

Chief Justice's Court

Case :- WRIT - C No. - 22551 of 2021

Petitioner :- M/S Express Project Pvt. Ltd.

Respondent :- State of U.P. and Another

Counsel for Petitioner :- Uma Nath Pandey, Sanjay Kumar Mishra, Sr. Advocate

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

Hon'ble Pritinker Diwaker, Chief Justice

Hon'ble Ashutosh Srivastava, J.

1. Heard Sri Uma Nath Pandey, learned counsel for the petitioner, Smt. Anjali Upadhya, learned counsel for respondent nos. 2 & 3 and the learned standing counsel.

2. A Consortium of Four Real Estate Developers was allotted a Plot No. GH-06-A, Sector-1, Greater Noida area 7,38,000 sq. mtrs. by Greater Noida Industrial Development Authority (GNIDA) comprised of revenue Khasra Nos. 663, 654 & 655 for a group housing on 27.4.2010. The Consortium was permitted under the order of the Authority dated 24.3.2011 for sub-division of the said plot. Plot no. GH-06-A (area 23,800 sq. mtr) was allotted to the petitioner, one of the 4 members of the consortium, after sub-division. The order of sub-division indicated that petitioner was granted 24 mtr. wide approach road to access its plot. A lease deed dated 27.5.2011 in respect of 21,718.56 sq. mtrs. and a supplementary lease dated 11.7.2013 for area 2193.94 sq. mtrs came to be executed for 90 years in favour of the petitioner. It is alleged that petitioner could access its plot only through Khasra Nos. 663 & 654 which were under litigation as there was an order of status quo operating, as a result of which actual physical possession in respect of above khasras could not be delivered till 14.5.2015 when the same was removed with police aid.

3. The Development Authority has framed a policy dated 1.1.2016 for granting benefit of "Zero Period" which provides that in the event an allottee is unable to take actual physical possession of the demised area on account of encumbrance or encroachment or a pending dispute, the Authority is entitled to waive lease rent, interest and penal interest thereon for a definite period. In the present case, "Zero Period", was alleged from 27.4.2010 to 15.5.2015. The petitioner after obtaining the possession and after completing the entire formalities applied for sanction of map on 25.6.2015 and the same was sanctioned by the respondent authority on 30.6.2015. The petitioner staked a claim for "Zero Period" on 16.11.2015. Pursuant thereto, a report dated 22.02.2016 was submitted by General Manager, Project admitting the fact that construction could not be carried out by the petitioner on the plot in question due to interim orders passed by this Court in favour of farmers. In

the 104th Board Meeting, the case of the allottees was found to be successful on merits and they were directed to be given the benefit of "Zero Period". Pursuant thereto, "Zero Period Committee" was constituted to look into the matter and the Committee aforesaid vide its report dated 21.12.2017 held that benefit of "Zero Period" has already been given from 21.10.2011 to 24.8.2012 and further extended the benefit from 24.8.2012 to 4.2.2014. The said benefit was approved by the respondent Authority in its 111th Board Meeting dated 1.2.2018. Meanwhile, the State Government issued a Government Order dated 5.12.2019 governing grant of "Zero Period". Later on, the Zero Period Committee report was placed in the 117th Board Meeting held on 10.2.2020 and in the said meeting earlier minutes of 111th Board Meeting were reviewed and the petitioner was granted partial benefit and the same was communicated to the petitioner on 6.3.2020 impugned herein.

4. Learned counsel for the petitioner challenges the 117th Board Meeting and order dated 6.3.2020 on the following grounds:-

(i) Plot of the petitioner was inaccessible from 27.4.2010 to 15.5.2015, in the absence of any approach road, preventing the petitioner from raising any constructions.

(ii) Petitioner was entitled to parity like others who had been granted benefit of zero period.

(iii) Case of petitioner is squarely covered under the terms and conditions as contained in the policy dated 1.1.2016 and Government Order dated 5.12.2019 issued by the State Government.

5. Learned counsel for the authority opposed the submissions on the premise that the sub-division of the plot was carried out by the petitioner and other members of consortium knowing fully well the location of its plot and the approach road after sub-division. No case for parity was made out as the ground situation is absolutely different qua the petitioner. Once the case of the petitioner has been considered in the light of parameters provided under the G.O. dated 1.1.2016, this Court under Article 226 is prohibited to act as a court of appeal.

6. The GNIDA is an authority constituted under Section 3 of the U.P. Industrial Area Development Act, 1976. The object of the authority shall be to secure the planned development of the industrial development areas.

7. From the perusal of the policy dated 1.1.2016, it appears that following conditions have been laid down for the grant of benefit of Zero Period:-

(i) If for some reason, the authority is unable to deliver possession to the allottee or developer.

(ii) The authority is unable to deliver possession to the allottee / developer as the same could disturb the peace and tranquility of the area or there is an encroachment as a result of which development is unable to proceed.

(iii) Execution of allotment / lease / delivery of possession is unable to take place in view of pending interim order of a court.

(iv) Lease deed is unable to be executed on account of G.O or a decision of the Board.

(v) If the authority has delivered possession to the allottee and the lease deed executed but the allottee is unable to access the plot as a result of which development is impossible to commence, the allottee is entitled to the benefit of zero period upto the date on which alternate access is provided.

8. The petitioner, one of the four members of the Consortium, was allotted plot no. GH-06-A after the authority had consented for sub-division under the order dated 24.3.2011. The authority is a signatory to the sub-division. Although 24 mtrs. wide approach road was assigned to the petitioner under the order of sub-division, no approach road whatsoever was actually provided to the petitioner till 15.5.2015 which is an admitted fact. It could not be disputed that in the absence of any approach road, construction at the assigned plot was impossible. The authority being a signatory to the order of sub-division, cannot feign ignorance on the ground that it was an internal matter of the Consortium. The authority being an instrumentality of a State, was obliged to act reasonably and fairly by providing actual physical possession of the approach road over khasra no. 663 & 654 to the petitioner which was under unauthorized possession coupled with the fact that not only the said fact was admitted to the Authority but it also delivered the possession of this area to the petitioner after removing encroachment with the aid of police only on 15.5.2013.

9. Learned counsel for the petitioner further 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 of "Zero Period" was extended to one of the Consortium member M/s Rajhans Infratech Pvt. Ltd., writ petitioner of Writ-C No. 12462 of 2020, but the petitioner has been denied the benefit.

10. We, in the light of above discussion, are of the considered view that the petitioner was liable to be granted benefit of zero period from 27.4.2010 to 15.5.2015 in view of Clause-5 of the policy dated 1.1.2016 as inserted by the resolution of the 104th Board Meeting dated 9.3.2016.

11. This Court finds that the petitioner is one of the member of a Consortium of four Real Estate Developers. M/s Rajhans Infratech Pvt. Ltd., one of the member of

the Consortium filed Writ-C No. 1246 of 2020 (M/s Rajhans Infratech Pvt. Ltd. versus State of U.P. & others). The said writ petition was allowed by this Court vide its judgment and order dated 17.3.2021 and the matter was remitted back to the Competent Authority to consider the case of the petitioner for grant of benefit of "Zero Period" w.e.f. 27.4.2010 to 15.5.2015 afresh according to the observations made in the order dated 17.3.2021. The order dated 17.3.2021 passed in Writ-C No. 12462 of 2020 was put to challenge before the Apex Court in SLP No. 20096 of 2021. The Apex Court while retaining the order of remand passed by this Court, directed the Competent Authority to decide the matter afresh *de novo* in accordance with law. The relevant portion of the order dated 21.3.2022 passed in SLP No. 20096 of 2022 is quoted below:-

"In other words, the Competent Authority shall deal with the matter afresh de novo in accordance with law.

The respondent may file further representation in terms of this order within two weeks from today.

The Competent Authority shall give opportunity of personal hearing to the respondent before taking a final decision and, as aforesaid, if the Competent Authority intends to rely on any specific material, the list of those documents and the compilation of those documents be made over to the respondent well before the date of personal hearing"

12. We are of the view that the petitioner is also entitled for the same benefit as extended to M/s Rajhans Infratech Pvt. Ltd. The impugned 117th Board Meeting and its communication dated 6.3.2020 is hereby quashed. The writ petition is **allowed**. The Competent Authority is directed to consider the case of the petitioner for grant of benefit of "Zero Period" w.e.f. 27.4.2010 to 15.5.2015 in respect of Khasra No. 663 and Khasra No. 655 and for the period w.e.f. 27.04.2010 to 10.02.2020 in respect of Khasra No. 654, as expeditiously as possible, preferably within 6 weeks, from the date of receipt of this order, in accordance with law.

Order Date :- 30.10.2023

Ravi Prakash

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