

Chief Justice's Court

Case :- WRIT - C No. - 17510 of 2020

Petitioner :- M/S Nirala Infratech Private Limited

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

Counsel for Petitioner :- Sanjay Kumar Mishra, Nikhil Agrawal

Counsel for Respondent :- C.S.C., Anjali Upadhyay, Ramendra Pratap Singh

Hon'ble Pritinker Diwaker, Chief Justice

Hon'ble Ashutosh Srivastava, J.

1. Heard Shri Nikhil Agarwal and Shri S. K. Mishra, learned counsel for the petitioners and Smt. Anjali Upadhyay, learned counsel for contesting respondent Nos. 2 to 4. Learned Standing Counsel represents the State-respondent No. 1.

2. The aforesaid writ petition has been filed assailing the non grant of "Zero Period" benefit with other ancillary reliefs.

3. The petitioner M/s Nirala Infratech Pvt. Ltd., is a company registered under the Companies Act, 1956 having its registered office at G-83/207 Vijay Chowk, Laxmi Nagar, Delhi. The petitioner company is engaged in the business of real estate and development of integrated township, construction and sales of flats.

4. The respondent Greater Noida Industrial Development Authority (hereinafter referred as "GNIDA") floated a scheme dated 6.3.2010 for allotment of large group housing/building residential plots being Scheme Code:- BRS-02/2010.

5. The petitioner company applied for the allotment of a plot through its Consortium consisting of M/s Nirala Developers Pvt. Ltd., M/s SMC Power Generation Ltd. and M/s Paras Buildtech India Pvt. Ltd. The Consortium was allotted Plot No. GH-04, Sector Tech Zone-IV, Greater Noida vide allotment letter dated 23.4.2010 ad-measuring 1,00,000/- square meters. The GNIDA approved the name and status of the Special Purpose Company (SPC) M/s Nirala Infratech Pvt. Ltd. on the request of the Consortium members to develop and market the project on allotted Plot No. GH-04, Sector Tech Zone-IV, Greater Noida. Pursuant thereto, the lease deed for an area of 99,196.40 square meters was

executed on 28.7.2010. Later on, a supplementary lease deed was executed on 12.10.2010 for remaining area of 795 square meters. Possession memo transferring the possession of the land were also executed. However, it came to light that the bidding was invited in respect of land acquired through various notifications issued from time to time under the Land Acquisition Act, 1894 and the challenge to the said proceedings were pending in the Courts of Law.

6. After the alleged possession of the land, it came to the knowledge of the petitioner that several disputes/litigation on the leased property were pending before the High Court coupled with the fact that there was pucca construction on the plot to the extent of 812.08 square meters and nursery was also situate on the plot occupying approx 4,000 square meters of land allotted. It has been further contended that this Hon'ble Court granted 'status quo' order in the several cases. It has also been contended that the land in question falls in revenue village Patwari which is subject matter of Harkaran Singh's case and this Hon'ble Court vide its order dated 19th July, 2011 quashed the acquisition and directed that the entire land be returned back to villagers. Thereafter, various other writ petitions were also filed challenging the land acquisition proceedings before this Court and leading being Writ Petition No. 37443 of 2011 (Gajraj and others versus State of U.P. and others) which was referred to larger Bench vide order dated 26.7.2011 by this Court and finally the bunch of writ petitions were decided on 21st October, 2011. It has been further contended that the matter was finally settled by the Apex Court vide judgment and order dated 14.5.2015 in SLP No. 4506 of 2011 (Savitri Devi and others versus State of U.P. and others) observing that enhanced compensation would be paid to the farmers and acquired land would remain with the authority and it is thereafter the petitioner could start his project again. The details of the litigation regarding the plot allotted to the petitioner since 2010 up to 14.5.2015 have been detailed in Para 18 of the writ petition which has been disputed by the respondent Authority by submitting that petitioner was extended "Zero Period" benefit from 19.7.2011 up to 24.8.2012. Thereafter, the petitioner has further been granted "Zero Period" benefits for various other periods taking into consideration the impact of the legal proceedings upon the project of the petitioner. It is the case of the petitioner that it is not liable to pay any interest/ penal interest/ lease rent/ time extension charges for the period when the land allotted was locked in litigation and other disputes. In this backdrop, it has been prayed to quash the order dated 9.7.2020 passed by the authority rejecting the application of

the petitioner for granting the benefit of "Zero Period". It has been further prayed that demand notice dated 26.7.2018 be quashed/modified whereby the respondent Authority have placed an arbitrary demand for additional compensation and re-schedulement without taking into consideration the waiver of the "Zero Period". Several other prayers have also been made in the writ petition.

7. The petitioner has placed reliance upon judgment and order rendered by this Court in case of ***M/s Gaursons India Ltd. versus State of U.P. and 3 others***, in Writ-C No. 8018 of 2022 involving similar questions of fact and submitted that the denial of the benefit of Zero Period as claimed by the petitioner is unjustified, particularly in view of the fact that in similar circumstances, the benefit was extended to the writ petitioner of ***M/s Gaursons India Ltd.*** (supra), but the petitioner has been denied the benefit.

8. It is further contended that the respondent authority in its Board Meeting held on 14.3.2016 (104th Board Meeting) took a decision to grant "Zero Period" benefit to allottees amongst other ground on the ground that if the authority has delivered possession to the allottee and lease deed was executed but the allottee is unable to access the plot on account of agitation of farmer or on account of Court's stay order as a result of which development is impossible to commence, the allottee is entitled to the benefit of "Zero Period". The petitioner stood entitled for 100% rebate under the Zero Period Policy dated 5.12.2019. The petitioner also extended an undertaking in the application dated 30.1.2020 that it will complete the project by 31.5.2021 as required by the Government Order. The Authority did not extend the benefit of "Zero Period" to the petitioner even though it stood covered by it. The petitioner approached the authority vide its several representations. However, the same was dismissed vide order dated 9.7.2020 impugned in the writ petition. It is also submitted by learned counsel for the petitioner that this Court while entertaining the writ petition vide order dated 3.12.2020 directed that the premium and interest from 19.7.2011 till 14.5.2015 claimed as "Zero Period" shall not be insisted by the Development Authority. However, despite the said order, the respondent Authority required the petitioner to deposit the premium and interest for the said period in a separate account ESCROW Account, which amount the petitioner deposited as and when demanded into a separate ESCROW Account which amount is liable to be refunded/adjusted.

9. Heard the counsels for the parties and perused the record.

10. A perusal of the order dated 26.07.2018 (Anexure-16 to the writ petition) reveals that benefit of Zero Period was provided for the area 775 square meters for the period 08.10.2010 to 14.05.2015 and for area 14519.99 square meters for the period 29.10.2013 to 13.05.2014 and accordingly re-schedulement was sanctioned by CEO, Greater NOIDA vide its order dated 28.06.2018, demanding additional compensation of 25.80%. From the perusal of the order dated 09.07.2020 it is reflected that the claim of the petitioner for grant of Zero Period was rejected by stating that the same was considered in the light of the Government Order dated 05.12.2019 and accordingly the benefit of "Zero Period" could not be granted to the petitioners.

11. We find that the authority has not considered the claim of the petitioners for grant of Zero Period in the light of the 104th Board Meeting and also according to the Government Order dated 05.12.2019. Therefore, the action of the Development Authority is not in accordance with law.

12. In view of aforesaid facts and circumstances of the case, we are of the view that the Development Authority-respondents, while passing the impugned order dated 09.07.2020, have not rightly considered the grievance of the petitioner, claiming benefit of "Zero Period". From the tenor of the order, it is apparent that the same is a non speaking order. There is absolutely no discussion of the case of the petitioner. The Authority has not accorded consideration to the claim of the petitioner as per the prevailing policy for grant of "Zero Period" benefit. Hence, the impugned order dated 09.07.2020 deserves to be set aside and is, accordingly, set aside. We hold that the petitioner is entitled to get the benefit of "Zero Period" from 23.04.2010 to 14.05.2015. Consequently, the earlier notice dated 26.07.2018 placing demand for additional compensation and re-schedulement is also set aside. Respondents are directed not to realise the lease premium amount, lease rent, time extension charges as well as interest and penal interest from the petitioner for the period between 23.04.2010 to 14.05.2015 and also refund/adjust the premium amount and interest thereon deposited by the petitioner for the "Zero Period" 23.04.2010 to 14.5.2015.

13. The writ petition is, accordingly, ***allowed.***

Order Date :- 30.10.2023

Ravi Prakash

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