

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 (Civil) No(s).34489/2010

(From the judgement and order dated 09/11/2009 in CMWP No.  
27804/2002 of The HIGH COURT OF JUDICATURE AT ALLAHABAD)

NEW OKHLA INDUSTRIAL DEVT.AUTH. Petitioner(s)

VERSUS

BANARAS MARBLES & GRANITES LTD. Respondent(s)

Date: 19/01/2011 This Petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE R.V. RAVEENDRAN  
HON'BLE MR. JUSTICE A.K. PATNAIK

For Petitioner(s) Mr. Ravindra Kumar,Adv.

For Respondent(s) Mr. O.S. Bajpai, Sr. Adv.  
Mr. Ramesh Lal Bhatia,Adv.

UPON hearing counsel the Court made the following  
O R D E R

Leave granted.

In terms of the signed order, we allow this  
appeal, set aside the order dated 9.11.2009 of the High  
Court and uphold the cancellation dated 6.5.2000 by the  
appellant.

( Ravi P. Verma ) ( M.S. Negi )  
Court Master Court Master  
[Signed order is placed on the file]  
IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 805 OF 2011  
[Arising out of SLP(C) No. 34489 of 2010]

NEW OKHLA INDUSTRIAL DEVELOPMENT .....APPELLANT  
AUTHORITY

Versus

BANARAS MARBLES & GRANITES LTD. ....RESPONDENT

O R D E R

Leave granted.

2. New Okhla Industrial Development Authority ('NOIDA', for short), the appellant herein, allotted industrial plot No. C-57, Phase-II, NOIDA to the respondent on 28.7.1994. In terms of letter of allotment, a lease deed was executed on 14.11.1994 between the appellant as the lessor and the respondent as the lessee. The lease deed required payment of a premium of Rs.63,97,825/- in certain instalments. The lease deed also required the lessee to erect at its own cost, an industrial factory within twenty four months or within such extended time as may be allowed by the lessor in writing in its discretion on the request of the lessee. The lease deed also required the lessee not to erect any building, construction or structure except in accordance with the building plan approved by the lessor and also .....

- 2 -

required the lessee to comply with all regulations made or directions issued by the lessor.

3. The respondent did not put up the construction within twenty four months. On the other hand, by letter dated 27.5.1997, it requested for extension of one year for construction on the ground of financial problems. Subsequently, by letter dated 24.12.1999, the respondent submitted that the project for which allotment of the plot was obtained was no longer viable on account of mushroom growth of marble granite tile industries and, therefore, they proposed to set up an Industrial Park and requested for permission for the same.

4. The appellant, by letter dated 6.5.2000, cancelled the allotment. The first ground for cancellation was that the construction was not put up in terms of agreement within the stipulated period. The second ground for

cancellation was the abandonment of the project by the respondent to put up a factory for granite tiles and slabs and the proposal to use it for commercial letting purposes.

The respondent gave a representation dated 24.5.2000 wherein it again requested for permission to put up an Industrial Park. In this letter for the first time it

.....3.

- 3 -

stated that the appellant had not given physical possession of the plot. By a communication dated 19.6.2000, the NOIDA rejected the representation of the respondent and confirmed the cancellation of allotment. In pursuance of it, out of the amounts paid, a sum of Rs.16,65,338.25p. was forfeited and balance of Rs.55,97,901.25p. was refunded vide communication dated 12.9.2000. This was also confirmed by order dated 15.4.2002.

5. Feeling aggrieved, the respondent filed a writ petition (WP No.27804/2002) challenging the cancellation, that is the communications dated 6.5.2000, 19.6.2000 and 15.4.2002. A Division Bench of the Allahabad High Court, by the impugned order dated 9.11.2009, allowed the said writ petition. The said order does not consider the various contentions and objections raised by the appellant. It is a short order. It merely states that the respondent had alleged that it could not complete the construction as physical possession of the plot was not given to it and that assertion in paragraphs 8 and 10 of the writ petition had not been specifically denied by the appellant and no particulars about the delivery of possession were given by the appellant and, therefore, the respondent's contention that possession was never given to it had to be accepted.

.....4.

- 4 -

As a consequence, the High Court directed the appellant to hand over physical possession of the plot in question, with an observation that if the respondent thereafter did not complete the construction within twenty four months, the appellant could take action for cancellation. The said order is challenged by the appellant in this appeal by special leave.

6. It is contended that the respondent had never alleged non-delivery of possession as a ground for not completing the construction within twenty four months, at any point of time before cancellation and that it was clearly an after thought. It was also pointed out that the claim in the writ petition that possession was not delivered was specifically denied by the appellant and, therefore, the inference drawn by the High Court that possession was not delivered and that was the reason for the respondent not to put up construction was incorrect.

7. We find that there is considerable force in the contention of the respondent. As noticed above, the allotment was on 28.7.1994 and the lease deed was executed on 14.11.1994. The allotment letter and lease deed contemplates the respondent taking possession immediately

....5.

- 5 -

thereafter. What was allotted is vacant plot of land. The lease stipulated construction to be completed within twenty four months from 14.11.1994. It is of interest to note that within the said period of twenty four months or

thereafter until the cancellation, the respondent never alleged or complained to the appellant that possession of the plot was not given or that it could not commence construction for want of possession. As noticed above, in the letter dated 27.5.1997 seeking one year's time for extension, the specific reason shown was that it was in financial difficulties. In the subsequent letter dated 24.12.1999 the reason assigned was that there was a slump in the marble tile industries and, therefore, it proposed to put up a multi storey industrial park and let out the same for commercial purposes. It was only after the cancellation on 6.5.2000, for the first time, the respondent made a passing reference in the letter dated 24.5.2000 that appellant had not given physical possession of the plot. If really the possession had not been delivered and that was the reason for not putting up construction, the respondent would have referred to it or complained about it while seeking extension of time. The fact that it did not do so for five and a half years is a clear indication that there is no merit in the contention

.....6.

- 6 -

that the delay was on account of non-delivery of possession.

8. We find that the High Court's observation that the averments in the writ petition were not properly traversed is also not correct. The respondent in paragraphs 8 and 10 of the writ petition stated that possession of the plot was not handed over to it. We find that the appellant filed a counter dated 23.1.2003 to the said writ petition where the appellant has clearly denied the allegations in paragraphs 8 and 10 and stated that the appellant had executed a letter on the date of the lease deed itself for taking

possession.

9. Therefore, the contention of the respondent that non-delivery of possession was the cause for not using the plot for putting up the construction cannot be accepted. The High Court without examining the relevant facts, by a brief and virtually non-speaking order, has quashed the order of cancellation. The order cannot, therefore, be sustained.

10. We, therefore, allow this appeal, set aside the order dated 9.11.2009 of the High Court and uphold the cancellation dated 6.5.2000 by the appellant.

.....7.

- 7 -

11. At this stage, learned counsel for the appellant submitted that the plot has not been allotted to anyone else. He submitted that the respondent is willing to pay the prevailing allotment price (as on date) for the plot subject to adjustment of the forfeited amount. He also submitted that the respondent will give a representation for change of the project for the permission of the appellant. Having regard to the facts and circumstances, we are sure that if the respondent gives such a representation, it will be considered by the appellant in accordance with law and in terms of the schemes of the appellant.

.....J.  
( R.V. RAVEENDRAN )

New Delhi;  
January 19, 2011.

.....J.  
( A.K. PATNAIK )