

Neutral Citation No. - 2023:AHC:214450-DB

Chief Justice's Court

Case :- WRIT - C No. - 10890 of 2019

Petitioner :- M/S Kps Softech Private Ltd

Respondent :- Greater Noida Industrial Development Authority And Another

Counsel for Petitioner :- Siddharth Singhal, Ankita Jain, Sheo Kumar Singh

Counsel for Respondent :- Anjali Upadhya, Bhanu Bhushan Jauhari, Pramendra Pratap Singh

With

Case :- WRIT - C No. - 10927 of 2019

Petitioner :- M/S Surya Food And Agro Limited

Respondent :- New Okhla Industrial Development Authority And 2 Others

Counsel for Petitioner :- Siddharth Singhal, Ankita Jain, Namit Srivastava, Niraj Tiwari, Sheo Kumar Singh

Counsel for Respondent :- Kaushalendra Nath Singh, Shivam Yadav

Hon'ble Pritinker Diwaker, Chief Justice

Hon'ble Ashutosh Srivastava, J.

1. Both the writ petitions raise common questions of law and as such are being decided by a common order.

2. Heard Sri Siddharth Singhal, learned counsel for the petitioner, Sri Shivam Yadav, learned counsel for the Respondent Development Authority.

In Re: WRIT - C No. - 10890 of 2019 :

3. The Writ-C No.10890 of 2019 has been filed seeking issuance of a Writ of Certiorari quashing the order dated 06.12.2018 passed by the Respondent No.2, Deputy General Manager (Industries) Greater Noida Industrial Development Authority, Gauttam Buddh Nagar, whereby and

whereunder the claim for interest on refunded amount consequent to the cancellation of the allotment has been negated. Further, prayer has been made to issue a Writ of Mandamus commanding the Greater Noida Industrial Development Authority to refund the balance of the principal amount along with the interest @ 14% from the date of deposit till the date of refund.

4. The Writ-C No.10890 of 2019 has been filed with the allegation that the Greater Noida Industrial Development Authority (GNIDA) has been established by the Government of Uttar Pradesh for Industrial Development and besides other functions, it also provides residential facilities to the common man by launching various schemes. GNIDA is an instrumentality of the State and its functions relating to the development of land and other schemes are governed by the provisions of U.P. Industrial Area Development Act, 1976. In the year, 2007 the petitioner Company, which is registered under the Companies Act, 1956 made an application for allotment of industrial plot for the purpose of setting up of an industrial unit, bearing Application No.1257 of 2007 followed by interview. Pursuant to the interview, the petitioner was allotted Plot No.264 ad-measuring 4000 sq. meters situated in Sector Ecotech-11, Industrial Area, Greater Noida, on lease for a period of 90 years vide allotment letter dated 07.01.2008 with total premium of Rs.1,11,40,000/- @ Rs.2845 sq. mtrs.

5. Pursuant to the allotment letter dated 07.01.2008, the petitioner deposited Rs.33,50,000/- towards allotment money.

6. However, pursuant to the allotment, possession of the said plot was not handed over to the petitioner company on account of the fact that development of the said sector was not carried out till the year 2016 by the Development Authority.

7. It is contended that the petitioner company, who was already suffering on account of the callous approach of the Development

Authority moved an application on 29.02.2016 requesting for handing over possession of the allotted plot to the petitioner and in case of difficulty, in the alternative give alternative plot and also sought information of the balance amount due from the petitioner.

8. The Respondent No.2, vide letter dated 08.03.2016 informed the petitioner company that with respect to the allotment of Plot No.264 Sector Ecotech 11, Greater Noida, the amount payable by the petitioner as on 15.02.2016 stood at Rs.2,25,51,633/-

9. The Respondent Development Authority on 29.06.2016 had redrawn the payment schedule, according to which the petitioner company was required to deposit a sum of Rs.2,34,46,921.71 which included a sum of Rs.78,28,832 towards interest calculated @ 14% per annum compounded half yearly. Pursuant to rescheduled payment schedule dated 29.06.2016, the petitioner company deposited the entire outstanding in two installments i.e. Rs.70,00,000/- on 11.07.2016 and balance amount of Rs.1,64,47,000/- on 14.07.2016.

10. In spite of depositing the entire payment the Respondent Development Authority was not able to hand over the possession of the allotted plot. However, the Respondent Development Authority in the light of its letter dated 29.02.2016 decided to change the allotment of plot from Plot No.264 Sector Ecotech-11 to Plot No.76-B, Sector Ecotech-12 and the petitioner was required to deposit 10% of the prevalent allotment rate of land towards transfer fee, which amounted to Rs.43,16,000/-

11. Learned counsel for the petitioner contends that the petitioner has deposited total Rs.3,12,13,000/- towards the plot allotted, however, even possession of alternative plot, being Plot No.76-B, Sector Ecotech-12 Greater Noida has not been handed over to the petitioner. Thereafter, on 12.08.2017, the petitioner wrote to the Respondent Development Authority to either allot some other plot in lieu of the plot allotted in the

same sector or in the alternative refund the entire amount along with interest from the date of deposit till the date of payment.

12. Pursuant thereto, the Respondent Development Authority vide letter dated 28.09.2017, handed over the cheque of Rs.3,11,93,500/- as refund towards cancellation of plot made in favour of the petitioner.

13. Learned counsel for the petitioner contends that the petitioner raised his objection regarding refund of amount highlighting the fact that the petitioner was paid Rs.78,28,832/- towards interest on delayed payment. It was further alleged that the petitioner was allotted plot in the year 2007-08 @ Rs.2875/- with total premium of Rs.1,50,00,000/- but now the rates have hiked up and the prevailing rate in the area is Rs.10,790/- per sq. meter, thus the cost of land is Rs.4,31,60,000/- at present and as such the petitioner has suffered the loss of Rs.3,16,60,000/- and contends that the amount should have been refunded along with interest @ 14% which the petitioner was charged. However, the Respondent No.2 vide order dated 06.12.2018 rejected the representation and refused to grant interest @ 14% on the amount refunded consequent to the cancellation of allotment by the Respondent Development Authority.

In Re: Writ-C No.10927 of 2019 :

14. The writ petitioner which is a Company incorporated and registered under the provisions of the Companies Act, 1956, with the name and style of M/S Surya Food and Agro Limited has approached this Court invoking its extraordinary jurisdiction under Article 226 of the Constitution of India claiming *inter-alia* the following reliefs:

“i) issue a writ, order or direction in the nature of certiorari calling the records and quashing the impugned order dated 15.10.2018 passed by respondent No.2 (Annexure No.1 to the writ petition).

ii) to issue a writ, order or direction in the nature of mandamus commanding the respondent authority to pay the petitioner the amount deposited along with the interest @ 14% from the date of

deposit till the date of refund on the entire amount deposited by the petitioner as contained in Annexure 15.”

It is contended that in the year 2006, the respondent No.2 i.e. the New Okhla Industrial Development Authority (hereinafter referred to as the Development Authority) floated a scheme for allotments of sites for “SHOPPING MALLS” in Noida having scheme no. 2005-06 shopping Mall-I Scheme Opens on 13.03.2006 and close on 28.03.2006 at 02:00 PM. The petitioner submitted its bid under the scheme for allotment of the plot and deposited a sum of Rs. Forty One Lacs (Rs.41,00,000/-) as earnest money. The bid / tender for allotment of commercial Plot No. 92A/1, Block-F, Sector 44, Scheme No. 2005-06, (Commercial Plot-) was accepted the petitioner being the highest bidder @ Rs.80191.00 per square meter. The total area of the plot was 4026.49 square meters and as such, the total premium of the plot allotted to the petitioner at the rate accepted worked out to Rs.32,25,25875/-. As per the scheme, the petitioner was required to deposit 25% of the total premium amount of the plot on or before 27.04.2006 of the issuance of the allotment order after adjusting the 10% earnest money already deposited by the petitioner. The balance 75% of the premium was payable in 16 equal half yearly installments. The allotment letter further provided that the lease deed in respect of the plot would be executed within 120 days and the possession of the plot would also be given within 120 days.

15. It is submitted that a lease deed executed in favour of the petitioner on 23.12.2006 and possession of the said plot was handed over on paper on 27.12.2006 but physical possession over the said plot is not handed over to the petitioner, thereafter once again physical possession has been given to the petitioner on paper on 26.05.2014 but actual physical possession over the said plot was not handed over to the petitioner.

16. The writ petition has been preferred by the petitioner to treat the period from the date of issuance of allotment letter dated 27.3.2006 to actual date of physical possession, as zero period.

17. It is further submitted that the writ petition (i.e. Civil Misc. Writ Petition No.68220 of 2015) was disposed of in following terms:

“Consequently, without expressing any opinion on the merits of the issue and considering the facts and circumstances of the case, we dispose of the writ petition asking the Chairman/Chief Executive Officer, NOIDA to take appropriate decision on the representation of the petitioner dated 14.1.2015 within two months’ from the date of receipt of certified copy of this order.”

18. It is further submitted that in pursuance of the order passed by this Court in Civil Misc. Writ Petition No. 68220 of 2015, a meeting of Permanent Committee was held on 23.10.2017 under the Chairmanship of Additional Chief Executive Officer, Noida and as per the decision of the Committee, the authority cancelled the allotment of plot no. 44 made in favour of the petitioner and further directed to refund the amount deposited against the allotted plot and further clarifies that Stamp fee and Registration fee has been levied by the Registration Department which was not refunded by the authority.

19. It is further submitted that the authority refunded a sum of Rs.62,35,70,668/- through Cheque No. 000878, but the amount which is deposited as lease rent to the tune of Rs. 4,00,72,106/-, fine to the tune of Rs. 65,83,064/-, for map completion 3,36,577/- was not refunded to the petitioner and in so far as the amount deposited in respect to the stamp duty 3,26,62,000/- deposited before the registration department was the legitimate claim of the petitioner was not given together with the interest thereon.

20. It is further submitted on behalf of the petitioner that vide impugned letter dated 15.10.2018, it has been informed by the respondent that they have already refunded the amount of Rs.62,35,70,668.33, vide cheque

bearing number 878 dated 23.07.2018. The further amount deposited towards lease rent, penalty and completion of map shall be refunded without interest, provided the petitioner submits an undertaking on a stamp paper of Rs.10 duly notarized stating that after receiving the said money, the petitioner shall not claim any amount in future.

21. In the counter affidavit filed by the respondents, certain clause highlighting the terms and conditions mentioned in the scheme have been stated which are being reproduced hereunder:

“Clause 20 (III):-

If due to “FORCE MAJURE” or circumstances beyond Authority’s control the Authority is unable to make allotment or deliver possession of allotted plot, entire registration money or the deposits depending on **state** of allotment will be refunded without interest.”

22. In the rejoinder affidavit, the petitioner denying the averments made in the counter affidavit, has submitted that the allotment that was made in favour of the petitioner has been cancelled after authority itself reached to the conclusion that it was not in a position to hand over plot to the petitioner as apparent from the decision taken on 23.10.2017. Moreover the “FORCE MAJURE” clause contained in Clause 20 of the scheme under which the allotment was made is not attracted in the facts and circumstances of the case since it was well within the knowledge of the authority since beginning that the plot was not in its possession and therefore there was no occasion for the authority to have proceeded with the execution of lease deed in the year 2006. In any view of the case, fraudulent act of the respondent authority is further fortified from the fact that possession certificate was issued in favour of the petitioner even though the actual physical possession was never handed over to the petitioner. The mindset and the malafides are therefore, apparent on the face of record. In any view of the matter, even if the authority failed to deliver the possession, petitioner has legal right to claim the interest on its hard earned money and the petitioner cannot be restricted by arbitrary

terms and conditions of the authority especially when authority cast an obligation on the petitioner to make payment of interest @ 11% from the date of allotment compounded half yearly on outstanding premium and in case of any default under exceptional circumstances, an extension of time for payment of installment can be permitted subject to payment of penal interest @ 14% P.A. compounded half yearly on defaulted amount for defaulted period.

23. Learned counsel for the petitioner has placed reliance upon a decision of a Coordinate Bench of this Court rendered in *Writ-C No.33847 of 2019 (Vinod Kumar Gautam and 4 others Vs. State of U.P. & 3 others)* dated 26.11.2019 whereby the Coordinate Bench partly allowed the writ petition with the direction to the respondents to refund the entire amount of the petitioner within two months from the date of production of a certified copy of the order along with 15% interest from the date of deposit. The learned counsel submits that the petitioners are equally circumstanced and are entitled for the same relief.

24. Sri Shivam Yadav, learned counsel representing the Respondent Development Authority, does not dispute the fact as argued and mentioned in the writ petition. He submits that the circumstance beyond the control of the Authority, the possession of the land could not be delivered. He further submits that the money had been refunded as per the terms of the brochure of GNIDA after necessary deductions and order dated 06.12.2018 has been passed in accordance with law.

25. Learned counsel for the petitioner vehemently opposed the arguments advanced by the learned counsel for the Respondents Nos.1 & 2 and submitted that as per the brochure of GNIDA “Mode of Payment” in case of default of payment, the petitioner is required to pay the same with interest at the rate of 14% per annum compoundable half yearly, therefore, GNIDA is also liable to return the entire amount along with the same interest.

26. 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 Noida Authority 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 to the money deposited in respect of allotment of plot which was cancelled later on in the year 2017 on considering the conduct of respondent Corporation.

27. 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 listed 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 his reputation in the market.

28. We find that the respondent Authority is guilty of 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.

29. 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).”

30. Further, we find that the order of cancellation of allotment of plot in favour of the writ petitioner and not returning entire money together with interest is nothing, but an unjust enrichment on the part of the Noida Authority which is not liable to be permitted in the facts and circumstances that stand attracted to the case of the petitioner.

31. 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.

32. 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 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 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.”

33. Thus, from the above, we find that the conduct of the respondent Nos. 2, 3 and 5 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 respondents and they were certainly deficient in rendering service in terms of the obligations, they were expected to perform.

34. 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.62,09,59,254/- towards the entire allotment money way back in the year 2011-12, but the respondent Authority did not execute the lease deed of the plot allotted to the petitioner nor handed over possession of the same and now have proceeded to cancel the allotment and forfeit the amount entirety.

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

36. 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.

37. It has been informed to us that an SLP was preferred against the order dated 26.11.2019 wherein the Apex Court has been pleased to dismiss the SLP and has confirmed the order passed by the Coordinate Bench.

38. 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.

39. 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.

40. Accordingly, the writ petitions are **allowed**. The impugned orders dated 6.12.2018 passed by respondent No. 2-Deputy General Manager (Industries) Greater Noida Industrial Development Authority, Gautam Buddha Nagar and 15.10.2018 passed by respondent No.2-Assistant General Manager (Commercial), New Okhla Industrial Development Authority, NOIDA, so far as they withhold the amounts deposited by the petitioners as lease rent, fine and map completion in respect of the plots in question, are set aside. The petitioners are entitled for 11% interest over the entire money (except registration fee and stamp duty) deposited in respect of plots in question from the date of deposit till the date of return, to be paid within 45 days from the date of service of certified copy of this order before it.

Order Date :- 18.10.2023

pks/RK

(Ashutosh Srivastava, J) (Pritinker Diwaker, CJ)