

Chief Justice's Court

Case :- WRIT - C No. - 6049 of 2020

Petitioner :- M/S Jai Prakash Associates Ltd

Respondent :- State of U.P. and Another

Counsel for Petitioner :- Rohan Gupta, Navin Sinha (Senior Adv.), Rahul Agarwal

Counsel for Respondent :- C.S.C., Abhinav Gaur, Arvind Srivastava, Ashish Kumar Singh, Gaurav Tripathi, Kartikeya Saran, Rahul Agarwal, Rohit Nandan Pandey, Shreesh Srivastava, Sujan Singh, Syed Imran Ibrahim

Hon'ble Pritinker Diwaker, Chief Justice

Hon'ble Saumitra Dayal Singh, J.

1. Heard Sri Jayant Bhushan learned Senior Counsel assisted by Sri Vishal Gupta, Sri Rohan Gupta and Sri Amartya Bhushan learned counsel for the petitioner, Sri Manish Goyal learned Senior Counsel assisted by Sri Syed Imran Ibrahim, Sri Praveen Kumar, Sri Pranav Tanwar, Sri Gaurav Tripathi learned counsel for the Yamuna Express Way Industrial Development Authority (YEIDA), Sri Rahul Agrawal, learned counsel on behalf of the intervener-banks, Sri Anoop Trivedi learned Senior Counsel assisted by Sri Abhinav Gaur for the Home Buyers Association, learned Standing Counsel for the State, all of whom have appeared in person and Sri Anuj Bhandari learned counsel appearing for some individual home buyers, through Video Conferencing.

2. Present petition was filed in February 2020, principally to challenge the order dated 12.2.2020 passed by YEIDA, cancelling the allotment of 1000 Hectare of land allotted to the petitioner in Sector-25 under SEZ scheme. The writ petition has remained pending for more than three years. Pleadings are complete.

3. Also, upon the writ petition being entertained, on 25.2.2020 a detailed interim order was granted in favour of the petitioner. Same is extracted hereinbelow:-

"1. Heard Sri Rakesh Dwivedi, Senior Advocate, Assisted by Sri Vishal Gupta, Rohan Gupta, Ms. Sansriti Pathak, Sri Raghav Dwivedi, Advocates and Sri Naveen Sinha, Senior Advocate, assisted by Ms. Kalpana Sinha, Sri Kali Gupta & Sri Shivam Shukla, Advocates, learned counsels appearing for petitioners and Sri M.C. Chaturvedi, learned Senior Advocate, assisted by Sri Amar Gupta, Sri Gaurav Tripathi and Sri Syed Imran Ibrahim, learned counsels appearing for respondent-2.

2. This matter was released initially by a Division Bench of Hon'ble Abhinava Upadhyaya and Hon'ble Shamim Ahmad, JJ, vide order dated 20.02.2020. Thereafter, it was nominated to the Bench of Hon'ble B.K. Narayana and Hon'ble Prakash Padia, JJ, and again Bench of Hon'ble Mr. Justice B.K. Narayana, released it vide order dated 24.02.2020. Thereafter Hon'ble the Chief Justice has nominated it to the Bench presided by one of us (Sudhir Agarwal, J.) vide order dated 24.02.2020 and that is now this has come up to this Court.

3. Petitioner-M/S Jai Prakash Associates Ltd. has challenged order dated 12.02.2020 passed by Chief Executive Officer, Yamuna Expressway Industrial Development Authority (hereinafter referred to as 'YEIDA') cancelling allotment of land to petitioner in Sector-25 under Special Development Zone Scheme, vide six allotment letters of different dates. Land allotted to petitioner-M/S Jai Prakash Associates Ltd. under Special Development Zone. Policy is detailed in the impugned order as under:

SN	Allotment letters	Allotment dates	Area (hectares)	Premium Rate (In Rs.)	EDC Rate (in Rs.)	Total Rate (In Rs.)	Total Amount (In Rs. crores)
1	YEA/48/2009	24.02.2009	311.2641	941.59	574	1515.59	471.74
2	YEA/82/2009	20.03.2009	646.7530	941.86	574	1515.86	980.38
3	YEA/206/2009	10.08.2009	58.4182	946.00	574	1520.00	88.79
4	YEA/393/2009	27.01.2010	20.2960	945.17	574	1519.17	30.83
5	YEA/459/2009	23.06.2010	20.5098	1129.00	574	1703.00	34.92
6	YEA/497/2009	07.12.2010	28.0916	1220.00	651	1871.00	52.55

4. In all about 1000 and odd hectares of land was allotted to petitioner. Thereafter lease-deeds were also executed on different dates, details whereof as given in the impugned order as under :

S1 Nos.	Name of Village	Area (Hectare)	Date of Execution
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1.	<i>Bela Kalan</i>	<i>28.7532</i>	<i>24.09.2009</i>
2.	<i>Mustafabad</i>	<i>9.4210</i>	<i>24.09.2009</i>
3.	<i>Aurangpur</i>	<i>155.6821</i>	<i>24.09.2009</i>
4.	<i>Mathurapur</i>	<i>34.2640</i>	<i>24.09.2009</i>
5.	<i>Atta Gujran</i>	<i>74.6251</i>	<i>24.09.2009</i>
6.	<i>Salarpur</i>	<i>86.0487</i>	<i>25.09.2009</i>
7.	<i>Munjkheda</i>	<i>61.1913</i>	<i>25.09.2009</i>
	<i>Munjkheda (Surrender land)</i>	<i>-1.3300</i>	<i>16.12.2011</i>
	<i>Munjkheda (Correction deed)</i>	<i>-0.9955</i>	<i>08.09.2014</i>
8.	<i>Gunpura</i>	<i>175.3639</i>	<i>25.09.2009</i>
9.	<i>Jaganpur Afjalpur</i>	<i>8.0369</i>	<i>25.09.2009</i>
10.	<i>Dankaur</i>	<i>160.6253</i>	<i>25.09.2009</i>
11.	<i>Fatehpur atta</i>	<i>26.2968</i>	<i>25.09.2009</i>
12.	<i>Aurangpur</i>	<i>13.8193</i>	<i>25.09.2009</i>
13.	<i>Gunpura</i>	<i>8.5187</i>	<i>13.11.2009</i>
14.	<i>Gunpura</i>	<i>54.3950</i>	<i>19.11.2009</i>
15.	<i>Jaganpur Afjalpur</i>	<i>0.0312</i>	<i>19.11.2009</i>
16.	<i>Fatehpur atta</i>	<i>0.0570</i>	<i>19.11.2009</i>
17.	<i>Mutafabad</i>	<i>0.1390</i>	<i>19.11.2009</i>
18.	<i>Mathurapur</i>	<i>3.7960</i>	<i>19.11.2009</i>
19.	<i>Aurangpur</i>	<i>7.6425</i>	<i>05.05.2010</i>
20.	<i>Atta Gujran</i>	<i>2.4930</i>	<i>05.05.2010</i>
21.	<i>Salarpur</i>	<i>3.8139</i>	<i>05.05.2010</i>
22.	<i>Munjkhera</i>	<i>2.4560</i>	<i>05.05.2010</i>

23.	Fatehpur Atta	0.3289	05.05.2010
24.	Gunpura	0.3343	05.05.2010
25.	Fatehpur Atta	3.4675	18.12.2010
26.	Dankaur	14.4643	18.12.2010
27.	Salarpur	2.4708	18.12.2010
28.	Gunpura	0.0480	18.12.2010
29.	Aurangpur	0.0582	18.12.2010
30.	Atta Gujran	0.0010	18.12.2010
31.	Dankaur	28.0916	28.03.2011
32.	Munjekeda (Alternate land)	1.3300	16.12.2011
	Total	965.7390	

5. According to respondents-'YEIDA', petitioner committed default in payment of leased rent, premium and interest, therefore, entire allotment has been cancelled, by referring to condition 4.2 of allotment letter by impugned order.

6. Learned Senior Advocate Sri Dwivedi, appearing on behalf of petitioner as a matter of fact did not dispute that there are some dues in respect whereof petitioner has committed default in payment. Reasons explained therefor is a serious financial crisis found by Real Estate Sector etc. It is, however, submitted that substantial developments have been made on the land allotted to petitioner; payment of 2,379.74 crores has been made and only a sum of Rs.359.81 crores was outstanding on 31.07.2017.

7. It is contended, when substantial developments have already taken place, respondents could not have cancelled the entire allotment, particularly, when allotment has already converted into lease deeds, which have not been cancelled; and, default is in respect to some part of amount, but entire allotment has been cancelled, which is arbitrary and only proportional cancellation in respect of land in question at the best could have been made.

8. In our view mater requires consideration.

9. Sri M.C. Chaturvedi, learned Senior Advocate appearing for respondent-2 prays for and is allowed three weeks' time to file counter affidavit. Petitioner may file rejoinder affidavit within ten days' thereafter.

10. Counsel for petitioner have also prayed for interim relief, it is said that after passing impugned order, respondents are allegedly proceeding to take over possession of entire allotted land. In respect of the amount of outstanding dues as on today, there is some dispute between the parties. According to Sri Dwivedi Rs.225 crores is outstanding as on date, since there is default in payment of two instalments, while according to respondent-2 that amount is to Rs.287 crores.

11. After addressing the Court for sometime, learned counsel for both parties have agreed to the conditions stated below, subject where to parties may observe status quo. We therefore pass order in the following manner:

(i) Petitioner-M/S Jai Prakash Associates Ltd. shall deposit Rs.100 crores with respondent-2 within one month but in two parts. Rs.50 crores shall be paid by 10th of March, 2020 and another Rs.50 crores shall be paid by 25th of March, 2020.

(ii) Subject to payment of aforesaid amount, parties shall maintain status quo as on the date, in respect of property in dispute.

(iii) We make it clear that in case petitioner fails to deposit Rs.50 crores by 10th of March, 2020, this interim protection shall automatically stand vacated and respondents shall be free to proceed further.

(iv) Similarly, if first instalment of Rs.50 crores is paid but default is committed in compliance of direction with respect of payment Rs.50 crores payable upto 25th of March, 2020, in that case also interim protection granted by this Court shall stand automatically vacated and respondents shall be free to proceed further.

12. As agreed by the parties, list this matter on 01.04.2020 for final disposal."

4. Initially, the petitioner deposited Rs. 50 crores by 09.3.2020 but it could not deposit the balance 50 crores by 25.3.2020. Instead, it deposited Rs. 5 crores, more. Thereafter, on the prayer made by the petitioner, vide order dated 08.2.2021, petitioner was permitted to deposit Rs. 52,50,26,551/- within a week. Thereafter, the matter has remained pending. Several impleadment applications etc. came to be filed, both on behalf of the banks as also the home buyers etc.

5. Still later, petitioner moved another application being a proposal to revive its project of development over the land leased to it and to liquidate its liabilities towards YEIDA as well as the home buyers. At that stage, YEIDA prayed to the Court to require the petitioner to deposit Rs. 100 crores, upfront, to consider its proposal. That requirement is also recorded to have been met by the petitioner, in the order dated 09.11.2022. As on date, while pleadings are complete, though the allotment made in favour of the petitioner is described as cancelled, the lease deeds are described as intact. At the same time, in view of the order dated 25.2.2020, *status quo* order is operating in favour of the petitioner.

6. It is in such facts that the matter was heard on various dates in the

month of May as also today, to first consider the viability of the settlement proposed by the petitioner. Failing that proposal, Sri Jayant Bhushan learned Senior Counsel has prayed- further interim protection be granted to the petitioner to the extent, cancellation of the allotment order may be stayed so as to allow the petitioner to dispose of certain portions of the leased land, to generate funds both to liquidate the undisputed demand of YEIDA as also to secure the disputed demand of YEIDA and to generate revenues of the petitioner to complete the projects for which the allotment of vast track of land being 1000 acres was made to the petitioner.

7. Relying on the chart dated 09.5.2023 submitted by him, Sri Bhushan would submit, at most YEIDA is claiming Rs. 3621,50,48,489/-. It is inclusive of all demands being made by it from the petitioner (both disputed and undisputed).

8. Referring to its right to contest the cancellation of allotment of land, for the interim, it has been strenuously urged by him that the petitioner is willing to go along with YEIDA and deposit a reasonable amount of money as may be enough to discharge the just dues of YEIDA, as also to secure the disputed amounts, pending this petition.

9. Thus, relying on the counter proposal submitted by YEIDA, it has been submitted, even according to the best case of YEIDA, it has not paid and has yet not incurred any liability to pay interest on additional compensation that may have been paid to any of the original tenure holders/land owners. That notional interest (on additional compensation), has been quantified at Rs. 1506,11,58,900/-. If that be excluded (for the time being) from Rs.3621,50,48,489/-(the total amount being demanded by YEIDA), balance amount would come to about Rs.2115,38,89,589/-

10. In the first place, to secure that amount, the petitioner has offered to dispose of 150 acres of land in the “Core Area” of Sector-25 such

that it may generate enough revenue (to pay off the above noted amount), being roughly Rs. 2715,00,00,000/-. It would be more than enough to discharge the liability of about Rs. 2115 crores, noted above. As to the balance amount of about Rs. 600 crores, he would submit, the same may be retained in an escrow account that may abide by the final outcome of the writ petition.

11. As to the amount of Rs. 1506 crores and odd being claimed towards interest on additional compensation, Sri Bhushan has urged, that demand has yet not crystallised. In fact, it has no legal basis. In absence of any liability incurred in law and in absence of any computation shown to exist, that demand may be stayed in entirety, during the pendency of writ petition.

12. As to the mode and method to deposit Rs. 2715 crores, as noted above, 150 acres of land in the Core Area has been proposed to be sold. As to the time period, after much deliberation held over the last more than three hearings, it has emerged, not less than one year time would be required to make good that deposit. Here, it may be noted, at one stage petitioner had also proposed that it may give up about 100 acres of land in the Core Area to YEIDA against the demand of Rs. 2115 crores (approximately). However, that proposal was stoutly rejected by YEIDA.

13. The entire amounts to be recovered upon sale of land have been offered to be deposited in a dedicated escrow account, as may never allow for any chance or doubt of mis-utilisation etc.

14. As to the urgent need for such an order, learned Senior Counsel for the petitioner has referred to proceedings pending before the National Company Law Tribunal involving claim of insolvency of the present petitioner. Those proceedings have been drawn by various bankers/lenders, who according to the petitioner, hold a second charge over the land in dispute. Referring to certain communications issued

by the ICICI bank dated 12.7.2023 (copy of which was shown to us today, in the course of hearing), it has been asserted that the consortium of banks realise their predicament, being unable to enforce the mortgage since the YEIDA holds the first charge over the entire property. Therefore, they have taken a decision on 25.5.2023, in principal, endorsing the proposal made by the petitioner to release 150 acres of land in the Core Area of Sector-25, to discharge the dues of YEIDA. Thus, it has been submitted, the bankers who are vitally interested in the present dispute have, in principal, consented to the stay being prayed for by the petitioner.

15. As to concerns voiced by the home buyers, it has been submitted, the interim order being prayed for would be in their interest too. If no interim order is granted, the petitioner would remain disabled from carrying out any development over the land and, in absence of funds becoming available it may not be able to fulfill that commitment. Further, it has been submitted, no stake holder in the project stands to gain by the *status quo* as it prevails, today.

16. On the other hand, Sri Manish Goyal learned Senior Counsel appearing for YEIDA has been consistent and insistent in his opposition, both to the settlement and the stay prayed for. In the first place, he would submit, YEIDA must provide for interest on additional compensation to protect the interest of land owners. Today, two other litigation are stated to be pending before the Supreme Court in that regard. Also today, he has pressed for the first time, YEIDA would require to be paid by the petitioner an amount equal to 10% of the total dues Rs. 3621,50,48,489/- towards restoration of the allotment.

17. Thus, the efforts for settlement are seen to have completely failed, in entirety. It is not for the Court to test the legality or the justification or the sustainability of the stand being taken by respective parties in

the course of settlement. Only this much may be recorded, keeping the best interest of the stake holders in mind, we allowed the parties ample opportunity to discuss, amongst themselves and also before the Court, their respective positions. Efforts were made to help them examine the perceived weakness of their respective stand, to test if any settlement was possible.

18. The bankers on their part appear to have taken the stance of a fence sitter. While they have drawn the petitioner into proceedings before NCLT, seeking declaration of insolvency and consequential action, here (in the present proceedings), both tacitly and at times explicitly, they are seen to support the petitioner in seeking a stay order. Perhaps, they perceive to lose everything if the present petition is defeated.

19. The home buyers have concerns of their own. They seek securities regarding completion of the apartments booked by them.

20. Thus, at this stage we only record, all efforts to reach a settlement have failed.

21. As to the interim order being prayed, we have to recognise that as on date entire allotment made in favour of the petitioner over a vast tract of land admeasuring 1000 acres has been cancelled, by YEIDA. That status of cancellation by YEIDA exists for the last three years. Upon detailed consideration of the submissions advanced, at fresh stage, the Court granted ample protection to the petitioner by passing an order of *status quo*. That order has allowed the petitioner to retain possession over the allotted land and has effectively prevented YEIDA from either cancelling the lease deed/s or resuming the land or any part thereof or in any way dealing with that land or any part thereof. If at all the interim order has operated to the grave prejudice of the home buyers.

22. In face of that order neither any major development has taken place to address the rising grievance of the home buyers nor it has allowed any third party to intervene and carry out any development over the land. Though the home buyers are also before the Court, both by way of interveners and by way of separate petitioner, their stand appears to be one of concern about the completion of the various projects. Yet, it has nothing to do with the legality of the issue involved in the present petition i.e. whether the cancellation of the allotment was within the jurisdiction of YEIDA or otherwise legal.

23. Similarly, the concern and motives of the bankers cannot be addressed by the Court, in this proceeding, that is confined to testing the legality of the cancellation of allotment.

24. Having heard learned counsel for parties at length, we are of the firm opinion that in face of the order of cancellation of allotment and during its continuance, we cannot grant an interim protection to allow the petitioner to deal with or sell any part of the disputed property. To do that would be to set aside the cancellation of allotment, at least to the extent petitioner would have been permitted to deal with and sell the land over which its allotment has been cancelled by YEIDA. Though that relief is not prohibited in law, by very nature of the relief claimed, it may be granted at the stage of final hearing and not by way of interim protection. It is for that reason that we had allowed the petitioner to negotiate with YEIDA so that a consented order may arise, if terms of settlement could have been agreed to. Settlement having failed, we do not find any good ground to interfere at this stage and pass an interim order as may be in the nature of final relief.

25. Further, in the context of the dispute before us, the interest of the petitioner stands fully safeguarded, during pendency of this writ petition. What benefit or gain the petitioner may draw if final relief is granted, is not to be factored in at interim stage.

26. Here, it may also be noted, both, on earlier occasions as also today, we offered the matter to be heard finally. While the petitioner is not opposed to the final hearing, at the same time, learned Senior Counsel appearing for the petitioner has submitted, prayer for stay may be considered first.

27. In view of the above, prayer for stay made by the petitioner to allow it one year time to sell about 150 acres of land in the Core Area of Sector-25 under SEZ scheme, is declined. The prayer is thus rejected.

28. List for hearing after one month.

Order Date :- 13.7.2023

Faraz

(S. D. Singh, J.)

(Pritinker Diwaker, CJ.)