

Chief Justice's Court

Case :- WRIT - C No. - 7506 of 2019

Petitioner :- M/S Logix Infrabuild Private Limited

Respondent :- State Of U P And Another

Counsel for Petitioner :- Gaurav Bhatia, Nitin Sharma, Tarun Agrawal

Counsel for Respondent :- Aditya Bhushan Singhal, Pramod Jain

Hon'ble Pritinker Diwaker, Chief Justice

Hon'ble Ashutosh Srivastava, J.

1. Heard Sri Tarun Agarwal, learned counsel for the petitioner and Sri Aditya Bhushan Singhal, learned counsel for the respondent.

2. The present writ petition has been filed assailing the order dated 11.07.2017 by which the Respondent Authority has imposed certain conditions for execution of the surrender deed as also for direction to the respondent authority to refund entire amount paid by the petitioner to the Respondent-YEIDA in respect of allotment of the Plot No. TS-1A, Sector 22D, Yamuna Expressway, Gautam Buddh Nagar along with interest @ 15% per annum on account of forced surrender of the plot allotted to it, after adjusting the payment already made.

3. It is contended by the learned counsel for the petitioner that the respondent authority invited tender for allotment of the residential township plots in Sector 22D Yamuna Expressway in the year 2011. The advertisement contained a clear recital that the land in question had been acquired by Yamuna Expressway Authority and was in its possession. As per the Clause G of the brochure, 10% of the premium was to be paid within 30 days of reservation. Thereafter, the authority was to issue a formal allotment letter. Within 60 days thereafter, another 20% of the allotment premium was to be paid. The balance 70% allotment money was to be paid in sixteen half-yearly installments carrying interest @ 12.5% and penal interest @ 15% compounded half-yearly. The petitioner emerged as the highest bidder for Plot No. TS-1, Sector 22D admeasuring 200 acres with its bid of Rs. 308.41-Crores. Admittedly the petitioner deposited 10% of the allotment money within 30 days as required by the brochure. Thereafter on 11.05.2011 the authority issued the formal allotment letter.

4. It has been further contended that on 09.01.2012 the petitioner requested the respondent authority to execute two lease deeds by bifurcating Plot No. TS-1 into two equal areas of smaller sizes. The petitioner also requested for extension of time for payment of the balance 20% amount which it was required to pay for the time extension. The request was accepted by the respondent authority and time was granted till 31.01.2012. On 30.01.2012 the petitioner deposited Rs. 83.57-Crores which included the amount representing 30% of the entire allotment money. By 15.05.2012 the petitioner deposited the second installment towards the balance 70% of the premium.

5. Upon the deposit of the aforesaid amounts the petitioner requested the respondent authority for the execution of lease deed. However, it was not until November 2012 that the respondent authority chose to respond to these letters. For the first time on 02.11.2012 the petitioner was informed by the authority that it was not in possession of the entire 200 acres of the land. By the same letter the authority accepted the request of the petitioner to bifurcate Plot No. TS-1 into two equal areas of smaller sizes. Accordingly, Plot No. TS-1A ad-measuring 100 acres was allotted to the petitioner while Plot No. TS-1B of the remaining 100 acres fell into the share of the sister concern of the petitioner. In the present petition the lis pertains to Plot No. TS-1A.

6. It is also contended that the area of Plot No. TS-1A was 4,06,109.44 sq. mtrs. (100-acres). Out of this, an area of 94,071 sq. mtrs. was under stay. Thus, the authority was in position to execute lease deed with respect to only 3,12,037.57 sq. mtrs. Similar was the situation with respect to Plot No. TS-1B. It has been submitted that the area under stay were unevenly distributed through out Plot No. TS-1A. They were concentrated on one corner of the plot. This uneven distribution made it impossible for the petitioner to carry out any developmental activity even over the area under the possession. However, by this time the petitioner had already spent in excess of Rs. 100-Crores towards the lease deed for the net area of 3,12,037.57 sq. mtrs. Accordingly, on 26.11.2012 a lease deed was executed between the petitioner and the respondent authority with respect to Plot No. TS-1A for a lesser area of 3,12,037.57 sq. mtrs. However, there was a clear understanding between the parties that lease for the remaining area 94,071.87 sq. mtrs. shall be executed within the next one year, a little more or less.

7. It has been submitted that the authority failed to execute

lease deed for the balance 94,071.87 sq. mtrs. Even the area that was leased out to the petitioner continued to be interfered with by the farmers. The petitioner was therefore constrained to write a letter to authority on 24.08.2013 pointing out that the villagers are not permitting it to commence the project even over the leased area. However, the authority did not take any action on the request of the petitioner. Thereafter several letters were exchanged for delivery of possession and grant of zero period. In between, the petitioner was constrained to file Civil Misc. Writ Petition No. 5071 of 2013 for grant of zero period and other ancillary reliefs. However, the aforesaid writ petition was eventually withdrawn in 2016 after the management decided to call it quits. By this time it had become clear that the authority was in no position to deliver the balance area of 94,071.87 sq. mtrs and even the area leased out continued to be interfered by the farmers. Accordingly the petitioner offered to surrender Plot No. TS-1A due to the failure of the authority to deliver possession of the land. This request was made on 10.01.2017. The authority accepted the request of the petitioner for surrender of the plot on 11.07.2017 and asked it to execute a surrender deed.

8. Accordingly, the surrender deed was executed. The surrender deed carried a clear recital that the authority had been unable to give possession of the land to the petitioner necessitating the surrender of the plot. Significantly, there was absolutely no reference to withholding of any amount under the project settlement policy.

9. Upon surrender of the aforesaid plot on account of default of the authority, the petitioner became entitled to refund of the entire amount deposited by it till date. However, as per the undertaking given by the petitioner, it could not have demanded any compensation for the concealment and fraud played by the authority. Admittedly on the date of surrender, the petitioner had deposited a total amount of Rs. 104.97-Crores with the authority towards the Plot No. TS-1A. Out of this amount, around Rs. 70-Crores was towards principal and balance was towards interest on delayed installments charged by the authority. However, the authority arbitrarily deducted an amount of Rs. 43.20-Crores and paid only Rs. 61.77-Crores to the petitioner. It is this illegal deduction which is under challenge in the present writ petition.

10. In its counter affidavit, the respondent authority has sought to justify the illegal retention on the basis of their project settlement policy which permits them to deduct 15% of the principal amount as also any interest paid by the

allottee.

11. A perusal of the project settlement policy itself indicates that the aforesaid policy is intended to cover cases where the builder itself is at fault, has not been able to handover possession despite creation of third party rights. In the present case the authority is at fault having regard to the recital contained in the surrender deed recording its failure to deliver possession to the petitioner/allottee. As such, the justification offered by the authority in terms of the project settlement policy is not sustainable.

12. The Authority has also sought to claim that the petitioner had undertaken not to claim any extra surcharge, damages or surety from the authority. The undertaking given by the petitioner has been appended as Annexure CA-4. However, this Court finds that the petitioner is bound by its undertaking and not liable for any damages.

13. The petitioner has confined its claim only to the refund of the amount deposited by it.

14. We have considered the rival submission made by the learned counsel for the parties and have perused the record.

15. A perusal of the respective stand of the parties, as borne out from their pleadings, reveals that the moot question for consideration of this Court is whether the respondent YEIDA is justified in holding amounts deposited in respect of lease rent, fine and map completion of plot in favour of the petitioner and not paying interest on the money deposited in respect of allotment of plot.

16. Having gone through the facts of the case, pleadings of the parties and perusal of the record, the Court finds that the respondent Authority failed to perform and discharge its reciprocal contractual obligation tested on the anvil of reasonableness and rationality. The Authority blatantly ignored the difficulties faced by the petitioner to arrange for the finance after the deposit of the initial bid money/performance security/allotment money etc., with the Authority. Such finances are usually arranged from banking institutions investors and the market. In the absence of delivery of possession arrangement of finances are next to impossible and the entire project of the petitioner is jeopardized. The Authority has nothing to loose but the petitioner loses everything i.e., the project and above all its reputation in the market.

17. We find that the respondent Authority is guilty of non-fulfilment of its contractual obligations inasmuch as it failed to provide possession of the lease land even after the

petitioner deposited the entire allotment money. The petitioner legitimately expected the Authority to carry out its obligations in the letter and spirit.

18. The doctrine of legitimate expectations has been judicially recognized by the Apex Court as also by this Court in a catena of judgements. In ***Noida Entrepreneurs Association Vs. Noida and others***, reported in **2011 (6) SCC 508**, the Apex Court observed as under:-

"38. The State or the public authority which holds the property for the public or which has been assigned the duty of grant of largesse etc., acts as a trustee and, therefore, has to act fairly and reasonably. Every holder of a public office by virtue of which he acts on behalf of the State or public body is ultimately accountable to the people in whom the sovereignty vests. As such, all powers so vested in him are meant to be exercised for public good and promoting the public interest. Every holder of a public office is a trustee.

40. The Public Trust Doctrine is a part of the law of the land. The doctrine has grown from Article 21 of the Constitution. In essence, the action/order of the State or State instrumentality would stand vitiated if it lacks bona fides, as it would only be a case of colourable exercise of power. The Rule of Law is the foundation of a democratic society. (Vide: *M/s. Erusian Equipment & Chemical Ltd. v. State of West Bengal & Anr.*, AIR 1975 SC 266; *Ramana Dayaram Shetty v. The International Airport Authority of India & Ors.*, AIR 1979 SC 1628; *Haji T.M. Hassan Rawther v. Kerala Financial Corporation*, AIR 1988 SC 157; *Kumari Shrilekha Vidyarthi etc v. State of U.P. & Ors.*, AIR 1991 SC 537; and *M.I. Builders Pvt. Ltd. v. Radhey Shyam Sahu & Ors.*, AIR 1999 SC 2468).

41. Power vested by the State in a Public Authority should be viewed as a trust coupled with duty to be exercised in larger public and social interest. Power is to be exercised strictly adhering to the statutory provisions and fact-situation of a case. "Public Authorities cannot play fast and loose with the powers vested in them". A decision taken in arbitrary manner contradicts the principle of legitimate expectation. An Authority is under a legal obligation to exercise the power reasonably and in good faith to effectuate the purpose for which power stood conferred. In this context, "in good faith" means "for legitimate reasons". It must be exercised bona fide for the purpose and for none other. (Vide: *Commissioner of Police, Bombay v. Gordhandas Bhanji*, AIR 1952 SC 16; *Sirsi Municipality v. Ceceila Kom Francis Tellis*, AIR 1973 SC 855; *The State of Punjab & Anr. v. Gurdial Singh & Ors.*, AIR 1980 SC 319; *The Collector (Distt. Magistrate) Allahabad & Anr. v. Raja Ram Jaiswal*, AIR 1985 SC 1622; *Delhi Administration (Now NCT of Delhi) v. Manohar Lal*, (2002) 7 SCC 222; and *N.D. Jayal & Anr. v. Union of India & Ors.*, AIR 2004 SC 867)."

19. Further, we find that not returning entire money together with interest is nothing, but an unjust enrichment on the part

of the YEIDA Authority which is not liable to be permitted in the facts and circumstances that stand attracted to the case of the petitioner.

20. This Court in the case of ***Aharwas Singh @ Atarwas Singh v. Lucknow Development Authority, Lucknow*** reported in **(2015) 108 ALR 181**, while considering a case in which the Lucknow Development Authority after advertising a scheme for allotment of plots in Gomti Nagar Extension Scheme after making allotment and taking deposit of the entire amount from the public, failed to deliver possession and executed sale deed even after a lapse of more than 7 years while keeping the money in its account and earning interest or utilizing it in other schemes, then it shall be incumbent upon the Authority to pay reasonable interest to the allottees on the cost of the land or plot deposited.

21. The Apex Court in ***Indian Council for Enviro Legal Action v. Union of India***, reported in **2011 (8) SCC 161** has defined the "Unjust Enrichment", as under:-

"UNJUST ENRICHMENT"

152. 'Unjust Enrichment' has been defined by the court as the unjust retention of a benefit to the loss or another, or the retention of money or property of another against the fundamental principles of justice or equity and good conscience. A person is enriched if he has received a benefit, and he is unjustly enriched if retention of the benefit would be unjust. Unjust enrichment of a person occurs when he has and retains money or benefits which in justice and equity belong to another.

153. Unjust enrichment is "the unjust retention of a benefit to the loss of another, or the retention of money or property of another against the fundamental principles of justice or equity and good conscience." A defendant may be liable "even when the defendant retaining the benefit is not a wrongdoer" and "even though he may have received [it] honestly in the first instance." (Schock v. Nash, A.2d, -11-232-33).

159. Unjust enrichment is basic to the subject of restitution, and is indeed approached as a fundamental principle thereof. They are usually linked together, and restitution is frequently based upon the theory of unjust enrichment. However, although unjust enrichment is often referred to or regarded as a ground for restitution, it is perhaps more accurate to regard it as a prerequisite, for usually there can be no restitution without unjust enrichment. It is defined as the unjust retention of a benefit to the loss of another or the retention of money or property of another against the fundamental principles of justice or equity and good conscience. A person is enriched if he has received a benefit, and he is unjustly enriched if retention of the benefit would be unjust. Unjust

enrichment of a person occurs when he has and retains money or benefits which is justice and equity belong to another."

22. Thus, from the above, we find that the conduct of the Respondent Nos. 2 in not facilitating the execution of the lease deed in favour of the petitioner cannot be approved. There was thus total failure on the part of the said respondent and it was certainly deficient in rendering service in terms of the obligations, it was expected to perform.

23. The endeavour of a Constitutional Court must always be to ensure that everyone gets just and fair treatment. Constitutional Courts while rendering justice must adopt a pragmatic approach and in appropriate cases realistic costs and compensation must be ordered to discourage dishonest action. In the case at hand, we find that the petitioner had deposited a sum of Rs.104.97 Crores towards the entire allotment money way back in the year 2011-12, but the respondent Authority did not execute the lease deed of the entire plot allotted to the petitioner nor handed over possession of the same and now have refunded only Rs.61.77 Crores.

24. A coordinate Bench of this Court, while dealing with an identical issue regarding refund of money by the Development Authority with interest on account of cancellation of allotment for reasons beyond the control of the development authority in Writ-C 33847 of 2019 (Vinod Kumar Gautam and 4 others v. State of U.P. and 3 others) vide order dated 26.11.2019 had partly allowed the writ petition with a direction to the respondents to refund the entire amount along with interest at the rate of 15% from the date of deposit.

25. It has been informed at the Bar that an SLP was preferred against the order dated 26.11.2019 wherein the Apex Court has been pleased to dismiss the SLP and confirm the order passed by the Coordinate Bench.

26. We are of the view that the petitioner too is identically placed and is entitled to identical relief as extended to the petitioner of Writ-C No. 33847 of 2019.

27. We are, thus, of the view that in the given set of facts that stand attracted to the case of the petitioner, the petitioner is entitled to the refund of the entire amount of the allotment money deposited with the respondents Authority together with interest.

28. Accordingly, the writ petition is **allowed**. The impugned office order dated 11.07.2017 passed by the Respondent -

YEIDA, so far as it withholds the amounts deposited by the petitioner as lease rent, fine and map completion in respect of the plots in question is set aside. The Respondent Authority is directed to refund the balance amount of Rs.43.20 Crores illegally deducted, to the petitioner together with 15% interest from the date of deposit till the date of return, to be paid within two months from the date of service of a certified copy of this order.

Order Date :- 16.11.2023

pks/RK

(Ashutosh Srivastava, J)

(Pritinker Diwaker, CJ)