

Neutral Citation No: 2024:AHC-LKO:14704

Reserved: 11.12.2023

Pronounced: 20.02.2024

Court No. - 12

Case :- WRIT - C No. - 2773 of 2023

Petitioner :- Omaxe India Trade Center Private Ltd. Thru. Its
Authorized Signatory Mr. Vineet Kumar Singh

Respondent :- State Of U.P. Thru. Prin. Secy. (Industrial
Development) Lko. And Another

Counsel for Petitioner :- Ashish Raman Mishra, Anuj Kudesia

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

Hon'ble Pankaj Bhatia, J.

1. Present writ petition has been filed challenging the order dated 27.02.2023 whereby the revision preferred by the petitioner was disposed off by observing that in terms of the submissions made, it was clear that a part completion certificate was issued to the petitioner on 15.04.2019 and 95% of the work has been completed out of which 1292 units have already been allotted, as well as keeping in view the interest of the allottees and the assurance given by the applicant to deposit an amount of Rs.45,22,49,900/- within two months.

2. The facts, in brief, are that on 23.03.2011, respondent no.2 allotted the plot to a consortium comprising M/s Pam Developers (India) Private Limited and M/s Sam (India) Builtwell Private Limited in terms of the allotment order which is contained in Annexure – 2. The allotment was in respect of Plot No.C-1, Sector Alpha-II, Greater Noida admeasuring 11584 sq.mts. (hereinafter referred to as '*the plot in question*'). The said two allottees incorporated a special purpose vehicle company known as M/s AVJ Towers Private Limited in which M/s Pam Developers (India) Private Limited was having 90% shareholding and M/s Sam (India) Builtwell Private Limited was having 10% of the shareholding. The name of the M/s AVJ Towers Private Limited

was subsequently changed to M/s Omaxe India Trade Center Private Limited – the present petitioner.

3. In terms of the allotment, respondent no.2 executed a lease deed on 06.09.2011 in favour of the petitioner under its erstwhile name. It bears from record that on 27.09.2012, the name of the company was changed to that of the petitioner company through a certificate of incorporation contained in Annexure – 4. It bears from record that on 01.02.2013, the map for construction was sanctioned by respondent no.2 and the Environment Impact Assessment Authority and the Pollution Clearance Certificate was issued in the year 2013 & 2014 respectively.

4. In the year 2016, respondent no.2 raised demand of Rs.28,79,40,101/- and called upon to deposit 25% of the said amount immediately against which a letter was written for re-scheduling the installment. The petitioner was apprised of the re-schedulement policy and was called upon to apply under the same which according to the petitioner was applied on 16.05.2017. Similar requests were made by the petitioner on 25.05.2017, 09.06.2017 & 25.07.2018. The petitioner once again requested for re-scheduling the payment of the balance amount on 31.10.2018, however, without considering the said request and the request of the petitioner for grant of benefit of zero period, respondent no.2 directed the petitioner to deposit 15% of the due amount through a letter contained in Annexure – 11.

5. The documents on record reveal that throughout the lease period, the communication was addressed to M/s AVJ Towers Private Limited and even in the petitioner's letter, it was indicated that the letter was sent for M/s AVJ Towers Private Limited.

6. It is stated that on 15.04.2019, a part occupancy certificate of commercial building situated on the plot in question was issued depicting that the property was fit for occupation and thereafter on

19.05.2019, a defaulter notice was issued to the petitioner stating that the petitioner has failed to deposit the amounts in terms of the lease deed and which may lead to cancellation. After receiving the said defaulter notice, the petitioner once again represented on 10.09.2019 for grant of benefits of zero period policy and for re-scheduling the loan; alongwith the said request, an amount of Rs.2,00,00,000/- out of the total outstanding balance was also deposited through a Demand Draft on 17.10.2019. The respondent authority raised a demand of Rs.6,47,37,906/- from M/s AVJ Towers Private India Ltd raising a demand of fee for change in constitution (CIC charges). A late fee was also demanded for not intimating the change of name.

7. The petitioner replied through a letter dated 18.02.2020 denying its liability to pay any name change charges as it was alleged that fault was at the instance of respondent no.2. It is alleged that on 08.10.2020, a defaulter notice was issued by respondent no.2 without considering the earlier representation dated 19.06.2020 in respect of zero period benefits and it is alleged that the same was without giving any opportunity of hearing. Through the reply dated 03.11.2020, the petitioner denied the liability of payment of imposition of CIC charges. As the issue with regard to CIC charges was not being considered, the petitioner preferred Writ Petition No.26906 of 2020, which is said to be pending. During the pendency of the said writ petition, on 04.01.2021, the respondent authority rejected the representation filed by the petitioner through an order dated 04.01.2021 (Annexure – 20). The said order dated 04.01.2021 was challenged by preferring Writ Petition No.1699 of 2021 wherein directions were issued through order dated 22.01.2021 to consider the representation of the petitioner.

8. It is alleged that instead of considering the representation, respondent no.2 proceeded to pass an order cancelling the lease

deed through an order dated 25.01.2021. The petitioner preferred Writ Petition No.3868 of 2021 challenging the cancellation order dated 25.01.2021. In the meanwhile, the petitioner was called for hearing in terms of the order dated 22.01.2021 passed by this Court. After hearing, the plot of the petitioner was restored vide order dated 25.03.2021 after an amount of Rs.20 Crore was paid by the petitioner, however, while restoring the plot, the outstanding amount was increased from Rs.7,32,96,415/- to an amount of Rs.65,88,88,734/-. The said amount, according to the petitioner, was without any basis whatsoever.

9. It is argued that in respect of the restoration charges, in the case of one allottee Sai Namo Namah, the restoration charges were imposed @ 10% of the outstanding dues whereas in the case of the petitioner, huge amounts were sought to be recovered. It is stated that the petitioner company deposited Rs.47 Crore towards the restoration of allotment. Out of the said amount, Rs.20 Crore was upfront payment and balance Rs.27 Crore was deposited towards the installments for the payment schedule indicated in the restoration order.

10. The case of the petitioner is that the amount deposited by the petitioner towards restoration charges has been wrongly collected to the extent that the same is beyond 10% of the total remaining dues. It is argued that on 02.07.2021, the respondent authority issued a letter demanding an amount of Rs.57 Crore failing which a penalty was prescribed. It is argued that the said communication did not take into consideration that an amount of Rs.2 Crore was paid by the petitioner company on the same day. Subsequently, on 05.08.2021, a payment was raised by respondent no.2 for payment of Rs.67,52,55,651/- which, according to the petitioner, was wholly arbitrary and aggrieved against the said, the petitioner preferred a representation.

11. On 18.02.2022, the petitioner was called upon to make a payment of Rs.52,87,64,087/- within 15 days failing which the termination proceedings may be taken. In response to the said, the petitioner company paid an amount of Rs.10 Crore on 28.03.2022 and requested the respondent to permit the petitioner to pay the entire outstanding amount in four installments i.e. on 28.04.2022, 28.05.2022, 28.06.2022 & 28.07.2022. The petitioner also paid an amount of Rs.5 Crore in terms of the restoration order dated 25.03.2021 to demonstrate the bonafides.

12. It is stated that the petitioner paid substantial amounts in terms of its request as detailed in Para – 50 of the writ petition, however, ignoring the request, a cancellation order came to be passed on 12.04.2022, which, according to the petitioner, did not even consider that the petitioner has deposited Rs.15 Crore.

13. Challenging the said cancellation order dated 12.04.2022, the petitioner preferred a revision under Section 41(3) of the U.P. Urban Planning and Development Act, 1973 read with Section 12 of U.P. Industrial Area Development Act, 1976 before respondent no.1.

14. During the pendency of the revision, the petitioner informed respondent no.1 that the petitioner had paid an amount of Rs.7,50,00,000/-. While hearing the said revision, the revisional authority – respondent no.1 – after considering the overall situation and the facts permitted the petitioner to deposit a balance amount of Rs.45,22,49,900/- within two months, as promised by the petitioner, and disposed off the revision. While doing so, the revisional authority took into account that certain units have already been allotted and any order of cancellation would adversely affect the allottees.

15. Challenging the said order, the submission of learned counsel for the petitioner, in brief, as per the written submission are extracted as under:

(i) The respondent no.1 while passing the impugned order dated 27.02.2023 (Annexure No. 1 Pg- 62 to 68), has restored the property of the petitioner which was cancelled vide order dated 12.04.2022 by the respondent no. 2. The respondent no. 1 while restoring the property of the petitioner vide impugned order dated 27.02.2023 has categorically found the illegality committed by the respondent no. 2 while passing the cancellation order dated 12.04.2022 which are as under:-

a) the respondent no. 1 has observed that the demand notices issued by the respondent no. 2 on various dates have discrepancies in valuation of the pending dues;

b) further it was observed that the payment made by the petitioner from time to time was not taken into account; and

c) adequate time was not given to the petitioner before cancelling the plot allotted to him.

(ii) The impugned order further records that the petitioner gave the commitment to deposit the sum of Rs. 45,22,49,900/-including the restoration charge within two months, whereas the petitioner on the date of hearing i.e. 24.02.2023 has submitted a written submission (Annexure No. 32 to WP Pg. 213 to 217) as per which the petitioner agreed to pay a sum of Rs. 32 crores within six months and denied to pay the restoration charges and has also relied upon several judgments of the respondent no. 1 wherein while restoring the cancelled plot no restoration charges were levied. The said fact has been admitted by the respondent no. 2 in paragraph 73 (Pg. 16) of the counter affidavit dated 10.07.2023.

(iii) That the respondent no.1 has passed the impugned order dated 27.02.2023 in violation of Article 14 of the Constitution of India since in identical circumstances the respondent no. 1 while exercising its power under section 41(3) of the Act, 1973 read with section 12 of the Act, 1976 has restored the plot without imposing any restoration charges.

A. In the case of M/s Max DIGI Infotech Pvt. Ltd. vs. Noida vide order dated 02.11.2021 (Pg- 228 Para-5(1)),

B. Sunshine Trade Tower Pvt. Ltd. vs. Noida vide order dated 14.09.2022 (Pg- 238 Para-16) and

C. M/s Surabhi Teli Link Pvt. Ltd. vs. Nodia vide order dated 03.10.2022 (Pg- 243) (Annexure No. 33 to WP Pg. 219 to 243).

Further during the pendency of this writ petition, the respondent no.1 has passed some more orders in identical situation in the case of:

E. Descent Buildwell Pvt. Ltd. vs. Greater Noida vide order dated 26.10.2023 (Pg. No. 13 Para-14),

F. Morpheous Developers Pvt. Ltd. vs. Greater Noida vide order dated 29.11.2023 (Pg. No. 20 Para-19)

G. Softech Pvt. Ltd. vs. Greater Noida vide order dated 29.08.2023 (Pg. No. 24 Para-8 and Pg. 25 Para IV) (Annexure No. SA-1 to SA dated 08.12.2023 Pg. 7 to 36).

(iv) That further the respondent no. 1 issued a government order dated 05.11.2019 (Annexure No.SA-1 to SA dated 11.07.2023 Pg. 7) whereby it was held that if the revisional authority finds perversity in the cancellation order challenged in the revision filed under Section 41(3) of the Act, 1973 read with Section 12 of the Act, 1976, then no restoration charges shall be imposed, thus the impugned order is in violation of the government order dated 05.11.2019. Moreover it is the essence of the order which has to be looked into, in as much as if the essence of the order dated 27.02.2023 is taken into account it amounts to quashing of the cancellation order.

16. In respect of charge of change in constitution (CIC charges), learned counsel for the petitioner submits as under:

(i) The respondent no. 2 leased the plot in favour of the M/s AVJ Tower Pvt. Ltd. (erstwhile name of the petitioner) on 06.09.2011 (Annexure No. 3 to WP Pg. 72 to 95).

(ii) On 27.09.2012 the name of the erstwhile company i.e. M/s AVJ Tower Pvt. Ltd. was changed to M/s Omaxe India Trade Center Pvt. Ltd. (Annexure No. 4 to WP Pg. 96 to 98).

(iii) That the petitioner on 27.02.2019 has requested to change the name from M/s AVJ Tower Pvt. Ltd. to M/s Omaxe India Trade Center Pvt. Ltd. (Annexure No. RA-2 to RA Pg. 56).

(iv) That on 25.06.2019 the respondent no. 2 issued an office order regarding change in constitution / change in share holding.(Annexure No. 35 to WP Pg. 246 to 263).

(v) The policy dated 25.06.2019 in its clause 3.4 (Annexure No.35 of WP Pg- 247 to 263) goes on to show that in case of change in name to any extent then no CIC charge shall be applicable, it is further submitted that the respondent no. 2 in its counter affidavit dated 10.07.2023 has categorically admitted (para 47, 54, 86 and 87) the fact that the Rs. 6,47, 37,906/- was charged upon the petitioner for change in name, hence the charge imposed is against the terms of the policy issued by the respondent no.2 itself (Judgment **Covestro (India) Pvt. Ltd. vs. State of U.P. and another reported in 2023 SCCONLINE ALL 41**; para 10 and 11). It is further submitted in identical situation this Hon'ble Court in **Writ-C No. 7852 of 2009 in re: M/s International Recreation Parks Pvt. Ltd. vs. State of U.P. and others (Para 11(a), (b), (e), 15, 16, 17, 19 and 22)** has observed that transfer of share of a company does not change status of a company.

(vi) That the respondent no.2 in terms of the policy dated 25.06.2019 decided the application dated 27.02.2019 for change in name of the petitioner company from M/s AVJ Tower Pvt. Ltd. to M/s Omaxe India Trade Center Pvt. Ltd. On 27.01.2020. (Annexure No. 16 to WP Pg. 127 to 130) whereby the petitioner was directed to pay a sum of Rs. 6,47,37,906/-as CIC charges, the said order was in violation of the contractual terms of the lease executed between the petitioner and the respondent since as per the lease deed the respondent no.2 has granted the permission to the consortium members to form a Special Purpose Company and further the permission was granted to transfer / sell upto 100% of its share holding subject to the condition that the original lead member shall continue to hold atleast 30% of the share holding (Pg-77 of WP), the said condition was not considered while directing the petitioner to pay CIC charge, it is further submitted that as per order dated 27.01.2020 the lead member had 90% of the share holding which was much more than the condition prescribed in the lease deed.

(vii) That the petitioner moved an application for change in name of the company on 27.02.2019 whereas the policy was formed on 25.06.2019 and the said policy did not had retrospective effect as such the charges levied as CIC charges are against the terms of the policy

(Judgment **Director General of Foreign Trade vs. M/s Kanak Exports in Civil Appeal No. 554 of 2006**). It is further submitted that the lease deed also goes on to show that the change in constitution of the allottee / lessee shall be permitted as per prevailing policy of the respondent no.2 (Pg- 87 of WP), therefore when the application was moved there was no such policy and hence the respondent no. 2 could not levy CIC charges upon the petitioner as per policy dated 25.06.2019 which came after application of the petitioner. (Judgment **International Hospital Pvt. Ltd. vs. State of U.P. and another reported in 2003 SCC ONLINE ALL 1220; para 25 the said judgment was upheld by the Hon'ble Supreme Court in Civil SLP (Civil) No. 6776 of 2004 vide judgment dated 24.03.2006**).

(viii) During the pendency of the present writ petition the petitioner in compliance of the interim order dated 26.04.2023 which was further confirmed vide order dated 11.07.2023, has paid a sum of Rs. 22.5 Crores against Rs.45,22,49,900/- to the respondents and Rs. 22,72,49,900/- is outstanding out of which if the petitioner succeeds then a sum of Rs. 6,47,37,900/- (CIC Charge) and Rs. 8,68,80,000/- (restoration charge) is adjusted in the pending amount i.e. Rs.7,56,32,000/- shall be paid by the petitioner as prayed in the writ petition.

17. Replying to the said arguments, learned counsel for respondent no.2 argues that the impugned order dated 27.02.2023 is basically a consent order. He submits as under:

(a) Bare Perusal of the operative part of the impugned order entails that the same has been passed after recording the submission of the revisionist/ petitioner that the petitioner is committed to make due payment of Rs. 45,22,49,900/- within two months. (Source: - Point No. 02 at Page 68 of the Writ Petition)

(b) Emphasis has been placed by the petitioner that written arguments were advanced during the course of hearing but the same were not considered while passing the impugned order. Para no. 63 of the Writ Petition would establish that the final hearing was conducted on 24-02-23 and the judgment was reserved. Petitioners then states that written arguments were submitted post hearing on 24-02-23. Written Arguments so advanced are filed as Annexure No.32 at Page no.212 of the Writ Petition. However, the same is undated. Further, in para 73 of the

Counter-Affidavit dated 10-07-23 this fact has neither been accepted nor denied by the present respondent since the issue required no comments. Impugned Order got passed on 27-02-23 i.e. three days after the hearing on 24-02-23 on the basis of pleadings preferred before the revisional authority i.e. the State Government.

(c) Impugned Order never quashed the allotment cancellation order dated 12-04-22 passed by respondent no. 02 but merely disposed off the revision by recording the commitment made by the petitioner/revisionist.

(d) Impugned order has also been passed keeping in consideration the fact that 1292 units have already been sold out by the petitioner to allottees and if restoration is not allowed then unnecessary trouble will be caused to such unit holders/allottees and the same would result in undue disputes and multiple litigation. (Source:- Point No. 01 at Page 68 of the Writ Petition).

(e) Hence, impugned order is to be construed as a consent order and an order which intended to put quietus to the issues involved.

18. In respect of the restoration charges, the submission of counsel for respondent no.2 is as under:

(a) Power to realize RC stems from Clause 3.21.2.iii of the Brochure of allotment of plot and the same is evident from perusal of page no.43 of the Counter Affidavit dated 24-07-23 filed by Respondent No.02 wherein RC @ 10% of the total premium of the plot at prevailing rate as on date of restoration is made applicable upon defaulters. There is no bar so as to limit the payment of RC to just one occasion. On account of every subsequent default and every subsequent restoration the said policy may be applied.

(b) Petitioner by means of supplementary affidavit dated 08-12-23 has placed reliance on four cases marked as Annexure SA-1 (page 7 to 36) and claimed that the case of the petitioner is identical to these cases. However, bare perusal of Page 13, 21, 25 and 35 of the said Affidavit would reveal that in all these cases the lease cancellation order of the authority was quashed by the revisional authority which is not the case with respect to the instant impugned order dated 27-02-23. Cancellation order in the present case has not been quashed by the revisional authority but taking into account the commitment

preferred by the petitioner, revision has merely been disposed off amicably making certain observations.

(c) Similarly, by means of Rejoinder Affidavit dated 25/07/23 petitioner has placed reliance on Government Order dated 05-11-19 marked as Annexure RA-01 (page 53-54) which again is not applicable to the case of the petitioner. Concerned G.O again relates to situations only where the allotment cancellation order has been quashed by the revisional authority.

19. In respect of change in constitution of charges (CIC), the stand of respondent no.2 is as under:

(a) Clause 3.4 of the CIC Policy dated 25/06/19 finds mention on page 247 of the Petition (Annexure No. 35) wherein it is stipulated that no CIC Charges shall be applicable if there is only change in name (ownership/shareholding should not be changed 'to any extent'). Emphasis is being made upon the phrase 'to any extent' in the concerned clause.

(b) Further Clause 4.5 of the CIC Policy dated 25/06/19 finds mention on page 248 of the Petition (Annexure No. 35) wherein it is stipulated that change in constitution must not result in change in ownership, otherwise charges shall be applicable.

(c) That it is pertinent to mention here that the CIC policy was never challenged by the petitioner and also the same was not agitated during the revision proceedings which culminated into the impugned order.

(d) That perusal of page 70 of the Petition would entail that the original allottee was a consortium consisting of M/s Pam Developers (India) Pvt Ltd. (Lead member) and M/s Sam (India) Builtwell Pvt. Ltd. (Relevant member). Pam & Sam went on to incorporate a Special Purpose Vehicle namely M/S AVI Tower Pvt Ltd Wherein 90% shareholding was held by M/s Pam and 10% held by M/s Sam.

(e) That on 27-09-12 change in name from AVJ Tower Pvt. Ltd to petitioner i.e. Omaxe India Trade Centre Pvt Ltd took place. However, intimation of the said fact was sent to the Respondent No.02 on 27-02-19 i.e. after almost 7 years. It is pertinent to submit that the payable amounts were paid in the old name i.e. AVJ during 2012 and 2019.

(f) That taking into account the delay in intimation and change in shareholding an Order dated 27-01-20 was

passed by the Respondent No. 02. (Annexure No. 01) stating the reasons for imposition of CIC and penalty for delay. Order dated 27-01-20 has yet again never been challenged by the petitioner wither before the revisional authority or any other Court.

(g) That Change in Constitution has been made permissible by means of Clause 11 the lease agreement and the same finds mention at page no 87 wherein it is stated that CIC of the allottee/lessee shall be permitted as per prevailing policy of the lessor.

(h) That the provision which finds mention at page no 77 of the writ petition wherein it is provided that Special Purpose Company i.e. AVJ Towers Pvt. Ltd. In the present case will be allowed to transfer upto 100% of its shareholding subject to the condition that original lead member (M/S Pam Developers in the present case) shall continue to hold atleast 30% of the shareholding in the SPC till the occupancy/completion certificate of at least one phase of the project is obtained from the lessor, is a provision that does not in any manner restricts/prohibits imposition of CIC charges but merely permits the transfer of tile and consequential rights to the new body incorporate so formed. Petitioner should not be allowed to claim non application of CIC charge on the basis of the said provision in the lease agreement.

(i) That the argument advanced by the petitioner that since petitioner preferred an application before the Respondent No. 02 for change of name on 27-02-19 i.e. prior to CIC policy dated 25/06/19 hence, petitioner is not liable to pay CIC charges since the CIC policy could not be given effect retrospectively is an erroneous position taken by the petitioner.

(j) That here it is expedient to mention that the application dated 27-02-19 preferred before respondent no. 02 was duly considered on 27-01-20 wherein the order fixing liability for CIC upon the petitioner has been passed.

(k) That as such the relevant date of consideration becomes 27-01-20 wherein delayed application dated 27-02-19 preferred by the petitioner was examined & decided by the Respondent No. 02. Order dated 27-01-20 imposing CIC has been passed subsequent to the CIC policy from coming into force i.e. after 25-06-19. Therefore, it cannot be said that there is any infirmity in application of the CIC policy to the case of the petitioner.

(l) Reliance here is being placed upon judgement passed by this Hon'ble Court in Writ-C No49810 of 2019 titled "Dr. Ashok Tahiliani versus State of UP & Ors." and also upon Judgement dated 13/02/14 passed by Hon'ble Full Court in Writ C No. 41958 of 2008.

20. In respect of the lack of bonafide on behalf of the petitioner, the stand of respondent no.2 is as under:

That the bona-fide being cited by the petitioner are not well established. Since time and again the petitioner has preferred his proposals/commitment before the Authority and then being accorded accommodation in lieu of the same, eventually withdrew from fulfilling the same. Modus employed to arrive at the impugned order has been that a particular promise/commitment is advanced by the petitioner and on the basis of such advancement a certain relaxation is fetched/obtained but eventually, after having secured the relaxation, petitioner withdraws from the commitment made. Same modus has perpetuated during the course of hearing of the present petition wherein continued relaxations have been sought by the petitioner despite having secured interim order dated 26-04-23 based on its own commitment before this Hon'ble Court.

21. Considering the submissions made at the Bar, what transpires from the impugned order is that it records that the order was passed recording the consent of the petitioner made before the Revisional Authority and keeping into account the fact that the petitioner had undertaken to pay an amount of Rs.45,22,49,900 within a period of two months; the order also took into account the fact that the residential accommodations have already been allotted to 1292 allottees and it would be in the interest of the said allottees to pass the said order.

22. It is necessary to mention that the dispute emanates from the order dated 12.04.2022 wherein an order of cancellation was passed basically on the ground that the petitioner had failed to pay the demands as were raised in the order dated 18.02.2022. The foundation for challenging the said order was that despite the petitioner agreeing to pay the outstanding

amount in four installments on 28.04.2022, 28.05.2022, 28.06.2022 & 28.07.2022, which ought to have been accepted by the respondent-authority, was wrongly not accepted, and thus, the order is bad in law. It is essential to note that in the revision filed by the petitioner, in terms of the memo which is contained in Annexure – 29, there was no agitation at the part of the petitioner with regard to either the CIC charges or the overcharging of the cancellation charges as is sought to be argued before this Court; even in terms of petitioner's communication with the respondent-authority as contained in the letter dated 29.04.2022 (Annexure – 30), the essence of the submission of the petitioner was that the petitioner was ready and willing to pay the amounts, if some reasonable time is granted and the petitioner requested for installment. In the said letter also, there is no agitation on the part of the petitioner with regard to overcharging of CIC amount or the restoration charges.

23. The entire arguments advanced before this Court are that the petitioner has been wrongly saddled with the payment of CIC charges and the restoration charges, which is contrary to the old policy as well as against the precedents in respect of the persons who are similarly placed. In terms of the letter submitted by the petitioner to the respondent-authority on 29.04.2022 and thereafter, in the memo of revision filed before the revisional authority as contained in Annexure - 29, there was no agitation with regard to either the CIC charges or the overcharging of restoration charges. That being the case, the revisional authority has rightly recorded that the petitioner had agreed to pay the amounts and the revision was decided accepting the undertaking given by the petitioner and keeping in view the interest of the allottees.

24. The submission of learned counsel for the petitioner that the written arguments submitted by the petitioner agitated these issues and were not considered, merits rejection inasmuch as it is well settled that there cannot be any arguments without the foundation of pleadings which are clearly missing in the revision filed by the petitioner.

25. A conjoint reading of the representation of the petitioner dated 29.04.2022 and the pleadings contained in the revision leave no scope for the petitioner to argue that the issues were raised in the written arguments but were not considered. It is also clear that this Court in exercise of powers under Art. 226 of the Constitution of India is to basically determine the manner of decision making by the lower authorities or if there is any infirmity with the order which requires interference.

26. Considering the basic pleadings on which the written arguments were submitted being missing from the revision, I do not see any reason to interfere with the revisional order. However, there is a slight dispute that the amounts deposited by the petitioner, particularly, the amounts deposited on 28.03.2022 amounting to Rs.10 Crore, the amounts deposited on 11.04.2022 amounting to Rs.5 Crore and the amount of Rs.7 Crore 50 Lakhs paid to the authority through RTGS on 28.04.2022, in all likelihood, have not been taken into consideration while passing the impugned order, in defense of this averment, one of the stands taken by the respondent is that the said amounts were not credited by the respondent-authority except for an amount of Rs.7 Crore 50 Lakhs deposited through RTGS on 28.04.2022. Thus, for the limited accounting purposes, the amount deposited by the petitioner on 28.03.2022, 11.04.2022 & 28.04.2022 shall be looked into by the respondent-authority once again.

27. To make it further clear it is held that the total amount payable by the petitioner stands crystallized at Rs.52,87,64,087/- as indicated in the cancellation order dated 12.04.2022.

28. The amounts, if any, deposited by the petitioner and not taken into consideration while passing the cancellation order dated 12.04.2022 or deposited after the cancellation order shall be computed and informed to the petitioner by the respondent-authority within a period of three weeks, which the petitioner shall pay within a further period of four weeks.

29. It is further clarified that in the impugned order dated 27.02.2023, the petitioner was granted two months' time to pay the amounts, which now would further attract interest at the rates chargeable by the respondent-authority on the overdue amounts after the date fixed in the revisional order as indicated above while computing the balance amounts in terms of the directions issued herein above.

30. The writ petition stands ***disposed off*** in terms of the aforesaid order.

31. I have not gone into the other questions as I have already indicated that there were no pleadings by the petitioner either before the revisional authority or in the communication with the respondent-authority on 29.04.2022.

Order Date :- 20.02.2024
nishant

[Pankaj Bhatia, J.]