

Neutral Citation No. -
2025:AHC:229742



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HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT – C No. - 26271 of 2025

A.F.R.

Judgement Reserved on 24.09.2025

Judgement Delivered on 19.12.2025

Vision Town Planners
Private Limited

.....Petitioners(s)

Versus

State Of U.P.
And 2 Others

.....Respondents(s)

Counsel for Petitioners(s)	: Tarun Agrawal
Counsel for Respondent(s)	: C.S.C., Kaushalendra Nath Singh, Vineet Pandey

Court No. - 2

HON'BLE PRAKASH PADIA, J.

1. Heard Sri Tarun Agrawal, learned counsel for the petitioner, Sri Kartikey Saran, learned Additional Advocate General State of U.P. along with Sri Vijay Shankar Prasad, learned Additional Chief Standing Counsel appearing on behalf of respondent no. 1 and Sri M.C. Chaturvedi, learned Senior Counsel along with Sri Vineet Pandey, learned counsel appearing on behalf of respondent nos. 1, 2 and 3 at length.

2. The petitioner has preferred the present petition with the following prayers:-

i) Issue a writ, order or direction in the nature of CERTIORARI quashing the impugned order dated 17.10.2024 passed by the respondent no. 1 to the extent it refuses to set aside the demand of

Rs. 168.37-Crores towards arrears of annual lease rent as well as Rs. 7.38-Crores towards CIC charges (Annexure No. 1);

ii) Issue a writ, order or direction in the nature of MANDAMUS commanding the respondent authority to forthwith restore the plot of the petitioner without demanding restoration charges in accordance with GO dated 05.11.2019.

iii) Issue a writ, order or direction in the nature of MANDAMUS commanding the respondent authority to charge annual lease rent only from the date of delivery of actual physical possession of the plot together with the possession letter;

Facts in brief as contained in the writ petition are that the predecessor in interest of the petitioner namely M/s BPTP International Trade Centre Limited was allotted a commercial plot admeasuring 3.80 lakh sq. mt. in Sector 94, Noida. The total premium of the aforesaid plot was Rs. 4,957,829-crores. M/s BPTP International Trade Centre Limited paid Rs.1115.51/-crores, and thereafter sought curtailment of the area corresponding to the payment already made by it. Accordingly, the allotted area was reduced to 85,672.17 sq. mt. corresponding to an allotment premium of Rs. 1,115.51/-crores. Since, this amount had already been paid in full a lease deed was executed between the respondent authority and M/s BPTP International Trade Centre Limited on 09.02.2009. The lease deed also provided yearly lease rent equivalent to 2.5% of the total premium of Rs 1,115.51-crores.

4. Thereafter, a request had been made by M/s BPTP International Trade Centre Limited to sub-divide the allotted plot into two smaller plots and this request was accepted by Noida vide letter dated 16.02.2010. The sub-division of plots was permitted pursuant to the government order dated 25.10.2009 and the decision of the Board taken in its 166th Meeting dated 29.12.2009. Certain conditions were imposed while permitting subdivision of plots. Condition no. 3 provides for separate execution of a sublease deed and for independently obtaining the possession certificate.

5. Thereafter, no fresh lease deed was executed and only correction deed was executed between the respondent authority and M/s BPTP International Trade Centre Limited which had the effect of bifurcating

Plot no. 2 into two smaller plots, viz, Plot no. 2A (admeasuring 28,328 sq. mt.) and Plot no. 2B (admeasuring 57,344 sq. mt.).

6. M/s BPTP International Trade Centre Limited moved application for transfer of plot No. 2A (28,328 sq. mt.) to the petitioner company. The respondent no. 2 granted permission by letter dated 22.2.2010 to transfer the plot No. 2A to the petitioner. By virtue of the transfer deed executed between M/s BPTP International and the petitioner company dated 24.02.2010, Plot no. 2A admeasuring 28,328 sq. mt was transferred to the petitioner on 24.02.2010 and registered transfer deed was executed between the petitioner and M/s BPTP International Private Limited.

7. After transfer of Plot no. 2A on 24.02.2010, the entire management and shareholding of the petitioner's-company had been changed, as such, the petitioner company applied for recording the changes of management and shareholding. The respondent no. 2 by letter dated 23.8.2010 demanded Rs.7,38,21,899.40 in pursuant to office order no. 575 dated 05.05.2010. The said amount was deposited by the petitioner in 2010 itself with the respondent authority which is admitted. When the petitioner learnt that two Division Benches of this Court had already held that levy of CIC imposed by Noida is illegal the petitioner sought refund of Rs. 7.38 crores deposited by it.

8. The petitioner has also applied for additional FAR. for which respondent no. 2 by order/letter dated 23.3.2011 demanded Rs.1,27,25,37,000/- against which the petitioner deposited Rs. 15 crores. The respondent no. 2 by order dated 31.3.2023, rejected the application of the petitioner for purchase of additional FAR, but the amount of Rs. 15 crores was not refunded.

9. Thereafter, the respondent authority vide orders dated 02.11.2020 & 08.12.2020 cancelled the allotment of the petitioner for non payment of lease rent of Rs.1,68,370,018) (Rs.168.37 crores). The petitioner claimed that he was entitled for benefit of zero period on account of failure of the respondent authority to give a separate possession certificate to it and the petitioner also sought adjustment of excess amount of Rs.7.38 crores

deposited towards CIC charges, as also Rs 15 crores deposited towards utilized additional FAR charges with the respondent-authority.

10. The orders dated 2.11.2020 and 8.12.2020 were challenged by the petitioner before the Secretary, Department of Infrastructure and Industrial Development, Lucknow by filing revision.

11. The aforesaid orders dated 2.11.2020 and 8.12.2020 were partly set aside by the Revisional Authority, vide order dated 17.10.2024 by accepting the claim for refund/adjustment of Rs. 15-crore and the order cancelling the plot was also set aside. The revisional authority however refused to grant the benefit of zero period to the petitioner and also upheld the levy of CIC charges. Aggrieved with the refusal of the to grant the benefit of zero period to the petitioner and CIC charges, the petitioner has preferred the present writ petition.

12. The dispute in the present case arising out of interpretation of Condition No.3 imposed by Noida in its letter dated 16.02.2010 by which permission was granted to sub division of the plot as well as the question of legality of the demand of Rs.7.38 crores levied by the respondent authority towards change-in constitution (hereinafter referred to as "CIC") of the petitioner company in 2010.

13. It is argued by learned counsel for the petitioner that the petitioner claims zero period on the strength of the failure of the respondent authority to issue a separate possession letter/certificate to it. He placed reliance upon the mandatory condition no. 3 imposed by the respondent authority itself in its letter dated 16.02.2010. It is admitted by the respondent authority that no such separate possession letter/certificate was issued to the petitioner.

14. So far as refund of Rs. 7.38 crores deposited towards CIC charges is concerned, the submission of learned counsel for the petitioner is that Division Bench of this Court in Writ-C No. 7852 of 2009 (M/s International Recreation Parks Pvt. Ltd. Vs. State of up & others) has held that the demand of CIC charges for change in management simplicitor is illegal. The Court has further held that clarification of the State Government dated 11.10.2010 and notification dated 27.10.2010

Issued by the Noida Development Authority will be applicable retrospectively and no CIC charges can be leveled on transfer of share by the company and no permission of respondent development authority was required in cases, involving 100% transfer of share.

15. However, the counsel for the respondent-Development Authority has contested the claim for zero period on the ground that no such separate possession letter/certificate was required to be issued in view of the fact that the petitioner was handed over peaceful possession by M/s BPTP International Private Limited. The authority has also submitted that it is not in dispute that the petitioner in fact obtained peaceful possession of Plot no. 2A thereby obviating the need for a separate possession letter. The authority has also questioned the delay on the part of the petitioner to raise the issue of zero period as no letter was ever written by the petitioner seeking separate possession letter/certificate. It was only after the cancellation order was passed, the petitioner cooked a story of possession certificate to cover its own default of non-payment of lease premium.

16. On the issue of CIC, the respondent authority stated that the petitioner had deposited the entire demanded amount without any protest and even though, with respect to CIC charges, the petitioner did not seek refund or adjustment at any point of time. The petitioner had submitted its map for construction of a building and had also sought additional FAR for the same. The petitioner had also deposited Rs.15-crore towards additional FAR which clearly shows that the petitioner was in actual physical possession of the entire plot and that they did not ever intend to question the levy of CIC charges by the respondent authority. It was too late in the day for the petitioner to question the levy of CIC charges and claim zero period having failed to object at any point of time in the past.

17. Heard learned counsel for the parties and perused the record.

18. After perusing the record, the Court is of the opinion that the questions to be decided in the present petition are that:-

(i) Whether the petitioner is entitled for zero period for failure of the authority to issue a separate possession letter/certificate as required under condition no 3 of the letter dated 16.02.2010.

(ii) Whether the petitioner is entitled to refund/adjustment of the CIC charges to the tune of Rs. 7.38-crores.

19. Insofar as the first issue regarding the entitlement of the petitioner for zero period is concerned, learned counsel for the petitioner placed reliance on condition no.3 appended with the Noida/Commercial/2010/187 dated 16.02.2010. The said condition is reproduced herein under-

(3) दोनों भूखण्डों का पृथक से साइट प्लान, उप पट्टा विलेख एवं कब्जा प्रमाण प्राप्त करना होगा.

20. The aforesaid condition found reiteration in the transfer deed dated 24.02.2010 executed between M/s BPTP International Private Limited and the petitioner. Therefore, it can be safely concluded that the requirement of obtaining a separate possession letter was mandatory in order to enable the petitioner to reap the benefits of transfer.

21. From perusal of paragraphs 15 & 21 of the impugned order it is clear that while passing the letter dated 16.2.2010 (Annexure-7 to the writ petition), it was clearly provided that separate site plan, sub-lease deed and possession certificate with regard to both the plots has to be obtained separately, but instead of execution of fresh lease deed, correction deed was executed on 24.2.2010. The respondent has not brought on record any document to establish that fresh possession certificate as contemplated in letter dated 16.2.2010 has been granted. By way of supplementary counter affidavit, the respondent brought on record the possession letter dated 10.2.2009 and by the said letter, the possession of 85672.17 square meters land of plot No. 2A, Sector 94 was handed over to M/s BPTP International Trade Centre Limited. The said plot was divided into two plots, i.e. plot No. 2A, measuring 28,328.07 square meters and plot No.2B, measuring 57,344.10 square meters in terms of 166th Board Meeting, vide letter dated 16.2.2010 and as per condition

No. 3 of letter dated 16.2.2010, a separate possession letter was required, which has not been issued by the development authority.

22. The respondent No.2 itself stated that since the possession of plot no.2 has already been given to M/s, BPTP international Trade Centre Pvt. Ltd, as such, M/s Vision Town Planners Pvt. Ltd, the petitioner, was supposed to take the possession from M/s. BPTP International Trade Centre Pvt. Ltd only. Since the possession of plot no.2 as a whole has already been handed over on 20.02.2009 to M/S. BPTP International Trade Centre Pvt. Ltd, there is no occasion for the NOIDA authority to impose condition to give the separate possession of both the plots while granting the permission for sub-division of plot separately. It is argued that once condition has been imposed it was mandatorily required to be complied with by NOIDA Authority. As is evident from the record that the possession of plot no.2A have not been given separately in compliance of condition no.3 of sub-division permission dated 16.02.2010 either to M/s. BPTP International Trade Centre Pvt. Ltd. or M/s Vision Town Planners Pvt Ltd. When possession of plot no.2A has not been given to M/s BPTP International Trade Centre Pvt. Ltd. the question of handing over the possession of plot no 2A to Vision Town Planners Pvt Ltd, never arises. Learned counsel for the petitioner placed reliance upon paragraph 14 of judgement dated 11.07.2022 passed the Hon'ble Apex Court in the case of Principal Commissioner of Income Tax-III. Bangalore and another Versus M/s Wipro Limited (Civil Appeal No.1449 of 2022) which reads as follows:

In view of the above discussion and for the reasons stated above, we are of the opinion that the High Court has committed a grave error in observing and holding that the requirement of furnishing a declaration under Section 10B (8) of the IT Act is mandatory, but the time limit within which the declaration is to be filed is not mandatory but is directory. The same is erroneous and contrary to the unambiguous language contained in Section 10B (8) of the IT Act. We hold that for claiming the benefit under Section 10B (8) of the IT Act, the twin conditions of furnishing a declaration before the assessing officer and that too before the due date of filing the original return of Income under section 139(1) are to be satisfied and both are mandatorily to be complied with: Accordingly, the question of law is answered in favour of the Revenue and against

the assessee. The orders passed by the High Court as well as ITAT taking a contrary view are hereby set aside and it is held that the assessee shall not be entitled to the benefit under Section 10B (8) of the IT Act on noncompliance of the twin conditions as provided under Section 10B (8) of the IT Act, as observed hereinabove. The present Appeal is accordingly Allowed. However, in the facts and circumstances of the case, there shall be no order as to costs.

23. Hon'ble Supreme Court in the case of **Central Warehousing Corporation Versus Adani Ports Special Economic Zone Limited (APSEZL) And Others** held that two limbs of the government should not speak in two voices. Paragraph Nos. 37, 45 and 52 reads as follows:-

37. The said proposal was put up for consideration before the BoD. The BoD. in principle, accepted the said proposal on the following conditions:

"(i) M/s. APSEZ may provide a suitable alternative land of the same size as the existing one as selected by CWC outside the SEZ area at Mundra Port.

(ii) A godown of 66000 MT (as per existing) may be created by M/s. APSEZ as per the specification of CWC within the period of twelve (12) months

(iii) M/S. APSEZ shall take the whole covered space so created along with remaining open area at CWC's existing public tariff with 6% annual escalation (compoundable) warehousing basis for entire period of lease i.e., till 16.2.2031, underwriting the business and other risks of the Corporation and shall sign an agreement, giving suitable amount of bank guarantee to this effect.

45. The High Court, in effect, forces the MD of the appellant-CWC, which is a statutory body, to accept the first two conditions and leave the 3rd condition to be settled mutually through mediation. The offer given by APSEZL on 9th March 2019 was a composite one so also the acceptance thereof by the appellant-CWC was a composite one. The acceptance of the first two conditions was also dependent upon the 3rd condition. If the High Court was so concerned about settlement of the dispute. then, while compelling the appellant-CWC to accept the first two conditions, it also ought to have compelled APSEZL to accept the 3rd condition.

45. We are of the considered view that it does not augur well for the Union of India to speak in two contradictory voices. The two departments of the Union of India cannot be permitted to take stands which are diagonally opposite. We may gainfully refer to the following observations made by a three Judges Bench of this

Court In the case of Lloyd Electric and Engineering Limited Vs. State of Himachal Pradesh and Others.

14. The State Government cannot speak in two voices. Once the Cabinet takes a policy decision to extend its 2004 Industrial Policy in the matter of CST concession to the eligible units beyond 31-3-2009, up to 31-3-2013, and the Notification dated 29-3-2009, accordingly, having been issued by the Department, concerned viz. Department of Industries, thereafter, the Excise and Taxation Department cannot take a different stand. What is given by the right hand cannot be taken by the left hand. The Government shall speak only in one voice. It has only one policy. The departments are to implement the government policy and not their own policy.

c. The Hon'ble Apex Court while deciding the Appeal in Azam Jha Bahadur (Dead) By His Legal Expenditure Tax Officer, Hyderabad held that logic and reason cannot be of much avail in interpreting a taxing statute.

24. Allahabad High Court and Delhi High Court in various cases has held that when possession has not been given by NOIDA, it is not authorized to realize the lease rent handing over of possession. The aforesaid, judgments reads as follows:-

I. *M/s Ace Infracity Developers (P) Ltd. Vs. State of UP & Others vide order dated 09.11.2023 in Writ-C No. 14964 of 2023* (para no. 12)

12. Consequently, writ petition is allowed. The demand notice dated 29.3.2023 placing demand for additional compensation, instalment of lease premium and annual lease rent is set aside.

Respondents are directed not to realize the lease premium amount as well as the lease rent from the petitioner for the period between 19.12.2014 to till date and also adjust the due interest amount of the said period. Respondent Authority is also directed to consider the revised building plan regarding Plot No. SC-02/G, Sector 150. Noida having an area of 60,000.54 sq. mtrs in accordance with law considering the observations made herein above.

In paragraph 15 of the judgment dated 23.05.2022 in the case of ***Allure Developers Private Limited Vs. State Of U P. And 3 Others (WRIT C No. 19361 of 2020)***, the same thing was again reiterated. Paragraph 15 reads as follows:-

15. Accordingly, the writ petition stands allowed The order dated 11.2.2021 passed by the respondent No. 2 in relation to Plot No.SC-02/C. Sports City, Sector 150, Noida, Gautam Budh Nagar, U.P., is set aside. The respondent No. 2 is directed to grant benefit of zero period to the petitioner from 19.4.2014 up to 21.8.2020 and

not charge the lease rent in respect of the area of the plot, the possession of which has not been handed over at the time of allotment.

In paragraph 34 of the judgment dated 16.11.2023 in the case of ***M/S Rudra Buildwell Projects Pvt. Ltd. Vs. State of U.P. & Others (Writ-C No.31247 of 2022)***, the same thing was again reiterated. Paragraph 34 reads as follows:-

34. Accordingly, the writ petition stands allowed. The Order dated 30.07.2020 passed by the Respondent Authority in relation to Plot No. GH-05A, Sector 16, Greater Noida, is set aside. The Respondent No. 2 is directed to grant benefit of zero period to the petitioner from the date of allotment till actual possession ie. April, 2023 and not charge the lease rent and interest accruing thereon in respect of the area of the plot, the possession of which has not been handed over at the time of allotment.

The Delhi High Court again in case of ***Parmod Kumar & Anr. vs Lt. Governor of Delhi & Ors. in W.P. (C) No.6704-05/2004 vide its order dated 03.12.2008*** held that

6. The petitioner cannot, therefore, be subjected to any liability in respect of the said plot which is yet to be delivered to him, except to require him to pay the balance price, which he has already paid. The respondent cannot seek to charge ground rent for the plot when, as a matter of fact, the respondent was not in a position to deliver possession of the plot to the petitioner, and the possession has not yet been delivered to the petitioner.

8..... In the present case, though the allotment can be said to have been made at the time when the auction was held in the year 2002 wherein the petitioner emerged as the highest bidder, as a matter of fact, on account of the aforesaid circumstances, the petitioner has not been placed in possession of the plot till today. The reasons for this delay are attributable to the respondent, and not to the petitioner.

9. However, in a case where the date of allotment is separated by a long period from the date when the DDA is in a position to deliver possession of the plot, for reasons attributable to the DDA, the liability to pay the ground rent cannot start from the date of allotment, and must start only from the date when the allottee is placed in possession of the plot under a conveyance.

The Delhi High Court again in case of ***Flourish Hospitals Pvt. Ltd. vs Delhi Development Authority in WP(C) 15333/2022*** decided on 28.02.2025 held that:-

38. *In Vivekanand Pratisthan Parishad (Regd) Vs. Delhi Development Authority: 2000 SCC Online Del 897, the formal possession was distinguished from actual possession and it was held that ground rent was rather payable from 'actual and not formal possession.*

44..... *Therefore, the demand of ground rent, before clarifying the actual land area and demarcation, would potentially amount to unjust enrichment, especially when DDA, itself, is largely responsible for generating ambiguity uncertainty.*

45. *In view of the peculiar facts and circumstances of the case, it will be in the fitness of things if DDA is directed to treat ground rent of Re 1 per annum until 14.06.2021. taking into account the fact that the exact area of the land was ascertainable only after preparation of the modified layout plan, which could have provided clarity about the exact boundaries and dimensions of the plot.*

46. *The ground rent @ of 2.5% per annum on the premium of the plot would thus be leviable only w.e.f 15.06.2021"*

Delhi High Court in the case of ***Vivekanand Pratisthan Parishad VS Delhi Development Authority in AIR 2001 Delhi 104 dated 23.11.2000***, para 7 which is reproduced as under.-

When the respondent itself has written to the petitioner on 19-9-1990 that till date they have not handed over the possession, insertion of Clause (4) in the lease-deed is highly improper and illegal thereby stating that the petitioner is entitled for payment of ground rent from 27-2-1989. One cannot lose sight of the fact that for starting any activities or construction over the land in question, no objection from DDA was sine qua non. DDA having given the same in the year 1995, cannot turn now and say that the petitioner is liable to pay ground rent from 1989. The building plans can be sanctioned only after no objection is granted and lease-deed is executed. The building plans are valid for a specific period and if construction is not raised, then the building plans have to be revalidated. In this case, if the date as shown in Clause (4) of the draft lease-deed is taken to be correct, then a great anomaly will be created vis-a-vis the right of the petitioner. The ground rent will be leviable from 1989, although no objection certificate has been granted by the DDA only on 26-9-1995 and lease-deed has not been executed and only a copy of the draft lease-deed was sent to the petitioner on 10-10-1996. The respondent/DDA is directed to execute fresh lease-deed taking the date from the date of actual handing over of the possession on 21-8-1995. After the lease-deed is executed

the building plan submitted by the petitioner with the respondent will be sanctioned by the competent authority in accordance with law within a period of six months. 8 Petition stands disposed of.

25. In view of the aforesaid fact and law laid down by Apex Court as well as this Court, it is clear that the respondent development authority cannot take two stands, i.e., (1) while granting permission for sub-division asked for obtaining fresh possession certificate and (2) say that the possession which was delivered to M/s BPTP International Trade Centre Limited Prior to grant of permission of sub-division of plot is sufficient compliance of condition no. 3 of order dated 16.2.2010. In the entire proceeding and document, the development authority has not at all denied that the condition no. 3 of order dated 16.2.2010 was not imposed or condition no. 3 of order dated 16.2.2010 was complied by the development authority. It is well settled law that while executing any transfer deed, the delivery of possession is mentioned and the said delivery may be actual or symbolic. The lease hold right of M/s BPTP International Trade Centre Limited stand transferred to the petitioner company and symbolic possession of the leased land was given by M/s BPTP International Trade Centre Limited to the petitioner, but as per the order dated 16.2.2010, independent possession by way of possession certificate of two divided plots was not handed over to M/s BPTP International Trade Centre Limited, as such, lawful possession of the petitioner cannot be presumed over plot No. 2A, Sector 94 Noida. As already held by series of judgments of this Court, once the lawful possession of divided plots ie. plot No. 2A was not handed over either to M/s BPTP International Trade Centre Limited or the petitioner, the respondent development authority is not entitled to charge lease rent and the said period i.e. from the date of execution of sub-lease deed by M/s BPTP International Trade Centre Limited to the petitioner is worthy to be allowed, as zero period.

26. So far as CIC Charges is concerned, the Division Bench of this Court in case of *International Hospital Pvt. Ltd. Vs. State of U.P. and*

another, reported in 2004(1) AWC 300 has held that merely by change of share holding, the status of the company is not changed, as the company has its separate legal entity, which is different from its shareholding. The Court has held as under:

7. Unitech Investments Ltd. having 49,99,970 shares was one of the main promoters of the petitioner company. It was a 100% subsidiary of Unitech Holdings Ltd. It appears that a scheme for amalgamation was filed u/s. 391 and 394 of the Companies Act by Unitech Investments Ltd. to merge it with its holding company, i.e., Unitech Holdings Ltd., before the Delhi High Court being Company Petition Nos. 162 of 2005 and 163 of 2005. The Delhi High Court vide judgement and order dated 25.7.2005 allowed merger of Unitech Investments Ltd. (100% subsidiary) with Unitech Holdings Ltd. (holding company of Unitech Investment Ltd.). The relevant portion of the order of the Delhi High Court dated 25.7.2005 reads as follows:-

"This court doth hereby sanction the scheme of amalgamation setforth in Schedule I annexed hereto and doth hereby declare the same to be binding on all the shareholders and creditors of the Transferor and Transferee Companies and all concerned and doth approve the said scheme of amalgamation with effect from appointed date, i.e, 1-4-2004.

That as on date, the entire share capital of the transferor company is held by the Transferee Company. Accordingly, upon the transfer and merger of Transferor Company under the scheme into transferee Company, there would be no issue of equity shares of Transferee Company to the shareholder(s) of Transferor Company, since the provisions of the Act do not permit Transferee Company to hold its own shares, upon the dissolution of Transferor Company. Under the terms of this scheme, all the shares held by Transferee Company in Transferor Company shall stand cancelled upon the scheme becoming effective without any further act or deed."

As a result of amalgamation of Unitech Investments Ltd. with its holding company, namely, Unitech Holdings Ltd., shares of the petitioner company in the hands of Unitech Investments Ltd. came to be held by Unitech Holdings Ltd. Accordingly, Unitech Holdings Ltd. came to own 49,99,970 shares of the petitioner company w.e.f. 1.4.2004, the appointed date under the sanctioned scheme.

27. This Court further in Writ-C No. 7852 of 2009 (M/s International Recreation Parks Pvt. Ltd. Vs. State of U.P. & others) had followed the aforesaid judgment, which was affirmed by dismissal of SLP No. 692 of 2005 dated 24.3.2006. The Division Bench of this Court, relying upon

counter affidavit filed by Noida Development Authority and the supplementary affidavit filed by the petitioner in that case has held that the Noida Development Authority had not been charging CIC charges in similar other cases referred in para 20 of the aforesaid judgment. The Court has further held that the State Government has issued only clarification on 11.10.2010, which was further clarified by the Noida Development Authority by issuing notification dated 27.10.2010. The Court has held as under:

20. Here it is pertinent to mention that in supplementary counter affidavit filed by NOIDA authority, it tried to set up a case that the notification dated 27-10-2010 is applicable only prospectively and therefore, the petitioner company is not entitled to its benefit. In order to prove that the aforesaid stand of the NOIDA authority is apparently false and that the NOIDA authority itself had given benefit of the said notification to various companies in whose favour lease deeds were executed much before the issuance of the said notification, petitioner company had brought on record various instances in this regard by filing second supplementary affidavit. These instances are as follows :-

(a) In case of M/s. Raga Impex Pvt. Ltd. allotment / lease deeds are dated 30-5-2005 and 2-6-2005 and 100% transfer of shares in the said company was not regarded as change in constitution by Noida Authority.

(b) In case of M/s. MKG Creations Pvt. Ltd. allotment / lease deeds are dated 9-10-2009 and 8-12-2009 and 100% transfer of shares in the said company was not regarded as change in constitution.

(c) In case of M/s. Noida Electrical and Moulding Pvt. Ltd. allotment / lease deeds are dated 22-8-2007 and 15-2-2007 and 100% transfer of shares in the said company was not regarded as change in constitution.

(d) In case of M/s. Neelkanth Industrial Consultants Pvt. Ltd. allotment / lease deeds are dated 4-10-2006 and 22-12-2006 and 100% transfer of shares in the said company was not regarded as change in constitution

(f) In case of M/s. Sachdeva Packaging Pvt. Ltd. allotment / lease deeds are dated 24-6-2009 and 100% transfer of shares in the said company was not regarded as change in constitution.

21. The assertion made in this regard by the petitioner were not rebutted by Noida Authority by filing any affidavit in reply thereto. This also clearly proves that even Noida had extended the benefit of the notification dt. 27-10-2010 to the existing leases. In view of it, the petitioner company is also entitled to the benefit thereof.

22. Thus, the irresistible conclusion is that petitioner company is

not liable to pay CIC charges and the demand made in this regard vide impugned orders dated 01-01-2009, 01-10-2007 and 30-11-2007 is wholly unwarranted.

28. This being the position the levy of CIC charges on 23.08.2010, and acceptance of its deposit on 05.10.2010 is clearly unfair on the petitioner. The authority ought to have refunded the amount of Rs.7,38,21,900/-deposited by the petitioner on 05.10.2010. Pertinently M/s International Recreation Parks Private Limited (Supra) only reiterated an earlier Division Bench judgment of this Hon'ble Court in CMWP No. 13556 of 2003, where also the levy of CIC by Noida was held illegal Thus, the respondent authority clearly knew that it could not legitimately levy CIC charges for transfer of shares simplicitor. without any change in the form and nature of the entity.

29. The authority has not been able to provide any valid justification for illegally retaining a sum of Rs.7,38,21,900/-despite the levy of CIC having been declared illegal by two Division Benches of this Court. The action of the respondent-authority is not only both unfair and unreasonable but contemptuous in nature. The petitioner is not only entitled to refund of the entire principle amount of Rs.7,38,21,900/-, but the same shall also carry interest. It has been held in series of judgment that the rate at which illegal monies ought to be refunded shall be same as the rate charged by such entity. The petitioner is therefore, entitled to receive Rs.7,38,21,900/- interest 9% per annum.

30. The present writ petition is allowed. The order dated 17.10.2024 passed by the respondent No.1/Principal Secretary (Industrial Development), U.P. Lucknow, insofar as it affirm the demand of Rs.168.37 crores towards arrear of annual lease rent and with-holding of refund of Rs.7.38 crores towards CIC charges is set aside. The respondent development authority is directed to provide fresh calculation of lease rent from the date the possession certificate of divided plot No. 2A is issued to the petitioner in terms of condition No.3 of order dated 16.2.2010 Any excess amount deposited by the petitioner, after adjustment of amount payable by the petitioner, as calculated as per observation made herein above be refunded to the petitioner, forthwith

and in case any amount is found payable. the same shall be paid by the petitioner within a period of two months from the date of communication and in case the said amount is not paid by the petitioner within two months, the authority will be free to pass orders in accordance with law.

(Hon. Prakash Padia J.)

November 19, 2025

saqlain/Pramod