

[2012] 8 S.C.R. 719

CHAIRMAN & CEO, NOIDA & ANR.

v.

MANGE RAM SHARMA (D) THR. LRS & ANR.

I.A. No. 10 of 2012

IN

(Civil Appeal No. 10535 of 2011)

SEPTEMBER 13, 2012

**[SWATANTER KUMAR AND RANJANA PRAKASH
DESAI, JJ.]**

Urban Development – Supreme Court order dated 30.7.2012 directing NOIDA (Authority) to float ‘Special Scheme’ – In para 4 of the order stating that the allottees of land by NOIDA in previous schemes would not be eligible to the benefit of the ‘Special Scheme’ – Special Scheme floated as per the order of Supreme Court – Clause 3 thereof making the tenderers eligible to bid for two plots whose turnover exceeds aggregate net worth required for both the plots, applied for by the tenderer – Interlocutory application for modification of Para 4 of the order dated 30.7.2012 – Plea that the condition in the Special Scheme framed under order of Supreme Court is leaving the applicant as ineligible to apply for two plots – Held: Court declined to modify Para 4 of order dated 30.7.2012 – Turnover of a company has no connection with number of plots allotted to an applicant – Clause 3 of Special Scheme is quashed as two plots cannot be allotted under the Scheme – Direction to delete clause 3 with retrospective effect – Any plot if left unallotted under the Special Scheme, relating to nursing homes, NOIDA would be at liberty to formulate a General Scheme for auctioning such plots – The applicant if eligible in terms of that policy, can participate in the auction.

CIVIL APPELLATE JURISDICTION : I.A. No. 10 of 2012

A IN

Civil Appeal No. 10535 of 2011.

From the Judgment & Order dated 9.10.2002 of the High Court of Judicature at Allahabad in Civil Misc. Writ Petition No. B 15934 of 1995.

Ranjit Kumar, Ravindra Kumar, Sanjai Kr. Pathak, Aditya Kr. Choudhary, Sashi Pathak for the Appellants.

C Bijoy Kumar Jain, Saurabh Mishra, Praveen Chaturvedi for the Respondent.

The following Order of the Court was delivered

ORDER

D 1. By this order, we will dispose of the above Interlocutory Application filed on behalf of Dr. G.P. Pathak. The prayer in this application is that this Court should modify para 4 of the directions contained in the order dated 30th July, 2012. While making the above prayer, it is submitted that the New Okhla Industrial Development Authority (NOIDA) has published a policy in furtherance to order of this Court and in clause 3 made a criteria which renders the applicant ineligible for obtaining a second plot under the same scheme. The contention is that E under the general schemes floated by the NOIDA, a person is F entitled to get two plots and can even take two adjacent plots. Such allotment is required to be made by the authority and there is no restriction. However, the scheme framed under the orders of the Court is placing the applicant at a disadvantageous position. Para 4 of the directions contained G in order dated 30th July, 2012 reads as under :

H "4. The persons who have been allotted lands by the NOIDA previously under any Scheme, would not be eligible to the benefit of the Special Scheme floated by the NOIDA in furtherance of the order of this Court."

Clause 3 of the 'Special Scheme' reads as under : A

"3. The tenderer can Bid for a maximum of 2 (two) plots out of all plots offered in above Scheme. However, in that case net worth of the tenderer should exceed aggregate net worth required for both the plots applied for by the tenderer taken together. In case the two adjoining plots are allotted to any successful bidder, amalgamation of the said two plots shall be permissible." B

2. There is no dispute to the fact that the applicant was running a clinic in the residential area and has to close the same activity in furtherance to the orders of this Court. He would be entitled to apply under the 'Special Scheme' formulated by the NOIDA under the order of the Court. The question is as to whether under the 'Special Scheme', the applicant can claim two plots? We have no hesitation in answering the said question in the negative. This is a 'Special Scheme' floated by NOIDA as per the directions of this Court. It is not a 'General Scheme' floated by NOIDA of its own. The terms and conditions applicable under 'General Scheme' floated by NOIDA will have such eligibility criteria and terms and conditions that NOIDA in its wisdom finds suitable and in consonance with its policy. Such 'General Scheme' may permit grant of double benefit i.e. the party may be a successful bidder even in two plots. To the contrary under the 'Special Scheme' no person can be permitted to derive double benefit even if a person was running two clinics or two small nursing homes in the hospital area. He can easily club both such clinics or nursing homes and build a common hospital just by raising additional construction as may be permissible. It is not disputed before us that the applicant has already got a plot for establishing a nursing home and in fact he has already built a nursing home there. We see no reason why he should get double benefit under the court directed 'Special Scheme'. We do not see any necessity to alter or modify para 4 of the directions contained in the order dated 30th July, 2012. Consequentially, there is also no C
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A requirement for modification of clause 3 of the 'Special Scheme' floated by the NOIDA which debar a person who has already been given a plot. We do not think that there was any occasion for the NOIDA even to introduce clause 3. In fact, we direct its deletion. Nobody would get two plots under this 'Special Scheme'.

3. We make it clear that the net worth of a tenderer would be of no consideration for giving such applicant two plots as the plots are being allotted in furtherance of the orders of the Court and, thus, could not be used as an instrument for providing state largesse in a manner not contemplated in terms of the judgment.

4. We also make it clear that if, for any reason, the plots declared by NOIDA for construction of nursing homes are not sold under this 'Special Scheme', the NOIDA would be free to formulate its general policy for allotment of such plots for nursing homes and the present applicant can apply under that scheme as per the terms and conditions of that policy, if such policy does not put any embargo or restriction upon grant of another plot.

5. In view of the above discussion, we dispose of this application with the following order :

(a) We decline to modify para 4 of the directions contained in the order of this Court dated 30th July, 2012.

(b) We are of the considered view that turnover of a company has no connection with the number of plots that could be allotted to an applicant under the scheme formulated in furtherance to the said order of the Court. Suffice it to note that two plots cannot be allotted under this Scheme. Thus, we quash clause 3 of the brochure. The same shall stand deleted with retrospective effect.

- (c) Any plots which remain unallotted under the 'Special Scheme' relating to nursing homes, the NOIDA will be at liberty to formulate a 'General Scheme' for auctioning such plots in terms of its policy and the applicant, if eligible in terms of that policy, can participate in the auction for buying the plot. A
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6. The Interlocutory Application is accordingly dismissed. There shall be no order as to costs.

K.K.T.

I.A. dismissed.