

Chief Justice's Court

Case :- WRIT - C No. - 10587 of 2023

Petitioner :- Viraat Creators Pvt. Ltd. And Another

Respondent :- U.P. State Industrial Development Authority

Counsel for Petitioner :- Nikhil Agrawal, Vinayak Mithal

Counsel for Respondent :- Sunil Kumar Misra, Mahesh Narain Singh

Hon'ble Pritinker Diwaker, Chief Justice

Hon'ble Ashutosh Srivastava, J.

Heard Sri Tarun Agrawal, learned counsel for the petitioners, Sri Anurag Khanna, learned Senior Counsel assisted by Sri Mahesh Narain Singh, learned counsel for the Respondents.

The present writ petition has been filed assailing the order dated 25.11.2022 passed by the Respondent, Uttar Pradesh State Industrial Corporation (UPPSIDC). It has been further prayed to treat the entire period from January, 2013 till date as the zero period and reschedule the payments accordingly and further permit the petitioners to carry out construction of the proposed project over the demised plot.

Learned counsel for the petitioners contended that the land in question i.e. Plot No.B-15, Site-III, Meerut Road, Ghaziabad admeasuring area 13529 sq. yards was originally allotted by the UPSIDC to M/s Gresham & Company vide lease deed dated 17.03.1967 for a period of 90 years. Later on, M/s Gresham and Company was renamed as Gresham Industries, consequent thereupon fresh lease deed was executed on 12.06.2003. M/s Gresham Industries entered into an agreement with Viraat Packaging Pvt. Ltd. (VPPL) for transfer of lease hold right, which was approved by the UPSIDC. Pursuant thereto fresh lease deed was executed between UPSIDC and VPPL for Plot No.B-15 admeasuring area 13529 sq. yards on 29.03.2004 and possession was delivered to VPPL on 29.04.2004.

On the request of VPPL, Plot No.15 was sub-divided into four plots by the UPSIDC viz Plot No.15, B-15/1, B-15/2 and B-15/3. Later on Plot No.B-15 was retained by VPPL and rest three plots being Plot No.B-15/1, B-15/2 and B-15/3 was transferred to third parties. Thereafter, a rectification deed was executed on

29.03.2005 for Plot No.B-15 admeasuring 6531.02 sq. mts. The State Government issued a policy dated 22.05.2006 in its effort to promote tourism. The petitioners moved an application on 10.06.2009 seeking permission from UPSIDC to change the activity from packaging to hotel. The said permission was granted by the UPSIDC and land-user was changed to commercial. Upon the change of land user/conversion, the UPSIDC changed land use conversion charges @ Rs.9000/- per sq. mts. and sent a demand letter dated 17.12.2009 demanding Rs.5,87,79,180/-

Pursuant thereto the petitioners deposited Rs.3.31 Crores and requested UPSIDC to reschedule the balance amount of Rs.2.50 Crores to be paid in the installments. However, neither the rectification deed was executed nor was the re-schedulement of balance payment intimated to the petitioner. Learned counsel for the petitioners contended that even before the petitioners could get the map sanctioned and commence constructions, two Public Interest Litigation (PIL) Nos. 8173 of 2012 and PIL No. 207/2012 were filed at Lucknow Bench of this High Court. This Court vide order dated 13.12.2012 directed constitution of the Special Investigation Team (SIT) to investigate into the alleged instance of illegal conversion of land use. Pursuant thereto, the said SIT in January, 2013 instructed all the allottees including the petitioners not to carry out any construction and maintain status quo. Further, a FIR being Case Crime No. 10 of 2014, under Sections 420, 109, 120-B IPC and Section 13(1)(2)(3) of Prevention of Corruption Act was registered against the petitioners.

During the pendency of the proceedings, the VPPL was renamed to Viraat Creators Pvt. Ltd., the present petitioners.

During the status quo order, the UPSIDC continued to levy interest on the balance amount of Rs.5.26 Crores towards land conversion charges and send a demand notice dated 26.12.2013 to the tune of Rs.4,61,55,800/-. Meanwhile, the SIT sent the report dated 27.04.2015 recorded a finding that no illegality was found in conversion of land use. The said report was accepted by the State Government on 25.08.2015.

It is further contended that the petitioners filed a representation dated 21.11.2018 before the respondents seeking waiver of interest for the period during which they were restrained from necessary constructions and also claimed benefit of zero period from January, 2013 till the time embargo was lifted. However, when no decision was taken by the respondents on the representation of the petitioners, they were constrained to approach this Court by filing

Writ-C No.13213 of 2022 (Viraat Creators Pvt. Ltd. Vs. U.P. State Industrial Authority). This Court vide order dated 24.05.2022 disposed of the writ petition by permitting the petitioners to file fresh representation within three weeks and directed the Respondent Authority to decide the same within further period of two months. Pursuant thereto, the petitioners filed the representation on 10.06.2022 claiming benefit of zero period in terms of Clause 13.01 (a) of the Operating Manual of UPSIDC. Further, prayer was to refund the amount of Rs.3,31,79,180/- deposited in the year 2010 with interest @ 15% till date of refund and also prayed for extension of time for completion of constructions over the demised land. The said representation came to be rejected by Chief Executive Officer, UPSIDC, vide its order dated 25.11.2022, impugned herein.

Learned counsel for the petitioner has challenged the order dated 25.11.2022 on the following grounds:-

- (i) There was restrain order passed by the SIT on constructions since January, 2013, preventing the petitioners to raise constructions.
- (ii) Case of the petitioners is squarely covered by Clause 13.01(a) of the Operating Manual of the UPSIDC.
- (iii) Petitioners were entitled to parity from others, who had been granted benefit of zero period.

Learned counsel for the Respondent Authority opposed the submissions on the premise that the petitioners were required vide letter dated 17.12.2009 to get the rectification deed executed and was required to deposit the land use conversion charge within 30 days and was required to obtain NOC from the Pollution Department and Central Environment and Forest Ministry, but the petitioners made only part payment and did not comply with other conditions. No case for parity as the ground situation is absolutely different qua the petitioners. Once the case of the petitioners has been considered in the light of the parameters provided under Clause 13.01(a) of the Operating Manual of the UPSIDC, this Court under Article 226 is prohibited to act as a Court of Appeal.

The Uttar Pradesh State Industrial Development Corporation (UPSIDC) was established on March 29, 1961. UPSIDC functions under the Management of the Ministry of Infrastructure and Industrial Development, Government of U.P. The main functions of UPSIDC are to facilitate infrastructure facilities and services to

entrepreneurs for setting up industries for economic growth of Uttar Pradesh.

From perusal of Clause 13.01(a) of the Operating Manual of UPSIDC (page 113 of the petition) it appears that the Managing Director has been authorized to waive of interest in full or part for the period the allottee could not utilize the plot, if he is satisfied that

- (i) The allottee could either not be given the possession of plot, or
- (ii) Having given the possession, could not utilized the plot/shed due to the problem of encroachment or litigation; or
- (iii) Any other reasons causing UPSIDC's land/shed beyond his control.

The petitioners applied on 10.06.2009 seeking permission of UPSIDC to change the activity from packaging to hotel, which was granted vide order dated 02.12.2009 passed by UPSIDC changing the usage of land as commercial. UPSIDC demanded Rs.5,87,79,180/- from the petitioners as land use conversion charge. Pursuant thereto, the petitioners have deposited Rs.3,31,79,180/- on 17.08.2010. Thereafter, there was restrain order passed by the SIT in January, 2013 till date on the construction, hence no construction could take place. The Respondent Authority has rejected the claim of the petitioners for waiver of interest on the ground that the petitioners could have raised constructions in between 02.12.2019 (the date of land use conversion) and 16.09.2013 (the date of passing of restraint order) and further parity has also been denied on the ground that the other allottees have deposited the total land use conversion charge and have approached this Court seeking for construction. This Court finds that time limit provided for raising constructions of hotel was 5 years and admittedly, conversion was approved on 02.12.2009 and restraint order was passed on 16.09.2013 i.e. within four years. This Court further finds that parity has been denied only on the ground that the petitioners have not deposited the total land use conversion charges and have approached this Court seeking permission for construction, which are not the sine qua nor for waiver of interest.

We, in the light of the above discussion, are of the view that the petitioners were liable for grant of benefit of zero period from 16.09.2013 till 14.01.2022. In the representation there was a prayer for refund of Rs.3,31,79,180/- deposited in 2010 with interest @

15% till date of refund, which was also rejected vide order impugned but the said prayer has not been made in the present writ petition. The writ petition is **allowed**. The order impugned dated 25.11.2022 passed by the Chief Executive Officer, UPSIDC is hereby quashed to the extent of grant of benefit of zero period and permission for construction over the land in question.

No order as to costs.

Order Date :- 3.11.2023

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