

(2013) 05 AHC CK 0351

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 10600 of 1996

Om Prakash Munjal

APPELLANT

Vs

Chairman, New Okhla Industrial Development Authority
(NOIDA) and Others

RESPONDENT

Date of Decision : 17-05-2013

Acts Referred:

Citation : (2013) 7 ADJ 350 : (2013) 99 ALR 317 : (2014) 2 AWC 1599

Hon'ble Judges : Sunil Ambwani, J; Bharat Bhushan, J

Bench : Division Bench

Advocate : Kaushal Kishore Singh, Ajay Sharma and Kaushal Kumar Singh, for the Appellant; U.S. Awasthi, R.P. Singh and S.C., for the Respondent

Final Decision : Dismissed

Judgement

1. Heard Shri Kaushal Kishore Singh, for the petitioner and learned counsel appearing for the New Okhla Industrial Development Authority (NOIDA). The writ petitioner was allotted a plot No. C-015 in Sector 34 measuring 300 sq. mtr. by New Okhla Industrial Development Authority (Noida), Distt. Ghaziabad vide allotment letter dated 30.11.1993. It is alleged that he moved an application before the respondents offering for conversion of the allotment to some other plot, which was accepted by the NOIDA vide letter dated 5.9.1995 allotting plot No. B-73 Sector 44 measuring 450 sq. mtrs. signed by the Assistant Development Manager (R), Noida. The petitioner was required to deposit the difference in premium of the total plot area between Rs. 16,20,000/- (at Rs. 3600/- per sq. mtr. for 450 sq. mtr. of plot No. B-73 Sector-44) and Rs. 7,20,000/- at Rs. 2400/- per sq. mtr. (for 300 sq. mtr. of the earlier allotted plot No. C-15 in Sector-34); and Rs. 1,80,000/- towards conversion charges at Rs. 400/- per sq. mtr.

2. The petitioner was required to deposit the entire amount of Rs. 10,80,000/- including difference in premium and conversion charges within 30 days from the issue of the letter positively, with a condition that if the amount is not deposited

within time the offer shall stand withdrawn automatically without any notice.

3. The petitioner sent a letter to Development Manager (R) on 13.10.1995 informing him that he has deposited conversion charge of Rs. 1,80,000/- vide cheque drawn on City Bank dated 13.10.1995 with request to give him 60 days time for depositing total cost.

4. The Assistant Development Manager (R), Noida by order dated 23.1.1996 withdrew the offer of conversion and returned the enclosing Draft No. 8489 of Rs. 35,000/-; Draft No. 8478 of Rs. 50,000/-; Draft No. 353004 of Rs. 1,35,000/-; Draft No. 8477 of Rs. 50,000/- totalling Rs. 2,70,000/- and the cheque No. 95690 dated 22.1.1996 of Rs. 1,80,000/- towards deposit of conversion charges. In this letter the petitioner was informed that Plot No. 73 Block-B Sector-44 was offered for conversion against plot No. 15 Block-C Sector 34 vide letter dated 5.9.1995 by which the petitioner was required to deposit Rs. 1,80,000/- towards conversion charges and Rs. 9 lacs towards difference in premium of the converted plot and the original allotted plot by 4.10.1995. The petitioner has tendered the demand draft of Rs. 2,70,000/- and conversion charges at Rs. 1,80,000/- only, and since he did not deposit the total demanded amount within the stipulated time, the offer stands automatically withdrawn giving rise to this writ petition.

5. The petitioner has prayed for writ of certiorari for calling the records and quashing the order dated 23.1.1996, as above, withdrawing the offer and returning amount deposited by the petitioner, and a writ of mandamus directing the respondents to accept the offer of the petitioner for conversion of the plot. The order has been challenged on the grounds that it has been passed without giving any opportunity of hearing in violation of principle of natural justice. The respondents had accepted the offer of the petitioner regarding payment of difference of the premium in installments and had accepted the demand draft invoking principles of estoppel. The order was passed without going through the records and Government Order dated 10.10.1995.

6. Learned counsel appearing for the petitioner submits that after accepting the offer of the petitioner for conversion of the plot and having accepted the tender of the demand draft of Rs. 2,70,000/- and the conversion charges by cheque, it was not open to the respondents to withdraw the offer. The petitioner had alongwith the deposit of Rs. 1,80,000/- towards conversion charges requested for 60 days time to deposit the amount to which no response was given by the respondents. The respondents had been accepting such prayers for grant of time and also for installments in payment of the premium and conversion charges. A large number of conversions were made during the relevant year 1995-96. He has given examples of Shri Jai Pal Singh, Plot No. 166A, Sector 15A; Shri V.N. Arora, Plot No. D-3/7, Sector 14 and Shri Jagat Singh, Plot No. 288, A/4 Sector 15A of which lease-deed was also executed and in which facility of time for payment of premium in installments were given by Noida authorities, discriminating the petitioner without any reasonable basis.

7. It is submitted that on 29.3.1996 the Division Bench of this Court had passed an interim order directing that if the petitioner deposits total of Rs. 6 lacs on or before 16.4.1996 the authorities concerned were directed to accept the same and not to cancel the allotment in favour of the changed plot, and not to take any other persons concerning the settlement of the said plot to any third person. It is submitted that the petitioner deposited Rs. 6 lacs in pursuance to the order dated 29.3.1996. The old plot has been allotted to some one else and that in case the petitioner is not allotted the present plot, as an allottee in the entrepreneur quota, he would suffer great financial loss.

8. It is submitted that in case of some of the matters of conversion of plots, the Supreme Court had directed an enquiry to be conducted by the CBI. The said enquiry is still pending. The Noida authorities have filed affidavit in the Supreme Court defending such conversions.

9. Learned counsel appearing for the petitioner has relied on the judgment of the Supreme Court in R.K. Saxena Vs. Delhi Development Authority, and Teri Oat Estates (P) Ltd. Vs. U.T., Chandigarh and Others, , in which the Supreme Court had in such circumstances, where lessee had defaulted/delayed the payment of installments of premium, interest and ground rent, and had explained the circumstances in making such delays due to situation beyond his control and not on account of any willful or dishonest intention, allowed the appeals, directing the respondents to restore the allotments.

10. Learned counsel appearing for NOIDA submits that no written request was made by the petitioner regarding conversion of the plot. He, however, admits that the respondents had allowed conversion and Plot No. B-73, Sector-44 measuring 450 sq. mtrs. was allotted to the petitioner vide letter dated 5.9.1995. According to this letter an amount of Rs. 10,80,000/- was required to be paid as difference of the premium and conversion charges. The petitioner moved an application on 13.10.1995 requesting for extension of time of 60 days for depositing the total cost. He had deposited conversion charges of Rs. 1,80,000/- on 9.11.1995. The NOIDA did not grant any extension of time for depositing the total cost to the petitioner as no reasons were given for extension of time. The petitioner had submitted four bank drafts on 6.12.1995. The respondents had returned all these drafts and cheque of Rs. 1,80,000/- to the petitioner. In paragraph 7 of the counter-affidavit it is stated as follows:

7. That the contents of paragraphs 5 and 6 of the writ petition are not correct as set out. It is only admitted that letter dated 23.1.1996 was sent to the petitioner. According to this letter respondent had withdrawn the offer of the conversion of plot No. B-73/44 and returned these bank draft of Rs. 2,70,000/ - and cheque of Rs. 1,80,000/ -. Since the petitioner had not fulfilled the terms and conditions of respondent's letter dated 5.9.1995. Senior Development Manager (R) was delegated power vide order dated 20.6.1994 to sanction extension of time for construction, to allot available small area of plot, to cancel the allotment of plots, to grant extension, to withdraw the allotment of plot and to grant extension of

time and installments facility. The said order was subsequently amended by an order dated 9.10.1995 and Dy. Chief Executive Officer was delegated the powers of sanction of extension of time, to allot small area of plot, to grant installment facility and to grant permission for payment of premium of additional area on installment basis. Thus the permission granted by the Senior Development Manager (R) was not a valid permission as the copy of the so-called order dated 10.10.1995 appears to be internote and photo copy of this note was sent by the Sr. Development Manager (R) vide letter dated 23.1.1996 to Development Manager (R) (received on 24.1.1996) but no formal order was issued in this respect. The original file of this note is not available in the Residential Department. It is also stated that a writ petition No. 19592 of 1996 Shashi Aggarwal v. NOIDA, has been dismissed by this Hon"ble High Court which was also based on similar grounds.

11. So far as the exemplars given by the petitioner are concerned, it is stated in paragraph 8 that in the first case it is admitted that the conversion charges were deposited by the allottee. In the second case there was no additional area and hence no installment facility was given and in the third case the allottee had deposited the entire conversion charges and the full cost before the execution of the lease-deed.

12. It is further submitted by learned counsel appearing for the Noida that the respondents have not violated principles of natural justice. It was clearly stated in the conversion letter dated 5.9.1995 that the offer of conversion shall stand withdrawn automatically without any notice if allottee does not deposit the entire amount. He has relied on Skyline Contractors Pvt. Ltd. and Another Vs. State of U.P. and Others, , in which the Supreme Court in a similar matter arising from the allotment made by NOIDA held that where no reasons are given for non-payment of the premium amount and that NOIDA authorities had rejected the request for installments in its discretion, the decisions in R.K. Saxena v. DBA (Supra) and Ten Oat Estates (P) Ltd. v. UT, Chandigarh (Supra) would not apply. It was held that the deposits subsequently made by the applicant were not accepted by the NOIDA and that in any case deposits made unilaterally only after the communication was received from NOIDA asking for proof of deposits and that 2-3 months after receipt of such letter would not give any benefit to the petitioner particularly when third party interest had intervened and fresh allotment order was issued in favour of the third party.

13. In the present case we find that no request was made nor any application has been annexed with the affidavits to show that the petitioner made any request for conversion of the plot to bigger plot in Sector-B. The Noida authorities appear to have acted without any request, on their own by letter dated 5.9.1995 signed by the Assistant Development Manager (R), Noida allowing conversion on payment of difference in the premium of Rs. 9 lacs of conversion charges of Rs. 1,80,000/- totaling Rs. 10,80,000/- to be paid within 30 days, failing which the offer was to stand withdrawn automatically without

any notice. The petitioner deposited Rs. 1,80,000/- on 13.10.1995, after the expiry of 30 days given in the notice without disclosing any reason for delay with a request to grant 60 days" time for depositing the total cost.

14. The request for 60 days time was not accepted as no reasons were given by the petitioner. In any case the 60 days time from 13.10.1995 expired on 12.1.1996 within which the petitioner did not deposit the entire amount. He deposited Draft No. 8489 of Rs. 35,000/-; Draft No. 8477 and 8478 of Rs. 50,000/- each all dated 3.12.1995, and 353004 of Rs. 1,35,000/-dated 5.12.1995. All these demand drafts totalling Rs. 2,70,000/- and the conversion charges deposited by cheque of Rs. 1,80,000/- were returned to the petitioner alongwith withdrawal of the offer on 23rd January, 1996.

15. On 29.3.1996 this Court passed interim order in the following terms:

Connect with writ petition No. 6270 of 1996 and other connected matters.

Sri Ajay Sharma, learned counsel for the petitioner contended that the cancellation order dated 23.1.1996 is illegal for various reasons enumerated in the writ petition.

Sri U.S. Awasthy, learned counsel for the opposite parties has accepted notices on behalf of opposite parties. He prays for and is granted 3 weeks time to file counter-affidavit. Rejoinder-affidavit may be filed within a week, thereafter.

List this writ petition alongwith aforesaid writ petitions on the date fixed.

In the meantime, if the petitioner deposits a total sum of Rs. 600000 (six lacs) on or before 16.4.1996, the authorities concerned are directed to accept the same and not to cancel the allotment in favour of the changed plot and not to take any other persons concerning the settlement of the said plot to any third person. If the deposit is not made by the date fixed, the authorities concerned will be at liberty to deal with the said plot wholly uninfluenced by the pendency of the writ petition or passing of this interim order.

16. We do not find any affidavit in proof of deposit of Rs. 6 lacs in compliance with the order dated 29.3.1996. Learned counsel appearing for the petitioner has relied upon the letter dated 15.4.1996 sent by him to Chief Legal Advisor, Noida referring to the order of the High Court dated 29.3.1996. In this letter enclosing one cheque of Rs. 1,80,000/-, which was returned to the petitioner and nine drafts of which four drafts as above of Rs. 2,70,000/- were also returned to him in original, the petitioner has referred to the deposits of Rs. 30,000/- on 31.10.1995 by demand draft No. 272784; Rs. 30,000/- on 1.11.1995 by demand draft No. 272795; Rs. 30,000/- on 1.11.1995 by draft No. 272796; demand draft of Rs. 1,35,000/- dated 5.12.1995; by demand draft No. 353004 of Rs. 30,000/- on 28.10.1995 by demand draft No. 013761 and another Rs. 30,000/- on 15.4.1996 by demand draft No. 273859. These details given in letter dated 15.4.1996 sent by the petitioner to the Chief Legal Advisory, NOIDA in proof of deposit of Rs. 6 lacs in compliance with the order of the High Court. In these

deposits except for deposit of Rs. 30,000/- on 15.4.1996 by demand draft No. 273859 all the deposits relate to the period prior to interim order of this Court dated 29.3.1996. The petitioner thus did not comply with the order of the Court, which required him to deposit a total amount of Rs. 6 lacs on or before 16.4.1996. The petitioner tried to take advantage of the earlier deposits made by him, which was in any case short of the total amount as the petitioner had deposited only Rs. 2,70,000/- towards difference in the premium. The object of directing the petitioner to deposit Rs. 6 lacs was to ascertain his bona fides. He had, as confirmed in the letter dated 23rd January, 1996, deposited only Rs. 2,70,000/- towards difference of premium worked out at Rs. 7 lacs and thus the Court asked him to deposit Rs. 6 lacs on or before 16.4.1996. The petitioner appears to have deposited only Rs. 30,000/- and made request to adjust the remaining amount, which was returned to him with the impugned letter dated 23rd January, 1996 withdrawing the offer. We do not find any proof of the acceptance of the deposit by NOIDA. In any case the deposit was not in compliance with the interim order passed by this Court on 29.3.1996.

17. In the supplementary counter-affidavit of Shri S.N. Sharma, Law Officer, Noida filed in February, 1999 it is stated that the conversion made in favour of the petitioner in this case is part of 187 conversions made by Smt. Neera Yadav, the then Chief Executive Officer of NOIDA. All these 187 conversions were made irregularly and were subject-matter of scrutiny by the Supreme Court. The Noida authority had filed counter-affidavit in the Supreme Court in Writ Petition No. 150 of 1997. In para 19 of this counter-affidavit it was stated as follows:

Para 19. As regards conversions in favour of allottees in Sector 44, it is submitted that 73 allottees have been given plot in Sector 44 through conversion. Apart from this, there have been some conversion in other Sectors also. With respect to the entire 187 conversions, the Chief Executive Officer has passed an order for cancelling the allotments by conversions on 16.8.1996. The matter is, however, being given a fresh look by NOIDA and a Committee of four Senior has been constituted for this purpose. In view of the fact that matter now pending before this Hon"ble Court, the review exercise has been stopped. It may, however, be pointed out that NOIDA has a policy with respect to conversions and all the conversions had been done under the said policy by the competent authority, the Chief Executive Officer, NOIDA.

18. In para 4 of this supplementary counter-affidavit it is stated that on 20.1.1998 the Supreme Court passed an order directing the CBI to investigate into the matter in view of the seriousness of allegations about irregularities in the matter of allotment as well as the conversion of plot in Noida. A direction was also issued that if investigation discloses commission of criminal offence, the persons found responsible should be prosecuted in the criminal Court. The investigation by CBI was directed for the time being in respect of irregularities in the matter of allotment and conversions of the plots to which reference was made in the letters of the Director (CBI) dated 6.12.1995 and 16.12.1996 and

the self-contained note was appended to the letter. The Supreme Court directed that with respect to irregular allotment and conversion of plots found in the report of the enquiry commission, necessary action should be taken for cancellation of such allotment and conversions. The order dated 20.1.1998 of the Supreme Court has been annexed to the affidavit. We are informed that Smt. Neera Yadav was prosecuted for conversion of the plots, which was allotted in favour of her daughters and some other plots in the meetings presided by her. After sanction, charges were framed against her and that she has been convicted by CBI Court, against which she has filed appeal in the High Court.

19. In the present case as observed above there is nothing to show that the petitioner had applied for conversion of the plot. The NOIDA intimated conversion to him of a bigger plot without any request made by him. The petitioner having secured the advantage of conversion, failed to take benefit of the offer in depositing the entire amount of Rs. 10,80,000/-, which includes Rs. 9 lacs as difference in the premium and Rs. 1,80,000/- as conversion charges within the time provided to him. The acceptance of offer clearly stipulated that if the amount is not deposited within 30 days from the issue of the letter dated 5.9.1995, the offer shall stand withdrawn automatically without any notice. The deposit of Rs. 1,80,000/- made by the petitioner as conversion charges beyond 30 days with request to give 60 days time without giving any reasons was beyond the terms of the offer. The NOIDA authorities did not exercise the discretion nor there was any reason given by the petitioner in his letter for extension of the time to deposit the balance amount. It is apparent that the Noida authorities waited for another 60 days without accepting the request of the petitioner for extension of time and withdrew the offer on 23.1.1996 after the expiry of 60 days from 13.10.1995.

20. The petitioner got another chance to deposit the entire amount by the interim order dated 29.3.1996 of the Court. He failed to take the opportunity and instead of depositing Rs. 6 lacs tried to take advance of the previous deposits, which were in any case short of total amount required to be deposited by the petitioner.

21. The petitioner has not established that the conversion of the allotment was made on his request in a legal and bona fide manner. He failed to deposit the total cost on which conversion was allowed within the time stipulated in the letter dated 5.9.1995, and even thereafter within the extension of time requested by him. He also failed to take the opportunity for depositing entire amount in pursuance to the interim order passed by this Court on 29.3.1996. The petitioner thus cannot invoke the principles of estoppel, nor is entitled in equity to any relief.

22. In the facts and circumstances following the reasoning given in the judgment by the Supreme Court in Skyline Contractors Private Limited and another v. State of Uttar Pradesh and others (Supra), we do not find any good ground to interfere with the order dated 23.1.1996 withdrawing the offer of conversion of plot. The

writ petition is dismissed with costs.