
(2015) 07 AHC CK 0151

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 40831 of 2007

Rakesh Sachan and Others

APPELLANT

Vs

Vice Chairman Kanpur Development Authority and Others

RESPONDENT

Date of Decision : 30-07-2015

Acts Referred:

Citation : (2015) 7 ADJ 613

Hon'ble Judges : Krishna Murari, J;Amar Singh Chauhan, J

Bench : Division Bench

Advocate : Ganga Singh, Amit Kumar Singh, P.M.N. Singh and S.S. Sachan, for the Appellant; A. Ahmad, A.K. Singh, M.C. Tripathi and Vivek Varma, Advocates for the Respondent

Final Decision : Allowed

Judgement

Krishna Murari, J—We have heard learned counsel for the petitioners, Sri Saroj Yadav, learned counsel for respondent Nos. 1, 2 and 5 and learned Standing Counsel for respondent No. 4. The petitioners have approached this Court challenging the order dated 8.8.2007 passed by the respondent No. 1, the Vice Chairman, Kanpur Development Authority, Kanpur cancelling the order of allotment of plots No. 42 and 43 situate at Y-1, Virat Nagar, Kidwainagar, Kanpur in favour of the petitioners No. 1 and 2 respectively.

2. Undisputed facts, in short, of the case giving rise to the dispute are that plot No. 42 was allotted to the petitioner No. 1 vide allotment order dated 2.8.1990. Similarly, plot No. 43 was allotted in favour of the petitioner No. 2 vide allotment order dated 4.8.1990. Subsequently, by means of two separate free hold deed, which were duly registered, the said plots were made free hold in favour of both the petitioners. It was only when the Development Authority tried to demolish the boundary wall surrounding the said plots, the petitioners came to know that some order has been passed by the authority cancelling the allotment. It is alleged in the writ petition that despite repeated demands and request, the copy of the cancellation order was not provided to the petitioners and they could only

lay their hands on letter dated 8.8.2007 written by the vice Chairman to the Principal Secretary (Housing) that the allotment made in favour of the petitioners has been cancelled on the basis of some reports submitted by the Kanpur Development Authority.

3. A counter-affidavit has been filed on behalf of the Development Authority wherein the fact of allotment made in favour of the petitioners and subsequently execution of free hold deed of the said plots have not been denied. What has been stated in the counter-affidavit is that allotment was made without carving out the said plots and without showing them in the lay out plan and as such, the allotment was void and it has rightly been cancelled.

4. Learned counsel for the petitioners contended that allotment was made after accepting the allotment money and the free hold deed was executed and duly registered after payment of consideration and the vice Chairman could not have cancelled the allotment after seventeen years of allotment of the same without any notice or opportunity of hearing behind their back. It is also submitted that once the free hold deed was executed by the Development Authority absolute right in the property in question vests in the petitioners and unless the same is cancelled by a competent Court of law mere cancellation of allotment would not adversely affect their rights created in the said plots.

5. In reply, learned counsel appearing for the Development Authority has tried to justify the impugned order. Referring to the averments made in the counter-affidavit, it has been urged that an inquiry was conducted in the matter only then it has transpired that in the lay out plan of Kidwai Nagar, at the time of allotment, plots Nos. 42 and 43 were not mentioned nor the plots were in existence but it has wrongly been shown in the site plan and the plots were never created and as such, there was no question of allotment. On the basis of averments in the counter-affidavit, learned counsel for the respondents has further urged that since the plots were not carved out they were not actually in existence and as such, the allotment of the same has been cancelled.

6. It is pertinent to note at this stage that the fact that the petitioners were allotted the plots and free hold deed was executed in their favour after making entire amount has not been denied in the counter-affidavit. Refuting the argument advanced on behalf of the Development Authority, it has been submitted by learned counsel for the petitioner that plots No. 42 and 43 have been duly shown in the lay out plan, which was approved by Sri Anil Kumar, the then Vice Chairman of the Kanpur Development Authority, a copy of the lay out plan and approval accorded by the then Vice Chairman have been annexed as annexure-RA-1 and 2 to the rejoinder-affidavit.

7. It thus remains undisputed that not only the said two plots after being carved out were allotted in favour of the two petitioners but subsequently after accepting consideration, free hold deed was also executed in their favour in 2005.

8. After allotment and execution of free hold deeds, it was not within the

competence of the Vice Chairman of the Kanpur Development Authority to have cancelled the allotment made in favour of the petitioners after seventeen years on the basis of some ex parte inquiry in the matter without affording any notice or opportunity of hearing by means of an administrative order.

9. In view of the above facts and discussions, the impugned order of the respondent No. 1 dated 8.8.2007 cancelling the allotment of plots No. 42 and 43 situate at Y-1, Virat Nagar, Kidwainagar, Kanpur in favour of the petitioners No. 1 and 2 cannot be sustained and is hereby quashed.

10. Writ petition stands allowed. Respondents are restrained from interfering in the peaceful possession of the petitioners over the aforesaid plots in any manner, except in accordance with law.