

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No(s). 9572/2007
(Arising out of impugned final judgment and order dated 08/05/2007
in CMWP No. 31442/2006 passed by the High Court of Judicature at
Allahabad)

I CITY INFRASTRUCTURE(INDIA) PVT. LTD.

Petitioner(s)

VERSUS

NEW OKHLA INDUSL.DEVT.AUTHORITY & ORS.

Respondent(s)

(With appln.(s) for exemption from filing O.T. and impleadment as
party respondent and permission to file additional documents and
permission to submit additional document(s) and permission to urge
addl. Grounds and interim relief and office report)
(For Final Disposal)

Date : 08/02/2017 This petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE DIPAK MISRA

HON'BLE MRS. JUSTICE R. BANUMATHI

For Petitioner(s) Mr. V. Giri, Sr. Adv.

Mr. Joseph H. Samuel, Adv.

Mr. Christopher, Adv.

Mr. Rajat Agnihotri, Adv.

Mr. Tayenjam Momo Singh, AOR

For Respondent(s) Mr. C.U. Singh, Sr. Adv.

Mr. P.S. Sudheer, AOR

Mr. Gaurav Jain, Adv.

Mr. Ram Avtar Sharma, Adv.

Mr. Rishi Maheshwari, Adv.

Ms. Anne Mathew, Adv.

Ms. Shruti Jose, Adv.

Mr. Ashutosh Kr. Shrivastava,

Respondent-in-person

UPON hearing the counsel the Court made the following

O R D E R

Heard Mr. V. Giri, learned senior counsel along with Mr.
Joseph H. Samuel, learned counsel for the petitioner, Mr. Ravindra
Nath, learned counsel for the New Okhla Industrial Development

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Authority (NOIDA), Mr. C.U. Singh, learned senior counsel along
with Mr. P.S. sudhir, learned counsel for the respondent No.2 and
Mr. Ashutosh Kumar Shrivastava, intervenor-in-person. At the very
outset, we make it clear that the relief sought in the special
leave petitions need not be adjudicated as the special leave
petitions were filed against the judgment and order dated 8.5.2007

in Writ Petition No.31442 of 2006 questioning the non-consideration
of the petitioner as it was ineligible. Be it noted, the
respondent-authority has issued work order in favour of the
respondent No.2, namely, Unitech Ltd. in 2006. It is submitted by
Mr. Giri, learned senior counsel that the work has really not
progressed. The said aspect is seriously disputed by Mr. C.U.
Singh, learned senior counsel appearing for the respondent No.2.

At this juncture, Mr. Ashutosh Shrivastava, who has intervened
in the matter submits that though more than a decade has expired,
the developer has really not developed as per the contract awarded
by the NOIDA as a result of which this project is affected. Be it
noted, the contract was awarded to the 2 nd

respondent for
development of township in three sectors. An award of contract by
a public authority has immense public significance. The work was
to be completed by the end of 2014. It is submitted by Mr. Giri,
after obtaining instructions, that the time has lapsed and there
has been really no substantial development. The same concern is
echoed by Mr. Ashutosh Shrivastava.

We will be failing in our duty, if we do not take notice of
the submissions advanced by Mr. C.U. Singh, learned senior counsel
on behalf of the 2 nd

respondent. It is submitted by him that the development relating to building of towers and also developing of plots, in both the areas there has been substantial development. Additionally, it is submitted by him that the 2nd respondent has taken recourse to the exit policy announced in December, 2016. Mr. Ashutosh Shrivastava submitted that the NOIDA has published a public notice in the 'Hindustan Times'; New Delhi on 12.4.2016 'stopping of proposed e-auction of Group Housing Plot No. Express

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City, Sector-96, 97 & 98, NOIDA scheduled on 6th May, 2016' by the Life Insurance Corporation of India (LIC) as it was going to auction the property. The relevant part of the said notice reads follows :-

â S New Okhla Industrial Development Authority vide allotment letter dated 26th June, 2006 has allotted Group Housing Plot in Sector-96, 97 & 98 admeasuring 14,07,327.68 sqm. under the terms and conditions of Brochure of the Scheme for Allotment of EXPRESS City Group Housing in Sector-96, 97 & 98, NOIDA. Lease deed of land has been executed on 28th December, 2006 and possession delivered on 29th December, 2006. As per the lease deed, lessee has paid Rs.483.74 Crores and remaining amount of Rs.1139.10 Crores was to be paid in 10 equal half yearly instalments along with interest @ 11% p.a. The first such instalment was fallen due on 30th November, 2006 and the last instalment was scheduled to be paid on 30th

May, 2011. The terms and conditions of brochure / allotment / lease deed provides that in case of default interest compounded every half yearly @ 14% p.a. will be payable and in case of default in payment of three consecutive instalments, the authority has right to exercise the cancellation of allotment and forfeiture of deposited amount. On the request of lessee, the Authority rescheduled the payment of instalment vide this office letter dated 28th

October, 2010. As per aforesaid letter the last instalment is to be paid on or before 30th

April, 2016. It is also to inform you that the said allottee has defaulted in payment of dues (install No.1 to 10 of reschedulement offer, interest, defaulted interest, lease rent and interest on lease rent) of Lessor and the dues as on 31st

March, 2016 have accumulated to the tune of Rs.2423,25,17,431/-. In addition to above, last instalment amounting to Rs.175,66,16,317/- of reschedulement offer is to fall due on 30th April, 2016. It is also to inform that the Lessee has been issued a Show Cause Notice by the Lessor as to why the allotment be not cancelled on account of persistent non-payment of dues. The terms and conditions of the brochure / allotment / lease deed provide for mortgage with prior permission of the Lessor. The said clause No.12 of lease deed is reproduced below :

â- \235 Mortgage â- the lessee may, with the prior approval of the Chief Executive Officer or any other Officer authorized by him mortgage the plot for availing a loan for implementation of project to any Government/Financial Institution subject to the fulfillment of following:

(i) After payment of full premium, interest thereon, upto date lease rent and interest thereon.

(ii) On submission of an undertaking from the Govt./Financial Institution(s) to the effect that they will pay full premium of the plot upto date lease rent alongwith interest as per allotment letter dated 26.06.2006 and 10.11.2006 in both the conditions the first charge over the property will be of the Lessor.â- \235

Our record reveals that no such permission has ever been applied / granted by the Lessor. Even if such a permission has been applied, it would not have been granted as per the terms of lease deed since the Lessee has defaulted in payment of dues. Even in cases where permission to mortgage is granted, the NOIDA always imposes a specific condition that NOIDA shall have first charge over the mortgaged property towards its dues. It is a matter of grave concern that you have proceeded to accept the mortgage without seeking confirmation of this office. In case Lessee has made available any purported permission to mortgage the leased land, kindly provide the relevant records in this regard because no permission to mortgage the leased land has been issued by this office.

It has come to the knowledge of the Lessor through press and print media that you have proceeded to issue the auction notice on the premises that the leased land was mortgaged with you but in reality no permission to mortgage has been issued vide this Authority. Your rights cannot override those of this Authority to recover its dues under the lease. You have without our permission have mortgaged the property with you without obtaining our permission and fulfilling the terms of lease deed. It has also come to our knowledge that you are going to auction of the aforesaid land through e-auction which is scheduled for 6 th

May,
2016.

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In view of above, it is to inform you that you have no right to auction the said property. You are requested to stop the proposed e-auction scheduled for 6 th

of May, 2016 and inform us within seven days from the date of issue of this letter, failing which Lessor has every right to take suitable action as deemed fit to protect its right over the property. In case of any clarification, you may like to contact this office on any working day.â- \235

As it appears, there is a dispute between the NOIDA and the LIC and the developed property of the 2 nd respondent is involved.

Mr. Singh, at this juncture, submitted that the auction which was proposed to be done by the LIC has been stayed by the Debt Recovery Tribunal.

The question that emerges for consideration is to what extent
the 2 nd

respondent has carried out the contract and on what basis
the exit policy can be accepted or not accepted. Regard being had
to the aforesaid facts that have come before us, we direct that the
Chairman of NOIDA shall file an affidavit which will indicate the
status of development at the site. The status report shall also
include the amount to be paid by the 2 nd

respondent to the 1 st
respondent, if any.

Respondent No.2 is granted liberty to file an affidavit with
regard to the status report and the payment made.

Let the matter be listed on March 27, 2017.

(Gulshan Kumar Arora) (H.S. Parasher)

Court Master Court Master