
(2015) 04 UK CK 0027

In the Uttarakhand High Court

Case No : Writ Petition No. 300 of 2013 (M/S)

Hardeep Singh

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 29-04-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 226
Contract Act, 1872 — Section 10, 23

Citation : (2015) 3 UC 2204

Hon'ble Judges : Alok Singh, J.

Bench : Single Bench

Advocate : M.S. Pal, Senior Advocate assisted by Aamir Malik, Advocate, for the Appellant

Final Decision : Dismissed

Judgement

Alok Singh, J.—For the reasons stated in the application, Intervention Application No. 4561 of 2015 is allowed. Mr. R.C. Tamta, Advocate is permitted to address his arguments on behalf of Mahendra Kumar Garg, intervener. Present petition is filed, invoking Article 226 of the Constitution of India, assailing the order dated 13.02.2013, passed by the respondent No. 2, cancelling the reservation of the plot; further seeking writ of mandamus commanding the respondents to honour the reservation letter dated 20.11.2012.

2. Brief facts of the present case, inter alia, are that Civil Suit No. 37 of 1998, Har Prasad Sah Vs. U.P. Awas Evam Vikas Parishad and others (hereinafter referred to as "Parishad") was pending disposal in the Court of Civil Judge, Junior Division, Haldwani, District Nainital seeking permanent prohibitory injunction restraining the Parishad and its Officers, servants and agents in making any interference in the peaceful possession of the plaintiff over the suit property and for declaration to declare that notices under Sections 28 and Section 31 (3) (a) of the U.P. Awas Evam Vikas Parishad Adhiniyam 1965 are non-est and void ab initio; during the pendency of the suit, petitioner herein moved an application on

15.10.2012 before the Housing Commissioner, Parishad, annexure No. 1 to the writ petition, saying that petitioner shall contest O.S. No. 37 of 1998 on behalf of the Parishad at his own expenses and cost and shall make every effort to get the decision in favour of the Parishad and after the decision in the suit in favour of the Parishad, petitioner shall purchase the commercial plot No. 101, Yojna III, measuring 1500 sq.m. (property in question) by paying five lacs more than prevailing market value; Housing Commissioner, Parishad, vide letter dated 20.11.2012, annexure No. 3 to the writ petition, informed the petitioner that commercial plot No. 101 (property in dispute), shall remain reserved in favour of the petitioner with the condition that after the dismissal of the Suit No. 37 of 1998 in favour of the Parishad, allotment letter shall be issued in favour of the present petitioner; with the further stipulation that petitioner has to pay Rs. 5 lacs more, over and above, the prevailing market rate of the property; having received letter dated 20.11.2012, petitioner deposited Rs. 24 lacs with the Parishad as earnest money; thereafter, petitioner moved impleadment application in O.S. No. 37 of 1998 and his application was allowed by the learned Trial Court; on 13.02.2013, Housing Commissioner of the Parishad was pleased to issue impugned cancellation order saying that Writ Petition No. 95 of 2013 (M/S) has been preferred by Mr. Yamuna Dutt Sanwal against the Parishad saying reservation of the commercial plot, in question, in favour of the petitioner was wrong and was made on the very less rate while market value of the property is not less than Rs. 300 lacs, therefore, to avoid complications, Parishad has decided to cancel the reservation made in favour of the petitioner, therefore, same is cancelled and petitioner may receive back money deposited by the petitioner at the time of reservation made; feeling aggrieved, petitioner has preferred present writ petition challenging order dated 13.02.2013, annexure No. 2 to the writ petition, whereby reservation made earlier in favour of the petitioner was cancelled.

3. I have heard Mr. M.S. Pal, Senior Advocate assisted by Mr. Aamir Malik, Advocate for the petitioner; Mr. Pankaj Purohit, Advocate for respondent Nos. 2 and 3, Mr. Gajendra Tripathi, Brief Holder for respondent No. 4, Mr. M.S. Tyagi, Mr. Pooran Singh Bisht and Mr. Ramesh Chandra Tamta, Advocates, appearing for the interveners and have carefully perused the record.

4. Learned counsel for the parties do not dispute that Parishad is instrumentality of the State and as per Regulation No. 34 of U.P. Awas Evam Vikas Parishad (Registration and Allotment of Plots and Houses) Regulation, 1979, applications shall be invited from the public at large for the allotment of plots and houses and allotment shall be made by way of lottery. Regulation 34 (3) further provides that any small portion of left over land which cannot be included in the lottery, may be allotted by the Housing Commissioner by exercising his discretion directly.

5. Perusal of the application moved by the petitioner dated 15.10.2012, annexure No. 1 to the writ petition, would demonstrate that petitioner has requested the Parishad that petitioner shall contest the O.S. No. 37 of 1998 at

his own expenses and case shall be decided in favour of the Parishad and thereafter, plot should be sold in favour of the petitioner after charging Rs. 5 lacs more on the market value. Perusal of reservation letter dated 20.11.2003, annexure No. 3 to the writ petition, would also demonstrate that the then Housing Commissioner has directed the petitioner to deposit Rs. 24 lacs with the Parishad and petitioner shall contest the case on behalf of the Parishad and shall make every effort to get the case decided in favour of the Parishad and thereafter plot, in question, shall be allotted in favour of the petitioner.

6. Section 10 and 23 of the Indian Contract Act, 1872 reads as under:-

"What agreements are contracts.-All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void.

Nothing herein contained shall affect any law in force in [India], and not hereby expressly repealed, by which any contract is required to be made in writing or in the presence of witnesses, or any law relating to the registration of documents.

Section 23 - What considerations and objects are lawful and what not -- The consideration or object of an agreement is lawful, unless--

it is forbidden by law; or

is of such a nature that, if permitted, it would defeat the provisions of any law; or is fraudulent; or

involves or implies, injury to the person or property of another; or the Court regards it as immoral, or opposed to public policy.

In each of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is void."

7. As per the mandate of Section 10 of the Indian Contract Act, all agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void.

8. Section 23 of the Indian Contract Act defines as to what would be the lawful consideration and objects. As per the language of Section 23 of the Contract Act, consideration or object of an agreement is lawful unless it is forbidden by law or is of such nature, if permitted, it would defeat the provisions of any law or involves or implies, injury to the person or property of another or the Court regards it as immoral or opposed to public policy.

9. As discussed hereinbefore, there is no dispute between the learned counsel for the parties that as per Regulation No. 34, every application seeking allotment of the plots or residences shall be invited by way of publication and allotment shall be made by way of lottery. As per Clause (3) of Regulation 34, only small portion

of left over land may be allotted by the Housing Commissioner directly by exercising his discretion.

10. In my humble opinion, Clause (3) of Regulation 34 was inducted with a view or in other words can be understood to mean that if after carving out different plots, small piece of land is left over, then it can be allotted in favour of the allottee of the neighbouring plot by the Housing Commissioner by exercising his discretion.

11. Undisputedly, Plot No. 101, property in question, is a commercial plot, measuring about 1500 sq.m. It is not a small piece of left over property, therefore, it cannot be reserved or allotted by the Housing Commissioner in violation of Regulation 34. Plot, in question, can be allotted only by way of inviting applications from the general public that too thereafter by lottery.

12. Since reservation made in favour of the petitioner on 20.11.2013, annexure No. 3 to the writ petition, is in violation of Regulation 34, therefore, same can very well be said against the public policy too.

13. There is another aspect of the matter. As per Article 14 of the Constitution of India, State or instrumentality of the State cannot act arbitrarily and action of the Housing Commissioner making reservation in favour of the petitioner without adopting procedure prescribed under Regulation 34, on the face of it, is arbitrary and against the public policy. Consequently, it was barred by Section 23 of the Contract Act. Therefore, it was not valid agreement of reservation as per Section 10 of the Contract Act. Consequently, cancellation thereof by the impugned order cannot be faulted with.

14. This is settled position of law that no order should be quashed on hyper technical ground which would result into revival of any illegal order. In my opinion, even if it is held that petitioner was not heard or was not given any opportunity of hearing before passing the impugned cancellation order, quashing of this order on that ground would amount to restoration of illegal reservation made in favour of the petitioner which itself is not valid as per Sections 10 and 23 of the Indian Contract Act. Therefore, writ petition fails and is hereby dismissed.