
(2008) 04 AHC CK 0080
In the Allahabad High Court

Hira Lal Gupta and Another	APPELLANT
Vs	
New Okhla Industrial Development Authority (N.O.I.D.A.) and Others	RESPONDENT

Date of Decision : 09-04-2008

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2008) 3 AWC 2690

Hon'ble Judges : Rakesh Sharma, J;Anjani Kumar, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Rakesh Sharma, J.—Through this writ petition, petitioners have prayed for quashing of the notices dated 22.3.2003, 6.9.2002, 25.7.2002 and 1.5.2002 sent by the appropriate authorities of New Okhla Industrial Development Authority (hereinafter referred to as N.O.I.D.A.) imposing penalty against the petitioners for not getting the lease deed for the commercial Plot No. 1/1A, Sector 27, N.O.I.D.A. executed within the stipulated period of 120 days from the date of allotment of the said plot, that is, 25.7.2001. The petitioners have assailed the penalty imposed on them by N.O.I.D.A.

2. As per the learned Counsel for the petitioners, after completing necessary formalities, the petitioner was allotted a commercial plot No. 1/1A, Sector 27 in New Okhla Industrial Development Authority (hereinafter referred to as N.O.I.D.A.) on 3.7.2001. Initially, the petitioner was allotted 2970 Sq. Meters of land at the rate of Rs. 15,552 per Sq. Meter. Later on, a revised allotment order was issued to the petitioner indicating reduction of the area of the plot from 2970 Sq. Meters to 2590 Sq. Meters. The consideration for allotment of the plot was proportionately reduced. As per learned Counsel for the petitioners, on the spot, the area of plot was found to be different from that which was indicated in the Brochure. There existed an irrigation drain flowing through the plot, although its existence was not indicated in the Brochure. The petitioner had been moving

applications to the Chief Executive Officer, N.O.I.D.A., requesting him to make inspection of the spot and for disclosing of exact area and the boundaries of the plot. Since this was not done by the concerned authorities, the petitioners could not submit the lease deed for execution within the prescribed period of 120 days. On 24.3.2002, petitioners moved an application before the Chief Executive Officer, N.O.I.D.A. for waiver of the penalty by explaining it to him that since the exact area and location of the plot was different from that given in the Brochure, the delay in execution of the lease deed should not be attributed to the petitioners and the penalty may not be imposed against them. The Chief Executive Officer, N.O.I.D.A., waived the penalty imposed on the petitioners and granted further time of two months" for execution of the lease-deed.

3. Learned Counsel has further submitted that the concerned authority of the N.O.I.D.A. had written to petitioners vide letter dated 1.5.2002 that the penalty would be charged with effect from 22.11.2001. The petitioners responded to this letter by submitting a representation dated 15.5.2002 and several applications were also submitted by the petitioners in this regard to the N.O.I.D.A. Authorities from time to time for waiving the penalty drawing their attention that the drain passing through the plot was not covered nor any alternative plot was allotted to the petitioners. In the representation dated 21.9.2002, the petitioners indicated that on one occasion, the authorities of N.O.I.D.A. were willing to provide him with an alternative site. However, on 22.3.2003, the petitioner was informed that the Board of N.O.I.D.A. had rejected the proposal for waiver of the penalty and the petitioners shall have to pay the penalty within 30 days, otherwise, his allotment would be cancelled. A Division Bench of this Court had granted an interim order on 18.4.2003 staying the operation of imposition of penalty against the petitioners.

4. Learned Counsel for the petitioners has assailed the order of penalty on several grounds that the concerned authorities of N.O.I.D.A. were not addressing the problems faced by the petitioners. The real issue was that the exact location and the actual area of the plot in question was not the same on the spot as indicated in the Brochure. Since there was a dispute regarding the area and exact location of the plot in question, the authorities were duty bound to inform the petitioners about the same. It is well-settled that once a lease deed is registered with regard to a land, the area as defined in the lease deed is binding on the contracting parties. The Clause 19 of the Brochure ought not to have been invoked against the petitioners in the present set of circumstances. The order of the Chief Executive Officer, dated 24.3.2003 waiving the penalty imposed against the petitioners should not have been implemented. The Board of N.O.I.D.A. has not fairly dealt with the case of the petitioners.

5. Learned Counsel for the respondents has submitted that a scheme for allotment of commercial plot was published in the newspaper. The terms and conditions of allotment, location and area of the plots were mentioned in the Brochure of the scheme. The petitioners were allotted a commercial plot vide

allotment order dated 3.7.2001 and the total cost of the plot was Rs. 4,61,89,440. However, allotment money was reduced due to reduced area of the plot at the site. A copy of the site plan of disputed plot was indicated in the allotment order. It was clearly mentioned in Clause 25 of the Brochure of the Scheme that the plots were to be sold on "as is where is basis". Thus, the petitioners at the time of submitting his application for allotment of plot and also at the time of the allotment was well aware that there existed an irrigation drain on the site. The petitioners were duly informed about the size of the plot and he was asked to pay for the reduced area of plot and cost was reduced taking into account the size of the plot as it existed on the site. It was clearly indicated in Clause 25 of the Brochure that there may be variation in the area of the plot and the allottee was bound to accept the area of plot as final as per terms of allotment. The petitioners were required to deposit the total cost of the plot by 23.8.2001. However, the petitioners had deposited the payment after due date. The drain existing near the plot was to be covered and in fact work was in progress to cover the same. The petitioners were duly informed vide letter dated 7.7.2002, 1.5.2002, 25.7.2002 and 6.9.2002 to get the lease deed executed. It was the responsibility of the allottee to get the lease deed executed within 120 days from the date of formal allotment of the plot.

6. The petitioners sought for modification in the allotment order putting various terms before the authorities of N.O.I.D.A. Their application was duly dealt with and the same was rejected vide letter dated 1.5.2002. The petitioner No. 1 was asked to deposit the penalty vide letter dated 1.5.2002 and he was again informed to do the same vide letter dated 25.7.2002. The petitioners' matter was finally placed before the Board of N.O.I.D.A. which in its 113th meeting held on 10.2.2003 had finally rejected the request of the petitioners. Despite this, the petitioners did not deposit the penalty and insisted upon the waiver of penalty and the interest etc. An interim order granted by a Division Bench of this Court on 18.4.2003 is still operative and by virtue of this order, the petitioners did not deposit the amount of penalty and interest thereon. The petitioner was himself responsible for not executing the lease deed within the prescribed period of 120 days. The decision of the Board of N.O.I.D.A. was duly communicated to the petitioners vide letter dated 22.3.2003.

7. We have heard learned Counsel for the parties and perused the material on record.

8. Under Clause 19 of the General terms and conditions as spelt out in the Brochure and in the allotment order, the lease deed had to be executed within 120 days from the date of allotment of the plot, that is, 25.7.2001. If an allottee fails to get the lease deed executed within the stipulated period, he was liable to pay penalty, as per Clause 19 of the Brochure, a copy of which is enclosed as Annexure-1 to the writ petition. The Clause 19 is quoted below:

Abantan Rashi Ke Bhugtan Paschat Abantee Aayakar Aayukt, Lucknow Ke Karyalay Se Form 37 (i) (Yadi Lagu Ho) Prapt Karane Ke Liye agreement to lease

Nishpadit Karega Tatha Form 37 (i) Prapt Hone Ke Paschat Abantan Patra Ki Tithi Se Adhikatam 120 Din Ke Aandar Patta Pralekh Nishpadit Evam Panzikrit Kara Kar Kabza Lega. Yadi Abanti Iss Awadhi Mein Patta Pralekh Nishpadit Karke Kabza Nahi Leta To Vilamb Ke Liye Vah Arthdand Dene Ke Liye Vadhya Hoga. Pratham 30 Din Ke Samayvridhee Hetu Rs. 5.00 Prati Varg Meter Pratt Din. Aagle 60 Dino Tak Samast Awadhi Hetu Rs. 10.00 Prati Varg Meter Prati Din Tatha Aagle 90 Din Tak Evam Iske Paschat Samast Awadhi Hetu Rs. 15.00 Prati Varg Meter Prati Din Ki Dar Se Arthdand Dey Hoga.

9. It is evident from the record and the pleadings that the petitioners had failed to get the lease deed executed within 120 days of the date of the allotment of the plot. In the present case petitioner No. 1 was duly informed vide letter dated 1.5.2002 to get the lease deed executed failing which he shall be liable to pay penalty and late fee. Further communication was sent to him on 25.7.2002 and 6.9.2002 and finally the Board of N.O.I.D.A. in its 113th meeting held on 10.2.2003 had rejected the request of the petitioners for waiver of the penalty and the interest etc. No proper Justification or compelling reasons or circumstances have been indicated by the petitioners in this petition to persuade this Court to grant indulgence to the petitioners in waiving penalty and interest thereon. As far as the existence of a drain, location and status of the plot, it was clearly indicated in the Brochure that there may be variations in the area of plot. It was also indicated in the site plan made available to the petitioners that there existed an irrigation drain adjoining the plot in dispute. In para 14 of the counter-affidavit, it has been brought to the notice of the Court by the N.O.I.D.A. that the work to cover the drain was in progress. Moreover, the plot was allotted on the basis of "as is where is" as mentioned in Clause 25 of the Brochure of the scheme duly published in the newspapers for information of the general public and desirous persons who were seeking allotment of plot in the scheme. Clause 25 of the Brochure is quoted below:

Vanijya Sampati Ka Abantan "Jahan Hai Jaisa Hai" Ki Paddhati Par 90 Varsha Ke Liye Pattee Par Hoga Tatha Yeh Samay Patta Pralekh Ke Nishpadan Ki Tithi Se Lagu Hoga. Abantit Parisampati Ke Kshetraphal Ke Aantim Satyapan Mein Yadi Koi Aantar Ho To Use Abantee Sweekar Karega Tatha Tadanusar Yadi Koi Attrikt Dey Rashi Banati Hai, Ka Bhugtan Karega. Yadi Kshetraphai Kam Paya Jata Hai To Anupatik Rup Mein Dhanrashi Samayojit/Vapis Kar Dee Jayagee.

10. Thus, it is borne out from the record that the petitioners had the knowledge of all these terms and conditions, status, location and other details about the plot which was advertised for the allotment. The terms and conditions were spelt out in the advertisement and the Brochure supplied to the persons who had applied for allotment of the plot developed by the N.O.I.D.A. The petitioners have failed to make out a case for interference under Article 226 of the Constitution of India.

11. The writ petition is devoid of merit and the same is accordingly dismissed. The interim order granted by this Court is hereby vacated. The consequences shall follow.