

Court No. - 21

Case :- WRIT - C No. - 35545 of 2022

Petitioner :- Amrita Bhati

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Gautam Kumar

Counsel for Respondent :- C.S.C.,Suresh Singh

Hon'ble Manoj Kumar Gupta,J.

Hon'ble Jayant Banerji,J.

(Per Manoj Kumar Gupta, J.)

1. The petitioner has challenged the constitutional validity of Section 10 of the U.P. Industrial Area Development Act, 1976 (for short 'the Act'); the notification dated 18.12.2015, issued under the proviso to clause (1) of Article 243-Q of the Constitution of India; the notification dated 22.8.2001, issued by the State Government, under Section 2(d) of the Act and the order dated 29.8.2022, passed by the Competent Authority, Yamuna Expressway Industrial Development Authority, Gautam Budh Nagar (respondent no. 3 – for short 'the Authority').

BACKGROUND

2. The petitioner claims to be co-owner of a residential plot in Khasra No. 422, area 561.86 square meters, Dankaur, Gautam Budh Nagar on basis of a sale deed dated 12.3.2021, executed in her favour by one Satish Goyal. The impugned order passed by

respondent no. 3 dated 29.8.2022 records that an inspection was made by the officials of the Authority on 1.4.2022 and whereupon it transpired that the petitioner had sub-divided the plot and had raised illegal constructions over it. The same was prejudicially affecting the proper planning of the industrial development area and falls within the mischief of Section 10 of the Act. It was held to be violative of Section 9 of the Act and Regulation 1 and 3 of the Yamuna Expressway Development Authority (Construction and Demolition) Regulations, 2010, as no prior approval was taken from the Authority before raising the constructions. There is also a recordal to the effect that the area in question is part of the 'industrial development area', so notified by notification dated 24.4.2001 and the notification issued on 18.12.2015, notifying eighty villages, including Village Dankaur as part of 'industrial township' under the proviso to clause (1) of Article 243-Q of the Constitution of India. Consequently, the constructions raised were held to be illegal and have been directed to be removed within fifteen days, failing which, the Authority would remove it at the cost and expense of the petitioner.

CONTENTIONS

3. The basic ground of challenge is that the plot in respect of which the impugned order has been passed, is situated in Village Dankaur. The authority competent to grant approval to the constructions was Nagar Panchayat, Dankaur and the petitioner had applied before it on 2.11.2022 for grant of approval of the constructions. The said application is still pending. In these circumstances, the order passed by respondent no. 3 for demolition of the constructions on the ground that the petitioner had not taken permission from the Authority, is wholly illegal, as it amounts to usurpation of the powers of Nagar Panchayat, Dankaur. It is contended that the Act of 1976 and the U.P. Municipalities Act, 1916 under which Nagar Panchayat, Dankaur would be exercising its power, could not operate simultaneously. The notification issued under Article 243-Q results in divesting the Nagar Palika of its jurisdiction in the matter. It is also contended that Section 10 is violative of Articles 14, 21 and 31A of the Constitution of India, as it has the effect of permanently depriving a person of his/her right to use and enjoy the property or to raise constructions over it.

4. On the other hand, Sri Manish Goyal, learned Senior Counsel, assisted by Sri Suresh Singh, appearing for the respondent Authority, submitted that the vires of the notification dated 18.12.2015, issued under the proviso to clause (1) of Article 243-Q of the Constitution of India, has already been upheld by this Court in **Writ – C No. 50154 of 2016 (Shri Niwaz Nagar and Another vs. State of U.P. and 5 Others)**, decided on 4.7.2017. It is urged that in the said judgment, this Court had considered the interplay between the constitutional scheme and the provisions of the Act and had held that the notification does not violate any provision of the Constitution. He has also placed reliance on another judgment of this Court in **Writ – C No. 9899 of 2015 (Rakam Singh vs. State of U.P. and 6 Others)**, decided on 1.5.2015, wherein the validity of a similar notification dated 14.01.2015 was upheld. It is further contended that Section 10 is a provision which merely regulates the development and constructions in the area declared as ‘industrial development area’ and does not impose any permanent restriction in raising constructions. Therefore, the submission that the said provision offends any mandate of the Constitution, is not sustainable. It is also urged that the petitioner

having admittedly raised constructions in an area declared as ‘industrial development area’, without prior approval of the Authority, there is no illegality in the impugned order and the writ petition deserves to be dismissed.

ANALYSIS

5. The impugned notification dated 18.12.2015 was issued in exercise of powers under Article 243-Q(1), which falls under Part IX-A of the Constitution, dealing with the Municipalities. It was inserted by the Constitution (Seventy-fourth Amendment Act), 1992 w.e.f. 1.6.1993. Article 243 (d) defines ‘municipality’ as an institution of self-government constituted under Article 243Q. Article 243Q envisages three different kinds of municipalities, namely, a Nagar Panchayat for a transitional area, that is to say, any area in transition from a rural area to an urban area; a Municipal Council for a smaller urban area; and a Municipal Corporation for a larger urban area. The proviso to clause (1) of Article 243Q empowers the Governor to constitute a municipality for any area or part thereof where having regard to the size of the area and the municipal services being provided or proposed to be provided by an industrial establishment in that

area and such other factors as are deemed fit, by public notification, specify to be an industrial township. Article 243Q is extracted below for convenience of reference: -

243Q. Constitution of Municipalities. - (1) There shall be constituted in every State, -

- (a) a Nagar Panchayat (by whatever name called) for a transitional area, that is to say, an area in transition from a rural area to an urban area;
- (b) a Municipal Council for a smaller urban area; and
- (c) a Municipal Corporation for a larger urban area, in accordance with the provisions of this Part:

Provided that a Municipality under this clause may not be constituted in such urban area or part thereof as the Governor may, having regard to the size of the area and the municipal services being provided or proposed to be provided by an industrial establishment in that area and such other factors as he may deem fit, by public notification, specify to be an industrial township.

(2) In this article, “a transitional area”, “a smaller urban area” or “a larger urban area” means such area as the Governor may, having regard to the population of the area, the density of the population therein, the revenue generated for local administration, the percentage of employment in non-agricultural activities, the economic importance or such other factors as he may deem fit, specify by public notification for the purposes of this Part.

6. The proviso to clause (1) of Article 243Q is in nature of an exception to the main provision. Where the Governor specifies an area to be an 'industrial township', having due regard to its size and the municipal services being provided or proposed to be provided by an industrial establishment in that area and such other factors as he may deem fit, a municipality need not be constituted in such area. As a corollary of the above, such an area would stand excluded from the municipal area. Any municipality already constituted for such an area, would cease to exist. Consequently, the municipal services, if any, being hitherto provided by the Municipality, would be provided by the industrial establishment.

7. The U.P. Industrial Area Development Act, 1976 provides for the constitution of an Authority for the development of certain areas in the State into industrial and urban township and for matters connected therewith. Section 2(b) defines 'Authority' as that constituted under Section 3 of the Act. Thereunder, the 'Authority' is a body corporate. Section 2(d) defines an 'industrial area' as an area declared as such by the State Government by notification. Section 6 of the Act enjoins the Authority to secure planned development of the industrial

development areas. Sub-section (2) of Section 6 enumerates some of the functions of the Authority to enable it to achieve its objectives. It includes preparation of plan for development of the industrial area; provide amenities, regulate erection of buildings, prescribe land usage, etc. On 22.3.2016, by U.P. Act No. 10 of 2016, sub-section (2) of Section 6 was amended and the function of providing 'municipal service' by the Authority was specifically included. Sub-section (2) of Section 6, as amended, is extracted below: -

(2) Without prejudice to the generality of the objects of the Authority, the Authority shall perform the following functions :—

- (a) to acquire land in the industrial development area, by agreement or through proceedings under the Land Acquisition Act, 1894 for the purposes of this Act;
- (b) to prepare a plan for the development of the industrial development area;
- (c) to demarcate and develop sites for industrial, commercial and residential purpose according to the plan;
- (d) to provide infrastructure for industrial, commercial and residential purposes;
- (e) to provide amenities and municipal services;

- (f) to allocate and transfer either by way of sale or lease or otherwise plots of land for industrial, commercial or residential purposes and such other land uses as per master plan;
- (g) to regulate the erection of buildings and setting up of industries and land uses as per master plan; and
- (h) to lay down the purpose for which a particular site or plot of land shall be used, namely for industrial or commercial or residential purpose or any other specified purpose in such area as per the Master Plan.

8. Section 9 of the Act imposes ban on erection of buildings in contravention of Regulations and it reads as follows: -

9. Ban on erection of buildings in contravention of regulations. - (1) No person shall erect or occupy any building in the industrial development area in contravention of any building regulation made under sub-section (2).

(2) The Authority may by notification and with the prior approval of the State Government make regulations to regulate the erection of buildings and such regulations may provide for all or any of the following matters, namely -

- (a) The materials to be used for external and partition walls, roofs, floors and other parts of a buildings and their position or location or the method of construction;
- (b) Lay out plan of the building whether industrial, commercial or residential;

- (c) the height and slope of the roofs and floors of any building which is intended to be used for residential or cooking purposes;
- (d) the ventilation in, or the space to be left about any building or part thereof to secure circulation of air or for the prevention of fire;
- (e) the number and height of the storeys of any building;
- (f) the means to be provided for the ingress and egress to and from any building;
- (g) the minimum dimensions of rooms intended for use as living rooms or sleeping rooms and the provision of ventilation;
- (h) any other matter in furtherance of the proper regulation of erection, completion and occupation of buildings; and
- (i) the certificates necessary and incidental to the submission of plans amended plans and completion reports.
- (j) the time limit within which any building shall be required to be erected or repairs, additions, modifications is to be made in an existing building, shall be carried out and after completion thereof a notice of completion of construction of building or repairs, additions or modifications as the case may be, shall be lodged with the Authority and completion certificate obtained therefrom.

9. Section 10 is power of the Authority to ensure proper maintenance of site or building so that it does not prejudicially affect the planned industrial development of the area. Section 10 is extracted below: -

10. Power to require proper maintenance of site or building – (1) If it appears to the Authority that the condition or use of any site or building is prejudicially affecting or is likely to affect the proper planning of or the amenities in any part of the industrial development area of the interests of the general public there, it may serve on the transferee or occupier of that site or building a notice requiring him to take such steps and within such period as may be specified in the notice and thereafter to maintain it in such manner as may be specified therein and in case such transferee or occupier fails to take such steps or to maintain it thereafter the Authority may itself take such steps or maintain it, and realize the cost incurred on it from such transferee or occupier.

(2) If the State Government considers it necessary or expedient in the public interest it may, by a general or special order, exempt wholly or partly – any such transferee or occupier or any class thereof from the taxes levied under sub-section (1).

10. It is noteworthy that Section 12-A and Section 12-B were inserted by U.P. Act No. 4 of 2001 and U.P. Act No. 10 of 2016, respectively and read as follows: -

12-A. No panchayat for industrial township. -

Notwithstanding anything contained to the contrary in any Uttar Pradesh Act, where an industrial development area or an part thereof is specified to be an industrial township under the proviso to clause (1) of Article 243-Q of the Constitution, such industrial development area or part thereof, if included in a Panchayat area, shall, with effect from the date of notification made under the said proviso, stand excluded from such Panchayat area and no Panchayat shall be constituted for such industrial development area or part thereof under the United Provinces Panchayat Raj Act, 1947 or the Uttar Pradesh Kshettra Panchayats and Zila Panchayats Adhiniyam, 1961, as the case may be, and any Panchayat constituted for such industrial development area or part thereof before the date of such notification shall cease to exist.

12-B. (1) The Governor may, by notification, specify under Article 243-Q of the Constitution of India, the whole of Special Investment Region or the Industrial Development Area or any part thereof to be an Industrial Township.

(2) Notwithstanding anything to the contrary contained in any Uttar Pradesh Act, where an special investment region or industrial development area or any part thereof is specified to be an Industrial Township under the proviso to clause (1) of Article 243Q of the Constitution of India, such industrial development area or part thereof, falling in a Municipality shall from the date of notification stand excluded from that Municipality area and all powers and functions performed with respect to such area shall be exercised or performed by the Authority.

These provisions make explicit the effect of any area being declared as ‘industrial township’ under the provisions of Article 243-Q. If it was part of the panchayat, it shall stand excluded therefrom and any panchayat constituted for such area or part thereof shall cease to exist from the date of notification under Article 243-Q. The same consequences are to follow in case any area or part comprised in a Municipality is declared as ‘industrial township’. It shall stand excluded from that Municipality from the date of notification and all powers and functions performed with respect to such area shall be exercised by the Authority.

11. Section 18 invests the State Government with the power to make rules for carrying out the purposes of the Act. Section 19 empowers the Authority to make regulations with the previous approval of the State Government, not inconsistent with the provisions of the Act or the Rules for proper administration of the affairs of the Authority. In exercise of the above powers, the ‘Authority’ has made ‘the Yamuna Expressway Industrial Development Area Building Regulations, 2010 and the Yamuna Expressway Authority Demolition Regulations’ containing specific provisions regulating the manner in which permission is to be obtained for raising constructions in the ‘industrial

development area’ and the power of the Authority to demolish the constructions made without obtaining approval or contrary to the plans or usage prescribed. Chapter-II Regulation 4 of the Regulations, 2010 which prohibits construction activity in the ‘industrial development area’ without obtaining approval is extracted below: -

4.0 Building permit – No person shall erect any building or a boundary wall or fencing without obtaining a prior permit thereof, from the Chief Executive Officer or an Officer authorized by the Chief Executive Officer for this purpose.

Regulation 5(i) and (ii) of the Demolition Regulations which empowers the Authority to remove constructions made without permission, approval or sanction is as follows: -

5.(i) Where any development in an industrial development area has been commenced or continued in contravention of the plan without the permission, approval or sanction, referred to in regulation – 1 or in contravention of any condition subject to which such permission, approval or sanction has been granted then, without prejudice to the provisions of the regulation – 4 and section – 15 of the Act, the Competent Officer may make an order requiring the development to be discontinued from the date of service of the order, and such order shall be complied with accordingly.

(ii) Where such development is not discontinued in pursuance of the order under sub-regulation (I), Competent Officer may require force to remove the person by whom the development has been commenced and all his assistance and workmen from the place of development within such time as may be specified in the regulation.

12. The object and the scheme of the Act demonstrably is to give impetus to the development of industries in certain areas in the State. The State Government declares such areas as ‘industrial development area’ by issuing notification under Section 2(d) of the Act. The Industrial Development Authority constituted under Section 3 for such area gets invested with the power to carry out development of the said area. As noted above, one of the functions of the Authority is to ensure that the development which takes place in the area is such that it does not have adverse impact on the proper planning of or the amenities in any part of the industrial development area or the interests of the general public there. To achieve the said object, the Authority has also been given power, inter alia, to regulate the building activity in the area by framing regulations. The Regulations framed by the Authority inter alia, provides for the manner in which approval for raising constructions is to be obtained and

empowers the 'Authority' to remove the same, if made without obtaining approval.

13. On 24.4.2001, by a notification, the State Government constituted an Authority in the name of 'Taj Expressway Development Authority, in exercise of power under Section 3 of the Act. Eight revenue villages were notified as 'industrial development area', falling under its jurisdiction. On 24.8.2001, another notification was issued, notifying more villages as 'industrial development areas'. It included village Dankaur as well, with which we are presently concerned in the instant case. The said notification was issued under Section 2(d) of the Act. The result of the same was that the said area stood excluded from the panchayat area of Nagar Panchayat, Dankaur and the municipal services and building activity in the said area came to be regulated and controlled by the Taj Expressway Development Authority. On 11th July, 2008, by another notification, the name of the Authority was changed to Yamuna Expressway Industrial Development Authority. On 18th December, 2015, by the notification impugned, the Governor in exercise of powers under the proviso to clause (1) of Article 243Q of the Constitution, specified an area comprising of eighty villages, which had earlier

been declared as ‘industrial development area’, as an ‘industrial township’ w.e.f. the date of publication of the notification. It superseded the earlier notification dated 30.6.2008.

14. In **Rakam Singh** (supra), the notification dated 14.1.2015 notifying certain area of a particular Gram Panchayat as an ‘industrial township’, was challenged on the ground that it would have the effect of dissolving the Gram Panchayat of that area, a consequence, which is against the spirit of Part IX of the Constitution, which contemplates the creation of Panchayats as institutions of self-government. The challenge was repelled and it was held as follows: -

What Article 243-Q (1) does, is to provide that a Municipality under clause (1) may not be constituted in respect of an area which has been specified as an industrial township having regard to the size of the area and the municipal services being provided or proposed to be provided by an industrial establishment. An industrial township is a subset of an urban area which fulfils the characteristics provided by the proviso to Article 243-Q (1). But for the proviso, a Municipality would have had to be constituted under the substantive part of Article 243-Q (1) in respect of an area which has been specified as an industrial ownership. An industrial township, however, is an area in which an industrial establishment has provided or proposes to provide municipal services and which is so

specified by the Governor having regard to the size of the area. Where an industrial township has been specified, the requirement of constituting a Municipality stands lifted. If this constitutional scheme providing for Panchayats on one hand and Municipalities on the other is construed so as to effectuate the purpose and intent of the provisions of Part IX and Part IX-A, there can be no ambiguity about the position. Once a Municipality is constituted in respect of an area under Article 243-Q (1), it would be far fetched to contend that nonetheless, the very same area must necessarily fall within the jurisdiction of a village Panchayat that was constituted under Article 243-B. The whole object of constituting a Municipality is to provide an institution of local self-government in those areas which have ceased to be villages within Part-IX and which do not meet the description of a rural area. The constitution of an industrial township under the proviso to Article 243-Q (1) obviates the necessity of constituting a Municipality for that area. Once an industrial township is constituted, regulation of that township would take place under the enabling provision of state legislation governing such a township.

15. The constitutional validity of the notification dated 18th December, 2015 impugned herein, whereby the village in question along with other villages had been notified as ‘industrial township’, was specifically in issue in **Shri Niwaz** (supra). Also under challenge therein were the communication issued by the Government dated 10.9.2016 and 12.9.2016 whereby the Authorities decided not to hold election of

panchayats in villages notified as 'industrial development areas'. A Co-ordinate Bench of this Court of which one of us (Manoj Kumar Gupta, J.) was a member, upheld the constitutional validity of the notification relying on the judgment in **Rakam Singh** (supra) and repelled the contention that provisions of the Constitution had been violated. It was observed as follows: -

It has been authoritatively held in **Rakam Singh (Supra)** that "
(i) If the area is included in a Panchayat area, it would, with effect from the date of the notification made under the proviso, stand excluded from the Panchayat area; (ii) No Panchayat can be constituted for such an industrial development area or a part under the Act of 1947 or the Adhiniyam of 1961". The impugned orders passed by the Special Secretary dated 10 September 2016 and the Director, Panchayat Raj dated 12 September 2016 simply clarify the legal position which emerges on account of the area being declared as Industrial Township. Even in the absence of these orders, the legal consequence flowing out of the notification dated 18 September 2015 was inevitable and could not have been avoided by the petitioners.

The validity of the notification is therefore no more res-integra, as rightly pointed out by Sri Manish Goyal, Senior Advocate, appearing on behalf of the Authority.

16. As regards challenge advanced to the notification dated 22.8.2001, the same was issued by the State Government in exercise of power under Section 2(d) of the Act. The vires of Section 2(d) is not in issue. As seen, the Constitution itself envisages development of certain areas as industrial townships and to achieve the said object, it also envisages a separate Authority for such area which would provide municipal services and develop it. The said object of the Constitution is being achieved under the enabling provisions of the State legislation under which initially notification dated 24.4.2001 was issued, notifying eight villages as ‘industrial development area’. In sequel to the same, the impugned notification dated 22.8.2001 was issued. It merely includes some more areas within the ambit of the industrial development area falling under the jurisdiction of the Authority. The contention that the said notification is illegal or against the constitutional mandate, does not merit acceptance.

17. We also do not find any merit in the contention that the impugned notifications have the effect of bringing in conflict the provisions of the U.P. Municipalities Act, 1916/U.P. Panchayat Raj Act, 1947 with that of the U.P. Industrial Area Development

Act, 1976. As already discussed, the effect of issuance of the notification under proviso to clause (1) of Article 243Q of the Constitution is that the area covered thereunder ceases to be under the control of the Panchayat or Municipality, as the case may be, and the municipal services and building activities therein gets regulated by the Authority constituted under the Act. The provisions of the U.P. Municipalities Act, 1916/U.P. Panchayat Raj Act, 1947 ceases to apply. Consequently, there is no question of any conflict. In a similar fact situation, the Supreme Court in **Saij Gram Panchayat vs. State of Gujarat and Others**¹ repelled the contention while considering cognate provision of the two legislations in the State of Gujarat. It has been held that the objective of the two legislations is different and they operate in different fields and there is no question of any conflict. It was observed as follows: -

"16. The contention is based on a misconception about the relationship of the provisions of Parts IX and IXA of the Constitution with any legislation pertaining to industrial development. The Gujarat Industrial Development Act operates in a totally different sphere from Parts IX and IXA of the Constitution as well as the Gujarat Panchayats Act, 1961 and the Gujarat Municipalities Act, 1962 - the latter being

¹ AIR 1999 SC 826

provisions dealing with local self Government while the former being an Act for industrial development, and orderly establishment and organisation of industries in a State. The industrial areas which have been notified under Section 16 of the Gujarat Industrial Development Act on 7.9.1993 were notified as industrial areas under the Gujarat Industrial Development Act long back in the year 1972. These industrial areas have been developed by the Gujarat Industrial Development Corporation and they can hardly be looked upon as rural areas covered by Part IX of the Constitution. It is only such industrial areas which can be notified under Section 16 of the Gujarat Industrial Development Act, 1963. If by a notification issued under Section 16, these industrial areas are deemed to be notified areas under the Gujarat Municipalities Act and are equated with industrial township under the proviso to Clause (1) of Article 243-Q, the constitutional scheme is not violated. In fact, under Chapter 3 of the Gujarat Industrial Development Act, 1962, the Gujarat Industrial Development Corporation, has been given power, inter alia, to develop land for the purpose of facilitating the location of industries and commercial centers. It has also been given the power to provide amenities and common facilities in such areas including provision of roads, lighting, water supply, drainage facilities and so on. It may do this either jointly with Government or local authorities or on an agency basis in furtherance of the purposes for which the corporation is established. The industrial area thus has separate provision for municipal services being provided by the Industrial Development Corporation. Once such an area is a deemed

notified area under the Gujarat Municipalities Act, 1964, it is equated with an industrial township under Part IXA of the Constitution, where municipal services may be provided by industries. We do not see any violation of a constitutional provision in this scheme."

(emphasis supplied)

18. A feeble attempt was made to challenge the said notification by contending that the provision of the Act shall also come in conflict with the U.P. Land Revenue Act, 1901, but without specifying how it would be so. It is pertinent to note that the U.P. Land Revenue Act, 1901 deals with land revenue and the jurisdiction of Revenue Officers in the State. The Act does not regulate building activity. The Revenue Authorities are not concerned with planning or development. The contention is thus devoid of merit.

19. Counsel for the petitioner contended that Section 10 of the Act imposes unreasonable restriction on the right of a person to raise constructions over his land. According to him, it is violative of Articles 14, 21 and 31A of the Constitution. The contention does not appear to have any force. Section 10 is not a permanent clog on right of any person to raise construction in areas falling under the jurisdiction of the Authority constituted

under the Act. The construction activity only gets regulated by the regulatory steps that are taken by the Authority to ensure proper planning of the area so that it does not prejudicially affect the industrial development or interests of the general public there. The Regulations framed by the Authority in exercise of its power under Section 19 of the Act contains specific provisions as regards the manner in which permission for raising construction could be obtained. It does not ban the development or construction activity, but is only a power to regulate.

20. Article 31A is not at all attracted to the facts of the instant case. The contention that the impugned notification has the effect of acquiring the land of the petitioner without paying compensation, does not merit acceptance, inasmuch as, the impugned notification issued under Article 243-Q, notifying ‘industrial township’ and the limits of the lands included therein, does not have the effect of acquiring such lands or any building or structure standing over it, but only subjects the same to the regulatory measures prescribed by the Authority to achieve the objective of planned development of the area.

21. Concededly, the petitioner had raised constructions without obtaining previous approval of the Authority. The impugned order specifically records that the constructions raised were prejudicially affecting the planned development of the area. These findings of fact are not under challenge. Consequently, we find no merit in the writ petition.

22. Accordingly, the writ petition is dismissed. No order as to costs.

(Jayant Banerji, J.) (Manoj Kumar Gupta, J.)

Order Date :- 03.04.2023
Jaideep/-