

New Okhla Industrial Development Authority & Ors. Vs. 24 Oranges Lab LLP & Anr.

Civil Appeal No. 5799 of 2021

2021-09-21 | M. R. Shah, J.

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Full judgment text

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[Civil Appeal No. 5799 of 2021]

M. R. Shah, J.

1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 31.07.2019 passed by the High Court of Judicature at Allahabad in Writ Petition (C) No.27632 of 2014 by which the High Court has allowed the said Writ Petition preferred by the respondents herein - original writ petitioners by which the High Court has disposed of the said writ petition by observing that in view of the subsequent execution of the lease deed in favour of the respondents herein original writ petitioners on 21.10.2014 determining the market value of the plot in question at Rs.5900/per sq.meter, the original respondent - NOIDA has preferred the present appeal.

2. Shri Sourav Roy, Learned Counsel has appeared on behalf of the appellants. Learned Advocate appearing on behalf of the appellants has vehemently submitted that the High Court has materially erred in disposing of the writ petition by observing that in view of the execution of the lease deed dated 21.10.2014 in favour of the original writ petitioners at Rs.5900/per sq.meter, it would prevail over the allotment letter dated 08.05.2014 and therefore the writ petition no longer survives.

2.1 It is vehemently submitted by Learned counsel appearing on behalf of the appellants that as such the lease deed dated 21.10.2014 in favour of the original writ petitioners at Rs.5900/per sq.meter was pursuant to the interim order passed by the High Court dated 07.07.2014 in writ petition and subject to the ultimate outcome of the main writ petition. It is submitted that the price in the lease deed dated 21.10.2014 of Rs.5900/per sq.meter was interim and ad hoc and by way of interim measure only and therefore solely on that basis the High Court is not justified in observing that in view of the execution of the lease deed dated 21.10.2014 it would prevail over the allotment order dated 08.05.2014.

2.2. Heavy reliance is placed on the interim order passed by the High Court vide order dated 07.07.2014 passed in the main writ petition as well as the conditions in the lease deed dated 21.10.2014 and the terms and conditions for allotment of industrial plot more particularly Clause 2(d) which provides the rates of allotment stated in the allotment letter are subject to change without notice and that the rates prevailing on the date of issue of allotment letter would be applicable, irrespective of the date of application and interview.

3. Present appeal is vehemently opposed by Shri Sanjay Kumar Tyagi, Learned Counsel appearing on behalf of the respondents.

3.1 It is submitted that in the facts and circumstances of the case and considering the fact in the lease deed dated 21.10.2014 nothing was mentioned that the lease deed dated 21.10.2014 is subject to the ultimate outcome of the main writ petition and/or the rates mentioned in the lease deed i.e. Rs.5900/per sq.meter is tentative and/or ad hoc and it was submitted that therefore when the subsequent execution of the lease deed dated 21.10.2014 at Rs.5900/per sq.meter was final for all purpose and conclusive, the High Court has rightly observed that the said lease deed shall be binding upon both the parties and therefore the High Court has rightly accepted the rate at Rs.5900/per sq.meter.

3.2 Learned Counsel appearing on behalf of the respondents has also tried to make submission on merits on other points which as such are not dealt with and/or considered by the High Court at all. And for the reasons stated hereinbelow we propose to remand the matter to the High Court for fresh consideration of the original writ petition. We therefore do not enter any further on merits and/or the submissions by Learned counsels appearing for the respective parties on merits.

4. Having heard Learned counsels appearing for the respective parties and considering the impugned judgment and order passed by the High Court, we are of the opinion that the impugned judgment and order passed by the High Court is unsustainable.

4.1 The High Court has disposed of the main writ petition accepting the rate at Rs.5900/per sq.meter solely on the basis of the subsequent lease deed executed in favour of the petitioners on 21.10.2014 and treating the said lease deed at Rs.5900/per sq.meter as binding between the parties. However, the High Court has not at all appreciated and/or considered the fact that the rate of Rs.5900/per sq.meter was fixed by the NOIDA as mentioned in the lease deed in view of the interim order passed by the High Court vide order dated 07.07.2014 which as such was by way of interim measure. Interim order dated 07.07.2014 in Writ Petition No.27632 of 2014 reads as under:

"Sri Shivam Yadav has accepted notice for the respondents Authority.

The petitioner has come up questioning the action of the respondents in calling upon the petitioner to deposit an enhanced amount in respect of the allotment of a commercial plot.

The dispute was occasioned on account of the refusal to make allotment to the petitioner and the petitioner approached this Court by filing Writ Petition No.52933 of 2010, which was allowed on 11.10.2013. A copy of the judgment has been filed as Annexure 10 to the writ petition. Para 25 of the said judgment categorically set aside the earlier refusal and directed the authority to consider the application of the petitioner in the light of the observations made therein.

The respondent Authority appears to have questioned the correctness of the said decision by filing a Special Leave to Appeal which was dismissed on 24.3.2014, a copy whereof is annexed as Annexure 11 to the writ petition.

In the aforesaid background the respondent Authority has now proceeded to allot the said plot to the petitioner but on an enhanced rate. Sri Ravi Kiran Jain, learned senior counsel for the petitioner, submits that this enhancement is absolutely uncalled for and the respondents are not bound to realise the enhanced amount in terms of clause 2(d) of the scheme. For this he has invited the attention of the Court to the judgment inter partes.

Sri Shivam Yadav prays that he may be granted time to file a counter affidavit in order to meet the aforesaid argument.

In the aforesaid circumstances, we provide as an interim measure that the allotment of the petitioner shall be made at the rate of Rs.5900/per sq. mt. and the petitioner shall deposit the amount accordingly with the respondents. This arrangement is an interim measure during the pendency of the writ petition.

So far as the dispute of the balance enhanced amount is concerned, the same shall be settled and disposed of after exchange of affidavits.

Three weeks' time is granted to file counter affidavit. Rejoinder affidavit may be filed within one week thereafter."

4.2 The High Court has not at all appreciated the fact that the lease deed dated 21.10.2014 was followed by the interim order dated 07.07.2014 in which it was specifically mentioned that the rate at Rs.5900/per sq.meter shall be as an interim measure. In order dated 07.07.2014, it has been specifically observed that so far as the dispute of the balance enhanced amount is concerned, the same shall be settled and disposed of after exchange of affidavits. In that view of the matter the High Court has erred in observing that the rate of Rs.5900/per sq.meter mentioned in the lease deed dated 21.10.2014 shall be conclusive and final and binding between the parties.

What was ordered by way of interim measure cannot be said to be final and conclusive between the parties. In that view of the matter the High Court has erred in disposing of the main writ petition by observing that the rate at Rs.5900/per sq.meter mentioned in the lease deed dated 21.10.2014 shall be final and conclusive between the parties and the same shall over ride the conditions mentioned in the allotment order dated 08.05.2014.

The High Court has disposed of the writ petition solely on the basis of the execution of the lease deed dated 21.10.2014 at Rs.5900/per sq.meter which as observed hereinabove was only by way of interim measure pursuant to the interim order dated 08.05.2014 passed by the High Court vide order dated 07.07.2014. The

High Court has not at all considered other aspects, if any, on merits. Therefore, the matter is required to be remitted to the High Court to consider the writ petition afresh in accordance with law and on its own merits and considering the observations made hereinabove.

5. In view of the above and for the reasons stated above the impugned judgment and order dated 07.07.2014 passed by the High Court holding that the rate mentioned in the lease deed dated 21.10.2014 at Rs.5900/sq. meter is final and conclusive and binding between the parties and consequently disposing of the main writ petition is quashed and set aside. It is observed that the rate at Rs.5900/per sq.meter mentioned in the lease deed dated 21.10.2014 was by way of interim measure only pursuant to the interim order passed by the High Court dated 07.07.2014.

As the High Court has not at all considered the writ petition on merits, we remit the matter to the High Court for fresh consideration of the main writ petition on merits. Writ Petition (C) No.27632 of 2014 before the High Court is ordered to be restored to the file of the High Court which shall be disposed of by the High Court at the earliest and preferably within a period of six months from the date of the receipt of the present order.

6. The present appeal is accordingly allowed to the aforesaid extent however there shall be no order as to costs.

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

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