

Reserved

Court No. - 8

Case :- WRIT - C No. - 5677 of 2022

Petitioner :- M/S Ametek Buildtech India Pvt. Ltd. Thru. Its Authorized Signatory Anmol Yadav

Respondent :- State Of U.P. Thru. Addl. Chief Secy. Deptt. Of Infrastructure And Another

Counsel for Petitioner :- Aahuti Agarwal, Abhishek Khare, Apoorva Tewari

Counsel for Respondent :- C.S.C., Prashant Kumar

Hon'ble Pankaj Bhatia, J.

1. Heard Sri Apoorva Tewari assisted by Sri Abhishek Khare the counsel for the petitioner and Sri Prashant Kumar the counsel for the respondents.
2. The present petition has been filed by the petitioner for the following reliefs :
 - a. *To issue a writ, order or direction in the nature of certiorari to quash the order dated 21.08.2020 passed by respondent no. 1 as contained in Annexure No.1 to this writ petition, after summoning the original;*
 - b. *To issue a writ, order or direction in the nature of certiorari to quash order dated 20.07.2022 passed by the respondent no. 2, as contained in Annexure No. 2 to this writ petition, after summoning the original;*
 - c. *To issue a writ order or direction in the nature of mandamus commanding the respondent no. 2 to grant benefit of the zero period policy to the petitioner in respect of the plot in question from the date of allotment i.e. 21.07.2014 till the date of actual vacant possession of the entire plot is given to the petitioner in accordance with law;*
 - d. *To issue a writ order or directions in the nature of mandamus commanding the respondent no. 2 to reschedule the premium instalment and lease rent of the plot in question so as to commence after the completion of the zero period;*
 - e. *To issue a writ order or directions in the nature of mandamus commanding the respondent authority to revise all the demands against the petitioner by applying simple interest at*

the rate of State Bank of India Marginal Cost of Funds Based Landing Rate percent interest per annum as per the directions of the Hon'ble Supreme Court made vide order dated 25.08.2020 in Writ Petition (C) No. 940 of 2017 in Bikram Chatterjee vs Union of India and Ors.;

....."

3. The facts giving rise to the present petition are that the petitioner along with four other members formed a consortium and the said consortium was allotted a land ad-measuring 708500 sq. mts being Sports City Plot No. SC-02 Greater Noida. The said allotment was done to the entire consortium on 21.07.2014 (Annexure no.3). Subsequently, on an application being moved by the members of the consortium, the entire plot allotted to the consortium was sub-divided into 04 separate plots, which were numbered by the respondent no.2 as Sports City Plot No. SC-02A (ad-measuring area 1,01,175 sq mts), SC-02B (ad-measuring area 96,117 sq. mts), SC-02C (ad-measuring area 2,51,560 sq mts) and SC-02D (ad-measuring area 2,51,371 sq. mts).
4. In terms of the sub-division into four separate plots, a lease deed came to be executed in favour of the petitioner on 08.07.2015 in respect of Plot bearing No. SC-02A. The said lease deed is on record as Annexure no.4. On 31.07.2015, the possession certificate was also handed over to the petitioner, however, as per the petitioner, the clear and vacant physical possession was not handed over to the petitioner.
5. It bears from the record that as the petitioner was not given the vacant and physical possession, the petitioner filed a representation to grant the benefit of zero period to the petitioner till the time physical and vacant possession is handed over to the petitioner.
6. During the pendency of the application filed by the petitioner, on

14.12.2015 the Board of Respondent no.2 passed a resolution No.103/2014 framing a policy for grant of zero period benefits in view of the farmers' agitation and the other issues for which litigations were pending. On a request made earlier by the petitioner, on 11.03.2016 the seven member committee recommended the grant of complete zero period benefit to the petitioner for the period 02.06.2015 to 31.12.2015 and thereafter partial zero period benefit was to be given to the petitioner in respect of the land under encroachment. The said recommendation of the seven member committee was approved by the CEO of the respondent no.2. Subsequently on 14.03.2016, the decision dated 11.03.2016 was placed before the Board of the respondent no.2 in the meeting as agenda item no.104/2, which was taken note of by the Board, however, the petitioner was never communicated either the decision dated 11.03.2016 or the decision taken by the Board in its meeting on 14.03.2016.

7. As the petitioner was not aware of any decision being taken, the petitioner moved yet another application on 01.06.2016 requesting the respondent no.2 to reschedule the instalments of the premium payable by the petitioner in terms of the lease deed in view of the encroachments existing over the property which was leased out to the petitioner. The petitioner thereafter raised his grievances with regard to the interference caused by the farmers through their agitation, through his communication dated 15.08.2016 and 26.08.2016.
8. As the petitioner was never informed the earlier decisions taken on his request for grant of zero period benefits and the petitioner was continuously raising his grievances with regard to interference in the possession by the farmers, the respondent no.2 issued a show cause notice to the petitioner calling upon the petitioner to show cause as to

why the petitioner is not depositing the lease premium and the lease rent in terms of the lease deed. Subsequently, on 14.01.2019 a notice was issued to the petitioner proposing cancellation of the lease deed mainly on the ground of non-payment of premium and lease rent. As it was only a notice issued proposing cancellation of the lease deed, the petitioner instead of giving reply to the said notice, along with other allottee M/s Supertech Pvt. Ltd. (lessee of Plot No.SC-02D) preferred a joint revision under section 41(3) of the 1973 Act read with section 12 of the 1976 Act challenging the notices dated 23.10.2018 and 14.01.2019. During the pendency of the revision, the State Government issued another Government Order on 05.12.2019 making the provision therein that in the cases where more than 30% of the plot area allotted to the builders was subject to some dispute, they would be extended the benefit of complete zero period.

9. It bears from the record that in the revision filed by the petitioner, the respondent no.2 filed a reply and admitted the fact that there existed encroachment over the plot in question. They also admitted that the order dated 11.03.2016 was never communicated to the petitioner.
10. With this background, the counsel for the petitioner argues that not only the respondents admitted the factum of encroachment, they also issued a notice to the petitioner on 04.02.2020 (Annexure no.21) and demanding the lease premium. In the said notice, it was categorically admitted that only 13,575.18 sq. mts. of the plot in question was free from encumbrances and the remaining 87,600 sq. mts. was encumbered. In reply to the notice dated 04.02.2020, the petitioner gave a reply stating that in view of the admission regarding existence of the dispute in respect of more than 80% of the total area of the plot allotted to the petitioner, he was entitled to the benefit of complete zero period in terms of the provisions/policy issued through

Government Order dated 05.12.2019.

11.It is argued that on 21.08.2020, the revision filed by the petitioner as well as the co-allottee was heard and without even considering the admitted position, dismissed the revision by the impugned order dated 21.08.2020. He draws my attention to the revisional order, which is on record as Annexure no.1 to argue that while deciding the revision, the facts pertaining to M/s Supertech Private Limited were considered and the developments in respect of the petitioner were not even considered and in respect of the petitioner, it was only mentioned that once the benefit of zero period has been extended to the petitioner, the same cannot be extended again and on that ground, the revision filed by the petitioner was dismissed.

12.Subsequent to the dismissal of the revision, a writ petition no.16431 (M/S) of 2021 came to be filed by M/s Supertech Pvt. Ltd. challenging the composite order dated 21.08.2020, however, the petitioner did not file any writ petition nor was a party in the writ petition No.16431 (MS) of 2021 on the wrong legal advise that once one of the revisionist has filed a writ petition, no fresh writ petition was required to be filed. In the meanwhile, the petitioner had applied for sanction of map, which was refused mainly on the ground of non-payment of the lease rent. Similarly, the request of the petitioner for permission to mortgage the plot in question was also rejected twice. The order rejecting the application for sanctioning the map as well as the refusal of permission to mortgage were challenged in a revision filed by the petitioner. As the said revisions were pending, the petitioner approached this Court by filing a writ petition no.4725 of 2022 for early disposal of the revision, which was dismissed as withdrawn vide order dated 29.08.2022. In the meanwhile, on 20.07.2022, the respondent no.2 passed the impugned order

cancelling the lease of the plot allotted to the petitioner on account of non-payment of premium and the lease rent treating the order dated 21.08.2020 to be final in respect of the petitioner. The petitioner once again preferred a revision against the order dated 20.07.2022, which according to the petitioner was wrongly filed under wrong legal advise. The petitioner thereafter filed a petition bearing Writ-C No.4836 of 2022 for early disposal of the revision. However, on 26.08.2022, the petitioner moved an application withdrawing the revision filed by the petitioner challenging the order dated 20.07.2022 and consequently, the Writ C No.4836 of 2022 renumbered as A-227 No.2766 of 2022 was also withdrawn.

13.In the light of the facts as narrated above, the counsel for the petitioner argues that the revisional order impugned in the present writ petition insofar as it dismisses the revision of the petitioner solely on the ground that once the zero period request had been accepted in the case of the petitioner, he was not entitled to the benefit of zero period once again. He argues that admittedly, the first order passed accepting the benefit of zero period to be granted to the petitioner was never communicated to the petitioner as is the admitted position even before the revisional authority, thus, the ground on which the revision has been dismissed merits rejection. In the alternative, he argues that subsequently, the State Government had issued another policy decision on 05.12.2019 extending the benefit of zero period in respect of allottees whose more than 30% of the land was subject matter of dispute, which according to the petitioner, has not even been considered by the respondent no.2 despite there being a specific application filed by the petitioner.

14.In short, he argues that before taking a decision on the application filed by the petitioner for extension of benefit flowing from the

Government Order dated 05.12.2019, no further decision could have been taken for cancellation of the lease deed as has been done. He argues that although the issue of cancellation of lease deed is also under challenge in the present writ petition, however till the issue with regard to grant of zero period is not decided by the respondent no.2, the issue with regard to cancellation of the lease deed would have no relevance as both the issues are interlinked and thus, prays that the respondent no.2 be directed to consider the application of the petitioner for grant of benefit flowing from the Government Order dated 05.12.2019 by passing a reasoned order and thereafter revisit the cancellation order once again based upon the decision that may be taken by the respondent no.2.

15.Counsel for the respondents, on the other hand, argues that the issue raised by the petitioner in a revision filed along with the allottee of plot no. SC-02D was decided in a revision by means of an order dated 21.08.2020, which was never challenged by the petitioner and thus, the same had attained finality and the natural consequence of the order achieving finality was the cancellation of the lease deed as admittedly the petitioner did not deposit the lease rent in terms of the lease deed. He, however, does not dispute the fact that the earlier decision dated 11.03.2016, accepting the request of the petitioner for grant of benefits of zero period, was never communicated to the petitioner. In the light of the fact that the petitioner never challenged the revisional order dated 21.08.2020, he argues that the present petition is liable to be dismissed.

16.After hearing the counsel for the parties, the admitted position that emerges from the facts as narrated herein above is that a decision was taken in favour of the petitioner on 11.03.2016 extending the benefit of zero period in the case of the petitioner but was never

communicated. The petitioner continued to labour under impression that his application for benefit of zero period was pending and during the pendency thereto, a show cause notice for cancellation of the lease was issued to the petitioner. The filing of the revision by the petitioner challenging the show cause notice dated 23.10.2018 as well as the notice dated 14.01.2019 was on the face of it erroneous as no revision would lie against a show cause notice. In any case, it was incumbent upon the revisional authority to have considered the facts which were pleaded and the relevant facts that the earlier decision granting the benefit of zero period on 11.03.2016 was never communicated to the petitioner, as such, holding that the petitioner has been granted the benefit of zero period policy once, was an improper exercise of the power of the revisional authority more so when the revision itself was not maintainable. The sole reason of denying the benefit of zero period policy in terms of the Government Order dated 05.12.2019 is that a decision giving the benefit of zero period policy had been taken in favour of the petitioner once and thus, he was not entitled for consideration once again, cannot be sustained simply in view of the admitted position that the order dated 11.03.2016 was never communicated to the petitioner.

17. From the facts narrated above, what further emerges is that no decision whatsoever has been taken till date by the respondent no.2 on the application of the petitioner for grant of benefits under the Government Order dated 05.12.2019 and the same has been denied through the revisional order also makes the revisional order bad in law, as admittedly no decision has been taken by the respondent no.2 on the issue of grant of benefits flowing from the Government Order dated 05.12.2019, the impugned orders deserve to be quashed and are accordingly quashed with direction to the respondent no.2 to decide the claim of the petitioner for grant of zero period benefit in terms of

the Government Order dated 05.12.2019 by passing an appropriate reasoned order within a period of three months from the petitioner moving a fresh application before the respondent no.2. The petitioner is directed to file a fresh comprehensive application claiming the benefit of zero period in terms of the policy dated 05.12.2019 within a period of three weeks from today.

18.It is clarified that while deciding the said application, in terms of the directions issued herein above, the respondent no.2 shall not be influenced by the fact that earlier an order giving the benefit of zero period policy had been passed in respect of the petitioner on 11.03.2016 as the same was never communicated to the petitioner. After the orders are passed, as directed above, the respondent no.2 is further directed to revisit the issue and pass a fresh order in respect of the cancellation of the lease, which naturally would be dependent on the order to be passed in respect of the petitioner in terms of the Government Order dated 05.12.2019. The fresh order in respect of the cancellation of the lease deed, as directed to be passed after revisiting the issue, shall abide in between the parties and shall supersede the order dated 20.07.2022.

19.The writ petition is allowed in terms of the said directions.

Order Date :- 12.10.2023
VNP/-

[Pankaj Bhatia, J.]