

Hampshire Hotels and Resorts (NOIDA) Pvt. Ltd. Vs. Ritu Maheshwari, Chief Executive Officer, New Okhla Industrial Development Authority (NOIDA)

Contempt Petition (Civil) No. 413 of 2019
2021-01-01 | Uday Umesh Lalit · Indu Malhotra · Krishna Murari
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Full judgment text

Hampshire Hotels and Resorts (NOIDA) Pvt. Ltd. Vs. Ritu Maheshwari, Chief Executive Officer, New Okhla Industrial Development Authority (NOIDA)

[Contempt Petition (Civil) No. 413 of 2019]

[Civil Appeal No. 4564 of 2008]

[Contempt Petition (Civil) No. 416 of 2019]

[Civil Appeal No. 4570 of 2008]

[Contempt Petition (Civil) No. 415 of 2019]

[Civil Appeal No. 4568 of 2008]

[Contempt Petition (Civil) No. 414 of 2019]

[Civil Appeal No. 4566 of 2008]

[Contempt Petition (Civil) No. 645 of 2019]

[Civil Appeal No. 4565 of 2008]

[Contempt Petition (Civil) No. 646 of 2019]

[Civil Appeal No. 4571 of 2008]

[Contempt Petition (Civil) No. 647 of 2019]

[Civil Appeal No. 4569 of 2008]

Uday Umesh Lalit, J.

1. These Contempt Petitions allege infraction on part of NOIDA, the Respondent-Authority in not obeying the directions issued by this Court in its Judgment and Order dated 05.07.2011 in Civil Appeal No.4564 of 2008¹ and all other connected matters; and seek issuance of directions to NOIDA to execute a fresh lease deed/supplementary lease deed as detailed in the aforesaid Judgment and Order dated 05.07.2011 and for rescheduling of the balance land premium/instalments.

2. The basic facts in the backdrop of which the present proceedings have arisen, were set out in paragraphs 3, 4, 5, 6, 7, 8 and 9 of the Judgment dated 05.07.2011 as under:-

" 3. At the 135th meeting of the Board of Directors/Members of NOIDA Authority (for short 'NOIDA Board') held on 5.6.2006, the said State Policy dated 22.5.2006 to attract more capital investment in tourism/hotel industry was considered. The NOIDA Board resolved to implement the said policy in the areas falling within its jurisdiction and apply the rates applicable to its Industrial area (Phase I) to the plots to be allotted to the hotel industry. The rate referred was the reserve rate of Rs.7400/- per sq.m. applicable to Industrial Area (Phase I) plots, fixed by the NOIDA Board at its meeting held on 20.3.2006.

4. The resolution also mentioned that the implementation of the said policy should ensure construction of sufficient hotels before the Commonwealth Games to be held in Delhi, which were scheduled to commence in October, 2010. Having regard to the importance of the matter, the Principal Secretary, Tourism, the Commissioner, Meerut Circle and the Director of Industries of the U.P. Government, attended the said meeting as special invitees.

5. At a meeting held by the Circle Commissioner, Meerut on 2.7.2006 with officials of NOIDA Authority, he communicated the direction that construction of Hotels should be completed before the commencement of the Commonwealth Games. At the said meeting the following 14 plots were identified as being suitable for allotment as hotels/plots: (a) six plots each measuring 40000 square metre for 5 star hotels in Sectors 96, 97 and 98; (b) five plots each measuring 20000 square metre for 4 star hotels in Sectors 72, 101, 105, 124 and 135; and (c) three plots for 3 star hotels (measuring 20000, 20000 & 10000 square metre) in Sectors 62, 63, and 142.

6. In view of the Government's Policy dated 22.5.2006 and the decisions taken at the meeting chaired by the Commissioner, Meerut Circle on 6.7.2006, the NOIDA Board took the following decisions at its 136th meeting held on 14.7.2006 :

(i) It approved the proposal for making provision for hotels in reserved commercial area - Zone C 3 (as hotels had not been permitted in commercial areas C-1 and C-2 of the master plan reserved for wholesale and retail activities and as there was demand for hotels due to Commonwealth Games 2010) and directed inclusion thereof in the approved proposed NOIDA Master Plan 2021 and reference to the State Government for its approval.

(ii) It decided to launch the Hotel Plot Allotment Scheme and authorized the CEO to finalise the terms and conditions for allotment, so as to ensure construction of hotels by the allottees before the commencement of the Commonwealth Games. In pursuance of the said decision, NOIDA Authority sent a communication dated 20.7.2006 to the State Government seeking approval of its decision to make a provision for hotels in commercial areas under Zone 3 and inclusion of it in NOIDA Master Plan, 2021.

7. The Secretary, Sports & Youth Affairs, Government of India, held meetings with NOIDA Authority officials on 28.7.2006 and 22.8.2006 in connection with preparations for Commonwealth Games scheduled in October, 2010. At those meetings, the Secretary, Sports & Youth Affairs stressed the Government of India's request for earmarking 25 hotel plots in NOIDA.

Therefore it was decided to reduce the area of 5 star hotels to 24000 square metre (instead of 40,000 square metre earlier proposed), the area of 4 star hotels to 12500 square metre (instead of 20000 square metre) and the area of 3 star Hotels to 7500 square metre (instead of 10000 square metre) and thereby convert the 14 plots into 25 plots made up of 10 plots for 5 star hotels, 5 plots for 4 star hotels and 10 plots for 3 star hotels.

8. At the meeting held on 28.8.2006 under the chairmanship of the Circle Commissioner, Meerut, the said decision to increase the number of plots for hotels from 14 to 25 by reducing the plot measurements, in the following manner:

(i) Ten plots for 3 star hotels - (area 7500 square metre each)

Plot Nos. SDC/H1 and SDC/H2 in sector 62, plot Nos.A-155/B and A-155/C in sector 63, plot No. SDC/H 2 in sector 72, plot No.124A/2 in sector 124, plot No.SDC/H-2 in sector 103, plot No.SDC/H-2 in sector 105, SDC/H-2 in sector 135 and plot No.14 in sector 142.

(ii) Five plots for 4 star hotels : (area : 12,500 square metre each)

Plot No.SDC/H-1 in sectors 72, 103, 105 and 135 and plot No.124A/1 in sector 124.

(iii) Ten plots for 5 star hotels : (area 24,000 square metre)

Plot Nos.H-1 to H-10 in sectors 96, 97 and 98.

9. The proposal for approving the increase in number of plots and reductions in their size was placed before the NOIDA Board at the 137th meeting on 1.9.2006. The NOIDA Board approved the proposal. The terms and conditions for allotment drawn by the CEO were also approved with a modification that they should provide for obtaining Hotel Completion Certificate by December 2009 (with authority to CEO to grant extension of time).

In pursuance of the said decision, NOIDA Authority published the Hotel Site Allotment Scheme on 17.10.2006, by advertisements in newspapers and by issue of information brochures containing detailed terms and conditions, inviting applications for allotment of plots for 5 star, 4 star and 3 star hotels in NOIDA on 90 years lease basis. Applications were made available between 17.10.2006 and 1.11.2006 (extended till 10.11.2006)."

3. The facts in all these Contempt Petitions are more or less identical and for facility, Contempt Petition No.413 of 2019 is taken as the lead case. The reference to the expression the "Petitioner" shall hereafter be taken as the Petitioner in said lead case while the expression the "Petitioners" shall be taken as all the Petitioners in the Contempt Petitions.

The application preferred by the Petitioner for allotment of Plot No.03, Block No. H, Sector No.96, Noida, admeasuring 24,000 square metre having been accepted, Lease Deed dated 28.03.2007 was executed between the Petitioner and NOIDA. The relevant recitals of the Lease Deed were as under:-

"WHEREAS the Authority had floated a scheme for allotment of [3/4/5] star hotel sites in NOIDA on 17/10/2006 (hereinafter referred to as the "Scheme") in compliance of Tourism Department, U.P. Government Order No.984/41-06-180/2005 dated 22/05/2006 and had invited applications for allotment of Hotel site under the said Scheme from companies/institutions/consortium of companies/ institutions registered/incorporated in India or abroad which are in hotel business and satisfying the eligibility criteria and subject to and on the terms and conditions set-forth in the said Scheme; and

WHEREAS the Authority, after evaluation of the applications received from the eligible 'applicants including, inter alia, M/s. HAMPHSIRE HOTELS & RESORTS LLC, a Company incorporated and existing under the laws of jurisdiction of its incorporation, has issued its allotment Letter No. NOIDA/DGM (IND.)/2007/91 dated 12/01/2007 (hereinafter referred to as the "Allotment Letter") to the said M/s. HAMPSHIRE HOTELS & RESORTS LLC allotting them Plot No.03, Block-H, Sector-96, NOIDA admeasuring 24000 square metre approximately and more fully described in Schedule 'I' hereto and inter alia requiring the M/s. HAMPSHIRE HOTELS & RESORTS LLC to, inter alia, pay the premium, take possession and execute the lease deed within the period stipulated in the Letter of Allotment; and

I. That in consideration of the total premium of Rs.19,53,60,000/- (Rupees Nineteen Crores Fifty Three Lacs and Sixty Thousand only) agreed to be paid by the Lessee at the time and in the manner hereinafter provided and in further consideration of the lease rent herein reserved and of the covenants, conditions and agreements hereinafter contained and on the part of the Lessee to be paid observed and performed, the Lessor doth hereby grant and demise UNTO the Lessee all that plot of land numbered as 03 in Block H Sector No.96 situated within the New Okhla Industrial Development Area, District Gautam Budh Nagar, Uttar Pradesh, and containing by measurement 24,000 square metre.

II. That the Lessee has on or before the date of execution of this lease deed paid unto the Lessor at its office or as otherwise directed by the Lessor the yearly Lease Rent of Rs.48,84,000.00 (Rs. Forty Eighty Lacs Eighty Four Thousand only) in advance on yearly basis, for the first 10 years of the Term of the Lease hereby granted commencing from the date of execution of the lease deed and the yearly Lease Rent for the remaining period of the Term shall be payable by the Lessee annually in advance on or before the due date of payment set-forth in Clause 1 hereinabove, without waiting for any demand, notice or reminder therefor."

4. The allotment of the hotel sites by NOIDA to various such allottees was challenged by way of two Writ Petitions (Civil Misc. Writ Petition No.24917/2007 and PIL Writ Petition No.29252/2007) in the High Court² submitting inter alia that the allotment was at a very low price. By an interim order dated 22.05.2007 the High Court directed the State Government to exercise its power of revision under Section 41(3) of the U.P. Urban Planning and Development Act, 1973 read with Section 12 of said Act and to take a re-look in regard to the allotments.

The State Government considered the matter and found the allotments to be irregular and, therefore, directed NOIDA to cancel the same. The decision was implemented by NOIDA by issuing cancellation orders dated 03.08.2007. In view of the cancellation, the original writ petitions were allowed to be withdrawn. However, the allottees then preferred writ petitions challenging cancellation of their allotments.

These writ petitions were allowed by the High Court by common order dated 13.05.2008 and the cancellation orders dated 03.08.2007 were set aside on the ground that they were opposed to principles of natural justice for want of opportunity of hearing. The High Court, therefore, remanded the matter for taking a fresh decision. The order of remand was, however, challenged by the allottees by filing Special Leave Petitions in this Court.

By way of an interim order, this Court permitted the State Government to give hearing to the concerned allottees and pass a reasoned order in accordance with law, uninfluenced by any of the observations made by the High Court in its judgment and order dated 13.05.2008. Accordingly, the matter was considered by

the State Government and by individual orders dated 08.09.2008 passed in the case of each of the allottees, a decision was taken by the State Government to cancel the allotments made by NOIDA.

Since these orders were passed during the pendency of the challenge in this Court, the allottees were permitted to challenge the orders of cancellation dated 08.09.2008 by filing additional grounds in pending Special Leave Petitions.

5. After considering the rival submissions, by its judgment and order dated 05.07.2011, this Court found that the allotment of commercial plots to the allottees was valid and legal, but, since the commercial plots could have fetched premium at a rate of Rs.70,000/- per square metre at the relevant time, this Court made following observations:-

" 110. In these cases the allotment of commercial plots to appellants is valid and legal. The violation is in making such allotment on fixed allotment rate which is less than the rate the plots would have fetched by calling for tenders or by holding auctions. Therefore the equitable solution in these cases is to give an opportunity to the lessees to pay the difference thereby in consideration which arose on account of wrong interpretation instead of cancelling the leases.

111. According to the State Government, the commercial plots would have fetched a premium at rate of Rs.70,000 per square metre at the relevant time (October 2006 to January 2007) and NOIDA Authority had been denied the benefit of that allotment rate, by reason of allotment of the plots at Rs.7400/- per square metre. Therefore if the appellants are willing to pay the balance of premium as claimed by respondents, the leases need not be interfered.

112. In this case the violation of the policies of NOIDA in making allotments has resulted in a lesser premium being charged than what would have been applied for commercial plots. According to respondents the premium that would have been charged was Rs.70,000/- per square metre as against Rs.7,400 per square metre. Therefore, the violation of the guidelines in regard to disposal of commercial plots has resulted only in a loss of revenue by way of premium and if this could be made up, there is no reason why the leases should not be continued.

115. Therefore if the appellants (2006-2007 allottees) are to be extended the aforesaid benefits offered to allottees under the 2008 Scheme, the rate of Rs.70,000/- per square metre (the rate of 2008 scheme was 10% more than Rs.70,000/- per square metre) claimed by the respondents becomes logical and reasonable. We therefore find no reason to reject the claim of respondents that the allotment rate should be Rs.70,000/- per square metre. We accordingly grant the appellants an opportunity to save the leases by paying the difference in premium at Rs.62600/- per square metre to make it upto Rs.70,000/- per square metre.

116. In view of the above we dispose of these appeals as follows :

(i) The order of the High Court setting aside the revisional order dated 1.8.2007 of the State Government and the consequential orders of cancellation of allotment of plots dated 3.8.2007 by NOIDA Authority, is affirmed.

(ii) The revisional orders dated 8.9.2008 passed by the State Government cancelling the allotments of plots to appellants, are set aside.

(iii) The appellants are given the option to continue their respective leases by paying the premium (allotment rate) at Rs.70000/- per square metre (with corresponding increase in yearly rent/one time lease rent), without any location benefit charges. The appellants shall exercise such option by 30.9.2011. Such of those appellants exercising the option will be entitled to the following benefits which has been extended in regard to the allottees under 2008 allotment scheme of NOIDA Authority:

(a) 40% of FAR can be used by the allottee as commercial space (as stipulated in the 2008 scheme).

(b) Permission to pay at its option, the balance to make up 25% of the premium (after adjusting all amounts paid at Rs.7400/- per square metre plus location benefit charges) on or before 30.9.2011 and the balance 75% of premium in sixteen half yearly instalments commencing from 1.1.2012 with interest at 11% per annum (as offered to the applicants in 2008 scheme).

(c) The lessees will be entitled to transfer rights in accordance with the 2008 scheme.

On exercise of such option, the lease shall continue and the period between 1.8.2007 to 31.7.2011 shall be excluded for calculating the lease period of 90 years. Consequently the period of lease mentioned in the

lease deed shall stand extended by a corresponding four years period, so that the lessee has the benefit of the lease for 90 years. An amendment to the lease deed shall be executed between NOIDA Authority and the lessee incorporating the aforesaid changes.

(iv) If any appellant is unwilling to continue the lease by paying the higher premium as aforesaid, or fails to exercise the option as per para (iii) above by 30.9.2011, the allotment and consequential lease in its favour shall stand cancelled.

In that event, NOIDA Authority shall return all amounts paid by such appellant to NOIDA Authority towards the allotment and the lease, and also reimburse the stamp duty and registration charges incurred by it, with interest at 18% per annum from the date of payment/incurrence of such amounts to date of reimbursement by NOIDA Authority. If NOIDA Authority returns the amount to the appellant within 31.12.2011, the rate of interest payable by NOIDA Authority shall be only 11% per annum instead of 18% per annum.

(v) Parties to bear their respective costs."

6. Thus, the allottees who were willing to pay the premium at Rs.70,000/- per square metre, with corresponding increase in yearly rent/one-time lease rent without any location benefit charges, could exercise an option whereafter an amendment to the lease deed had to be executed between NOIDA and the concerned allottee.

But those allottees who were unwilling to continue the lease by paying the higher premium, were to be returned all amounts paid by them towards the allotment and the lease and the amount of stamp duty and the registration charges incurred by them with interest at 18% per annum from the date of payment/incurrence of such amounts to the date of reimbursement.

7. The Petitioners exercised their option to continue their respective leases by paying the premium at Rs.70,000/- per square metre.

8. On 29.09.2011, 25% of the premium and lease rent was deposited by the Petitioner and thereafter, on 03.04.2013 additional amount of Rs.5 crores was deposited. It is submitted that despite such deposits, no supplementary lease deed was executed. According to the Petitioners, after making over the additional amount, at the rate stated by this Court, the supplementary lease deed had to be executed on the basis of which the Petitioners could have raised finance and gone ahead with the project.

On the other hand, according to NOIDA, the lease rent and other dues had to be cleared first, only whereafter the supplementary lease deed would be executed. It is in this background that the present Contempt Petitions have been filed in this Court.

9. During the course of hearing of these Contempt Petitions, on 05.09.2019 two options were suggested to resolve the disputes between the parties. Those options were:-

"All the contempt petitioners-allottees shall pay up all the amounts that are due along with the accrued interest on or before 31.12.2019, whereafter, NOIDA shall execute a supplementary lease deed in favour of the contempt petitioners-allottees. Or

The plots in question which were allotted to the contempt petitioners-allottees be resumed by NOIDA and put up for fresh auction, and from and out of the proceeds the money deposited by each of the contempt petitioners-allottees be returned by the NOIDA along with interest @ 11% p.a."

Both the sides sought accommodation to seek instructions in the matter and they were directed to file affidavits. Accordingly, the affidavits were filed on behalf of the Petitioners as well NOIDA.

10. All the Petitioners filed their affidavits willing to exercise the Second Option. The affidavit filed on behalf of NOIDA on 13.09.2019 stated as under:-

"4. In reference to the order passed by this Hon'ble Court, it is respectfully submitted that the NOIDA would have not objection if this Hon'ble Court is pleased to permit the petitioner - allottee-lessee to pay up all the amounts that are due along with accrued interest on or before 31.12.2019 where after the NOIDA shall execute the Supplementary lease deed in favour of the petitioner-allottee-lessee company.

5. With reference to the second option set out in the Hon'ble Court's order dated 5.9.2019 and taking into consideration contents of para 3 of the affidavit dated 11.9.2019 filed on behalf of the petitioner-allottee-lessee company, the following five aspects may very kindly be considered by this Hon'ble

Court:

(i) that the petitioner-allottee lessee has been enjoying possession of the leased plot since the September 2009;

(ii) that under terms of the allotment, the processing fees is non-refundable;

(iii) that the stamp duty is paid to the State Government and not to NOIDA and as per the directions issued by this Hon'ble Court in its Judgment dated 5.7.2011, the stamp duty was refundable only in the event the allottee were to exercise the option of not accepting the rate fixed by this Hon'ble Court i.e. Rs.70,000/- per sq.mt. The petitioner - allottee-lessee exercised the option of continuing with the allotment @ Rs.70,000/- per sq.mt. Therefore, the petitioner is not entitled to seek refund of the stamp duty from NOIDA.

(iv) that while enjoying possession of the leased plot, the petitioner has belatedly approached this Hon'ble Court by alleging that the Supplementary lease deed has not been executed.

(v) the interest that was paid was only on account of the delay on the part of the petitioner - allottee-lessee in not paying the amount on time for which the petitioner -allottee-lessee itself is responsible, therefore, whether such interest amount is also liable to refunded and that too with interest.

Therefore, this Hon'ble Court may like to consider whether the petitioner-allottee-lessee is to be refunded the amount with reference to all the 9 heads, excluding the stamp duty and that too with 11% interest so as to enable the NOIDA to take its final decision with respect to the second option noted in the Hon'ble Court's order dated 5.9.2019."

11. The matter came up on 17.09.2019. After quoting the relevant portion from the Order dated 05.09.2019, the Order recited as under:-

"Thereafter, affidavits have been filed by the concerned contempt petitioners in all the matters. By way of example, we may quote the figures available from the affidavit filed by the contempt petitioner in Contempt Petition (Civil) No.413 of 2019, which are to the following effect:

The contempt petitioners thereafter submitted that they would have no objection if NOIDA was to resume all the plots in question subject to the aforesaid amounts being refunded to the contempt petitioners. In response, an affidavit has been filed by NOIDA in which it is submitted that certain elements out of the amounts mentioned hereinabove would be nonrefundable and, as such, those amounts ought not to be taken into account while coming to the aggregate sum that could be returned to the contempt petitioners.

It was also submitted that the interest @ 11% per annum as suggested in the order passed by this Court would be at a rate higher than the prevalent rate and, as such, it needed to be scaled down. We heard Mr. Mukul Rohatgi, learned Senior Advocate and Mr. Ravindra Kumar, learned Advocate.

Mr. Mukul Rohatgi, learned Senior Advocate fairly submitted that the amounts mentioned against Heads at Sr. Nos.1, 5, 6 and Stamp Duty may not be refunded to the contempt petitioners provided reasonable rate of interest was awarded to them on the amounts deposited by the contempt petitioners. In his submission, interest @ 11% per annum would be reasonable considering the fact that the huge amounts were deposited with the authorities.

Mr. Ravindra Kumar, learned Advocate submitted that the contempt petitioners had all the while enjoyed the property and, as such, they were not entitled to any interest on the amounts deposited by them. Said submission was refuted by Mr. Rohatgi submitting that the land has always been lying without being put to any profitable use and, as such, the contempt petitioners have not really enjoyed any benefit from the land.

Mr. Kumar then left the matter to the discretion of the Court and suggested that the Court may consider granting interest at such rate as it deems appropriate. Considering the entirety of the matter, in our view, the appropriate interest rate could be @ 7% per annum. In the circumstances, the options given in order dated 05.09.2019 could be availed, subject to the aforesaid modification.

The appropriate affidavits shall be filed by the contempt petitioners as well as NOIDA within three weeks from today. The affidavits shall indicate in tabular form all the amounts as stated hereinabove and then indicate separately those which would not be refundable. If there be any other charges or dues, the same be indicated with clarity in the affidavit of NOIDA."

12. A further affidavit was filed on behalf of NOIDA on 25.11.2019 submitting inter alia that in case the Petitioners express their intention not to continue with the allotment and seek refund, the case would be required to be considered as surrender in terms of Clause 'N' of the Brochure, in which case the deposited sum or 30% of the premium, whichever is less, would be required to be forfeited and the remaining amount would be refunded without interest. It was stated in the affidavit as under:-

"3. It is submitted that pursuant to the allotment and the execution of the Lease Deed in favour of the Petitioner Company, possession of the allotted plot was handed over to the Allottee - Lessee way back on 28.9.2007. Ever since then the Petitioner is in the possession of the allotted plot. However, as submitted in the Affidavit filed earlier the Petitioner Company, except for making part payment of the first instalment the petitioner company failed and neglected to pay all the 16 instalments.

As a result, it is in arrears of huge dues payable to the NOIDA. It is submitted that earlier, a Compliance Affidavit in reference to Hon'ble Court's Order dt. 5.9.2019 had been filed on 13.9.2019, the contents whereof are reiterated and the same may be taken into consideration by this Hon'ble Court.

4. It is further submitted that this Hon'ble Court, vide Order dt. 17.09.2019, has been pleased to grant opportunity to the respondent to submit an Affidavit indicating in a tabular form the amounts that had been deposited by the Petitioner. Liberty has also been granted by the said order to indicate with clarity any other charge or dues which is not refundable."

13. In the aforesaid backdrop, we heard learned counsel led by Mr. Mukul Rohatgi, Senior Advocate for the Petitioners on one hand and Mr. Ravindra Kumar, learned Advocate for NOIDA.

14. Two options were suggested in the Order dated 05.09.2019. Going by the affidavits filed by the Petitioners and the stand taken by the learned counsel on their behalf, the Petitioners are not agreeable to the First Option, though NOIDA is completely agreeable.

15. The Second Option as suggested in the Order dated 17.09.2019, contemplated sale of the plots after resumption by NOIDA, and payment to the Petitioners from and out of the sale proceeds. It was also made clear that the interest of NOIDA could be secured by ensuring that in case the price quoted in the fresh auction was lesser than what was assured under the current arrangement with the Petitioners, the shortfall could be directed to be made good by the Petitioners. But the affidavit filed by NOIDA has not dealt with this aspect and has suggested deduction of 30% of the premium as stated above.

16. During the course of discussion, the learned counsel for the Petitioners invited our attention to communication dated 21.10.2019 addressed by Commercial Department of NOIDA to M/S INGKA Centres India Pvt. Ltd. accepting E-bid for allotment of a Commercial Property admeasuring 47833 square meters, which is comparable with the size of the plots in the instant case. The communication shows that the bid at the rate of Rs.1,59,010.4528 per sq. metres was accepted, as against the price of Rs.70,000/- per sq. metres in the instant case.

17. The facts set out in afore-quoted paragraphs of the Judgment dated 05.07.2011 indicate that the plots in the instant case were meant for fivestar and three-star hotels which were to come up well-in-time to cater to the demand for hotels around Commonwealth Games, 2010. It has been more than 10 years since the Games got over but no development on these plots has occurred.

The tussle is going on between the Petitioners on one side who submit that because of indifferent and recalcitrant attitude on part of the authorities, they could not enter into any arrangement for financial accommodation, and as such, no development could be undertaken; while on the other hand, the submission on part of NOIDA is that unless the payment of premium in entirety was made, no lease could be executed.

Each side is blaming the other and the resultant effect is that the properties are lying undeveloped, no payment of premium is forthcoming and the public interest is not getting subserved. It was in this background that the Second Option was suggested so that the Petitioners are allowed to withdraw themselves from the arrangement and, at the same time, the interest of NOIDA is also well secured.

Submissions were advanced on the basis of what weighed with this Court when the Judgment dated 05.07.2011 was passed, where this Court had given the facility of withdrawal from the arrangement to such of the allottees who were unwilling to continue. In that case, the concerned allottees were allowed to withdraw all the amounts including the stamp duty and registration charges along with interest @ 18% per

annum.

This aspect of the matter has been pressed into service on behalf of the Petitioners to submit that they were willing to forego the amounts indicated at Sl. Nos. 1, 5 and 6 of the illustrative chart quoted in the Order dated 17.09.2019 and as such the offer on part of NOIDA to refund the deposited amounts, after deducting 30% of the premium amount without payment of any interest, would not be fair, if the current prices of the lands in the area were to be taken into account.

It was also submitted that the fault actually lies with NOIDA in not permitting the Petitioners to enter into financial accommodation, and thus no development could take place. These submissions are undoubtedly refuted by the learned counsel for NOIDA.

18. The present status is nothing but a stalemate in which valuable assets of a public authority are locked completely. The public interest is neither getting subserved, nor is NOIDA getting instalments towards premium on time. We asked the learned counsel for NOIDA if any proceedings for resumption of land were undertaken, to which the response was in the negative. In this situation, the modalities suggested by the Second Option, in our considered view, could yield results which would be favourable to both sides, and at the same time would take care of public interest as well.

However, considering the price index which is available through the bid as described in the communication dated 21.10.2019, and keeping the interest of NOIDA in forefront, in our view, the modalities stated hereafter, will take care of public interest and competing claims of both sides. 19. Before we come to the modalities, certain aspects need to be clarified including what amounts the Petitioners would be entitled to:-

A] From the illustrative chart, which was quoted in the Order dated 17.09.2019, the claims with regard to amounts mentioned against Sl. Nos.1, 5 and 6 were given up by the Petitioners.

B] As regards stamp duty, the stand of NOIDA is that the money was not paid to NOIDA but was paid to the State Government, and, therefore, NOIDA cannot be made to refund the amount towards stamp duty. Since the State Government is not party to the present matter, no direction in that behalf can be issued, and the matter shall have to be left to the State Government to consider whether there could be refund of stamp duty either in full, or in part.

C] Rest of the amounts comprise of two types of payments:

- a) towards instalments of premium; and
- b) towards payment of lease rent.

20. As regards lease rent, it is evident from the chart in the Order dated 17.09.2019 that an amount of Rs.44,84,000/- was paid by the Petitioner by way of lease rent on 06.03.2007 and one-time lease rent amounting to Rs.5,37,24,000/- was paid on 11.05.2007. One-time lease rent constitutes payment for the entirety of the period of lease covered by the document. Therefore, that component of the amount which represents the remainder period after the plot is sold in terms of this Order, ought not to be charged by NOIDA from the Petitioners.

If the plot is re-sold, the new allottee, in any case, will be paying in respect of such remainder period under a fresh lease executed in his favour. The Petitioners shall, therefore, be entitled to refund of that component of amount of one-time lease rent which proportionately represents the remainder period after the plots in question are sold in terms of this Order. They shall not, however, be entitled to any interest on such component.

21. The amount of interest on refund of the amounts paid towards premium that the Petitioners would be entitled to was subject matter of discussion on the earlier occasion. By order dated 17.09.2019 it was found that the appropriate rate of interest could be 7% per annum. The Petitioners would, therefore, be entitled to 7% annual interest on the amounts deposited by them towards premium from time to time. These amounts payable towards interest shall be calculated upto 30.04.2021 and shall stand frozen as on that date.

22. In the light of the aforesaid discussion, the revised Second Option shall be as under:-

A) The concerned plots allotted to the Petitioners be sold by NOIDA by inviting E-bids or by auction after advertising the same as was done in the Scheme No.2019-20 (Commercial Builder Plot-I)

B) If the price quoted in such E-bid for each of the concerned plots is more than one and a half times of the price at which the arrangement with the Petitioners was arrived at; that is to say, more than Rs.1,05,000 per sq. metre, the Petitioners be returned the amounts deposited towards premium in each case. However, in case there is shortfall as against the rate of Rs.1,05,000/- per sq. metre, the shortfall shall be made good by the Petitioners and to that extent the amount payable to the Petitioners towards refund of amount paid towards premium shall stand reduced.

C) Insofar as refund of amounts towards remainder part of the lease rent and the component of interest payable to each of the Petitioners are concerned, said amounts shall be made over only if the price received by NOIDA in fresh sale of said plots in terms of this Order is in excess of Rs.1,05,000/- per sq. metre and only to the extent of excess beyond Rs.1,05,000/- per sq. metre.

D) The Petitioners shall, thus, first be made over the component representing the amount paid by them towards premium in the manner as stated above.

It is only if the rate fetched in such re-sale is greater than Rs.1,05,000/- per sq. metre that the Petitioners shall be paid amounts towards the remainder part of the lease rent and component of interest payable, as stated hereinabove; subject always to the requirement that these amounts are paid from the amounts representing the excess above the base price of Rs.1,05,000/- per sq. metre; which will ensure that NOIDA will always get a base rate of Rs.1,05,000/- per sq. metre for the concerned plot in such re-sale.

If the excess amount beyond Rs.1,05,000/- per sq. metre is not sufficient to absorb the amounts payable to the Petitioners towards component of lease rent and the interest; their entitlement shall stand reduced to that extent. It is also made clear that if the difference between the base price of Rs.1,05,000/- per sq. metre and the price fetched in the re-sale is greater than what would be payable towards component of lease rent and interest, NOIDA alone shall be entitled to such excess amount.

E] By way of illustration:-

(a) If the price quoted in E-bid or auction for a plot of 20,000 sq. metre is at the rate of Rs.1,00,000/- per sq. metre, the shortfall will be Rs.5,000/- x 20,000/- (extent of plot) = Rs.10 Crores. Thus, Rs.10 Crores shall be deducted from the deposited amount towards premium and the balance shall be refunded. Since the price quoted in E - bid or auction is less than Rs.1,05,000/- per sq. metre, nothing shall be payable towards remainder part of the lease rent and the component of interest.

(b) If the price quoted in E - bid or auction is at the rate of Rs.1,20,000/- per sq. metre, the amount to be received by NOIDA beyond the level of Rs.1,05,000/- per sq. metre for the same plot shall be Rs.15,000/- x 20,000/- (extent of plot) = Rs.30 Crores. As the price quoted is more than Rs.1,05,000/- per sq. metre:-

(i) The entire amount deposited towards premium shall be refunded by NOIDA; and

(ii) So much of the amount representing remainder part of the lease rent and component of interest which can be absorbed from and out of Rs.30 Crores shall be refunded but not beyond Rs.30 Crores.

(iii) Thus, if the amount representing remainder part of the lease rent and the component of interest is greater than Rs.30 Crores, the entitlement shall be only upto Rs.30 Crores and not in excess thereof. However, if such amount payable towards these two heads is less than Rs.30 Crores, the amount shall be paid in full and the balance shall be retained by NOIDA.

(F) In the process, NOIDA will always get minimum of Rs.1,05,000/- per sq. metre in such re-sale.

G] After the concerned plots are sold in auction and appropriate documents are executed in favour of the new allottees, the concerned Petitioners shall be entitled to apply to the State Government for refund of amounts paid by them towards Stamp Duty. Such applications shall be considered by the State Government in accordance with the extant policy and in accordance with law.

23. The modality devised above will ensure that as against the promised rate of Rs.70,000 per sq. metre, which premium is also in arrears in the present cases, NOIDA shall get much more than that towards price of land and will also stand to gain considerably. Accordingly, in the process, not only will the public interest stand subserved, but the projects which have run into stalemate, will also come out of difficulties.

24. The Second Option given in the Order dated 05.09.2019 shall stand modified to the aforesaid extent.

25. In case the Petitioners are agreeable to these conditions, the Petitioners may exercise such option by filing appropriate affidavits with NOIDA along with an appropriate Resolution of the Board of the concerned Company. Upon such affidavit being filed within two weeks from the date of this Order, NOIDA shall calculate the amounts deposited by each of the Petitioners towards premium and so also the amounts payable to each of the Petitioners towards component of lease rent and interest from the date of each of those deposits @ 7% per annum upto 30.04.2021.

A communication giving all the details, including the proposed user as well as the minimum price at which the plots would be put up for sale, shall be addressed to each of the Petitioners exercising such option on or before 17.05.2021. The possession shall then be delivered by each of the Petitioners of the concerned plots back to NOIDA by 31.05.2021. Upon such handing over of the possession, the title of the Petitioners in respect of the concerned plots shall stand extinguished. The Lease Deeds in their favour, shall be delivered up by each of the Petitioners, which shall also stand cancelled.

26. NOIDA shall, thereafter, put up the plots in question for auction or invite E-bids within three months, in the same fashion as was done in connection with the property referred to in the communication dated 21.10.2019. It will be entirely up to NOIDA to put up the plots for sale collectively or individually or to sell them for any purpose which in the opinion of NOIDA would subserve public interest and devise the modalities for sale. From and out of the sale proceeds received in such sale, the amounts indicated above shall be paid to each of the Petitioners exercising such Second Option in accordance with the principles as stated above, within three months of the sale.

27. In case no option is exercised by any of the Petitioners in the manner indicated hereinabove, or in case no possession is handed over within the time stipulated even after exercising such option, it shall be deemed that each of such Petitioners is not desirous of exercising the Second Option and said Petitioners shall be treated to have opted for the First Option as indicated in the Order dated 05.09.2019.

In such cases, NOIDA shall issue appropriate communication calling upon them to pay up all the dues in terms of the First Option within reasonable time. The supplementary Lease Deed shall be executed only after all the dues as indicated in the First Option are cleared. If the amounts are not cleared within the time stipulated, the concerned plots shall stand resumed in favour of NOIDA and those Petitioners shall be dispossessed of the plots in their occupation in a manner known to law.

28. It is made clear that the handing over of possession in exercise of the revised Second Option, as granted earlier or taking over of possession in terms of the preceding paragraph, shall be on "as is where is" basis. The concerned Petitioners shall not be entitled to any value addition, be it in the form of construction of any structures or erection of any compound wall.

The possession shall be handed over and/or received along with such value additions, which shall vest in NOIDA. Similarly, every individual on the plot in question must be made to vacate and the handing over or receiving of possession must be clear and peaceful.

29. Though the scope of the Contempt Petitions was restricted to see whether functionaries of NOIDA were guilty of disobedience of the directions issued by this Court, the matter was considered from the standpoint of enabling both sides to settle their disputes and get over the stalemate which has been obtaining for the last 10 years.

The endeavour was to see that the interest of both sides is sufficiently taken care of and more than anything else, the public interest must stand subserved. It is with this solution in mind, that the directions as stated above have been issued by this Court.

30. Subject to what is stated hereinabove, all the contentions raised in these Contempt Petitions are rejected and Contempt Petitions are closed.

31. Ordered accordingly.

1 (2011) 7 SCC 493 (ITC Ltd. vs. State of Uttar Pradesh and Ors.)

2 The High Court of Judicature at Allahabad

Source disclosure: Complete sanitized public judgment text retained for research. Official-primary replacement and later-history closure remain pending.

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