

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH
NEW DELHI**

Original Application No. 225/2015

In the matter of:

1. Resident's Welfare Association,
Sector 23, Noida (Regd.),
Through Shri Deepak Manghani,
Registered Address at C-41B, Community Centre,
Sector-23, Noida, U.P., 201301
2. Shri Rajesh Kathotia,
S/o Shri Moolchand Kathotia,
R/o A-97, Sector 23, Noida, U.P., 201301
3. Shri Ravinder Singh,
S/o Cdr. Amarjit Singh Natt,
R/o A-98, Sector 23, Noida, U.P., 201301
4. Shri Deepak Manghani,
S/o Shri KV Manghani,
R/o A-99, Sector 23, Noida, U.P., 201301
5. Col. S.B. Lamba,
S/o Shri Jagbir Singh,
R/o A-100, Sector 23, Noida, U.P., 201301
6. Shri Arunoday Bhattacharjya,
Former Additional Secretary, Government of India &
Former Chairman, Central Pollution Control Board,
R/o Bhoomika, A-104, Sector-23,
Noida, U.P., 201301

.....Applicants

Versus

1. New Okhla Industrial Development Authority,
Through its Chairman/ Secretary,
Administrative Complex,
Sector 6, Noida-201301,
Gautam Budh Nagar, Uttar Pradesh
2. State of Uttar Pradesh,
Through its Chief Secretary,

Vidhan Bhawan/ Secretariat,
Lucknow, Uttar Pradesh

3. Union of India,
Through Secretary,
Ministry of Environment, Forests & Climate Change,
Indira Paryavaran Bhavan,
Jor Bagh Road, New Delhi-110003
4. Central Pollution Control Board,
Parivesh Bhawan, CBD-cum-Office Complex,
East Arjun Nagar, Delhi-110032
5. Uttar Pradesh Pollution Control Board,
Through its Chairman
Building No. TC-12V
Vibhuti Khand, Gomti Nagar,
Lucknow-226 010, U.P.
6. State Level Environment Impact Assessment Authority, UP
Through Member Secretary,
Dr. Bhim Rao Ambedkar Paryavaran Parisar,
Vineet Khand-I, Gomti Nagar, Lucknow-226010
7. District Magistrate,
Gautam Budh Nagar, Noida, U.P.

.....Respondent

COUNSEL FOR APPLICANT:

Mr. Amit Khemka, Adv.

COUNSEL FOR RESPONDENTS:

Mr. Ravinder Kumar, Adv. for Respondent No. 1

Mr. Ankit Verma and Ms. Savitri Pandey, Advs. for
Respondent No. 2 & 7

Mr. Vikas Malhotra and Mr. M.P. Sahay Advs. for Respondent
No. 3

Mr. Raj Kumar Adv with Niti Choudhary, (L.A.) for
Respondent No. 4

Mr. Pradeep Misra, Mr. Daleep Kr. Dhayani, Advs. for
Respondent No. 5

Ms. Savitri Pandey, Adv. for Respondent No.

JUDGEMENT

PRESENT:

Hon'ble Mr. Justice Swatanter Kumar (Chairperson)

Hon'ble Mr. Justice Raghuvendra S. Rathore (Judicial Member)

Hon'ble Mr. Bikram Singh Sajwan (Expert Member)

Hon'ble Mr. Ranjan Chatterjee (Expert Member)

Reserved on: 07th September, 2016

Pronounced on: 15th December, 2016

1. Whether the judgment is allowed to be published on the net?
2. Whether the judgment is allowed to be published in the NGT Reporter?

RAGHUVENDRA S. RATHORE. (JUDICIAL MEMBER)

This Original Application has been filed by the Applicants against the action of Respondents in allotting plot No.C-43, Sector 23, Noida for constructing high-rise commercial buildings of seven and half storeys in the middle of residential sector. The apprehension of the Applicants is that if this building is allowed to be constructed, it would further deteriorate the environment of the sector. Therefore, the Applicants have, inter-alia, prayed for quashing of action of Respondent No.1 in allowing change of user from sector shops to multi storyied commercial building on plot No.C-43, Sector 23, Noida. Further it has been prayed for quashing of any

allotment made, based on such illegal user change in respect of plot C-43 as Sector 23, Noida.

Facts in brief:

2. The Applicant No.1 is a registered society formed and registered at Delhi, having its registered office in Sector 23, Noida, Uttar Pradesh. The society is said to be in existence since 1999 and working for welfare of residents of Sector 23, Noida. Sector 23 is having a total area of 246305sq.m and consists of approximately 300 plots and three groups of housing societies having about 280 flats for residence. The most of the plots in the sector are residential except for certain plots which have been carved out for commercial purposes, such as local sector shops, school, temple, community centers etc.

3. According to the Applicants, the initial of plan Sector No.23 was having an area of about 17340sqm comprising of 7.88% of the sector land for facilities such as Community Centre, Playgrounds and other facilities for use of residents of the sector. About 5250sq.m constituting 2.66% of the sector land was for commercial activity, incidental to residential living i.e. the sector shops. The area allotted for sector shops, was divided into three parts at different places in the sector. They were meant for small shops, vegetable shops, dairy, and establishment of Mother Daily etc. The roads within sector are 18m in width catering to the need of sector residents. Public

utility and Public facility complex were created in the center of the sector which consists of Central Park, Community Center, Dispensary and area for local shops. The plot C-44 was allocated for Central Park, Plot C-41B for Community Center, C-42 for Dispensary and C-43 was allocated for local sector shops, to cater the daily needs of the residents of the sector. All these plots are adjacent to each other. The sector plan is said to have been first prepared in the year 1986. The plot C-42 and C-43 meant for Dispensary and other Community Services are still lying vacant.

4. In the year 2006, a news item was published in the news paper “Daily Jagaran” (dated 14.3.2006), wherein, it was reported that the Respondent No.1 was proposing to use plot C-42 and C-43 for the purposes of banquet hall in the sector. The Applicants and other Respondents of the sector had objected to the said proposal and also made representations before the Respondent No.1 on 25.9.2006.

5. Again in the year 2009, the Respondent No.1 had sought to allot the plot C-43A in sector 23, to a private commercial Nursing Home. As the number of the plot indicates, it was sought to be carved out of plot No.C-43. The proposal was again objected to by Applicant No.1, vide their letter dated 14.12.2009, with a request to Respondent No.1 to withdraw the aforesaid proposal. The Applicant No.1 had requested to Respondent No.1 to consider the allotment of the said plot for

making it a part of the Community Center or a Senior Citizens Complex.

6. It was in the year 2010 that the Respondent No.1 had through the newspaper "Hindustan Noida" dated 16.9.2010, announced that the commercial plots in Noida would be utilized for Restaurant, Hospital and other commercial activities. Sector No.23 was also shown as one of such proposed site. The Applicants' society protested against the said decision on 10.10.2010 and 14.2.2012 and apprised Respondent No.1 of the fact that the Sector was not in need of any School, Nursing Home, Shopping Complex, Dispensary or banquet hall, as many such establishments are already existing and functioning in the vicinity of the sector. The Applicants' society requested for using the redundant shop space in the sector for a complex meant for Senior Citizens of the Sector as no such institution exists in the entire Noida city and playground for children, as there is none in the sector. No allotment to third party was made and, therefore, it was believed that the plan to allot the land for any commercial activity or Nursing Home has been dropped.

7. Later in the month of June, 2012, the Respondent No.1 had again proposed to sell plot C-43A for Nursing Home. Sooner the Applicants came to know about such advertisement, a representation was submitted to the Respondent No.1 on 9.7.2012, with the request not to use the plot for the said purpose. The Applicants had thereafter approached the Hon'ble

High Court of Judicature at Allahabad, by way of filing the Writ Petition (37460 of 2012), to seek quashing of the proposal to construct a Nursing Home in plot C-43A and also the special scheme for Nursing Home plots as published by Respondent No.1 with regard to sector 23, Noida. The Hon'ble High Court granted stay in favour of the Applicants asking the Respondents not to allot plot C-43A for the said purpose, till pending adjudication. The said matter is still pending before the Hon'ble High Court.

- 8.** Some of the residents of Sector 23 had, on 17.4.2015, learnt about an advertisement published in Times of India on 21.3.2015, whereby Respondent No.1 had invited sealed tenders for allotment of commercial plots under the Scheme of 2014-15 (Commercial builders plot-I) in various sectors of Noida, in which C-43, Sector 23, admeasuring 1879sq.m was also included. The plot C-43 had been allocated in the sectoral plan for small sector shops. Having come to know about the said advertisement, the Applicant Nos. 2 to 6 and other residents of the sector had visited the office of Respondent No.1 and inquired about the matter.

By the said advertisement, the Respondents have allowed prospective purchasers of the plot, maximum ground coverage of the area which is 0.40 and maximum Floor Area Ratio (FAR) of 2.00. The successful bidders could, therefore, apply for additional FAR of 0.60 and raise the same from 2.00 to 2.6.

These specifications of the proposed commercial buildings infer that seven and half (including basement) storied building reconstructed on plot C-43, if sold to a private developer.

According to the Applicants, in plot C-43, admeasuring 1879Sq.m if used for sector shops, it would have a floor area of ratio of 0.20 only, as it is the practice in case of all other sector shop areas and would virtually be no load on infrastructure of the sector. But if a commercial building with proposed FAR of 2.6 comes up then it would have more than 56000 sqft of covered area.

9. The Respondent No.1 has contested the case of the Applicants by way of filing a reply. They have mainly denied the averments of the Original Application as being wrong and incorrect. According to Respondent No.1, there has been no change whatsoever in the Master Plan. They denied the allegations as being baseless. They averred in the replies that from day one in the layout plan of the sector, plot in question is commercial in nature and it is permissible to have commercial pocket within residential sector. It has been denied that building if constructed would be seven and half storied. Such disclosure in the petition has no basis. Every building which is to be constructed has to have FAR within limit, as prescribed in the Building Regulations. The relevant Regulations for the plot in question, would not result in construction of seven and half storied building. The Respondents have stated that when there

is no change in the Master Plan, there is no question of obtaining any Environment Clearance (EC) as the same is applicable only in the case where constructed area is in excess of 20,000 sqm. Such construction is not possible over the plot in question. There is no basis to say that the construction of building over the plot in question, would be detrimental to environment of the sector. Further, it is submitted by the Respondents that if criteria advanced by the Applicants is accepted, then no construction would be allowed anywhere in the city of Noida.

10. In respect of the facts given in the Application, the Respondents have sought for strict proof of the same. Further, it is stated that sector 23 has been developed in accordance with sectoral layout plan, which provides for statement of area and description of the plots. The Plan was finalized in the year 1996 and certain modifications thereof were carried out later, which do not concern the plot in question. The original layout plan do include a commercial pocket within the sector. The plot in question is part of that commercial pocket, which existed from day one and it is not that by effecting change in the sectoral plan that commercial plot has now been carved out.

11. The respondent has further submitted that it has been constituted and functions under a statute. They have submitted that Sector 23 is primarily residential in nature and as per the planning norms, it also has a commercial pocket. So

according to the respondent, as per the approved original layout plan of Sector 23, the total area having commercial land use within sector is 5250 sq. meters, which is only 2.38 percent of the total area and therefore the primary nature of the sector is residential. But for planned development, in every residential sector, there is a designated commercial pocket. The plot in question falls within the commercial pocket of 5250 sq. meters. The road is 18 meters wide. The applicant cannot argue that the nature of the sector or the permissible activities on the basis of the roads constructed three decades ago.

The applicant, it is stated by the respondents, has contended that the commercial pocket must be planned actually to cater to the populace of their sector, as if persons from the adjoining sectors are aliens who should not be allowed to enter the sector and to use the commercial facilities existing therein. The document filed as annexure A/2 is incomplete, therefore, no reliance can be placed on the same. The applicant has rightly admitted that plot C-43 is part of the commercial pocket and when it is so admitted, then the applicants cannot contend that it can contain only a single storey building. It is a commercial pocket and activities therein are as per the Master Plan and Building Regulations including FAR.

12. The vacancy of the plot is not determined by its character and plot C-43 is a commercial plot which is in two parts

comprising of C-43 and C-43A. The plot C-43 is earmarked for nursing home, as per the layout plan. A dispensary is different from nursing home. The respondents have submitted that it is not known as to which objection the applicant is referring to because no such objection is marked as annexure to para under reply (5m).

It is further submitted by the respondent that the land use is not to be determined by any residents. The land use is determined by the Master Plan and the Sectoral Plan. The so called letters 10.10.2010 and 14.02.2012 have not been annexed to the application when the plot is demarcated as commercial, as per the Sectoral Plan, it would naturally be used for the said purpose. The respondents have denied that there is no park or open space within the sector. Compared to an area of 5250 sq. meters which is equal to 2.38 % of the sector area, an area of 18207.79 sq. meters totaling to 7.17 % of the sector area is earmarked for and is being used as park. This is in addition to the green belt around the sector. The applicants, it is contended by the respondent, appears to be very short sighted as they only seem to be interested in facilities for the actual inhabitants of the sector and desired to be oblivious that nursing home etc. which is permissible under the Master Plan area allocated to cater the needs of other residents of the city. The plot no. C-43A is marked as a plot for nursing home but in

view of the interim order passed by the High Court in the Writ Petition (37460/2012), no allotment has been made.

13. The land use is commercial in nature. According to the respondents it is wrong to contend that only small shops, catering to the daily requirements of the residents of the sector, alone are permissible on the plot in question. The interim order passed by the High court is in relation to plot C-43A and not plot C-43 and these two plots are distinct. The construction which is permissible, includes ground coverage and the FAR which has to be in accordance with the Building Regulation. It is submitted by respondent that it is too hypothetical to contend that the person who applies for allotment will also buy the additional FAR. It has been submitted by the respondent that it has not even been disclosed in the question as to on what basis the building to be constructed would be certainly 7 ½ storeys wherein at least 700 people would be working. Commercial pocket is permissible in a residential sector and there is nothing wrong in it. It is submitted by the respondent that the applicant appears to have concern over shortage of electricity and consequent use of generators in a commercial building. But they have not disclosed whether no resident in Sector 23 uses a generator and does not contribute towards sound and air pollution. The norms regarding use of generators and the requirement of pollution certificate are well known and if at all,

the same is to be used, the competent authority in this regard shall perform its duty as a watchdog. The authority does not permit squatting or dhabas and with a vigilant RWA, like the applicant, there is no basis to apprehend that dhabas will also mushroom in the area. It has also been denied by the respondents that there would be congestion on account of increase in number of vehicles.

14. According to the respondents adjacent plot has an area of about 4 ½ acres and it is wrong to contend that high rising building would be constructed adjoining to the park and would have any adverse effect on it. Even for residential plot, FAR of 1.8 is provided in the building by laws. For the commercial plots, like the one in question, permissible FAR is only two. In commercial buildings, extra FAR has to be purchased and it is not available free. It has been submitted by the respondents, in respect of the Action Taken Plan, that the matter is pending in the case of Sanjay Agnihotri vs. U.O.I. (O.A. 3 of 2012) and this Tribunal is seized with it and whatever orders are passed in the said case, the same would be implemented. But the pendency of the case cannot be a ground to challenge the scheme under the garb of apprehension to environment. It is not a case dealing with pollution but it seeks to stall allotment of a plot earmarked for commercial purpose by making reference to alleged pollution. The applicant should appreciate that over 16 % of the area in Noida is reserved for greenery and over the

years the areas, open and green, have increased. In the year 2014 and 2015, 1 lakh trees and 3 lakh shrubs are to be planted and work in this regard is going on. The respondents have denied that the construction of small building on a plot of 1879 sq. meters would result in causing pollution to the city or it will be disastrous to the residents. It is denied that there is a change in land use. Whether it is a small shop or a commercial building, the land use would still be commercial. There is no change whatsoever in the Sectoral Plan, as has been wrongly alleged by the applicant. For construction of a building over a plot of 1879 sq. meters no EC or EIA are required because of small size of the constructed area. There is no need for any assessment to be done or that the same would be bad for the environment.

15. The respondents have also submitted that even where the EC is required, it is obtained by the allottee and the construction is made only thereafter. The applicants have not been able to show as to under which provision of law EC is required to be obtained for carrying out construction on a commercial plot of 1879 sq. meters. It is misconceived on the part of the applicant to allege that EC would be required because there is already a group housing and other construction, including that of residential plots within the sector. If such an interpretation was to be accepted then no construction even on a small plot will be permissible because

existing construction in the vicinity would always be in excess of 2000 sq. meters. EC is required in respect of plot and not the sector. The respondent can only wish that the applicant should have been reasonable in making averments in their application. Further it is denied that EC is required for construction of building which would be constructed in the event of allotment of the plot in question. The level of pollution in Noida is far less than that of Delhi. It has also been submitted that OM dated 19.06.2013 has no application to the plot in question. The respondent no. 1 has the power to amend the Master Plan but in the present case no change in either the Master Plan or the Sectoral Plan has taken place. The plot in question has been demarcated as commercial plot within a residential area. It has been submitted by the respondent that the judgment of Hon'ble Supreme Court in the case of R.K. Mittal has no relevance to the facts of the present case. The respondent authority is not in violation of any law or in disobedience of any judgment. The reference to the judgments in para 5(pp) and 5(rr) is misplaced as those judgments have no application to the facts of the present case.

16. There is neither any change in the land use nor any violation of the Master Plan. It is denied by the respondent that construction of a commercial building on a demarcated commercial plot is illegal or it would have an adverse impact on the environment. The applicant is in the habit of interfering in

the working of the respondent which is a statutory authority. There is nothing unlawful in issuing the advertisement as it only invites applications for allotment of a demarcated commercial plot. It has also been denied that the proposal of the respondent for allotment of the plot in question is arbitrary, fanciful, illegal, malafide, without application of mind or is violative of Fundamental Rights of the residents or has any adverse effects on the environment. The respondents have denied the grounds alleged in the application as wrong and misconceived. The application referred to in para 7 is not known to the respondents and they are also not aware as to what averments were made in that application which was later withdrawn by the applicants, with liberty to file an appropriate application. It is submitted that the applicant should file a copy of the Application No. 151/2015 and also be provided to the answering respondent.

17. It is submitted by the respondents that a copy of the paper be furnished to them. It is seen that on page A letter of service has been annexed as addressed to “the standing counsel, National Green Tribunal, New Delhi”. It is not even mentioned therein as to who is the standing counsel representing before NGT. The respondent further stated that this is a classic example as to how procedure is by passed. The petitioner owes an explanation to the Tribunal. The respondents have submitted that the commercial plot was demarcated about 3

decades ago. The challenge to such demarcation or the use of demarcated plot or its allotment is completely misconceived. The respondents have then prayed that the application lacks bonafide, devoid of merits, based on false statements and is liable to be dismissed with cost.

18. The respondent no. 2 State of U.P. and 6 SEIAA, U.P. have filed a joint reply. The said respondents have submitted that the Ministry of Environment and Forests, Government of India vide its notification dated 14.09.2006 has made it mandatory to obtain Prior Environmental Clearance before establishment or expansion of any such project or activity which is listed in the schedule of notification. Environment Clearance shall be required for:

- a. All new projects or activities listed in the Schedule to this notification.
- b. Expansion and modernization of existing projects or activities listed in the Schedule to this notification with addition of capacity beyond the limits specified for the concerned sector, i.e., projects or activities which cross the threshold limits given in the Schedule, after expansion or modernization.
- c. Any change in the product – mix in an existing manufacturing units included in the Schedule beyond the specified range.

19. Objective of this process is to impose certain restrictions and prohibition on new projects or activities or on the

expansion or modernization of existing projects or activities based on their potential, environmental impacts.

20. The Environmental Clearance shall be taken from Central Government in the Ministry of Environment and Forests for matters falling under category A in the Schedule and at State level, the State Environment Impact Assessment Authority for matters falling under category (B) in the said Schedule, before any construction work or preparation of land by the project management except for securing the land, started on the project or activity. The State Environment Impact Assessment Authority (SEIAA) shall base its decision on the recommendation of the State Level Expert Appraisal Committee.

21. State Environment Impact Assessment Authority and the State Level Expert Appraisal Committee U.P. has been constituted by Ministry of Environment and Forests, Government of India through notification dated 12.10.2010 and in furtherance reconstituted through notification dated 25.10.2014.

22. The respondents have stated that illegal construction matter does not pertain to respondent no. 6. However, it is mentioned in reply that Directorate of Environment, Government of U.P. is declared to function as secretariat to the statutory bodies. All such projects, proposals received by SEIAA for prior environment clearance are dealt with according to EIA Notification, 2006. The copy of grant of each Prior

Environmental Clearance is also being sent for information and necessary action to the following:

1. Advisory, IA division, Ministry of Environment and Forests, Government of India.
2. Chief Conservator, Ministry of Environment and Forests, Regional Officer, Lucknow.
3. Member Secretary, UPPCB, Lucknow.
4. District Magistrate(concerning district)

23. It is submitted by the respondent that till 3rd of September 2015 SEIAA, U.P. had not received any application on prescribed format regarding grant of Prior Environment Clearance for the project site at plot no. C-43, sector 23, U.P. Thus SEIAA U.P. has not granted any prior environmental clearance for the project site and no competent authority has ever informed SEIAA, U.P. to take action according to EIA Notification 2006 in view of the illegal construction. In the end it has been submitted by the respondents that petition does not show any cause of action and the same is misconceived which is liable to be dismissed.

24. Respondent no. 4 Central Pollution Control Board has in its affidavit to the present application submitted that the Central Pollution Board, in collaboration with IIT Delhi, has carried out comprehensive environmental assessment of 88 prominent and industrial cluster based on the comprehensive environment pollution index (CEPI) criteria in 2009. Out of

these 88 industrial clusters 43 with CEPI score 70 and above were identified as critically polluted. Noida with CEPI scored 78.90 is identified as one of the 43 critically polluted area (CPAs). Time series CEPI scores data presented in para (aa) of the OA are in order.

25. Subsequently, Ministry of Environment and Forests, Government of India has imposed moratorium on consideration of any new projects/ expansion in existing units located in the identified Critically Populated Areas (CPAs) for Environmental Clearance, vide office memorandum dated 13.01.2010. Accordingly, moratorium was imposed in all the CPAs including Noida. The imposition of moratorium was further followed by the formulation of remedial Action Plan by UPPCB for Noida CPA in compliance with the direction of MoEF. The Action Plan addressed various environmental issues of Noida CPA, which is currently under various stages of implementation. The effective implementation of action plan will help in restoration of environmental quality of Noida CPA.

26. Initially during October, 2010-September, 2013 MoEF decided to lift the moratorium on the basis of statements furnished by concerned State Pollution Control Board, to the effect that some ground work has been initiated in line of the submitted action plans. Accordingly, the Moratorium was lifted from 26 CPA including Noida in a phased manner. Subsequently, in September 13, the trend analysis of CEPI for

the years 2011 and 2013 has been used by MoEF for lifting/ re-imposing moratorium in CPAs. Accordingly, MoEF has lifted the moratorium in 10 CPAs and also re-imposed the moratorium in 8 CPAs vide its order dated 17.09.2013. Recently in June 2014 MoEF has issued an OM on 10.06.2014 regarding keeping in abeyance of the OM dated 17.09.2013, about re-imposition of moratorium in 8 CPAs namely Ghaziabad, Indor, Jharsuguda, Ludhiana, Panipat, Pattancherubollaram, Singrauli and Vapi. In view of the above developments the moratorium in Noida CPA was lifted by MoEF.

27. Noida is a critically polluted area where a remedial action plan and an additional plan were already formulated in compliance with direction to MoEF and NGT, respectively and are currently under various stages of implementation. It has been prayed by the respondent that CPCB may be exempted as a respondent in this matter.

28. U.P. Pollution Control Board had got the site inspected on 17.10.2015 through its Junior Engineer. On having inspected the site of plot No. C-47, Sector 23, Noida, the following report had been submitted on record (Pg 131)

“----As per the directions inspection of aforesaid site has been done by the undersigned on 17.10.2015. The said referred site is a vacant plot. In one corner of plot a room has been constructed and inside and outside of that room Municipal Solid Waste has been found. Generation of foul smell near solid waste in natural. At present any kind of construction work has not been found at the said

site. During inspection the photograph of the vacant plot taken (Total 8 copies are enclosed). On Plot No. C-42, Sector 23, NOIDA which is adjacent to this plot M.S. Jain Sthanana Sabha Sthal has been constructed. Representative of resident of the sector has informed that on the said plot construction of multi storeyed building/housing complex is proposed. As per the record of the office No Objection Certificate by U.P. Pollution Control Board has not been issued for any proposed multi-storeyed building on the said site. At the time of earlier inspection done on 13.07.2015 the same situation has been found.”

29. Let us now first come to the case of R.K. Mittal & Ors. Vs. State of U.P. & Ors (Civil Appeal No. 6962 of 2005) decided on 5th December, 2011 upon which, the Learned Counsel for applicant heavily relies. In that case, broadly speaking, the facts were that the development authority executed a lease deed on 2nd April, 1988 in favour of Shri Rajendra Kumar Srivastava in relation to Plot No. 778, Block A, Sector XIV, New Okhla Industrial Development Area, District Ghaziabad, admeasuring about 274.37 sq. meters. The lessee had raised some construction and thereafter transferred the plot in question, along with unfinished super structure, vide transfer Deed dated 20th August, 1999 in favour of Shri R.K. Mittal, Shri Ashok Garg and Shri Sanjeev Gupta, the appellants therein. The original lease deed contained specific stipulations with regard to the lessee being obliged to all the Rules, Regulations and Directions made by the lessor. The lessee was to raise construction as per approved plans and to use the premises only for the purpose of which it was committed, in terms of the lease and as per law.

30. The transfer deed executed by the original lessee in favour of the appellants (R.K. Mittal & Ors.) also contained similar conditions and in addition thereto provided that the conditions of the lease deed shall be binding upon the appellants, therein.

31. After completing the construction, the appellants appear to have rented out the premises to Andhra Bank and Akariti Infotech. As such, both the bank and the company had been carrying on their business from the premises in question. The Development Authority, on 18th January, 2001 and 22nd February, 2001, issued notices to both Andhra Bank and Akariti Infotech to stop commercial use in the said premises within 30 days, failing which action would be taken as per the lease deed. It was also stated in the notice that there was encroachment in violation of the prescribed building byelaws and the use of residential plot for commercial purposes was in violation of the provisions of the lease deed of the plot. The appellant therein had not only filed objections but also appeared before the Development Authority and contended that the Development Authority, in furtherance to the proposal to permit running of consulting clinics, banks and guest houses in the residential area, had permitted such use on the main roads, on payment of 30 % of the existing residential rates on per sq. meter area of plot per annum and had invited suggestions from general public. The Development Authority after taking the view that there was no legal sanctity to the alleged change of

user, rejected the objections and required the misuse to be stopped and violation of the building byelaws, to be removed within four months.

32. Aggrieved of the said order of the Development Authority, the appellants therein filed a writ petition before the High Court of Allahabad. But, the writ petition came to be dismissed on 19th January 2002. However the High Court had noticed that the Development authority had invited some suggestions for change of user of residential plots to commercial or mixed user on certain terms and conditions, by bringing certain changes/ amendments in its byelaws and policy decisions. The Development Authority had not undertaken any exercise for the said amendment in accordance with the law and had not even sought the approval of the State Government, as required under law, for change of user or amendment of byelaws, master plan etc.

33. In view of the aforesaid facts, the question which came up for consideration before the Hon'ble Supreme Court in case of R.K. Mittal (SUPRA) was, whether the residential premises can be, wholly or partly, used by the original allottee or even its transferee, for any purpose other than residential. Secondly, the ambit and scope of power of New Okhla Industrial Development Authority to permit user, other than residential, in the sectors specifically earmarked for residential use in the master plan of new Okhla Industrial Development Area.

In the case before us an advertisement was published in Times of India on 21.03.2015 whereby the Development Authority respondent No. 1 had invited sealed tenders for allotment of commercial plots under the scheme of 2014-15 (Commercial builders plot-I) in various sectors of Noida, in which plot no. C-43, Sector 23, admeasuring 1879 sq. meters was also included. The plot C-43 had been allocated in the sectoral plan for similar sector shops. In other words there was no change whatsoever in the master plan. From day one in the layout plan of the sector, plot in question is commercial in nature and it is permissible to have commercial pocket within residential sector. The plot C-43 is a commercial pocket and the activities therein would be as per the master plan and building regulation. Therefore, it is amply clear that the case of R.K. Mittal & Ors. and the present one, stands on a totally different footings and as such the judgment passed in the former case has no application whatsoever to the present case.

34. The applicants' own case is that in the Plan of 1986, Sector 23 was having an area of about 17340 sq. meters comprising of 7.88 % of sector land for facilities to be used by the residents of the sector. About 5250 sq. meters constituting 2.66 % of the sector land was for commercial activity, incidental to residential living i.e. the sector shops. The area allotted for sector shops was divided into 3 parts at different places in the sector. The public utility and public facility complex were

created in the centre of the sector which consisted of park, community center and area for local shops. The plot C-44 was allocated for the park, C-41B for community centre, C-42 for dispensary and C-43 for local sector shops to cater the daily needs of the residents of the sector. All these plots are adjacent to each other. An advertisement was published on 21.03.2015 by which the respondent had invited sealed tenders for allotment of commercial plots under the scheme of 2014-15 (commercial builders plot -I) in various sectors of Noida, in which C-43, in Sector 23, admeasuring the plot C-43 had been allocated in sectoral plan for small sector shops.

35. It has been submitted by the respondent no. 1 that there has been no change whatsoever in master plan. The case of the respondent is that from day one, in the layout plan of the sector, the plot in question is commercial in nature and it is permissible to have commercial pocket within residential sector. Further they have submitted that there is no change in the master plan and as such there is no question of obtaining any environmental clearance as the same is applicable in a case where the constructed area is of 2000 sq. meters. The original layout plan do include commercial pocket within the sector. The plot in question is part of that commercial pocket which existed from the very beginning and it is not by way of effecting any change in the sectoral plan that commercial plot has now been carved out.

36. It is pertinent to note here that no rejoinder to the reply filed by the respondent have been submitted by the applicant, as a result of which the facts given by the respondents in the reply stands uncontroverted. The material facts which emerges in this case are that as per the approved original layout plan, passed in the year 1986, Sector 23 is having a total commercial land use within it as 5250 sq. meters which is 2.38 % of the total area and therefore the nature of the sector is residential. But for planned development there is a commercial pocket in every residential sector. The plot in question falls within the commercial plot of 5250 sq. meters. In a commercial pocket the activities are in accordance to master plan and building regulations, including FAR. In such plots not only small shops but the construction permissible, includes ground coverage and the FAR which is to be in accordance with the building regulations.

37. Even in cases where environmental clearance is required the same is to be obtained by the allottee and the construction is made only thereafter. The instant case is the one where only advertisements for allotment of commercial plot has been issued by the respondent. The plot in question has been demarcated as commercial plot within a residential area. In such circumstances where no change whatsoever has been made in the sectoral plan. The issuance of advertisements for allotment by the respondent to invite application in respect of

demarcated commercial plot, is very much in accordance to the law which does not call for any interference by this Tribunal. Moreover, the commercial plot in question was demarcated about 3 decades ago and challenge to demarcation or use of such plots or its allotment, now by the applicants is devoid of merits.

38. Apart from the fact that the plot C-43 demarcated as commercial plot from day one when the master plan was approved in the year 1986 and that its use is that of commercial in a residential area, the said land is still laying vacant. No construction work whatsoever, has been found on the site.

39. The inspection of the plot was got done by UPPCB on 17.10.2015. Only the representative of the residents had informed that multi storeyed construction on the plot is proposed. According to the report of the Junior Engineer UPPCB, submitted in respect of the site inspection, according to the office record NOC has not been issued by UPPCB for any proposed multi storeyed building on the said plot. It has also been mentioned in the report that the same condition of the plot was found on the earlier inspection which was done on 13.07.2015.

40. Even the applicant in the present case has sought relief against the respondents for allotting plot no. C-43, Sector 23 Noida, apprehending that there would be construction of high rise commercial building which would deteriorate the

environment of the sector. Further he has prayed for quashing of any allotment made on the basis of illegal user change in respect of C-43 in Sector 23 Noida. Apart from the fact that no allotment has been made so far, the applicant has approached this Tribunal merely on the apprehension that there will be construction of high rise commercial building of 7 ½ stories, for which there is no basis on record. The case of the applicant rather stands in anticipation and what he has imagined for the future. However, the fact remains that as of now when the plot is lying vacant and only advertisement for allotment has been published the deterioration of environment is only apprehended and in such a situation it cannot be said that there is any violation of any of the environmental laws so as to call for any interference by this Tribunal.

41. For the aforesaid reasons, we are of the considered opinion that the applicant has failed to make out a case against the respondents for violation of any of the environmental laws and to seek redress from this Tribunal. There is nothing on record which can form the basis of the apprehension of the applicant in respect of construction of high rise building or deterioration of environment in the sector, violating the environment law. The entire case of the applicant based on change of land use is without any foundation. The fact that no allotment has been made the prayer made by the applicant for quashing of it cannot be sustained.

42. Consequently the original application has no merit and the same is dismissed, with parties being left to bear their own cost.

M.A No. 593/2015

This miscellaneous application is filed for seeking interim relief. As the main matter itself is being disposed of, this miscellaneous application (593/2015) is also disposed of, with no order as to cost.

....., CP
(Swatanter Kumar)

....., JM
(Raghvendra S. Rathore)

....., EM
(Bikram Singh Sajwan)

....., EM
(Ranjan Chatterjee)

New Delhi
Dated: 15th December, 2016

NGT