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**SooperKanoon Citation :** [sooperkanoon.com/490542](http://sooperkanoon.com/490542)

**Court :** Allahabad

**Decided On :** Oct-29-2004

**Reported in :** AIR2005All99; 2005(2)AWC1677

**Judge :** M. Katju, A.C.J. and ;Sunil Ambwani, J.

**Acts :** Uttar Pradesh Industrial Area Development Act, 1976 - Sections 2, 3 and 41

**Appeal No. :** Civil Misc. Writ Petn. No. 15355 of 2003

**Appellant :** Ashish Tandon

**Respondent :** Greater Noida Industrial Development Authority and ors.

**Advocate for Def. :** Pradeep Kumar, S.C.

**Advocate for Pet/Ap. :** Anil Kumar Mishra, Adv.

**Disposition :** Petition dismissed

**Judgement :**

ORDER

1. Heard learned counsel for petitioner and Sri Pradeep Kumar, learned counsel for respondents.

2. By this writ petition, the petitioner has prayed for a direction to the respondents to impose and accept the extension charge according to Clause P of the lease

deed dated 30-12-1998, and to extend the time for completion of the constructions of the building over Plot No. 1, Block-F, Sector Alfa, Greater Noida, Gautam Budh Nagar. He has also prayed for a direction to calculate the total premium of the plot at the rate which was provided at the time of execution of lease deed.

3. The Greater Noida Industrial Development Authority (In short the Authority) is a body corporate constituted under Section 3 read with Section 2(d) of the U.P. Industrial Area Development Act 1976. The petitioner was allotted Plot No. 1 situate in Block-F in Sector Alfa, Greater Noida by Greater Noida Industrial Development Authority, measuring 200 square meters for construction of residential building. A lease deed dated 30-12-1998 was executed by the Authority in favour of the petitioner for a period of 90 years commencing from the date of execution of the lease deed at a premium of Rs. 94,248/-. Clause II (p) of the lease deed provides that the lessee shall have to erect and complete the building on the leased land within a period of three years from the date of execution of the lease deed, unless extension is allowed by the lessor in exceptional circumstance and on such conditions as it may impose. The lease deed further provides in Clause II(q) that in case the lessee does not construct the building within the time provided for above, the deed of lease will be void and his interest in the property will determine. However, in exceptional circumstances extension can be allowed by the lessor or any officer authorised by him subject to fulfilment of such conditions, charges as he may impose for the same.

4. A notice dated 10-2-2001 was issued to the petitioner by the Project Incharge of the Authority intimating that a partial amendment has been made in the policy/condition for raising constructions, by which the allottees of the land prior to 27-2-1999. In Alfa/Beeta/Gama Sectors were required to make applications for extension of the period to make constructions by 30-9-2001, 30-11-2001 and 30-12-2001 respectively, after which no application for extension of period for constructions shall be accepted. The petitioner by his letter dated 10-9-2001 requested for a further period of one year up to 29-12-2001 for raising constructions and gave his consent to deposit 3% of the premium as penalty. By a letter dated 6-10-2001, the petitioner in response to his application was informed to deposit Rs. 15,524/- for extending the period for raising constructions. The

petitioner made a protest to the demand on the ground that it was violative of Clause (p) of the lease deed.

5. By letter dated 15-5-2002, the Manager Estate of the Authority informed the petitioner that after 29-12-2001, i.e. the prescribed date for completion of constructions, the permission can only be granted by Chief Executive Officer of the Authority. The last date for applying for extension was fixed for 30-9-2001. Since the petitioner did not apply within the prescribed period, it was not possible to consider his application and now after the expiry of the time provided for application for extension, the application can only be accepted up to 31-12-2002 on depositing Rs. 140/- per square meter of the leased land, which in the case of the petitioner comes to Rs. 15,524/-. The petitioner again made a protest against the demand, and intimated his willingness to deposit only three percent of the premium in accordance with the Clause (p) of the lease deed. The Authority refused to accept the request. By a letter dated 17-2-2003 of the Authority the petitioner was informed to deposit a total amount of Rs. 36,813/- including Rs. 15,524/- as late fees up to 31-12-2002, and thereafter Rs. 192/- per square meter for a period of one year up to 31-12-2003, and thereafter at the rate of Rs. 48/- per square meter quarterly, for consideration of his request for extension.

6. In the counter-affidavit of Sri K.D. Mani, Manager I (Property) Greater Noida Industrial Development Authority, Gautam Budh Nagar, it is stated that the petitioner had agreed to the terms and conditions of the lease deed, which provides in Clause III(j) that the Chief Executive Officer, or the lessor reserves the right to make such additions and alterations or modifications in the terms and conditions as may be considered just and expedient. Under the terms of the lease deed the building was to be constructed within a period of three years unless an extension was allowed by the lessor in exceptional circumstances, which was solely at the discretion of the Authority. The petitioner was informed by letter dated 10-2-2001 about the amended policy pertaining to constructions, and in order to persuade the allottees to undertake constructions on account of which the development of the township was suffering, the petitioner was called upon to pay Rs. 14,524/- for extension of the period to complete the constructions up to 31-12-2002. In case the petitioner was aggrieved, he could have filed a representation

under Section 41 of the U.P. Industrial Area Development Act 1976.

7. We have examined the terms and conditions of the lease deed executed between Greater Noida Industrial Development Authority and the petitioner. Clause II(p) and (q), and Clause III(j) of the lease deed dated 31-12-1998 relevant for the matter are quoted as below ;

'II(p) That the lessee shall have to erect and complete buildings on the leased land within a period of three years from the date of execution of lease deed unless extension is allowed by the lessor in exceptional circumstance and on such conditions as it may impose. (Extension of one year, two year, three year and four year may be granted by the Lessor on payment of 1%, 2%, 3% and 4% of the premium respectively by the lessee).

(q) That in case the Lessee does not construct building within the time provided for above, this deed of lease will be void and his interest in the property will determine. However, in exceptional circumstances extension can be allowed by the lessor or any officer authorised by him subject to the fulfilment of such conditions, charges as he may impose on the Lessee).

III. (J) The Chief Executive Officer or the Lessor reserves the right to make such additions and alterations or modifications in these terms and conditions as may be considered just and expedient.'

8. We do not find any such condition in the lease deed, which may bind the lessor to grant extension for erecting and completing the building. The permission can only be given in exceptional circumstances and on such conditions which the authority may impose. Clause (P) gives an indication for determination of the quantum of the amount, with reference to the premium for such extension. The covenants of the lease deed, however, do not place an restriction upon the lessor to extend the period of constructions only upon payment of the percentage of premium indicated in Clause II(p).

9. There is no pleading in the writ petition that the Authority had fixed different charges for different plot owners in any sector or has discriminated between the

lessees of sector. The conditions of the lease for the purpose of fixing the time period for raising constructions were uniformly modified in respect of different sectors for timely raising of the constructions.

10. We find substance in the contention of the respondents that in order to dissuade the frequent sale and purchase of plots only for the purposes of prospecting and making gains out of such purchase, the Authority modified the period provided in the lease deed for raising constructions, and imposed uniform charges, based on the plot area for giving permission to extend the period. We do not find that the Authority acted arbitrarily, and unfairly or that the amount fixed by the Authority for granting permission to the lessees for extension is unreasonable. The decision of the Authority is within the terms and conditions of the lease deed, and in order to rule out any arbitrariness in considering the exceptional circumstances, uniform extension charges were fixed to grant of extension. The petitioner has not disclosed any reason for grant of extension, much less exceptional circumstances for exercising discretion by the Authority.

11. The Court can neither create a contract nor can it modify nor extend its period, vide *Anil Kumar Gupta v. Union of India* 2003 (3) All WC 1819, *Murari Lal v. D.M.* 2003 (3) All WC 1872, *Pole Ads Advertising (P) Ltd. v. Nagar Nigam* 2003 (3) All WC 1880 and *Shakti Narain Singh v. Anoop Singh* (2004) 3 UPLBEC 2444.

12. The writ petition is consequently dismissed.