IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-21141-2023 (O&M)
Reserved on: 16.01.2024
Pronounced on: 26.02.2024

WTC Noida Development Company Limited ….Petitioner

Versus

State of Punjab and Others .....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI
CORAM: HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present: Mr. Akshay Bhan, Senior Advocate, with
Mr. Sangram Singh Saron, Advocate, for the petitioner.

Mr. V.G. Jauhar, Addl. A.G., Punjab.

Mr. Gurminder Singh, Advocate General, Punjab, with
Mr. J.S. Gill, Advocate, for respondents No.2 and 3.

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VIKRAM AGGARWAL, J.

1. The petitioner-company is a public limited company. It claims to be a well known international brand of repute in the field of commercial buildings. It has knocked the doors of this Court praying for the following substantial relief:-

> ***"Civil Writ Petition under Article 226 of the Constitution of India for issuing a writ of Mandamus or any other appropriate writ, order or direction for directing the Respondents to give a true, correct and fair Property Ledger in respect of the Commercial Plot No. 2 (measuring 8.00 acres) situated at Block-D, Aerocity, Sahibzada Ajit Singh Nagar (Mohali), Punjab ('the Plot') of the Petitioner by modifying the Order of the Chief Administrator, GMADA dated 14.08.2023 (Annexure P-29) by incorporating and making the following modifications, compliances and corrections, that is to say:-***

i) dispense with the charging of interest for the period between the date of auction i.e., 10.07.2015 and the date of allotment i.e., 07.09.2015;

ii) treat the additional Floor Area Ratio (FAR) of the Plot as surrendered ab-initio and adjust the amount paid by Petitioner for additional FAR towards payment of bid va1ue/amount of Rs. l31,33,00,000/-;

iii) dispense with the charging of any interest for the Plot during the period of Covid-19 pandemic in the Country being a force majeure situation in consonance with and in the spirit of the general orders passed from time to time by the Hon'b1e the Supreme Court in Re:Cognizance for Extension of Limitation, Suo Motu Writ Petition (C) No.3 of 2020 initially on 23.03.2020/P-32 whereby the period of limitation for the litigants across the country in filing their petitions/applications/suits/appeals all other proceedings within the period of limitation prescribed under the general law of limitation or under special laws (both Central and/or State) was enlarged w.e.f. 15.03.2020 till further orders and the subsequent orders passed on 06.05.2020 (Annexure P-33), 10.07.2020 (Annexure P-34), 08.03.2021 (Annexure P-35), 23.09.2021 (Annexure P-36) and 10.01.2022 (Annexure P-37) by which these continued till 01.03.2022; and also by the order dated 28.04.2021 (Annexure P-38) passed by this Hon'b1e Court in Court on its own motion v. Union of India and others CWP PIL No.77 of 2021 (O&M) and further extended and modified from time to time till 07.03.2022;

iv) dispense with the charging of any interest for the period between 16.03.2023 till 14.08.2023 and interest on interest i.e., the period during which the allotment in favour of the Petitioner remained cancelled, besides the calculation and final figure mentioned and arrived at is not in consonance with the terms of allotment and is based on a mere ipse dixit of the Respondents;

v) dispense with the charging of interest on interest, on penal interest and further penal interest on penal interest, which is neither stated or envisaged as per the terms of allotment;

vi) in any case charge interest and Penal interest, if leviable, only at the prevailing rates of GMADA; and further

Issue a writ, order or direction in the nature of Mandamus directing the Respondents to allow and permit the Petitioner to mortgage the Plot in consonance with condition No.5 (ii) of the allotment letter dated 07.09.2015 (Annexure P-2);

Issue a writ order or direction in the nature of Mandamus restraining the Respondents from cancelling the allotment or resuming the site in question until the true and correct ledger and accounts are not brought on record before this Hon'b1e Court and the calculations arrived at are in consonance with the terms of allotment."

2. In pursuance to an auction notice issued by respondent No.2-GMADA (Greater Mohali Area Development Authority) (Annexure P-1), for allotment and sale of various sites/plots at S.A.S. Nagar (Mohali), the petitioner-company participated in the auction held on 10.07.2015. It was declared successful in its bid

for commercial plot No.2 measuring 8 acres situated at Block-D, Aerocity, Mohali (for short ‘the plot’). Allotment letter dated 07.09.2015 (Annexure P-2) was issued as per which the total sale consideration was ₹131,33,00,000/- (131 crores 33 lacs). As per the same, a sum of ₹28,89,26,000/- was initially paid by the petitioner-company. The balance 80% amount i.e. Rs.105 crores 6 lacs 40 thousand (₹105,06,40,000/-) was required to be paid either in lumpsum with 10% rebate provided the same was paid within a period of 60 days from the date of the issuance of the allotment letter or in 10 yearly equated installments with interest @ 12 % per annum as per the schedule given in the allotment letter.

3. The possession of the plot was handed over to the petitioner-company on 17.09.2015. Building plans submitted by the petitioner-company were approved by GMADA on 06.04.2016. However, some restriction on the height, which as per the plan was 77 meters, was imposed by the Airports Authority of India (AAI) while granting NOC as per which the height of the building could not be more than 59.7 meters.

4. It appears that the implementation of the project ran into rough weather which in turn affected the payment schedule. Be that as it may, the payment schedule was re-scheduled on 24.06.2019 (Annexure P-10). However, since the petitioner-company could not adhere to the payment schedule, the allotment of the plot was cancelled vide order dated 16.03.2023 (Annexure P-25).

5. Aggrieved by the said order, an appeal was preferred by the petitioner-company. During the pendency of the appeal before the appellate authority, an eviction notice dated 10.04.2023 (Annexure P-27) was issued. The same was assailed before this Court by way of ***CWP-8508-2023***. The writ petition was disposed of on 24.04.2023 (Annexure P-28) by a Co-ordinate Bench directing that till the decision of the stay application or the appeal, whichever was earlier, *status quo* with regard to possession would be maintained. The appeal was disposed of by the appellate authority vide order dated 14.08.2023 vide which the payment schedule was again

modified (Annexure P-29). As the said schedule could also not be adhered to, the petitioner-company approached this Court by way of the instant petition.

6. The writ petition came up for hearing for the first time before a Co-ordinate Bench on 21.09.2023 and the following order was passed:-

> ***"Senior Counsel for the petitioner has raised the argument that in pursuance of the auction held on 10.07.2015 for the site in question measuring 8 acres for ₹131,33,00,000/- having a Floor Area Ratio (FAR) of 1:2, the allotment letter was issued on 07.09.2015 (Annexure P-2). The case of the petitioner is that additional FAR was purchased which was permissible @ 1:3 while referring to the communication dated 01.01.2016 (page No.88). It is submitted that on account of the objections received from the Indian Air Force, the height of the proposed building was reduced to 59.7 meters from 77 meters as envisaged while referring to the communication dated 15.11.2016 (Annexure P-4).***
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> ***A representation had been made on 05.08.2022 (Annexure P-18) bringing this fact to the notice of the authorities and for seeking relaxation in the payment schedules due to various factors including Covid-19 pandemic. The same was rejected on 10.08.2022 (Annexure P-21). Accordingly, cancellation order dated 16.03.2023 (Annexure P-25) was passed while noting that there were outstanding amounts and payments have been delayed by more than 18 months, as per the terms of the allotment letter and, thus, 10% of the consideration money and interest was forfeited. The appeal was preferred and on account of the same being not taken up, CWP-8508-2023 was filed, in which order dated 24.04.2023 (Annexure P-28) was***

passed wherein interim protection was granted. In pursuance of the same, order dated 14.08.2023 (Annexure P-29) has now been passed, whereby the petitioner has been put to terms to deposit ₹124.50 crores in 7 monthly installments of ₹17.79 crores each to be deposited by 10th of every month. The order of resumption, thus, has been restored conditionally. It is, thus, the argument of the Senior Counsel that the issue of reduction of FAR was never decided which would reduce the outstandings and even after the decision a representation was filed on 29.08.2023 (Annexure P-30) wherein specific request has been made for surrendering the FAR, so that the additional payment would come down by almost 40 crores. It is further pointed out that ₹123 crores have already been paid, which would show the bonafide of the petitioner.

Mr. Jauhar on instructions from Mr. Sobha Gir, Law Officer has submitted that it was a consented order, which would be clear from the order itself, as the representative of the petitioner-company himself offered the payment given by post-dated cheques. He, however, fairly submits that he can seek instructions whether the respondents are still willing to reconsider the issue provided that the petitioner will show some bonafides by depositing the first installment which had become due on 10.09.2023 and payment of which is already delayed.

Accordingly, we are of the considered opinion that if the petitioner company makes deposit of ₹17.79 crores for the installment of September, 2023 within a period of 2 weeks from today, the respondent-authority will take a decision on the

representation 29.08.2023 (Annexure P-30) within 10 days thereafter.

Adjourned to 06.11.2023."

7. The aforesaid order dated 21.09.2023 was, however, not complied with by the petitioner and the first installment of ₹17.79 Crores was not deposited within the stipulated time. Detailed arguments were addressed by learned counsel representing the parties after which, this Court passed the following order on 07.11.2023:

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"Concededly, the petitioner failed to deposit the first installment of Rs.17.79 crores within the stipulated time.

Learned Senior counsel for the petitioner submits that it was owing to an unforeseeable situation and circumstances beyond the control of the petitioner, the requisite amount could not be deposited. However, in terms of the order passed by this Court, he has brought a demand draft for Rs. 18 crores [bearing No. 897655], in the name of the Estate Officer, GMADA, towards the first installment. And, a formal application under Section 148 of the Code of Civil Procedure, for extension of time, has already been moved. And a copy has been served upon the respondents. He submits that bonafides of the petitioner cannot be doubted, as concededly, it has already deposited a sum of Rs.123 crores with the respondent authorities.

To this, learned State counsel, in reference to the previous order dated 06.11.2023, submits that he has been instructed by Mr. Sobha Gir, Law Officer, that authorities are

ready and willing to accept the first installment. Whereafter, the authorities shall consider the grievance/claim of the petitioner qua surrendering of FAR. And, thus the period within which the petition was required to deposit the first installment be extended till today.

Accordingly, the draft in original (for Rs.18 crores), has been handed over to the learned State counsel in court, and a copy thereof is retained on record as 'Mark X'.

In the wake of the above and in terms of the statement made by learned State counsel, the order dated September 21, 2023, is modified to the extent that the period to deposit the first installment, that had fallen due in September, 2023, is extended till today.

Accordingly, learned State counsel prays for a short accommodation to seek further instructions in the matter.

Learned Senior counsel submits, for, in the meanwhile, the authorities have initiated the proceedings under Section 46(1) of the Punjab Regional and Town Planning and Development Act, 1995, and thereafter, an order dated 03.11.2023, under Section 46 (1)(C) of the Act has also been passed, the petitioner apprehends immediate dispossession.

To which, learned State counsel submits that as indicated in the order dated 03.11.2023 (ibid), a period of 30 days was granted to the petitioner to vacate the site, and therefore, the matter be adjourned by three weeks.

Adjourned to 01.12.2023."

8. Thereafter, pursuant to the matter having been adjourned on a few occasions on the request of learned counsel for the parties, this Court was apprised

on 12.12.2023 that the matter had been discussed/deliberated upon with the concerned authorities and was under active consideration. Time was sought to submit a proposal/affidavit as to how and in what time, the petitioner would clear the outstanding dues pursuant to the order dated 14.08.2023 vide which the payment had been rescheduled by the authorities. The order dated 12.12.2023 reads as thus:

> ***"Learned Senior counsel for the petitioner submits that the matter as regards payment of installments, in terms of order dated August 14, 2023 (P-29), was discussed/deliberated upon with the Principal Secretary (Housing), and is still under active consideration. He prays for time to submit a proposal/affidavit, as to how and in what time, the petitioner shall clear the outstanding dues, pursuant to the order referred to above.***
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> ***That being so, learned Senior counsel for respondents No.2 and 3 fairly submits that let the matter be adjourned to enable the petitioner to do the needful.***
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> ***Adjourned to 15.01.2024."***

9. On the adjourned date i.e. 15.01.2024, learned Advocate General, Punjab submitted that not even once had the petitioner reverted to the competent authority to resolve the issue as a result of which the matter was at a stand still. Under the circumstances, the following order was passed on 15.01.2024:

> ***"In reference to our order dated 12.12.2023, learned Senior counsel for respondents No.2 and 3 submits that not even once the petitioner reverted to the competent authority-Principal Secretary (Housing) to resolve the issue, and therefore, even today, the matter is at a standstill. He submits that in the given circumstances, the petitioner is not entitled to any further indulgence.***

The position is not disputed by learned Senior counsel for the petitioner. However, he prays for a short accommodation to ascertain true and actual position, and seek instructions.

Adjourned to 16.01.2024."

10. Learned Senior counsel representing the petitioner strenuously urged that the petitioner-company is an established name in the field and only due to the Covid-19 pandemic and other factors, the payment schedule went haywire. Learned Senior counsel submitted that the petitioner-company has all the intentions to pay the balance amount but the respondents would also have to consider the issue of the height of the building since there were initially no restrictions. Learned Senior counsel also submitted that the petitioner-company would pay a further sum of approximately ₹20 crores instantly towards the balance outstanding. Learned Senior counsel submitted that under the circumstances, the prayers made in the writ petition deserve to be accepted.

11. Per contra, learned Advocate General, Punjab submitted that the petitioner-company had made persistent defaults in payments and even the order dated 14.08.2023 passed by the appellate authority had not been complied with. It was submitted that the petitioner had knocked the doors of this Court and this Court had also shown indulgence to test the *bona fides* of the petitioner-company but the petitioner-company had failed to show its *bona fides*. Learned counsel submitted that under the circumstances, the writ petition deserved to be dismissed.

12. We have given our thoughtful consideration to the issue in hand. The payment to be made by the petitioner was rescheduled vide order dated 14.08.2023 (P-29). The conditions were as follows:

"(i) The appellant will deposit this balance amount of Rs.124.50 Crore in 7 installments of Rs.17.79 Crore each. Accordingly, Rs.17.79 Crore will be deposited by the appellant on 10th of every month with 1st

> ***installment starting from 10.09.2023, till all outstanding dues of this site are deposited.***
>
> ***(ii) Re-scheduling of outstanding amount due as on date in installments would not be treated as waiver of any interest or penal interest, which the allottee/appellant is liable to be pay under the terms and conditions of allotment.***
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> ***(iii) In case there is default in payment of any monthly installment re-scheduled as above in Para no.(i), then the order of resumption passed by the Estate Officer (Plots), GMADA shall become operational and he shall be free to pass eviction orders against the appellant and take over possession of site.***
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> ***(iv) Apart from above, the allottee/appellant shall continue to comply with payment schedule of future installments without any default.".***

A perusal of the schedule shows that the outstanding amount of ₹124.50 Crores was to be paid in seven installments starting from 10.09.2023. As against this, only a sum of ₹18 Crores was paid in compliance of the orders passed by this Court. Eventually, after efforts of amicable settlement had been made but the same had failed, four more installments had become due by 15.01.2024 i.e. the installments due as on 10.10.2023, 10.11.2023, 10.12.2023 and 10.01.2024. Admittedly, the petitioner-company has to pay more than ₹100 Crores to the respondents and, as mentioned, by 15.01.2024, more than ₹70 Crores had become due. It is, therefore, clear that the petitioner-company neither honoured the order dated 14.08.2023 as per which, resumption of the site would become operative in case of failure to deposit nor did it make the payments after this Court had taken cognizance of the matter and even the State of Punjab had made all out efforts to arrive at an amicable settlement. Under the circumstances, there is serious doubt with regard to the *bona fides* of the petitioner-company and the matter is not required to be taken any further.

In view of the aforesaid, this Court does not find any reason to proceed further with the writ petition. Finding the same to be devoid of merits, the same is accordingly dismissed.

(ARUN PALLI)
JUDGE

(VIKRAM AGGARWAL)
JUDGE

Reserved on: 16.01.2024
Pronounced on: 26.02.2024
Prince Chawla

Whether speaking/reasoned : Yes/No.
Whether reportable : Yes/No.