

Neutral Citation No. - 2024:AHC-LKO:85686

Reserved

A.F.R.

Case :- WRIT - C No. - 22622 of 2021

Petitioner :- M/S Oriental Structural Engineers

Pvt.Ltd.Thru.Auth.Officer

Respondent :- State Of U.P.Thru.Prin.Secy. Infra.And Industrial

Devpt.And Anr.

Counsel for Petitioner :- Abhishek Khare,Akber Ahmad,Amrendra

Nath Tripathi,Avdhesh Kumar Pandey,Chinmay Mishra,Gaurav

Mehrotra,Rani Singh,Saumya,Sudeep Kumar,Tushar

Mittal,Yogeshwar Sharan Srivastava

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

Upadhyay,Waseeq Uddin Ahmed

Hon'ble Alok Mathur,J.

1. Heard Sri Nitesh Jain, learned counsel for the petitioner as well as learned Standing counsel and Sri Sachin Upadhyay for the respondents.
2. The Petitioner who had been allotted a plot from the Greater Noida Industrial Development Authority (hereinafter referred to as GNIDA) has disputed the handing over of the possession of the said plot and has claimed benefit of the zero period policy of the respondents. The respondents on the other hand have rejected his claim of possession and proceeded to levy penalty and notice for cancellation of the allotment of the plot, and even the revision preferred before the State Government has been rejected leading to the present writ petition.
3. It has been submitted by learned counsel for the petitioner that on 12/03/2008 and 30/06/2008 notifications under section 4 read with section 17 of the Land Acquisition Act, 1894 were issued by the

State Government for acquisition of land of 589.188 Ha. situated at village Patwari, Greater Noida, Gautam Budh Nagar. Subsequent to the acquisition, the land was developed and offered for allotment of institutional plots for setting up educational hub, University, Training centers, Schools, Hospitals and office plots for self-use of various sizes. The petitioner made an application on 30/05/2008 for allotment of a plot of 20,000 m² for the purpose of setting up an office for self-use and deposited 10% of the application amount. The application of the petitioner was successful, and he was informed that he has been allotted a plot of 20,000 m² for a total premium of ₹ 15.80 Crores. Considering that the petitioner has already paid 10% of the sale consideration, he was required to pay the 20% of the amount within 60 days of the allotment letter, and the balance 70% of the premium was to be paid in 12 half yearly installments with an interest of 12% from 12/07/2009 onwards.

4. According to the terms and conditions of the allotment, the petitioner was required to complete the construction over the plot within 5 years from the date of the allotment. Though by means of the letter of allotment 20,000 m² of space was allotted to the petitioner, but the plot number was never communicated, but he proceeded to deposit further 20% of the premium. It is only on 13/11/2009 that the GNIDA informed the petitioner that the plot of an area 20,007.52 m² has been allotted at plot No. 3, Techzone IV, Greater Noida, and that he was to complete the formalities to get the lease deed registered. On 16/03/2010 a lease deed was executed in favour of the petitioner and a formal letter of possession was also issued by the GNIDA on the same day.
5. It has been submitted that plot No. 3 Techzone IV Greater Noida was carved out from khasras nos. 321, 323, 324, 325, 342, 343, 344, 340, 331 village Patwari, District Buddhnagar. The petitioner stated that despite possession certificates having been issued in favour of the petitioner, the actual physical possession of the said plot was never given to him, and therefore the petitioner made

repeated representations to the respondents to hand over the actual physical possession.

6. It is stated that on 15/06/2010, the Manager Institutional wrote a letter to the Officer on Special Duty (Project, Greater Noida) to nominate some officer to hand over actual physical possession. According to the petitioner, the letter dated 15/06/2010 evidences the fact that actual physical possession was never given to the petitioner, and even subsequently a number of letters and representations by the petitioner did not yield the result.
7. It is stated that by means of letter dated 02/06/2011, the petitioner was informed that the revised lease plan has been received by the respondents according to which the total area of the plot of the petitioner has been reduced from 20,007.52 m² to 20,000.76 m² and accordingly a correction deed was executed on 24/06/2011. Simultaneously a corrected possession certificate was also signed and delivered to the petitioner without handing over actual physical possession.
8. It is the case of the petitioner that even after execution of the correction deed, he repeatedly requested the respondents to hand over the actual physical possession of the plot, but the same was not done, and when the petitioner attempted to construct a boundary wall of the plot the local farmers prevented him from undertaking any construction, and this fact was also informed to the respondents as well as the District Administration and the police officials.
9. According to the petitioner, he has deposited the outstanding amount totaling Rs. 18.85 Crores against the total premium of ₹ 15.8 crores till 31/03/2013. The petitioner was also given a default/cancellation notice on 02/05/2017 asking him to deposit an amount of ₹ 6,81,22,500.47 within 15 days failing which, the lease would be deemed cancelled and the possession of the land would be resumed by GNIDA. The petitioner submitted a detailed reply to the said notice on 10/05/2017 once again narrating the entire

sequence of events, and also emphatically stating that the actual possession of the property had never been given to the petitioner. A query was made by the petitioner under the Right to Information Act in this regard, but no information was supplied to him with regard to handing over the possession.

10. It is in the aforesaid circumstances that a request was made to defer all the future instalments and interest thereon and also to reverse all the interest levied on the plot. In sum and substance, the benefit of Zero Period Policy was claimed by the petitioners along with the actual physical possession of the allotted plot. When the grievance of the petitioner was not redressed despite writing numerous representations to GNIDA, the petitioner preferred a writ petition being writ petition No. 57227 of 2013 seeking a direction to the respondents to reckon the payable dues from the date of actual physical possession rather than the date of execution of the lease deed and further not to realise the lease rent and interest from the petitioner and also grant the moratorium from payment of interest till actual physical possession is granted to the petitioner. It was during the pendency of the writ petition the GNIDA responded to the representations of the petitioners on 14/09/2018 informing them that no action can be taken by them in light of the pending writ petition.
11. The petitioner thereafter preferred a revision under Section 41(3) of the U.P Urban Planning and Development Act, 1973 read with Section 12 of the U.P Industrial Area Development Act, 1976, on 29/04/2019 and during pendency of the aforesaid revision a fresh demand for additional compensation was made by GNIDA through letter dated 24/09/2019 and 15/10/2019.
13. The petitioner had preferred two appeals before the respondent no.1, the first appeal was dated 29/04/2019 made to the State Government with the following prayer:-

“Without prejudice to our rights in the writ petition mention above, we put forward our representation for refund

of the entire amount deposited by us in shape of reservation money, allotment money, premium, lease rent, interest, location charges etc. along with interest at the rate of 15% per annum from the date of its deposit along with the losses made by us explained in para 14 above, which comes to INR 114 crores.”

14. Another appeal/revision was preferred on 15/10/2019 to the State Government for the following reliefs:-

“ In view of the above, you are requested to withdraw your demand made vide your above referred letter dated 24/09/2019 being illegal, contempt of court proceedings as subject matter is sub-judice before court. Moreover, our request for refund of entire amount deposited with GNIDA along with 18% interest is pending with GNIDA. Under the circumstances, you are requested to keep a demand made through letter dated 24/09/2019 in abeyance till the writ petition is subjudice before the court or till actual peaceful and physical handing over of the subject plot. ”

15. Both the revisions/appeals of the petitioners were decided by the common order dated 27/10/2020 whereby the State Government defenestrated the prayer made by the petitioner. A perusal of the impugned order would indicate that determination was only regarding the issue of giving possession of the plot allotted to the petitioner. The petitioner repeatedly stated that he had never been given possession and had given only a symbolic possession by letter dated 16/03/2010 and actual physical possession was never handed over to him. The State Government while rejecting the appeal was of the view that the petitioner himself has admitted that he had started construction of the boundary wall which itself was an admission with regard to possession, and accordingly the delay if any in commencing the construction work was of the

petitioner himself and hence he was not entitled for any relief and both the appeals were rejected.

16. Assailing the aforesaid order dated 27/10/2020 the present writ petition was filed with the following reliefs:-

- i) *Issue a writ, order or direction in the nature of Certiorari quashing the impugned order dated 27.10.2020, passed by the Respondent No.1 (Annexure No.1), and direct the Respondent No.1 for fresh consideration.*
- ii) *Issue a writ, order or direction in the nature of Certiorari quashing the demand dated 24.09.2019 as contained in Annexure No.2 with this writ petition.*
- (iii) *Issue a writ, order or direction in the nature of Certiorari quashing the notice dated 04.03.2020 as contained in Annexure No.3 with this writ petition.*
- (iv) *Issue a writ order or direction in the nature of Mandamus directing the Respondent Authority to grant the benefit of “Zero Period” in terms of the office order dated 04.01.2017 for the period when no development could be undertaken on account of the orders of status quo passed by the Hon’ble Court on the parcel of land leased to the petitioner.*
- v) *Issue a writ, order or direction in the nature of Mandamus directing the Respondents not to take any coercive action against the petitioner for realization of the disputed outstanding lease rent, lease premium, interest or cancellation of the lease deed dated 22.12.2009.*
- vi) *Issue a writ order or direction in the nature of Mandamus directing the Respondent Authority to reschedule the installments, lease rent, penal interest, if any, etc. after accounting for the benefit of “Zero period” admissible to the Petitioner. ...”*

17. During pendency of the writ petition a fresh demand was raised by order dated 17/01/2023 issued by the GNIDA wherein it was stated that failure to deposit the said amount would result in cancellation of the leased plot, and therefore the following prayer added in the writ petition:-

“(III.a) Issue a suitable writ, order or direction in nature of certiorari, quashing the demand letter no. Gr.No./Sansthat 2023/232 dated 17/01/2023 issued by Officer on Special Duty (Institutional), GNIDA, (enclosed as Annexure no. 39 to the petition).”

(III.b) Issue a suitable writ, order or direction in nature of prohibition, restraining or prohibiting the respondents, their servants and agents in proceedings in any manner whatsoever pursuant to the demand letter number Gr/ Sansthat 2023/232 dated 17/01/2023 issued by Officer on Special Duty (Institutional), GNIDA, (enclosed as Annexure no.39 to the petition).

(III.c) issue a suitable writ, order or direction in nature of mandamus commanding the respondents to refund Rs. 1,61,71,657/- by GNIDA along with a compound interest @15% per annum to be calculated from the last date of payment i.e 21/03/2013 till the date of actual payment.”

18. Respondents have opposed the writ petition and filed a counter affidavit stating that the petitioners themselves have conceded that the possession of the plot is with them when they lodged complaint to the police station Bishrek Gautam Buddhnagar on 13/03/2013 seeking police protection for continuing with the construction. It has further been stated that the benefit of Zero Period has already been given to all the developers including the petitioner during the pendency of the case from 21/10/2011 to 24/08/2012, and further asserted that the petitioner had the physical possession of the plot since 2011 and accordingly it is liable to pay penal interest.

19. A detailed counter affidavit was subsequently filed reiterating the stand disclosed in the short counter affidavit but did not comment on paragraph No. 51 to 62 of the writ petition where the petitioner has asserted that there were interim orders passed by the High Court and the Supreme Court according to which the possession of the disputed land of the farmers could not have been interfered with, by the State Government as well as by GNIDA.

20. I have heard the counsel for the parties and perused the record.

21. The controversy in the present case centers around the fact as to whether the “actual physical possession” of the disputed plot was handed over to the petitioner or not, and whether merely by issuance of possession certificate dated 24/06/2011, it would be sufficient to conclude that the said plot is physically vested with the petitioner. In the present case the petitioner was allotted a plot No. 3 Techzone IV Greater Noida was carved out from khasras nos. 321, 323, 324, 325, 342, 343, 344, 340, 331 village Patwari, District Buddhnagar by the GNIDA. A lease deed was executed in favour of the petitioner on 16/03/2010. The possession of the said plot was not given to the petitioner, who wrote several letters requesting GNIDA to hand over the possession, and the possession certificate was given to the petitioner on 24/06/2011. The respondents Stated that by handing over of the possession certificate they have handed over the possession of the plot to the petitioner, while the petitioner contends that the petitioner was never handed over to them. The petitioner tried to take the physical possession of the property himself and build a boundary wall, but he was stopped by the villagers on 25/01/2012 and 13/03/2013, and he duly intimated this fact to the respondents as well as the police. The contention of GNIDA is that they have handed over the possession of the plot to the petitioner, and he is thereafter under a mandate to pay the premiums, lease rent and interest on delayed payment and penalty, while the petitioner has been contending that in absence of handing over of the physical possession of the property he would not be liable to pay the aforesaid, and also relies

upon the Zero period policy of the GNIDA which provides that in case the physical possession cannot be handed over to the allottee then GNIDA will not charge interest penalty and also defer the instalments which are due for such period till the property is actually handed over to the lessee.

22. The manner of taking possession of land which has been subjected to acquisition proceedings under the Land Acquisition Act, 1894 have been dealt by the Supreme Court extensively in the case of ***Indore Development Authority v. Manoharlal*, 2020 (8) SCC 129** where it was observed:-

261. Now, the Court would examine the mode of taking possession under the 1894 Act as laid down by this Court. In Balwant Narayan Bhagde [Balwant Narayan Bhagde v. M.D. Bhagwat, (1976) 1 SCC 700] it was observed that the act of Tahsildar in going on the spot and inspecting the land was sufficient to constitute taking of possession. Thereafter, it would not be open to the Government or the Commission to withdraw from the acquisition under Section 48(1) of the Act. It was held thus : (SCC pp. 711-12, para 28) “28. We agree with the conclusion reached by our Brother Untwalia, J., as also with the reasoning on which the conclusion is based. But we are writing a separate judgment as we feel that the discussion in the judgment of our learned Brother Untwalia, J., in regard to delivery of “symbolical” and “actual” possession under Rules 35, 36, 95 and 96 of Order 21 of the Code of Civil Procedure, is not necessary for the disposal of the present appeals and we do not wish to subscribe to what has been said by our learned Brother Untwalia, J., in that connection, nor do we wish to express our assent with the discussion of the various authorities made by him in his judgment. We think it is enough to State that when the

Government proceeds to take possession of the land acquired by it under the Land Acquisition Act, 1894, it must take actual possession of the land, since all interests in the land are sought to be acquired by it. There can be no question of taking "symbolical" possession in the sense understood by judicial decisions under the Code of Civil Procedure. Nor would possession merely on paper be enough. What the Act contemplates as a necessary condition of vesting of the land in the Government is the taking of actual possession of the land. How such possession may be taken would depend on the nature of the land. Such possession would have to be taken as the nature of the land admits of. There can be no hard-and-fast rule laying down what act would be sufficient to constitute taking of possession of land. We should not, therefore, be taken as laying down an absolute and inviolable rule that merely going on the spot and making a declaration by beat of drum or otherwise would be sufficient to constitute taking of possession of land in every case. But here, in our opinion, since the land was lying fallow and there was no crop on it at the material time, the act of the Tahsildar in going on the spot and inspecting the land for the purpose of determining what part was waste and arable and should, therefore, be taken possession of and determining its extent, was sufficient to constitute taking of possession. It appears that the appellant was not present when this was done by the Tahsildar, but the presence of the owner or the occupant of the land is not necessary to effectuate the taking of possession. It is also not strictly necessary as a matter of legal requirement that notice should be given to the owner or the occupant of the land that possession would be

taken at a particular time, though it may be desirable where possible, to give such notice before possession is taken by the authorities, as that would eliminate the possibility of any fraudulent or collusive transaction of taking of mere paper possession, without the occupant or the owner ever coming to know of it.”

262. In **T.N. Housing Board v. A. Viswam** [**T.N. Housing Board v. A. Viswam, (1996) 8 SCC 259**] it was held that drawing of panchnama in the presence of witnesses would constitute a mode of taking possession. This Court observed : (SCC p. 262, para 9) “9. It is settled law by series of judgments of this Court that one of the accepted modes of taking possession of the acquired land is recording of a memorandum or panchnama by the LAO in the presence of witnesses signed by him/them and that would constitute taking possession of the land as it would be impossible to take physical possession of the acquired land. It is common knowledge that in some cases the owner/interested person may not cooperate in taking possession of the land.” (emphasis supplied)

263. In **Banda Development Authority** [**Banda Development Authority v. Moti Lal Agarwal, (2011) 5 SCC 394 : (2011) 2 SCC (Civ) 747**] this Court held that preparing a panchnama is sufficient to take possession. This Court has laid down thus : (SCC p. 411, para 37) “37. The principles which can be culled out from the abovenoted judgments are:

- (i) No hard-and-fast rule can be laid down as to what act would constitute taking of possession of the acquired land.
- (ii) If the acquired land is vacant, the act of the State authority concerned to go to the spot and prepare a

panchnama will ordinarily be treated as sufficient to constitute taking of possession.

- (iii) *If crop is standing on the acquired land or building/structure exists, mere going on the spot by the authority concerned will, by itself, be not sufficient for taking possession. Ordinarily, in such cases, the authority concerned will have to give notice to the occupier of the building/structure or the person who has cultivated the land and take possession in the presence of independent witnesses and get their signatures on the panchnama. Of course, refusal of the owner of the land or building/structure may not lead to an inference that the possession of the acquired land has not been taken.*
- (iv) *If the acquisition is of a large tract of land, it may not be possible for the acquiring/designated authority to take physical possession of each and every parcel of the land and it will be sufficient that symbolic possession is taken by preparing appropriate document in the presence of independent witnesses and getting their signatures on such document.*
- (v) *If beneficiary of the acquisition is an agency/instrumentality of the State and 80% of the total compensation is deposited in terms of Section 17(3 A) and substantial portion of the acquired land has been utilised in furtherance of the particular public purpose, then the court may reasonably presume that possession of the acquired land has been taken.”*

264. *In State of T.N. v. Mahalakshmi Ammal [State of T.N. v. Mahalakshmi Ammal, (1996) 7 SCC 269] , this Court dealt with the effect of vesting on possession and mode of taking it and opined thus :*

(SCC p. 272, para 9) “9. It is well-settled law that publication of the declaration under Section 6 gives conclusiveness to public purpose. Award was made on 26-9-1986 and for Survey No. 2/11 award was made on 31-8-1990. Possession having already been undertaken on 24-11-1981, it stands vested in the State under Section 16 of the Act free from all encumbrances and thereby the Government acquired absolute title to the land. The initial award having been made within two years under Section 11 of the Act, the fact that subsequent award was made on 31-8-1990 does not render the initial award invalid. It is also to be seen that there is stay of dispossession. Once there is stay of dispossession, all further proceedings necessarily could not be proceeded with as laid down by this Court. Therefore, the limitation also does not stand as an impediment as provided in the proviso to Section 11-A of the Act. Equally, even if there is an irregularity in service of notice under Sections 9 and 10, it would be a curable irregularity and on account thereof, award made under Section 11 does not become invalid. Award is only an offer on behalf of the State. If compensation was accepted without protest, it binds such party but subject to Section 28-A. Possession of the acquired land would be taken only by way of a memorandum, panchnama, which is a legally accepted norm. It would not be possible to take any physical possession. Therefore, subsequent continuation, if any, had by the erstwhile owner is only illegal or unlawful possession which does not bind the Government nor vested under Section 16 divested in the illegal occupant. Considered from this perspective, we hold that the

High Court was not justified in interfering with the award.”

23. A perusal of the aforesaid judgments of the Supreme Court would clearly demonstrate that the normal mode of taking possession is drafting the panchnama in the presence of panchas and taking possession and giving delivery to the beneficiaries is the accepted mode of taking possession of the land.
24. An important aspect of the present case is the litigation between the farmers/landowners who had challenged the land acquisition proceedings before the High Court. Plot No. 3 Techzone IV Greater Noida which was allotted to the petitioner was carved out from khasras nos. 321, 323, 324, 325, 342, 343, 344, 340, 331 village Patwari, District Buddhnagar. The challenge was made to the notification under section 4 of the Act of 1894 dated 12/03/2008 and notification under Section 6/17 dated 30/06/2008. A bunch of writ petitions were filed challenging the land acquisition proceedings, and the land of village Patwari in writ petition No. 17068 of 2009 Writ C. All the petitions were allowed by means of judgement dated 19/07/2011 and the land Acquisition proceedings were quashed. **In the said judgement it has been clearly mentioned that interim orders were passed to maintain status quo during the pendency of the petition.**
25. The matter was subsequently placed before a full bench in the case of **Gajraj and Others Vs State of U.P. and Others** reported in 2011 SCCOnline 1711. The full bench had specifically formulated an issue pertaining to taking of possession of the acquired land by the State of U.P which is as follows:-

“8. Taking of possession: One of the submissions which has been pressed by petitioners' counsel in all the writ petitions is that no possession of the plots in question have been taken by the Collector on the spot. It is submitted that possession as contemplated under Section 17, sub Section 1 has to be actual

physical possession. It is submitted that the District Revenue Authorities as well as NOIDA authority/greater NOIDA authorities have never taken physical possession of land in dispute and the possession memo has been prepared without coming on the spot and there are neither signatures of land holders nor there are signatures of any independent witnesses in the possession memo.”

26. Considering the rival submissions of the petitioner as well as the respondents full bench concluded by holding that taking of possession by the respondents cannot be said to be in accordance with law and further observed that the possession was not taken by the State authorities of the land in accordance with law and the possession memo which has been filed by the State authorities cannot be treated to be valid possession memo evidencing taking of possession. The relevant findings are quoted hereinbelow:-

*“Copy of the possession memo as claimed by the State dated 2nd February, 2007 was also filed as Annexure 5 to the writ petition. The possession memo Annexure 5 to the writ petition also contains the Statement “details of the land possession of which is being transferred to acquiring body/greater NOIDA Industrial Development authority”. The said memo has again been signed by four officers of the Greater NOIDA authority and Additional District Magistrate Land Acquisition, Gautam Budh Nagar. **The aforesaid possession memo are not the possession memo or the document showing taking of possession by the State. There is no occasion to transfer the possession to the Greater NOIDA authority by the State unless the possession is obtained by the State.”***

27. Furthermore, as held by the Apex Court as noticed above, even if the land is vacant the State authority has to go to the spot and prepare a Panchanama which ordinarily has to be treated as sufficient to constitute taking of possession. The possession memo filed by the State in the counter affidavit cannot be termed to be a Panchanama as signatures of Panch (independent witness) are absent. Thus, the taking of possession by the respondent cannot be said to be in accordance with the law.
28. We find merit in the submission of the learned counsel for the petitioners that possession was not taken by the State authorities of land in accordance with law and possession memo which has been filed by the State authorities cannot be treated to be valid possession memo evidencing taking of possession.
29. The full Bench of the High Court while deciding the writ petitions had categorised the cases into groups and Group 1 cases pertain to village Patwari. In its judgement dated 21/10/2011 it in unequivocally terms returned a finding that the State Government had not taking possession of the said land pursuant to the acquisition proceedings and the possession of the land continued to be with the farmers/landowners. Against the judgement of the full bench special leave petitions were filed before the Hon'ble Supreme Court where also interim protection was granted restraining the State Government from forcefully dispossessing the landowners/farmers.
30. The Supreme Court while deciding the bunch of cases in the matter of *Savitri Devi vs State of U.P 2015 (7) SCC 21* on 14/05/2015 where in paragraph No. 44 of the said judgement it has been observed that many residents of Patwari village had entered into the agreement with the authorities agreeing to accept enhanced compensation at the rate of 64.7%, and the special leave petitions filed by the authority were dismissed.
31. Considering the findings of the writ petition that interim orders were passed in all the cases at the very initial stage, and

subsequently the finding of the full bench that the possession of the land continued to be with the landowners/farmers, and subsequently interim protection was granted by the Supreme Court, it is clear that the State Government never obtained the physical possession of the land and consequently the GNIDA could not have given the physical possession of land till 14/05/2015.

32. It is against the backdrop of the aforesaid facts that the issue to be considered is as to whether actual physical possession of the land was given to the petitioner or not? The GNIDA considering the fact that there were farmers agitations and litigations were pending, pursuant to the land acquired by the State Government, which was handed over to the GNIDA for development, a policy was framed to grant benefit to the allottees and developers who are being given land by the GNIDA.
33. The board of GNIDA in its 103rd board meeting held on 14/12/2015 considered and passed a policy known as the Zero period Policy decided that in case certain situations were found to be existing then they will declare that period to be a Zero period during the said period the premium and interest would be deferred, no penalty interest would be charged in installments would be adequately shifted ahead. The said policy was issued on 28/03/2016. The pre- conditions for grant of the zero policy benefit were:-
 1. In the authority has been unable to hand over the physical possession of the plot for any reason.
 2. If due to breach of public order due to which the possession cannot be handed over or there is encroachment over the allotted land due to which the development is not possible on the land;
 3. In case there is a stay order passed by any court due to which the allotment, execution of lease deed or possession has been Stated due to which the construction work cannot be carried on,

4. In case any order has been passed by the State Government or GNIDA due to which the lease deed could not be entered into; Then subject to the determination of the aforesaid conditions, during the zero period the interest which falls due for payment during the said period would be shifted till the end of the Zero period, and no penal interest would be charged.

34. In the 103rd board meeting, the matter specially pertaining to Ecoteck 11 was deliberated and it was determined that the physical possession of the plot could not be handed over to the developer and therefore they were given the benefit of the zero period policy from 01/04/2011 to 21/03/2016. The similar policy was reiterated by the board of GNIDA in its 107th board meeting held on 24/12/2016 and notified by order dated 04/01/2017, where it stated that the standing committee would consider and recommend the case for grant of zero period to the Chief Executive Officer of GNIDA, which would take final decision in the matter.

35. The GNIDA in its counter affidavit filed on 08/08/2023 in paragraph 13 have Stated that the petitioner has been given the benefit of zero period during pendency of the litigation before the High Court from 21/10/2011 to 24/08/2012. No reason has been given for limiting the benefit of zero period only for the period 21/10/2011 to 24/08/2012 and not extending it till actual physical possession has been handed over has been stated.

36. In the impugned order the only issue which has been dealt with by the State Government is with regard to the handing over of the possession of the plot after execution of the lease deed to the petitioner.

37. Analysing the aforesaid facts, it is seen that writ petitions challenging the land acquisition in village Patwari were filed between 2008-09 and in all the writ petitions interim orders were passed to maintain status quo, and the full bench has categorically held that the possession land including the land situated village Patwari was never taken by the State Government. During the

pendency of proceedings before the Supreme Court interim protection was given in favour of the existing landowners and against the GNIDA and the State Government. Despite the orders of maintenance of status quo having been passed by the High Court in the case of ***Har Karan Singh vs State of U.P*** writ petition no. 17068 of 2009 regarding the land situated in village Patwari, the GNIDA proceeded to allot the land in favour of private developers and the possession certificates were also issued. The certificates were signed only by the officers of the GNIDA without there being any independent witness or drawing up a panchnama evidencing that the actual possession of the plot has been handed over to the petitioner.

38. The GNIDA in an order passed on 09/06/2013 have stated that in the 92nd Board meeting had considered the aspect of granting the benefit of Zero period for the land acquired in village Shahberi and Patwari as there were some orders of the High Court and consequently decided to grant the benefit of Zero period From 21/10/2011 to 24/08/2012. From the order dated 09/06/2013 it is clear that the GNIDA was fully aware of the interim orders passed by the High Court and subsequently by the Supreme Court and for which reason possession could not have been given to the allottees, which was duly considered in the 92nd board meeting and the benefit of zero period was granted.
39. Further, it is noticed that the letter was got signed from the petitioner which was titled as possession certificate on 16/03/2010 on the basis of which the respondents contended physical possession was handed over to the petitioner.
40. Considering the various judgements as considered above including ***Indore Development Authority v. Manoharlal***, this Court is of the considered opinion that a mere paper signed by an authority of GNIDA without it being signed by any other independent person it cannot be said that actual physical possession was handed over to the petitioner. The petitioner, on the other hand, has been

repeatedly requesting GNIDA to hand over the actual physical possession of the plot. The petitioner had further intimated that it would initiate building the boundary wall, and in fact, it had engaged a contractor to build the boundary wall, which was obstructed by the farmers, and the GNIDA as well as police authorities were duly intimated about the said fact on 25/01/2012.

41. It has been contended by GNIDA, the mere fact that the petitioner had commenced construction of boundary wall evidences that the petitioner had the possession over the said plot.
42. The aforesaid premise on which the impugned order has been passed is itself a baseless and not believable. From the fact that the petitioner attempted to initiate construction, that too of the boundary wall, and from the said facts it cannot be said that it had actual physical possession of the entire plot. On the other hand, we find that , the GNIDA itself never had the actual physical possession of the said plot which was allotted to the petitioner due to various interim orders passed by the High Court and the Supreme Court, and they themselves have considered this fact when they passed the order dated 09/06/2013 and gave benefit of the zero period for the allotments made in village Patwari. The declaration of Zero period was from 19/07/2011 to 24/08/2012. During this period, even the respondents admit that there were sufficient reasons due to which the possession could not be given to the allottees.
43. There is no material on record to suggest that after 24/08/2012 actual physical possession was given to the petitioner. We also take due notice of the fact that during the pendency of the special leave petition before the Hon'ble Supreme Court, interim orders were operative against the respondents in favour of the landowners. The said cases came to be finally decided on 14/05/2015 and accordingly till the said date the possession could not have been handed over to the petitioner.

44. Assertions made by the respondents which run contrary to the findings recorded by the High Court and Supreme Court cannot be accepted. The insistence of the respondents with regard to the handing over possession, in fact, amounts to the contempt of the orders of the High Court, as when an order of status quo has been passed with regard to the disputed plot, it was not open for the GNIDA to change the said status quo by handing over possession to the petitioner.

45. It is for the aforesaid reasons that the contention of the respondents cannot be accepted and is accordingly rejected. As the petitioner was not given the benefit of zero period policy, the respondents continued to raise demands due to non-payment of the premium and other dues and thereby issued a letter dated 17/01/2023 which has also been assailed by the petitioner in the present writ petition. In the said demand letter, the petitioner has been required to pay

(a) an amount of ₹ 15,57,54,818/- on account of default in the payment of premium,

(b) an amount of ₹14,55,26,129/- on account of default in payment of the lease rent and

(c) an amount of ₹3,01,86,595/- as additional charges for the default committed by the petitioner.

46. The petitioner, on the other hand, insists that had the benefit of Zero period should be granted to it and therefore the petitioner is not be liable to pay the said amount, and without considering the aspect of non-handing over of the possession, the said demand having been raised is illegal and arbitrary. It has further been contended that the computation of the amount is, on the face of it, arbitrary and has been made without taking into account the premium already paid by the petitioner, and further that the benefit of the zero period already granted to it for a limited period.

47. The revisions preferred by the petitioner before the State Government have been considered and decided in the most cursory and summary manner without taking into account the relevant facts or properly applying the mind to the facts in issue. It was incumbent on behalf of GNIDA to fairly disclose before the State Government, the facts pertaining to the interim order passed by the High Court as well as by the Supreme Court for maintenance of status quo due to the litigation preferred by the farmers/landowners by challenging the land acquisition proceedings. There is no doubt that the possession of the disputed land was never handed over to the allottees, and it is for this reason that the GNIDA itself had granted the benefit of Zero period from 21/10/2011 to 24/08/2012 petitioner. The GNIDA being an instrumentality of State is under a mandate to act reasonably and fairly, and consequently should have itself considered the fact that the possession of the disputed land could not have been given to the petitioner in light of the interim order passed by the High Court and Supreme Court, and also that this fact was recognised by them when they granted the benefits of Zero period to the petitioner. No material has been adduced by the respondents which may indicate that actual physical possession was handed over to the petitioner, and therefore, the only conclusion which can be drawn by this court with regard to actual physical possession is that the same was never given to the petitioner subsequent to the allotment, and the execution of possession certificate issued to the petitioner does not amount to handing over of the actual physical possession of the plot to the petitioner.

48. This Court is also of the considered view that when the actual physical possession of the allotted plot has not been given to the allottee, due to existence of any condition stated in the zero period policy of GNIDA it cannot demand enhanced interest, penal interest etc. which may be payable by the allottee in case he fails to pay the dues within the prescribed time. The unreasonableness on part of the respondents is writ large on the face of the record where

on one hand they themselves have given and admitted the benefit of Zero period to be petitioner, but have subsequently opposed the grant of the same for subsequent period without there being any change in the circumstances, or any intervening fact which may demonstrate that the actual physical possession of the disputed plot was given to the petitioner.

49. We also express our deep concern as to the manner in which the appeal/revisions are being decided by the State Government. In exercising the statutory power vested with the State Government, it is mandated to act as independent arbiter and not as spokesperson for the authority concerned who is duty bound to defend their actions. The manner in which the State has proceeded to reject the revision preferred by the petitioner clearly indicates non-application of mind and the cursory manner of dealing with such important disputes which leaves much to be desired. The State while delegating its power to the Government officials, should adequately consider their seniority and the capability to deal with such important matters.
50. Considering the fact that we have already held that actual physical possession of the allotted plot was not given to the petitioner, and even the benefit of the zero period was given for a limited period between 21/10/2011 and 24/08/2012, we see no reason for rejection of the claim of the petitioner regarding handing over of the actual physical possession. Considering that levy of penal interest and other penalties having been raised on the petitioner only on account of the fact that he has not deposited the said amounts claiming benefit of zero period, the demand raised by the respondents without adequately considering the claim of the petitioner is also illegal and arbitrary and, therefore, set aside.
51. For the aforesaid reasons the writ petition is **allowed**. Order dated 27/10/2020 passed by the State Government as well as the demand letters dated 24/09/2019 and 17/01/2023 are quashed. Respondent no.2 is directed to hand over the physical possession of the allotted

plot to the petitioner forthwith, within a period of two weeks from the date a certified copy of this Judgment is submitted to the opposite party no.2.

52. Respondent no.2(GNIDA) is directed to pass appropriate order for the grant of benefit of zero period to the petitioner taking into account all the relevant factors including the interim orders of the High Court and Supreme Court and findings recorded by this Court hereinabove, and only thereafter issue a fresh demand letter taking into consideration the amounts already deposited by the petitioner. Let the said exercise be concluded expeditiously, say within a period of 2 months from the date a certified copy of this Judgment is submitted to the opposite party no.2.

(Alok Mathur, J.)

Dt. 19.12.2024.

RKM.