

(2010) 01 AHC CK 0257
In the Allahabad High Court

Parshuram Misra	Vs	APPELLANT
State of U.P. and Others		RESPONDENT

Date of Decision : 21-01-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2010) 01 AHC CK 0257

Hon'ble Judges : Prasad Singh, J;Devendra Kumar Arora, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. Heard learned Counsel for the petitioner and Shri Shikhar Anand, learned Counsel appearing for the opposite parties 2 and 4 as well as learned Standing Counsel.

2. The petitioner, who was allotted House No. M-I/124 under MIG Scheme, namely U.P. Jawahar Vihar Yojna, has approached this Court under Article 226 of the Constitution of India on the ground that the cost of extra land attached to the premises in question has been assessed more than what was existing at the time of allotment of house in the year 1993. It has been stated that the possession of the house under above scheme was given vide letter dated 22.3.1993.

3. Earlier, the petitioner had preferred a writ petition No. 3739(M/B) of 1992 with regard to payment of instalment towards the price of the house. The writ petition was disposed of finally vide judgment and order dated 22.1.1992 providing that the petitioner was liable to pay balance of the amount in accordance with the original schedule of payment in instalments. The operative portion of the judgment and order dated 22.1.1993 is reproduced as under:

Having heard the learned Counsel of the parties and having considered their respective contentions, we are of the opinion that since in this case, the only question involved is the payment of the amount by the petitioners to the

opposite parties, we dispose of this petition finally by providing that the opposite parties shall deliver possession of the houses to each of the petitioners within a fortnight from today and on possession being delivered to the petitioners, the latter, namely, the petitioners shall make payment of arrears of instalments within six months from the date of delivery of possession, while the balance of the amount shall be paid in accordance with the original schedule of payment in instalments.

The petition is disposed of finally in the manner indicated above.

4. However, it appears that the dispute arose with regard to additional land adjacent to the premises in question. It has been stated that by the impugned notice, the petitioner has been directed to pay certain charges with regard to additional land at the current rate and not on the basis of the cost of land which was prevailing in the year 1993.

5. The petitioner submitted a representation (Annexure-16) with the prayer that the additional land should be allotted on the same price which was prevailing at the time of allotment of house.

6. The petitioner's counsel has relied upon a Division Bench judgment of this Court in which one of us (Hon'ble Devi Prasad Singh, J) was a member, reported in 2008 (26) LCD 122 Smt. Urmila Arora v. U.P. Avas Evam Vikas Parishad Lucknow and Ors. In the case of Urmila Arora (supra), the Division Bench held that in case a house is allotted with added land, then the cost of added land should be the same which was prevalent at the time of allotment and giving of possession. For convenience, para 16 of the judgment of Smt. Urmila Arora (supra) is reproduced as under:

16. For this reason, it is not possible to accept the plea of Mr. Mahesh Chandra, that the respondents are entitled to claim the price for added land as in August, 2003. The petitioner is entitled to get the house along with added land at the rate, which was prevalent when all others were allotted and given possession of their houses in the year 1989. She has already paid the amount for construction of the house. It is only the price for the added extra land, which is required to be paid. The respondents will calculate the appropriate amount as above and call upon the petitioner to make that payment.

7. One other judgment relied upon by the petitioner's counsel is reported in N.D. Ojha Vs. Allahabad Development Authority and Others, The Division Bench in the case of N.D. Ojha (supra) observed that after payment of entire amount, i.e. the cost of land, at later stage, the development authority may not demand additional amount on the basis of enhanced rate. As and when a person deposits the entire cost of land prevailing at particular time but the sale-deed is not executed for no fault on his or her fault, then enhancement of the cost of the house at later stage shall not entitle the developmental authorities to charge higher rate.

8. In view of aforesaid proposition of law, we are of the view that for additional land, though, the Raebareli Development Authority has got right to charge the cost of land but that cost or price should be the same which was prevailing at the time of delivery of possession of the house. It was incumbent on the developmental authority at the time of allotment of house to charge the cost of additional land also. In case it has not been done, then for that inaction or fault, the allottee should not be put to suffer.

9. In view of settled proposition of law, the writ petition deserves to be and is hereby allowed. A writ in the nature of certiorari is issued quashing the impugned notices dated 20.5.2000 and 22.6.2000 (Annexures 14 and 15) with consequential benefits. Liberty is given to the Raebareli Development Authority to charge the cost of additional land which was prevailing in the year 1993 when the possession of the house was handed over to the petitioner. In case higher amount has been charged, then that shall be refunded to the petitioner forthwith.

10. The writ petition is allowed accordingly. No order as to costs.