
(1999) 08 AHC CK 0166
In the Allahabad High Court
Case No : C.M.W.P. No. 26860 of 1991

Alkashwari Sawrup Joshi

APPELLANT

Vs

New Okhla Industrial Development Authority, Ghaziabad and
others

RESPONDENT

Date of Decision : 13-08-1999

Acts Referred:

Citation : (1999) 4 AWC 3526 : (1999) AWC 3526 : (1999) 3 UPLBEC 2050

Hon'ble Judges : Lakshmi Bihari, J; Binod Kumar Roy, J

Bench : Division Bench

Advocate : U.N. Sharma, V.K. Upadhayay and Kripa Shanker Singh, for the Appellant; U.N. Awasthi, for the Respondent

Final Decision : Allowed

Judgement

Binod Kumar Roy and Lakshmi Bihari, JJ.—The petitioner has come up with a prayer to quash the office order dated 17.9.1991 passed by the Chief Executive Officer, NOIDA (as contained in Annexure-10) cancelling her deed dated 2.8.1986 in relation to plot No. 11, Block-E, Sector 40 on the ground that it was got executed and possession obtained by bringing false facts noting that on coming to know of these facts, a show cause notice was sent to her by exercising his power under clauses III-B and III-E of the lease deed itself.

2. A number of grounds have been urged by Mr. U. N. Sharma, learned counsel appearing for the petitioner in support of the prayer made in this writ petition as well as the prayer made through an Interlocutory petition for commanding the respondent Nos. 1 and 2 to produce the alleged original affidavit of the petitioner dated 16.6.1986 bearing serial No. 694 which was kept in mind while passing the impugned order though not mentioned in it from their possession as according to her the said document is a forged and fabricated one which was not executed by her to which no counter-affidavit was even filed by the respondents even though a copy of that application was served on the learned counsel for the respondents as early as on 20.12.1991 : the impugned order does not show as to what was

the show cause filed by the petitioner, which has been appended as Annexure-9 to the writ petition ; and that had the authority took trouble even to peruse the show cause it would have disclosed as to how the petitioner had stepped into the shoes of her mother, who was one of the members of the Paradise Co-operative Housing Building Society Ltd. and through whom she had derived her right, title and interest in the plot in question.

3. Mr. Awasthi after some arguments found himself in a very embarrassing position to submit any valid reply to the submissions made by Mr. Sharma that the impugned order even does not mention the failure of the filing of the show cause by the petitioner what to talk of its contents and consideration.

4. Having gone through the Impugned office order, we accept the submission of Mr. Sharma that it does not even mention the filing of the show cause by the petitioner, what to talk of its consideration. Thus, we hold that the impugned order is liable to be set aside on account of this Infirmary alone.

5. In the result, this writ petition succeeds. The impugned order is quashed.

6. In the peculiar facts and circumstances, we hold that the petitioner is entitled to cost of this writ proceeding which is quantified to Rs. 2,000.

7. Before parting, it is made clear that If the respondents intend to proceed further, after verifying the genuineness or otherwise of the affidavit said to have been sworn and filed by the petitioner in that event he will give a notice to her to have her say in the matter and in that event it will be open for the petitioner, or to both sides to furnish any material in support of their respective cases before the Chief Executive Officer concerned of the Authority and thereafter the matter will be decided as per the law.

8. We also clarify that the observations made by us shall not be construed by the petitioner or the respondents that we have adjudicated the claim of one or the other party on merits.

9. The office is directed to hand over a copy of this order to Mr. Awasthi, learned counsel for the respondents within two weeks for its Intimation to and follow up action by the authority concerned.