

*UITEM NO.1A
(For Jt.)

COURT NO.7

SECTION XI

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 3625 OF 2006

N.O.I.D.A.

Appellant (s)

VERSUS

ARMY WELFARE HOUSING ORGANISATION & ORS.

Respondent(s)

With

CIVIL APPEAL NOS.2938/2005, 2939/2005,
2941/2005, 2942/2005, 2943/2005, 2945/2005, 2944/2005,
3607/2006,3605/2006, 3621/2006, 3618/2006, 3608/2006, 3604/2006,
3606/2006 and 3603/2006

Date: 10/09/2010 This Appeal was called on for hearing today.

For Appellant(s)

Mr. S.K.Dwivedi,Adv.
Mr. Ravindra Kumar,Adv.
Mr. Manoj Kr. Dwivedi,Ms.Vandana Mishra,
Mr. Ashutosh Kr. Sharma,Advs.

Mr. G.V.Rao,Adv.

Mr. J.K.Bhatia,Adv.

For Respondent(s)

Ms. Abha R. Sharma,Adv.

Mr. Ranjan Mukherjee ,Adv.

Mr. Kamendra Mishra ,Adv.

Ms. Anitha Shenoy,Adv.

Mr. Ranjan Mukherjee,Adv.

Mr. S.K.Mishra,Adv.

Mr. K.V.Mohan,Adv.

Mr. Arvind Kr. Tewari,Adv.

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Ms. Mridhula Ray Bhardwaj,Adv.

Mr. Praveen chaturvedi,Adv.

Mr. D.K.Garg,Adv.

Ms. Manjula Gupta,Adv.

Mr. Naresh Kumar,Adv.

Mrs. Geetha Muthu Perumal,Adv.

Respondent-in-person

Ms. Madhu Sikri,Adv.

UPON hearing counsel the Court made the following

O R D E R

Hon'ble Mr. Justice Harjit Singh Bedi
pronounced the judgment of the Bench
comprising Hon'ble Mr. Justice Dalveer
Bhandari and His Lordship.

The Appeals are allowed.

[SUMAN WADHWA]
COURT MASTER

[VINOD KULVI]
COURT MASTER

Signed Reportable judgment is placed on the file.

[REPORTABLE]

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.3625 of 2006

New Okhla Industrial Development
Authority (NOIDA)

.....APPELLANT

Versus

Army Welfare Housing Organization
& Ors.

....RESPONDENTS

WITH

CIVIL APPEAL NOS.2938/2005, 2939/2005,
2941/2005, 2942/2005, 2943/2005, 2945/2005, 2944/2005, 3607/2006,
3605/2006, 3621/2006, 3618/2006, 3608/2006, 3604/2006, 3606/2006 and
3603/2006

J U D G M E N T

HARJIT SINGH BEDI, J.

1. These appeals are directed against the Judgment of the Division Bench of the Allahabad High Court dated 14 th October, 2004 whereby the writ petition filed by the respondents herein has been allowed and the letters issued by New Okhla Industrial Development Authority (hereinafter called the 'NOIDA') dated 13th November, 2002 and 7th January, 2003 have been quashed. Aggrieved by the decision of the Division Bench, the respondents in the High Court are the appellants before us.
2. The facts leading to these appeals are as under:-
3. The writ petitioners-respondents, Societies registered under the Societies Registration Act, 1860 namely The Indian Railway Welfare Organization (IRWO), the Air Force Naval Housing Board (AFNHB), the Army Welfare Housing Organization (AWHO) and several others filed writ petition in the

Allahabad High Court impugning the letters/notices dated 13th November, 2002 and 7th January, 2003 and other similar notices by which NOIDA had directed the individual members of the Housing Societies to execute tripartite deeds, the other two parties being the Housing Societies, as the lessee, and NOIDA, as the lessor, for the sale of the super-structure which had been built on the land allotted to these Societies and for further restraining the State Government, Noida etc. from charging any stamp duty on the execution of the deeds. The petitioners also pleaded that the land had been allotted to the Societies by NOIDA and that the super-structure thereon had been built solely on the contributions made by the individual members as the said Societies did not have any corpus of their own. It was further pointed out that the buildings had been constructed in a phased manner over a period of time and, the Societies being the lessees of the land in question were not the owners of the super-structure so as to bind the individual members to the covenants that had been subscribed to by the Societies with NOIDA the lessor. It was further highlighted that NOIDA had not contributed anything towards the cost of construction of the super-structures and that the only role performed by it was the sanctioning of the building plans and the directions to execute tripartite deeds for the sale of the super-structure of the residential units or sub-leases for the land, was a superfluous exercise, which was not backed by any statutory authority, or contractual obligation the more so that it did not fall in the definition of sale under Section 54 of the Transfer of Property Act, 1882. The basic argument was that the petitioners could not be compelled to buy something which was already their own.

4. The stand of the writ petitioners was controverted by NOIDA and several pleas were raised.

5. It was submitted that a writ petition directed against the issuance of a notice was not maintainable and that as the

dispute in effect was as to the terms of a contract, it could not be adjudicated upon by the High Court in its writ jurisdiction under Article 226 of the Constitution.

6. It was submitted on merits that the petitioners had consented to the execution of tripartite deeds and that the lease deeds entered into between the NOIDA and the Societies clearly stipulated that a sub-lease would be executed between the Societies and the members/allottees and that the sub-lessees herein above referred had to abide by the terms and conditions of the lease deed. It was pleaded that the provisions of the Uttar Pradesh Industrial Development Act, 1976 (hereinafter called the '1976 Act') were binding on the sub-lessees and that the costs of the stamp duty and registration charges were to be borne by them and that Section 7 and 14 when read together provided for the resumption of a site in case of a breach of a condition of the lease or sub-lease.

7. The State of U.P. supporting NOIDA, pleaded that the members of the Societies had sub-leased the land from the Societies on the terms and conditions settled between them and as the land had been taken on lease by the Societies from NOIDA and the consideration had been paid by the Societies in advance the transactions were liable to stamp duty under Sub-Section (6) of Section 2 of the Stamp Act 1899 and that a tripartite deed envisaged between the parties was chargeable to stamp duty on the proportionate cost of the land as well as the cost of the super-structure built thereon.

8. The High Court examined the various aspects raised before it and concluded that a distinction had to be made between contracts entered into between two private individuals and a contract where one of the parties was the State, or an instrumentality of the State, and that in the first mentioned case no writ would lie in relation to such a contract and the parties would have to be relegated to the

civil court. It further held that in the latter case, it would be open to the High Court to entertain the writ petition and to examine as to whether any constitutional provision has been violated more particularly where a claim was made that the State or an instrumentality of the State respondent was acting in a discriminatory and arbitrary manner.

9. In this background, the Division Bench observed that admittedly the land have been taken on lease from NOIDA by the Societies on which the individual members had built their houses on the basis of contributions made by the individual members as the Societies themselves did not have any corpus of funds. It further pointed out that the flats/apartments had been constructed by the Societies on a self-financing arrangement under which the construction of the super-structure was paid for in installments by the allottee members and in this view of the matter, there was no sale of the super-structure in favour of the members and the demand raised thereby on the basis of the two notices was arbitrary and unreasonable and violated Article 14 of the Constitution. The Division Bench also supported its findings by referring to several judgments of this court.

10. The Court then went into the merits of the controversy and observed that the lease deeds executed by NOIDA with the various Housing Societies which were the writ petitioners, the basic covenants were the same and related primarily to paragraphs 2 to 4 and 12 to 14 and the Societies-writ-petitioners represented the interests of the members collectively and that the members were bound by the terms of the bye-laws of the Societies which postulated that the land allotted to the Societies would be handed over to the Societies for the construction of flats/apartments and on the basis of a lease deed executed between NOIDA and the Societies only.

11. The Court collated the various paragraphs of the lease deed and held that they referred only to the transfer of the land and there was no reference whatsoever that the building constructed thereon at a later stage would also be treated to have been demised by the lessor. The Court also observed that the provisions of Section 108 (h) of the Transfer of Property Act that the building also belonged to the owner of the land was not applicable to India in the light of the various pronouncement of this court and various High Courts as well.

12. The court, in conclusion, observed that in the light of the aforesaid facts, NOIDA could not compel the Societies or the individual members of the Societies to execute tripartite sub-leases in terms of the notices and observed as under:

"The allottee members, as owners of the flats/apartments, built from the contributions made by these persons cannot be compelled to purchase it from the society. It amounts to compelling a full owner of the flat/apartment to purchase the property already owned by him, from the society of which he is a member and to which it had contributed for purchase of and for construction of building. Such a transfer will be fictitious and involuntary, and thus a void transaction under the Indian Contract Act. It will be neither a sale under section 54, nor a lease under Section 105 for the Transfer of Property Act 1882"

13. The Writ Petitions were accordingly allowed in the following terms:

"All the writ petitions are consequently allowed. The impugned notices published and issued by NOIDA and its officers, directing the petitioners to enter into the tripartite deeds are set aside. The NOIDA and other respondents are restrained from compelling the petitioners to execute the tripartite sale deed of super structure of flat and sub lease deed of land, and from requiring payment of any stamp duty and registration fees on such documents. No order as to costs."

14. Mr. K.K.Venugopal, the learned senior counsel for the appellants, has made several submissions before us.

He has

first pointed out that the observation of the Division Bench in the High Court that there was no provision for the execution of a tripartite deed under the lease deed executed between NOIDA and the respondent AWHO was contrary to the record as several clauses of the lease deed read cumulatively

clearly visualized the execution of tripartite deed featuring NOIDA, AWHO and the individual sub-lessees. He also pleaded that Section 17(1)(d) of the Registration Act, 1908 when read with Section 105 of Transfer of Property Act, 1882 clearly visualized the registration of a lease or sub-lease and Section 49 of the Registration Act dealt with the consequences of non-registration. He further pointed out that a lease executed included a sub-lease as per Section 107 of Transfer of Property Act and such a document required compulsory registration. He has also submitted that in the absence of a registered document, any document purporting to be a lease would be a mere waste paper, as held by this Court in Lachhman Dass vs. Ram Lal 1989 (3) SCC 99. It has also been pleaded that Entry 35 © of Schedule I B of the Stamp Act as applicable to the State of Uttar Pradesh postulated that stamp duty was payable not only on the land but on the super-structure as well and the findings of the High Court to the contrary were, therefore, not maintainable. It has also been submitted that Section 2(g) of the 1976 Act postulated the need for a tripartite deed between NOIDA, AWHO and the sub-lessees and that NOIDA's authority to issue the impugned instructions flowed from Section 6 thereof. It has also been pointed out that the AWHO had, during the course of this litigation and even before had taken conflicting stand as in the affidavit of Col. Upal of October 2007, it had been specifically deposed that a sub-lease was contemplated in the lease deed executed between NOIDA and AWHO and that in a letter from the AWHO to Brig. Gur Dyal dated 19th of June 1990 it had been specified that a tripartite document was to be executed and a specimen of the document was also enclosed along with the letter. It has been highlighted that thereafter AWHO had taken a volte face and in the affidavit filed by Col. Sabharwal, a contrary stand had been taken that a tripartite deed was not visualized in the lease deed executed between NOIDA and AWHO. It has, accordingly, been

pointed out that on account of this confusion and other reasons a large number of individual members, that is sub-lessees, had in fact executed tripartite deeds, as required by the instructions. In the rejoinder filed by NOIDA, the fact that the respondents had been taking shifting stands has, once again, been highlighted and as further evidence of this fact, attention has again been drawn by Mr. K.K.Venugopal to the affidavit of Col. Sabharwal of January 2008 wherein the affidavit of Col. Upal has been completely disowned.

15. Mr. Anand for the respondents has, however, controverted

the stand taken by the appellants. It has been pointed out

that the land had been allotted to AWHO and other Societies and the Societies formed by members of the Defence Services had been exempted from the payment of stamp duty on the premium for the lease whereas in the case of Societies set up of civilians, stamp duty had been made leviable and had, in fact, been paid, and there was no justification now, after 15 years from the allocation of the land, that the AWHO and sub-lessees had been called upon to execute a tripartite document and also to pay stamp duty and registration charges. He has

also pointed out that the lease deed between the NOIDA and AWHO pertained only to the land and had nothing to do with the super-structure and as the residential building on the land had been built by the lessees themselves, they could not be called upon to execute tripartite deeds along with NOIDA and AWHO. The learned counsel has also referred to several

clauses of the lease deed executed between the NOIDA and AWHO in support of this plea. He has further submitted that a society registered under the Societies Registration Act was not a body corporate or a juristic person and its membership could not be said to be distinct from the society and as such there is no question of transfer of property from the AWHO to its members. In this connection Mr. Anand has relied upon

Illachi Devi & Ors. vs. Jain Society, Protection of Orphans India & Ors. 2003 (8) SCC 413.

16. We have considered the arguments advanced by the learned counsel for the parties. At the outset, it must be pointed out that some of the arguments that have been raised by the learned counsel were not urged, or if urged, were not dealt with by the High Court. The High Court has, in fact, proceeded primarily on the interpretation to be put on the lease deed executed between NOIDA and AWHO and has been influenced also by the fact that as the structures on the land allotted to AWHO had been built by the sub-lessees, and as the structures belonged to them the question of any further transfer by way of sub-lease as per a tripartite deed was not envisaged. It is this background, we have examined the arguments raised by the learned counsel.

17. NOIDA has been set up under the provisions of the 1976 Act. Section 2(a) thereof defines amenities which include roads, water supply, street lighting, power supply, sewerage and sub-clauses (d), (e) and (f) deal with the provision of basic infrastructure for industrial, commercial and residential purposes whereas Section 6 (2) deals with the obligation of NOIDA towards the land development of the area. Section 7 authorizes NOIDA to transfer the land by way of sale, lease or otherwise whether by auction or allotment on such terms and conditions, as it may think fit to impose. Sections 13 and 14 provide for the imposition of a penalty and mode of recovery of arrears and resumption of the property for breach of conditions of transfer and Section 17 gives overriding effect to the 1976 Act vis-à-vis other statutes.

It is the case of the appellants that the impugned notices were envisaged under the lease deed between NOIDA and AWHO as well as the aforesaid provisions of the 1976 Act and for the AWHO and the sub-lessees to contend that they could not be called upon to execute tripartite deeds was, therefore, not acceptable.

18. We have perused the lease deed executed between NOIDA and AWHO. We reproduce herein below some of the relevant clauses.

The lease deed which is for a period of 99 years itself indicates that the lessees had agreed to the allotment of the land on lease for the purpose of constructing residential buildings for its members. Clause 3(b), 3(c), 5, 7, 8, 10, 11 and 12 are reproduced below:-

"3B. That the lessee shall in no case assign relinquish (except in favour of the lessor), let transfer or part with possession of the demised premises except by way of sub-lease as provided in this lease to the Cooperative Society of the members or directly to the individual registered member of the lessee whose list will be provided to the lessor within three months of such transfer. Any subsequent transfer will be made by the members with prior concurrence of the AWHO/Co-operative Society and NOIDA and will be subject to condition of payment of transfer charges as levied from time to time but subject to a maximum of 25% of the unearned increase in the value of land.

3C. This lease deed will form part of sublease executed between AWHO and Cooperative Society or to individual members. All conditions contained herein binding on the sub-lessees also.

5. The lessee shall construct the building (group housing pockets) on the demised premises in accordance with the plan elevation and design and in a position to be approved by the lessor or any officer authorized by the lessor in that behalf in writing and in accordance with the building regulations or direction existing or to exist in future.

The lessee shall be required to commence construction of flats/houses within one year from the date of possession letter and complete the same within a period of 7 years extendable to 10 years from the date of possession failing to which the lease shall be revoked and 10% of amount deposited shall be forfeited and possession of the plot and structures thereon unless removed by the lessor within time specified by the lessee may be taken over by the lessor and lessee will not be entitled to any compensation.

7. That the lessee will obey and submit to all direction issued or regulations made by the lessor now existing or hereinafter to exist so far as the same are incidental to the possession of immovable property or so far as they effect the health or convenience of the other inhabitants or the place.

8. That the lessee will at his own cost erect on the demised premises in accordance with the plans, deviation and design to be approved by the lessor or any other authorized by the lessor in that behalf in writing and in a substantial and workman like manner, a building only with all necessary, sewers, drains and other appurtenances according to the directions issued or regulations made in respect of buildings, drains, latrines and connection with sewer.

10. That the lessee will not make, or permit to make, any alteration in or additions to the said buildings or other erections for the time being on the demised premises erect, or permit to be erected any new building in the demised premises without the previous permission in writing of the lessor and except in accordance with the terms of such permission and the land, if any, approved by the lessor or any officer authorized by the lessor or in that behalf and in case

of any deviation from such terms or plan, will immediately upon receipt of notice from the lessor or such requiring him to do, correct such deviation for the space of one calendar month after the receipt of such deviation to be corrected at the expenses of the lessee which expenses the lessee hereby agrees to reimburse by paying to the lessor such amount as the lessor (whose decision shall be final) shall fix in that behalf.

11. That the lessee shall use the demised premises only for the purpose of constructing a building for housing its members and for no other purpose.

12. That the lessee shall not assign, transfer, relinquish (except in favour of lessor) sublet or otherwise part with possession of the demised premises or any part thereof or the house constructed thereon or any part thereof, except first to Co-operative Society of its members and then to or individual members, without the previous permission in writing of the lessor.

Provided that the lessee may be permitted by the lessor to create a mortgage for purposes of securing loan from State Central Government/Life Insurance Corporation, Scheduled Bank/Housing Board/HUDCO and similar statutory bodies and in that case the right to mortgages shall be as may be provided in the deed of mortgage, accrue to such institution subject to NOIDA retaining first charges for recovery of ground rent and other dues, taxes and charges."

19. A perusal of the aforesaid clauses would reveal the very starkly patent fact that most of the covenants place obligations on the lessees as well as on the sub-lessees and if the covenants are in any manner violated, the lease would be liable for forfeiture under Section 14 of the 1976 Act. We may, in particular, highlight sub-clause 3B and 3C which says that the conditions of the lease deed will be binding on the sub-lessees as well. Clause 5 provides that the lessees shall construct the building on the allotted land in accordance with the plan, elevation and design to be approved by the lessor and further that the lessee shall be required to commence construction within the period of one year from the date of possession. Clause 8 further clarifies that the lessees would erect the building on the basis of the approved design and Clause 11 once again reiterates that the demised premises shall be used by the lessee only for construction of buildings, offices and houses for no other purposes whereas Clause 12 stipulates that the lessee AWHO will not transfer etc. or part

with the possession of the demised premises or the house constructed thereon except first to the Cooperative society or its members and then to individual members without the previous permission of the lesser in writing. Clause 15 stipulates that

on the breach of the conditions of the transfer by the lessee or any other person claiming through or under him, it will be open for the lessor i.e. NOIDA to re-enter the demised premises to determine the lease. It would be clear from a reading of

these provisions that the sub-lessees have been fastened with several obligations vis-à-vis the demised premises and furthermore, even more significantly, the obligation lies on the lessees to construct the buildings or flats, as the case may be, at their own cost and thereafter transfer the same to individual members i.e. the sub-lessees. It is extremely significant that paragraph 69 of the Master Brochure of July 1987 issued by the AWHO, as amended up to May 2007 reads as under:-

"69. Organization may at its discretion on a written request from the Allottee, give possession on such conditions as it may stipulate before instruments of transfer are executed and registered."

20. We are, therefore, of the opinion that in this background the impugned notices postulating the execution of tripartite deeds flows not only from the clauses of the lease deed executed between the NOIDA and AWHO but also from the supervisory authority which is placed on NOIDA by virtue of the provisions of Section 7 of the 1976 Act. The observation of the High Court that the structures built on funds provided by the sub-lessees is to our mind of no consequence. Even

assuming that such was the position, this was an arrangement inter-se AWHO and its members and would not detract from the obligations placed on AWHO and the sub-lessees to execute

tripartite deeds. We, however, see from the above facts that the question as to whether the sub-lessees had themselves

constructed the structures is itself in doubt. In the affidavit of Col. Upal it has been specifically mentioned

that the funds of the organization were raised by AWHO mainly from the advances/deposits of the allottees, as also from the borrowings from financial institutions and that the respondent organization i.e. AWHO therefore constructed the dwelling units with the funds contributed by the allottees and also funds raised on loan from the financial institutions. In paragraph 9 of the aforesaid affidavit, it is deposed by Col.Upal as under:

"Upon completion of the housing project the respondent organization then forms a "user committee" of the allottees who subsequently form a 'registered maintenance society' for the maintenance and upkeep of the common areas and amenities of the housing project. The registered maintenance society of the allottees so formed is then given the common area maintenance funds as collected by the respondent organization during the payment of installments towards the cost of the development of their dwelling units. Thereafter, as and when the allottee(s) desire to have a registered title deed of the dwelling unit executed in their favour, the respondent organization registers the same as per the terms and conditions of the land allotting agency and office of the sub-registrar upon payment of the required stamp duty and registration charges payable by the allottee."

21. As already indicated above, the above meaningful admission was sought to be explained away in the subsequent affidavit of Col. Sabharwal wherein (in paragraph 5) he contradicted the affidavit of Col. Upal by stating that all the expenses involved in the procurement of land on lease hold basis, payment of lease costs, lease rent, construction cost of dwelling units, the common amenities and salary required etc. were met from the contributions made by the allottees of the housing scheme and some loans to procure land from the Government of India or the General Branch of the Army Group Insurance Scheme had been taken and that the interest on the loans and the principal amounts had been refunded from the contribution made by the allottees. It has, however, been admitted that in the year 1989-90 several allottees had approached AWHO for execution of sub-leases of their dwelling units, and the respondent AWHO under the impression that stand of NOIDA was bona fide and legally

correct had under mistaken advice directed the execution of the tripartite deeds.

In other words, it has been admitted that a large number of allottees had executed the tripartite deeds, as required by the impugned notices.

Col. Sabharwal

has, accordingly, in a manner, sought to distance AWHO from the letter issued on behalf of AWHO to Brig. Gur Dyal.

It

is significant that despite requests to AWHO, no record was produced to substantiate the plea, that the super-structures had been constructed by the allottees at their cost.

We are,

therefore, of the opinion that the Division Bench to have held that the structures had been built exclusively by the allottees and therefore they were deemed to be the owners of the structures, is on uncertain ground.

In this background,

we are not called upon to examine the constitution and charter of AWHO or the purpose of its being set up, though a great deal of time and energy had been expended on this aspect.

22. It is also evident from the reply of Col. Upal

(Paragraph 10) that AWHO had constructed the dwelling units in NOIDA and the draft bipartite sub-leases for the transfer of dwelling units to the allottees had been submitted by AWHO

to NOIDA on 4th April 1989 and pursuant thereto the registration of tripartite documents had commenced.

In the

affidavit it has further been deposed that no stamp duty had been charged on the lease deed in favour of AWHO and stamp

duty was proposed to be charged for the first time on the

execution of the tripartite deeds and that though the allottees were entitled to the ownership of land and

structure, but the same would be conveyed to the individual allottees only on the execution of the registered and stamped documents, as per the provisions of the Registration Act, the Stamp Act and the Transfer of Property Act.

23. It has also been submitted by Mr. Venugopal and Mr. Sunil Gupta, the learned senior counsel for the appellants, that the payment of stamp duty and the registration of the

tripartite deeds were essential as per the Stamp Act and the

Registration Act.

The learned counsel have referred us to

Section 2(16) and Entry 35 of the Stamp Act.

Section 2(16)

reads as under:

Sec.2(16). "Lease" means a lease of immovable property, and includes also -

3. a patta;
4. a Kabuliyat or other undertaking in writing, not being a counterpart of a lease, to cultivate, occupy, or pay or deliver rent for, immovable property;
5. any instrument by which tolls of any description are let;
6. any writing on an application for a lease intended to signify that the application is granted."

Item 35 of Schedule I calls for the payment of stamp duty on

leases and sub-leases.

This fact was not seriously disputed

by the learned Counsel for the respondents.

In the background

of this Statutory provision, it is not open for the respondents to say that stamp duty was not payable.

24. Mr. Anand, has however, submitted that a society

registered under the Societies Registration Act was not a body

corporate or a juristic person and the society i.e. AWHO and

its members were one entity and there was, accordingly, no

question of transferring by way of sub-lease any property from

the AWHO to the sub-lessees.

This argument to our mind is

without force in the light of what has been held above and

that in the case of Brig. Gur Dyal the stand taken was that

the sub-lessees should execute a document directly with NOIDA

bypassing AWHO, as that was deemed to be the right procedure.

Mr. Anand's reliance on Illachi Devi case is misplaced for the

simple reason as no ownership has been transferred to the

cooperative society i.e. AWHO by NOIDA.

In this background it

must be held that word 'vest' in Section 5 of the Societies

Registration Act does not envisage a lease deed and the matter

would, if at all, be covered by Section 5 A, an amendment

pertaining to the State of Uttar Pradesh alone which provides:

"Sec.5A. Restriction on transfer of property. - (1) Notwithstanding anything contained in any law, contract or other instrument to the contrary, it shall not be lawful for the governing body of a

society registered under this Act or any of its members to transfer, without the previous approval of the court, any immovable property belonging to any such society.

(2) Every transfer made in contravention of sub-section (1) shall be void."

25. We are, however, not inclined to examine the implication of Section 5A for the simple reason that many of those who are likely to be affected by its interpretation are not parties to the Writ Petition.

26. Mr. Gupta has, further, submitted that a Society was a legal entity in law distinct from its members as the property vested in living members, Trust or Board and as such the Society could hold property, although it may not be a juristic person. For this argument, Mr. Gupta has placed reliance on

Board of Trustees, Ayurvedic and Unani Tibia College, Delhi

vs. State of Delhi AIR 1962 SC 458.

In this case, the

Constitution Bench was dealing with Sections 5 and 6 of the Societies Registration Act and the question as to whether the Tibia College Board set up under the Tibia College Act, 1952 was a Corporation in Law. The Bench held that the Board was,

indeed, not a Corporation but had the characteristics of a quasi-Corporation and though a registered society could not hold property but a quasi-Corporation would be deemed to be separate legal entity and entitled to hold property. We are,

therefore, of the opinion that AWHO though registered under the Societies Registration Act has certain characteristics which would enable it to hold property and therefore transfer of the land cum super-structure would be by way of a sub-lease from the lessor i.e. NOIDA to the lessee which is the AWHO to the sub-lessees who are the individual allottees, by way of a stamped and registered document.

27. It has also been submitted by the learned counsel for the appellant that registration of a tripartite deed was mandatory as per the provisions of Section 17(1)(d) of the Registration Act read with Section 107 of the Transfer of Property Act. It

has been pointed out that the Law Commission had highlighted

the importance of the registration of documents and in this connection reference has been made to the 13th Report of the Law Commission. Paragraph 14 thereof reads as under:

"From this brief survey of the provisions of the Act it is clear that the object of the Registration Act is to preserve an authentic record of the terms of documents so that if a document be lost or destroyed or misplaced, a certified copy from the register can be obtained. Registration also facilitates the proof of execution of a document as its execution is admitted by the executant, before the Sub-Registrar. Yet another useful purpose that registration serves is to enable any person intending to enter into any transaction relating to immovable property to obtain complete information relating to the title to such property and for the purpose to look into the register and obtain certified copies of the documents."

28. Our attention has also been drawn to Section 49 of the Registration Act which talks of the effects of non-registration of documents required to be registered and provides inter-alia that non-registration of such a document would not affect any immovable property comprised therein, or be received as evidence of any transaction affecting such property. In Lachhman Dass's case (supra) it has been held that a non-registered sale deed would be a paper transaction having no effect in transferring or creating any rights in the sub-lessees. It has been observed thus:

"The real purpose of registration is to secure that every person dealing with the property, where such document requires registration, may rely with confidence upon statements contained in the register as a full and complete account of all transactions by which title may be affected. Section 17 of the said Act being a disabling section, must be construed strictly. Therefore, unless a document is clearly brought within the provisions of the section, its non-registration would be no bar to its being admitted in evidence.

and again

the Section, however, enjoins registration in respect of any document, which purports not which intends to create a right in immovable property or declare a right in immovable property. It is not a question of declaration of an existing right."

29. It has, accordingly, been submitted that it was in the interest of the sub-lessees that they execute tripartite

deeds duly stamped and registered so that they could safeguard the title to their properties and deal with them accordingly as they were holding legal documents. It has

been highlighted by the learned counsel that the AWHO had on several occasions realized the importance of the execution of the tripartite deeds and had advised the Societies accordingly.

30. Concededly a lease deed or sub-lease of immovable property would be compulsorily registerable under Section 17 (1)(d) of the Registration Act and Section 107 of the Transfer of Property Act. In the absence of such a document,

Section 49 visualizes no legal effect or an effective transfer by way of a lease or sub-lease.

31. We have, therefore, no hesitation in setting aside the judgment of the Division Bench of the High Court and to allow the appeals and dismiss the writ petitions. We do so, however, with no order as to costs.

32. Before we part with the judgment, we must make a further direction. During the course of arguments, it was pointed out that notices had been issued by NOIDA calling for the execution of tripartite deeds failing which penalties etc.

would be imposable on the individual sub-lessees, particularly as a large number of allottees had already

signed such deeds. In the light of the fact that this has been a long drawn litigation and involves primarily serving or retired personnel of the armed forces, we direct that if the sub-lessees execute tripartite deeds as per the requirement of NOIDA within a period of six months from

today, no penalty or extra charge would be made payable by such allottees. We clarify that if the tripartite deeds are

not executed within the period of six months, the law or instructions would take their own course and NOIDA would be entitled to levy such charges as it was entitled thereunder.

.....J.

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(DALVEER BHANDARI)

.....J.
(HARJIT SINGH BEDI)

NEW DELHI,
DATED: SEPTEMBER 10, 2010