(2015) 10 AHC CK 0164

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 17856 of 2002

Shiksha Enclave Cooperative Housing Society Ltd. APPELLANT

Vs

Assistant Housing Commissioner RESPONDENT

Date of Decision : 16-10-2015

Acts Referred:

Citation : (2017) 121 ALR 58

Hon'ble Judges : Krishna Murari and Amar Singh Chauhan, JJ.

Bench : Division Bench

Final Decision : Allowed

Judgement

Krishna Murari and Amar Singh Chauhan, JJ.—Heard Shri Vijay Kumar Rai, learned counsel for the petitioners and Shri Kant appearing for the respondents.

2. Challenge in this petition has been made to the demand notice dated 27.03.2002 issued by Assistant Housing Commissioner, U.P. Avas & Vikas Parishad, Ghaziabad requiring the petitioner to deposit a sum of Rs.81,90,151/- by 15th April, 2002, failing which the amount shall be recovered as arrears of land revenue and the allotment made to the petitioner-society dated 15.07.1998 shall be liable to be cancelled.

3. Petitioner is a housing society registered with the U.P. Avas & Vikas Parishad (for short as the ''Parishad'') on 10.06.1992 having registration no. 1739. A scheme known as Vasundhara Yojna was floated by the Parishad inviting applications for allotment of land to the housing societies registered with it. Petitioner-society made an application dated 21.11.1997 for allotment of 4 acres of land. A letter dated 15.07.1998 was issued by respondent no. 1, Assistant Housing Commissioner, U.P. Avas Evam Vikas Parishad, Ghaziabad making allotment of an area of 2 acres of land in favour of the petitioner-society. The total price of the land under the terms and conditions of the allotment was Rs.2,23,04,448/-. The amount of lease rent for the period of 90 years was fixed as 22,03,448/-. The terms and conditions further provided that the entire

amount of the lease rent was to be deposited in lump sum within one month from the date of issue of the demand letter. The terms and conditions also provided that, in case, the entire cost of the land was deposited by 31st March, 1999, the society would be entitled to a rebate of 10%. However, in case, the price of the land is not deposited in lump sum by 31st March, 1999, the same could be paid in 8 instalments of Rs.34,86,191/-. The first instalment was to be paid between 01.08.1998 to 31.08.1998 and the last instalment was to be paid between the period 01.05.2000 to 31.05.2000. On default in making the payment of the instalments, 21% interest was liable to be paid.

4. According to the case set up by the petitioner, till 31st March, 1999, the petitioner-society made deposit a sum of Rs.1 crore 42 lacs on different dates till 31st March, 1999. A representation was made by the petitioner-society and other similarly situated cooperative housing societies to extend the period fixed under allotment order dated 15.07.1998 on the ground that the land allotted to the societies was neither demarcated nor developed nor possession was handed over. Respondent-Parishad after considering the request made by the housing society passed a resolution dated 22.05.2000 that all such housing cooperative societies, who deposited the cost of the land in accordance with the allotment letter by 30th June, 2000, shall be entitled to rebate of 10% and the time to deposit the lease rent and the outstanding interest is extended till 31.08.2000 and no interest on the lease rent would be charged on deposit of lease rent till the said date. A further resolution was passed that since the land allotted to cooperative housing societies situate in Sector 6, had not been developed, no interest shall be charged form such societies till 16.10.1999 and simple interest would be charged from such societies only w.e.f. 17.10.1999. In pursuance to the aforesaid decision taken by the Parishad, the petitioner-society deposited the entire principal amount towards the price of the land and the entire lease rent, total amounting to Rs.81,04,535/- till 17.02.2000 on different dates by means of bank draft. No Dues Certificate dated 19.02.2000 was also issued by respondent no. 1 to the petitioner-society certifying that against allotment of plot no. 6-BH-11 (house no. GH-11) in Sector 6, petitioner-society has deposited entire cost of the land and lease rent. Another policy decision was taken by the respondent-Parishad in a meeting dated 30.10.2000. It was resolved in the said meeting that the benefit of granting rebate of 10% would be entitled to only those societies, who have deposited the entire outstanding amount in the same financial year and in case of societies, which have not availed the benefit by depositing the outstanding within the same financial year, their allotment may be treated to be on instalment and, accordingly, they may be informed of their outstanding dues.

5. Learned counsel for the petitioner submits that before the decision was taken in the meeting dated 30.10.2000, the petitioner had already deposited the entire outstanding by 17.02.2000 and a No Dues Certificate was also issued to it and, thus, no amount was due from the petitioner-society and the demand has been illegally raised. It is further submitted that even under the revised policy

approved in meeting dated 30.10.2000, since the deposit was made by the petitioner in the same financial year, i.e., before 30th March, 2000, there was no outstanding and the petitioner-society was not liable to make payment of any further amount.

6. A counter affidavit has been filed on behalf of the respondents admitting the fact that all deposit has been made by the petitioner by 17.02.2000. It is further stated in the counter affidavit that those societies, who have not exercised their option of benefit of 10% rebate by making the entire deposit in the financial year, their allotment were deemed to be on the basis of the instalments as per the allotment order and, therefore, the petitioner was liable to pay the amount demanded vide impugned letter dated 27.03.2002.

7. It may be relevant to quote paragraph 6 of the counter affidavit, which reads as under.

"That in reply to contents of paragraph 4 of the writ petition, it is stated that No Dues Certificate was issued to the petitioner on the basis of the relaxation of Rules as resolved in the meeting of the Presidents of Housing Societies with the Housing Commissioner, but later on considering the financial loss of the respondents, it was resolved on 30.10.2000 that those societies, who had not exercised their option of 10% rebate in the financial year, their allotment were deemed to be on the basis of the instalments as per allotment orders."

8. The same reason is spelled out from the impugned demand notice dated 27.03.2002.

9. From the averments made in the counter affidavit and the impugned demand notice dated 27.03.2002, it becomes clear that outstanding is being demanded from the petitioner treating the allotment to be on the instalment basis and, thus, interest and penal interest is being charged from the petitioner, which fact becomes clear from the statement of account filed along with the counter affidavit.

10. Firstly, once the respondent-Parishad took a policy decision in the meeting dated 22.05.2000 to extend the time to deposit the cost of land, lease rent and the outstanding interest till 31.08.2000 and to charge simple interest w.e.f. 17.10.1999 and to grant 10% rebate to such societies, who deposit the entire cost of land by the extended time, and the petitioner-society in pursuance whereof deposited the entire outstanding, any subsequent change brought in the policy will not be applicable retrospectively so as to dis-entitle the petitioner-society from the benefits which were made available to it under the earlier policy on fulfilment of the terms and conditions enumerated therein.

11. Even under the revised policy, since the petitioner had deposited the amount in the same financial year, allotment made in its favour cannot be treated to be on instalment basis, so as to charge penal interest. Further, under the revised policy only simple interest w.e.f. 17.10.1999 till the actual payment of

outstanding was liable to be charged.

12. Thus, the impugned demand notice is against the policy framed by the respondent-Parishad and is not liable to be sustained, and the same stands quashed.

13. The writ petition stands allowed. The respondent-Parishad is directed to recalculate the outstanding, if any, in accordance with observations made herein above and issue a fresh demand notice to the petitioner-society, in case, any outstanding is found to be due. The respondent-Parishad shall also provide a reasonable time to deposit the same.