2025:AHC:228019-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - C No. - 22383 of 2025

M/S Kci Ltd Formerly M/S Khemka Containers Ltd

.....Petitioner(s)

Versus

State Of U.P. And 3 Others

.....Respondent(s)

Counsel for Petitioner(s) : Prashant Mishra, Tarun Agrawal
Counsel for Respondent(s) : Anjali Upadhya, C.S.C., Shivam Yadav

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AFR

Reserved on: 19.11.2025

Delivered on:18.12.2025

Court No. - 4

HON'BLE AJIT KUMAR, J.
HON'BLE SWARUPAMA CHATURVEDI, J.

(*Per:* Swarupama Chaturvedi, J.)

1. Heard Sri Tarun Agarwal, learned Senior Advocate assisted by Sri Prashant Mishra, learned counsel for the petitioner, Sri Shivam Yadav, learned counsel for the respondents no. 2 to 4 and Sri Devesh Vikram, learned Additional Chief Standing Counsel for the State respondents.

2. By means of this petition filed under Article 226 of the Constitution, petitioner has prayed for quashing of the order dated 12.12.2024 passed by respondent no. 3 raising a demand of Rs. 5,28,85,639/- and order dated 15.05.2025 whereby the petitioner's request for grant of early production incentive has been rejected as well as the consequential final notice before cancellation of allotment dated 23.12.2024. Further it is prayed that a direction be issued to the respondents to recalculate the lease rent dues according to the directions contained in the revisional order dated 27.07.2023 as well as grant the petitioner the benefit of early production incentive rebate of Rs. 9.02 lacs as applied on 27.03.2003. Also a direction to respondents be issued to grant the petitioner the benefit of waiver of past interest in accordance with the office order dated

05.12.2013.

3. Brief facts of the case are that the petitioner is a company engaged in the manufacture of corrugated boxes, which got allotted Industrial Plot No. 11-B, Udyog Vihar, Greater Noida, by final allotment letter dated 09.02.2001. Thereafter, a lease deed was executed on 26.02.2002 for a period of ninety years, providing for an annual lease rent of Rs. 2,96,907/- for the first ten years. The lease deed specifically stipulated that any enhancement of rent could be effected only every ten years and strictly through execution of a supplementary lease deed.

4. The petitioner commenced construction strictly in accordance with Clause 16 of the lease deed. After obtaining due approval of the building plan from the Lessor, the Lessee was required to commence construction on the demised premises within six months from the date of possession and to make the industrial unit operational within a period of thirty-six months, or within such extended time as may be permitted by the Lessor. The petitioner duly complied with the said stipulations, commenced construction within the prescribed period, made the unit operational on 11.11.2002, and has since continuously maintained its operations, while duly fulfilling all statutory and contractual obligations.

5. Learned counsel for the petitioner submits that the petitioner was fulfilling all conditions to receive the early production benefit under the promotional scheme, and, therefore, applied for early production incentive rebate of Rs. 9.02 lakhs in March 2003, being fully eligible under the applicable scheme. However, the Authority neither decided the application nor raised objections for over two decades and then got rejected by the means of impugned order dated 12.12.2024.

6. Learned counsel further submits that the rebate amount was almost equal to the three years of lease rent about which the petitioner could not get response from the respondents. Due to oversight and lack of regular follow up by employees of the petitioner and failure of authority to update records, lease rent for certain years got delayed, which was later regularized by depositing all principal amounts along with advance lease rent to avail waiver of interest as per the Authority’s office order dated 05.12.2013. Despite this, the Authority retrospectively enhanced the

annual lease rent without executing a supplementary lease deed and raised exorbitant demands along with penal/compound interest.

7. Aggrieved by this, the petitioner filed writ petition being Writ C No. 11459 of 2021, before this court seeking quashing of letter dated 1st February, 2021, by which the respondents have raised a demand of the amount outstanding against dues payable by the petitioner in connection with allotment of plot no.11B, Udyog Vihar, Ecotech-II, Greater Noida. The petitioner alleged that he was entitled to benefits which ought to have been adjusted against the demand raised. He has also questioned the levy of interest at the rate of 20% as being violative of Section 13 of the Act of 1976 as also being un-conscionable and void under Section 23 of the Contract Act, 1872. After hearing both parties, the petition was disposed of by order of this court dated 02.08.2021, while directing the Chief Executive Officer, Greater Noida Industrial Development Authority, Greater Noida, Gautam Budh Nagar to take a decision on the representation of the petitioner dated 8th February, 2021 against the demand raised from the petitioner, preferably, within a period of six weeks with the further direction that till a decision is taken on the representation of the petitioner as directed above, the allotment of the petitioner shall not be cancelled. In compliance of this order, the order dated 26.02.2023 was passed by authority rejecting all claims of the petitioner.

8. The petitioner challenged the order dated 26.02.2023 in revision petition number 4433/appeal 40/23 under Sec 41(3) of Uttar Pradesh Urban Planning and Development Act 1973 read with Sec 12 of Uttar Pradesh Industrial Development Act 1976 and after both parties, the State Government, in revision order dated 27.07.2023, granted full relief to petitioner by holding that the petitioner is entitled to relief sought. However, instead of complying the order, the Authority passed a fresh impugned order dated 12.12.2024 raising a demand of Rs.5.28 crores, relying upon a subsequent Board Resolution dated 15.06.2024, which is prospective in nature. Consequential notices threatening cancellation of allotment and refusal to issue mortgage NOC were also issued, compelling the petitioner to deposit large sum of amount under protest.

9. That the petitioner again approached this Court while filing writ

petition with prayer to direct the respondent authority to comply with the Order No. 4433/Appeal 40/23 dated 27.7.2023 passed by the respondent no. 1 and recalculate the dues (if any) payable by the petitioner. It was observed that the counsel for the petitioner submitted there that the first respondent has already decided claim of the petitioner Company under Section 41(3) of the Act, 1973 read with Section 12 of the Act, 1976 and directed the second respondent to recalculate the dues payable by the petitioner vide order dated 27.7.2023 but till date the said order has not been complied by the second respondent. Such situation compelled the petitioner to approach this Court. After hearing counsel of all parties, this court in its order dated 22.05.2024, observed that with the consent of the parties, the writ petition is disposed of with the direction to the second respondent to take a final call in the matter in the light of the order dated 27.7.2023 passed by the first respondent, as expeditiously as possible and preferably within six weeks.

10. Learned Senior Counsel for the petitioner submits that in pursuance of the directions issued by this court, respondent no.3 has passed the impugned order dated 12.12.2024. He further submits that the Authority has passed the impugned order against law and acted in clear violation of binding order and directions in the revision order dated 27.07.2023, which attained finality and directions were required to be implemented under Section 41 of the U.P. Urban Planning and Development Act, 1973. Learned senior counsel further submits that 135th Board Resolution dated 15.06.2024 is expressly prospective and cannot be applied retrospectively to the petitioner’s case. Hence, the petitioner is entitled to early production incentive rebate of Rs. 9.02 lakhs, which was neither rejected nor adjudicated for over 22 years, and cannot now be denied by importing new conditions.

11. He further submits that the petitioner fulfilled conditions for waiver of past interest under the office order dated 05.12.2013 by depositing advance lease rent and therefore denial of such benefit is arbitrary. The demand towards functional certificate and levy of penal/compound interest, are not justified in law. Learned counsel contends that the impugned demand and other notices are arbitrary, disproportionate, and against the established principles of law.

12. *Per contra,* Learned counsel for the Greater Noida Industrial Development Authority (in short 'GNIDA') submits that under Clause 1 of the original lease deed dated 26.02.2002, enhancement of lease rent after every 10 years (subject to a cap of 50% of the then prevailing lease rent) is a clear and mandatory stipulation. Execution of a supplementary lease deed was contemplated only as a consequential act following the demand and determination of enhanced lease rent. Since the petitioner contested the enhancement and delayed payment of lease rent for nearly 13 years without interest or penal/compound interest, the supplementary lease deed could not be executed. Subsequently, to remove ambiguity and streamline the process, GNIDA in its 135th Board Meeting held on 15.06.2024 consciously abolished the requirement of executing a supplementary lease deed for enhancement of lease rent, a decision reiterated through office order dated 31.07.2024.

13. It is further submitted that the observations made by the State Government in its order dated 27.07.2023, particularly in paragraph 4, proceeded on an incorrect interpretation of the lease deed. The Board of GNIDA, exercising its statutory and contractual authority, considered the matter in its 134th, 135th, and 138th Board Meetings and resolved that enhancement of lease rent at 1.50% after every 10 years is consistent with the lease deed and uniformly applicable to other industrial units. The Board decisions, taken with participation of State nominees, validly justify the enhancement and negate the petitioner's claim that absence of a supplementary lease deed bars such enhancement.

14. Lastly, the petitioner's claims for early production incentive and waiver of interest are untenable. The petitioner admittedly failed to obtain a functional certificate and defaulted in timely payment of lease rent, paying only the principal amount after a delay of 13 years without interest or penal/compound interest, contrary to the lease deed. Such defaults dis-entitle the petitioner from any incentive, rebate, or equitable relief. Accordingly, the impugned demands and decisions of GNIDA are legal, reasonable, and in consonance with the lease deed and Board resolutions.

15. In rejoinder argument, counsel for the petitioner rebutted the submissions made by the learned counsel for the respondents and further submits that the lease deed governing parties clearly mandates that any

enhancement of rent can be effected only through execution of a supplementary lease deed and admittedly, no such supplementary lease deed was ever executed, rendering any unilateral and retrospective enhancement of rent by the respondent authority, illegal and unsustainable. He also reiterate that the revisional order dated 27.07.2023 passed by the State Government under Section 41(1) of the U.P. Urban Planning and Development Act, 1973 is binding upon the respondent authority, having attained finality and subsequent board resolutions and impugned orders passed by the respondents, which seek to nullify or bypass the said revisional order, are void *ab initio,* and cannot justify retrospective enhancement of rent or deviation from contractual and statutory obligations.

16. Learned counsel for the petitioner also submits that the entity has been a functional industrial unit since year 2002 and is entitled to the benefits of the early production incentive scheme because the lease deed does not prescribe issuance of a functional certificate as a condition precedent for availing any such benefits, and denial thereof on technical grounds is totally arbitrary and illegal. He further submits that the petitioner deposited advance rent in accordance with the office order dated 05.12.2013, which provides for waiver of penal/compound interest, and therefore no interest can now be levied. Any excess amount paid pursuant to the illegal enhancement of rent is liable to be adjusted. Hence, the impugned order deserves to be quashed.

17. Upon thoughtful consideration of the rival submissions and perusal of the material on record, the principal questions that arise for consideration are, whether the respondent Authority could enhance the lease rent retrospectively in the absence of execution of a supplementary lease deed dated 26.02.2002, and whether such enhancement could be justified by relying upon subsequent Board Resolutions, including the 135th Board Resolution dated 15.06.2024, which is admittedly prospective in nature. Other related questions that arise are whether the petitioner, having commenced production within the stipulated period and remained a continuously functional industrial unit, is entitled to early production incentive rebate and waiver of penal/compound interest in terms of the applicable scheme. We also consider it necessary to examine

that whether the revisional order dated 27.07.2023 passed by the State Government under Section 41(3) of the U.P. Urban Planning and Development Act, 1973, having attained finality, was binding upon the respondent Authority and mandatorily required to be implemented in its letter and spirit, and whether the impugned order dated 12.12.2024 and consequential demands constitute an impermissible attempt to circumvent or nullify the said revisional order.

18. We first proceed to examine whether the respondent Authority was legally justified in enhancing the lease rent retrospectively in the absence of execution of a supplementary lease deed as expressly contemplated under the lease deed dated 26.02.2002. It is a matter of fact that the lease deed constitutes a binding contract between the parties. The counsel for the petitioner heavily relied upon conditions agreed in the lease deed to contend that it is not permissible to increase lease rent for ten years as per condition of the lease deed. For ready reference relevant lines of clause I of the lease deed are reproduced below:

> "*…and which said plot is more clearly delineated and shown in the attached plan there in marked in red (hereinafter referred to as "the demised premises") with their appurtenances to the Lessee to the term of 90 years commencing from the date of execution of this lease deed except and always reserving to the Lessor full rights and title to all mines and minerals in and under the demised premises or any part there of, Yielding and paying therefor yearly lease rent in advance during the said term unto the lessor on the 26th day of Feb in each year at the rate of 2.5% of the total premium during the first ten years. The lessee shall pay lease rent unto the lessor at its office or as otherwise directed lease rent in advance on yearly basis. The lease rent would be Rs.2,96,907.00/- (Rs. Two lakhs ninety six thousands nine hundred seven only annually for the first 10 years changeable from the date of execution of the lease deed and would be payable within 10 days from the date of execution of the lease deed, without waiting for any demand notice or reminder therefor. The lease rent may be enhanced*

> *after every 10 years from the date of execution of the. lease, deed by an amount not exceeding 50% of the annual lease rent payable at the time of such enhancement and in such case a supplementary deed will be executed by both the parties. In case of default in payment of lease rent interest @ 20% per annum compounded every half yearly would be chargeable for the delayed period. When lease rent will be revised a supplementary deed will be executed.*"

19. From bare reading it appears that the lease deed contemplates enhancement of lease rent after every ten years and such enhancement is expressly conditioned upon execution of a supplementary lease deed. In the facts of the case, admittedly, no such supplementary lease deed was ever executed between the parties. In the absence of fulfillment of this contractual pre-condition, the unilateral enhancement of lease rent by the respondent Authority, that too with retrospective effect, is clearly contrary to the express terms of the lease and cannot be sustained in law. The contention of the Authority that execution of a supplementary lease deed was merely a consequential or ministerial act cannot be accepted, as contractual stipulations governing financial liabilities must be strictly construed and scrupulously adhered to, particularly by a statutory authority.

20. When the petitioner invested to build the unit, made it functional having the promise in existence as per lease deed, the legitimate expectation is to get the outcome as could be foreseen in terms of a specified amount of rent and the rebate, denying that cannot be justified in the eyes of law. The Supreme Court, in **Motilal Padampat Sugar Mills Co. Ltd. v. State of U.P., (1979) 2 SCC 409** has held that:

> "*19. When we turn to the Indian law on the subject it is heartening to find that in India not only has the doctrine of promissory estoppel been adopted in its fullness but it has been recognized as affording a cause of action to the person to whom the promise is made. The requirement of consideration has not been allowed to stand in the way of enforcement of such promise. The doctrine of promissory estoppel has also been applied against the Government and the defence based on executive necessity has been*

> *categorically negatived. It is remarkable that as far back as 1880, long before the doctrine of promissory estoppel was formulated by Denning, J., in England, a Division Bench of two English Judges in the Calcutta High Court applied the doctrine of promissory estoppel and recognised a cause of action founded upon it in the Ganges Manufacturing Co. v. Sourujmull [(1880) ILR 5 Cal 669 : 5 CLR 533] . The doctrine of promissory estoppel was also applied against the Government in a case subsequently decided by the Bombay High Court in Municipal Corporation of Bombay v. Secretary of State [(1905) ILR 29 Bom 580 : 7 Bom LR 27].”*

While referring various judgements mentioned in the paragraph, the Supreme Court has further held that:

> “*24. This Court finally, after referring to the decision in the Ganges Manufacturing Co. v. Sourujmull, Municipal Corporation of the City of Bombay v. Secretary of State for India and Collector of Bombay v. Municipal Corporation of the City of Bombay summed up the position as follows:*
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> > “*Under our jurisprudence the Government is not exempt from liability to carry out the representation made by it as to its future conduct and it cannot on some undefined and undisclosed ground of necessity or expediency fail to carry out the promise solemnly made by it, nor claim to be the Judge of its own obligation to the citizen on an ex parte appraisement of the circumstances in which the obligation has arisen.”*
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> *The law may, therefore, now be taken to be settled as a result of this decision, that where the Government makes a promise knowing or intending that it would be acted on by the promisee and, in fact, the promisee, acting in reliance on it, alters his position, the Government would be held bound by the promise and the promise would be enforceable against the Government at the instance of the promisee, notwithstanding that there is no consideration for the promise and the promise is not recorded in the form of a formal contract as required by Article 299 of the Constitution. It is elementary that in a republic governed by the rule of law, no one, howsoever high or low, is above the law. Everyone is subject to the law as fully and completely as any other and the Government is no exception. It is indeed the pride of constitutional democracy and rule of law that the*

> *Government stands on the same footing as a private individual so far as the obligation of the law is concerned : the former is equally bound as the latter. It is indeed difficult to see on what principle can a Government, committed to the rule of law, claim immunity from the doctrine of promissory estoppel."*

21. To deny the petitioner from his legitimate benefits, the reliance placed by the respondent Authority on subsequent Board Resolutions, including the 135th Board Resolution dated 15.06.2024, to justify such enhancement cannot be acceptable. The said resolution is admittedly prospective in nature and cannot be applied retrospectively to alter rights and obligations that had already crystallized under the lease deed. A Board Resolution, howsoever authoritative, cannot override or rewrite the terms of a concluded contract, nor can it be employed to retrospectively impose financial burdens upon an allottee. Acceptance of such a proposition would amount to permitting unilateral alteration of contractual terms by an authority, which is impermissible in law.

22. The next issue that arises for consideration is whether the petitioner, having commenced production within the stipulated period and remained a continuously functional industrial unit, is entitled to early production incentive rebate and waiver of penal/compound interest in terms of the applicable scheme and office order dated 05.12.2013. In this regard the law is settled by the Apex Court in number of judgements, which makes it clear that benefits once accrued under a policy or scheme cannot be denied due to administrative inaction or delay. In **State of Punjab v. Nestle India Ltd. (2004) 6 SCC 465**, the Supreme Court held that legitimate expectations arising from a policy decision cannot be frustrated by arbitrary State action. Similarly, it was held in **Tata Chemicals Ltd. v. Commissioner of Customs (2015) 11 SCC 628**, that the levy of interest or penal charges contrary to the terms of the governing scheme or express waiver orders is impermissible.

23. After analysing facts of the case and perusal of records, it is clearly established that the petitioner commenced production within the time prescribed under the lease deed and has kept it operational. The petitioner applied for early production incentive rebate in March 2003, which remained undecided for over two decades. Such inordinate delay on the

part of the Authority cannot operate to the prejudice of the petitioner. The benefit, once accrued, could not be denied by subsequently introducing conditions not contemplated under the lease deed or the promotional scheme. Similarly, the petitioner having deposited the principal lease rent dues along with advance lease rent in accordance with the office order dated 05.12.2013, became entitled to waiver of penal/compound interest. The subsequent levy of penal/compound interest despite compliance with the conditions of the waiver scheme is arbitrary and unsustainable.

24. After thoughtful consideration, we find merit in the submission of the learned counsel of the petitioner that the revisional order dated 27.07.2023 passed by the State Government under Section 41(3) of the U.P. Urban Planning and Development Act, 1973, having attained finality, was binding upon the respondent Authority and required to be implemented.

25. In **Union of India v. Kamlakshi Finance Corporation Ltd., 1992 Supp (1) SCC 648**, the Supreme Court has analysed similar issue and has held that orders passed by higher statutory authorities are binding on subordinate authorities and must be implemented in letter and spirit, and that any attempt to bypass or dilute such orders strikes at the very foundation of administrative discipline. A subordinate authority cannot sit in appeal over a binding order under the guise of fresh decision-making.

Supreme Court observed in Paragraph 7 that:

> "*7…The High Court has, in our view, rightly criticised this conduct of the Assistant Collectors and the harassment to the assessee caused by the failure of these officers to give effect to the orders of authorities higher to them in the appellate hierarchy. It cannot be too vehemently emphasised that it is of utmost importance that, in disposing of the quasi-judicial issues before them, revenue officers are bound by the decisions of the appellate authorities. The order of the Appellate Collector is binding on the Assistant Collectors working within his jurisdiction and the order of the Tribunal is binding upon the Assistant Collectors and the Appellate Collectors who function under the jurisdiction of the Tribunal. The principles of judicial discipline require that the orders of the higher appellate authorities should be followed unreservedly by the subordinate authorities. The*

> *mere fact that the order of the appellate authority is not "acceptable" to the department — in itself an objectionable phrase — and is the subject-matter of an appeal can furnish no ground for not following it unless its operation has been suspended by a competent court. If this healthy rule is not followed, the result will only be undue harassment to assessees and chaos in administration of tax laws."*

26. Applying above principle in facts of this case, we are of the view that the respondent Authority could not have questioned the correctness of the revisional order by passing a fresh order on the same issues, nor could it have relied upon subsequent Board Resolutions to dilute or nullify the effect of the revisional directions. Once the revisional authority exercised its statutory jurisdiction and granted relief to the petitioner, the respondent Authority was functus officio insofar as those issues were concerned. The impugned order dated 12.12.2024, passed in purported compliance of earlier judicial directions, in fact constitutes an impermissible attempt to circumvent and nullify the binding revisional order dated 27.07.2023. Raising fresh demands on grounds already considered and rejected in revision order, amounts to colourable exercise of power and reflects non-adherence to the principles of administrative discipline and rule of law.

27. In view of the foregoing discussion and conclusions recorded hereinabove, the impugned orders dated 12.12.2024, 23.12.2024, and 15.05.2025 are hereby **quashed**. The respondent Authority is directed to implement the revisional order dated 27.07.2023 strictly in its letter and spirit and to recalculate the dues, if any, payable by the petitioner in accordance therewith and subject to the observations made in this judgment. The respondent Authority is further directed to extend to the petitioner the benefit of early production incentive rebate as well as waiver of penal/compound interest in terms of the applicable scheme and office order dated 05.12.2013. Any excess amount deposited by the petitioner pursuant to the impugned demands shall be adjusted or refunded, as the case may be, within a period of eight weeks from the date of receipt of a certified copy of this judgment. The writ petition is **allowed** in the aforesaid terms. There shall be no order as to costs.

(Swarupama Chaturvedi,J.) (Ajit Kumar,J.)

December 18, 2025/Kirti