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Case Comment: Supertech Limited vs Emerald Court Owner Resident Welfare Association

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INTRODUCTION

On 31 August 2021, Justice D.Y. Chandrachud and Justice M.R. Shah of the Supreme Court of India passed an order upholding the decision of the Allahabad High Court directing Supertech Ltd. to demolish the twin towers constructed by it in Noida. The judgement held that the twin towers were constructed illegally and the said towers were not the part of the original plan laid down by Supertech Ltd. It was held that the construction of twin towers was facilitated as a result of the collusion between the developer and developing authority and such construction needs to be demolished, providing refunds to the purchasers along with the interest.¹

BACKGROUND OF THE CASE

¹ PTI, 'Supertech twin tower case: U.P. CM calls for inquiry, action against guilty officials' (*The Hindu*, 1 September 2021) <<https://www.thehindu.com/news/national/other-states/supertech-twin-tower-case-up-cm-calls-for-inquiry-action-against-guilty-officials/article36222991.ece>> accessed 10 September 2021

- **The Emerald Court Project**

Supertech Ltd. was allotted a plot of land measuring 48,263 square meters by “New Okhla Industrial Development Authority” (NOIDA) on 23 November 2004. This plot of land was granted for the purpose of constructing the Group Housing Society, i.e., Emerald Court. On 16 March 2005, the first lease deed was executed between Supertech Ltd. and NOIDA, and a possession certificated was issued on 17 March 2005. The building plan for the construction of the Emerald Court was sanctioned on 20 June 2005. The plan consisted of fourteen towers, each having a ground floor along with nine floors. The sanction for the same was granted under the “New Okhla Industrial Development Area Building Regulations and Directions, 1986.”² Subsequently, three revision plans were introduced to the original plan³.

- **First Revision Plan**

An additional land area of 6556.51 square meters was added through another lease deed which was executed on 21 June 2006. According to the terms of the deed, all the conditions of the original deed would apply similarly in the subsequent deed too, thus increasing the total area plot to 54,819.51 square meters. The possession certificate of the later deed was issued on 23 June 2006. On 5 December 2006, the “New Okhla Industrial Development Area Building Regulations and Direction, 2006⁴” came into force, so the revised plan was sanctioned under the new floor-area-ratio that is 2 instead of the previous 1.5. Under the revised plan, towers 15 and 16 were added and the floors of all the towers were increased to 11 and one ground floor. It also added one shopping complex to the plan. Brochures for the sale of flats were also according to the first revised plan.

- **Second and Third Revised Plans**

The second revised plan added tower 17 to the project. According to the second revision of the plan, the height of towers 16 and 17 was to be 73 meters consisting of 24 floors each. Tower 17

² New Okhla Industrial Development Area Building Regulations and Directions 1986

³ *Supertech Limited v Emerald Court Owner Resident Welfare Association* [2021] SCC OnLine SC 648

⁴ New Okhla Regulations and Direction (n 2)

was to be built at a distance of 9 meters from tower 1 and both the towers were to be connected through a space frame. The second revised plan was sanctioned on 26 November 2009 under the NBR, 2006.⁵ Subsequently, a third revised plan was sanctioned on 2 March 2012. According to the third revised plan, the height of towers 16 and 17 was increased to 121 meters with 40 and 39 floors respectively.

The revised plans were subsequently challenged by the “Emerald Court Owner Resident Welfare Association” (RWA) through a writ petition filed in the Allahabad High Court under the provisions of the UP Apartments Act, 2010⁶. The RWA asked for the demolitions of towers 16 and 17 (twin towers) and demanded that there should be no linking between towers 17 and tower 1.

JURISDICTION ON THE MATTER

- **Allahabad High Court**

The Allahabad High Court allowed the writ petition filed by RWA (Resident Welfare Association). It also passed an order directing the demolition of the twin towers i.e., towers 16 and 17. Additionally, the competent authorities were directed to persecute involved officers under section 49 of “UP Urban Development Act, 1973”⁷ (Section 12 of “UP Industrial Area Development Act, 1976”⁸). Further, Supertech Ltd. was ordered to refund the entire amount to the flat purchasers who bought the flats in towers 16 and 17 along with the interest of 14% per annum compounded annually⁹.

- **Supreme Court of India**

Supertech Ltd. being unsatisfied with the orders of the Allahabad High Court, filed Special Leave Petition before the Supreme Court of India. After taking everything into consideration, the Apex court upheld the order of Allahabad High Court. It ordered the demolition of towers

⁵ Noida Building Regulations (NBR) 2006

⁶ UP Apartments Act 2010, s 5

⁷ UP Urban Development Act 1973, s 49

⁸ UP Industrial Area Development Act 1976, s 12

⁹ *Resident Welfare Association v State of UP* [2014] SCC OnLine All 14817

16 and 17 within three months from the date of the judgement. All the costs pertaining to the same are to be incurred by Supertech Ltd. Furthermore, Supertech Ltd. was instructed to refund the whole amount to the purchasers of the flats at an interest rate of 12 percent per annum. In addition to that, Supreme Court also directed Supertech Ltd. to pay Rs. 2 crores to RWA within one month of the judgement¹⁰.

ANALYZATION OF THE DECISION USING VARIOUS PROVISIONS

- **NBR 2006 and NBR 2010**

“New Okhla Industrial Development Area Building Regulations and Directions, 2006” (NBR 2006) came into force in December 2006 before the first revised plan for the Emerald court project was issued. So, the first revision plan had to abide by NBR 2006 which it did not. According to regulation number 33.2.3 of NBR 2006, the distance between two adjacent building blocks must be at least half the size of the tallest buildings which was not followed by Supertech Ltd¹¹. Similarly, the NBR 2010 came into force before the third revised plan for the Emerald Court Project was approved. According to the NBR 2010, the distance between two adjacent building blocks had to be between 6 and 16 meters¹². According to the “National Building Code, 2005” (NBC 2005), 6 meters of spacing is required for a building of 18 meters of height, spacing has to increase by 1 meter after every addition of 3 meters in the height of the building¹³. But these regulations were not met by Supertech Ltd.

1) Interpretation of the term “Building Blocks”

Supertech Ltd. asserted that towers 16 and 17 were part of the same building block along with towers 1, 2, and 3. The term “Building Blocks” refers to the group of buildings on the plot. Towers 16 and 17 were not part of the original project of Supertech Ltd. According to the original plan, different towers were different building blocks. Subsequently, Supertech Ltd. changed the names of the buildings and referred to them as

¹⁰ *Supertech Limited v Emerald Court Owner Resident Welfare Association* [2021] SCC OnLine SC 648

¹¹ New Okhla Industrial Development Area Building Regulations and Directions 2006, regulation 33.2.3

¹² New Okhla Industrial Development Area Building Regulations and Directions 2010, regulation 24.2.1.6

¹³ National Building Code 2005

towers, but according to the sanctioned maps, all these towers were separate building blocks. So, considering towers 16 and 17 to be a part of the same building block would defeat the very purpose of NBR, 2006 and NBR, 2010. Therefore, the court rightly held that towers 16 and 17 were part of separate blocks due to which regulations under NBR 2006 and NBR 2010 were applicable upon them and the towers were in violation of the spacing regulations.

2) Interpretation of the term “Dead End Sides of the Building”

According to NBC 2005, if the building blocks have “dead-end sides” facing each other, the maximum spacing of 9 meters is required instead of 16 meters. Supertech Ltd. contended that tower 1 and tower 17 had their end sides facing each other, so the distance requirement was only 9 meters. The term “Dead End Sides” means that two sides of the buildings facing each other should not have an egress (any window or balcony) and there should be no habitable rooms on the dead-end side of the buildings. Even if there is a single opening or habitable on adjacent sides of either building, the condition would not apply. Therefore, such a condition would not apply to the sides of towers 17 and 1 facing each other. So, the distance of 9 meters which has been left between tower 1 and tower 17 is violative of the spacing regulations of the NBR 2006 and NBR 2010.

- **Violation of Fire Safety Norms**

Supertech Ltd. filed for fire NOC (No Objection Certificate) for the project. Since the roads between the buildings were wide enough for the fire brigade department to reach the place in case of emergency situations, a temporary NOC was granted. But the clause 10 of the report explicitly mentioned that the regulations laid down by NBC 2005 were to be strictly adhered to, otherwise NOC shall stand canceled. NBC 2005 clearly mentions that there should be a minimum distance of 16 meters between buildings of height 55 meters and above. Since the distance between towers 1 and 17 was only 9 meters¹⁴, NOC stands cancelled subject to clause

¹⁴ National Building Code 2005

10. Therefore, the fire safety norms for the building were violated putting forward one more logical point for the demolition of towers 16 and 17.

- **“UP Act 1975” and “U.P. Apartments Act, 2010”**

Supertech Ltd. asserted that “UP Flat Ownership Act” (UP Act 1975) would not apply to the Emerald Court project. According to section 2 of the “UP Flat Ownership Act” (UP Act 1975), the act would apply to only those owners who explicitly submit to its provisions by making a declaration¹⁵. In the present case, Supertech Ltd. did not make any declaration but clause II(h) of the lease deed issued by NOIDA mentioned that act would apply to the lease deed executed in the favour of Supertech ltd. Therefore, the act would be applicable to the project. Similarly, “U.P. Apartments Act, 2010” would be applicable to the third revised plan as the act came into force prior to the sanctioning of the third revision plan for the Emerald Court Project.

According to section 5(2) of the “UP Flat Ownership Act” (UP Act 1975) and section 5 of the “U.P. Apartments Act, 2010”, in case, there is any amendment in the original declaration, the consent of all the flat purchasers had to be taken¹⁶. But in the present case, no such consent was taken from the flat purchasers of towers 1 to 15.¹⁷ Supertech Ltd. contended that the “Resident Welfare Association” (RWA) was not formed by the time the revision plans were made, so it could not take its approval. Since the acts explicitly mention the consent of the individual flat owners of the project, non-constitution of the collective body of flat owners would not exempt Supertech ltd. for its violation of the acts. Thus, the revised plans were illegal according to the acts.

CONCLUSION

In the judgement, the Supreme Court of India rightly decided in favour of the Resident Welfare Association and ordered the demolition of towers 16 and 17 of the Emerald Court Project. The court also directed Supertech ltd. to refund the money of the flat purchasers of

¹⁵ UP Flat Ownership Act 1975, s 2

¹⁶ UP Flat Ownership Act 1975, s 5(2)

¹⁷ UP Apartments Act 2010, s 5

towers 16 and 17 along with the interest of 12 percent. Further, the direction was made towards the proper inquiry and punishment of the officials who illegally sanctioned the revision plans for the project. The construction of the towers was illegal and this was clear as various provisions of the relevant acts were violated time and again. The apex court of India gave some strict interpretations of the various terms used in different provisions. Such interpretations were need of the hour to ensure the proper implementation of the acts made for the safety and welfare of residents of the society. It would hopefully act as the deterrent for any unscrupulous practices violating the rights of the flat buyers.