

Chief Justice's Court

Case :- WRIT - C No. - 28777 of 2023

Petitioner :- M/S Advance Compusoft Private Limited

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Gaurav Tripathi, Syed Imran Ibrahim

Counsel for Respondent :- C.S.C., Anjali Upadhya

Hon'ble Pritinker Diwaker, Chief Justice

Hon'ble Ashutosh Srivastava, J.

Heard Sri Vikas Pathak, under the authority of Sri Syed Imran Ibrahim and Mrs. Anjali Upadhyay, learned counsel for the Respondent Authority.

The writ petition has been filed assailing the impugned cancellation notice dated 21.09.2022 issued by the Respondent No.3, Officer on Special Duty (IT), Greater Noida Industrial Development Authority, Gautam Buddh Nagar, whereby and whereunder the petitioner has been asked to deposit the default amount outstanding against the petitioner in respect of the Plot No.19, Sector Tech Zone-04, Greater Noida, area 1,00,000 sq. mtrs. (25 acres) and at the same time the benefit of 25% incentive under the Mega Investment Head has been withdrawn. The petitioner has been asked to deposit a sum of Rs.35,13,45,286/- on account of withdrawal of the aforesaid incentive as also a sum of Rs.19,86,29,419/- against lease premium, Rs.6,98,79,429/- towards lease rent and an amount of Rs.19,51,61,714/- and Rs.16,26,34,761/- towards time extension charges.

Learned counsel for the petitioner submits that the impugned notice with respect to the withdrawal of the 25% incentive under the head of Mega Investment is based on total non application of mind inasmuch as it ignores the conditions under the sanction letter dated 05.10.2021 which provides 5 years time to complete the project which time is still subsisting. As regards the demand towards outstanding premium, lease rent and time extension charges it is submitted that the said demand is also unwarranted inasmuch as this court in Writ-C No.32055 of 2019 (M/s Advance Compusoft Pvt. Ltd. Vs. State of U.P. & 2 others) vide order dated 23.05.2023 had directed the respondents not to realize the lease premium amount as also the lease rent from the petitioner granting it the benefit of zero period.

The Respondent Development Authority has refuted the allegations levelled in the writ petition by filing the counter affidavit. It has been averred in the counter affidavit that in pursuance of the terms and conditions of the lease deed, detailed building plan is to be submitted within 18 months and 30% of the constructions is to be completed within three years and the project itself is to be completed within five years and further Rs.98.93 Crores is to be invested within 5 years which was never done by the petitioner, the time provided to complete the project has already expired on 02.02.2015. As per the lease deed it was clearly mentioned that the petitioner has to invest Rs.4 Crores per acre, which was never done by the petitioner. The petitioner has not obtained the time extension to complete the project. Hence, the petitioner was not entitled for the benefit of 25% incentive under the Mega Investment Head.

Learned counsel for the Respondent Development Authority submitted that the judgment and order dated 23.05.2023 passed by this Court in Writ-C No.32055 of 2019 has been assailed before the Apex Court in SLP and the same is still pending consideration before the Apex Court.

Be as it may be, once this Court has directed the respondents not to realize the lease premium amount as also the lease rent from the petitioner granting the benefit of zero period, the respondent authorities are restrained to realize the lease premium amount and lease rent granting petitioner the benefit of zero period, the petitioner is entitled for all the benefits flowing out of grant of zero period. Further sanction letter dated 05.10.2021 (Annexure No.17 to the writ petition) the validity of sanction is upto five years, meaning thereby the petitioner has been permitted or extended the time limit for completing the project for further five years and the said time period is still subsisting.

Accordingly, the writ petition succeeds and is **allowed**. The impugned notice dated 21.09.2022 is hereby set aside. No order as to costs.

Order Date :- 7.11.2023

pks

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