
(2014) 05 AHC CK 0297
In the Allahabad High Court
Case No : C.M.W.P. No. 2954 of 2007

Digambar Jain Society for Child Welfare	APPELLANT
Vs	
State of U.P.	RESPONDENT

Date of Decision : 30-05-2014

Acts Referred:

Citation : (2014) 6 ADJ 629 : (2014) 6 ALJ 292 : (2014) 105 ALR 370 : (2014) 5 AWC 5425 : (2015) 126 RD 146

Hon'ble Judges : Ranjana Pandya, J; Ashok Bhushan, J

Bench : Division Bench

Advocate : Vivek Chaudhary and Anurag Khanna, Advocate for the Appellant;
R.P. Singh, Advocate for the Respondent

Final Decision : Allowed

Judgement

Ranjana Pandya, J.—By this writ petition, the petitioners have prayed for an order of certiorari calling for the records of the case and quashing the order dated 4.12.2006 issued by the respondent No. 3 (Annexure No. 30 to the writ petition). After hearing learned Counsel for the parties, following order was passed by this Court on 16.1.2009:

"The supplementary counter-affidavit be kept on record.

It appears, not only from the writ petition and affidavits, but also from the supplementary affidavit as well as from the second supplementary affidavit, filed therein, that now the Authority is in possession of the land, and therefore, there cannot be objection on their part to hand over the possession to the petitioner after executing the lease deed. Therefore, for the purpose of completion of execution and registration of the lease deed, a time bound programme has been fixed by the Court. The same has to be done within a period of two weeks from the communication of the same. Further, within a week the petitioner will supply the appropriate stamp papers etc. to complete the formalities so that it can be executed by the Authority within a period of seven days thereafter. But, under no

circumstance, there should be delay in executing the same.

In view of the aforesaid circumstances and all other circumstances, impugned order is quashed. The writ petition is disposed of without imposing any cost."

2. Feeling aggrieved by the aforesaid order, the Secretary, Greater NOIDA Industrial Development Authority preferred Civil Appeal No. 7908 of 2013 @ SLP (C) No. 9434 of 2010 before the Hon''ble Apex Court in which the order dated 16.12.2009 passed by this Court was set aside and the matter was to be decided afresh.

3. After the file was received from the Hon''ble Apex Court, counter and rejoinder affidavits were exchanged between the parties.

4. Learned Counsel for the petitioners and the Counsel for respondent Nos. 2 to 4 and Standing Counsel have been heard at length and record has been perused.

5. The petitioner applied for allotment of plot for the purpose of establishing a Modern School at Greater Noida. The General Manager (Property and Administration) sent an intimation letter dated 14.3.1995 (Annexure No. 2 to the writ petition) whereby he intimated the petitioners that they had been allotted a plot measuring 5 acres (20350 sq. meters) for establishing Senior Secondary School in sector Delta of Greater Noida. After allotment of the plot, the petitioner deposited Rs. 33,89,363/- and further deposited interest being Rs. 3,15,327/-, which come to total Rs. 37,04,690/- whereafter the petitioners requested respondent Nos. 2 to 4 to issue no objection certificate which was issued on 10.5.1999, Annexure No. 3 to the writ petition. The case of the petitioner was that the respondent Nos. 4 had not acquired the plot till 2001 and did not have possession over the plot, hence, he applied for an alternative plot, vide Annexure No. 4 to the writ petition on 6.9.1999.

6. In reply the OSD, Greater Noida Industrial Development Authority issued a letter, Annexure-5 to the writ petition, stating that Plot No. HS-8 in Delta sector had been allotted to the petitioner and petitioner was expected to execute lease deed and take possession of the plot. This letter was issued on 13.10.1999. By means of letter dated 26.11.1999, Annexure No. 5 to the supplementary counter-affidavit, the Greater Noida Industrial Development Authority intimated the petitioner about the stamp duty etc. In reply on 16.10.1999, vide Annexure-6 to the writ petition, the petitioner made certain inquiries as to whether the plots were developed, the situation of transportation and again requested for change of the site. In reply on 20.1.2000 the Deputy Manager (Property) of the Greater Noida Industrial Development Authority intimated, Annexure No. 7 to the writ petition, that since the Institute had not deposited the amount nor informed the Authority regarding the exact status, hence, the petitioner was asked to execute the lease deed within 15 days from the dispatch of the letter dated 20.1.2000. Further by letter dated 29.2.2000 (Annexure No. 9 to the writ petition), the petitioner made certain queries and requested for change of site reply whereof is Annexure No. 10 to the writ petition in which the Management Trainee of Greater

Noida Industrial Development Authority informed the petitioner that change was not possible. This letter was dated 26.8.2000. Again on 28.8.2000, the petitioner made certain inquiries, vide Annexure No. 11 to the writ petition and requested of change for the site which was again refused by the Greater Noida Industrial Development Authority by letter dated 8.9.2000, Annexure No. 12 to the writ petition.

7. Meanwhile, a show cause notice was issued on 5.10.2001 by the Greater Noida Industrial Development Authority being Annexure No. 13 of the writ petition requiring the petitioner to show cause within 15 days as to why action should not be taken against him for non-execution of the lease deed failing which petitioner's plot was to be cancelled. In reply to the show cause notice, the petitioner sent his reply dated 16.10.2001, vide Annexure No. 14 to the writ petition in which the petitioner requested for one year's time to execute the lease deed. This request was refused by the Greater Noida Industrial Development Authority, vide Annexure No. 15 to the writ petition, and the petitioner was required to complete all the formalities and execute the lease deed within one month from the issuance of the letter. This letter refusing extension of execution of lease deed was dated 23.11.2001. In reply again the petitioner sent a letter dated 28.11.2001 being Annexure No. 16 to the writ petition seeking one years time for completing the formalities. In reply the Greater Noida Industrial Development Authority sent a letter dated 7.3.2002 being Annexure No. 17 stating that if the formalities were not completed by the petitioner within 10 days from the date of issuance of the letter, the Authority shall be constrained to cancel the petitioner's allotment. On 16.3.2002, vide Annexure No. 18 to the writ petition, the petitioner sought some information regarding execution of lease deed. Again on 31.10.2003, vide Annexure No. 19 to the writ petition, the petitioner wrote a letter to the Greater Noida Industrial Development Authority asking for the formalities which the petitioner had to complete. Meanwhile, on 19.12.2003, vide Annexure No. 20 to the writ petition, the allotment of the petitioner was cancelled and the registration amount of Rs. 10,000/- was forfeited by the Greater Noida Industrial Development Authority.

8. After hearing about the cancellation of allotment by the Greater Noida Industrial Development Authority, the petitioner again wrote a letter dated 29.12.2003, vide Annexure No. 21 to the writ petition, requesting the Greater Noida Industrial Development Authority to withdraw the cancellation orders and give necessary instructions. This was rebutted by letters dated 28.1.2004, 4.3.2004, 19.3.2004 and 24.5.2004, vide Annexure No. 22 to the writ petition.

9. Consequently, on 22.7.2003, vide Annexure No. 23, the Greater Noida Industrial Development Authority, after forfeiting the registration fee of Rs. 10,000/-, sent a cheque Nos. 928673 dated 21.7.2004 refunding the amount deposited by the petitioner, as his allotment was cancelled.

10. After all this was done, the petitioner sent letter dated 27.7.2004, vide Annexure No. 24 to the writ petition, returning the cheque and requesting the

Greater Noida Industrial Development Authority that since they had issued a NOC and had failed to give possession, hence, they should decide the matter on merits.

11. It has been vehemently argued on behalf of the Greater Noida Industrial Development Authority that the petitioner committed default in payment of the money. He was not having sufficient means to pay and had even mentioned about the deficiency of finances available with the petitioner, therefore, since the petitioner himself was a defaulter, he cannot be granted any relief by means of this writ petition.

12. Counsel for the petitioner has contended that since the land was not acquired by the Greater Noida Industrial Development Authority and they did not take possession, hence, they were not in a position to hand over the possession to the petitioners. Thus, the Greater Noida Industrial Development Authority itself is guilty of laches, hence, the petitioner should be granted relief, which he has prayed for in the writ petition.

13. Counsel for the Secretary, Greater Noida Industrial Development Authority by way of his supplementary counter-affidavit filed possession letter by which the possession of the land was taken and has argued that since possession was taken as back as 1992, hence, it does not lie in the mouth of the petitioner to say that the Secretary, Greater Noida Industrial Development Authority was not having possession over the property.

14. The entire money has been deposited by the petitioner is not in dispute. It is also established on record that the respondent No. 2 had acquired the property and was also in its possession.

15. There is no doubt that there were some laches on the part of the petitioner but we cannot lose sight of the fact that the respondent No. 2 was all the more guilty of laches. It appears from the perusal of the record that the petitioner was running short of finances, as such, he showed his inability to execute the lease deed. Further the perusal of the record also shows that the respondent No. 2, instead of cancelling the allotment, exchanged correspondences either asking the petitioner to execute the documents or asking him to submit his difficulties but did not proceed to cancel the allotment. It has come on record that this plot has been earmarked for establishment of a school, hence, it cannot be utilized for any purpose other than running a school.

16. Counsel for the respondent No. 2 has placed reliance upon a Judgment of the Hon'ble Apex Court rendered in the case, of Angel Baby Products Pvt. Ltd. Vs. New Okhla Industrial Development Authority and Others, and has argued that this is a fit case in which the respondent No. 2 has cancelled the allotment. The Hon'ble Apex Court observed in the Judgment as under:

"--It is, therefore, not a case where the Court will have to take one stand or the other, in the light of the statutory provisions. The question as to whether the

extreme power of resumption and forfeiture has rightly been applied or not will depend upon the factual matrix obtaining in each case. Each case may, therefore, have to be viewed separately and no hard and fast rule can be laid down therefore.

At a later stage their Lordships further held:

"We, may, however, hasten to add the we do not intend to lay down a law that the statutory right conferring the right of the respondent should never be resorted to. We have merely laid down the principle giving some illustrations where it may not be used. There cannot be any doubt whatsoever that if the intention of the allottees is dishonest or with an ill motive and if the allottee does not make any payment in terms of the allotment or the stature with a dishonest view or to any dishonest motive. Then section 8A can be resorted to."

The facts in the case cited are clearly distinguishable. In that case the allottee had been allotted the land, was put in possession and had constructed the building. Thereafter, for breach of the terms of allotment not only the allotment was cancelled, possession resumed and large amount forfeited. In the present case possession remained with the Authority as the society never come forward to have the lease deed executed and take over possession, consequently the construction could never come up. Moreover, in this case the registration amount was forfeited. Therefore the case cited is not only distinguishable on facts but also the action taken by the Authority.

Section 8A of the letter of allotment is also quoted in the said Judgment. It deals with the consequences of non payment of the installments. Payment of installments was defaulted by the society but this is not a ground for cancellation."

17. No doubt the authority should not exercise the right of cancellation as a general rule but it is well established that in the particular facts of a case, the authority can exercise its right to cancel a particular allotment.

18. Counsel for the respondent No. 2 to 4 has argued that it is not one of those cases where the default could be attributed to the authority of not being able to execute the lease deed and hand over possession because the petitioner was called upon to have the lease deed executed and take possession but the society kept on asking for extension for years which was not granted by the respondent No. 2 to 4. It is also fact that the petitioners were running short of funds and they did not want their funds to be blocked, thus, the dishonest and unreasonable intention of the petitioner can very well be inferred. Therefore, there being complete inaction on the part of the society, the cancellation of allotment was very legitimately arrived at by the respondent Nos. 2 to 4, and it could not be termed as unreasonable, biased or without any cause.

19. Counsel for the respondent No. 2 has further placed reliance upon a Judgment of the Apex Court rendered in the case of Skyline Contractors Pvt. Ltd.

and Another Vs. State of U.P. and Others, in which the Apex Court has held as under:

"3. Admittedly, the appellant made an application for allotment of the aforesaid plot measuring 8000 sq.m. Pursuant to an advertisement published on behalf of NOIDA inviting such applications and made an initial deposit of Rs. 13,20,000 while submitting the application. On 17.4.2003 an order of allotment was issued in favour of the appellant whereby the petitioner was required to deposit 25% of the premium amount in cash or by a bank draft in favour of NOIDA within 60 days of such allotment. It was categorically stipulated that if the said amount was not deposited within the time specified, the depositor's earnest money would be forfeited and no extension of time would be granted for deposit of the said amount under any circumstances. The balance 75% of the premium amount was required to be deposited by the allottee in ten equal half-yearly installments alongwith interest at the rate of 14% per annum on outstanding premium. Here also, it was categorically stipulated that no extension for payment of installments would be granted and if the allottee failed to pay the installments within due dates the allotment would be cancelled and the amount equivalent to 25% of the premium would be forfeited in favour of NOIDA."

20. The law laid down by the Hon"ble Apex Court as above, does not help the respondent No. 2. Inasmuch as in the case in hand, the complete deposit was made whereas in Skyline Contractors Private Limited and another (supra), there was default in payment.

21. It has been admitted by the learned Counsel for the respondent Nos. 2 and 3 that the plot is lying vacant and has not been allotted to anybody.

22. This Court was keen to look into the brochure connected to this allotment but Counsel for both the parties showed their inability to produce the brochure. In fact learned Counsel for the respondent Nos. 2 to 4 contended that he has reproduced some part of the brochure in paras 14 and 15 of his supplementary counter-affidavit which is as follows:

"The allottee will be required to execute the lease deed and take over the possession within the period intimated by the lessor and get the lease deed registered before taking over possession of the plot in case of non execution of documents, the allotment would be cancelled and the amount deposited as registration money would be forfeited, as per rule. However, in exceptional circumstances the extension may be granted by the lessor/CEO of the Authority on such terms and conditions as applicable at the time of granting extension."

"In case of default on the part of applicant/allottee/lessee for breach/violation of terms an conditions of registration/allotment/lease and/or no deposit of allotment money, the allotment of the plot is liable to be cancelled. In the event of cancellation being on account of non-deposit of allotment money and/or breach/violation of any and or terms and conditions of registration/allotment/lease stated herein, then entire registration money shall be forfeited and balance

shall be refunded without any interest."

23. Referring back, to the letter of cancellation dated 19.12.2003 being Annexure No. 20 to the writ petition, its perusal shows that it has been specifically mentioned in the allotment letter that show cause notice was issued on 5.10.2001, final notice was issued on 7.3.2002 and ultimately order for cancellation was passed on 19.12.2003. Perusal of the record shows that when the order for cancellation of allotment was passed, the letter dated 31.10.2003 had already been sent by the petitioner to the respondent Nos. 2 stating that they were ready and willing to execute the lease deed and take possession of the plot. But pending any decision on this letter in a high handedness manner, the respondent Nos. 2 cancelled the allotment. Thus, this Court fails to appreciate why the order of cancellation of the allotment was passed after the petitioner had stated his unconditional willingness to execute all the formalities and when he had already deposited the complete amount. This Court fails to understand if the respondents No. 2, 3 and 4 were at all inclined or intended to cancel the allotment then why it was not done much earlier when it could have been done. This shows that the respondents No. 2 to 4 did not intend to cancel the allotment and they kept on granting time and purposely did not cancel the allotment till the petitioner had shown his willingness to execute all the formalities relating to the allotment. Thus, as equity would demand, this Court thinks that the order dated 4.12.2006 issued by the respondent Nos. 3 needs to be quashed subject to certain observations. In view of the foregoing discussions, the order dated 4.12.2006 passed by the respondent No. 3 is quashed, and the writ petition is allowed with a direction that the respondent Nos. 2 to 4 shall hand over possession of the plot to the petitioners within two months from the date of this order after getting all the formalities completed. The petitioner shall complete all the formalities as per the requirement within the stipulated period.