

(1992) 02 AHC CK 0076

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 1740 of 1988

Rajesh Kumar Dwivedi

APPELLANT

Vs

Kanpur Development Authority

RESPONDENT

Date of Decision : 11-02-1992

Acts Referred:

Constitution of India, 1950 — Article 14

Uttar Pradesh Urban Planning and Development Act, 1973 — Section 4

Citation : (1992) 2 AWC 994 : (1992) 2 UPLBEC 1134

Hon'ble Judges : B. Dikshit, J;A.N. Varma, J

Bench : Division Bench

Advocate : A.K. Sachan, for the Appellant; R.C. Shukla, for the Respondent

Final Decision : Allowed

Judgement

B. Dikshit, J.—The Petitioner, who belongs to Economically Weaker Section of Society, filed this petition raising grievance of arbitrariness and discrimination by Kanpur Development Authority (KDA in short). The Petitioner has claimed violation of Article 14 of the Constitution of India for making demand of Rs. 26,763-00 as price of flat No. A-424 EWS allotted to Petitioner in the development scheme known as Barrah Pariyojna at Kanpur. The grievance of discrimination has arisen as KDA has allotted similar flat in same scheme for Rs. 15291-25 to other allottees while Petitioner has been asked to pay a higher price.

2. KDA is a Development Authority constituted u/s 4 of U.P. Urban Planning and Development Act, 1973. To achieve one of its object it framed a scheme for building dwelling units in shape of flats with financial aid from the "World Bank" under development scheme. The disputed flat has been constructed for economically weaker section of society under said scheme and it is known as flat of fourth category under scheme. According to brochure issued by KDA for making applications for allotment of a flat the estimated cost and price of each flat was Rs. 9,000/- which was finally determined on revision as Rs. 15,291-25. After determination of price as Rs. 15,291-25. each allottee of flat of same

category was asked to pay Rs. 15, 291-25 as price of flats while Petitioner has been asked to pay Rs. 26,763-00 for a similar flat, which has given rise to this petition. As the flat of Petitioner was constructed simultaneously with other flats of same category and was of same kind, the Petitioner has claimed that he could not be asked to pay more than what was being paid by other allottees. It has been argued on behalf of Petitioner that the Petitioner has been asked to pay more arbitrarily without any reasonable basis and, therefore, the demand from Petitioner to pay more than what others were asked to pay violates Article 14 of the Constitution of India.

3. The KDA has justified the demand of enhanced amount from Petitioner as price of flat allotted to him. The justification of KDA is that the Petitioner was initially allotted flat No. A-243 at Barrah Pariyojna on 27-5-1986 and as he did not fulfil conditions of the allotment, he was asked to pay an enhanced amount as price, the enhancement being 25% per year over and above original cost of flat. This amount of 25% per year was considered payable for whole of the period between initial allotment of flat No. A-243 on 27-5-1986 and the present allotment on 9-1-1988. The KDA has claimed the amount demanded as price of flat on 9-1-1988. The stand of KDA is that the Petitioner has been asked to pay enhanced amount as he did not fulfil the conditions of allotment on initial allotment on 27-5-1986 and under such circumstances there is no unreasonableness in demanding higher price from Petitioner, which is neither arbitrary nor unreasonable and Article 14 of the Constitution does not stand violated. This has given rise to argument by Learned Counsel for KDA that there was reasonable basis for demanding higher amount from Petitioner. He argued that Petitioner did not deposit the price of flat No. A-243-EWS despite communication dated 27-5-1986 by KDA to him and therefore he cannot be equated with other allottees, each of whom made the deposit of amount demanded as price on draw of lot. The Petitioner has disputed the fact about receipt of information from KDA.

4. This takes us to consider the reasonableness of the demand of higher price from Petitioner as compared to other allottees, the excess amount being Rs. 11,471-75 which is more than 42.86% as compared to the amount payable by other allottees. This amount is an increased amount at the rate of 25% per year over and above original cost. The KDA has claimed it to be the price of the flat on 9-1-1988, when allotment was made in favour of Petitioner.

5. The KDA has asked Petitioner to pay Rs. 11,471-75 which price is about 42.86% more than what has been for similar other flats. The demand of such higher sum is per se discriminatory. No. more facts, are required for establishing violation of Constitutional right of equality enshrined in Article 14 of the Constitution of India. Once it is established that the present case is of discrimination per-se then the onus of proof is on KDA to justify the demand of higher amount on some reasonable basis.

6. KDA is a Development Authority constituted with the object to promote and

secure planned development of Kanpur Nagar and areas around it. To ease acute house problems at Kanpur the KDA undertook to construct dwelling units, beside others, for economically weaker section of society. In doing so, it was discharging Governmental function of planned development of Kanpur. Such planned development being Governmental function, the legislature felt the need for creation of separate town-planning or development authorities for individual cities. See Union of India (UOI) and Others Vs. Shri R.C. Jain and Others, , U.P. Urban Planning and Development Act was enacted to achieve that object giving rise to constitution of KDA for development of Kanpur. To achieve one of its object of planned development, KDA framed the scheme and constructed flats to provide dwelling units on ownership basis to economically weaker section of the society. The KDA with application forms for allotment of flats issued a brochure in which the price of Rs. 9,000/- was also mentioned; It was also shown as estimated cost of each flat. The estimated cost and price of flats being same, indicates that flats of the scheme were to be allotted on "No Profit, No. Loss" basis. The brochure provided terms and conditions on which allotment was to be made. According to Brochure, the price was subject to change but it was nowhere provided for charging enhanced price from any allottee for any reason whatsoever. The Brochure is in the nature of an offer for registration of persons who were interested for allotment of house to be constructed under the scheme. It is undisputed fact that Petitioner got registration which brought into existence an agreement between KDA and Petitioner as per terms and conditions mentioned in Brochure. Similarly, other persons also applied giving rise to separate agreements between KDA on one part and each of them on the other part.

7. The demand of higher price from Petitioner alone is per se discriminatory and the KDA has to justify such demand on some reasonable basis. The KDA has tried to justify its stand on the ground of default by Petitioner in not fulfilling the condition of allotment after draw of lot in his favour in March, 1986 in respect of flat No. A 243-EWS due to which allotment was cancelled. On perusal of brochure it appears that in discharge of its Governmental function and with the object of providing own dwelling unit to economically weaker section of society on ""No Profit, No. Loss" basis the KDA constructed flats. It has not constructed flats for profiteering and to earn out of them yet it has not disclosed in its counter-affidavit as to why it has asked for enhanced amount. It is not the ease of KDA that the higher price was demanded as it has to pay interest to some other corporate body or financial institution increasing the cost of dwelling unit allotted to Petitioner, nor it is case of KDA that Petitioner was made liable to pay more by way of some penalty which it was legally entitled to ask for. Except making averment in counter-affidavit that Petitioner was asked to pay more as he did not fulfil condition of allotment for flat No. A-243-EWS and therefore, his allotment was cancelled, there is no other reason assigned by KDA justifying enhanced price for the flat. Such a plea cannot be considered to be a plea justifying reasonable basis for demanding higher amount as price from Petitioner. As the

exercise of executive power by KDA for demanding higher price was challenged by Petitioner on the ground of arbitrariness, it was necessary for KDA to set out reasons justifying the demand. which could justify its action to be on reasonable basis and not arbitrary. The demand being per se-violative of Article 14 of the Constitution of India and there being no satisfactory explanation the action of KDA demanding higher rent from Petitioner is unreasonable.

8. The unreasonableness of demand of higher price at rate of 25% per year can be examined from another angle. The KDA has not assigned any reason as to how it arrived to this figure of increasing the price by 25% per year. As already stated above, the KDA to achieve its object of providing dwelling units to members of economically weaker section of society framed the scheme. It did not make any mention of charging higher price from any one in the brochure issued. So far Petitioner is concerned, his case in paragraphs 21 and 23 of writ petition is that he did not receive any communication dated 27-5-1986 about lot in respect of flat No. A-243-EWS being drawn in his favour. His case has been that when he learnt about it he made representation dated 3-11-1987 whereupon the KDA after admitting its default, decided to allot the flat in question to Petitioner. The Petitioner has filed office report of KDA to show that he was allotted flat No. A-424-EWS in lieu of flat No. A-243-EWS, the allotment of which was cancelled earlier. The KDA has not denied specifically these averments in counter-affidavit about mistake on the part of KDA. In the absence of specific denial, the averment of writ petition are to be accepted as correct. Once it is shown that KDA allowed representation considering it to be default on the part of KDA, then KDA is not entitled to make demand of higher price occasioned due to its own default. The justification of reasonableness set up by KDA also fails on the facts of case.

9. As stated earlier, the brochure issued by KDA does not provide for charging higher price from any member of economically weaker section of society for whom the scheme has been drawn. The KDA has not been able to justify the demand of higher price from Petitioner on any reasonable basis. As the flat has been allotted to Petitioner in discharge of executive function of KDA in the development scheme, we hold that the KDA demanded higher price from Petitioner arbitrarily without any reasonable basis. The Supreme Court of India in the case of *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, held that : international

...obviously where a corporation is an instrumentality or agency of Government, it would, in exercise of its power or discretion, be subject to the same constitutional or public law limitations as Government. The rule inhibiting arbitrary action by Government which we have discussed above must apply equally where such corporation is dealing with the public whether by giving jobs or entering into contracts or otherwise, and it cannot act arbitrarily and enter into relationship with any person it likes at its sweet will, but its action must be in conformity with some principle which meets the test of reason and relevance.

This rule also flows directly from the doctrine of equality embodied in Article 14. It is now well settled as a result of the decision of this Court in *E.P. Royappa Vs. State of Tamil Nadu and Another*, and *Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another*, that Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. It requires that State action must not be arbitrary but must be based on some rational and relevant principle which is non-discriminatory; it must not be guided by any extraneous or irrelevant consideration, because that would be denial of equality. The principle of reasonableness and rationality which is legally as well as philosophically an essential element of equality or non-arbitrariness is projected by Article 14 and it must characterise every State action, whether it be under authority or law or in exercise of executive power without making of law. The State cannot, therefore, act arbitrarily in entering into relationship, contractual or otherwise with a third party, but its action must conform to some standard or norm which is rational and non-discriminatory.

In view of law enunciated by Supreme Court of India in aforesaid case, the action of KDA demanding higher price from Petitioner for the flat in dispute is unsustainable for being in violation of Article 14 of Constitution of India. The Petitioner is liable to pay Rs. 15,291.25 only for flat No. A-424-EWS at Barrah Scheme of KDA. The demand of Rs. 26,763 00 by KDA is held to be unreasonable being in violation of Article 14 of the Constitution of India.

10. For aforesaid reasons we quash the demand of Rs. 26,763 00 raised by Kanpur Development Authority for its flat No. A-424 EWS at Barrah Scheme and issue a writ of mandamus directing Kanpur Development Authority to charge Rs. 15,291 25 P as price for said flat from Petitioner.

11. The writ petition is allowed with costs.