the land purportedly acquired by the second respondent was, in fact, not acquired. A portion of the unacquired land formed a part of the project where Towers 7 and 8 along with a sewerage treatment plant were constructed.
- 4 On 7 March 2017, a Division Bench of the High Court of Judicature at Allahabad passed an order in Writ-C No 64996 of 2015 (*Mukesh Kumar vs State of Uttar Pradesh and Others*) holding that neither the State nor Noida could, without completing the formalities for acquiring the land proceed to deprive the land owners of their right in the property. Finding that an area ad-measuring 0.3597 hectares of plot No 87 was not covered by the acquisition, the Division Bench directed that a fresh demarcation be carried out in respect of the land. The High Court directed that the unacquired land would have to be returned back to the land owners except to those who had already sold their holdings.

- 5 The appellants, who are allottees of the housing plots, had initiated proceedings under Section 7 of the Insolvency and Bankruptcy Code 2016. The resolution professional has been appointed to submit a resolution plan before the NCLT. The issue with regard to the rate of interest and money payable to the appellants was directed to be settled by the resolution professional. The resolution professional moved an application before NCLT seeking to resolve the dispute with the land owners and for handing over peaceful possession of Khasra No. 87 admeasuring 0.847 hectare. The NCLT observed that it was not open for it to give any direction to NOIDA on the return of the land.
- 6 At this stage, the appellants filed a writ petition before the High Court, being Writ-C No 12975 of 2020 by 22 appellants claiming to be allottees of the housing project. The appellants sought a direction from the High Court directing the developer to hand over possession of the flats to the home buyers of Towers 7 and 8 within a specified time period and other consequential directions. The reliefs sought by the appellants are extracted below:
- “a) To issue writ of mandamus or any other suitable writ commanding the respondents No. 1,2 and 3 to handover the possession of their flats to the petitioners and other home buyers of Tower 7 and 8 within a time bound period or in the alternate return the amount paid by the petitioners towards cost of flat, plus interest paid to the

banks and expenses borne towards litigation before various and similar expenses borne towards litigation before various and similar expenses borne by the petitioners along with interest @ 18% p.a from the date of allotment till the date of actual payment to the petitioners.

- b) To issue suitable writ, order or directions in the nature of mandamus commanding the respondents No. 1,2 and 3 to compromise and/or settle with the respondents no. 4 to 9 or with any other tenure holder or person in relation to unacquired portion of land of plot/khasra no. 87 situated in Village Chhaprauli Baner, Pargana and Tehsil-Dadri, District-Gautam Budh Nagar within a time bound period.
- c) To issue such directions to the respondents No. 2 and 3 to compensate the petitioners and other home buyers to Tower No. 7 and 8 of project "Lotus Zing" within a time bound period, for having deprived them of their legal rights and prejudicing their prospects, solely due to their admitted actions, including in actions and for lapses and losses cause[ed] to the petitioners."

7 The Division Bench of the High Court, by its impugned judgment dated 2 September 2020, held that in terms of the provisions of the Real Estate (Regulation and Development) Act 2016², the regulatory authority constituted under the legislation would be competent to adjudicate upon the reliefs which were claimed in the petition. The High Court also held that it was not open to the appellants to raise any dispute with regard to the handing over or return of the unacquired land to the original tenure holders in view of the earlier decision dated 7 March 2017. As regards the claim for the payment of compensation by the developer, the High Court while adverting to the provisions of Section 71 of the RERA left it to the

2 "RERA"

adjudicatory authority constituted under the legislation to determine the claim. However, in order to ascertain whether NOIDA had complied with the directions in the earlier judgment dated 7 March 2017, the High Court directed that the proceedings would be listed again before it thereafter in order to enable counsel for NOIDA to place a memo regarding the delivery of possession of the unacquired land to the farmers/tenure holders.

8 It is at this stage that proceedings were instituted before this Court. Several orders have been passed by this Court during the pendency of these proceedings. Pursuant to those orders, acquisition proceedings have been initiated by the District Magistrate, Gautam Buddha Nagar for the acquisition of 0.4936 hectares of land comprised in revenue village Chhaprauli, Pargana & Tahsil Sadar, District Gautam Buddha Nagar. The award in respect of the land in terms of the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013³ has been declared on 25 July 2022. The District Magistrate has filed status reports in the proceedings apprising the court of the status of the acquisition proceedings.

9 An updated status report has been filed in these proceedings by the District Magistrate of Gautam Buddh Nagar on 9 August 2022 indicating that a public notice of the award which has been declared on 25 July 2022 was issued by the office of the Collector. Besides this, it has been stated that personal

3 "Act of 2013"

notices were also issued on 1 August 2022 to the land owners. The affidavit records that the compensation has been deposited with the land acquisition rehabilitation authority on 8 August 2022 in terms of Section 77 of the Act of 2013. Before accepting the possession of the land, NOIDA has requested the District Magistrate to complete the process of removing certain encroachments on the land. The Collector and District Magistrate has requested the DCP headquarters, Gautam Buddh Nagar for necessary assistance in that regard. In view of the steps taken for the acquisition of the land and the declaration of the award under the Act of 2013, including the deposit of the compensation, no further directions are required in the course of these proceedings. The claim for compensation against the builder for delayed delivery of possession may be pursued under the provisions of the Consumer Protection Act 2019 or under the RERA.

- 10 Several intervention applications have been filed in the course of these proceedings. The intervenors would be at liberty to pursue their rights and remedies in accordance with law.
- 11 The District Magistrate shall now take all necessary steps in pursuance of the directions which have been issued in the course of these proceedings and in terms of the commitment made before the court in the status reports, so that the acquisition of the land and the handing over of possession to NOIDA is taken to its logical conclusion. The Additional Advocate General for the State of Uttar Pradesh states that the process shall be completed within a period of

three weeks.

- 12 The Court has been apprised of the fact that the Interim Resolution Professional who was appointed during the course of the pendency of the proceedings under the Insolvency and Bankruptcy Code 2016 has resigned. We clarify that in these proceedings the Court is not concerned with the pending proceedings under the Insolvency and Bankruptcy Code, 2016.
- 13 In the event that any of the land owners seek an enhancement of the quantum of compensation awarded, they would be at liberty to pursue their remedies in accordance with law.
- 14 The appeals are accordingly disposed of.
- 15 Pending applications, if any, stand disposed of.

Civil Appeal No 3622 of 2020

- 1 We find no reason to interfere with the impugned order dated 28 August 2020 passed by the National Company Law Appellate Tribunal in Company Appeal (AT) (Insolvency) No 603 of 2020.
- 2 The Civil Appeal is accordingly disposed of.

3 Pending applications, if any, stand disposed of.

.....J.
[Dr Dhananjaya Y Chandrachud]

.....J.
[Surya Kant]

.....J.
[A S Bopanna]

New Delhi;
August 10, 2022
CKB

ITEM NO.4

COURT NO.3

SECTION XI

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) Nos.12902-12903/2020

(Arising out of impugned final judgment and order dated 02-09-2020 in WRITC No.12975/2020 03-09-2020 in WRITC No.12975/2020 passed by the High Court of Judicature at Allahabad)

ASHISH KOCHHAR & ORS.

Petitioner(s)

VERSUS

STATE OF U.P. & ORS.

Respondent(s)

(With IA No.25440/2021 - APPLICATION FOR SUBSTITUTION, IA No.134913/2020 - CLARIFICATION/DIRECTION, IA No.110902/2020 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT, IA No.101430/2021 - EXEMPTION FROM FILING O.T., IA No.110903/2020 - EXEMPTION FROM FILING O.T., IA No.91529/2021 - EXEMPTION FROM FILING O.T., IA No.11045/2021 - EXEMPTION FROM FILING O.T., IA No.134910/2020 - INTERVENTION/IMPLEADMENT, IA No.129219/2020 - INTERVENTION/IMPLEADMENT, IA No.43560/2021 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES, IA No.110901/2020 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES and IA No.11044/2021 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

WITH C.A. No.3622/2020 (XVII)

(With IA No.31751/2021 - APPROPRIATE ORDERS/DIRECTIONS, IA No.18609/2021 - EARLY HEARING APPLICATION, IA No.11038/2021 - EXEMPTION FROM FILING O.T., IA No.113324/2020 - EXEMPTION FROM FILING O.T., IA No.11037/2021 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES and IA No.43489/2021 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

Date : 10-08-2022 These matters were called on for hearing today.

CORAM :

**HON'BLE DR. JUSTICE D.Y. CHANDRACHUD
HON'BLE MR. JUSTICE SURYA KANT
HON'BLE MR. JUSTICE A.S. BOPANNA**

For Petitioner(s)

Mr. Rohit Amit Sthalekar, AOR

Mr. M.R. Shamsad, AOR

For Respondent(s)

**Mr. Vinod Diwakar, AAG
Mr. Aviral Saxena, Adv.
Ms. Alka Sinha, Adv.
Mr. Anuvrat Sharma, AOR**

**Mr. Rachit Mitta, Adv.
Mr. Parish Kumar, Adv.
Ms. Pooja Kapur, Adv.
Mr. Sudhir Naagar, AOR**

**Mr. Pulkit Srivastava, AOR
Minal Negi, Adv.
Ms. Kriti Ranjan, Adv.**

**Mr. Ajay Kumar, AOR
Mr. Avinish Kr. Saurabh, Adv.
Mr. Ashish Choubey, Adv.
Mr. Abhinav Srivastav, Adv.**

**Mr. Yogesh Tiwari, Adv.
Mr. Vikrant Singh Bais, AOR**

Mr. Malak Manish Bhatt, AOR

**Mr. Aabhas Kshetarpal, Adv.
Mr. Siddhartha Jha, AOR**

Ms. Suman Kukrety, Adv.

Mr. Ratish Kumar, Adv.
Mr. Aditya Parmar, Adv.
Ms. Swayam Sidha, Adv.
Mr. Karunakar Mahalik, Adv.

Mr. Kausar Raza Faridi, Adv.
Mr. Shahbaaz Jameel, Adv.

**UPON hearing the counsel the Court made the following
O R D E R**

- 1 Leave granted.
- 2 Application for substitution stands allowed.
- 3 The appeals are disposed of in terms of the signed order.
- 4 Pending applications, if any, including applications for intervention/impleadment stand disposed of.

Civil Appeal No 3622 of 2020

- 1 The appeal is disposed of in terms of the signed order.
- 2 Pending applications, if any, stand disposed of.

(CHETAN KUMAR)
A.R. -cum-P.S.

(Signed order is placed on the file)

(SAROJ KUMARI GAUR)
Court Master