
(2014) 04 AHC CK 0229
In the Allahabad High Court
Case No : C.M.W.P. No. 37127 of 2008

Shamim

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 28-04-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80
Constitution of India, 1950 — Article 226, 32
Evidence Act, 1872 — Section 115

Citation : (2014) 105 ALR 146 : (2014) 5 AWC 4994

Hon'ble Judges : Tarun Agarwala, J;Rajan Roy, J

Bench : Division Bench

Advocate : Subodh Kumar, Advocate for the Appellant; Ramendra Pratap Singh, Shivam Yadav and Udit Chandra, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Rajan Roy, J.—Heard learned Counsel for the petitioners, learned Standing Counsel for the State of U.P. and Shri Ramendra Pratap Singh, learned Counsel for opposite party No. 2, i.e., New Okhla Industrial Development Authority (hereinafter referred to as "N.O.I.D.A.") and perused the record. By means of the present writ petition, the petitioners have sought a writ of mandamus commanding the respondents, inter alia, (i) to allot a corner plot measuring 138.98 sq. mtrs situated in Sector 14 NOIDA or in nearby sector, (ii) to direct the respondents to refund the amount of stamp duty charged by them on lease deed with interest, (iii) to direct the respondents to refund a sum of Rs. 2,73,325/- which has been illegally realized by them and (iv) to refund a sum of Rs. 52,920/- illegally charged as lease rent. A further direction has been sought in respect of plot No. A-2, Sector 14, NOIDA allotted to Shri Chandra Prakash Chawla for fixing the responsibility of the officers of respondents No. 2 and 3.

2. The factual background, which has led to the filing of the instant writ petition, is as under:

A plot No. A-1 in Sector 14, NOIDA, was allotted by "N.O.I.D.A." to one Shri R.G. Ahuja on 31.3.1980 and a lease deed was executed in his favour on 3.3.1981. The said plot was transferred to several persons from time to time. Ultimately, it was transferred in favour of petitioners by the erstwhile owner/lessee Shri Sharad C. Das on 8.12.2004 for a consideration of Rs. 30 lacs.

3. The aforesaid plot alongwith adjacent plot No. A-2 was proposed to be acquired for construction of Noida Metro Rail.

4. Accordingly, on 19.6.2006, an offer was made by "N.O.I.D.A." to the petitioners to either take back the entire amount paid by them in respect of their plot, measuring 588.98 sq. mtrs alongwith simple interest or, as far as possible, another plot of equal area and in an equivalent Sector would be allotted.

5. In response to the aforesaid offer, the petitioners submitted an option on 20.6.2006. According to the petitioners, the option submitted by them was; firstly, for allotment of a plot in an equivalent sector and if that was not possible and another plot of lesser area was allotted, then they should be paid the cost of the difference of the area between the earlier plot and the subsequent plot.

6. Thereafter, the possession of the original plot No. A-1 was given back by the petitioners on 22.6.2006 and another plot bearing plot No. A-56 situated in Block A of Sector 44, NOIDA of lesser area measuring 450 sq. mtrs, was allotted to them. The terms and conditions of the allotment were also mentioned in the allotment order dated 22.6.2006.

7. A lease deed in respect of the aforesaid plot was executed and registered on 7.6.2007 by "N.O.I.D.A." in favour of the petitioners. The consideration paid for the earlier plot was adjusted against the consideration for the new plot and in addition an amount of Rs. 52,92,000/- was further charged as consideration.

8. Within 6 months of getting possession of the aforesaid plot No. A-56 in Sector 44, NOIDA, the petitioners sold the same on 27.12.2007 for a consideration of Rs. 1,80,00,000/-.

9. After having sold out the plot in question, the petitioners allege to have sent a representation to the Chief Minister of U.P. on 31.12.2007 alleging discrimination and unfair treatment by "N.O.I.D.A." and seeking allotment of another plot measuring 138.98 sq. metres in NOIDA in lieu of lesser area of plot having been allotted to them as mentioned above. A refund of the amount paid by them for getting the lease deed executed was also sought on the ground that instead of executing an exchange deed, as was done in the case of Shri Chandra Prakash Chawla the allottee of adjacent plot A-2, Sector 14 of NOIDA, a lease deed had been executed in their favour.

10. A notice u/s 80 of the CPC is also said to have been sent to "N.O.I.D.A." on 9.4.2008.

11. Against the aforesaid factual background, as the grievance of the petitioners

was not redressed by "N.O.I.D.A.", the present writ petition was filed before this Court on 24.7.2008 for the reliefs claimed therein.

12. "N.O.I.D.A." filed a counter-affidavit to the writ petition on 28.9.2008, to which the petitioners filed a rejoinder affidavit. The matter was heard and finally disposed of vide judgment and order dated 8.9.2010.

13. The aforesaid judgment and order was challenged by "N.O.I.D.A." before the Supreme Court of India by means of SLP (C) No. 10523 of 2011 (Civil Appeal No. 1296 of 2013).

14. On 11.2.2013, the aforesaid Civil Appeal was decided and after setting aside the judgment of this Court dated 8.9.2007, the matter was remanded back to this Court for reconsideration afresh.

15. Subsequent to the remand, "N.O.I.D.A." filed a supplementary counter-affidavit dated 19.4.2013 and thereafter, a second supplementary counter-affidavit dated 27.3.2014, to which the petitioners have filed rejoinder affidavits.

16. The contention of the petitioners is that they were unfairly treated while providing alternative allotment of plot No. A-56 in Sector 44 and that they were discriminated, as, in the case of the allottee of adjacent plot A-2, Sector 14, namely, Shri Chandra Prakash Chawla, alternative allotment was made in Sector 44 on more favourable conditions. It is submitted by the learned Counsel for the petitioners, that the allotment was not made to them in an equivalent sector nor was the plot of equal area given, as had been promised by "N.O.I.D.A." in its letter dated 19.6.2006 and as had been opted by them in their option dated 20.6.2006. The petitioners were made to run from pillar to post and were harassed before making the alternate allotment, that too on onerous terms and conditions, which they had to accept under compelling circumstances, considering the dominant position of "N.O.I.D.A." and the bank loan taken by them, which was to be repaid.

17. It is stated that "N.O.I.D.A." executed a lease deed in their favour whereas in the case of Shri Chawla an exchange deed was executed in lieu of the earlier plot. The amount of consideration as also the expenses to be incurred, including stamp duty etc. payable by Shri Chawla were much less than what was charged from the petitioners. The original plot of the petitioners was a corner plot and its value was more than the value of the subsequent plot which was not a corner plot. The petitioners were made to wait for a period of one year after the allotment of the alternative plot on 22.6.2006 before the lease deed could be executed in their favour whereas in the case of Shri Chawla an exchange deed was executed promptly.

18. In view of the above, it was contended that the petitioners were made to suffer huge financial loss for which they are entitled to be compensated.

19. Shri Ramendra Pratap Singh, learned Counsel for "N.O.I.D.A." disputed the assertions made on behalf of the petitioners. He has raised a preliminary

objection to the effect that the petitioners having concealed material facts and documents and having filed fabricated and forged documents are not entitled to get any relief in exercise of the equitable writ jurisdiction under Article 226 of the Constitution of India by this Court and the writ petition is liable to be thrown out without considering the merits.

20. In this regard he has submitted that the option letter dated 20.6.2006, annexed as Annexure-3 to the writ petition, is a fabricated document. The second last paragraph of the said letter containing the option for payment of cost of difference of the area of new plot (i.e., plot No. A-56, in Sector 44 measuring 450 sq. mtrs.), vis-?-vis the earlier plot No. A-1 of 588.98 Sq. Mtrs in Sector 14 is an interpolation and it does not exist in the original option submitted by the petitioners before it, which in fact categorically states that if a plot measuring 450 sq. mtr. is provided to them, they will not demand the cost difference of the area.

21. Learned Counsel has also invited the attention of the Court towards the two affidavits dated 20.6.2006 filed by petitioners before it which are also at variance with the copies of the affidavit filed by them alongwith the writ petition.

22. Learned Counsel has also invited the attention of the Court to the letter of alternative allotment dated 22.6.2006 by which plot No. A-56 was allotted to petitioners to show that the said letter categorically mentions the terms and conditions of allotment as also the area of the new plot.

23. It was contended that the petitioners had readily accepted the said allotment without any demur and had handed over the possession of the earlier plot No. A-1 in Sector 14, to it, on 22.6.2006.

Learned Counsel has also referred to other affidavits said to have been sworn by the petitioners on 22.4.2007 stating that as they have been allotted an alternative plot in Sector 44 they shall not file any case nor claim any right in respect of the earlier plot in Sector 14.

24. Further, learned Counsel has pointed out that the plot in question was sold out by the petitioners on 22.12.2007, after seeking requisite permission from "N.O.I.D.A." for a consideration of Rs. 1,80,00,000/-, whereby they earned huge profit within a short period of time. Learned Counsel also invited the attention of the Court to the transfer deed annexed alongwith the supplementary counter-affidavit dated 19.4.2013 in this regard.

25. It was also submitted that Sector 44 was equivalent to Sector 14 and the value of the plot of the former sector was also higher or at least equivalent to the plot of the latter sector. It was contended that having accepted the offer of "N.O.I.D.A." and having derived benefit therefrom by selling out the plot in question, it was not open to the petitioners to rum around and file this writ petition for the relief claimed therein.

26. In rejoinder, the learned Counsel for the petitioners submitted that

"N.O.I.D.A." had got certain blank papers signed by them under coercion and threat which have now been misused by it to prepare documents which have been filed alongwith their two supplementary counter-affidavits. The said documents were not filed with the earlier counter-affidavit filed by them in the year 2008.

27. It has further been submitted that the petitioners accepted the subsequent allotment under compulsion as they had to pay a huge amount consequent to the bank loan taken by them. In this regard reference was also made to an alleged notice of the bank contained in Annexure RA-1 to their rejoinder affidavit. The transfer of the plot in question by them does not have any bearing in the matter as they had to do so for repaying the loan taken by them. It cannot be a relevant factor for denying the relief claimed in the writ petition. The opposite parties apparently acted unfairly and discriminated with the petitioners and, therefore, the petitioners are entitled to the relief claimed.

28. We have heard the learned Counsel for the parties at length and have also perused the record. There is no dispute about the fact that plot No. A-1 was purchased by the petitioners from its rightful owner for a consideration of Rs. 30 lacs on 8.12.2004 and the said plot measured 588.98 sq. mtrs. It is also not in dispute that the adjacent plot bearing plot No. A-2 in Sector 14 was purchased by Shri Chandra Prakash Chawla.

29. It is also not in dispute that consequent to the proposal for acquisition of the aforesaid plots, alongwith other plots in the area, for the purpose of construction of a Metro Rail, an offer was made by "N.O.I.D.A." to the concerned persons, including the petitioners, on 19.6.2006.

30. The said offer clearly gave an option to the owners either to take back the money deposited by them alongwith simple interest or to opt for another plot, which, as far as possible, would be in an equivalent sector and of an equivalent area. Clearly the option was open for the petitioners to take back their amount alongwith simple interest or to opt for an alternative plot as offered by "N.O.I.D.A." subject to availability. The other option open to the petitioners was to approach the Court, if they were, in any manner, aggrieved that they were being treated unfairly in the matter, which they did not do.

31. The petitioners submitted an option. According to the petitioners, they demanded a plot of an equal area in an equivalent sector and in the alternative demanded payment of cost of difference of the area in the event a plot of lesser area was allotted. The Noida, on the other hand, submits that the second option referred above, is a manipulation and fabrication and in fact, the petitioners had categorically opted not to demand any money for the difference in the area of the plot in the event a plot of 450 sq. mtr. was allotted in an equivalent sector. There is a dispute with regard to the contents of the option document submitted by them.

32. So far as the veracity of the document filed by the petitioners as Annexure-3

to the writ petition and those filed by "N.O.I.D.A." as part of the supplementary counter-affidavits is concerned, we have perused the original records produced by "N.O.I.D.A." before us which contain the signatures of the petitioners. The letter of option filed by the petitioners as Annexure-3 as also other documents filed by them are clearly at variance with the original record.

33. The conduct of the petitioners in this regard is also very relevant. Though they dispute the veracity of the document filed by the opposite parties and claim that the same have been prepared subsequently using blank papers, which they were forced to sign, but the fact remains that by their very conduct, subsequent to the allotment of the alternative plot on 22.6.2006, they have accepted the very terms and conditions which are being relied upon by the opposite parties on the basis of the documents filed by them. Not only they accepted the option of alternative plot No. A-56 in Sector 44 measuring 450 sq. mtrs, which was 138.98 sq. mtr less in area than the earlier plot, but they readily accepted the execution of the lease deed in their favour on 7.6.2007, i.e., a year later, without any demur.

34. A perusal of the allotment order dated 22.6.2006 leaves no doubt that the terms and conditions of allotment (alternative allotment) as also the area of the new plot was clearly mentioned therein. The petitioners, thus, by their conduct, accepted the terms and conditions of the alternative allotment and acted upon the same as is evident from the lease deed executed subsequently.

35. Not only this, they even sold off the said plot to a third person on 27.12.2007 for a consideration of Rs. 1,80,00,000/- after seeking requisite permission from "N.O.I.D.A." on 18.12.2007 and after clearing all the dues and obtaining the no dues certificate from it in respect thereof.

36. Till this time no objection was raised by the petitioners. At least there is nothing in the writ petition to show that any protest was made by them, though it has been contended by the learned Counsel for the petitioners, based on various documents annexed alongwith the rejoinder affidavit, that they had visited "N.O.I.D.A." more than 50 times raising their grievances orally in this regard.

37. We are also unable to accept the contention of the learned Counsel for the petitioners that alternative allotment was accepted under compelling circumstances. The petitioners had the option to take back the cost of the plot with simple interest or in the alternative, to approach the Court for redressal of their grievances, but they did not do so instead they chose to accept the allotment order dated 22.6.2006 and it is only after selling off the plot in question on 27.12.2007 and deriving financial benefit therefrom, that the petitioners, for the first time, sent a notice to the Chief Minister U.P. on 31.12.2007, followed by a legal notice u/s 80, C.P.C. to "N.O.I.D.A." on 9.4.2008. Annexure RA-1 is not a notice of the bank but a statement of loan account provided by the Bank at their request which shows that they have been paying

the instalments of loan and even after receiving Rs. 1,80,00,000/- have not paid back the loan amount in one go.

38. It is only thereafter on 24.7.2008 that the petitioners approached this Court by filing the instant writ petition.

39. The aforesaid conduct of the petitioners, in accepting the allotment letter dated 22.6.2006 thereby inducing "N.O.I.D.A." to execute the lease deed in their favour on 7.6.2007 and altering its position and further selling out the said property to a third party on 27.12.2007, after obtaining necessary permission from "N.O.I.D.A.", clearly shows that the challenge made in the instant writ petition, is by way of an after thought. The petitioners are, therefore, estopped by their very conduct from making such a challenge.

40. In this regard reference may be made to the pronouncement of the Supreme Court in the case of Sunderabai Deshpande and Another Vs. Devaji Shankar Deshpande, wherein their Lordships considering the doctrine of Estoppel observed as under:

14. Estoppel is a rule of evidence and the general rule is enacted in section 115 of the Evidence Act, which lays down that when one person has by his declaration, act or omission caused or permitted another person to believe a thing to be true and to act upon such belief neither he nor his representative shall be allowed in any suit or proceeding between himself and such person or his representative to deny the truth of that thing. This the rule of estoppel by conduct as distinguished from an estoppel by record.....

41. In a recent judgment their Lordships of the Supreme Court in the case of The Rajasthan State Industrial Development and Investment Corporation and Another Vs. Diamond and Gem Development Corporation Ltd. and Another, in paragraphs 15 and 16 have observed as under:

"15. A party cannot be permitted to "blow hot-blow cold", "fast and loose" or "approbate and reprobate". Where one knowingly accepts the benefits of a contract, or conveyance, or of an order, he is estopped from denying the validity of, or the binding effect of such contract, or conveyance, or order upon himself. This rule is applied to ensure equity, however, it must not be applied in such a manner so as to violate the principles of what is right and of good conscience. [Vide Nagubai Ammal and Others Vs. B. Shama Rao and Others, Commissioner of Income Tax, Madras Vs. V. Mr. P. Firm, Muar, Ramesh Chandra Sankla Etc. Vs. Vikram Cement Etc., Pradeep Oil Corpn. v. M.C.D. 2011 (86) ALR 703 (SC) : 2011 (102) AIC 181; Cauvery Coffee Traders, Mangalore Vs. Hornor Resources (Intern.) Company Ltd., and V. Chandrasekaran v. Administrative Officer 2012 (95) ALR 884 (SC) : 2012 (120) AIC 58.

16. Thus, it is evident that the doctrine of election is based on the rule of estoppel-the principle that one cannot approbate and reprobate is inherent in it. The doctrine of estoppel by election is one among the species of estoppels in pais

(or equitable estoppel), which is a rule of equity. By this law, a person may be precluded, by way of his actions, or conduct, or silence when it is his duty to speak, from asserting a right which he would have otherwise had."

42. In Halsbury's Laws of England 4th Edn, Para 1471 the term "Waiver" has been described in the following words:

1471. Waiver.--Waiver is the abandonment of a right in such a way that the other party is entitled to plead the abandonment by way of confession and avoidance if the right is thereafter asserted, and is either express or implied from conduct....A person who is entitled to rely on a stipulation, existing for his benefit alone, in a contract or of a statutory provision, may waive it, and allow the contract or transaction to proceed as though the stipulation or provision did not exist. Waiver of this kind depends upon consent, and the fact that the other party has acted on it is sufficient consideration.....

It seems that, in general, where one party has, by his words or conduct, made to the other a promise or assurance which was intended to affect the legal relations between them and to be acted on accordingly, then, once the other party has taken him at his word and acted on it, so as to alter his position, the party who gave the promise or assurance cannot afterwards be allowed to revert to the previous legal relationship as if no such promise or assurance had been made by him, but he must accept their legal relations subject to the qualification which he has himself so introduced, even though it is not supported in point of law by any consideration.

(See Halsbury's Laws of England, 4th Edn., Para 1471).

43. We also take note of the fact that although the petitioners had sold out the plot in question on 27.12.2007 and derived financial benefit therefrom, they did not disclose this material fact before this Court in the instant writ petition. The allotment letter dated 22.6.2006 was also not brought on record by them. The concealment of such a material fact disentitles the petitioners to claim any relief in exercise of discretionary equitable writ jurisdiction under Article 226 of the Constitution of India.

44. In this regard reference may be made to the pronouncement of the Supreme Court in the case of K.D. Sharma Vs. Steel Authority of India Ltd. and Others,

"34. The jurisdiction of the Supreme Court under Article 32 and of the High Court under Article 226 of the Constitution is extraordinary, equitable and discretionary. Prerogative writs mentioned therein are issued for doing substantial justice. It is, therefore, of utmost necessity that the petitioner approaching the Writ Court must come with clean hands, put forward all the facts before the Court without concealing or suppressing anything and seek an appropriate relief. If there is no candid disclosure of relevant and material facts or the petitioner is guilty of misleading the Court, his petition may be dismissed at the threshold without considering the merits of the claim.

36. A prerogative remedy is not a matter of course. While exercising extraordinary power a Writ Court would certainly bear in mind the conduct of the party who invokes the jurisdiction of the Court. If the applicant makes a false statement or suppresses material fact or attempts to mislead the Court, the Court may dismiss the action on that ground alone and may refuse to enter into the merits of the case by stating, "We will not listen to your application because of what you have done." The rule has been evolved in the larger public interest to deter unscrupulous litigants from abusing the process of Court by deceiving it.

38. The above principles have been accepted in our legal system also. As per settled law, the party who invokes the extraordinary jurisdiction of this Court under Article 32 or of a High Court under Article 226 of the Constitution is supposed to be truthful, frank and open. He must disclose all material facts without any reservation even they are against him. He cannot be allowed to play "hide and seek" or to "pick and choose" the facts he likes to disclose and to suppress (Keep back) or not to disclose (conceal) other facts. The very basis of the writ jurisdiction rests in disclosure of true and complete (correct) facts. If material facts are suppressed or distorted, the very functioning of Writ Courts and exercise would become impossible. The petitioner must disclose all the facts having a bearing on the relief sought without any qualification. This is because "the Court knows laws but not facts."

39. If the primary object as highlighted in Kensington Income Tax Commrs. is kept in mind, an applicant who does not come with candid facts and "clean breast:" cannot hold a Writ of the Court with "soiled hands."

45. The contention of the petitioners that they accepted the alternative allotment under compelling circumstances is also not acceptable. The petitioners could have very well taken back the cost of the plot with simple interest or being aggrieved they could have approached the Court at the relevant time in the year 2006-07, i.e., prior to the acceptance of the alternative allotment and execution of the lease deed.

46. As regards the plea of discrimination, we find the contention of the petitioners regarding an exchange deed having been executed in favour of Shri Chandra Prakash Chawla to be incorrect. The copy of the lease deed executed in his favour has been filed and is not disputed. The contention of the petitioners that the petitioners had to pay higher stamp duty vis-?-vis Shri Chawla is also incorrect as a perusal of the lease deed of the petitioners, reveals that an amount of Rs. 9,96,800/- has been charged from Shri Chawla whereas the petitioners paid only about Rs. 4 lacs as stamp duty.

47. For the aforesaid reasons, the petitioners are not entitled to any relief. In view of the above discussion, the writ petition fails and is dismissed. Petition Dismissed.