(2015) 07 AHC CK 0138

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 42125 of 2015

Orris Developers Pvt. Ltd. APPELLANT

Vs

State of Uttar Pradesh and Others RESPONDENT

Date of Decision : 29-07-2015

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2015) 7 ADJ 303 : (2016) 1 ALJ 64 : (2015) 112 ALR 342 : (2015) 5 AWC 4803 : (2015) 129 RD 328

Hon'ble Judges : Rakesh Tiwari, J;Mukhtar Ahmad, J

Bench : Division Bench

Advocate : Rahul Agarwal and Navin Sinha, for the Appellant; Suresh Singh, Advocates for the Respondent

Final Decision : Dismissed

Judgement

1. Petitioner, Orris Developers Private Limited (herein after called as the Company'') is a Company incorporated and registered under the provisions of the Companies Act, 1956. It formed a consortium of companies and is engaged in the business of real estate development in the National Capital Region of India, Delhi.

BACKDROP OF THE CASE:

The Yamuna Expressway Industrial Development Authority, Greater Noida (hereinafter referred to as the Authority'') floated a scheme for residential township and invited sealed tenders pursuant to which, the Company participated in the two bid system for allotment of residential township plots in Sector 22 D in the Yamuna Expressway on lease for a period of 90 years on the basis of actual acquisition and physical possession. The Company deposited a sum of Rs. 10,00,00,000/- (Rupees ten crores only) as Earnest Money. Upon acceptance of the bid under the scheme, the Company further deposited an amount of Rs. 28,37,36,540/- on 28.4.2011, which was 10% of the total amount of premium of entire plot at the auctioned rate of Rs. 4,741/- per sq. meter, after adjustment of the earnest money. The Company also claims to have made deposits towards allotment money and excess area premium. The lease deed was executed in favour of the Company by the Authority asking the Company to sign a possession letter certifying that the size and area of the plot was according to the plan and was free from encroachments.

2. The grievance of the petitioner is that when its officials alongwith its consultants surveyed the entire plot in order to commence the planning and implementation of the Project, it came to light that actual possession of the plot was still with the farmers from whom the land had been acquired and some of them had already moved High Court whereas others were in process of moving the Courts for various reliefs including that of maintaining status quo on the issue of possession of land acquired under the scheme during pendency of the writ petitions.

3. Faced with this situation, the Authority was requested by the Company vide letter dated 18.7.2012 to hand over actual possession of the entire leased plot to it but deliberate delay was taken recourse to by the Authority, hence, the petitioner Company requested that a Zero Period on payment of lease rent instalments be declared until such time that the actual possession of the entire leased plot is not handed over to the petitioner.

4. The Authority formally acknowledged the factum of challenge to the acquisition of said land in batch of writ petitions filed before the High Court by the farmers who were in possession of the said plot. Further, the Authority instructed petitioner Company to act in conformity with the status quo directions/ orders passed by the High Court. The Authority also agreed to declare a Zero Period on the lease instalments from the period January 1, 2012 to February 19, 2013 and re-scheduled the instalment payment schedule vide letter dated 18.4.2013.

5. Thereafter, the petitioner was informed vide letter dated 30.5.2013 issued by the Authority that aforesaid letter dated 18.5.2013 was incorrect and the payment schedule was re-scheduled. On this, the petitioner requested the Authority to recalculate the instalments due for payment taking into account certain excess sums erroneously demanded by the Authority and paid by the petitioner Company.

6. According to the petitioner, they had paid more than 30% of the total lease premium amounting to Rs. 1,21,80,98,720/- (Rupees one hundred twenty one crores, eighty lakhs, ninety eight thousand, seven hundred and twenty only) but the Authority could not deliver possession of the leased land to it.

7. The petitioner Company also raised a point that due to non-delivery of possession of the leased land it was suffering heavy recurring loss as it was unable to undertake the proposed development on the land and therefore, a request was made to declare Zero Period for payment of instalments, which

request was not accepted by the Authority and the petitioner was instructed to adhere to the revised lease rent instalment payment schedule as communicated by the Authority vide its letter dated May 30, 2013 and make the lease payment of Rs. 19,87,99,234/- on or before 16.9.2013 as per the revised payment schedule.

8. Again the petitioner made a request on the ground of heavy loss incurred by it due to non-delivery of possession of the leased plot to it by the Authority to withdraw the demands made by it. This request of the petitioner was also not acceded to and a default notice was issued to it for failing to make payment of Rs. 19,87,99,234/- on or before 16.9.2013. The petitioner was also informed that in case the instalments due alongwith interest for default in making payment, amounting to Rs. 20,42,89,360/-, was not deposited on or before 30.10.2013, proceeding for cancellation of the lease granted to the petitioner Company shall be undertaken under clause ''Y'' of the Scheme.

9. These developments led the petitioner to again make a request to the Authority for handing over possession of the leased land and for declaration of Zero Period for payment of lease rent money till such time the possession of entire area of leased plot was not made available to the petitioner Company. A further default notice dated 20.8.14 was issued to the petitioner by the Authority for failing to make payment on or before 13.8.2014 as per the revised payment schedule. The petitioner was also informed that in case the instalments due alongwith interest for default in making payment, amounting to Rs. 123.17 crores was not deposited on or before 15.9.2014, the allotment of plot to the petitioner was to be cancelled. Not only this, an additional payment of a "no litigation initiative" was also demanded from the petitioner for payment to the farmers whose land was acquired @ Rs. 1,770/- per sq. meters for resolving the dispute with them but no response was received by the petitioner from the Authority on the request of the petitioner. However, on 28.5.15, the petitioner Company again requested for declaration of Zero Period for payment of lease rent money till such time that the possession of the entire area of the plot was not made available to the petitioner, which also remained unactioned by the Authority. Instead another letter dated 9.7.2015 was issued by the Authority to the petitioner regarding default on the part of petitioner demanding payment of lease rent as per the revised lease premium schedule. The petitioner was informed vide said letter that in case the minimum of due instalments alongwith default interest amounting to a total of Rs. 25,80,69,135/- was not deposited on or before 27.7.2015, the respondents will commence the process for cancellation of allotment of the plot made in favour of the petitioner.

10. The petitioner, in the aforesaid backdrop, has preferred this writ petition for the following reliefs:

"(a) Issue a writ, order or direction in the nature of Mandamus directing the respondents to declare a zero period for the payment of any money to the respondents till such time as the actual physical possession of all land parcels forming part of the Orris Land is not handed over to the petitioner;

(b) Issue a writ, order or direction in the nature of Mandamus directing the respondents to re-set the completion duration and other time related obligations of the petitioner in relation to the Orris Plot/Plot No. TS-02 in accordance with the date of actual handing over of all land parcels forming part of the Orris Land;

(c) Issue a writ, order or direction in the nature of Certiorari quashing the default notice letter No. YEA/Property/2013/36 dated October 15, 2013 (Annexure -25 to this writ petition) and the default notice letter No. YEA/2015/26 dated July 09, 2015 (Annexure - 30 to this writ petition);

(d) Issue a writ, order or direction in the nature of Mandamus directing the Respondent No. 2 to recalculate the pending lease rent instalment payment due for payment by the Petitioner after taking into consideration certain excess sums erroneously paid by the Petitioner as detailed in the Petitioners Letter dated June 14, 2013 (Annexure -19 to this writ petition);

(e) Issue a writ, order or direction in the nature of Certiorari quashing the Respondent No. 2''s demand for additional payment of a "no litigation initiative"(r) Rs. 1,770 per sq. meters from the petitioner for the Orris Plot vide its letter No. Sampati/2014/147 dated December 1, 2014 (Annexure-27 to this writ petition)."

11. The contention of learned counsel for petitioner is that failure of the Authority to handover possession of the Orris Plot to the petitioner is a gross violation of the terms and conditions of the Scheme as well as the lease deed and it amounts to a deliberate misrepresentation and concealment of material facts by the respondents which is causing recurring financial loss to the petitioner as it is not possible for the petitioner to commence the development of Project. Further, because of the delay in development of the project on the Plot for the reasons attributable to various acts and omissions of the respondents, the petitioner is unable to commercially exploit the Orris Plot in any beneficial manner and finds themselves in a very difficult position. The petitioner has not only made substantial expenditure of more than Rs. 100 crores, but is also bleeding on a day to day basis on account of interest payable on the deferred premium payable to the Authority.

12. Further contention of learned counsel for petitioner is that there is no difference in the ground situation that was prevailing when the letter dated 6th March, 2013 was issued by the respondent No. 2 and the situation that was prevailing when further requests for grant of zero period were made and then denied. The conduct of the Authority in denying the extension of Zero Period on the lease instalments is arbitrary and unreasonable as it is not open to the Authority to approbate and reprobate and it cannot change its stand.

13. It is also argued by learned counsel for the petitioner that the Orris Plot was allotted to the petitioner under the Scheme where-under the Authority had

invited sealed bids of firm prices for the land and accordingly the entire plot was allotted to the petitioner based on the said firm price under the Scheme, which cannot be revisited by either party as doing so shall vitiate the entire bidding process. Therefore, the demand, by the Authority vide its letter dated 1.12.2014 of the ''no litigation initiative'' @ Rs. 1,770 per sq. meters, is illegal and unjust and deserves to be set aside.

14. Per contra, the submission of learned counsel for the respondent No. 2 is that the reliefs sought by the petitioner in this writ petition originate from the lease-agreement arrived at between the parties and admittedly only 30% of the total amount has been deposited by the petitioner in regard to the lease rent, therefore, in case the petitioner alleges any breach of contract or fraud on the part of the Authority, the question can only be decided by a Civil Court on the basis of oral and documentary evidence. Besides this, seriously disputed questions of fact are involved in this case, which can be appropriately adjudicated only by the Civil Court after affording the parties opportunity to lead evidence in support of their respective claims, therefore, this writ petition itself is not maintainable and is liable to be dismissed out-rightly.

CONCLUSIONS:

15. Having heard learned counsel for the parties and upon perusal of the record, it is apparent that the petitioner has alleged breach of contract by the Authority in not delivering possession of the leased land to it for such a long time. A fraud is also alleged to have been committed by the Authority by leasing out a land which was not under its possession, that too, without disclosing this fact to the petitioner at the initial stage. The question of possession of the Authority over the leased land viz-?-viz possession of the farmers from whom the land was acquired, was essence of the contract, for which the petitioner has paid a valuable consideration of Rs. 1,15,12,09,620/- (Rupees one hundred and fifteen crores, twelve lakhs, nine thousand, six hundred and twenty only). The claim of petitioner that the possession of leased land has not been delivered to it due to which the petitioner is suffering a huge loss, is a question of fact. It is also a disputed question of fact as to whether the impugned act of the Authority amounts to a fraud or there was any legal impediment.

16. In view of above, we are of the considered view that there was a business transaction between the petitioner Company and the respondent Authority, consequent to which, a lease agreement was signed between the parties for a valuable consideration. The question as to whether any term or condition of the agreement has been violated or breached, can only be adjudicated on the basis of oral and documentary evidence adduced by the parties in suit where opportunity to lead evidence will be available to them. Such highly disputed questions of fact cannot be appropriately gone into by the High Court under Article 226 of the Constitution. For the reasons given above, we are not inclined to interfere in the matter under Article 226 of the Constitution. The writ petition is dismissed accordingly. The petitioner may avail the remedy for breach of

contract before the Civil Court.

