

Chief Justice's Court

Case :- WRIT - C No. - 14964 of 2023

Petitioner :- Ace Infracity Developers Private Limited

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Syed Fahim Ahmed

Counsel for Respondent :- CSC, Kaushalendra Nath Singh, Rahul Sahai

Hon'ble Pritinker Diwaker, Chief Justice

Hon'ble Ashutosh Srivastava, J.

1. Heard Shri Syed Fahim Ahmed, learned counsel for the petitioner and Shri Manish Goel, learned Senior Counsel, assisted by Shri Kaushalendra Nath Singh, learned counsel who has accepted notice on behalf of Respondent No. 3. Learned Standing Counsel has appeared for State Respondent Nos. 1 and 2. None appears for Respondent No. 4.

2. The writ petitioner is a Private Limited Company engaged in the development of residential and Commercial Projects mostly in Delhi NCR region.

3. A number of reliefs have been claimed in the writ petition and the petitioner essentially appears to be aggrieved by the non consideration to the application for revision of the Building Plans submitted by it, grant of zero period benefit, extension of time period for completion of the project and for quashing the demand notice dated 29.03.2023, whereby a demand for Rs. 79,01,14,116/- has been raised against the petitioner.

4. It is the case of the petitioner that it joined a consortium formed by M/s Lotus Green Constructions Private Limited (Lead Member)/ Respondent No. 4 and submitted the bid as a consortium Member under Sports City Scheme 2014-15 floated by respondent no 3, for allotment of plots. The Consortium was allotted Sports City Plot No. SC-02, Sector-150 NOIDA, admeasuring, 12,00,000 square meter of land @ 19,400/- per square meter. An area of 60,000 square meters out of the total area allotted to the Consortium was earmarked for the petitioner. The petitioner deposited a sum of Rs. 23,28,00,000/- being 20% of total consideration towards lease premium. A lease deed was executed in favour of the petitioner on 07.04.2015 in respect of the plot SC 02-G admeasuring 60,000 square meters.

5. It is contended that though the lease deed was executed, but its actual physical vacant possession of the area earmarked was not handed over on account of disputes with farmers and land owners against the acquisition of the land for the project. Respondent No. 3 could provide only 3,00,000 square meters of land instead of 12,00,000 square meters to the consortium. The petitioner had obtained sanction of building plans, vide letter dated 08.03.2016. However construction could not commence as substantial portion of land remained unacquired and sectoral infrastructure was non-existent. Under such circumstances, the petitioner applied for revision of the Building Plans on 26.08.2022, which are pending approval. It is also submitted that as on 31.03.2023, the petitioner has paid a total sum of Rs. 134,37,86,891/- as against the total premium of Rs. 116,40,10,476/- payable in respect of the plot. It is further contended that the grant of approval for revised Building Plans has been put on hold by the respondents and at the same time, have issued the impugned demand notice.

6. Submission of the learned Senior Counsel for the petitioner is that after execution of the sub lease dated 07.04.2015, contrary stand is being taken by respondent no. 3 in as much it has not granted approval to the revised sanction plan despite accepting a total sum of Rs. 134,37,86,891/- as against the total premium amount of Rs. 116,40,10,476/- and is preventing the petitioner to raise constructions, yet at the same time, has raised a demand for Rs. 79,01,14,116/- and upon failure to make the payment, the petitioner has been threatened with cancellation of the allotment. The respondents are blowing hot and cold in one breath.

7. The Respondent Development Authority has refuted the allegations made in the writ petition by filing the counter affidavit. It has been asserted in the counter affidavit that the Consortium of the petitioner was allotted 12 Lac sq. mtrs. of land. Out of which, 3 Lac sq. mtrs. of land was acquired by the Authority and 9 Lacs sq. mtrs. of land was not acquired by the Authority. It is further contended that the land area which was not acquired the Authority on various dates acquired the said land from the respected owners and allotted to the petitioner and as per that allotment the petitioner was given the benefit of zero period on several occasions for the un-acquired batch. It is contended that the petitioner Consortium was in possession, but they deliberately started construction somewhere in the year 2018, which is clear from satellite images. It has been further contended that as per the terms of the scheme. It was made clear that the allottee will not be entitled for any benefit relaxation on the ground that the land could not be made available

or handed over. The bare perusal of the clause establishes that the petitioner is not entitled for zero period. It is further contended that the petitioner has challenge the decision of the Board Meeting, which is the policy matter and that cannot be put to judicial review under Article 226 of the Constitution of India.

8. Having heard the counsel for the parties and having perused the record, this Court finds that lease deed dated 19.12.2014 was executed by the Respondent No.3 in favour of M/s Crest Promoters Pvt. Ltd. in respect of Plot No. SC-02-G admeasuring area 60,000 sq. mtrs. M/s Crest Promoters Pvt. Ltd. were required to develop and complete the project and the same was to be launched in the market in the name and style of Ace Infracity. The Respondent Development Authority vide order dated 08.03.2016 granted sanction of building plans. The agreement of the Respondent Development Authority to the effect that the petitioners were handed over the hindrance free possession of the land but the petitioners thereafter started construction in the year 2018 does not find merit on account of the fact that pixel images do not give the exact position regarding encroachment. The Respondent Development Authority has only averred that possession of the land in question was given to the petitioner but has neither annexed the possession memo and has also not mentioned the date on which possession of land was given to the petitioner.

9. Record reflects that the Respondent No.3 granted the benefit of zero period to M/s Lotus Green Constructions Pvt. Ltd. (Head Member) for the period upto 30.09.2016 from the date of allotment vide letter dated 12.09.2016, however, when the Consortium was not able to work on the spot due to interference of the farmers and land owners, the Lead Member of the Consortium approached this Court by means of Writ Petition No.60266 of 2017, which was disposed of by this Court vide order dated 15.12.2017 with direction to the Respondent No.3, to decide the application of the Lead Member with regard to handing over possession and grant of "Zero Period". Since, there was no response the Lead Member again approached the writ Court by means of Writ-C No. 18798 of 2019, which was disposed of by this Court vide order dated 29.5.2019 to decide the application of the Lead Member of the Consortium viz-z-viz handing over possession of grant of "Zero Period" within one month. Records further reflect that even at the time of filing of the writ petition, possession of whole of the land allotted to the Consortium has not been handed over. Meanwhile the Respondent No. 3 in its 201st Board Meeting dated 18.01.2021

has put on hold sanction of building plans and other approvals in respect of Lotus Green Sports City plot. During the restraint order the petitioner moved an application dated 26.8.2022 for revision of building plans. Later on, during the period of restraint order, a demand notice dated 29.3.2023 has been sent demanding outstanding dues towards instalments and annual lease rent amounting to Rs.79,01,14,116/-

10. In the light of above this Court has to decide, whether the petitioner is entitled for the benefit of "Zero Period" and for the revised sanction of the building plans in the wake of the restriction imposed by the 201st Board Meeting of the Respondent Authority. We find from the records that the petitioner has deposited a total sum of Rs.134,37,86,891/- against the premium of the plot allotted in place of Rs.116,40,10,476/-. Despite making deposit more than the premium amount the Development Authority has admittedly not sanctioned the building plans and a further demand of Rs.79,01,14,116/- has been raised. In our opinion, in the above scenario, the restriction imposed by the 201st Board Meeting for sanction of revised building plans and excess demand raised is totally unwarranted. The 201st Board Meeting of the Respondent Authority insofar as it imposes restriction upon the sanction of the building plans of the petitioner is, accordingly, set aside.

11. In the light of the above discussion, we are of the view that the petitioner company was not able to complete the work on account of non handing of possession of the entire area, agitation and hindrances carved by the farmers on the spot and later on due to restraint order in 201st Board Meeting. Thus, the petitioner is entitled for grant of benefit of "Zero Period" from the date of allotment till today.

12. Consequently, writ petition is **allowed**. The demand notice dated 29.3.2023 placing demand for additional compensation, instalment of lease premium and annual lease rent is set aside. Respondents are directed not to realize the lease premium amount as well as the lease rent from the petitioner for the period between 19.12.2014 to till date and also adjust the due interest amount of the said period. Respondent Authority is also directed to consider the revised building plan regarding Plot No. SC-02/G, Sector 150, Noida having an area of 60,000.54 sq. mtrs. in accordance with law considering the observations made herein above.

Order Date :- 9.11.2023/pks

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