

Judgment Reserved on 16.07.2025

Judgment Delivered on 25.07.2025

Neutral Citation No. - 2025:AHC:123104

Court No. - 33

Case :- WRIT - C No. - 12985 of 2024

Petitioner :- M/S Empire E-Parks Private Limited

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Tarun Agrawal

Counsel for Respondent :- Anjali Upadhya,C.S.C.,Vineet Pandey

Hon'ble Prakash Padia,J.

1. Heard Shri Shashi Nandan, learned Senior Counsel assisted by Shri Vinayak Mittal, learned counsel for the petitioner, learned Standing Counsel appearing on behalf of Respondent No. 1 and Shri M.C. Chaturvedi, learned Senior Counsel assisted by Shri Vineet Pandey, learned counsel for the Respondent Nos. 2 & 3.
2. Pleadings have already been exchanged between the parties.
3. With the consent of the counsel for the parties, the present writ petition is disposed of finally at the admission stage itself.
4. The petitioner has preferred the present writ petition inter-alias with the following prayers:-

“i) Issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 28.02.2023 passed by the respondent no. 1; (Annexure No. 1);

(ii) Issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 13.03.2020 passed by the respondent Greater Noida Authority;

(ii-a) Issue a writ, order direction in the nature of certiorari quashing Agenda no. 107/13 adopted by the respondent authority vide 107th Board Resolution dated 24.12.2016 to the extent it excludes the petitioner from the purview of zero period.

(iii) Issue a writ, order or direction in the nature of mandamus commanding the respondent authority to extend the benefit of zero

period to the petitioner from the date of allotment till the date of delivery of physical possession of the entire allotted area;

(iv) Issue any suitable writ, order or direction in addition to and in supplement to refer to above, as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

(v) Award the cost of the writ petition to the petitioner."

5. Facts in brief as contained in the writ petition are that the petitioner is company incorporated under the provisions of Companies Act, 1956, has applied for allotment of plot. The petitioner company was allotted IT/ITES plot measuring 80941 square meters by the respondent authority vide order dated 27.09.2007.

6. Subsequent to the same, a lease deed was executed between the petitioner and respondent- Greater Noida Industrial Development Authority on 12.09.2008. As per the allotment, letter dated 27.09.2007, the premium of plot was Rs.12,96,90,567/- out of which Rs.3,89,07,170/- was payable at the time of execution of the lease deed.

7. It is admitted between the parties that the aforesaid amount was duly paid by the petitioner company to the Respondent authority. The balance premium of Rs.9,07,83,396/- was payable in 12 half yearly installments along with 11% interest commencing from 27.05.2008.

8. The annual lease premium was fixed at Rs.32,42,268/- being 2.50% of total allotment premium. The lessee was also given an option of payment by one time lease rent equal to 27.5% of total allotment premium. The term of the lease was 90 years.

9. It is further stated in the writ petition that the petitioner has paid 1st installment of Rs.1,25,58,369/- on 27.03.2008. In paragraph-44 of the writ petition the details of amount paid by the petitioner has been mentioned. As per details the petitioner company has paid the sum of Rs.17,60,16,572.94/- between 2007 and 2019. It is further stated in the writ petition that apart from the aforesaid amount, an additional amount of Rs. 32.42 lacs as lease premium and Rs.1.47 crores as stamp duty has been paid by the petitioner.

10. The payment of the aforesaid amount has not been denied by the Respondent Nos. 2 & 3 in the counter affidavit. Only vague averment has been made to the effect that the payment made by the petitioner cannot be presumed that the entire amount has been deposited by the petitioner against plot in question.

11. As per the terms of the lease deed, the Respondent No. 3 is under obligation of developing infrastructure in Sector in question.

12. Respondent-authorities are also under obligation to develop sewage system and power supply. In paragraph-10 of the writ petition it is stated that the petitioner vide letter dated 31.10.2008 has pointed out that despite payment of Rs. 4.62 crores and an interest of Rs. 49.90 lacs, no external development has been made by the Respondent-authority around the plot allotted in favour of the petitioner.

13. In this view of the matter, the petitioner made an application dated 25.11.2008 under Right to Information Act seeking details of infrastructure provided by the Respondent-authority. Reply to the aforesaid letter was given by the Respondent-authority on 12.01.2009 in which the Respondent-authority informed that the road is under construction and sewer in front of plot of the petitioner has been completed. Petitioner made efforts writing letters to the respondent-authority for completion of infrastructure, but no head was paid by respondent to complete infrastructure.

14. Since no infrastructure was provided by the Respondent authority pursuant to the lease deed dated 12.09.2008 the petitioner approached this Court by filing Writ Petition No. 20797 of 2012 with the prayer to direct the respondents to commence, carried out and complete the infrastructure in Knowledge Park-5, as required for development of the said plot.

15. In the aforesaid writ petition a further prayer has been made that the period from the date of deposit of allotment money, i.e., 22.11.2007 till the date of completion of infrastructure at Knowledge Park-5, be declared as zero/dead period for all purposes.

16. During pendency of the aforesaid writ petition, the petitioner again moved application dated 06.03.2018 to the Respondent-authority for the grant of benefit of zero period on the ground that the authority has failed to provide un-hindered possession of the entire allotted plot area and also has failed to provide complete infrastructure as per terms of lease.

17. In the aforesaid application, the petitioner has also stated that allotted area has been taken over by the farmers on account of failure of authority to disburse the compensation, and as such, it is not possible for the petitioner to carry on any development over the allotted area.

18. The petitioner along-with his application has provided sufficient evidence to the Respondent-authority that the actual physical un-hindered possession of plot has not been provided to the petitioner. However, the Respondent No. 2 by an order dated 13.03.2020 rejected the application submitted by the petitioner for the grant of benefit of zero period facility, on the ground that in view of 107th Board Meeting petitioner is not entitled for benefit of zero period.

19. The aforesaid order dated 13.03.2020 was challenged by the petitioner before this Court by filing Civil Misc. Writ Petition 'C' No. 15060 of 2020. The aforesaid writ petition was disposed of by this Court directing the petitioner to approach the State Government as provided under Section 41(3) of the U.P. Urban and Planning Development Act, 1973 read with Section 12 of the U.P. Industrial Area Development Act, 1976.

20. Pursuant to the order passed by this Court, the petitioner has preferred the Revision before the State Government stating there in mainly:-

(I) Against total allotted premium of Rs. 12.97 crores, the petitioner has deposited Rs. 17.7 crores. The petitioner has also stated that he has also deposited 1st annual lease premium of Rs. 32.42 lacs as well as stamp duty of Rs. 1.47 crores. Thus, he had deposited the entire principle amount towards allotment premium and only interest amount was due and payable.

(ii) *At the time of execution of the lease deed, no external development has been carried on by the authority and despite repeated requests made by the petitioner, the authority did not provide the basic infrastructure till 2014.*

(iii) *The allotted land is occupied by the farmers, who have been given electric connection by Noida Power Corporation Ltd under the farmers quota.*

(iv) *Shri Sripal Singh, Senior Manager, Works Greater Noida by its letter dated 27.07.2017 had clearly admitted that the farmers are indeed in possession of the land allotted to the petitioner.*

21. On the aforesaid grounds, the petitioner sought benefit of zero period. Aforesaid revision was decided by the Respondent No. 1 vide order dated 28.02.2023 by which certain directions were given by him to the Respondent-authority to take a decision in the matter a fresh for the grant of benefits of the zero period to the petitioner.

22. The respondent no. 1, while passing the order dated 28.2.2023 has recorded a finding that the petitioner time and again has intimated to the authority as well as the police administration about unauthorized possession over the plot allotted to him. The respondent no. 1 has also recorded a finding that in part of allotted land, there is unauthorized possession and construction and unauthorized power connection. The revisional authority has further recorded a finding that the development authority has accepted that in part of the allotted land, there is unauthorized encroachment by the farmers. The operative portion of the order passed by respondent no. 1 reads as follows:-

"4. उभय पक्षों की विस्तृत सुनवाई तथा पुनरीक्षणकर्ता द्वारा अपनी याचिका तथा सुनवाई के समय प्रस्तुत किए गए तथ्यों तथा प्राधिकरण द्वारा प्रस्तुत किए गए तथ्यों पर सम्यक् विचारोपरान्त निम्नवत् स्थिति स्पष्ट हो रही है :-

उपरोक्त तथ्यों एवं साक्ष्यों से यह विदित है कि आवंटी द्वारा समय समय पर किसानों द्वारा भूखण्ड के कुछ भाग पर मुआवजा वितरण को लेकर विरोध प्रदर्शन किए जाने, कार्य अवरुद्ध किए जाने की शिकायत पुनरीक्षणकर्ता द्वारा प्राधिकरण तथा पुलिस को की जाती रही। प्राधिकरण तथा पुलिस की उपलब्ध आख्याओं में भी कुछ भाग पर अवैध कब्जा, निर्माण, अवैध विद्युत कनेक्शन आदि प्राप्त करने की पुष्टि होती रही है। प्राधिकरण द्वारा पुनरीक्षणकर्ता के प्रत्यावेदन निस्तारण आदेश दिनांक 13.03.2020 में मुख्य कठिनाई पुनरीक्षणकर्ता का प्रकरण जीरो पीरियड की प्रचलित नीति से आच्छादित न होने की रही, जिसके कारण उसे जीरो पीरियड

पॉलिसी का लाभ अनुमन्य नहीं किया गया। हालांकि प्राधिकरण स्वयं यह स्वीकार करता है कि आवंटित भूखण्ड के एक हिस्से पर अतिक्रमण रहा। परन्तु ऐसी परिस्थिति में निःशुल्क समयवृद्धि प्रदान किये जाने पर विचार किया जा सकता था

अतः प्रकरण में यह न्यायोचित होगा कि प्राधिकरण उपलब्ध अभिलेखों तथा समय-समय पर किये गये भौतिक सत्यापन के आधार पर यह सुनिश्चित कर ले कि भूखण्ड के कितने हिस्से पर किसानों के विरोध/अवैध कब्जे के कारण निर्माण कार्य में बाधा थी। यह बाधा कब से कब तक रही एवं तदनुसार अनुपातिक रूप से उक्त भाग पर निःशुल्क समयवृद्धि प्रदान करें।

तद्विषय पुनरीक्षण याचिका निस्तारित की जाती है।

अरविन्द कुमार

अपर मुख्य सचिव।”

23. That despite the fact that the revisional authority has recorded the aforesaid findings the benefit of zero period has been partly allowed.

24. The revisional authority has also recorded findings that the only objection of respondent no. 2 is that in view of 107th Board Meeting the benefit of zero period cannot be granted to the petitioner.

25. It is further argued by the learned counsel for the petitioner that once these findings have been recorded by the Revisional Authority, there is no occasion to remand the case to the development authority to ascertain the portion of the plot which was under unauthorized possession of the farmers and the period for which on account of agitation of the farmers, the construction could not be carried on, with a further direction to the development authority to grant proportionate zero period benefit to the petitioner. The Revisional Authority itself ought to have given the benefit of zero period to the petitioner from the date of allotment till the unauthorised possession was removed by the Development Authority.

26. It is further argued that once the finding has been recorded by the Revisional Authority that there had been unauthorized possession over the plot and due to agitation of the farmers, the construction could not be carried on and accordingly the proportionate benefit of zero period policy should be granted to the petitioner.

27. From the perusal of the aforesaid findings recorded by the Revisional Authority, it is clear that the respondent no. I was of the

view that the petitioner is entitled for the benefit of zero period.

28. Counsel for the petitioner has placed reliance upon the condition nos. AA & BB of the lease deed and on the basis of aforesaid submits that the petitioner was required to complete construction of first phase i.e. 40% of the total allowed covered area within 3 years from the date of possession of the plot and within 5 years from the date of taking over possession of the plot. Since un-interrupted complete possession of the plot has not been given to the petitioner, as such, he is entitled for the benefit of zero period.

29. The petitioner has further claimed that in view of 103rd Board Meeting, the petitioner is entitled for benefit of zero period, as all the conditions mentioned in the said Board Meeting, as affirmed by office order dated 28.3.2016 were fulfilled.

30. Counsel for the petitioner placed reliance upon the Division Bench Judgment of this Court passed in ***Writ-C No. 8018 of 2022 (M/s Gaurasons India Ltd. Vs. State of U.P. And 3 Others)*** decided on 30.05.2022.

31. In the counter affidavit filed by the respondents it is stated that the decision of Board Meeting for grant of zero period benefit was reconsidered in 107th Board Meeting on 24.12.2016 and according to the decision taken in the said Board Meeting, the benefit of zero period can be given only on two conditions. Paragraph 14 of the counter affidavit read as follows:-

"14. That the contents of paragraph nos. 19 and 20 of the writ petition as stated are not admitted. It is further submitted that the Authority convened 107 Boards meeting on 24.12.2016 and according to decision taken therein only on two points the benefit of zero period can be given under zero period policy which is as follows:-

(i) माननीय न्यायालय के स्थगन आदेश रहने के कारण आवंटन/पट्टा/कब्जे की प्रक्रिया पर रोक हो अथवा निर्माण कार्य आगे नहीं किया जा सकता है।

(ii) शासनादेश/प्राधिकरण बोर्ड के आदेशों के परिपेक्ष्य में पट्टाप्रलेख निष्पादित हो सका हो।

As is clear from the aforesaid policy the case of the petitioner-

company is not covered and accordingly the order dated 13.03.2020 by which the demand of benefit during zero period was disposed of which is completely in accordance with and the same as such does not require any interference by this Hon'ble Court.."

32. The counsel for the respondent submits that since the aforesaid two conditions are not present in the case of the petitioner, he is not entitled for benefit of zero period.

33. In response to the aforesaid argument as raised by the Counsel for the Respondent-authority, Counsel for the petitioner placed reliance upon paragraph 7 of the counter affidavit filed by the authorities, which reads as follows:-

*"That in reply to the contents of paragraph no. 5 of the writ petition it is stated that the petitioner-company, for the purposes of I.T./I.T.E.S. was allotted Plot No. 05 Sector Knowledge Park-5 Greater Noida (Area 80941.00 square meter) on 27.09.2007 whereafter the lease deed was executed on 12.09.2008 for an area of 80900.42 square meter was executed in favour of petitioner-company. As such the orders dated 28.02.2023 and 13.03.2020 passed by the respondent no.1 and respondent no.3 is in accordance with law and rule. **It is further relevant to mention here that the respondent no.2 is trying to remove the encroachment and as soon as the police force is available with the Authority, entire encroachment shall be removed and according to order dated 28.02.2023 passed by the respondent no.1 the free time extension shall be given to petitioner-company."***

34. From the facts as narrated above, it is clear that the possession of the entire plot has not been handed over to the petitioner, even till the date of filing of counter affidavit, as is clear from paragraph no. 7 of the counter affidavit which was sworn by the authorities on 12th August, 2024. Thus, it is clear that the encroachment over plot in disputed continued at least upto 12.8.2024 and till the date of filing of the counter affidavit, the possession of the entire plot had not been handed over to the petitioner. The petitioner has moved application for grant of zero period benefit, which was as per 103rd Board Meeting. As per aforesaid board meeting and office order dated 28.3.2016 in cases where on any reason, the possession of the plot could not be handed over to the allottee or on account of law and order problem, the allottee could not carry on construction, he is entitled for the grant of zero

period benefit. The aforesaid two conditions are mentioned in the office order dated 28.3.2016.

35. The claim of the petitioner for benefit of aforesaid has been denied on the ground that as per government order dated 17.12.2013, without permission of the Government, the benefit of zero period cannot be granted and subsequently, the matter of grant of zero period benefit was placed in 107th Board Meeting dated 14.12.2016 and in the said board meeting, it was decided that only in two conditions i.e., the benefit could be provided i.e.

(i) On account of interim order of any Court, the allotment/lease/possession was stayed.

(ii) On account of government order/order of board, the lease deed could not be executed.

36. Based on the aforesaid averment, the orders impugned have been passed that the decision of 103rd Board Meeting has been superseded by 107th Board Meeting, the petitioner is not entitled for the benefit of 103th Board Meeting. The Revisional Authority, while passing the order dated 28.2.2023 has recorded a finding that the development authority has accepted that in part of the allotted land, there had been encroachment. The Revisional Authority has directed the development authority to ascertain the fact that on how much portion of the allotted land and for how much period, physical possession could not be handed over and construction could not be carried on. Based on the verification of the aforesaid facts by the development authority, the Revisional Authority has directed that the proportionate benefit of zero period be granted to the petitioner.

37. Once the Revisional Authority itself has allowed the grant of benefit of zero period on the ground that the plot was under encroachment, the Revisional Authority has accepted that the petitioner is entitled for benefit of 103rd Board Meeting, as the revisional authority, which is state, has granted permission to grant benefit of zero period. Thus the condition of Government Order dated 17.12.2013 is

fulfilled.

38. The Division Bench of this Court in writ petition filed by **M/s Gaurasons (supra)** has granted the benefit of zero period where the plot of allottee was not free from encroachment. Paragraph nos. 8 to 11 of the aforesaid judgment reads as follows:-

"8. A perusal of the impugned order dated 23.12.2019 passed by the Additional Chief Executive Officer, Greater Noida Industrial Development Authority reveals that the petitioner was allotted Plot No.FH-2 area 404879 sq. meters on 25.04.2011 but lease deed of only an area of 401710.41 sq. meters was got executed on 02.11.2012. Lease of an area of 3168.59 sq. meters was admittedly not got executed. The petitioner soon after execution of the lease deed dated 02.11.2012 appraised the Authority on 09.11.2013 annexing on site photographs that the plot allotted was not free from encroachments of farmers who were preventing the petitioner to construct boundary wall. A supplementary lease deed dated 04.12.2015 was got executed in respect of balance area of 3168.59 sq. meters. On 27.09.2016 a fresh modified lease plan was issued by the Authority which was subject to the outcome of Writ Petition No.12300 of 2010, Writ Petition No.12303 of 2010 and Writ Petition No.32438 of 2012. A fresh lease deed dated 09.01.2017 was got executed which mentioned a 18 meters road across the plot allotted. The impugned order further records that the claim of the petitioner for grant of the zero period benefit was to be considered in terms of the direction of the Court dated 21.06.2018 passed in Writ Petition No.21878 of 2018 according to the prevailing policy of the Authority but the same has not been done.

9. We find that the Authority has proceeded to consider the claim of the petitioner on the basis of the agenda No.103/14 in the 103rd Board Meeting even though the direction in the writ petition No. 21878 of 2018 was to decide as per the policy decision taken in 104th Board Meeting held on 14.03.2014. In fact the authority has proceeded to hold that the claim of the petitioner for grant of the zero period benefit cannot be considered as the policy under the 103rd meeting was not approved by the Government and thus was not effective and the claim is to be considered as per the prevailing policy. However, we find that the authority has not accorded consideration of the claim of the petitioner as per the prevailing policy for grant of zero period benefit rather has proceeded to reject the claim by holding that the claim cannot be considered under the policy under the 103rd Board Meeting. Thus the action of the Development Authority is not in accordance with law.

10. This Court further finds that when the claim of the petitioner for zero period benefit was pending consideration, the State Government issued Government Order dated 05.12.2019 laying down the parameters for grant of the zero period benefit. The said Government Order was adopted by the authority. Once the

Government Order dated 05.12.2019 was in existence, the claim of the petitioner was required to be considered in terms of the parameters laid down in the Government Order dated 05.12.2019. We also take note of the fact that subsequently the authority has issued an office order dated 03.03.2020 adopting the Government Order dated 05.12.2019. This being so, we are of the view that the rejection of the claim of the petitioner for grant of zero period benefit by the impugned order dated 23.12.2019 is wholly unjustified and the petitioner is entitled for grant of zero period benefit.

11. Accordingly, the writ petition is partly allowed and the impugned order dated 23.12.2019 rejecting the claim of the petitioner for grant of zero period benefit is set aside. It is held that the petitioner is entitled for grant of zero period benefit from the date of allotment, i.e. 25.04.2011 to till date. The respondents-Authority are also directed to consider the sanctioning of the revised layout plan regarding FH-02, Agricultural Green, Greater Noida, in accordance with law considering the observations made herein-above."

39. Thus, it is clear that the respondent no. 1 itself has admitted that the petitioner is entitled for benefit of zero period for the period, the possession of the entire plot was not handed over to him and the plot consists of encroachment by farmers. Thus, the respondent no. 1 itself is of the view that the case of the petitioner is covered as per conditions contained in 103rd Board Meeting and office order dated 28.3.2016 and has granted permission to grant benefit of zero period as per Government Order dated 17.12.2013 and thus, the ground that the case of the petitioner is not covered under 107th Board Meeting is not sustainable.

40. Thus, in view of the aforesaid facts, when the respondent no. 1, i.e., the State Government itself has considered the case of the petitioner and order for grant of benefit of zero period for the period encroachment continued and the decision of this Court as rendered in ***Writ-C No. 8018 of 2022 (M/s Gaurasons India Ltd. (Supra)***, the present writ petition is allowed. The order dated 13.3.2020 is hereby quashed and the order dated 28.2.2023 passed by the respondent no. 1 is modified to the extent it denied the benefit of zero period for the entire period to the petitioner.

41. A mandamus is issued to the respondent-authorities to grant the

benefit of zero period to the petitioner from the date of allotment till un-interrupted peaceful physical possession of entire plot is handed over to the petitioner.

42. With the aforesaid observations, the writ petition is **allowed**. No order as to costs.

Order Date :-25.07.2025
Swati/Arti