
(2006) 03 MP CK 0072
In the Madhya Pradesh High Court
Case No : Writ Petition No. 883 of 2000

Ashok Agrawal

APPELLANT

Vs

Indore Development Authority and Another

RESPONDENT

Date of Decision : 21-03-2006

Acts Referred:

Madhya Pradesh Nagar Tatha Gram Nivesh Adhiniyam, 1973 — Section 58, 85, 86

Citation : (2007) 2 MPJR 32

Hon'ble Judges : S.L. Kochar, J

Bench : Single Bench

Advocate : Vijay Aasudani, for the Appellant; A.P. Polekar, for the Respondent

Final Decision : Allowed

Judgement

S.L. Kochar, J.

The petitioner has lodged his grievance for quashing the demand-notice (Annexure P/7) dated 24.03.00 issued by the Respondent and Estate Officer of Indore Development Authority (For short IDA) whereby in total Rs. 7,32,748/- have been demanded under different heads from the petitioner for revival of allotment of plot in his favour in Scheme No. 78 because he failed to deposit quarterly and half-yearly instalments from the month of December, 1994 to June, 1995 within 30 days from the date of issuance of demand-notice.

The factual matrix as pleaded by the parties to apprediate the controversy involved in this petition in brief, is as under:

The respondent No. IDA published Notification inviting tender (in short NIT) bearing No. 79/94 on 27.07.94 for sale of the residential plots admeasuring 50" x 70" in size on deposit of Rs. 10,000/- by Bank-Draft alongwith the tender. A copy of the NIT is filed alongwith the petition as Annexure P/1. The tender of the petitioner was accepted being highest one and the Respondent No. 1 issued allotment order for plot No. 32/C/F/3 in Scheme No. 78 (Annexure P/2). In compliance with the terms and condition of allotment the petitioner deposited

25% of the premium and annual lease-rent for first year aggregating to Rs. 1,10,308 by pay order No. 110010 dated 07.11.94 under his covering letter dated 07.11.94, copy whereof is filed as Annexure P/3, But the respondents, as per condition No. 4 of the NIT, and agreement, did not handover the physical possession of the allotted plot at sight by informing the petitioner, the date and time of handing over of physical possession thereof. It is further contended by the petitioner that by order dated 26.3.96, the petitioner requested the Respondents to handover physical possession of the plot as also intimate exact and accurate instalments payable by the petitioner.

The Respondents failed to handover the physical possession of the plot as also the exact and accurate instalments payable by the petitioner as a result of which the petitioner could not make payment of the instalments to the Respondents. Copy of the letter dated 18.3.96 delivered on 26.3.96 is Annexure P/4.

It is also averred in the petition that the petitioner visited the Respondent's office many a times for taking over physical possession of the said plot and for information about payment of exact and accurate instalments or premium of lease-rent. It is further stated that after expiry of about three years, the Respondents served letter (Annexure P/5) dated 13.02.99 to the effect that allotment of the plot to the petitioner has been cancelled and he can make application for revival of allotment showing reasons for his inability.

After receiving the letter (Annexure P/5), about cancellation of allotment of plot and filing of application for revival under fear and in abundant caution, the petitioner submitted an application dated 01.03.99 alongwith medical certificate, copies whereof are collectively filed as Annexure P/6. He also visited the Respondents and signed some documents on the plea that they are needed bona fide for revival of allotment of plot. On this, the respondents served demand notice (Annexure P/7) for revival of allotment. The Respondents asked the petitioner to deposit aggregate amount of Rs. 7,32,784/- towards revival of amount of allotment.

It is averred in the petition that after deposit of 25% premium as also annual lease-rent for first year, the Respondents were required to hand-over the physical possession of allotted plot as per clause (4) of NIT and agreement and Rule No. 33 of Madhya Pradesh Nagar Tatha Gram Nivesh Vikasit Bhoomiyo, Griho, Bhavano Tatha Anya Sanrachanao Ka Vyayan Niyam, 1975 (For short the "Rules-1975") and that the respondents failed to inform the petitioner accurate measurements, accurate premium and its instalments, because of which, the petitioner could not make payment of the instalments. The Respondents, contrary to Rule No. 23, demanded in total interest and penalty @ 45% of premium and service charges amounting to Rs. 8.667/-.

In the return, the respondents have submitted that the petitioner himself has submitted an application for revival of the plot vide Annexure P/6 and the same was considered by the Respondent No. 2 sympathetically in favour of the

petitioner. Even then the petitioner has filed this petition on incorrect facts and grounds. The procedure of delivery of possession of plot, measurement etc. could not be done because, the petitioner did not submit the prescribed agreement signed on ten rupees non-judicial stamp, and therefore, he could not urge before this Court that the Respondents have committed the breach of agreement. The petitioner himself submitted an application Annexure R/6 dated 05.02.00 for revival of the allotment of plot in his favour and expressed his willingness to deposit interest and penalty within one month. The Respondents had commenced procedure for revival of allotment of plot on the basis of Resolution No. 154 dated 25.10.99 on the basis of order No. F-3-103/99/32 Bhopal dated 3.1.00 issued by Ministry of Housing and Environment, State of Madhya Pradesh, Bhopal whereby 900 cases of allotment of plots were revived under the amended provisions of Vyayan Niyam Order 1987 (Herein-after referred to as I.D.A. Regulation 1987 Amended Clause No. 24(4). This regulation was brought in existence as per provision u/s 58 read with Section 86 of the Act. The petitioner submitted the application for revival (Annexure R/10) in pursuance of the impugned order under challenge (Annexure P/7).

I have heard Shri Vijay Aasudani learned counsel for the petitioner and Shri A.P. Polekar, learned counsel appearing for the Respondents.

While assailing the impugned demand, the learned counsel for the petitioner submitted of Rule 33 as well as Rule 40 of the Rules, 1975. Learned counsel urged that liability of the petitioner to pay the lease-rent arises only after the IDA delivers vacant possession of the plot allotted to the petitioner as required under Rule 40 of the Rules. According to him, the petitioner was never a defaulter, he having deposited the entire money in terms of the allotment letter and hence, to treat him the defaulter by fiction was not legal and/or proper. It is also argued that insistence on the part of the IDA to sign the agreement was not provided in Rule nor did it amount to commit any breach of Rules so as to entitle the IDA to raise demand. Learned counsel for the petitioner placed reliance on a decision passed by the High Court in the case of Shri Bubulal vs. IDA and another in Writ Petition No. 1192/96, decided on 26.02.2002.

In reply, learned counsel for the Respondents while defending the impugned demand, submitted that the same was rightly issued and hence, deserves to be upheld. Learned counsel urged that since the petitioner failed to execute the agreement signed by him, the Respondents were entitled to claim lease-rent and all other dues payable by the petitioner as if the possession was delivered.

His further submission is also that the revival letter along with demand was issued to several persons in accordance with Regulation 1987.

Having heard learned counsel for the parties and after perusing the entire record of the case, this Court is of the opinion that this petition deserves to be allowed.

In exercise of the powers conferred by Section 85 of the Act 1973, the State Government has framed Rules called M.P. Nagar Tatha Gram Nivesh Viksit

Bhoomiyo, Griho, Bhavano Tatha Anya Sanrachanao Ka Vyayan Niyam 1975. These rules prescribe the manner as to how the land which has been vested in or managed by the IDA is to be transferred. Rules 33 and 40 of the Rules are relevant for deciding the controversy between the parties and both are reproduced as under:

33. When the plot becomes ready for delivery and it is so notified by the Authority, the purchaser shall obtain permission of the plot within 60 days of the receipt of notice and shall obtain sale deed from the authority. The purchaser shall bear all costs of getting it only registered."

The lessee may take possession of the plot on the date fixed or notified to him to taking over possession of the plot and the lease of the plot shall commence from the date irrespective of the fact whatever, possession of the plot has been taken or not and the lessee shall pay all rates and taxes where leviable on the owner or the lessee from the date.

According to Rule 33, it is obligatory on the part of the respondents/Authority (IDA) to notify for delivery of the plot when plot becomes ready and the purchaser shall obtain permission of the plot within 60 days of the receipt of the notice and shall obtain sale deed from the Authority. No such notice was ever notified by the Authority regarding readiness of the plot for delivery and according to Rule 40, the Respondents/IDA was required to notify the date for taking possession of the plot by the lessee and lease of the plot shall commence from the date irrespective of the fact whether permission of the plot has been taken or not and the lessee shall pay all the rates and taxes.

In the instant case, this is the admitted position that no date was fixed or notified by the Respondents for delivery of possession to the petitioner therefore, the lease of the plot has not commenced and petitioner is not liable for payment of lease amount and other taxes, charges etc, as demanded in impugned order (Annexure P/7). The similar view is taken by this Court in the order passed in the case of Babulal (*supra*).

Contention of the learned counsel for the Respondents that since the petitioner failed to execute the agreement with the IDA, therefore, it has to be held that the petitioner committed breach entitling the Respondents/ IDA to demand lease-rent, is not acceptable. Learned counsel for the Respondents was unable to show any Rule which makes it obligatory for execution of agreement prior to issuance of notice under Rule 40. It is as clear as day light that compliance of Rule 40 was not dependant upon execution of agreement as is clear from its language. The Respondents, therefore, were not justified in demanding the lease rent from the petitioner in absence of non compliance of Rule 33 as well as Rule 40 of the Rules. When the rights of the parties are governed by statutory rules, then its compliance has to be made in conformity with the rules. Any act done in violation of the Rules or in its contravention, vitiates the very action. Regulation 1987 (*supra*) would have application only after compliance with rules 33 and 40.

Resultantly, in the wake of the factual and legal discussion as aforesaid, this petition succeeds and is hereby allowed. The impugned demand dated 24.02.2000 (Annexure P/7) is set aside by issuance of a writ of certiorari. It is however, made clear that the Respondents shall be free to proceed against the petitioner in accordance with the Rules and Regulation in relation to plot in question. Parties are left to bear their own costs as incurred.