

Reserved on : 07.08.2024

Delivered on : 22.08.2024

Court No. - 29

- (1) **Case :-** WRIT - C No. - 20573 of 2021
Petitioner :- Suresh Chand and others
Respondent :- State of U.P. and others
Counsel for Petitioner :- Ajay Kumar Singh, Anand Kumar Mishra, Ashish Kumar Singh, Deelip Kumar Pathak, Devansh Misra, Prashant Kumar Tripathi, Raghuvansh Misra, Rajiv Kumar Mishra
Counsel for Respondent :- Aditya Bhushan Singhal, Kaushalendra Nath Singh

WITH

- (2) **Case :-** WRIT - C No. - 17056 of 2023
Petitioner :- Aresko Estate Private Limited
Respondent :- State of U.P. and others
Counsel for Petitioner :- Abhay Pratap Singh
Counsel for Respondent :- C.S.C., Kaushalendra Nath Singh

WITH

- (3) **Case :-** WRIT - C No. - 17254 of 2024
Petitioner :- Warish Ali and another
Respondent :- State of U.P. and others
Counsel for Petitioner :- Devansh Misra, Mahendra Singh, Raghuvansh Misra
Counsel for Respondent :- C.S.C., Kaushalendra Nath Singh

WITH

- (4) **Case :-** WRIT - C No. - 18365 of 2023
Petitioner :- Amit Vohara
Respondent :- State of U.P. and others
Counsel for Petitioner :- Sanjay Kumar Mishra
Counsel for Respondent :- C.S.C., Kaushalendra Nath Singh

WITH

- (5) **Case :-** WRIT - C No. - 19666 of 2023
Petitioner :- Taj Mohammad
Respondent :- State of U.P. and others

**Counsel for Petitioner :- Mahendra Singh,Raghuvansh Misra
Counsel for Respondent :- C.S.C.**

WITH

- (6) **Case :- WRIT - C No. - 22453 of 2022
Petitioner :- Aman Singh and others
Respondent :- State of U.P. and others
Counsel for Petitioner :- Ram Prakash, Sanjay Dwivedi
Counsel for Respondent :- C.S.C.,Kaushalendra Nath Singh**

WITH

- (7) **Case :- WRIT - C No. - 25041 of 2020
Petitioner :- Chauhal Singh and others
Respondent :- State of U.P. and others
Counsel for Petitioner :- Abhay Pratap Singh,Atul Mehra
Counsel for Respondent :- Aditya Bhushan Singhal,C.S.C.,H.B
Singhal, K. N. Singh,Kaushalendra Nath Singh**

WITH

- (8) **Case :- WRIT - C No. - 25493 of 2021
Petitioner :- Nitin Chauhan and another
Respondent :- State of U.P. and others
Counsel for Petitioner :- Ishir Sripat,Sr. Advocate
Counsel for Respondent :- Kaushalendra Nath Singh**

WITH

- (9) **Case :- WRIT - C No. - 4260 of 2021
Petitioner :- Dharmendra Khandelwal and others
Respondent :- State of U.P. and others
Counsel for Petitioner :- Ajay Kumar Singh,Ashish Kumar
Singh
Counsel for Respondent :- C.S.C., Kaushalendra Nath Singh**

WITH

- (10) **Case :- WRIT - C No. - 7857 of 2024
Petitioner :- Omveer Singh
Respondent :- State of U.P. and others
Counsel for Petitioner :- Ajay Singh Yadav,Nitin Sharma
Counsel for Respondent :- C.S.C.**

WITH

- (11) **Case :-** WRIT - C No. - 8414 of 2021
 Petitioner :- Yatendra Kumar and others
 Respondent :- State of U.P. and others
 Counsel for Petitioner :- Sr. Advocate, Tej Bahadur Rai
 Counsel for Respondent :- C.S.C., Kaushalendra Nath Singh

Hon'ble Mahesh Chandra Tripathi, J.

Hon'ble Prashant Kumar, J.

(Delivered by M.C. Tripathi, J.)

1. All the aforesaid writ petitions have been clubbed and heard together as they involve similar issue, and hence, they are being decided by this common judgment and order.
2. Heard Sri Navin Sinha, learned Senior Counsel assisted by Sri Raghuvansh Misra and Sri Devansh Misra, learned counsel for petitioners in Writ C No.-20573 of 2021; Sri Rahul Sripat, learned Senior Counsel assisted by Sri Ishir Sripat, learned counsel for the petitioners in Writ C No.-25493 of 2021; Sri Abhay Pratap Singh and Sri Sanjay Kumar, learned counsel for the petitioner in Writ C No.-17056 of 2023; Sri Sanjay Kumar Mishra, learned counsel for the petitioner in Writ C No.-18365 of 2023; Sri Raghuvansh Misra and Sri Mahendra Singh, learned counsel for the petitioner in Writ C No.-19666 of 2023; Sri Ram Prakash and Sri Sanjay Dwivedi, learned counsel for the petitioners in Writ C No.-22453 of 2022; Sri Abhay Pratap Singh and Sri Sanjay Kumar, learned counsel for the petitioners in Writ C No.-25041 of 2020; Sri Ajay Singh Yadav and Sri Nitin Sharma, learned counsel for the petitioner in Writ C No.-7857 of 2024; Sri Manish Goyal, learned Additional Advocate General assisted by Sri F.A. Ansari, learned Standing Counsel for the State-respondents; Sri Kaushalendra Nath Singh and Sri Aditya Bhushan Singhal, learned counsel for the respondent-Authority.

BRIEF FACTS OF THE CASE

3. Facts giving rise to Writ Petition No. 20573 of 2021, which are more or less similar to all the connected petitions, are as follows:-

Petitioners herein are the owners and in possession of agricultural land in different revenue villages falling in Gautam Buddh Nagar. Petitioners, who were in dire need of money, wanted to sell their respective agricultural land, and when they tried to sell the land, they came to know that a decision has been taken by the respondents, “to not to register the sale deeds of the agriculture land lying in the Flood Plain Zone falling within the territorial jurisdiction of NOIDA and Greater NOIDA”. It reveals that the aforesaid decision was taken in exercise of the powers granted under the U.P. Industrial Area Development Act, 1976¹ and in exercise of powers conferred under Sections 25 and 34 of the Disaster Management Act, 2005². It seems that the respondents had resolved that in case of transfer of any agricultural land, the vendor has to get “No Objection Certificate” to the effect that the land sought to be transferred does not consist any illegal/unauthorized construction.

4. Since the petitioners were not accorded permission to sell the land, because of the decision taken by the respondents, the petitioners were left with no other alternative, but to file the instant writ petitions, (Writ C No.-20573 of 2021), in this writ petition, the petitioners have prayed for the following reliefs:-

“a. Issue a writ, order or direction in the nature of certiorari to quash and set aside Resolution dated 30.09.2020 to the extent of direction issued in Point No.30 B (iii) and order dated 01.10.2020 passed by Respondent no.3, District Magistrate, Gautam Budh Nagar (Annexure no.1).

b. Issue a writ, order or direction in the nature of mandamus commanding the respondents Authorities/Registrar, Gautam Budh

1 Act, 1976

2 Act, 2005

Nagar not to cause any hindrance in registration of sale deed for want of NOC as mentioned in resolution dated 30.09.2020 Point no.30 B (iii) and the register the same only in accordance with the provisions contained under the Act, 1908 and rules framed thereunder.”

5. Apart from Writ C No.-20573 of 2021, various writ petitions have been filed by similarly situated landowners, who wanted to sell their land, but could not execute the sale deed, because of the decision taken by the respondents. Since, all the petitions are raising the same issue, hence, all the petitions have been clubbed and heard together.

6. A meeting of District Disaster Management Authority, Gautam Budh Nagar³ headed by District Magistrate, Gautam Budh Nagar was held on 30.09.2020, and copy of the resolution has been forwarded by the District Magistrate vide Office Memorandum dated 01.10.2020. The relevant extract of Resolution dated 30.09.2020 and Office Memorandum dated 01.10.2020 are being reproduced hereunder for ready reference:-

"Resolution dated 30.09.2020

जनपद गौतमबुद्धनगर में नौएडा/ग्रेटर नौएडा/यमुना एक्सप्रेसवे औद्योगिक प्राधिकरण के अधिसूचित क्षेत्र के अंतर्गत तथा यमुना एवं हिण्डन नदियों के डूब-क्षेत्र (Flood Plain Zone) में प्राधिकरणों की अनुमति एवं मानचित्र स्वीकृत कराये बिना बड़े पैमाने पर हो रहे अन्धाधुंध अवैध एवं अनधिकृत बहुमंजिले भवन/कॉलोनाईजेशन/प्लाटिंग के दृष्टिगत पूर्व में घटित मानवजनित आपदाओं एवं भविष्य में सम्भावित मानव/प्राकृतिक जनित आपदाओं की सम्भावना को ध्यान में रखते हुए राष्ट्रीय आपदा प्रबन्धन अधिनियम, 2005 की धारा-25 में दिये गये प्राविधानों के क्रम में गठित जिला आपदा प्रबन्धन प्राधिकरण की बैठक दिनांक 30.09.2020 का कार्यवृत्त।

आपदा प्रबन्धन अधिनियम, 2005 की धारा-25 में दिये गये प्राविधानों के क्रम में जिलाधिकारी कार्यालय के कार्यालय ज्ञाप संख्या 1033/सी०आर०ए०/2020-21, दिनांक 29.09.2020 द्वारा पुनःगठित जिला आपदा प्रबन्धन प्राधिकरण की बैठक दिनांक 30.09.2020 को अपरान्ह 01:00 बजे जिलाधिकारी, कैम्प कार्यालय, सेक्टर-27, नौएडा पर जिलाधिकारी, गौतमबुद्धनगर की अध्यक्षता में आहूत की गयी, जिसमें जनपद गौतमबुद्धनगर में नौएडा/ग्रेटर नौएडा/यमुना एक्सप्रेसवे औद्योगिक प्राधिकरण के अधिसूचित क्षेत्र के अंतर्गत तथा यमुना एवं हिण्डन नदियों के डूब-क्षेत्र (Flood Plain Zone) में प्राधिकरणों की अनुमति एवं मानचित्र स्वीकृत कराये बिना बड़े पैमाने पर हो रहे अन्धाधुंध अवैध एवं अनधिकृत बहुमंजिले भवन/कॉलोनाईजेशन/प्लाटिंग के

दृष्टिगत पूर्व में घटित मानवजनित आपदाओं एवं भविष्य में सम्भावित मानव/प्राकृतिक जनित आपदाओं की सम्भावना को ध्यान में रखते हुए निम्नलिखित तथ्यों/बिन्दुओं पर विचार-विमर्श किया गया-

1- जिला आपदा प्रबन्धन प्राधिकरण को अवगत कराया गया कि ग्रेटर नौएडा औद्योगिक विकास प्राधिकरण के अधिसूचित क्षेत्र के अंतर्गत ग्राम शाहबेरी में ग्रेटर नौएडा प्राधिकरण की अनुमति एवं भवन मानचित्र स्वीकृत कराये बिना अवैध एवं अनधिकृत तरीके से निर्मित निर्माणाधीन बहुमंजिले भवन एवं उसके समीप स्थित एक अन्य नवीन निर्मित भवन के दिनांक 17.07.2018 को अकस्मात गिरने से 08 व्यक्तियों की घटना स्थल पर ही मृत्यु हो गई थी। उपरोक्त घटना के क्रम में अपर मुख्य कार्यपालक अधिकारी, ग्रेटर नौएडा प्राधिकरण के पत्र संख्या - ग्रे०नौ०/प्रोजेक्ट/वर्क सर्किल -4/2019/423, दिनांक 29.07.2019 द्वारा जिलाधिकारी, गौतमबुद्धनगर एवं वरिष्ठ पुलिस अधीक्षक, गौतमबुद्धनगर को अवगत कराया गया था कि ग्राम शाहबेरी के क्षेत्र में मा० उच्च न्यायालय के आदेश दिनांक 16.10.2014 के बाद भी अवैध निर्माण करने वाले सभी 431 विल्डरों के विरुद्ध एफ.आई.आर. दर्ज हो एवं जिला प्रशासन द्वारा एन०एस०ए०/गैंगस्टर की कार्यवाही कर जेल भेजा जाए। प्राधिकरण की सूचना अनुसार 426 अवैध बिल्डर भवनों में 1567 परिवार रह रहे हैं। शेष फ्लैट/भवन को सील कराने एवं अवैध निर्माण न कराये जाने की अपेक्षा की गयी थी।

7- जिला आपदा प्रबन्धन प्राधिकरण को यह भी अवगत कराया गया कि पुलिस आयुक्त, गौतमबुद्धनगर ने अपने पत्र संख्या-सीए/सीपी-05/2020, अगस्त, 2020 द्वारा हिण्डन नदी का डूब क्षेत्र में जो पुस्ता ढाल से प्रारम्भ होकर ग्राम लखनावली क्षेत्र तक फैला हुआ है। इस क्षेत्र की आबादी लगभग 10,000 है, जिसमें नदी में कभी भी जल स्तर बढ़ने पर सभी लोगों को जन-धन की हानि की सम्भावना है। इसलिए ऐसे स्थानों पर रह रहे लोगों द्वारा जिस प्रकार से अवैध कब्जा कर निर्माण/विस्तर किया गया है, के विरुद्ध विधिक कार्यवाही किये जाने हेतु राजस्व विभाग एवं सिंचाई विभाग से यथावश्यक कार्यवाही किये जाने की अपेक्षा की गयी है।

8- जिला आपदा प्रबन्धन प्राधिकरण को अवगत कराया गया कि जनपद-गौतमबुद्धनगर में यमुना एवं हिण्डन नदियों के डूब क्षेत्र (Flood Plain Zone) नौएडा, ग्रेटर नौएडा व यमुना एक्सप्रेस-वे औद्योगिक विकास प्राधिकरण के अधिसूचित क्षेत्र के अन्तर्गत स्थित है, किन्तु प्राधिकरणों द्वारा यमुना एवं हिण्डन नदियों के डूब क्षेत्र (Flood Plain Zone) की भूमि पर नियोजित विकास का कार्य नहीं किया जाता है और इन डूब क्षेत्रों में स्थित भूमि के निकट तक प्राधिकरण अवसंरचनात्मक/नियोजित विकास कार्य कराते हैं, अतएव अनधिकृत कॉलोनी/प्लाटिंग करने वाले भूमाफिया एवं भूमि की खरीद फरोख्त करने वाले तत्वों को भोली-भाली जनता को सस्ते प्लाट का झाँसा देकर ठगी करने का

अवसर प्राप्त होना स्वाभाविक है क्योंकि ऐसी डूब क्षेत्र की भूमि के निकट तक प्राधिकरणों के पहुँच मार्ग उपलब्ध रहते हैं, इसलिए अनधिकृत एवं अवैध कोलोनाइजेशन/प्लाटिंग/निर्माण की प्रवृत्ति तेजी से बढ़ती जा रही है। यद्यपि प्राधिकरणों द्वारा समय-समय पर ऐसे अनधिकृत एवं अवैध निर्माणों के विरुद्ध ध्वस्तीकरण की कार्यवाही की जाती रहती है, परन्तु इसके बावजूद भी इस पर पूर्णविराम लगाना सम्भव नहीं हो पा रहा है क्योंकि राष्ट्रीय राजधानी क्षेत्र में स्थित होने के कारण जनपद-गौतमबुद्धनगर में सस्ती आवास सुविधा के लालच में आम जनमानस डूब क्षेत्र में भूमाफियाओं द्वारा फैलाए जा रहे अवैध एवं अनधिकृत कोलोनाइजेशन/प्लाटिंग के जाल में आसानी से फंस जाता है। विगत कई वर्षों से यमुना एवं हिण्डन नदियों के डूब-क्षेत्र में हुए अवैध एवं अनधिकृत निर्माण कार्यों के मानव सृजित आपदा के रूप में जनधन की क्षति के प्रतिकूल स्थिति के उत्पन्न होने की प्रबल सम्भावना है।

9- इस संबंध में जिला आपदा प्रबन्धन प्राधिकरण को अवगत कराया गया कि अधिशाषी अभियन्ता सिंचाई निर्माण खण्ड, गाजियाबाद के पत्र संख्या-3366/सिंचाई/जी, दिनांक 29.12.2017 में यह उल्लेख किया गया है कि जनपद-गौतमबुद्धनगर के अंतर्गत यमुना एवं हिण्डन नदी के डूब क्षेत्र (Flood Plain Zone) में भू माफियाओं द्वारा अवैध/अनधिकृत कोलोनाइजेशन/प्लाटिंग करके हिण्डन एवं यमुना नदी के प्रवाह (नदी की धारा) तक स्थायी मकान व व्यवसायिक उद्देश्य से दुकान आदि के रूप में स्थायी निर्माण कर लिये गये हैं, जिससे वहाँ पर आबादी नदी की पानी की धारा तक पहुँच गयी है, जिससे हिण्डन एवं यमुना नदी का बैक-फ्लो एवं वर्षा के समय अधिक पानी की मात्रा आने पर बाढ़ का खतरा हमेशा बना रहेगा। जैसा कि वर्ष 2013 के जून माह में उत्तराखण्ड में हुई मूसलाधार वर्षा ने नदी के साथ बसी आबादी में भारी तबाही मचाई थी तथा इसी तरह वर्ष 2014 में जम्मू कश्मीर में भी बाढ़ आने से नदी के डूब क्षेत्र में बसे ग्रामों व शहरी क्षेत्र में जन-धन की व्यापक क्षति हुई थी। हिण्डन एवं यमुना नदियों के डूब क्षेत्र में किये जा रहे अनियोजित, अनधिकृत एवं अवैध निर्माण के मानव सृजित कारणों से आपदाओं की विषम स्थिति में बड़े पैमाने पर जन-धन की हानि की प्रबल सम्भावना है।

10- जिला आपदा प्रबन्धन प्राधिकरण को अवगत कराया गया कि हिण्डन एवं यमुना नदियों के डूब क्षेत्र में अनियोजित विकास होने से उन इलाकों में मलिन बस्तियाँ बढ़ जाएंगी, जिनमें वाँछित अवस्थापना एवं नागरिक सुविधाओं का अत्यन्त अभाव होना स्वाभाविक है। इसके साथ डूब क्षेत्र में कराये जा रहे अनियोजित/अनधिकृत एवं अवैध निर्माणों से ग्रीन कवर कम होता जा रहा है, जो राष्ट्रीय राजधानी क्षेत्र के पर्यावरण एवं पारिस्थितिकी संतुलन पर भी प्रतिकूल प्रभाव डालेगा। अवैध एवं अनधिकृत निर्माणों में भू माफिया तत्व भू सम्पत्तियों के अवैध कारोबार को गलत ढंग से आगे बढ़ा रहे हैं, जिसमें भोले-भाले निर्दोष लोगों को आपदा की विषम स्थिति में भारी कीमत चुकानी पड़ सकती है। साथ ही आपदा प्राधिकरण के सदस्य मुख्य अग्नि शमन अधिकारी, गौतमबुद्धनगर द्वारा अवगत कराया गया कि जनपद गौतमबुद्धनगर भूकम्पीय गतिविधियों की दृष्टि से सीज्मिक जोन-IV में स्थित है और अधिसूचित क्षेत्र में मानचित्र स्वीकृत न कराने

के कारण बहुमंजिली इमारतों में भूकम्परोधी तकनीकी का पालन नहीं किये जाने की सम्भावना है, जिससे भविष्य में किसी आपदा के आने पर बड़े पैमाने पर जनहानि हो सकती है।

11- जिला आपदा प्रबन्धन प्राधिकरण को अवगत कराया गया कि प्राधिकरणों के महायोजना में हिण्डन एवं नदियों के डूब क्षेत्र की भूमि को रिवर फ्रन्ट डेवलपमेंट के रूप में नियोजित किया गया है जैसे कि नौएडा महायोजना-2031 में उपरोक्त नदियों के डूब क्षेत्र की भूमि को रिवर फ्रन्ट डेवलपमेंट के रूप में नियोजित करने के संबंध में निम्नवत प्राविधान किये गये हैं-

“NOIDA is bounded by the two embankments of river Yamuna and Hindon. Urbanization is proposed broadly within the area between the two embankments. Development of urban activities has not been proposed in more than 5000 hectare land situated in the river front area of both the rivers because this is basically a flood affected area. The river Yamuna suffers from inadequate flow and quantum of water during majority time of the year. Rapid urbanization, encroachment on the river bank and over exploitation of water in Delhi has resulted in the dwindling of water flow in the river. The river is highly polluted due to discharge of untreated waste water flow in the river and due to discharge of untreated waster water through drains. However, the river Yamuna generated very high level of water flow during rainy season and sometimes due to discharge of rainy water from dams cause floods in the area of Delhi and NOIDA. Conservation of flood prone area is essential. Therefore, urban activities have not been proposed in the river front areas of both the rivers. This entire area is proposed to be kept as green and open. However, it is proposed that the river front areas shall be developed for recreational and tourist activities with the provision of some temporary and removable structures on 1 percent area of a specific development project. A detailed plan of the development of river front areas is proposed to be prepared after a detailed study of its environmental conditions and potentials of development. It is a sensitive area and needs a detailed study to understand the cycle of flood occurrence, the ground water recharge potential and requirement, potential of reclamation and the potential of making this area physically accessible and functional.”

12- जिला आपदा प्रबन्धन प्राधिकरण को यह भी अवगत कराया गया कि जनपद गौतमबुद्धनगर के अंतर्गत यमुना एवं हिण्डन नदियों का डूब क्षेत्र नौएडा, ग्रेटर नौएडा व यमुना एक्सप्रेस-वे औद्योगिक विकास प्राधिकरण के अधिसूचित क्षेत्र के अंतर्गत आता है और प्राधिकरणों के अधिसूचित क्षेत्र के सम्पूर्ण क्षेत्रफल का नियंत्रण प्राधिकरणों के अधिकार क्षेत्र में ही है और इन सम्पूर्ण क्षेत्र का सभी प्रकार

के विकास एवं रख रखाव के दायित्व का निर्वहन भी तीनों प्राधिकरणों द्वारा किया जा रहा है।

13- इस संबंध में जिला आपदा प्राधिकरण को यह भी अवगत कराया गया कि राष्ट्रीय हरित प्राधिकरण, नई दिल्ली द्वारा Application no 89/2013, आकाश वशिष्ठ एवं अन्य बनाम युनियन ऑफ इण्डिया व अन्य में पारित आदेश दिनांक 20, मई 2013 में राष्ट्रीय राजधानी क्षेत्र में यमुना एवं हिण्डन नदियों के डूब क्षेत्र में अस्थाई एवं स्थायी प्रकृति के अवैध एवं अनधिकृत निर्माणों को रोकने हेतु आदेश पारित किये गये हैं। राष्ट्रीय हरित प्राधिकरण, नई दिल्ली द्वारा पारित दिनांक 20 मई, 2013 का सरवान अंश निम्नवत है:-

“.....It is conceded before us by all learned counsel appearing for respective Authorities, Corporations, NCT of Delhi, State of Uttar Pradesh and State of Haryana that there are unauthorized and illegal constructions raised on the flood plain of river Yamuna. These constructions have been raised without permission of any competent authority. On the contrary, these Authorities including the Irrigation Department of State of Uttar Pradesh and other Authorities claim to have issued Notices to the persons who have raised unauthorized and illegal constructions upon the flood plain of river Yamuna, but rarely of any effect.

It is an admitted position in law that construction upon flood plain area is prohibited. It not only affect the natural flow of the river but causes environment problems besides raising risk to human life and property.

.....
In view of the above circumstances, we hereby issue ad interim injunction restraining any illegal and unauthorized construction, be it temporary or permanent, on the flood plain zone of river Yamuna in the NCT of Delhi, State of Haryana and State of Uttar Pradesh. All Authorities of the respective States including the Police, Irrigation Department, Environment Department and PWD and all the public Authorities and Corporations shall ensure that no illegal and unauthorized construction is raised upon the flood plain zone of river Yamuna. Wherever unauthorized and illegal constructions have been raised steps should be taken to demolish the same in accordance with law.

We hereby direct the NCT of Delhi, State of Uttar Pradesh and State of Haryana to specifically file Plans/Maps showing extent of one in 25 years flood plain zones.....”

x x x x

15- इस संबंध में जिला आपदा प्रबन्धन प्राधिकरण को यह भी अवगत कराया गया कि मुख्य सचिव उत्तर प्रदेश शासन के पत्र संख्या 1417 बी (1) 09-27-सि-02-18/वाद दिनांक 16.03.2010, प्रमुख सचिव, सिंचाई के पत्र दिनांक 19.09.2012 एवं मुख्य सचिव की अध्यक्षता में शासन स्तर पर हुई बैठक दिनांक 20.06.2013 के अनुक्रम में जारी कार्यवृत्त दिनांक 27.06.2013 में दिये गये दिशा निर्देशों से

स्पष्ट हुआ कि जनपद- गौतमबुद्धनगर में प्राधिकरणों के अधिसूचित क्षेत्र के अंतर्गत स्थित डूब क्षेत्र (Flood Plain Zone) में होने वाले अवैध एवं अनधिकृत निर्माण क्षेत्र के विरुद्ध कार्यवाही हेतु तीनों प्राधिकरणों का उत्तरदायित्व निर्धारित किया गया है।

16- इसके अतिरिक्त प्रश्नगत मामलों में जिला आपदा प्रबन्धन प्राधिकरण को यह भी अवगत कराया गया कि नदी के डूब क्षेत्र में किसी भी प्रकार का अनधिकृत निर्माण अनुमन्य नहीं है। इस संबंध में विशेष सचिव उ०प्र० शासन द्वारा समस्त जिलाधिकारी उत्तर प्रदेश शासन को सम्बोधित पत्र संख्या-5923(1) एफ-9-21 सि.-6/बाढ़/71 दिनांक 03.02.1992 तथा मुख्य सचिव, उत्तर प्रदेश शासन के द्वारा आयुक्त एवं प्रमुख सचिव आवास एवं शहरी नियोजन विभाग एवं अन्य के साथ-साथ प्रमुख सचिव सिंचाई एवं बाढ़ नियंत्रण विभाग उत्तर प्रदेश शासन को सम्बोधित पत्र संख्या-1417 बी (1) 09-27-सि०-2-18/वाद दिनांक 16.03.2010, प्रमुख सचिव, उत्तर प्रदेश शासन के द्वारा प्रमुख अभियन्ता विभागाध्यक्ष सिंचाई विभाग, उत्तर प्रदेश को सम्बोधित पत्र संख्या -1560/12-27-सि०-3-43 एल/08 टी०सी, दिनांक 19.09.2012 के द्वारा भी समय-समय पर निर्देश जारी किये जाते रहे हैं।

प्रमुख सचिव उत्तर प्रदेश शासन का पत्र संख्या-1560/12-27-सि-3-43 एल/08 टी०सी०, दिनांक 19.09.2012 :-

“.....जिलाधिकारी, गौतमबुद्धनगर के उक्त पत्र द्वारा यह तथ्य शासन के संज्ञान में लाया गया है कि जनपद गौतमबुद्धनगर में यमुना नदी के किनारे डूब क्षेत्र में कतिपय व्यक्तियों द्वारा अवैध अतिक्रमण करते हुए 319 फार्म हाऊस 124.437 हे० में बनाये गये हैं। कतिपय प्रकरणों में जिला पंचायत द्वारा मानचित्र स्वीकृत करने एवं सिंचाई विभाग की अनापत्ति भी जारी की गयी हैं। प्रकरण अत्यन्त गंभीर है। ऐसी स्थिति में उक्त डूब क्षेत्र में बनाए गए अवैध फार्म हाऊस /अतिक्रमण तथा अनापत्ति प्रमाण पत्र निर्गत करने वाले अधिकारियों के विरुद्ध आवश्यक कार्यवाई सुनिश्चित करने का कष्ट करें तथा प्रकरण में अन्तर्गस्त अधिकारियों/कर्मचारियों की सूची पूर्ण विवरण के साथ उपलब्ध कराने का कष्ट करें। यह प्रत्येक दशा में सुनिश्चित किया जाए कि भविष्य में उक्त क्षेत्र में कोई अतिक्रमण एवं अवैध निर्माण न होने पाए। यदि उक्त क्षेत्र में कोई अतिक्रमण एवं अवैध निर्माण होता है तो संबंधित स्थानीय अधिकारी/कर्मचारीगण व्यक्तिगत रूप से उत्तरदायी होंगे और उनके विरुद्ध कठोर कार्यवाई की जाएगी... ..”

मुख्य सचिव उत्तर प्रदेश शासन की अध्यक्षता में दिनांक 20.06.2013 को सम्पन्न बैठक का कार्यवृत्त

“..... यमुना नदी के किनारे डूब क्षेत्र में हुए अतिक्रमण तथा अवैध निर्माण को प्रभावी ढंग से रोकने और अवैध निर्माण को ध्वस्त करने की जिम्मेदारी मुख्य रूप से नौएडा, ग्रेटर नौएडा, गाजियाबाद विकास प्राधिकरण, जिनके अधिकार क्षेत्र में यह घटित हुए हैं, की है।”

17- जिला आपदा प्रबन्धन प्राधिकरण को अवगत कराया गया कि अवैध निर्माणों को गिराने तथा नियंत्रित करने के लिए उत्तर प्रदेश औद्योगिक क्षेत्र विकास

अधिनियम, 1976 की धारा 2(घ), 6(छ), 9(1) व 10 में निम्नवत् प्राविधान किया गया है:-

2(घ)- "औद्योगिक विकास क्षेत्र" का तात्पर्य उस क्षेत्र से है, जिसे राज्य सरकार अधिसूचना द्वारा ऐसा क्षेत्र घोषित करें।

6(छ)- भवनों के परिनिर्माण और उद्योगों की स्थापना को विनियमित करना,

9(1)- कोई व्यक्ति, उपधारा (2) के अधीन बनाये गये किसी भवन सम्बन्धी विनियम का उल्लंघन करके औद्योगिक विकास क्षेत्र में किसी भवन का परिनिर्माण या अध्यासन नहीं करेगा।

10- यदि प्राधिकारी को यह प्रतीत हो कि किसी स्थल या भवन का दशा या उपयोग से औद्योगिक विकास क्षेत्र के किसी भाग के समुचित आयोजन पर या सुविधा पर या वहां सामान्य जनता के हित पर प्रतिकूल प्रभाव पड़ रहा है या पड़ने की सम्भावना है तो वह उस स्थल या भवन के अन्तरिती या अध्यासी पर नोटिस तामील कर सकता है, जिसमें उससे यह अपेक्षा करेगा कि वह ऐसी कार्यवाही ऐसी अवधि के भीतर करें, जैसा उसमें विनिर्दिष्ट हो और यदि उसके पश्चात ऐसा अन्तरिती या अध्यासी ऐसी कार्यवाही करने या उसका अनुरक्षण करने में असफल रहता है तो प्राधिकारी स्वयं ऐसी कार्यवाही कर सकता है या उसका अनुरक्षण कर सकता है और उस पर उपगत व्यय ऐसे अन्तरिती या अध्यासी से वसूल कर सकता है।

18- जिला आपदा प्रबन्धन प्राधिकरण को यह भी अवगत कराया गया कि उत्तर प्रदेश शासन की अधिसूचना संख्या- 2159/77-4-10-284 भ/91 दिनांक 20.12.2010 द्वारा जारी ग्रेटर नोएडा इंडस्ट्रियल डेवलपमेंट एरिया बिल्डिंग रेगुलेशन, 2010 के नियम 20.2 व 20.3 के संबंध में निम्नवत् प्राविधान किये गये हैं-

20.2 "असुरक्षित भवन" असुरक्षित भवन वे भवन हैं, जो संरचात्मक रूप से असुरक्षित हैं तथा अस्वास्थ्यकर हैं या जिनमें निकास के पर्याप्त साधन न हो या जिनमें आग लगने का खतरा हो या जो मानवजीवन के लिए अन्यथा रूप से खतरनाक हो या जो विद्यमान उपयोग के सम्बन्ध में अपर्याप्त अनुरक्षण, जीर्णशीर्णता या निषिद्धता के कारण सुरक्षा, स्वास्थ्य या लोककल्याण के प्रति संकटकारी हो गये हों।

20.3 "अनाधिकृत विकास- अनाधिकृत विकास के मामले में मुख्य कार्यपालक अधिकारी-

(अ) ऐसी समुचित कार्यवाही करेगा जिसमें अनाधिकृत निर्माणों को ढहाया जाना, परिसरों का बन्द किया जाना तथा प्रवृत्त संगत अधिनियमों के अनुसरण में अपराधियों के विरुद्ध अभियोग चलाया जाना एवं दण्डिक कार्यवाहियां किया जाना सम्मिलित हैं।

(ब) संबंधित तकनीकी व्यक्ति के विरुद्ध समुचित कार्यवाही करेगा।"

19- जिला आपदा प्रबन्धन प्राधिकरण को यह भी अवगत कराया गया कि उत्तर प्रदेश शासन की अधिसूचना संख्या- 2213/77-4-10-158 एन/85, दिनांक 30.11.2010 द्वारा जारी नवीन ओखला विकास क्षेत्र भवन विनियमावली-2010 के नियम 20.2 व 20.3 में निम्नवत प्राविधान किये गये हैं-

20.2 “असुरक्षित भवन” असुरक्षित भवन वे भवन हैं, जो संरचात्मक रूप से असुरक्षित हैं तथा अस्वास्थ्यकर हैं या जिनमें निकास के पर्याप्त साधन न हो या जिनमें आग लगने का खतरा हो या जो मानवजीवन के लिए अन्यथा रूप से खतरनाक हो या जो विद्यमान उपयोग के सम्बन्ध में अपर्याप्त अनुरक्षण, जीर्णशीर्णता या निषिद्धता के कारण सुरक्षा, स्वास्थ्य या लोककल्याण के प्रति संकटकारी हो गये हों।

20.3 “अनाधिकृत विकास- अनाधिकृत विकास के मामले में मुख्य कार्यपालक अधिकारी-

(अ) ऐसी समुचित कार्यवाही करेगा जिसमें अनाधिकृत निर्माणों को ढहाया जाना, परिसरों का बन्द किया जाना तथा प्रवृत्त संगत अधिनियमों के अनुसरण में अपराधियों के विरुद्ध अभियोग चलाया जाना एवं दण्डिक कार्यवाहियां किया जाना सम्मिलित है।

(ब) संबंधित तकनीकी व्यक्ति के विरुद्ध समुचित कार्यवाही करेगा।”

x x x x

23- जिला आपदा प्रबन्धन प्राधिकरण को यह भी अवगत कराया गया कि पूर्व जिलाधिकारी द्वारा यमुना एवं हिण्डन नदियों डूब क्षेत्र (Flood Plain Zone) में अवैध एवं अनधिकृत निर्माण के फलस्वरूप सम्भावित मानव/प्राकृतिक आपदा के कारण होने वाली जन धन की क्षति को ध्यान में रखते हुए क्रय-विक्रय को नियंत्रित करने हेतु ऐसे विक्रय दस्तावेजों को निबन्धन के सम्बन्ध में कतिपय शर्तों के साथ कार्यालय आदेश संख्या-627 (1-10) एस०टी०-डी०एम०/2019, दिनांक 20.06.2019 निर्गत किया गया था, जिसमें निम्नवत उपबन्ध स्थापित किये गये थे- “... पर्यावरण एवं पारिस्थितिकी तंत्र के संरक्षण, जन-धन की सुरक्षा एवं कानून व्यवस्था को सुदृढ बनाये रखने के लिये डूब क्षेत्र में आवासीय सम्पत्ति (प्लाट/भवन) के क्रय-विक्रय से सम्बन्धित विलेखों के निबन्धन हेतु प्रस्तुतिकरण के समय मुख्य सचिव उ०प्र० शासन लखनऊ के पत्र सं० 1417 बी-27-सि०-2-81/बाढ/09, दिनांक 16.03.2010 क्रेता पक्ष द्वारा निम्नलिखित प्रमाण पत्र एवं शपथ पत्र सम्बन्धित उप निबन्धक द्वारा प्रश्रगत आवासीय सम्पत्ति (प्लाट/भवन) के विलेख को निबन्धन हेतु स्वीकार नहीं किया जाएगा-

- 1- सिंचाई विभाग, द्वारा प्रदत्त इस आशय का प्रमाण पत्र कि प्रश्रगत विक्रीत आवासीय सम्पत्ति (प्लाट/भवन) पर निर्माण किया जाना अनुमन्य होगा।
- 2- सम्बन्धित प्राधिकरण (नोएडा, ग्रेटर नोएडा एवं यमुना एक्सप्रेसवे औद्योगिक विकास प्राधिकरण) के सक्षम अधिकारी द्वारा प्रदत्त इस आशय का प्रमाण पत्र कि प्रश्रगत विक्रीत आवासीय सम्पत्ति (प्लाट/भवन) का भू-मानचित्र स्वीकृत किया जाएगा।

उपरोक्त शर्तों को पूर्ण होने के उपरान्त ही सम्बन्धित उप निबन्धक द्वारा यमुना एवं हिण्डन नहीं के डूब-क्षेत्र में आवासीय सम्पत्ति (प्लाट/भवन) के विलेख को पंजीकरण हेतु स्वीकार किया जाएगा।..”

X X X X

28- जिला आपदा प्रबन्धन प्राधिकरण को यह भी अवगत कराया गया कि राष्ट्रीय आपदा प्रबन्धन प्राधिकरण अधिनियम-2005 की धारा-34 में सम्भावित आपदा की स्थिति होने की दशा में जिला आपदा प्रबन्धन प्राधिकरण के कर्तव्य एवं शक्तिया निम्नवत परिभाषित हैं:-

“Recommend to any Department of the Government of the State or any authority or body under that Government at the district level to take such measures as are necessary in its opinion;”

29- जिला आपदा प्रबन्धन प्राधिकरण को यह भी अवगत कराया गया कि चूँकि राष्ट्रीय आपदा प्रबन्धन अधिनियम, 2005 की धारा 34(h) में प्राविधान है कि Recommended to any Department of the Government of the State or any authority or body under that Government at the district level to take such measures as are necessary in its opinion,” के दृष्टिगत भविष्य में उपरोक्तानुसार वर्णित परिस्थितियों के दृष्टिगत मानव/प्राकृतिकजनित आपदाओं को ध्यान में रखते हुए जन धन की क्षति को बचाने के लिए जिला आपदा प्रबन्धन प्राधिकरण को उपरोक्त प्रावधान में अपनी अनुशंसा आवश्यकतानुसार दृष्टिगत रखते हुए कर सकती है।

30- उपरोक्तानुसार वर्णित मा० उच्च न्यायालय, इलाहाबाद द्वारा विभिन्न याचिकाओं में पारित आदेशों, राष्ट्रीय हरित प्राधिकरण, नई दिल्ली द्वारा पारित आदेश, विभिन्न उ०प्र० शासन द्वारा समय-समय पर निर्गत शासनादेशों/कार्यवृत्त, राष्ट्रीय आपदा प्रबन्धन अधिनियम, 2005, में विहित प्राविधानों, उ०प्र० औद्योगिक क्षेत्र विकास अधिनियम, 1976 के प्राविधानों, नौएडा/ग्रेटर नौएडा इंडस्ट्रियल डेवलपमेंट एरिया बिल्डिंग रेगुलेशन, 2010 में उल्लिखित नियमों के आलोक में जिला आपदा प्रबन्धन प्राधिकरण सम्यक विचारोपरान्त सर्वसम्मति से यह मत अवधारित करता है कि जनपद- गौतमबुद्धनगर में नौएडा/ग्रेटर नौएडा/यीडा के अधिसूचित क्षेत्र में आपदाओं की पुनर्रवृत्ति को रोकने एवं डूब क्षेत्र में अन्धाधुन्ध प्लाटिंग/कॉलोनाईजेशन के फलस्वरूप अनवरत हो रहे मानव जनित अवैध/अनधिकृत निर्माणों के कारण भविष्य में मानवजनित कारणों से प्राकृतिक आपदाओं की सम्भावना को समाप्त करने एवं जन-धन की क्षति को बचाने की संवेदनशीलता के दृष्टिगत वर्तमान परिस्थितियों में आवश्यक हो गया है कि मानव जनित कारणों से होने वाली आपदा से जनसामान्य के जीवन को सुरक्षित करने के लिए राष्ट्रीय आपदा प्रबन्धन अधिनियम, 2005, में उपरोक्तानुसार उल्लिखित प्राविधानों के आलोक में त्वरित कार्यवाही की जाए। अतएव इस हेतु जिला आपदा प्रबन्धन प्राधिकरण, गौतमबुद्धनगर मानव जनित आपदाओं के कारण भविष्य में उत्पन्न होने वाली

प्रतिकूल स्थितियों की सम्भावना को समाप्त करने एवं जनसामान्य के जीवन को सुरक्षित करने के उद्देश्य से तत्काल प्रभाव से निम्नवत निर्णय लेता है:-

A. ग्रेटर नौएडा/नौएडा/यमुना एक्सप्रेस-वे औद्योगिक विकास प्राधिकरणों के अधिसूचित क्षेत्र के अन्तर्गत उपरोक्तानुसार वर्णित प्राविधानों में दी गयी व्यवस्था के अनुसार भविष्य में मानव/प्राकृतिक जनित आपदाओं से जन धन की क्षति को बचाने के लिए अवैध एवं अनधिकृत तरीके से किये जा रहे भवनों के निर्माण/कॉलोनाईजेशन/प्लाटिंग को नियंत्रित करने एवं विधिसम्मत कार्यवाही करने के लिए औद्योगिक विकास प्राधिकरणों एवं पुलिस विभाग के द्वारा अविलम्ब कार्यवाही सुनिश्चित की जाए।

B. जनपद- गौतमबुद्धनगर के ग्रेटर नौएडा/नौएडा/यमुना एक्सप्रेस-वे औद्योगिक विकास प्राधिकरणों के अधिसूचित क्षेत्र के अंतर्गत तथा यमुना एवं हिण्डन नदियों के डूब क्षेत्र (Flood Plain Zone) में मानव जनित कारणों के फलस्वरूप आपदाओं से जनसामान्य के जीवन की सुरक्षा के लिए राष्ट्रीय आपदा प्रबंधन अधिनियम, 2005, की धारा-30 व धारा-34 में प्रदत्त शक्तियों का प्रयोग करते हुए किसी सम्पत्ति के क्रय/विक्रय विलेख को संबंधित उपनिबन्धक के समक्ष निबन्धन हेतु प्रस्तुत करने के पूर्व निम्नवत अनिवार्य उपबन्ध स्थापित किया जाये-

(1) जनपद गौतमबुद्धनगर के ग्रेटर नौएडा/नौएडा/यमुना एक्सप्रेस-वे औद्योगिक विकास प्राधिकरणों के अधिसूचित क्षेत्र के अंतर्गत उ०प्र० औद्योगिक क्षेत्र विकास अधिनियम, 1976 की धारा-2(घ), 6(छ), 9(1) एवं 10 में दिये गये प्राविधानों और नौएडा/ग्रेटर नौएडा इंडस्ट्रियल डेवलपमेन्ट एरिया बिल्डिंग, रेगुलेशन-2010 के नियम 20.2, 20.3 एवं 24.1 में उल्लिखित नियमों के आलोक में किसी भी औद्योगिक/वाणिज्यिक/संस्थागत/आवासीय (भवन/फ्लैट) के क्रय-विक्रय विलेखों के पंजीकरण हेतु उपनिबन्धक के समक्ष प्रस्तुत करने के समय यह अनिवार्य होगा कि विलेख में भवन की ऊंचाई और तलों की संख्या का अंकन कराया जाय। ऐसे औद्योगिक/वाणिज्यिक/संस्थागत/आवासीय (भवन/फ्लैट) के विक्रय विलेख, जो किसी भवन में स्थित हैं और उनकी ऊंचाई 15 मीटर से अधिक है अथवा औद्योगिक/वाणिज्यिक/संस्थागत/आवासीय (भवन/फ्लैट) चार तल से ऊपर हैं, तो ऐसी दशा में नौएडा/ग्रेटर नौएडा इंडस्ट्रियल डेवलपमेन्ट एरिया बिल्डिंग, रेगुलेशन-2010 के नियम 20.2, 20.3 एवं 24.1 में उल्लिखित नियमों के आलोक में प्राधिकरणों की अनुमति/भवन मानचित्र स्वीकृत किये जाने से सम्बन्धित अभिलेखों के प्रस्तुत किये जाने के उपरान्त ही संबंधित उपनिबन्धकों द्वारा किसी भी औद्योगिक/वाणिज्यिक/संस्थागत/आवासीय (भवन/फ्लैट) के क्रय- विक्रय विलेखों के पंजीकरण की कार्यवाही नियमानुसार सुनिश्चित की जाए। यहाँ यह भी स्पष्ट किया जाता है कि ऐसे औद्योगिक /वाणिज्यिक/संस्थागत/आवासीय (भवन/फ्लैट) जिनकी ऊंचाई 15 मीटर से अधिक है अथवा 4 से अधिक तल है और प्राधिकरणों की अनुमति/भवन मानचित्र स्वीकृत किये जाने के संबंध में सम्बन्धित अभिलेखों के प्रस्तुत नहीं किये जाने की दशा में ऐसे औद्योगिक/वाणिज्यिक/संस्थागत/आवासीय (भवन/फ्लैट) के किसी भी तल के क्रय-विक्रय विलेख के पंजीकरण की कार्यवाही सम्बन्धित उप निबन्धक द्वारा नहीं की जायेगी, जिससे भविष्य में किसी भी प्रकार की मानव जनित कारणों के फलस्वरूप

आपदाओं से होने वाली जन धन की क्षति के उत्पन्न होने की सम्भावना को समाप्त किया जा सके।

(ii) जनपद गौतमबुद्धनगर के ग्रेटर नौएडा/नौएडा/यमुना एक्सप्रेस-वे औद्योगिक विकास प्राधिकरणों के अधिसूचित क्षेत्र के अंतर्गत हिण्डन एवं यमुना नदियों के डूब-क्षेत्र में किसी भी औद्योगिक /वाणिज्यिक/संस्थागत/आवासीय (भवन/फ्लैट/आवासीय भूखण्ड) सम्पत्ति के क्रय-विक्रय विलेखों के पंजीकरण की कार्यवाही उ०प्र० औद्योगिक क्षेत्र विकास अधिनियम, 1976 की धारा-2(घ), 6 (छ), 9(1) एवं 10 में दिये गये प्राविधानों और नौएडा/ग्रेटर नौएडा इंडस्ट्रियल डेवलपमेंट एरिया बिल्डिंग, रेगुलेशन-2010 के नियम 20.2, 20.3 एवं 24.1 में उल्लिखित नियमों के आलोक में प्राधिकरणों की अनुमति/भवन मानचित्र स्वीकृत किये जाने से सम्बन्धित अभिलेखों के प्रस्तुत किये जाने के उपरान्त ही सम्बन्धित उपनिबन्धक द्वारा पंजीकरण की कार्यवाही की जायेगी, जिससे भविष्य में किसी भी प्रकार की मानव जनित कारणों के फलस्वरूप आपदाओं से होने वाली जन धन की क्षति के उत्पन्न होने की सम्भावना को समाप्त किया जा सके।

(iii) जनपद- गौतमबुद्धनगर के अंतर्गत प्राधिकरणों के अधिसूचित क्षेत्र में हिण्डन एवं यमुना नदियों के डूब-क्षेत्र में कृषि भूमि के क्रय/विक्रय विलेख के निबन्धन के पूर्व उ०प्र० औद्योगिक क्षेत्र विकास अधिनियम, 1976 की धारा- 2(घ), 6(छ), 9(1) एवं 10 में दिये गये प्राविधानों और नौएडा/ग्रेटर नौएडा इंडस्ट्रियल डेवलपमेंट एरिया बिल्डिंग, रेगुलेशन- 2010 के नियम 20.2, 20.3 एवं 24.1 में उल्लिखित नियमों के आलोक में सम्बन्धित प्राधिकरणों से इस आशय का प्रमाण पत्र/अनापत्ति प्राप्त की जायेगी कि प्रश्नगत क्रय की जाने वाली कृषि भूमि पर कोई अवैध/अनधिकृत निर्माण नहीं है ताकि भविष्य में किसी भी प्रकार की मानव जनित कारणों के फलस्वरूप आपदाओं से होने वाली जन धन की क्षति के उत्पन्न होने की सम्भावना को समाप्त किया जा सके।

नवीन ओखला औद्योगिक विकास प्राधिकरण के अपर मुख्य कार्यपालक अधिकारी द्वारा अपने पत्र संख्या - नौएडा/भूलेख/2020/3411, दिनांक 25.09.2020 द्वारा अन्य बिन्दुओं के साथ प्रस्तर-30 के बिन्दु-2 जो बिन्दु B से प्रदर्शित है, के सम्बन्ध में सहमति व्यक्त की गयी है।

x x x x

Office Memorandum dated 01.10.2020

कार्यालय जिलाधिकारी गौतमबुद्धनगर।
पत्रांक 1056/सी०आर०ए०-आपदा प्रबंधन/2020-21 दिनांक 01 अक्टूबर
2020

कार्यालय ज्ञापन

आपदा प्रबंधन अधिनियम-2005 की धारा- 25 में दिये गये प्राविधानों के अनुरूप गौतमबुद्धनगर में गठित जिला आपदा प्रबंधन प्राधिकरण की बैठक जिलाधिकारी गौतमबुद्धनगर/अध्यक्ष जिला आपदा प्रबंधन प्राधिकरण की अध्यक्षता में पूर्व निर्धारित कार्यक्रम के अनुसार दिनांक 30.09.2020 को सम्पन्न हुई। उपरोक्त बैठक में जनपद में पूर्व में घटित आपदा सम्बन्धित घटनाओं और

भविष्य में प्राकृतिक/मानव सृजित सम्भावित आपदाओं के न्यूनीकरण हेतु कतिपय निर्णय लिये गये हैं। जिला आपदा प्रबन्धन प्राधिकरण द्वारा आपदा प्रबन्धन अधिनियम-2005 की धारा-34 में दिये गये प्राविधानों के तहत जनपद के सम्बन्धित विभागों के लिए कतिपय अनुसंशा की गयी है जो उपरोक्त बैठक दिनांक-30.09.2020 के कार्यवृत्ति के प्रस्तर-30 के बिन्दु ए०और बी० पर वर्णित है।

अतः कार्यवृत्ति की प्रति संलग्न करते हुए सम्बन्धित को अनुपालनार्थ इस अनुरोध के साथ प्रेषित है कि आप आपदा प्राधिकरण के उपरोक्त निर्णय एवं अनुसंशा के क्रम में तत्काल अपने स्तर से नियमानुसार कार्यवाही करने का कष्ट करें।

संलग्नक- उपरोक्तानुसार।

अपर जिलाधिकारी(वि/रा)
गौतमबुद्धनगर"

7. As per averments made in the writ petition, the petitioners are absolute owners of land, and in the minutes of the meeting it has been resolved (vide Clause 30A and 30B), whereby directions were issued not to register sale deed, unless it is accompanied by "No Objection Certificate" from the respondents-development authorities.

8. Even on previous occasions the district authorities have passed similar order, wherein they had restrained the registering officer from registering the sale deed and this has always been set aside by this Court. A similar identical situation was earlier created where the District Magistrate has issued order dated 20.05.2011 restraining execution of sale deed of identically situated land. This was assailed before this Court by means of filing writ petition being Writ C No.-70786 of 2011 wherein this Court vide judgment and order dated 08.03.2013 was pleased to allow the petition and set aside the restrictions imposed by the District Magistrate on execution of sale deed. The operative part of the judgment and order dated 08.03.2013 is quoted below for ready reference:-

"On the aforesaid discussion, we are of the view that the Act of 1951 or the Government Order dated 3.2.1992, do not give legal authority in the District Magistrate to put restriction on the transfer of property in the subject area between River Hindan and its embankments. The District Magistrate may in order to save and control the loss of

property or life in case of floods or apprehension of water levels rising in the area put restrictions for raising of construction in accordance with the building bye-laws made by local authorities including the Municipal Corporation or the Ghaziabad Development Authority. If the building bye-laws did not restrict the private builders from raising multi storey constructions in the area, it will be arbitrary and discriminatory to place restrictions on sale and purchase of land on farmers for smaller areas. Further the restrictions on registering documents of sale or purchase on plots of land less than one thousand square meters for the reasons stated in the counter affidavit, if contradictory and causes hostile discrimination with no statable purpose or object to be achieved.

For the aforesaid reasons, the writ petition is allowed. The order of the District Magistrate dated 20.5.2011 placing restriction on transfer of property by the owners of the land in the area between River Hindan and the embankments constructed by the Irrigation Department, is set aside. The petitioners will be free to execute the agreement or transfer deeds, which will be registered by the registration authorities in accordance with law. The petitioners or the purchasers will, however, not raise any constructions, except after obtaining approval from the concerned local bodies or development authorities. Costs are made easy.”

(emphasis supplied)

9. Yet again, District Magistrate has passed an order on 04.12.2018 restraining the Sub Registrar from executing the sale deed. This was again challenged by way of a writ petition being PIL No.-5133 of 2018 and this Court had allowed the writ petition and has passed the following order:-

“In our view there would have been various other ways by which public may be apprised not to enter into transaction relating to properties which are illegally and unauthorizedly constructed, but in regard to the matters which are governed by statute, no executive order beyond the scope of statute is permissible.

In the result, the writ petition is allowed and impugned order dated 04.12.2018 passed by District Magistrate, Ghaziabad is set aside.”

(emphasis supplied)

10. After failing twice in imposing restrictions on execution of sale deed, the respondents once again conducted a meeting on 30.09.2020 they resolved that no sale deed be executed without prior “no objection” from the

concerned authorities. This was communicated vide Office memorandum dated 01.10.2020. The petitioners herein had challenged this restriction vide resolution dated 30.09.2020 and office memorandum dated 01.10.2020 by means of instant writ petition (Writ C No.-20573 of 2021).

11. This Writ C No.-20573 of 2021 was taken up for hearing on 13.09.2021 wherein the Court was pleased to pass the following order:-

The petitioners have questioned resolution dated September 30, 2020 of the District Disaster Management Authority, headed by the District Magistrate, Gautam Budh Nagar, to the extent it relates to direction provided in paragraph 30B(iii) of that resolution.

The contention of the learned counsel for the petitioners is that there can be no restriction on registration of transfer instruments as any such restriction would have to be placed by a valid and reasonable law and not by an executive fiat, inasmuch as such a restriction would violate Article 300-A of the Constitution of India. Learned counsel for the petitioners, in support of his submission, has cited a decision of a Division Bench of this Court dated 08.03.2013 in Writ-C No.70786 of 2011 (Annexure-10 to the petition).

The matter requires consideration.

The learned Standing Counsel has accepted notice on behalf of the respondent nos.1 to 5 and 7. Shri Kaushalendra Nath Singh has accepted notice on behalf of the respondent no.6. They pray for and are allowed three weeks' time to file their respective counter affidavits.

Put up as fresh on 18.10.2021.

12. The matter was again listed on 26.10.2021 but counter affidavit was not filed and the Court directed the State and NOIDA to file counter affidavit and also directed that in case the same is not filed, exemplary cost will be imposed. The matter was again taken up on various dates but no counter affidavit was filed and matter was then taken up on 25.04.2023 but still respondent nos.1, 2, 6 and 7 chose not to file response. The Court directed that in case no counter affidavit is filed, the Court directed that Principal Secretary Stamp and Registration U.P. at Lucknow (respondent

no.1); Inspector General of Registration U.P. at Lucknow (respondent no.2) and Nodal Officer, District Disaster Management Authority, Gautam Budh Nagar (respondent no.7) shall remain present personally before the Court. It is thereafter that the counter affidavit has been filed on behalf of respondent nos.3, 4 & 5 on 26.11.2021 in which it has been stated that the issue of illegal construction and encroachment on plain zone of various rivers has been a burning issue. Because of these encroachments and illegal constructions, a situation has been created where it can become a cause of natural disaster. It was further stated that the National Green Tribunal, New Delhi⁴ vide order dated 20.05.2013 has also considered this fact and ordered to check the illegal and unauthorized constructions on the Flood Plain Zone of Hindon and Yamuna River. The operative portion of order passed by NGT dated 20.05.2013 is being quoted hereunder:-

“It is conceded before us by all learned counsel appearing for respective Authorities, corporations, NCT of Delhi, State of Uttar Pradesh & State of Haryana that there are unauthorized and illegal constructions raised on the flood plain of river Yamuna. These constructions have been raised without permission of any competent authority. On the contrary, these authorities including the Irrigation Department of State of Uttar Pradesh and other authorities claim to have issued Notice to the persons who have raised unauthorized and illegal constructions upon the flood plain of river Yamuna, but rarely of any effect.

It is admitted position in law that construction upon flood plain area is prohibited. It not only affect the natural flow of the river but even causes environment problems besides raising risks to human life and property.....

In view of the above circumstances, we here by issue ad interim injunction restarting any illegal and unauthorized construction, be it temporary or permanent, on the flood plain zone of river Yamuna in the NCT of Delhi, State of Haryana & State of Uttar Pradesh. All authorities of the respective states including the police, Irrigation Department, Environment Department and PWD and all the public authorities and corporations shall ensure that no

4 NGT

illegal and unauthorized construction is raised upon the flood plain zone of river Yamuna. Wherever unauthorized and illegal constructions have been raised steps should be taken to demolish the same in accordance with law.”

13. In the Master Plan 2031 of NOIDA, it was proposed that no development of urban activities should be carried out in 5000 hectare land situated in the river front area of both the rivers. Moreover, river Yamuna suffers from inadequate flow and quantum of water during majority time of the year. Rapid urbanization, encroachment on the river bank and over exploitation of water in Delhi has resulted in the dwindling of water flow in the river. The river is highly polluted due to discharge of untreated waste water in the river. However, the river Yamuna generates very high level of water flow during rainy season and sometimes due to discharge of rainy water from dams cause floods in the area of Delhi and NOIDA. Therefore, conservation of flood prone area is essential. Therefore, urban activities have not been proposed in the river front areas of both the rivers. This entire area is proposed to be kept as green and open. However, it is proposed that the river front areas shall be developed for recreational and tourist activities.

14. A short-counter affidavit has been filed by Principal Secretary (Stamp and Registration), Government of U.P. Lucknow (Respondent No.1) on 17.5.2023 indicating therein that the resolution/minutes of meeting dated 30.9.2020 and office order dated 01.10.2020 were not passed by the respondent No.1 but was passed by respondent Nos.3, 5 and 7. It is further stated therein that respondent No.1 is not directly connected with the matter. DDMA has passed a resolution in its meeting dated 30.9.2020 wherein, the restrictions were imposed on the registration of deeds under sub-para (i) and (iii) of Para (B) of Point No.30.

15. It is also averred in the short counter affidavit that sub-para (i) and (iii) of Para (B) of Point No.30 in the minutes/resolution dated 30.09.2020 was cancelled by the State Government vide Government Orders dated

06.12.2021 and 07.12.2021 and the Government Orders dated 06.12.2021 and 7.12.2021 were amended by Government Order dated 05.01.2022. By virtue of Section 38(1) read with Section 2(5) of Disaster Management Act, 2005, and thereafter, respondent No.1 has withdrawn the previous Government Order dated 6th and 7th December, 2021 and 5th January, 2022 and referred the matter to the Additional Chief Secretary for further direction to the D.D.M.A.

16. Yet another affidavit has been filed on behalf of Principal Secretary, Revenue, Govt. of U.P., Lucknow on 09.07.2024 in which they have placed reliance on Government Order dated 08.07.2024, which reads as under :-

"

संख्या-699/एक-11-2024

प्रेषक,

राम केवल,
विशेष सचिव,
उत्तर प्रदेश शासन।

सेवा में,

1- जिलाधिकारी,
गौतमबुद्धनगर।
2- मुख्य कार्यपालक अधिकारी,
नोएडा, ग्रेटर नोएडा एवं यमुना
एक्सप्रेस वे प्राधिकरण।
3- महानिरीक्षक,
निबन्धन,
उ०प्र० लखनऊ।

राजस्व अनुभाग-11

लखनऊ: दिनांक: 08 जुलाई, 2024

विषय: सिविल मिस० रिट पिटीशन नोटिस संख्या 20573/2021 सुरेश चन्द्र व अन्य
बनाम उ०प्र० राज्य व अन्य तथा 8414/2021 यतेन्द्र कुमार व अन्य बनाम उ०प्र०
राज्य व अन्य के सम्बन्ध में।

महोदय,

उपर्युक्त विषयक रिट याचिकाओं में मा० उच्च न्यायालय, इलाहाबाद द्वारा पारित
आदेश दिनांक 31.07.20023 तथा 09.04.2024 के क्रम में मुख्य सचिव, उत्तर प्रदेश

शासन की अध्यक्षता में दिनांक 14.05.2024 को सम्पन्न बैठक में लिये गये निर्णय के क्रम में निर्गत कार्यवृत्त दिनांक 22.05.2024 का कृपया संदर्भ ग्रहण करें।

2- उक्त कार्यवृत्त के बिन्दु संख्या-3 के सम्बन्ध में जिलाधिकारी, गौतमबुद्धनगर से आख्या प्राप्त की गयी। प्राप्त आख्या के आधार पर लेखपत्र पंजीकरण के लिये इच्छुक व्यक्तियों को आवेदन पत्र प्रस्तुत करने तथा प्राधिकरणों से आपत्ति/अनापत्ति प्राप्त करने हेतु निम्नवत प्रक्रिया एवं समय सीमा निर्धारित की जाती है:-

1. लेखपत्र पंजीकरण के लिये इच्छुक व्यक्ति अपर जिलाधिकारी (वि०/रा०) के समक्ष/कार्यालय में आवेदन पत्र प्रस्तुत करेंगे।
 2. अपर जिलाधिकारी (वि०/रा०) प्राप्त आवेदन पत्र को सम्बन्धित प्राधिकरण को जिला आपदा प्रबन्धन प्राधिकरण, गौतमबुद्धनगर की बैठक के क्रम में पारित आदेश दिनांक 30.09.2020 के संदर्भ में 30 दिन के अन्दर आख्या प्रस्तुत करने हेतु प्रेषित करेंगे। यदि प्राधिकरण द्वारा 30 दिन के अन्दर (निर्धारित अवधि) में आख्या प्राप्त नहीं होती तो यह माना जायेगा कि इस सम्बन्ध में प्राधिकरण को कुछ नहीं कहना है तथा उसकी अनापत्ति मानते हुए अग्रिम कार्यवाही की जायेगी।
 3. सम्बन्धित प्राधिकरण से आख्या प्राप्त होने अथवा निर्धारित समय सीमा व्यतीत होने के उपरान्त अपर जिलाधिकारी (वि०/रा०), सम्बन्धित उपजिलाधिकारी एवं सिंचाई विभाग से प्राप्त आख्या के क्रम में परीक्षण कर आवेदन पत्र को अग्रिम आवश्यक कार्यवाही हेतु सम्बन्धित उपनिबन्धक को प्रेषित करेंगे।
- 3- इस सम्बन्ध में मुझे यह कहने का निर्देश हुआ है कि कृपया प्रकरण में उपरोक्त प्रक्रिया का अनुपालन सुनिश्चित कराने का कष्ट करें।

भवदीय,

Signed by

Ram Kewal

Datte: 08-07-2024 11:23:55

(राम केवल)

विशेष सचिव।"

17. G.O. dated 08.07.2024 made it mandatory that before sale deed is executed the vendor has to give application to Additional District Magistrate (Finance and Revenue), who in turn will take instructions from the authority within 30 days. Once instruction is received from the authority thereafter he will seek instructions from the Irrigation Department and then only sale deed could be executed. However, it has been made clear that in case within 30 days the instruction is not granted by the authority, it will be considered deemed approval.

ARGUMENT OF THE PETITIONERS

18. The learned counsel for the petitioners submitted that the right of a person to construct residential house is a valuable right. Moreover, the said construction can only be regulated in terms of the regulatory statutes. In the present matter, the respondent authorities have ample opportunity to regulate the constructions in view of the provisions contained under U.P. Urban Planning and Development Act, 1973⁵ or Act, 1976 but unless there exists a clear provision to restrict the transfer, the same cannot be taken away in an arbitrary manner. No restriction can be imposed on transfer of property by the owners of the land, who have got absolute title and right/claim with transferable right.

19. He further submitted that the present controversy is no longer res integra as the matter has already been settled by the Division Bench of this Court in Civil Misc. Writ Petition No.70786 of 2011 (Smt. Rajan Yadav & ors vs. State of UP and others) decided on 08.3.2013; and then again in Public Interest Litigation (PIL) No.50456 of 2013 (Sachin Yadav vs. State of UP & ors. He has also placed reliance on the judgement and order dated 15.5.2019 passed in Writ C No.8093 of 2019 (Sabir vs. State of UP and 3 others), as well as the judgement and order dated 31.10.2019 passed in Writ C No.35017 of 2019 (Satpal and 37 others vs. State of UP and 5 others).

20. The learned counsel for the petitioner emphatically submitted that the resolution and order to the extent of para no.30B(iii) is illegal, without jurisdiction, inasmuch as, Section 2(d), 6(f), 9(1) and 10 of Act, 1976 and its regulation do not apply as neither the building is to be erected nor the same is being transferred. The land sought to be transferred is purely an agricultural land, which although lies in the notified area but is not governed by Act, 1976.

⁵ Act, 1973

21. He next submitted that the land in question to be transferred by the petitioners herein is not an industrial area nor the transfers are being made for industrial, commercial or residential purposes, therefore, Section 2(d), 6(f), 9 and 10 of Act, 1976, which deals with the power to require proper maintenance of site or building is not applicable and therefore the restrictions imposed vide resolution dated 30.09.2020 or dispose of under G.O. dated 08.07.2024 are per se illegal.

22. He further submitted that the agricultural land of the petitioner is lying in flood zone and no construction can be raised and it actually bears no construction and therefore the powers conferred upon the authority as mentioned in the impugned order/resolution in exercise of the alleged powers under the Act, 2005 does not find place, therefore, the order impugned as well as subsequent G.O. dated 08.07.2024 are absolutely illegal.

23. The counsel further submitted that the provisions of the Act, 2005 does not contemplate prohibition over transfer of properties, inasmuch as, the transfer of property is regulated under the Registration Act, 1908⁶ and the same has nothing to do with the rules and regulations of NOIDA nor it has anything to do with the disaster as defined under the Act, 2005.

24. To elaborate, the learned counsel submitted that the Act, 1908 is a Central Legislation having its application in Uttar Pradesh being an act kept in the concurrent list of the VIIth schedule of the Constitution of India. The only hurdle, whereby the registration can be denied is Section 35 of Act, 1908, and that too, by a procedure provided under the Act. In case, the Registrar refuses the registration of sale deed under Section 71 of the Act, 1908 then the Registrar has to record reasons for refusal to register the sale deed.

⁶ Act, 1908

25. The learned counsel for the petitioners drew our attention to the statute and rules framed thereunder and submitted that the authority i.e. the Registrar/Sub Registrar has no jurisdiction to refuse registration of sale deed particularly in view of Rule 241 of the Rules framed under the Registration Act, 1908, which is being quoted below:-

“241:- Registering officers not concerned with validity of documents. Registering officers should bear in mind that they are in no way concerned with the validity of documents brought to them for registration, and that it would be wrong for them to refuse to register on any such grounds as the following-

I. that the executants was dealing with property not belonging to him;

II. that the instrument infringed the rights of third persons not parties to the transaction;

III. that the transaction was fraudulent or opposed to public policy;

IV. that the executants had not agreed to certain conditions of the document;

V. that the executants was not acquainted with conditions of the document;

VI. that the executants declared that he had been deceived into executing;

VII. that the executants is blind and cannot count.

These and such like are matters for decision, if necessary, by competent courts of law, and registering officers, as such, have nothing to do with them. If the document be presented in a proper manner, by a competent person, at the proper office, within the time allowed by law, and if the registering officer be satisfied that the alleged executants is the person he represents himself to be, and if such person admits execution, the registering officer is bound to register the document without regard to its possible effects. But the registering officer shall make a note of such objections of the kinds mentioned in grounds (1) to (7) above, as may be brought to his notice in the endorsement required by Section 58.”

26. He argued that Rule 241 of the Rules framed under the Registration Act, 1908 stipulates that the registering officer has no jurisdiction or authority to look into the validity of the title.

27. Learned counsel for the petitioner lastly submitted that G.O. dated 08.07.2024 has provided nothing but the very same order, which will create hindrance by which no objection certificate would never be granted. A plain reading of G.O. dated 08.07.2024 shows that once the vendor applies for NOC, the authority will give instructions within 30 days. Thereafter, ADM seeks instructions from the Irrigation Department and there is no time frame for it. With the result, no “No Objection Certificate” will ever be granted to the vendor. This G.O. is nothing but to create further hindrance by which the vendor is forced to take NOC and at the same time, the State has made it very difficult to get the NOC.

ARGUMENT OF THE RESPONDENTS

28. Per contra, Sri Manish Goyal, learned Additional Advocate General assisted by Sri F.A. Ansari, learned Standing Counsel for the State-respondents stated that the issue of illegal construction in the flood plain area in North Central Region⁷ has aggravated in many folds. Maximum number of sale deeds are happening where illegal colonies are being made because of residential pressure around Delhi/NCR and all kind of illegal activities are being carried out in flood plain zone area. If these activities are not checked immediately, it may cause huge natural disaster which may end up in huge loss to the life and property of people around.

29. He further submitted that his arguments would be mainly on the four prongs :-

⁷ NCR

(A) Firstly, NGT has considered this problem of illegal construction in flood plain zone and has passed order on 20.05.2013, wherein the Tribunal has shown its concern about illegal developments being carried out in the flood plain zone. He further submitted that in view of the directions given by NGT it is imperative to curb such kind of illegal constructions mushrooming up in the area, for which the only way is to restrict the execution of the sale deeds. The respondents are not stopping the execution of sale deeds but are only asking the vendors to take “No Objection Certificate” just to ensure that there are no illegal constructions over the said property.

(B) Secondly, to curb the mischief of illegal construction :

Undoubtedly, illegal constructions in the flood plain area has become a menace. Lots of Land Mafias have started doing sale-purchase of land and they are selling small piece of land after illegal plotting to gullible buyers. Due to acute shortage of housing in NCR, poor people are becoming prey of these Land Mafias. After considering this issue, respondents had come up with resolution dated 30.09.2020 and put restrictions on execution of sale deeds in that area. On the order passed by this Court, the original resolution has been watered down by Government Order dated 08.07.2024 wherein now it has been agreed that the vendor can execute the sale deed but before that he has to make an application before the Additional District Magistrate, Finance and Revenue, Gautam Budh Nagar⁸, who within next 30 days would seek instructions and thereafter, on the basis of report given by the A.D.M., instructions would be sought from the Irrigation Department, and thereafter, the sale deed can be executed by the vendor. In case, he does not get any instruction within 30 days, it will be deemed approval.

8 A.D.M.

(C) Thirdly, disaster caused by such mischief :

Because of increased housing pressure in the NCR, Land Mafias have started taking advantage and have started buying plots in the flood plain zone and illegally plotting the same into small pieces and started selling it to gullible poor people, who wants to have an accommodation in the NCR. The illegal colonization have been mushrooming in the flood plain zone, which would lead to natural disaster. To mitigate this disaster, DDMA had indicated that illegal mushrooming of such colonization in the flood plain area has to be curbed, and in order to curb the same it has put certain restrictions on the sale-purchase of land in that area.

(D) Fourthly, remedial action to be taken to curb this menace:

The only way to curb this illegal action is to do it under a statute. A meeting was conducted on 30.09.2020 under the aegis of District Disaster Management Authority, who after considering all the facts and situation on the ground, has suggested for finding a way to curb the sale of property which is being used for such illegal mushrooming of colonies. It was further submitted that remedial actions should be taken in this regard, the restrictions sought to be imposed are completely proportionate and in line with the provisions of the Disaster Management Act, 2005. If such kind of reasonable restrictions are not imposed, then there will be mayhem which will end up into great natural calamity. He further submitted that there is no blanket ban on the sale of the property. The only thing the respondents are asking from the vendor is to take “No Objection Certificate” from the authority to ensure that there are no illegal constructions over the said land falling within flood plain zone. This restriction is fair and reasonable. In fact, it protects the fundamental rights, which is right to live.

30. Mr. Goyal, further vehemently submitted that DDMA cannot remain a mute spectator by allowing such kind of unauthorized colonies/constructions coming up in flood plain area. It is only to mitigate disaster that DDMA has set up conditional regulation for transfer/sale of land falling in the flood plain zone area.

31. Mr. Goyal, further stated that whatever restrictions are being imposed are for betterment of the people and property. Restrictions are reasonable and the same has been imposed just to ensure that no illegal mushrooming of colonies come up on the flood plain zone.

32. Heard the submissions of all the learned counsel appearing in the different writ petitions, who have adopted the arguments advanced by learned Senior Counsel for the petitioners, learned Additional Advocate General for the State-respondents and perused the record.

ANALYSIS BY THE COURT

33. From the record, it transpires that DDMA conducted meeting on 30.09.2020, which was basically held to stop illegal construction/plotting and construction of multi storied buildings in flood plain zone. In this meeting, it was resolved as under :-

(A) That the police should immediately take action against any person who is found involved in illegal construction/colonization/plotting of land in the flood plain zone.

(B) In the notified area of Industrial Development Authorities within the flood plain zone of Yamuna and Hindon rivers in order to save life and property of people, under section 30 and 34 of Act, 2005 following conditions should be met before sale and purchase of property in those area:-

(i) In light of the provisions given in sections 2(d), 6(f), 9(1), and 10 of the U.P. Industrial Area Development Act, 1976 and the rules mentioned in Rule 20.2, 20.3 and 24.1 of the Noida/Greater Noida Industrial Development Area Building Regulation 2010, for the areas notified under the Greater Noida/Noida/Yamuna Expressway Industrial Development Authorities of Gautam Buddha Nagar

District, at the time of presenting the sale-purchase deed of any industrial/commercial/institutional/residential (building/flat) before the sub-registrar for registration, it will be mandatory that the height of the building and the number of floors be mentioned in the deed. If industrial/commercial/institutional/residential (building/flat) is located in a building and its height is more than 15 meters or industrial/commercial/institutional/residential (building/flat) is exceeding four floors, then, in such case, the process of registration of sale-purchase deed of any industrial/commercial/institutional/residential (building/flat) should be ensured as per the rules by the concerned Sub Registrar only after the submission of records related to approval granted by the authorities/ acceptance of the map of building, in the light of the rules mentioned in the Rule 20.2, 20.3 and 24.1 of the Noida/Greater Noida Industrial Development Area Building Regulation, 2010. It is also clarified here that in case of non-submission of relevant records regarding permission of authorities/approval of building map for such industrial/commercial/institutional/ residential (building/flat), which is of height more than 15 meters or has more than 4 floors, then the registration process for the sale-purchase deed of any floor of such industrial /commercial/institutional/ residential (building/flat) shall not be undertaken by the concerned Sub Registrar; so that in future the possibility of loss of life and property due to disasters occurring as a consequence of any kind of manmade reasons, can be eliminated.

(ii) The proceedings for registration of sale-purchase deed of any industrial/commercial/institutional/residential building/flat/residential plot) property in the flood plain zone of Hindon and Yamuna rivers, lying under the area notified by the Greater Noida/Noida/Yamuna Expressway Industrial Development Authorities of District Gautam Buddha Nagar, shall be done by the concerned Sub Registrar only after submission of records related to approval granted by the authorities/acceptance of the map of building, in light of the provisions given under Section-2 (d), 6 (f), 9 (1) & 10 of the UP Industrial Area Development Act 1976 and the rules mentioned in Rule 20.2, 20.3 and 24.1 of the Noida/ Greater Noida Industrial Development Area Building Regulation, 2010; so that in future the possibility of loss of life and property due to disasters occurring as a consequence of any kind of manmade reasons, can be eliminated.

(iii) Before the registration of sale/purchase deed of agricultural land in the flood plain zone of Hindon and Yamuna rivers lying in the notified area of the authorities under Gautam Buddha Nagar District, a certificate/no objection certificate in light of the provisions given in Section-2 (d), 6(f), 9(1) and 10 of U.P. Industrial Area Development Act, 1976 and the rules mentioned in Rule 20.2, 20.3 and 24.1 of Noida/ Greater Noida Industrial Development Area Building Regulation, 2010, shall be obtained to the effect that there is no illegal/unauthorized construction on the agricultural land in question which is to be purchased; so that in future the possibility of loss of life and property due to disasters occurring as a consequence of any kind of man-made reasons, can be eliminated.

34. Clause B(i) of the Resolution of DDMA relates to industrial and residential area. Clause B(ii) relates to house in flood plain zone area. However, Clause B(iii) is relevant for the adjudication of these writ petitions, in which it is stated that before sale/purchase of land in flood plain zone of Hindon and Yamuna rivers it is imperative to obtain “No Objection Certificate” in light of the provisions given in Section 2(d), 6(f), 9(1) and 10 of Act, 1976 as well as Rules 20.2, 20.3 and 24.1 of NOIDA/Greater NOIDA Industrial Development Area Building Regulation, 2010 to ensure that there is no illegal/unauthorized construction, so that there cannot be any natural calamity in those area.

35. During pendency of the instant writ petitions, the Government of U.P. has watered down the resolution dated 30.09.2020 and passed Government Order dated 08.07.2024 wherein it has been held that any vendor who wants to sell his agricultural land of which he is absolute owner, he has to make an application before the A.D.M., Finance and Revenue seeking permission to sell the land. Thereafter, A.D.M. within 30 days would seek instructions from the authority and thereafter, he will take instructions from the Irrigation Department and in case, it is not accorded within 30 days, the same would be deemed to have been approved, and after that the vendor is allowed to execute the sale deed.

36. It is not disputed that an identical restriction has been imposed earlier, District Magistrate vide order dated 20.05.2011 has restrained execution of sale deed for the agricultural land in flood plain zone. This order dated 20.05.2011 was assailed before this Court in Writ P. no.70786 of 2011 wherein this Court was pleased to allow the writ petition and set aside the restrictions imposed by the District Magistrate. However, again similar restrictions were imposed by the District Magistrate vide order dated 04.12.2018 wherein he ordered not to execute any sale deed in flood plain zone and the same was challenged in PIL No.5133 of 2018 and this Court vide order dated 24.01.2019 was pleased to set aside the order passed by the District Magistrate and allowed the vendors to execute the sale deed. Respondents had earlier twice imposed such kind of restrictions and the same were set aside by this Court and again by means of resolution dated 30.09.2020 and Office memorandum dated 01.10.2020, the respondents had imposed the same restrictions though only difference is this time the same restrictions has been imposed under the garb of Act, 2005.

37. Section 30(xxiii) of the Disaster Management Act, 2005 lays down powers and functions of District Authority and reads as under:

“30. Powers and functions of District Authority.—(2) Without prejudice to the generality of the provisions of provisions of subsection (1), the District Authority may-

.....
.....

(xxiii) examine the construction in any area in the district and, if it is of the opinion that the standards for the prevention of disaster or mitigation laid down for such construction is not being or has not been followed, may direct the concerned authority to take such action as may be necessary to secure compliance of such standards.

.....”

38. On plain reading of aforesaid section it transpires that if the district authority finds that for prevention of disaster, which could be caused by

construction, then the authorities may take suitable and necessary action to secure compliance of such standard to mitigate such kind of disaster. Here in the case in hand, there are illegal colonies being mushrooming in the flood plain zone and it is imperative on the respondents to ensure that no such illegal colonies come up in that area and whatever illegal constructions come up in the area, should be demolished.

39. Section 35 (2) of the Disaster Management Act, 2005 lays down as follows :-

“35. Central Government to take measures.—(1) Subject to the provisions of this Act, the Central Government shall take all such measures as it deems necessary or expedient for the purpose of disaster management.

(2) In particular and without prejudice to the generality of the provisions of sub-section (1), the measures which the Central Government may take under that sub-section include measures with respect to all or any of the following matters, namely:—

(a) coordination of actions of the Ministries or Departments of the Government of India, State Governments, National Authority, State Authorities, governmental and non-governmental organisations in relation to disaster management;

(b) ensure the integration of measures for prevention of disasters and mitigation by Ministries or Departments of the Government of India into their development plans and projects;

(c) ensure appropriate allocation of funds for prevention of disaster, mitigation, capacity-building and preparedness by the Ministries or Departments of the Government of India;

d) ensure that the Ministries or Departments of the Government of India take necessary measures for preparedness to promptly and effectively respond to any threatening disaster situation or disaster;

(e) cooperation and assistance to State Governments, as requested by them or otherwise deemed appropriate by it;

(f) deployment of naval, military and air forces, other armed forces of the Union or any other civilian personnel as may be required for the purposes of this Act;

(g) coordination with the United Nations agencies, international organisations and governments of foreign countries for the purposes of this Act;

(h) establish institutions for research, training, and developmental programmes in the field of disaster management;

(i) such other matters as it deems necessary or expedient for the purpose of securing effective implementation of the provisions of this Act.”

40. Looking to the aforesaid provisions of Disaster Management Act, 2005 and the restrictions imposed by the respondents, this Court finds that there is no rationale between the two. The respondents are not taking any action to remove the illegal/unauthorized constructions which has come up. No such construction could have come up without connivance of the officers of the authority. The failure of the authority to stop the illegal constructions cannot be covered by such kind of resolution which prohibits transfer of agricultural land on which there is no construction.

41. The right to hold property includes right to sale the property, ceased to be a fundamental right, when it was transposed from part III to part XII and inserted as chapter IV by tenth Constitutional amendment (44th amendment) Act, 1978, w.e.f. 20.06.1979. It is now a constitutional right vide **Zilubhi Nanbhai Khachar vs. State of Gujrat**⁹, subject to restrain and regulations by the State vide **State of Bihar and others vs. Project Uchha Vidya, Sikshak Sangh and others**¹⁰, wherein it was held by Supreme Court that restrain and Regulation must be fair and reasonable and should not violate the fundamental rights guaranteed in Part-III of the Constitution of India.

42. Under Article 300A of the Constitution of India, every citizen has right to acquire, sell and dispose of property. Any restrictions imposed upon a person by the authority in disposing of his own property would amount to

9 1995 Supp.(1) SCC 596

10 (2006) 2 SCC 545

violation of Article 300A of the Constitution of India. However, if the restrictions are reasonable as held by Hon'ble Supreme Court in the matter of **State of Bihar and others vs. Project Uchcha Vidya, Sikshak Sangh and others (supra)**, the same can be imposed, if it does not violate the fundamental rights enshrined in Part III of the Constitution of India.

43. Thus, any restriction placed on right to property, which violates Article 300A must be based upon valid and reasonable law. The Disaster Management Act, 2005 does not give any such power to the District Magistrate. If he did not have any objections for the builders raising constructions in the area, it is not open to him to restrict the transfer of properties in the area.

44. In **T. Vijayalakshmi and others vs. Town Planning Member and another**¹¹ it was held by the Apex Court that the right to property would include right to construct a building. Such a right, however, can be restricted by legislation, which must stand test of reasonableness. The right to property has also been included as human right and is part of right to development, which in turn has been held to be right to life guaranteed under Article 21 of the Constitution of India.

45. Considering the above provisions and authorities pronounced by the Hon'ble Supreme Court, we are of the view that the Disaster Management Act, 2005 does not give legal authority to the District Magistrate to put restriction on the transfer of property in the subject area between River Hindan and River Yamuna flood plain zone. It will be arbitrary and discriminatory to place restrictions on sale and purchase of agriculture land of farmers.

46. Here, in the instant case, the restrictions imposed by the respondents are not reasonable restrictions though it is only of asking for "No Objection

¹¹ (2006) 8 SCC 502

Certificate” from the authority before execution of sale deed. The authority is in fact nobody to grant “No Objection Certificate” to the vendor. Even the Statute does not authorize the respondent to impose such kind of condition wherein a vendor is forced to go and take “No Objection Certificate” from NOIDA.

47. It is an undisputed fact that no illegal construction could have come up in flood plain zone, until and unless the same is carried out with connivance of officers of the authority. It is surprising to see that the authorities had not taken any action against the officers, who had allowed such kind of construction to come up in flood plain zone but they are keen to create impediments and hurdles for the farmers, who want to sell the agricultural land. We fail to understand as to how in the presence of the authority and its officers, such illegal constructions in flood plain zone has been coming up. It is even more surprising to see that now the respondents have relegated the vendors to go to the same authority to take “No Objection Certificate”. It is just like asking “fox to guard the henhouse”. The authority which is clearly responsible for mushrooming of illegal colonies in the flood plain zone are now being asked to give “No Objection Certificate”. In our considered view, this amounts to complete mockery of the system.

48. Respondents cannot cover their mistakes by imposing conditions which has no rationale with the Act under which such conditions are imposed. As far as reasonable restrictions are concerned, to mitigate any kind of future disaster and loss of human life and property it is imperative to lay down reasonable restrictions and to check on illegal/unauthorized constructions coming up in flood plain zone.

49. It is clear that the impediments so created by resolution dated 30.09.2020, Office Memorandum dated 01.10.2020 and G.O. dated

08.07.2024 has no relation with Disaster Management Act, 2005 and hence, the restrictions are found to be illegal and are, accordingly, set aside.

50. With the aforesaid directions, all the writ petitions are hereby **disposed of.**

Order date : 22.08.2024

Manish Himwan