

Court No. - 6

Case :- WRIT - C No. - 33002 of 2023

Petitioner :- M/S Avs India Infra Private Limited

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

Counsel for Petitioner :- Pankaj Agarwal

Counsel for Respondent :- C.S.C

Hon'ble Mrs. Manju Rani Chauhan,J.

1. Heard Mr. Pankaj Agarwal, learned counsel for the petitioner and learned Standing Counsel for the State-respondents.

2. This writ petition has been filed by the petitioner with a prayer to quash the order dated 17.07.2023 passed by Chief Controlling Revenue Authority, Meerut as well as order dated 24.03.2023 passed by Collector Ghaziabad and ex-parte order dated 19.09.2022 passed by District Magistrate/Collector, Ghaziabad.

3. Brief facts of the case are that:-

(i) The petitioner is a private limited company, duly registered under the Companies Act, having its registered office at GF-38, Indra Prakash Building, 21 Barakhamba Road, New Delhi and is a developer and engaged in the business of real estate. The persons, namely, Raj Kumar son of Late Harikesh, Lakshya Tyagi son of Late Deepak, Smt. Jyoti Tyagi, wife of Deepak and Smt. Santosh wife of Subhash, all resident of Village-Noor Nagar, Tehsil and District-Ghaziabad, were owner of Khasra No. 1128 (M) area 2.5280 hectare, out of which, for area 2943.74 sq.m., they entered into a consortium agreement with the petitioner-company for the purpose of developing the above land on the terms and conditions mentioned under the said consortium agreement dated 08.03.2019.

(ii) The Consortium Agreement is based on the Power of Attorney dated 08.03.2019, executed between the parties, under which, through the said Power of Attorney, the owner of the above land authorized the petitioner-company to develop the said land.

(iii) However, a Stamp Case No.1838 of 2022 was registered against the petitioner on the basis of the report of Assistant Collector (Revenue), Ghaziabad dated 25.04.2022, whereby the consortium agreement dated 08.03.2019 has been treated to be a

conveyance chargeable with stamp duty and the matter was referred to Collector for charging stamp duty of Rs.67,98,080/-.

(iv) In the aforesaid stamp case, notice dated 07.05.2022 was sent to the petitioner on the address mentioned in the aforesaid consortium agreement dated 08.03.2019, however, the petitioner-company's address was changed way back in the year 2021, therefore, the same was not served to the petitioner.

(v) However, service upon the petitioner-company was held to be sufficient by the respondent no.3 on basis of tracking delivery report and the respondent no.3 passed the ex-parte order dated 19.09.2022 showing the deficiency of stamp duty of Rs.67,98,080/- along with penalty of Rs.20,00,000/-.

(vi) After coming to know about the aforesaid order, the petitioner filed a restoration application on 31.01.2023 stating therein that due to change of petitioner-company's office, he has not been served any notice, therefore, he has no knowledge about the same. However, the said restoration application has been rejected vide order dated 24.03.2023 without considering the aforesaid fact, against which appeal has been filed by the petitioner, which was also rejected by the appellate authority. Hence, the present petitioner has been filed.

4. Learned counsel for the petitioner submits that against the ex-parte order dated 19.09.2022, the petitioner had moved a restoration application on 31.01.2023 mentioning the fact about the change of office address, which, according to him, was changed in the month of April, 2021 and emphasizing on page 75, the change of address was registered by the Registrar is proved. However, the notice in this regard was sent in the month of May, 2022 and emphasizing on page 95, the track report goes to show that the same was delivered to the petitioner in the old office on 09.05.2022. He further submits that without realizing the aforesaid fact, the restoration application has been rejected, which is against the provision of the relevant Act and principles of natural justice, as the petitioner is the power of attorney holder and as per the terms and conditions mentioned in the power of attorney as annexed at page 51 to the writ petition, the owner of the aforesaid plot has authorized the petitioner-company to develop the aforesaid land and to obtain necessary N.O.C. as well as sanctioned letter from the various authorities as required from time to time for the purposes of development of the land. He further submits that the possession of the property in question has also not been given to the petitioner.

5. On the other hand, learned Standing Counsel has no objection, in case, afresh application is filed by the petitioner raising all the grievances in detail, the same shall be decided within stipulated period.

6. In view of the aforesaid, no useful purpose will be served to keep this writ petition pending and calling for a counter affidavit.

7. Perusal of the records goes to show that the petitioner-office address was changed way back in the month of April, 2021, whereas the notice was sent to the petitioner's old address on 07.05.2022 and as per the tracking delivery report, it has been delivered on 09.05.2022. However, the aforesaid fact has not been considered while rejecting the restoration application filed against the ex-parte order dated 19.09.2022. Therefore, the impugned order dated 24.03.2023 is liable to be set aside. Accordingly, the impugned order dated 17.07.2023 vide which the appeal of the petitioner has been rejected, is also liable to be set aside.

8. Under such circumstances, the impugned orders dated 24.03.2023 and 17.07.2023 are **set aside**. The petitioner is directed to file afresh restoration application before the respondent no.3-District Magistrate/Collector (Stamp), Ghaziabad, mentioning all the grievance, within three weeks from today along with a certified copy of this order and, if any such application is filed, the respondent no.3 shall make all endeavours to consider and decide the same after giving opportunity of hearing to all the parties expeditiously, in accordance with law, by a reasoned and speaking order, preferably within a period of two months from the date of receipt of the said application.

9. For the period of three months from today or till such application is decided, whichever is earlier, the effect and operation of the impugned order dated 19.09.2022 passed by respondent no.3 shall be kept in abeyance.

10. With the aforesaid observations/directions, the writ petition stands **disposed of**.

Order Date :- 28.11.2023

Jitendra/-