

**(2001) 03 AHC CK 0007**

**In the Allahabad High Court**

**Case No : Civil Misc. Writ Petition No. 7789 of 1988**

Ali Johad Naqvi

APPELLANT

Vs

Allahabad Development Authority and Another

RESPONDENT

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**Date of Decision : 14-03-2001**

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation : AIR 2001 All 172 : (2001) AWC 890**

**Hon'ble Judges : Lakshmi Bihari, J;D.S. Sinha, J**

**Bench : Division Bench**

**Advocate : L.R. Khan, for the Appellant; Ashok Mohiley, S.C., for the Respondent**

**Final Decision : Dismissed**

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## **Judgement**

Lakshmi Bihari, J.—On the refusal by the respondent-Allahabad Development Authority to refund Rs. 1,49,250/- deposited by the petitioner for the allotment of the shop in question, the petitioner has filed this petition under Article 226 of the Constitution of India, praying for quashing the notice dated 22-12-1987 (Annexure "8" to the writ petition), and for commanding the respondent-Allahabad Development Authority to refund the said amount.

2. The case of the petitioner, as disclosed in the writ petition, is that in pursuance of the scheme floated by the Allahabad Development Authority, he applied for allotment of the shop in question and deposited in all Rs. 1,49,250/- for the same, but the possession was not given to him for about two and a quarter years. His case, further, is that the parties are governed by a written contract and in terms of condition No. 1-8 thereof, he could obtain refund of the money deposited by him with interest in case no floor space is given to him within a period of two years since the date of registration. He, accordingly, moved an application dated 26-6-1987 for the refund of the money deposited by him, but the respondent-Allahabad Development Authority instead of refunding the said amount, issued a letter dated 22-12-1987 calling upon him to pay a sum of Rs. 2,04,016.40, in order to get the said letter dated 26-6-1987 considered.

3. In paragraph 9 of the supplementary counter affidavit of S.C. Srivastava, Secretary of the Allahabad Development Authority, it is mentioned that out of the total amount deposited by the petitioner, a sum of Rs. 1,45,165/- has been paid to the petitioner and the balance amount has been forfeited under the terms and conditions of allotment and the rules framed under the U.P. Urban Planning & Development Act, 1973 as the petitioner had failed to comply with the said terms and conditions. In paragraph 10 of the supplementary rejoinder affidavit, the petitioner has admitted the said payment. Thus, the petition is confined only to the relief of the refund of the balance amount.

4. It is relevant to notice that from the averments made in the writ petition it is evident that the petitioner is seeking to enforce condition No. 1-8 of the Contract. Thus, the basis of the claim of the petitioner is the contract between him and the respondent-Allahabad Development Authority.

5. Here the question that arises for consideration is whether the jurisdiction under Article 226 of the Constitution of India could be invoked for enforcing the contract between the petitioner and the respondent-Allahabad Development Authority.

6. In the judgment rendered in Bareilly Development Authority v. Ajai Pal Singh, reported in AIR 1989 Supreme Court 1076, the Hon''ble Supreme Court relying upon Radhakrishna Agarwal and Others Vs. State of Bihar and Others, Premji Bhai Parmar and Others Vs. Delhi Development Authority and Others, and Divisional Forest Officer Vs. Bishwanath Tea Co. Ltd., has held that "there is a line of decisions where the contract entered into between the State and the persons aggrieved is non statutory and purely contractual and the rights are governed only by the terms of the contract, no writ or order can be issued under Article 226 of the Constitution of India so as to compel the authorities to remedy a breach of contract pure and simple".

7. In view of the principles enunciated by the Hon''ble Supreme Court in the aforementioned case, it must be held that the writ jurisdiction under Article 226 of the Constitution of India could not be invoked by the petitioner for enforcing the contract between him and the respondent-Allahabad Development Authority.

8. Thus, the petitioner is not entitled to the relief claimed in the petition. Accordingly, the petition is dismissed, but without any order as to costs.