

Chief Justice's Court

Case :- WRIT - C No. - 15473 of 2022

Petitioner :- M/S Avp Buildtech Pvt. Ltd.

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Somesh Khare, Ashok Kumar Pandey, Yashwant Singh

Counsel for Respondent :- C.S.C., Kaushalendra Nath Singh

Hon'ble Pritinker Diwaker, Chief Justice

Hon'ble Ashutosh Srivastava, J.

1. Heard Ms. Priya Sharma, learned counsel for the petitioner, Shri Ankit Gaur, learned Standing Counsel for the State-respondent and Shri Kaushalendra Nath Singh, learned counsel who has put in appearance on behalf of respondent Nos. 2 & 3.

2. The instant writ petition has been filed seeking issuance of a writ of mandamus commanding the respondent to accord benefit of 'Zero Period' from 31.3.2010 i.e. the date of allotment of the Group Housing Plot No. GH-03/C, Sector-77, NOIDA, Gautam Budh Nagar to the petitioner till January, 2019, i.e. the date of construction of the approach road to the plot.

3. It is the case of the writ petitioner that the plot No. GH-03/C (Sub Divided Plot No. GH-03, Sector 77) was part and parcel of Khasra Plot No. 89 and 744 situate in village Saurakha Jahidabad, Pargana and Tehsil Dadri, District Gautam Budh Nagar. The said plots were sought to be acquired by the respondent Development Authority under the provisions of the Land Acquisition Act, 1894 for the planned development and setting up Urban and Industrial township. The plots were recorded in the name of one Rich Pal Singh. The said Rich Pal Singh challenged the acquisition proceedings by means of Writ-C No. 52005 of 2011 (Richpal Singh and another versus State of U.P. and others). This Court initially stayed the acquisition proceedings, however, subsequently vide order dated 29.4.2013, the writ petition was decided in terms of the Full Bench Decision dated 21.10.2011 rendered in the case of ***Gajraj and others versus State of U.P. and others***. The respondent Development Authority ultimately purchased the plots under a registered Sale Deed dated 1.11.2018. It is contended that the Development Authority became the owner of the plots only after execution of the sale deed in the year 2018 even though the

allotment was made in favour of the petitioner in the year 2010. It is not in dispute that the land purchased by the Development Authority under the sale deed dated 1.11.2018 falls under Sector 77 and 116, respectively and is to be utilized for construction of 45 meter and 24 meter road and comes under green belt.

4. It is submitted that prior to the execution of the sale deed dated 1.11.2018 in the absence of any approach road to the plot allotted to the petitioner coupled with the agitation of the farmers who created all sorts of obstructions in the path of the petitioner for raising constructions, the petitioner had to suffer great losses. The petitioner on numerous occasions requested the Development Authority to construct the approach road and take measures for preventing the farmers to create hurdles in the petitioner's construction activities. No heed was paid by the Development Authority. However, the petitioner continued to pay the installments to the Development Authority as and when the same fell due.

5. In the above backdrop on the persistent persuasion of the petitioner, the Development Authority proceeded to grant the Zero Period benefit to the petitioner for the period 4/5.1.2011 to 27.6.2014.

6. From the facts and documents that have been brought on record, learned counsel for the petitioner has invited our attention to a Communication by the respondent- NOIDA Authority dated 22.11.2018 wherein it has been admitted that the petitioner has been extended the benefit of Zero Period from 4/5.1.2011 to 27.6.2014. Learned counsel for the petitioner submits that the benefit of the Zero Period for the aforesaid period was granted on the premise that the approach road to the plot allotted to the petitioner had not been constructed. Learned counsel for the petitioner submits that the road in fact was got constructed sometime in January, 2019 and, therefore, respondent NOIDA was not justified in limiting the grant of Zero Period benefit till 27.6.2014.

7. To demonstrate the aforesaid fact, learned counsel for the petitioner has invited our attention to Communication dated 24.7.2015, which has been addressed by the respondent to one of its Executive Engineer wherein it has been admitted that obstruction are being raised for the construction of the approach road to the Plot No. GH-03/C, Sector-77, NOIDA as also to a document which is a Report submitted by the Tehsildar, Dadri dated 5.12.2016 which also reflects that the road is under

construction.

8. In order to buttress her arguments, Ms. Priya Sharma, learned counsel for the petitioner has further relied upon an Advertisement dated 21.9.2018 (Annexure-13 to the writ petition) wherein the area which contains the plot allotted to the petitioner has been sought to be purchased contained Plot Nos. 89 and 744. Based on the above documents, it has been submitted that at least till January, 2019 the approach road to the plot allotted to the petitioner had not been constructed and on account of this fact, the constructions could not be raised by the petitioner. It is, thus, submitted that the petitioner stood entitled for grant of Zero Period benefit upto January, 2019.

9. Shri Kaushlendra Nath Singh, learned counsel for the NOIDA authority submits that as per Senior Manager Work Circle-6, Sector 78, it was informed that 124 meter long road was constructed and completed on 27.6.2014 and it is for this reason that the Zero Period benefit was granted from 4/5.01.2011 till 27.6.2014. He further submits that the petitioner in fact had raised constructions and numerous towers stood erected on the plot allotted to the petitioner. He places reliance on certain satellite images which show that the construction do exists on the land allotted to the petitioner.

10. The said satellite images have been brought on record by way of a supplementary affidavit. The images that have been brought on record appear to be related to a period from March, 2010 to May, 2022.

11. In response, learned counsel for the petitioner has vehemently argued that satellite images that have been brought on record relate to periods from 2010 to 2022 and cannot be relied upon for the purposes of demonstrating that the constructions were raised after 2014 disentitling the petitioner to the benefit of Zero Period as claimed. Besides, it is argued that the satellite images are not admissible in evidence in view of Section 65-B of the Indian Evidence Act as the basic requirement for proving the said documents have not been attached. It is also submitted that the land for construction of the approach road to the plot allotted to the petitioner was obtained under the Sale Deed dated 1.11.2018 and the road was got constructed sometime in the month of January, 2019. The claim of the petitioner for grant of Zero Period benefit from 31.3.2010 upto January, 2019 is reasonable and is liable to be allowed.

12. We have heard learned counsel for the parties and have perused the record.

13. From the perusal of the records, we find substance in the submissions advanced by learned counsel for the petitioner. Admittedly, the respondent Development Authority have extended the benefit of Zero Period to the petitioner for the period 4/5.1.2011 upto 27.6.2014 on the ground that approach road to the plot allotted to the petitioner had not been constructed. We find that the approach road to the plot allotted to the petitioner was got constructed only after purchase of the land by the Development Authority under the sale deed dated 1.11.2018. There appears no justification on the part of the respondent Development Authority to restrict the period till 27.6.2014. So far as the satellite images are concerned, though the images show constructions raised on the plot allotted to the petitioner but are not conclusive proof of the fact that the constructions were raised between 27.6.2014 and January, 2019 or after January, 2019 upto the year 2022.

14. In our opinion, the Development Authority manifestly erred in granting the Zero Period benefit from 4/5.1.2011 upto 27.6.2014 and the benefit was liable to be granted from 31.3.2010 i.e. the date of allotment of the plot upto January, 2019 as claimed by the petitioner. The writ petition is accordingly, ***allowed***.

15. The petitioner is entitled to get benefit of the Zero Period from 31.3.2010 upto January, 2019. The respondent Development Authority shall communicate the fresh statement of the dues of the petitioner after granting benefit of Zero Period as held hereinabove. The respondent Development Authority is also directed to consider the sanctioning of the revised layout plan regarding the plot GH-03/C, Sector 77, NOIDA, Gautam Budh Nagar in accordance with law considering the observations made hereinabove.

Order Date :- 17.10.2023

Ravi Prakash

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