

Judgment Reserved on : 23.08.2023

Judgment Delivered on : 16.11.2023

Neutral Citation No. - 2023:AHC:207677-DB

Chief Justice's Court

Case :- WRIT - C No. - 23888 of 2021

Petitioner :- M/S Silverline Furnishing And Furnitures Private Limited

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

Counsel for Petitioner :- Kartikeya Saran, Bidhan Chandra Rai

Counsel for Respondent :- C.S.C., Aditya Bhushan Singhal

With

Case :- WRIT - C No. - 26513 of 2022

Petitioner :- Silverline Furnishing And Furnitures (Pvt) Ltd

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

Counsel for Petitioner :- Bidhan Chandra Rai, Kartikeya Saran

Counsel for Respondent :- CSC, Aditya Bhushan Singhal

Hon'ble Pritinker Diwaker, Chief Justice

Hon'ble Ashutosh Srivastava, J.

1. The above two writ petitions between the same set of parties involve identical facts. The Writ-C No. 26513 of 2022 has been filed assailing an order dated 27.07.2022 passed by YEIDA canceling the allotment as also the lease deed executed in favour of the petitioner, during the pendency of the Writ-C No. 23888 of 2021. Both the writ petitions have been connected and thus are being decided together by a common order. The Writ-C No. 23888 of 2021 is treated as the leading petition and the facts involved therein are being considered to decide the controversy involved.

2. The writ petitioner which is a Special Purpose Company incorporated under the Companies Act, 1956 with the object and business of development of Residential Township, has approached this Court assailing the impugned notice dated 11.11.2020 issued by the Manager (Property), Yamuna Expressway Industrial Development Authority/ Respondent No.4 to the extent it demands interest and penal interest on the premium and lease rent amount during the period physical possession of the leased land has not been given to it. A further prayer in the nature of mandamus commanding the Respondent YEIDA to not impose interest and penal interest on the premium and lease rent during the period physical and

actual possession of the leased land is not handed over, and provide exemption from payment of the interest and penal interest on the premium and lease rent, hand over physical and actual possession of the lease land, execute an additional lease deed for the remaining area of the plot reserved and allotted to the petitioner under the reservation letter dated 30.03.2011 and allotment letter dated 22.12.2011 has been prayed for.

3. The facts shorn of unnecessary details leading up to filing of the instant writ petition are that the Respondent No.2 the Yamuna Expressway Industrial Development Authority hereinafter referred to as YEIDA in the year 2011 invited tender for setting up residential township from interested parties inter-alia for allotment of Plot No. TS-2 in Sector 18, Greater Noida for size approximately 100 acres under Scheme YEA-RT-03/2011. The tender rules permitted a Consortium of Companies to bid against the tender. A Consortium of M/s Amenite Builders and Developers (Pvt.) Ltd. and other Companies i.e. M/s PC Developers (Pvt.) Ltd., M/s Three C Universal Developers Pvt. Ltd, M/s Dashmesh Promoters and Developers Pvt. Ltd, M/s Visitor Constructions Pvt. Ltd and M/s Mereton Infotech (Pvt) Ltd. applied against the tender invited depositing Rs.10 Lacs as processing fee and earnest money of Rs.10 crores on 20.3.2011. The Consortium offered the highest bid of Rs.4,735/- square meters and consequently a reservation letter dated 30.3.2011 was issued in favour of the Consortium by the respondent no.2 YEIDA. The total premium payable was Rs.1,91,62,54,500/- for an area of 40,4700 square meters land. The respondent no.2 required the Consortium to deposit 10% of the total premium as reservation money which worked out to Rs.19,16,25,450/-. Since a sum of Rs.10 crores stood deposited the Consortium deposited a sum of Rs.9,16,25,450/- on 28.4.2011. Thereafter the respondent no.2 issued the allotment letter dated 22.12.2011 stating therein that as per lease plan, an area of 287645 square meters was being allotted at the rate of Rs.5,023 per square meters. The remaining area of the plot no. TS-2, Sector 18, Greater NOIDA would be allotted as soon as land comes under possession of the Development Authority (YEIDA).

4. As per the terms of the allotment letter, the Consortium was required to deposit 20% of the allotment money i.e. 1,44,38,40,835/- within 60 days which worked out to Rs.24,18,26,801/- and the balance was to be paid over the next 8 years together with interest. The Consortium was also advised to deposit the stamp duty for execution of lease deed towards the land allotted. The Consortium deposited the 20% of the allotment money amounting to Rs.24,18,26,801/- and stamp duty of Rs.8,01,88,666/- on 16.2.2012. The Consortium further deposited the advance lease rent to the tune of Rs.1,44,48,409/- on 24.2.2012.

5. It is contended on behalf of the petitioner that despite the Consortium complying with all the requirements set out in the allotment letter the respondent YEIDA vide communication dated 2.3.2012 revealed that it could offer only 1,84,199 square meters of land as against 2,87,645 square meters on account of 3rd party litigation and possession problems and balance land would be offered as and when available. A lease deed in respect of 1,84,199 square meters was got executed and registered in favour of the petitioner though the amount towards the allotted area of 2,87,645 sq. meters and stamp duty was accepted. The excess paid by the petitioner was to be adjusted towards execution of lease deed in respect of remaining land in future. The petitioner moved for modification of the payment schedule in accordance with the area for which the lease deed was got executed and also moved an application before the Tehsildar, YEIDA for measurement of the Plot No. TS-2 as the physical possession of the entire land for which the lease deed was got executed was not delivered. It is submitted that YEIDA responded to the request for revised payment schedule but did nothing regarding the request for giving actual physical possession of the leased plot or for the measurement of the plot allotted. YEIDA raised unwarranted demands based on the unamended payment schedule which were strongly objected to by the petitioner. The petitioner vide one of its replies dated 17.10.2014 raised the issue that since the respondent YEIDA had failed to handover actual physical possession of the leased plot, the entire period before grant of possession must be treated as

zero period and the interest obligation on the remaining premium amount liable to be waived.

6. It is also contended on behalf of the petitioner that after much persuasion, YEIDA agreed for measurement of the plot and handing over of physical possession of the plot allotted on 10.8.2015 and the officials of the petitioner along with Tehsildar YEIDA and Assistant Manager (Project) YEIDA visited the site for taking/handing physical possession but could not succeed on account of massive protests by the villagers and farmers. All further communication by the petitioner thereafter with YEIDA remained unresponsive. YEIDA instead of taking note of the fact that the actual physical possession of 1,84,199 sq. meters of land had not been given to the petitioner, the request for execution of supplementary lease deed for remaining land of 1,03,446 sq. meters had not been acceded, the request to treat the entire period prior to such handing over of possession be declared as a zero period and accordingly not raise any demand of interest on the premium amount had not been acceded, proceeded to issue notice dated 16.3.2016 raising demand of Rs.60,30,18,658/- towards premium and penal interest and additional compensation Rs.41,62,99,462/- totaling Rs.1,01,93,18,120/- . The demand was strongly objected to by the petitioner however the petitioner being keen to initiate the project which had already been delayed and severely compromised on account of the conduct of YEIDA, deposited a sum of Rs.6,69,94,618/- towards premium on 12.8.2016 and further sum of Rs.5,89,00,000/- on 3.3.2017 as also a sum of Rs.4,24,86,932/- on 22.5.2017.

7. YEIDA vide its letter dated 11.11.2020 required the petitioner to make payment of Rs.132.29 crores against the premium amount Rs.12.79 crores against lease rent and execute an undertaking that it would abide by the order of the Supreme Court in the matter regarding payment of additional compensation of Rs.54.29 crores. The total amount demanded from the petitioner is to the tune of Rs.199.37 crores.

8. It is also submitted by the learned counsel for the petitioner that during the pendency of the present Writ-C No.23888 of 2021, despite there being an order restraining the YEIDA from creating any third party rights, it proceeded to cancel the lease on an ex-parte motion vide order dated 27.7.2022 which is the subject matter of Writ-C No.26513 of 2022. YEIDA is stated to have issued a letter to the petitioner on 18.8.2022 stating that the cancellation order shall be kept in abeyance until final decision in Writ-C No.23888 of 2021 and the matter of cancellation shall be revived subject to the orders of this Court.

9. In the aforesaid backdrop, the petitioner has approached this Court for the reliefs claimed herein by filing the writ petitions.

10. Sri Shashi Nandan, learned Senior Counsel appearing for the petitioner vehemently submitted that the demand raised by YEIDA and its consequential action to cancel the lease executed in favour of the petitioner is totally unwarranted. He contends that possession of the leased land mentioned in the lease deed has not been granted to the petitioner till date. The request of the petitioner to demarcate the land and hand over actual physical possession has not been acceded by YEIDA. He has invited the attention of the Court to relevant page 51 of the writ petition to show that the boundary of the plot allotted has not been specified at any place. The possession certificate annexed at pages 53 and 75 only states that dimension of the plot is as per lease plan without any further details. The lease map on page 73 does not specify which areas have been given to the petitioner. The map is of total area of 4,05,292 square meters and provides no indication whatsoever where the allotted area of 1,84,199 square meters lies. The possession certificate attached to the lease deed is merely a paper possession. It is argued that the document was signed in good faith in continuation with the lease deed. The petitioner has also paid the requisite amount of money as and when demanded at the time of execution of the lease. It is also argued that the factum of not being handed the actual physical possession of the land allotted is apparent from the event on 10.08.2015 when the representative of the petitioner along with

representation of the respondents visited on site for taking/handing actual physical possession which could not materialize on account of farmers agitation/protest. YEIDA has failed to produce any document to prove handing over of possession. It has been argued that it is the duty of the lessor (YEIDA) to put the lessee (petitioner) in physical possession of the leased out land which YEIDA has utterly failed to follow. It has been vehemently submitted that the liability of the petitioner to pay the lease rent, interest etc. shall arise only after possession of the land has been given and not before it. The demands raised by YEIDA against the allotted plot without putting the petitioner in actual physical possession is unwarranted.

11. Sri Shashi Nanda, learned Senior counsel appearing for the petitioner has also vehemently submitted that the subsequent action of YEIDA in proceeding to cancel the lease deed by order dated 27.07.2022 is totally uncalled for and is not liable to sustain inasmuch as the order proceeds on the premise that the petitioner failed to pay dues and make constructions over the property as also on the ground that the shareholding of the petitioner has changed without intimation or information to the Development Authority. It is contended that YEIDA was duly informed of the change of shareholding on 23.06.2017. The change of shareholding was necessitated on account of the conduct of YEIDA. The Consortium of the petitioner had bid for the plot in question having a specific business plan in mind. Due to failure on the part of YEIDA to hand over possession the allotted plot with allotted area, the petitioner could not act in accordance with its plan and suffered heavy losses. The change in the shareholding took place in 2017 much after the allotment of the plot in favour of the Consortium. YEIDA continued to deal with the petitioner even after communication of the change in the shareholding and now YEIDA cannot be permitted to raise this plea and form it a basis to cancel the allotment and the lease deed particularly when YEIDA had acquiescent by its conduct.

12. Lastly, Sri Shashi Nandan, learned Senior Counsel submits that the petitioner is willing and eager to complete the project of development of residential township. It has already deposited about 61.74 crores against the plot in question. The petitioner is not shying away from its responsibility to pay the entire lease rent and premium but at the same time YEIDA is also obliged to hand over possession of the entire land admeasuring 4,04,700 square meters and for exemption from payment of premium and lease rent, during the period physical possession of the lease land has not been given to the petitioner. It is accordingly prayed that the writ petitions are liable to be allowed as prayed.

13. The writ petitions have been opposed by Sri Manish Goyal, learned Senior Counsel assisted by Sri A.B. Singhal, learned counsel representing the respondent nos.2, 3 and 4. The main thrust of the opposition is that elaborate arguments have been advanced by the learned counsel for the petitioner in Writ-C No.23888 of 2021 but no submissions have been advanced in Writ-C No.26513 of 2022. In the absence of argument being advanced in Writ-C No.26513 of 2022, it can safely be assumed that the petitioner has nothing to say on the order of cancellation and in view of the order of cancellation being in existence, the Writ-C No.26513 of 2022 is to be treated as abandoned. The natural corollary to this would be that the cancellation order would come into existence under which 25% of the amount of the premium deposited by the petitioner has been forfeited and remaining amount has been directed to be refunded to the petitioner. The revenue and recurring deposits made by the petitioner have also been forfeited by YEIDA under the cancellation order dated 27.7.2022.

14. Sri Manish Goyal, learned Senior Counsel appearing for the respondents submits that the plot allotted to the Consortium of the petitioner falls under Sector 18. It was clearly stipulated in the brochure that the acquisition of land in respect of plots falling under Sector 18 is in progress. He has invited the attention of this Court to certain clauses contained in the brochure regarding the position, regarding the possession, execution of lease deed and development around the plot and issuance

reservation letters and allotment letter which are reproduced below:-

(i) Clause C-5 :- The demised plot is allotted and lease on “as is where is basis”

(ii) Clause C-19 :- The lessee is required to submit building plan together with the detailed lay-out plan showing the phase for execution of the project for approval within 9 months from the date of possession and shall start land development, and internal development within 18 months from the date of possession. Date of execution of lease deed shall be treated as the date of possession. The land development and internal developments have to be completely by the lessee within 5 years from the date of possession to the satisfaction of the lessor.

(iii) Clause H-13 :- The lessee shall not be allowed to assign or change his role, otherwise the lease shall be cancelled and entire money deposited shall be forfeited.

15. It is next submitted by Sri Manish Goyal that reservation letter for Plot No. TS-2, Sector 18 was issued to the Consortium of the petitioner whose bid was the highest on 30.3.2011. The total premium payable was determined as Rs.1,91,62,54,500/-. The petitioner was required to deposit 10% of the total premium within 30 days. Since the land in Sector 18 was not fully acquired, the allotment letter issued to the petitioner was for an area of 2,87,645 square meters. The petitioner was to deposit 20% of the premium as allotment money within 60 days. The allotment letter clarified that remaining area would be allotted once the land was in possession of the Authority. A lease deed dated 1.3.2012 was executed in favour of the petitioner for an area of 1,84,199 square meters. The lease deed categorically stipulated that the aforesaid area was in possession of YEIDA and accordingly lease for the said area under possession was executed in favour of the petitioner. Clause 5 of the lease deed stipulated that the land was allotted on “as is where is basis”. Clause 19 stipulated that date of possession would be the date of execution of the lease deed. Clause H13 provided that the lessee shall not be allowed to assign or change his role otherwise the lease would be cancelled and the entire money deposited forfeited. It is also submitted that possession certificate revealed that physical possession of the leased land was taken over by the Director of the petitioner. It is also submitted that revised payment schedule was provided to the petitioner. The petitioner started making defaults and did

not make payment as per the revised payment schedule. Default notices were issued to the petitioner from 2013 to 2018. Benefit of reschedulement of premium of lease rent was provided to the petitioner in 2015, 2018, 2019 and 2020 but petitioner did not avail the benefit of re-schedulement.

16. Sri Goyal has argued that it was not permissible for the Members of the Consortium to exit out from the project and the shareholding of the special purpose company created by the Consortium could not be changed without notice to the Authority. He further submits that the lease deed is to be read as a whole and the lease plans and possession certificate which forms an integral part of the lease which bears the signatures of the Director of the petitioner is to be taken on its face value. He submits that in any case, the contents of the lease deed would fall within the realm of the private contract and will not fall for consideration in judicial review under Article 226 of the Constitution of India. The audit objections raised against the petitioner are serious enough to deny the petitioner any relief in equity. The special purpose company created for a specific purpose by the Consortium and the allotment of land being in favour of the Consortium, the petitioner has lost its substratum for the development of the plot in question and as such, is not entitled to any relief particularly, in view of the fact that Sachin Gupta, the Director of the petitioner company is a shareholder of only 1% in the special purpose company. It is also submitted that the petitioner is under an obligation to pay the amount as per the re-schedulement payment plan and admittedly is in default of payment of premium, lease rent and additional compensation which itself is sufficient to cancel the lease deed executed in its favour.

17. It has also been argued on behalf of the contesting respondents that the parties are at variance as regards the factum of possession of the leased plot. According to the petitioner, the actual physical possession of the leased plot has not been handed over to the petitioner and the possession certificate issued along with the lease deed is nothing but a paper transaction. On the other hand, the respondent Authority is assertive of the fact that the petitioner was put in possession over the plot at the time of

execution of the lease deed itself as is borne out from the possession certificate itself. It has been argued that the question of possession being essentially one of the facts and not law cannot be examined under writ jurisdiction under Article 226 of the Constitution of India. It has also been argued that mere silence to the correspondence of the petitioner regarding non delivery of actual physical possession cannot be construed to raise a presumption that the petitioner is not in actual physical possession of the leased land and the said factum cannot be utilized by the petitioner to evade the liability of payment of the legitimate dues of the respondent authority. In substance, it has been argued that the writ petitions are misconceived and are liable to be rejected.

18. We have heard the learned Senior Counsels for the parties at length and have perused the record.

19. From the respective pleadings of the parties, we find that the bone of contention between the parties is with regard to the handing over of possession of the land for the project concerned by the petitioner. Admittedly, the Consortium of which the petitioner is a part, had qualified for allotment of land to the extent of 4,04,700 sq. meters reserved under the scheme. Admittedly, the YEIDA was not in possession of the entire land reserved and allotted an area of 2,87,645 sq. meters of Plot No. TS-2, Sector 18, Greater NOIDA, with the understanding that the remaining land would be allotted as soon as the land would come under the possession of YEIDA. Admittedly, a lease deed in respect of 1,84,199 sq. meters land was got executed in favour of the petitioner. It is the case of the writ petitioner that the actual physical possession of the leased land was also not delivered to it jeopardizing its venture completely and consequently the petitioner stands entitled to the benefit of zero period. Consequently, the Development Authority is not entitled to recover the interest and penal interest on the unpaid premium. The subsequent action of the Development Authority in proceeding to cancel the allotment is also totally unwarranted.

20. The Development Authority on the other hand has stuck its grounds on the Possession Certificate which has been signed by the representative of the petitioner and thus is demonstrative of the fact that actual physical possession of the land under the lease deed has been handed over and accepted by the petitioner and the petitioner cannot be permitted to avoid the interest and penal interest on the ground that actual physical possession of the land under the lease had not been handed over to the petitioner.

21. We have examined the Possession Certificate dated 02.03.2012 as also the lease plan for Plot No. TS-2, Sector 18, filed at pages 72, 73 and 75 respectively to the writ petition. We find that the Possession Certificate though has been signed by the Director of the petitioner Company, reflects an area of 1,84,199 sq. mtrs., however, the boundaries of the area have not been specified and it is simply shown to be as per lease plan. A perusal of the lease plan annexed at page 73 of the writ petition reflects the original area of 4,05,292 sq. mtrs of Plot No. TS-2, Sector 18 reserved for the petitioner. The lease plan reflects certain areas shaded without specifying the character of such shaded areas whether possession of shaded area has been handed over or otherwise. Further, the lease plan is not in consonance with the Possession Certificate and does not inspire confidence. We find force in the submissions of Sri Shashi Nandan, learned Senior Counsel for the petitioner that the boundary of the plot allotted has nowhere been specified. No dimensions of the plot or details thereof have been indicated in the lease plan to demonstrate the handing over of possession of the leased plot to the petitioner as alleged by the Contesting Respondent/ Development Authority. The lease plan also does not indicate where the area of 1,84,199 sq. meters allotted to the petitioner lies. The Possession Certificate is nothing but paper transaction and the petitioner has signed the document in good faith in continuation of the lease deed. The validity of the Possession Certificate dated 02.03.2012 is also found doubtful as admittedly the representatives of the respondents and the petitioner visited the site on 10.08.2015 for the purpose of handing over/taking over possession of the plot which could not materialize on account of agitation

by the farmers. The respondent YEIDA has failed to bring on record any other document to demonstrate that the actual physical possession of the plot leased out to the petitioner was handed over. We under such circumstances hold that the petitioner was not handed over the actual physical possession of the entire leased land. Since we have concluded that the actual physical possession of the land leased out to the petitioner was not handed over to the petitioner the demand raised by the YEIDA towards the lease rent and interest cannot be justified. YEIDA has also failed to provide the remaining land to the petitioner.

22. Now coming to the subsequent action of YEIDA in canceling the lease deed in favour of the petitioner by order dated 27.07.2022 on the ground that the shareholding of the petitioner has changed without intimation or information of YEIDA, we find that the petitioner had intimated the change in the shareholding vide communication dated 23.06.2017 brought on record as Annexure No.1 to the rejoinder affidavit filed in Writ Petition No.26513 of 2022. Despite the said communication, YEIDA continued to deal with the petitioner. In our opinion, YEIDA had acquiesced the issue and could not raise the said objection after 5 years of the intimation and form it the basis of the order dated 27.07.2022 canceling the lease executed in favour of the petitioner. We also find that from the records that the CAG in its Audit had raised an objection regarding the exit of Key Member and change of shareholding of the petitioner Consortium. YEIDA had itself replied in response to the said audit objection that the objection was baseless and was liable to be expunged. This clearly demonstrates that YEIDA had no issues with the change in shareholding of the petitioner and continued to deal with it.

23. During the course of the arguments, the petitioner has all along submitted and expressed its willingness to complete the project of development of the residential township. The petitioner has also expressed its willingness to pay the entire lease rent and premium after investing a sum of close to Rs.61.74 Crores, as against total premium of 191.62 Crores for 4,04,700 sq. mtrs, out of which the petitioner has not even been put in

possession over 1,84,199 sq. mtrs of land. We see no occasion to doubt the intentions of the petitioner to complete the project.

24. In view of the above, both the writ petitions are **allowed**. The order dated 11.11.2020 impugned in Writ Petition No.23888 of 2021 demanding interest and penal interest on the premium and lease rent during the period physical possession of the leased land has not been given to the petitioner is set aside. The order dated 27.07.2022 whereby canceling the lease deed and allotment of the land in favour of the petitioner is also set aside. The respondent YEIDA is directed to handover actual physical possession of the lease land to the petitioner within three months of service of certified copy of the order of this Court upon it. Respondent YEIDA shall also execute an additional lease deed for the remaining area of the Plot No. TS-2, Sector 18 reserved and allotted to the petitioner company under letters dated 30.03.2011 and 22.12.2011 within the aforesaid period. YEIDA shall issue a revised demand to the petitioner for the balance premium and rent after providing exemption from payment of rent of premium and lease rent and interest thereon for the period actual physical possession of land is handed over to the petitioner.

Order Date :- 16.11.2023

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