

(2010) 10 SC CK 0029

In the Supreme Court Of India

Case No : Special Leave Petition (Civil) No. 10940 of 2008

Angel Baby Products Pvt. Ltd.

APPELLANT

Vs

New Okhla Industrial Development Authority and Others

RESPONDENT

Date of Decision : 27-10-2010

Acts Referred:

Citation : (2011) AIRSCW 206 : (2011) 2 AWC 1588 : (2010) 11 JT 538 :
(2010) 11 SCALE 355 : (2010) 12 SCC 701 : (2010) 10 UJ 5393

Hon'ble Judges : Altamas Kabir, J;A. K. Patnaik, J

Bench : Division Bench

Advocate : Manish K. Bishnoi, for the Appellant; Jayant Bhushan Manish Bishnoi, Amit Bhandari, Sanjeev Panigrahi and Ravindra Kumar, for the Respondent

Final Decision : Dismissed

Judgement

Altamas Kabir, J.—In this Special Leave Petition, the Petitioner has challenged the decision of the Allahabad High Court dismissing Writ Petition No. 16819 of 2003, filed by one Hira Lal Gupta and another praying for quashing of the notices dated 1.5.2002, 25.7.2002, 6.9.2002 and 22.3.2003 sent by the authorities of The New Okhla Industrial Development Authority, hereinafter referred to as 'NOIDA', imposing penalty against the writ petitioners for failing to get the lease deed for commercial plot No. 1/1-A, Sector 27, NOIDA, executed within the stipulated period of 120 days from the date of allotment of the plot. The said plot measuring 2970 sq. meters was initially allotted to the Writ Petitioner No. 1, Hira Lal Gupta, at the rate of Rs. 15,552/- per sq. meter. Later on, a revised allotment order was issued to Shri Gupta reducing the area of the plot from 2970 sq. meters to 2590 sq. meters and the consideration for allotment of the plot was proportionately reduced. Subsequently, disputes arose in regard to an irrigation drain which existed on a portion of the said plot, although, the existence thereof was not indicated in the brochure published by NOIDA. According to the Writ Petitioners, since the said problem was not attended to, the lease deed could not

be submitted for execution within the prescribed period of 120 days which attracted imposition of penalty.

2. On 24th March, 2002, the Petitioners made a representation to the Chief Executive Officer, NOIDA, for waiver of penalty on the ground that since the exact area and location of the plot was different from that specified in the brochure, the delay in execution of the lease deed could not be attributed to the Writ Petitioners and, accordingly, penalty could not be imposed against them. It appears that the Chief Executive Officer, NOIDA, waived the penalty imposed on the Writ Petitioners and granted them further two months' time to complete the execution of the lease deed. However, before the expiry of the said period of two months, the NOIDA authorities had written to the Writ Petitioners on 1st May, 2002, indicating that penalty would be charged with effect from 22nd November, 2001. The Writ Petitioners responded to the said letter by submitting a representation dated 15th May, 2002, praying for waiving the penalty on account of the drain passing through plot and also for providing any alternative plot in lieu of the plot already allotted.

3. The Writ Petitioners were informed on 22nd March, 2003, that the Board of NOIDA had rejected their proposal for waiver of the penalty and that the same would have to be paid within 30 days, otherwise their allotment would be cancelled. At the initial stage when the Writ Petition was filed, the High Court had passed an interim order on 18th April, 2003, staying the operation of imposition of penalty against the Writ Petitioners. Ultimately, after considering the submissions made on behalf of the respective parties, the High Court took note of Clause 25 of the Scheme indicating that the plots were to be sold on "as is where is" basis, leading to the presumption that the Writ Petitioners had knowledge of the existing irrigation drain on the plot. The High Court also took note of the power reserved to the NOIDA authorities to vary the area of the plot, which the allottee was bound to accept as final. The High Court also took into consideration the submissions made on behalf of the Board of NOIDA that in its 113th meeting held on 10th February, 2003, the Petitioners' representation was finally rejected but despite the same they did not deposit the penalty and insisted upon the waiver of penalty and interest.

4. Having arrived at the conclusion that the Writ Petitioners had knowledge of all the terms and conditions, status, location and other details about the plot, which was advertised for allotment, the High Court felt that there was no merit in the Writ Petition and dismissed the same. The interim order passed in the matter was also vacated.

5. Mr. Jayant Bhushan, learned Senior Advocate, who appeared for the Petitioner Company, submitted that having auctioned the plot in question without proper specifications and contrary to the description in its brochure, it was not within the competence of the NOIDA authorities to impose penalty on the Petitioner Company for not completing the execution of the lease deed within the stipulated period of 120 days from the date of allotment. In fact, in the aforesaid

background, a representation was made by Shri Hira Lal Gupta to the Chief Executive Officer, NOIDA, indicating that he wanted to transfer the plot in question to the Petitioner Company, wherein he and his son are Directors. Since the said formalities were likely to take some time, a prayer was made to the aforesaid Authority to extend the time for depositing the installments and for making the application in Form 37-I. In the same communication, a further prayer was made to waive the penalty due to the delay in execution of the lease deed. It is on that basis that Shri Hira Lal Gupta was granted two months' time, without penalty, for completion of formalities.

6. The said extension came to be considered by the Officer on Special Duty (G), who interpreted the same to mean that the Petitioner Company had been given two months' time without penalty only for change of constitution, but that the interest on the outstanding installments, penal interest and penalty, whatever was outstanding, would have to be recovered, as it was. On 1st May, 2002, the Deputy Manager (C), NOIDA, wrote to Shri Hira Lal Gupta in regard to his request for effecting the change relating to the transfer of the plot to the Petitioner Company. In his said letter, the said Authority requested Shri Gupta to submit the documents indicated in the said letter in order to effect the change of constitution in regard to the allottee of the plot in question. In addition, Shri Gupta was informed that on his failure to complete execution of the lease deed, a sum of Rs. 62,18,088.00 had become payable by way of late fee for the period between 22nd November, 2001 to 30th April, 2002. Furthermore, after the said period, penalty of Rs. 38,863.05 per day would also be payable. The Petitioner was requested to deposit the penalty amount for completion of Form 37-I for change of constitution and execution of the lease deed.

7. As indicated hereinabove, the imposition of penalty is the bone of contention in this Special Leave Petition.

8. Mr. Bhushan reiterated the submissions made before the High Court that on 24th March, 2002, when two months' time had been granted to the Petitioner Company by the Chief Executive Officer, NOIDA, for completion of the formalities for change of constitution, the Officer on Special Duty had acted illegally by passing an order on 11th April, 2002, which was within three weeks from the date of the order of the Chief Executive Officer, demanding payment of penal interest and penalty. Mr. Bhushan contended that during the extended period of two months, the Officer on Special Duty was not entitled to demand payment of penalty when, in fact, payment of such penalty had been specifically waived by the Chief Executive Officer.

9. On the other hand, learned Counsel for the Respondent Authority, supported the order of the Officer on Special Duty on the ground that the period for execution of the lease had been extended by a period of two months by the Chief Executive Officer in view of the prayer made by Shri Hira Lal Gupta to transfer the allotment in the name of the Petitioner Company, wherein both he and his son were Directors. Learned Counsel reiterated the submissions made before the

High Court that the order of the Chief Executive Officer, NOIDA, extending the time for completion of the execution of the lease deed would have to be considered in that context only. He urged that notwithstanding the time extended for completion of constitutional changes, the liability for payment of penalty did not stop on account of the order of the Chief Executive Officer which continued to remain operative after the expiry of 120 days from the date of allotment and the Petitioner Company was, therefore, liable to pay both the penalty charges as also the lease rent at the rate of Rs. 38,863.05 per day. Mr. Ravindra Kumar specifically referred to the subsequent order of the Chief Executive Officer dated 22nd July, 2002, by which he directed that the land (2590.86 sq. meters) shown in the brochure be given to Shri Hira Lal Gupta and penalty be recovered as per rules. He urged that the effect of the earlier order passed by the Chief Executive Officer on 24th March, 2002, stood superseded by the subsequent order, whereby penalty was directed to be recovered from the Writ Petitioners, according to the rules.

10. It was also reiterated that since the Petitioner Company had decided to invest a huge sum of money in the allotted land, it is difficult to accept that the Petitioner Company or its Directors would not have made enquiries as to the nature of the land which was being allotted to them. In other words, it has to be held that the Writ Petitioners were fully aware of the existence of the municipal drain on the land and absence of knowledge thereof was nothing but a ploy on the part of the Petitioner Company to avoid its responsibility regarding payment of penalty for non-compliance of the conditions to complete execution of the lease deed within 120 days from the date of allotment of the plot. Learned Counsel submitted that the position stood further compounded by the fact that under Clause 25 of the general terms and conditions spelt out in the brochure, it was clearly indicated that the allotment of the land was subject to variations in the area of the plot and that the same would have to be accepted by the allottees on "as is where is" basis.

11. Mr. Ravindra Kumar submitted that no case had at all been made out for interference with the orders passed by the High Court dismissing the Writ Petition.

12. For the reasons hereinafter following, we are unable to accept Mr. Jayant Bhushan's submissions questioning the order passed by the Officer on Special Duty dated 11th April, 2002, and the various notices subsequently issued on the basis thereof, demanding payment of penalty despite the order of the Chief Executive Officer waiving imposition of such penalty for the delay in execution of the lease deed.

13. The materials on record indicate that there had been correspondence exchanged between the parties with regard to the land allotted and the area thereof on account of the existence of the municipal drain either on the plot or in its vicinity. Shri Hira Lal Gupta had also made a request for the plot allotted in his name to be transferred in the name of the Petitioner Company in which he and

his son were Directors. Since the same was likely to take some time for completion of the formalities, a specific prayer was made to serve the penalty due to delay in the execution of the lease deed. In such background, the Chief Executive Officer, NOIDA, extended the period for completion of the formalities relating to the constitutional change by a period of two months without penalty from 24th March, 2002. Before the said period could expire, the Officer on Special Duty, on a misunderstanding of the order passed by the Chief Executive Officer, NOIDA, indicated by his order dated 11th April, 2002, that since the Chief Executive Officer had given two months' time without penalty only for change of constitution, interest on the outstanding installments, penal interest and penalty, were liable to be recovered from the Writ Petitioners. To add to the confusion, a further order was passed by the Officer on Special Duty (G) on 26th April, 2002, directing that steps be taken in terms of his earlier order dated 11th April, 2002, and indicating that two months' time given to the Writ Petitioners was for completion of formalities for change of the name of the allottee.

14. Up to this stage, the case of the Petitioner Company for waiver of penalty can be accepted, but the subsequent correspondence which followed between the parties and the failure of the Petitioner Company and Shri Hira Lal Gupta to complete the execution of the lease deed even within the extended time of two months, indicate that neither Shri Gupta nor the Petitioner Company had any inclination to complete the formalities for execution of the lease deed pursuant to the change in the name of the allottee from Shri Hira Lal Gupta to the Petitioner Company.

15. From the materials on record and the subsequent correspondence beginning with the letter dated 1st May, 2002, written by the Deputy Manager (C), NOIDA, it is apparent that the Petitioner Company and Shri Hira Lal Gupta were given a great degree of latitude to complete the transaction. In fact, meetings of the Committee had been convened on 23rd October, 2002 and 26th November, 2002, in which Shri Hira Lal Gupta appeared and made submissions for waiver of the penalty but on the basis of the record, the Committee rejected Shri Gupta's submissions and Shri Gupta was subsequently informed of the decision of the Committee which was approved at a meeting of the Authority convened on 15th February, 2003, under the Chairmanship of the Additional Chief Executive Officer, NOIDA. Even if initially a case may have been made out on behalf of the Petitioner Company that the execution of the lease deed could not be completed on account of the mis-description of the plot and in view of the prayer for change in the name of the allottee, on account of the subsequent conduct of the Petitioner Company and Shri Gupta, we are not inclined to interfere with the order of the High Court or the decision of the NOIDA relating to imposition of penalty and interest. However, we are also not inclined to accept the interpretation given by the Officer on Special Duty to the order passed by the Chief Executive Officer on 24th March, 2002, and, accordingly, we direct that in calculating the penalty and interest as payable under the agreement entered into between the parties, the said period of two months from the date of the order

dated 24th March, 2002, shall be excluded.

16. With the aforesaid modification of the order passed by the Chief Executive Officer on 22nd July, 2002 and the subsequent resolution of the NOIDA taken at the meeting convened on 15th February, 2003, the SLP stands dismissed.

17. There will, however, be no order as to costs.

Dear Brother,

I am sending herewith the draft judgment in the above matter for your kind perusal, suggestions and approval. The matter is listed for pronouncement of judgment on 27th October, 2010.

With warm regards,