

S/L 1
24.8.2023
Court No.26
SD

WPA 24550 of 2016

M/s. Sens Hotels Pvt. Ltd.
Vs.
State of West Bengal & Ors.

Mr. Vipul Kundalia
Mrs. Sonal Shah

...for the Petitioner.

Mr. Rajarshi Basu
Mr. Tapas Ballav Mandal

...for the State.

Mr. Satyajit Talukdar
Ms. Piu Karmakar

...for the K.M.D.A.

This is an application under Article 226 of the Constitution of India wherein the writ petitioner has challenged the show cause notice dated November 24, 2015 and the subsequent order for payment of penalty dated September 19, 2016.

The extract of show cause notice is enumerated below:-

Sir,

Whereas it has been verified from records that plot no. 5/4 at Block-I, Category- Bulkland under EKADP was allotted to Sens Group vide this office allotment letter no. 173/KMDA/Sectt/AD-16/2007 Dated: 23.10.07.

AND

Whereas possession advice was issued on 21.01.2007.

AND

Whereas License deed was executed on 28.04.2008 in respect of Plot no.5/4 Block-I, Category- Bulkland under EKADP.

AND

Whereas according to conditions at clause 2(iii) of the license deed executed on 28.04.2008 the allottee was supposed to complete the construction within 5 (five) years from the date of execution of License deed but it has been seen that the allottee has not submitted completion certificate. So, he is asked to show cause as to why the allotment will not cancelled as per the existing clause of license deed for non construction within schedule time.

Yours faithfully,

Sd/-
Deputy Secretary,
Estate Unit, KMDA.

Subsequently, a demand notice was raised by order dated September 19, 2016 approximately of Rs. 8 crore for delay in construction.

Several judgments have been cited on behalf of both the parties and this Court was on the verge of passing a judgment on the issue. However, Mr. Satyajit Talukdar, counsel appearing on behalf of the respondent authorities has placed a recent order dated February 10, 2022 passed in the case of **Siddharth Co-operative Housing Society Ltd. vs. Kolkata Metropolitan Development Authority & Ors.** along with **Dinabandhu Andrews Institute of Technology and Management & Ors. (in MAT 839 of 2018 with CAN 6085 of 2018)** passed by the Supreme Court.

The Supreme Court has noted that contrary views were taken in **Siddharth Co-operative Housing Society Ltd. (supra) and Dinabandhu Andrews Institute of Technology and Management & Ors. (supra)** with regard to issue that is also in question before this Court. Subsequently, the parties before the Supreme Court came up with a compromise formula based on a Pricing Committee meeting held on February 12, 2009 which reads as under:-

Sl No.	Category of Plots	Extension upto 5 years	Extension from 5-10 years	Extension beyond 10 years
1.	Commercial	2% of the rate at which the land was allotted to them	5% of the rate at which the land was allotted to them	10% of the rate at which the land was allotted to them
2.	Non-Commercial	Not more than 2% of the rate at which the land was allotted to them	Not more than 5% of the rate at which the land was allotted to them	Not more than 10% of the rate at which the land was allotted to them

Mr. Talukdar submits that Kolkata Metropolitan Development Authority has accepted the above table before the Supreme Court as the basis for charging penal rate.

As it is evident from the show cause notice that the construction was to be completed by April 2013 while in the present case, the completion certificate was received in the year 2016. Therefore, the particular case at hand falls under the category of "*Extension upto 5 years*" for which penalty is to be paid at the rate 2% at which land was allotted to the petitioner.

In light of the same, the petitioner herein has submitted that he is willing to make the payment of 2% of the value of the land, that is, Rs.3,00,40,000/- that was paid by him in the year 2007.

In light of the submissions made by both the parties, the petitioner is directed to make payment of 2% of Rs.3,00,40,000/- within a period of five weeks from date.

In light of the above discussions and observations, the show cause notice dated November 24, 2015 and order dated September 19, 2016 are quashed and set aside on the understanding that the petitioner shall make the payment as directed above.

In the event, payment is not made, penal charges shall apply on the said sum at the rate of 15% per annum.

With these observations, WPA 24550 of 2016 is disposed of.

All parties are to act on the website copy of this order.

(Shekhar B. Saraf, J.)