

Chief Justice's Court

Case :- WRIT - C No. - 37396 of 2023

Petitioner :- Jaina Properties And Finance Ltd.

Respondent :- State of U.P. and Another

Counsel for Petitioner :- Tarun Agrawal,Prakhar Saran
Srivastava,Sr. Advocate,Varad Nath

Counsel for Respondent :- C.S.C.,Anand Prakash Paul,Pradeep
Kumar Tripathi

Hon'ble Pritinker Diwaker,Chief Justice

Hon'ble Ashutosh Srivastava,J.

Heard Sri Ravi Kant, learned Senior Counsel assisted by Sri Tarun Agarwal, learned counsel for the petitioner, Sri A. P. Paul, learned counsel appearing for the contesting Respondent No.2 and learned Standing Counsel for the State Respondent No.1.

The writ petition has been filed seeking issuance of a Writ of Mandamus commanding the Respondent No.2 to forthwith process the OTS application of the petitioner dated 24.09.2020 and reminders dated 15.12.2021 and 16.12.2021 within three months as per Clause 2(f) of the OTS Scheme dated 02.07.2020 published by the Respondent No.1 or in the alternative command the Respondent No.2 to accept Rs.21,66,52,164/- towards full and final settlement amount for execution of lease deed/free hold deed of the plot.

It is the case of the petitioner that the Respondent No.2 conducted an auction in respect of a commercial Plot No. Part-A, Block R. N. Scheme, Ratan Lal Nagar, Kanpur, admeasuring 29,328.15 sq. mtrs. on 12.04.1987. The petitioner emerged as the highest bidder with bid Rs.3.30 Crores. An agreement to lease was executed in favour of the petitioner on 08.06.1987. As per the terms of the lease deed the plot was leased out for a period of 30 years with two further extensions of 30 years each. The Respondent No.2 was required to carry out the requisite development work around the property so as to facilitate construction of the commercial complex. The Development Authority did not perform its part under the agreement. The petitioner had already deposited an amount of Rs. 2.34 Crores out of Rs. 3.30 Crores but no development work was done and the authority insisted for deposit of the entire amount. The Respondent Authority threatened to

cancel the allotment and the petitioner was constrained to institute Original Suit No. 632 of 1991, seeking a decree of permanent injunction to restrain the Respondent Authority from cancelling the allotment. The Trial Court granted an interim order on 31.05.1991 restraining the Respondent Authority from undertaking any coercive measure against the petitioner. During the pendency of the suit and operation of the interim order the petitioner offered to surrender 9434.45 sq. yards of land which proposal was accepted and the Respondent Authority resolved vide Resolution No.68/10 to accept the surrender of 9434.45 sq. yards reduce the overall price by a proportionate amount. The resolution, however, was never given effect to. The petitioner sought to amend the plaint of Original Suit No.632 of 1991 by incorporating the relief of mandatory injunction directing the Respondent Authority to accept the surrender of 9434.45 sq. yards land. The amendment was allowed. The suit of the petitioner was ultimately decreed vide judgment and decree dated 29.08.2008 and the Respondent Authority was issued mandatory injunction to accept the surrender and reduce the balance payable amount proportionately and the Development Authority was permanently restrained from cancelling the allotment in favour of the petitioner. The judgment and decree dated 29.08.2008 passed in Original Suit No.632 of 1991 has been assailed in First Appeal No.138 of 2011 and is pending consideration before this Court. The appeal has been admitted and the operation of the judgment and decree dated 29.08.2008 has been stayed.

Learned counsel for the petitioner submits that the State Government has notified an One Time Settlement Scheme on 02.07.2020 covering all local bodies including the Respondent Development Authority. The petitioner satisfies all the modalities to avail the benefit of the OTS Scheme floated by the State Government. The petitioner had deposited a sum of Rs.5.11 Lacs on 01.09.2020 for participating in the OTS Scheme, which amount has duly been accepted and acknowledged by the Development Authority. However, the Respondent Authority has not proceeded with the OTS Scheme despite various requests by the petitioner through representations. The OTS application of the petitioner remains undisposed off as on date.

Learned counsel for the petitioner submits that the purpose of filing the instant writ petition shall stand served if directions are issued to the Respondent No.2 to decide the OTS Application of the petitioner dated 24.09.2020 within a time frame fixed by this Court.

Sri A. P. Paul, learned counsel appearing for the Respondent No.2, Development Authority submits that the case of the petitioner is pending consideration before this Court in First Appeal no.632 of 1991 and the OTS Application of the petitioner may not be considered on account of the pending litigation.

Be that as it may, we are of the view that the petitioner is eligible to reap the benefits of the OTS Scheme dated 02.07.2020 once the Development Authority has accepted a sum of Rs.5.11 Lacs from the petitioner towards its consideration. In our opinion, the OTS Scheme floated by the Respondent Authority is binding upon the Respondent Authority by virtue of Section 41(1) of the U.P. Urban Planning and Development Act, 1973. Even otherwise the petitioner has expressed its willingness to pay Rs.7-9 Crores as per the OTS or even Rs.21 Crores as per the actual demand. Such averments have been made in Para 52 of the writ petition. In our opinion, the pending First Appeal before this Court will not come in the way of the settlement of the dispute under the OTS Scheme.

In the wake of the above, we **dispose of** the writ petition by requiring the Respondent No.2, seized with the OTS Application of the petitioner dated 24.09.2020 to consider and pass appropriate order thereon after considering all aspects of the matter including the observations made by us herein before, expeditiously preferably within a period of three months from the date of service of a certified copy of the order of this Court.

Order Date :- 8.11.2023

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