

Chief Justice's Court

Case: - WRIT-C-No. –28625 of 2021

Petitioner: - M/s Divine Conbuild Pvt. Ltd.

Respondents: - State of U P and 2 Others

Counsel for Petitioner: - Kunal Shah, Suvansit Kumar Jaiswal

Counsel for Respondents: - C.S.C, AnujPratap Singh, Swapnil Kumar

Hon'ble Pritinker Diwaker, Chief Justice

Hon'ble Ashutosh Srivastava, J.

1. Heard Shri Abdhesh Chaudhary, learned counsel for the petitioner, learned Standing Counsel for respondent No.1 and Sri Swapnil Kumar, learned counsel for Respondents No.2 & 3.
2. The petitioner is a private limited company engaged in the development of residential and commercial projects and has filed the present writ petition, seeking *inter-alia* the following reliefs;

- “ i. *Issue a Writ, Order or Direction in the nature of Certiorari quashing the Impugned Disposal Order No. 3743/SIDC/1A/BGA-A/SRJ-C (Vol.II) dated 23.02.2018 passed by the Managing Director UPSIDC (ANNEXURE-P/1);*
- ii. *Issue a Writ, Order or Direction in the nature of Certiorari quashing the Impugned Demand Notice No.750-52 dated 22.07.2020 issued by the UPSIDC (ANNEXURE-P/2);*
- iii. *Issue a Writ, Order or Direction in the nature of Certiorari quashing the Impugned Letter No.2017 dated 15.09.2020 issued by the UPSIDC (ANNEXURE-P/3);*
- iv. *Issue a Writ, Order or Direction in the nature of mandamus directing the Respondent not to realize the lease premium as well as lease rent from the Petitioner from the date of allotment till completion of the construction of the 60 meters wide approach road and other infrastructural facilities as provided in Clause 16 of the Lease Deed;*
- v. *Issue a Writ, Order or Direction in the nature of mandamus directing the Respondent that period in issue i.e. the period starting from the date of allotment of the subject plot till the said proposed 60-meter road giving access to the subject plot be declared as zero period;*

- vi. *Issue a Writ, Order or Direction in the nature of mandamus directing the Respondent to grant waiver of interest for the period starting from the date of allotment of the subject plot to the Petitioner till the said proposed 60-meter road giving access to the subject plot is finally constructed and the payment made by the Petitioner to the Respondent be adjusted towards the premium of the subject plot;*
- vii. *Issue a Writ, Order or Direction in the nature of mandamus directing the Respondent to allow the further period of 7 years for undertaking construction, to commence from the date of the completion of the construction of 60-meter-wide road;*

3. It is contended on behalf of the petitioner that a Plot No.BGH-A1, Housing Sector, Surajpur Site-C (Extension) Phase-1, Greater Noida, was allotted to them and pursuant to the said allotment, a lease deed was executed between the petitioner and the U.P. State Industrial Development Corporation Ltd. (UPSIDC) on 11.04.2011. Apparently, as per the terms of the lease deed, the petitioner was required to deposit Rs.4,12,52,970/- towards provisional premium and the remaining amount of Rs.23,37,67,830/- was to be deposited in 16 instalments of each Rs.1,46,10,440/.

4. Thereafter, the petitioner was served upon a notice dated 16.06.2017, requiring them to deposit a sum of Rs.17,09,92,750/- by 01.07.2017 failing which, action was proposed to be taken in terms of the lease deed. The contention of learned counsel for the petitioner is that the petitioner is entitled to grant of "zero period" and waiver of interest till the 60 meter wide approach road, as shown in the site plan along with Time extension of seven years for construction. The petitioner in that regard had filed a representation dated 25.05.2017 before the Regional Manager of UPSIDC, which was not being decided. In the said background, the petitioner, filed Writ (C) No.35584 of 2017, which was disposed of, vide order dated 16.08.2017 (Annexure No.15 to the present writ petition) by requiring the petitioner to deposit a sum of Rs.5.00 Crores with the respondent-UPSIDC, within a period

of two months to show its bonafide and the UPSIDC was required to take a decision on the said representation, within one month.

5. Counsel for the petitioner contends that in pursuance of the order dated 16.08.2017, the petitioner deposited Rs.5.00 Crores, to show its bonafide, however, the Managing Director of the respondent-UPSIDC took a mechanical decision on the aforesaid representation and rejected the same, vide order dated 23.02.2018. Further, the UPSIDC, pursuant to the rejection of the representation of the petitioner also issued demand notice No.750-52 dated 22.07.2020 and letter dated 05.10.2021, whereby a sum of Rs.29,53,54,727 was demanded from the petitioner, else the lease deed of the petitioner was proposed to be cancelled. The orders dated 22.07.2020 and 05.10.2021 have been impugned in the present writ petition. It was submitted that the respondent-UPSIDC was bent upon to cancel the lease deed of the petitioner.

6. This court, vide order dated 29.10.2021, after recording the aforesaid submission of the petitioner and also the submission advanced on behalf of the UPSIDC, recorded its *prima-facie* view that the respondent-UPSIDC itself has failed to adhere to the terms of the lease deed executed by it with the petitioner, inasmuch as it had failed to provide the approach road, drains, culverts, electricity distribution/transmission lines, water supply, sewage etc., inspite of the petitioner having represented to it, to provide the same, so that it could undertake its project. Thus, this court, granted an interim protection in the following terms vide the said order:

“.....Considering the financial constraints being faced by the petitioner on account of nationwide lockdown and spread of Covid 19 pandemic, which has substantially impacted the construction industry, we direct that in the event the petitioner deposits a sum of Rs.1.00 Crore with the UPSIDC, within one month from today, no coercive action shall be taken against the petitioner for recovery of the amount mentioned in the impugned demand notice.

It is, however, provided that if the petitioner fails to deposit a sum of Rs.1.00 Crore within the time stipulated, it shall be open to the UPSIDC to proceed against the petitioner in accordance with law.”

7. Consequently, in compliance of the aforesaid interim order dated 29.10.2021, the petitioner deposited the aforesaid Rs. 1.00 Core on 22.11.2021 and also filed a proof of the same along with a supplementary Affidavit.

8. In the intervening period, UPSIDC filed their counter-affidavit through its Regional Manager, Mr. Anil Kumar Sharma and a rejoinder to the said counter was also filed by the petitioner thereafter.

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

10. The case of the Petitioner is that in the year 2010, the Uttar Pradesh State Industrial Development Corporation (now UPSIDA) invited Sealed Tenders in Two-Bid System in the prescribed Application Form for allotment of land admeasuring 4,16704.90 (Four Lakh Sixteen Thousand Seven Hundred and Four) Sq. Mtrs. for Bulk Group Housing Projects at Sector-C, Housing Phase-I (Extension), Surajpur, Gautam Buddha Nagar for the purpose of construction of the Multi-Storied Resident Colonies, wherein a Consortium of thirteen companies including the Petitioner, participated in the aforesaid Tender Process through its lead member M/s Paramount Propbuild. Pvt. Ltd. The said consortium was subsequently declared as successful bidder pursuant to which UPSIDC vide its Letter No.5672 dated 18.10.2010 allotted the land admeasuring 4,16704.90 (Four Lakh Sixteen Thousand Seven Hundred and Four) Square Meters bearing Plot No. BGH-A at Sector-C, Housing Phase-I

(Extension), Surajpur District Gautam Buddha Nagar, in favour of the said consortium.

11. M/s Paramount Propbuild Pvt. Ltd., who was the lead member of the Consortium, on 04.04.2011, requested the UPSIDC for sub-division of the Plot No. BGH-A into two parts measuring 3,66,701.30 (Three Lakh Sixty-Six Thousand Seven Hundred and One) Square Meters and 50003.60 (Fifty Thousand and Three) Square Meters and further requested that one of the part of land measuring 50003.60 (Fifty Thousand and Three) Square Meters be allotted to the Petitioner.

12. Respondent-UPSIDC, acceding to the request of the petitioner, permitted sub-division of the said land vide their letter dated 11.04.2021 and accordingly a Lease Deed in respect of 50003.60 square Meters land bearing Plot No. BGH-A1 was carved out from Plot No. BGH-A and a lease deed for ninety years was executed by UPSIDC as lessor in favour of the petitioner as Lessee.

13. The counsel for the petitioner has contended that UPSIDC has failed to provide the approach road as per Clause 16 of the Lease Deed and although the site plan attached to the Lease deed says that a 60 Meter approach road would be provided to them, however till date the UPSIDC has failed to provide the same. According to him, although several letters, including Letters dated 02.01.2012, 27.06.2012, 26.08.2013, 02.02.2015, 06.08.2015, 07.09.2015, 07.06.2016 and the Representation dated 25.05.2017 has been sent to UPSIDC, ventilating its grievance for not providing any approach road, however the same was not heeded.

14. UPSIDC instead of deciding the aforesaid representation raised a demand notice dated 16.06.2017, which was interdicted by the petitioner by way of Writ Petition Being Writ-C No.35584/2017 before this Court, which was disposed of vide an

Order dated 16.08.2017 with direction for deposit of Rs. 5 Crores by the petitioner and UPSIDC was directed to decide the Representation dated 25.05.2017 submitted by the Petitioner for grant of zero period.

15. The petitioner having deposited the aforesaid Rs.5 Crores, the representation was considered by UPSIDC, which was again rejected vide an order dated 23.02.2018 for grant of zero period. It is the contention of the petitioner that the said rejection was in a mechanical manner and was passed without considering the actual ground realities. Since, the petitioner was developer and was keen in developing the project, they continued sending letters/representation to UPSIDC vide their communication dated 18.02.2020 and on the other hand, UPSIDC continued sending demand notice vide their communication dated 22.07.2020, 15.09.2020. Thereafter, due to the onset of the pandemic Coovid-19, the present petition came to be filed on 24.10.2021. It is the submission of the petitioner that as per the attached site-plan to the lease deed dated 11.04.2011, they were entitled for 60 meters approach road, which was promised to them vide clause 16 of the said Lease deed and since the same was not provided to them by UPSIDC, they are entitled for zero period, waiver of interest/penal interest and time extension. The Petitioner also relied on the supplementary Affidavit to submit that as on today from the total premium payable of Rs.23,37,66,830- in sixteen instalments, payable till July, 2020, they have deposited altogether an amount of Rs. 20,65,01,222/- and also annexed receipt of the same along with the said Supplementary Affidavit.

16. On the other hand, the learned counsel for UPSIDC, premised their submission on the fact that the petitioner along with the consortium of companies were allotted the plot on “*as is where is basis*” as per the allotment letter dated 18.10.2010. It was submitted by them that the petitioner cannot claim any

advantage of the internal division of the allotted plot, which essentially was an internal decision of the consortium of companies. UPSIDC had promised only the consortium an approach road of 24 Meters, which they have already provided and they have never proposed to provide any approach road of 60 Meters to the petitioner. It is the case of the respondent that they have provided all external development as well as the approach road to the bulk housing project BGH-A and allottee consortium company. In any case, the 60-meter road shown in the site plan was the road to be developed by GNIDA and they cannot be held to be responsible for not providing the same to the petitioner. They also raised an objection to the belated challenge to the disposal order. Towards the end, a feeble submission was made by the Ld. Counsel for UPSIDC that the lease deed contains an arbitration clause and as such the parties may be referred to arbitration.

17. In rejoinder, counsel for the petitioner, invited the attention of this court towards the date of the allotment letter and the lease deed to submit that the lease deed was executed between the parties at later time and as such the lease deed being later on time abrogates the earlier allotment letter, so far as the terms being inconsistent. Regarding the delay in filing the writ petition, it was submitted that besides the exemption of the Covid Period, the petitioner is a developer and was interested in developing the plot and was avoiding to enter into a litigation regime with UPSIDC. According to him, the present plot had been carved out of the adjoining land and interestingly the adjoining land stands already developed after the site-plan & drawings were duly sanctioned by UPSIDC, whereas there is not even an approach road provided to the petitioner. Thus, it is incumbent on the UPSIDC to provide for the approach road to the petitioner, either from the proposed 60-meter-wide road or through the adjoining plot. Further, according

to him, there cannot be any internal arrangement between the consortium member, as it is the UPSIDC, who has demarcated and executed the lease deed along with the site-plan for the project land and further it is them who had sanctioned the drawings and design of the adjoining plot. Further, UPSIDC have themselves boasting about themselves have vide letter dated 22.05.2017 have informed the petitioner, that a proposed railway line of DFFCIL was to pass from the allotted plot and they/ UPSIDC have tried to divert the said railway line. However, the fact remains that of the 60-meter-wide proposed road, more than half of the width has already been taken by the proposed railway line of DFFCIL. In the end, it has been submitted that the petitioner-company is a genuine developer and ironically almost more than 21 Crores has already been paid and there is no balance amount or miniscule amount outstanding against them. They have been pursuing UPSIDC through personal and written communication as is apparent from the record of various letters, some of which have been attached to the present writ petition and as such are entitled for Zero period, interest waiver and Time extension.

18. Having heard learned counsel for the parties and gone through the records, we find that respondent No.2, while passing the impugned order, has not considered the case of the petitioner in correct perspective. Respondent No.2 was required to decide the representation in compliance of the order dated 16.08.2017 passed in Writ Petition, being Writ-C No.35584/2017 (Divine Buildcon Pvt.Ltd. vs. State of U.P & Others). The operative portion of the said order reads as under:

“ Be that as it may, it is for the UPSIDC to take a considered decision on the representation dated 25 May 2017 submitted by the petitioner for grant of “Zero Period”. However, the petitioners must deposit an amount of Rs. 5.0 Crores with the UPSIDC within a period of two months from today to show its bonafide. On deposit of this

amount, the UPSIDC shall take a decision within a period of one month thereafter...”

19. A perusal of the aforesaid order passed by a co-ordinate Bench of this court shows that UPSIDC was required to take a considered decision regarding the grant of “Zero period” till the road of 60 meters was provided to the petitioner. We find that UPSIDC while rejecting the representation of the petitioner has held that their responsibility for providing the approach road was limited only to the consortium as per the allotment letter and not to the petitioner. The order merely has recorded that the provision of approach road was an internal affair of the consortium and UPSIDC was not responsible for the same and nowhere in the lease deed there is mentioned that they would be providing the approach road. It has been recorded in the said disposal order that allegedly the petitioner has not adhered to the conditions of lease and the 60 Metrs road belonged to GNIDA and as such they were not responsible for providing the approach road to the petitioner. Thus, waiver of interest was denied by UPSIDC to the petitioner.

20. Further, the lease deed dated 11.04.2011 between the respondent/UPSIDC and the petitioner shows that UPSIDC is a lessor and the petitioner is a lessee. The recital of the said lease deed records the factum of the existence of consortium and allotment made to them as well as the approval of UPSIDC for sub-division/demarcation of plot “ BGHA1” in favour of the petitioner, who proposed to solely develop the project on the demarcated plot. Thus, the sub-division of the plot cannot be an internal affair of the consortium. Apparently, the consortium is not even a party to the said sub-division and the same has been strictly entered between UPSIDC and the petitioner only and two independent entities. Further, the purpose of demarcation was clear in as much as it was for “Sole development” by the

petitioner and not along with the consortium, so as to fall back on them for their approach road.

It is seen from the lease deed that UPSIDC had agreed to lease the said sub-divided plot for a consideration, wherein after payment of Rs. 4,12,52,970/-, the balance amount of rs. 23,37,66,830/- was payable along with interest @ 14% per annum on the outstanding amount in sixteen equal instalments of Rs. 1,46,10,426/- each, which were payable till July, 2020. It is available from the supplementary Affidavit filed by the petitioner that altogether Rs. 20,65,01,222/- has been paid by them against the total outstanding of Rs. 23,37,66,830/-, wherein about six crores have been deposited by virtue of a direction of this Court. Thus, it cannot be disputed that the petitioner are not a genuine developer or that they are not interested in making payments to UPSIDC or are making the excuse of non-approachable road for non-payments as contended in the disposal order.

21. This court finds that as per clause 16 of the lease deed executed between UPSIDC and the petitioner, it is UPSIDC who is responsible to provide approach road to the petitioner, as the said clause records:

“ The external development works as required up to the allotted plot like construction of approach Road, Drains, Culverts, electricity Distributions/ transmission lines, Water Supply, Sewages etc. will be provided by the Lessor/ Corporation.... ”

Further, the site-plan attached to the lease deed shows the existence of 60 mtrs wide road adjoining the sub-divided plot of the petitioner, which is the only approach road available to the said plot. As far as the other part of the demarcated plot is concerned, the site plan shows that the same is bounded by 24 mtrs road as well as 130 mtrs road.

22. This court also finds that the allotment letter was of 18.10.2010 and the lease deed was executed later on, i.e. on

11/04/2011. Thus, in case the contention of the UPSIDC is considered to be correct, in as much as they had a responsibility of providing 24 meters wide road to the consortium only and they had no responsibility of providing any approach road to the petitioner, there was no need to show the approach road of 60-meter road in the site-plan attached to the lease deed dated 11.04.2011.

23. We find that the existence of an approach road, which provides access to the plot, is fundamental for the development of the subject plot and in absence of the same, the development of the project would seriously jeopardize the ingress to or egress from the said project and resultantly adversely impact any construction activity in the project.

24. So far as the contention of the learned Counsel for the respondent/UPSIDC, relating to existence of an arbitration clause in the lease deed and for referring the present issue to arbitration is concerned, it is apparent from the facts of the present case that there is no disputed question of fact to be decided in the arbitration. The project of the petitioner had been already languishing for the last more than 12 years, which is not only financial loss to the petitioner but also loss to homebuyers and overall infrastructural development loss of the area. Moreover, the Apex Court, time and again has held that availability of an alternative remedy, such as arbitration, would not prohibit the High Courts from entertaining a writ petition in an appropriate case. (*See: Sanjana M. Wig v. Hindustan Petroleum Corporation Ltd.* (2005) 8 SCC 242; *Whirlpool Corpn. v. Registrar of Trade Marks* (1998) 8 SCC 1; and *Harbanslal Sahnia v. Indian Oil Corpn. Ltd.* (2003) 2 SCC 107.

25. In view of the aforesaid facts and circumstances of the case and the law laid down by the Apex Court, we are of the opinion that the present writ petition deserves to be allowed and,

accordingly, the same stands **allowed**. The order dated 23.02.2018 and subsequent demand/coercive letter/orders dated 22.07.2020, 15.09.2020 and 05.10.2021 issued by UPSIDC in relation to Plot No. BGH-A1, Housing Sector, Surajpur Site-C (Extension) Phase-1, Greater Noida, are set-aside. Respondent No.2 is directed to grant benefit of zero period and interest waiver to the petitioner till providing of approach road to the demarcated plot from the date of execution of lease deed, i.e 11.04.2011. Since, it is an undisputed fact that the proposed 60 meters approach road adjoining to the plot of the petitioner has further been truncated in width due to the fact that almost half of the width has already been taken by the proposed railway line of DFFCIL, it is directed that the petitioner shall not insist upon providing of 60 mtrs wide approach Road. Respondents shall, within a period of four weeks from today, provide the approach road to the plot of the petitioner, from the existing 60 mtrs road. Respondent No.2 is further directed not to charge the lease rent for the said period till the availability of the approach road to the plot. So far as the prayer of the petitioner for time extension for approval to the building plans is concerned, it goes without saying that the mandatory seven years of construction shall be reckoned from the date, the approach road is made available to the petitioner to the plot.

Order Dated: 20.11.2023
RKK/RK

(Ashutosh Srivastava, J)

(Pritinker Diwaker, CJ)