



2025:AHC:174585

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - C No. - 19097 of 2023

M/S Tanisha Builders Private Limited

.....Petitioner(s)

Versus

State Of U.P. And 3 Others

.....Respondent(s)

Counsel for Petitioner(s) : Abhinav Gaur, Vibhu Rai

Counsel for Respondent(s) : Shivam Yadav, Anjali Upadhya, C.S.C.

Court No. - 6

Judgment Reserved on 11.09.2025

Judgment Delivered on 26.09.2025

HON'BLE PRAKASH PADIA, J.

1) The present writ petition has been filed by the petitioner with the following prayers:

" I. Issue an appropriate writ order or direction to set aside the order dated 09.05.2023 (as contained in Annexure no.1) passed by the respondent No.4.

II. Issue an appropriate writ order or direction to set aside the order dated 10.01.2022 (as contained in Annexure no.2) passed by respondent no.3;

III. Issue an appropriate writ order or direction to set aside the demand dated 08.02.2019 (as contained in Annexure No. 9)."

2) The facts, as stated in the writ petition are that the petitioner, a private limited company, registered under the provisions of Companies Act, 1956, is engaged in business of development of real estate. The petitioner company was initially allotted plot Nos. 12 & 17, Sector Knowledge Park-3, Greater Noida, by allotment order dated 6.6.2003, consisting of an area of 80,970 square meters. The said land was allotted at the rate of Rs. 570/- per square meter. The petitioner, in compliance of the aforesaid allotment letter has paid a sum of Rs. 4,96,96,783/- upto 4.6.2007 as mentioned in para 7 of the writ petition.

3) It is further stated that the Development Authority was not in position to deliver the possession of plot nos. 12 & 17, allotted to the petitioner. It is further stated that by letter dated 6.7.2011, the respondent Development Authority re-allotted another plot bearing Plot No. 223, Sector Knowledge Park-7, Greater Noida, measuring 77,081.48 square meter at the rate of Rs. 570/- per square meter to the petitioner for development of IT/ITES project. In pursuance of the aforesaid allotment, a lease deed was executed on 4.10.2011. It is further stated that without delivering the physical possession of plot, a possession certificate was forcibly got signed by the petitioner on 7.4.2011, i.e., prior to execution of the lease deed. It is stated that the physical possession of plot was not handed over to the petitioner, as the said plot was under encroachment.

4) In para 20 of the writ petition, it is stated that the total premium of allotted plot as per lease deed dated 4.10.2011 was Rs. 3,29,52,333/-, whereas the petitioner has already deposited a sum of Rs. 4,96,96,783/- upto the year 2007 against plot Nos. 12 & 17, allotted by allotment letter dated 6.6.2003. Thus, nothing was payable by the petitioner.

5) As re-allotted plot was also occupied by the farmers and there was encroachment over plot, the petitioner continuously and regularly written letter and has personally met with the officers of the Development Authority to get plot encroached free and handover the physical possession of the said plot. The copy of the letter dated 12.9.2013. requesting for physical possession has been annexed as annexure-7 to the writ petition.

6) It is further stated that the total premium, as per lease deed dated 4.10.2011 was Rs. 3,29,52,333/- and the petitioner has deposited a sum of Rs. 4,96,96,783/-, as such, there was an excess amount with the Development Authority, amounting to Rs. 1,67,44,450/-. The Development Authority has issued a no dues certificate dated 17.12.2015 in favour of the petitioner. The said no dues certificate has been annexed as annexure-8 at page 123 of the writ petition.

7) It is further stated that the dimension of the plot along with boundaries was also not provided to the petitioner, as such, he was unable to submit plan for approval with the Development Authority.

8) On 8.2.2019, the respondent Development Authority issued a notice, raising demand of Rs. 3,40,33,879/- towards additional compensation to be paid to the farmers. It is stated that the said demand was perverse and illegal, as at the time of execution of the lease deed dated 4.10.2011, no such condition of demand of additional compensation was incorporated in the lease deed, as such, the petitioner was not liable to pay the said amount.

9) By notice dated 20.11.2019, the Development Authority issued a show cause asking the petitioner to show cause as to why the allotment be not cancelled for not paying the lease rent and additional compensation as well as for not obtaining the functional certificate of the project.

10) The said notice was replied by the petitioner by reply dated 3.3.2020 and a prayer was made to waive the demand of additional compensation. The petitioner, in his reply has also stated that there is already deposit a sum of Rs. 1,67,44,450/- as excess amount, whereas the lease rent was Rs. 8,23,809/- per annum. In view of the said fact, a request was made for adjustment of the lease rent against excess deposit amount.

11) The petitioner submitted drawing plans on 26.5.2020 for sanction with the Development Authority, however, without considering any of the representations/reply, the Development Authority issued another notice dated 18.12.2020, stating therein that by letters dated 29.6.2017, 16.10.2018, 2.1.2019, 20.8.2019 & 20.11.2019, the petitioner was required to explain (1) a sum of Rs. 7,49,91,259/- being amount of additional compensation, has not been deposited (2) non-submission of application for sanctioning of lay out plan, (3) not completing the project within time and (4) non deposit of exemption for payment of stamp duty with interest with the Development Authority. It was also stated that despite the last opportunity granted to complete the construction upto 30.6.2020, no construction has been carried out as well as require the investment in project had not been done and the various rebate granted to the petitioner has not been reimbursed to the Development Authority, as such, show cause was issued to the petitioner, asking him to appear for personal hearing and submit his explanation by 24.12.2020. The petitioner submitted reply to the aforesaid show cause notice on

24.12.2020. The petitioner, in paragraphs 49, 50, 51 & 53 has stated the facts which were narrated in reply to the show cause notice.

12) Thereafter on 20.1.2021, another letter was issued to the petitioner, asking him to provide details of submission of building plan and receipt of deposit of requisite fee. The said notice was replied by the petitioner, by letter dated 11.2.2021.

13) The respondent Development Authority, thereafter issued office-order dated 25.10.2021, directing the petitioner to submit an application for sanction of map and deposit an amount equivalent to 3% of the current allotment rate, as the delayed fee for considering the application for sanction of map along with outstanding dues including premium, lease rent and additional compensation. The aforesaid notice was replied by the petitioner, by letter dated 24.11.2021.

14) In between the respondent Development Authority issued show cause notice dated 16.8.2021, stating therein that as per the government order dated 30.7.2021, a personal notice granting one year time to complete the construction is being issued and in case, the said construction is not completed within one year from the date of notice, the allotment will stand automatically cancelled.

15) It is further stated that without completion of one year from the date of notice, i.e., 15.8.2022. the order dated 10.1.2022 has been passed by the respondent Development Authority, cancelling the allotment of the petitioner on two grounds, namely, (1) non-payment of additional compensation and lease rent (2) non-construction of building within time.

16) Being aggrieved with the aforesaid order dated 10.1.2022, the petitioner filed revision before the State Government, which has been rejected by the respondent no. 1, by an order dated 9.5.2023.

17) It is argued by the learned counsel for the petitioner that in the reply submitted by the Development Authority before the respondent no. 1, it was admitted that the amount of Rs. 87,47,623/- was excess amount to the lease amount of plot no. 223. It is also admitted in the aforesaid reply that there was encroachment in plot no. 223 and obstetrical in possession

were removed by the Development Authority in January 2015. Thus, these two facts being admitted by the Development Authority. It is clear that the entire act of the respondent in demanding excessive amount and not considering the fact that the construction could not be carried out within time due to encroachment over plot, vitiate the order passed by the Development Authority dated 10.1.2022 and the order dated 9.5.2023 passed by the respondent no. 1.

18) It is further argued that the State Government has made an amendment in 2020 in Section 7 of Uttar Pradesh Industrial Area Development Act, 1976 by inserting a proviso to said section by U.P. Act No. 25 of 2020. By the aforesaid proviso, it has been provided that if within period of 5 years from the date of possession or within period fixed for utilization in condition of allotment whichever is longer, the land is not utilized the lease deed will stand cancel and land shall vest with the authority. It is further provided in the said proviso is that in case the aforesaid period has expired, the authority shall give a notice to allottee to use the land for purpose, for which it was allotted within period of 1 year and if within the above period of 1 year the allottee does not use the land then the allotment and lease deed shall stand automatically cancelled. The aforesaid proviso inserted w.e.f. July 28, 2020 is as under:-

"(2) It shall be deemed to have come into force w.e.f. July 28,2020.

2. In section 7 of the Uttar Pradesh industrial Area Development Act, 1976 the following proviso shall be inserted, namely:-

"Provided that where any land so allotted is not utilized for the purpose for which it was allotted within the period of five years from the date of possession or within the period fixed for such utilization in the conditions of allotment, whichever is longer, the lease deed will stand cancelled and the land shall vest with the authority.

Provided further where the aforesaid period has already lapsed before the commencement of this Act, the Authority shall give a

notice to the allottee to use the land for the purpose for which it was allotted within a period of one year and if within the above period of one year the allottee does not use the land, then the allotment and lease deed shall stand automatically cancelled."

19) Subsequently, a clarification of aforesaid proviso was issued by the State Government on 30.7.2021 in consultation shall vest with Nyay Vibhag, clarifying that the period of 1 year will be counted from the date of personal notice issued to the allottee.

20) In the present case, in pursuance of the aforesaid amendment and government order, notice was issued to the petitioner on 16.8.2021, granting one year time to the petitioner to complete the construction and settle the payment. The said notice is annexed at page 180 of the writ petition, which reads as under:

"महोदय,

नोटिस अवगत कराना है कि उपरोक्त सन्दर्भित भूखण्ड के आई०टी० विभाग में उपलब्ध रिकार्ड के अनुसार आपके द्वारा वर्तमान तक आवंटित भूखण्ड पर सम्पूर्ण परियोजना निर्मित कर सम्पूर्ण परियोजना का कार्यपूर्ति प्रमाण पत्र प्राप्त नहीं किया गया है एवं ना ही सम्पूर्ण परियोजना के कार्यपूर्ति प्रमाण पत्र प्राप्त करने के सम्बन्ध में कोई साक्ष्य / अभिलेख आई०टी० विभाग के रिकार्ड के अनुसार उपलब्ध कराये गये है। उपरोक्त के अतिरिक्त आपको आवंटित भूखण्ड के सापेक्ष विभिन्न मदों में देयता भी बनती है जो आपके द्वारा प्राधिकरण के पक्ष में जमा कराया जाना अपेक्षित/वांछित हैं। प्राधिकरण की नीति के अनुसार आपको पट्टा प्रलेख में निर्धारित समय सीमा एवं इसके पश्चात समय-समय पर प्राधिकरण बोर्ड द्वारा निर्धारित सशुल्क समय विस्तरण अवधि में सम्पूर्ण परियोजना का कार्यपूर्ति प्रमाण पत्र प्राप्त करना था, जिसके पश्चात भूखण्ड निरस्तीकरण की श्रेणी में है। इस सम्बन्ध में शासनादेश दिनांक 30.07.2021 के अनुपालन में इस व्यक्तिगत नोटिस जारी करने की तिथि से 1 वर्ष तक प्रत्येक दशा में सशुल्क सम्पूर्ण परियोजना का कार्यपूर्ति प्रमाण पत्र प्राप्त किया जाना अनिवार्य है अन्यथा आवंटन एवं पट्टा प्रलेख स्वतः निरस्त माना जायेगा। शासनादेश की प्रति संलग्न है

नोट:- यदि आपके द्वारा सम्पूर्ण परियोजना का कार्यपूर्ति प्रमाण पत्र प्राप्त कर लिया गया है तो उपरोक्त नोटिस को शून्य समझे।"

21) Thus, it is argued that since the cancellation order has been passed prior to completion of one year from the date of notice, i.e. on 10.1.2022,

as such on this ground alone, the order dated 10.1.2022 passed by the Development Authority and revisional order dated 9.5.2023 passed by the respondent no.1, are illegal, contrary to the aforesaid provisions and are liable to be quashed by this Hon'ble Court.

22) The learned counsel for the respondents has argued that prior to issuance of aforesaid notice dated 16.8.2021, various notices i.e, notice dated 16.10.2018, 21.1.2019, 20.11.2019, 5.3.2020 & 2.7.2020 were issued to the petitioner, asking him to make payment and complete the construction but these notices have not been complied with, as such, in pursuance of the aforesaid notices issued prior to notice dated 16.8.2021, the order dated 10.1.2022 has been passed. It is further argued that prior to the amendment made in section 7 of Uttar Pradesh Industrial Area Development Act, 1976, the notice was issued to the petitioner, as such, the said amendment will not be applicable and the orders passed by the Development Authority as well as State Government are just and lawful orders and the writ petition is devoid of merit and liable to be dismissed.

23) Heard learned counsel for the parties.

24) The averment of issuance of notice dated 16.8.2021 has been made by the petitioner in paragraph 64 of the writ petition. The said averment of paragraph 64 of the writ petition has been replied by the respondent in its counter affidavit filed by Shri Arvind Mohan Singh, Manager (IT), Greater Noida Industrial Development Authority. The said counter affidavit has been filed on behalf of respondent nos. 2 to 4. In paragraph 29 of the counter affidavit, paragraph 64 of the writ petition has been replied. The said paragraph 29 of the counter affidavit is being reproduced below:

"That the contents of paragraph nos. 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79 and 80 of the writ petition are not accepted, in reply it is stated that the proper answer has been given in the preceding paragraphs of this counter affidavit."

25) Thus, there is no specific denial of fact that the notice dated 16.8.2021 was issued to the petitioner in pursuance of the amendment

made in Section 7 of Act of 1976, as clarified/explained by government order dated 30.7.2021. The reference of the government order is also mentioned in the notice dated 16.8.2021.

26) Thus, it is clear that before completion of period of one year granted by notice dated 16.8.2021, the order dated 10.1.2022 has been passed.

27) The argument of learned counsel for the respondent that prior to issuance of notice dated 16.8.2021, various notices, as referred above, were issued to the petitioner, as such, the order impugned dated 10.1.2022 has been passed in pursuance of earlier notices is not sustainable. Once a fresh notice dated 16.8.2021 has been issued in pursuance of amendment made in section 7 of Uttar Pradesh Industrial Area Development Act, 1976, as clarified by the State Government by government order dated 30.7.2021, the earlier notices issued to the petitioner stand superseded and the earlier notices lost their existence. By notice dated 16.8.2021 one year time was granted to the petitioner to complete the construction, as such, prior to expiry of one year, i.e. 15.8.2022, the cancellation of lease of the petitioner is wholly illegal and is also against the provisions contained under section 7 of Act of 1976. This aspect of the matter has not at all been considered by the respondent no. 1, while passing the impugned order. The said ground was taken by the petitioner in his revision, but it has not been considered by the respondent no. 1. As the order dated 10.1.2022, on the face of it, is illegal and contrary to the provisions contained under section 7 of the Act of 1976, the consequential order of the revisional court is also illegal and contrary to law and is not sustainable.

28) In view of the aforesaid the order dated 10.01.2022 passed by the Development Authority and order dated 09.05.2023 passed by respondent no.1, are hereby quashed.

30) Since, the aforesaid order has already been quashed, the recovery of demand dated 08.02.2019, copy of the same is annexed as Annexure No.(9) to the writ petition is also quashed.

31) The petitioner is entitled for all consequential benefits.

32) The writ petition is **allowed**. No order as to cost.

(Prakash Padia,J.)

September 26, 2025
Arti/S.K.