

ITEM NO.103

COURT NO.3

SECTION XII

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). 6260 OF 2001

GHAZIABAD DEVELOPMENT AUTHORITY

Appellant (s)

VERSUS

LAJJA RAM

Respondent(s)

(With office report)

WITH Civil Appeal NO. 6261 of 2001

(With office report)

Date: 15/02/2012

This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE DALVEER BHANDARI

HON'BLE MR. JUSTICE DIPAK MISRA

For Appellant(s)

Mr. Vijay Hansaria, Sr. Adv.
Ms. Reena Singh, Adv.
Mr. Devesh Kumar, Adv.
Mr. Jatinder Kumar Bhatia, Adv.

For Respondent(s)

Mr. Harshvir Pratap Sharma, Adv.
Mr. Ambhoj Kumar Sinha, Adv.
Mr. Sharad Kumar Vaish, Adv.

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

The appeals are allowed in terms of the
signed order leaving the parties to bear their
own costs.

[KALYANI GUPTA]
COURT MASTER

[INDU SATIJA]
COURT MASTER

C.A. No. 6260 of 2001

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[SIGNED ORDER IS PLACED ON THE FILE.]

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GHAZIABAD DEVELOPMENT AUTHORITY

.....

APPELLANT

VERSUS

LAJJA RAM

.....

RESPONDENT

WITH

CIVIL APPEAL NO. 6261 OF 2001

O R D E R

1. These appeals are directed against judgment dated 5th July, 2000 and 4th December, 2007 passed in Second Appeal No. 1138 of 1997 and Writ Petition No. 1496/2007 by the High Court of Judicature at Allahabad.

2. The short question which arises for consideration in these matters is whether the respondents are entitled to 3.47 Floor Area Ratio (FAR) for residential building as demanded by them?

3. Mr. Vijay Hansaria, learned Senior Counsel appearing for the Ghaziabad Development Authority has drawn our attention to the order passed by the Vice-Chairman of the Authority dated 17th October, 2001 which clearly indicates that maximum FAR which can be granted

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to any builder or any individual in this area is 1.5

FAR. This order was passed in pursuance to the directions of this Court dated 7th September, 2001. The

order reads as under:

"In compliance of the order dated 7.09.2011 passed by the Hon'ble Supreme Court in SLP NO-20205/2000, GDA Vs. Lajja Ram, which is still sub judice before the Hon'ble Supreme court, I have gone through the application filed by Sri Lajja Ram dated 07/07/97 for Khasra No. 125/4 & 126 village Makaan Pur total area 11925.46 sq.m. Which was filed for sanction of Residential group housing 3.47 FAR according to the bye-laws of Housing prevalent at the time of the application. It is

disposed of in the following ways-

1. From the total area of 4-14-6 Bigha of the Khasra No. 125/4 and 126, 2-15-0 Bigha land of the above said numbers are acquired land of the Ghaziabad Development Authority, in which authority has already paid compensation Rs. 19,976,630.31 to Sri Jaswant and others for 1-3-0 Bigha of the land.

So with regard to the land owner as Housing Bye-laws defines the owner of land, the person who has the legal right on that particular piece of land which is an important necessity for sanctioning the map. In these circumstances, sanctioning of map can only be considered after the decision of the Hon'ble Supreme Court.

Therefore after the decision of the Hon'ble Supreme Court only decided land can be considered for the sanctioning of the map.'

2. In the map 3.47 FAR is proposed, to consider this point following facts are relevant-

(A) In year 1993, Housing department of the government of U.P. prepared a Housing bylaws for all the cities, where development Authorities are working and the same was sent for adoption. GDA by its Board Meeting dated 29/09/93 adopted the Housing Bye-laws. Thus from 29/9/93 these Housing Bye-laws are

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applicable in Ghaziabad. According to the above said Housing Bye-laws for group housing part 2 clause 33(9) page - 27 provides that in such developmental areas where population is 175 person per acre reside, there 1.50 FAR is recommended. According to the township planning 2001, the density of the Vaishali Scheme is 100 persons per acre, against which, for group housing, maximum 1.5 FAR is recommended.

(B) According to the revised Housing Bye-laws, which is applicable now, in part 3, para 3.3.6 page 26 clearly says, that the maximum residential FAR is recommended is only 1.5, and the same has also been notified by the government in Notification No- 1157/9-A_3-1992-2-A.N./89 dated 9.03.99, it was also provided in the same notification that any group housing society can further purchase 33% of the recommended FAR i.e. .5 FAR from the authority after the payment of the due charges according to the calculation provided in the notification.

As mentioned above in such conditions for group housing maximum 2.00 FAR is permissible.

3. Except the above applicant has also not completed the following important conditions-

(a) No proper/adequate parking is mentioned in the map.

(b) Certificate of the chief of the fire department has not been produced.

(c) For the safety of the structure, neither the structural design is provided nor any certificate for safety of the concerned

department is annexed with the application, which are very important for the earth quake proof structure.

(d) Inside the amp location of the plot and key plan is not mentioned.

Therefore till the final decision of the Hon'ble Supreme Court in the above said SLP and if the applicant is ready to correct the map and annexed the required documents as discussed above, the amp of the applicant can be sanctioned, on the payment of the development charges, purchase cost and other charges applicable in his case.

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Accordingly the application of Sri Lajja Ram dated 07-07-97 for sanctioning of map is disposed off.
Dated 17.10.2011

illegible
(L.M. Vass)
Vice Chairman
Ghaziabad Development Auhority
Ghaziabad"

Mr. Hansaria also submits that in the vicinity of the site in question, no one else has been granted FAR of more than 1.5 for residential purposes.

In view of the aforesaid statement and the order dated 17th October, 2001 passed by the Vice Chairman, Ghaziabad Development Authority, the impugned judgment of the High Court is set aside, the appeals are allowed leaving the parties to bear their own costs.

We make it clear that, in case, as a consequence of the amendment of bye-laws, FAR is increased and benefit is given to other similarly placed builders or individuals then the case of the appellants would also be considered by the concerned authorities.

.....J
[DALVEER BHANDARI]

.....J
[DIPAK MISRA]

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NEW DELHI
FEBRUARY 15, 2012.