

The Uttar Pradesh Industrial Area Development Act, 1976¹

[U.P. Act No. 6 of 1976]

(As passed by the Uttar Pradesh Legislature)

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An Act to provide 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.

It is hereby enacted in the Twenty-seventh Year of the Republic of India, as follows :

1. Short title and extent.—(1) This Act may be called the Uttar Pradesh Industrial Area Development Act, 1976.

(2) It extends to the whole of Uttar Pradesh.

2. Definitions.—In this Act—

- (a) "amenities" includes roads, water supply, street lighting and power supply, sewerage, drainage, collection, treatment and disposal of industrial waste and town refuse and other community facilities, services or conveniences as the State Government may, by notification, specify to be an amenity for the purposes of this Act;

¹ Received the assent of the Governor on 16.04.1976 and published in the U.P. Gazette, Extra., dt. 16.04.1976.

- (b) "Authority" means the Authority constituted under Section 3 of the Act;
- (c) "Chief Executive Officer" means the officer appointed as such under Section 4;
- (d) "industrial development area" means an area declared as such by the State Government by notification;
- (e) "Occupier" means a person (including a firm or body of individuals whether incorporated or not) who occupies a site or building within the industrial development area and includes his successors and assigns;
- (f) "transferee", means a person (including a firm or other body of individuals, whether incorporated or not) to whom any land or building is transferred in any manner whatsoever, under this Act and includes his successors and assigns;
- (g) the words and expressions "building", "development", "to erect a building" and "land" shall have the same meaning as assigned to them in the Uttar Pradesh Urban Planning and Development Act, 1973.

COMMENT

Building—Meaning of.—In the *Websters New International Dictionary*, the word "building" has been defined as follows :

"That which is built specific : (a) as now generally used a fabric or edifice, framed or constructed, designed to stand more or less permanently and covering a space of land for use as a dwelling, store house, factory, shelter for beasts or some other useful purpose. Building in this sense does not include a mere wall, fence, monument, hoarding or similar structure though designed for permanent use where it stands, nor a steamboat, ship or other vessel of navigation."¹

"It is quite clear that the expression 'buildings' does not mean everything that can by any means be described as built; it means buildings in a more narrow sense than structures, because there are other structures of a limited class which under the terms of the sub-section may also be taken into consideration."²

3. Constitution of the Authority.—(1) The State Government may, by notification, constitute for the purposes of this Act, an Authority to be called "(Name of the area) Industrial Development Authority", for any industrial development area.

1. *Ghansham Das v. Debi Prasad*, (1966) 3 SCR 875.

2. *State of Bombay v. Sardar Venkat Rao Krishna Rao Gujar*, (1963) 1 SCR 428.

(2) The Authority shall be a body corporate.

(3) The Authority shall consist of the following :

- (a) The Secretary to the Government, Uttar Pradesh, Industries Department or his nominee not below the rank of Joint Secretary—*ex officio*. *Member-Chairman.*

¹[Provided that the Chairman of the Uttar Pradesh Industrial Development Corporation shall be the *ex-officio* Chairman of the Uttar Pradesh State Industrial Development Authority.]

- (b) The Secretary to the Government, Uttar Pradesh, Public Works Department or his nominee not below the rank of Joint Secretary—*ex officio*. *Member.*

- (c) The Secretary to the Government, Uttar Pradesh, Local Self-Government Department or his nominee not below the rank of Joint Secretary—*ex officio*. *Member.*

- (d) The Secretary to the Government, Uttar Pradesh, Finance Department or his nominee not below the rank of Joint Secretary—*ex officio*. *Member.*

- (e) The Managing Director, U.P. State Industrial Development Corporation—*ex officio*. *Member.*

- (f) Five members to be nominated by the State Government by notification. *Member.*

- (g) Chief Executive Officer *Member-Secretary.*

(4) The headquarters of the Authority shall be at such place as may be notified by the State Government.

(5) The procedure for the conduct of the meetings for the Authority shall be such as may be prescribed.

(6) No act or proceedings of the Authority shall be invalid by reason of the existence of any vacancy in or defect in its constitution of the Authority.

4. Chief Executive Officer.—(1) The Chief Executive Officer of the Authority shall be appointed by the State Government and he shall be a whole-time officer of the Authority.

¹ Ins. by U.P. Act No. 20 of 2008 (w.e.f. 24.07.2008).

(2) The Chief Executive Officer shall be entitled to receive from the funds of the Authority such salaries and allowances and be governed by such conditions of service as may be determined by general or special order of the State Government in this behalf.

(3) The Chief Executive Officer shall exercise such powers and perform such duties as may be specified in the regulations or delegated to him by the Authority.

5. Staff of the Authority.—(1) Subject to such control and restrictions as may be determined by general or special orders of the State Government, the Authority may appoint such number of officers and employees as may be necessary for the performance of its functions, and may determine their grades and designations.

(2) Subject as aforesaid the officers and other employees of the Authority shall be entitled to receive from the funds of the Authority such salaries and allowances and shall be governed by such other conditions of service as may be agreed upon with the Authority.

COMMENT

Sub-section (2) of Section 5, thus, *inter alia*, provides that the officers and other employees of the Authority shall be governed by such other conditions of service as may be agreed upon with the Authority.¹

6. Functions of the Authority.—(1) The object of the Authority shall be to secure the planned development of the industrial development areas.

(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 purposes according to the plan;
- (d) to provide infra-structure for industrial, commercial and residential purposes;
- (e) to provide amenities;
- (f) to allocate and transfer either by way of sale or lease or otherwise plots of land for industrial, commercial or residential purposes;

1. *Rakesh Kumar Saxena v. State of U.P. and another*, 2009 (1) ADJ 560 (DB).

- (g) to regulate the erection of buildings and setting up of industries; 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.

COMMENT

Section 6 of the Act provides for functions of the Authority and amongst other, the functions are to allocate and transfer either by way of sale or lease or otherwise, plots of land for commercial, industrial or residential purposes, to regulate the erection of buildings and setting up of industries and 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.¹

7. Power to the Authority in respect of transfer of land.—The Authority may sell, lease or otherwise transfer whether by auction, allotment or otherwise any land or building belonging to the Authority in the industrial development area on such terms and conditions as it may, subject to any rules that may be made under this Act, think fit to impose.

COMMENT

In view of Section 7 of the Act, NOIDA cannot impose charges or rental in violation of the terms and conditions of the lease.²

8. Power to issue directions in respect of erection of building.—(1) For the purposes of proper planning and development of the industrial development area, the Authority may issue such direction as it may consider necessary, regarding—

- (a) architectural features of the elevation or frontage of any building;
- (b) the alignment of buildings on any site;
- (c) the restrictions and conditions in regard to open spaces to be maintained in and around buildings and height and character of buildings;
- (d) the number of residential buildings that may be erected on any site;
- (e) regulation of erection of shops, workshops, warehouses, factories or buildings;
- (f) maintenance of height and position of walls, fences, hedges or any other structure or architecture constructions;

1. *M/s. Vishal Properties (P) Ltd. v. State of U.P. and others*, (2005) 2 SAC 546.

2. *International Hospital Pvt. Ltd., New Delhi v. State of U.P. and another*, (2003) 2 SAC 530.

- (g) maintenance of amenities;
- (h) restriction of use of any site for a purpose other than that for which it has been allocated;
- (i) the means to be provided for proper—
 - (i) drainage of waste water,
 - (ii) disposal of industrial waste, and
 - (iii) disposal of town refuse.

(2) Every transferee shall comply with the directions issued under sub-section (1) and shall as expeditiously as possible erect any building or take such other steps as may be necessary to comply with such directions.

COMMENT

Under Section 8 of the Act power has been given to NOIDA to issue directions in respect of erection of building. It has been provided that for the purposes of proper planning and development of the industrial development area, the Authority may issue such directions, as it may consider necessary regarding the architectural features of the frontage of any building, the alignment of buildings on any site, the restrictions and conditions in regard to open spaces to be maintained in and around buildings and height and character of buildings, regulation of building and maintenance of amenities and restriction of use of any site for the purpose other than that for which it had been allocated.¹

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, rolls, floors and other parts of a building 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;

1. *M/s. Vishal Properties (P) Ltd. v. State of U.P.*, (2005) 2 SAC 546.

- (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.

COMMENT

Section 9(2)(b) states that the Authority constituted under Section 3 may, with the prior approval of the State Government, make regulations providing for the layout plan of a building, whether industrial, commercial or residential. Hence, in the layout plan for construction of a building, the purpose for which the building will be used, has to be mentioned.¹

10. Power to require proper maintenance of site or building.—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 or 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.

11. Levy of tax.—²[(1) For the purposes of providing, maintaining or continuing any amenities in the industrial development area, the Authority may, with the previous approval of the State Government, levy such taxes as it may consider necessary in respect of any site or building on the transferee or occupier thereof, provided that the total incidence of such tax shall not exceed one per cent of the market value of such site, including the site of the building.

Explanation.—For the purposes of this sub-section, the expression 'market value' means, the amount of—

- (a) consideration, in the case of sale; or
- (b) premium, in the case of lease; or
- (c) the minimum value determined in accordance with the rules made under the Indian Stamp Act, 1899, whichever is more.]

¹ *R.K. Mittal and others v. State of U.P. and others*, (2002) 1 SAC 189.

² Subs. by U.P. Act No. 18 of 1995 (w.e.f. 15.05.1995).

(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).

COMMENT

On a bare reading of Section 11 of the Act, it is crystal clear that NOIDA has the Authority to levy taxes. It may be mentioned that sub-section (1) of Section 11 stands amended by U.P. Act 18 of 1995, with effect from 15.05.1995 according to which the total incidence of such tax cannot exceed one percent of the manual value of such site including the site of the building and that the expression 'market value' means the amount of consideration, in the case of sale or premium, in the case of lease on the minimum value determined as per the rules made under the Indian Stamp Act, whichever is more.¹

12. Applications of certain provisions of President's Act XI of 1973.—The provisions of Chapter VII and Sections 30, 32, 40, 41, 42, 43, 44, 45, 46, 47, 49, 50, 51, 53 and 58 of the Uttar Pradesh Urban Planning and Development Act, 1973, as re-enacted and modified by the Uttar Pradesh President's Act (Re-enactment with Modifications) Act, 1974, shall *mutatis mutandis* apply to the Authority with adaptation that—

- (a) any reference to the aforesaid Act shall be deemed to be a reference to this Act;
- (b) any reference to the Authority constituted under the aforesaid Act shall be deemed to be a reference to the Authority constituted under this Act; and
- (c) any reference to the Vice-Chairman of the Authority shall be deemed to be a reference to the Chief Executive Officer of the Authority.

12-A. No panchayat for industrial township.—Notwithstanding anything contained to the contrary in any Uttar Pradesh Act, where an industrial development area or any 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 Kshetra 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.

1. *Noida Enterprises Assn. (Regd.) v. Union of India*, (1999) 1 SAC 736.

2. *Ins.* by U.P. Act No. 4 of 2001.

Explanation.—The expression "Panchayat and Panchayat area" shall have the meanings respectively assigned to them in Part IX of the Constitution.]

COMMENT

From a plain reading of Section 12-A of the Act, it is clear that after declaration of any industrial development area under Section 2(d) of the Act, two things are required for excluding them from existing panchayat area. First is, specification to be an industrial township and secondly a notification under proviso to Article 243-Q of the Constitution of India.

The section further reveals that if the said area is included in Panchayat Area, such area with effect from the date of notification made under proviso to Article 243-Q stand excluded from such panchayat. Thus, specification to be an industrial township as well as a notification under proviso to Article 243 are conditions precedent for excluding from any panchayat area.¹

13. Imposition of penalty and mode of recovery of arrears.—Where any transferee makes any default in the payment of any consideration money or instalment thereof or any other amount due on account of the transfer of any site or building by the Authority or any rent due to the Authority in respect of any lease, or where any transferee or occupier makes any default in the payment of any fee or tax levied under this Act, the Chief Executive Officer may direct that in addition to the amount of arrears, a further sum not exceeding that amount shall be recovered from the transferee or occupier, as the case may be, by way of penalty.

14. Forfeiture for breach of conditions of transfer.—(1) In the case of non-payment of consideration money or any instalment thereof on account of the transfer by the Authority or any site or building or in case of any breach of any condition of such transfer or breach of any rules or regulations made under this Act, the Chief Executive Officer may resume the site or building so transferred and may further forfeit the whole or any part of the money if any paid in respect thereof.

(2) Where the Chief Executive Officer orders resumption of any site or building under sub-section (1) the Collector may, on his requisition, cause possession thereof to be delivered to him and may for that purpose use or cause to be used such force as may be necessary.

COMMENT

The U.P. Industrial Area Development Act, 1976 is a special law and hence it will prevail over the Transfer of Property Act, which is a general law in case of any inconsistency.²

1. *Rishipal and others v. State of U.P. and others*, (2005) 3 SAC 172.

2. *New Okhla Industrial Development Authority Ghaziabad v. M/s. Dabur Containers (P) Ltd., New Delhi*, (2004) 1 SAC 426.

Under Section 14 if any condition of the transfer is breached, the Executive Officer may resume the site or building so transferred and may further forfeit the whole or any part of the money paid in this respect. Section 14(2) provides that the Chief Executive Officer may cause possession of the building to be delivered to him and may use or cause to be used such force for this purpose as may be necessary.¹

15. Penalty.—Any person who contravenes any provisions of this Act, or rules or regulations made thereunder or any directions issued under Section 8, shall on conviction be punishable with fine which may extend to five thousand rupees and in the case of a continuing offence with further fine which may extend to one hundred rupees for every day during which such offence continues after conviction for the first commission of the offence.

16. Powers of entry, etc.—The Chief Executive Officer may authorise any person to enter into or open any land or building with or without assistance, for the purposes of—

- (a) making any inquiry, inspection, measurement or survey or taking levels of such land or building;
- (b) examining works under construction or of ascertaining the course of sewers or drains;
- (c) ascertaining whether any building is being or has been erected or re-erected without sanction or in contravention of any sanction given under this Act or the rules and regulations made thereunder and to take such measurements and do any such other Acts as may be necessary for such purpose;
- (d) doing any other thing necessary for the efficient administration of this Act :

Provided that—

- (i) no such entry shall be made except between the hours of sunrise and sunset and without giving reasonable notice to the occupier, or if there be no occupier, the owner of the land or building;
- (ii) sufficient opportunity shall in every instance, be given to enable women, if any, to withdraw from such land or building;
- (iii) due regard shall always be had, so far as may be compatible with the exigencies of the purpose for which the entry is made, to the social and religious usages of the occupants of the land or building entered.

1. *R.K. Mittal and others v. State of U.P. and others*, (2002) 1 SAC 189.

17. Overriding effect of the Act.—Upon any area being declared an industrial development area under the provisions of this Act, such area, if included in the master plan or the zonal development plan under the Uttar Pradesh Urban Planning and Development Act, 1973, or any other development plan under any other Uttar Pradesh Act, with effect from the date of such declaration be deemed to be excluded from any such plan.

18. Power to make rules.—The State Government may by notification make rules for carrying out the purposes of this Act.

19. Power to make regulations.—(1) The Authority may with the previous approval of the State Government, make regulation not inconsistent with the provisions of this Act or the rules made thereunder for the administration of the affairs of the Authority.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulation may provide for all or any of the following matters, namely,—

- (a) the summoning and holding of meetings of the Authority, the time and place where such meetings are to be held, the conduct of business at such meetings, and the number of members necessary to form a quorum thereat;
- (b) the powers and duties of the Chief Executive Officer;
- (c) the form of register of application for permission to erect a building;
- (d) the management of properties of the Authority;
- (e) fees to be levied in the discharge of its functions;
- (f) such other matters as are to be provided for in regulation.

COMMENT

A perusal of the provisions leaves no manner of doubt that NOIDA, with the approval of the State Government, can make regulations consistent with the provisions of the Act or the Rules made therein for administration of its affairs.¹

Sub-section (1) of Section 19 of the Act of 1976, thus, provides that the Authority may with the previous approval of the State Government, make regulation not inconsistent with the provisions of the Act or the Rules made thereunder "for the administration of the affairs of the Authority". Clause (f) of sub-section (2) of Section 19 of the Act provides that without prejudice to the generality of the power conferred under sub-section (1) of Section 19 of the Act, such regulation may provide for "such other matters as are to be provided for in regulation."²

1. *Noida Entrepreneurs Assn. (Regd.) v. Union of India and others*, (1999) 1 SAC 736.

2. *Rakesh Kumar Saxena v. State of U.P. and another*, 2009 (1) ADJ 560 (DB).