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**(2007) 04 AHC CK 0256**

**In the Allahabad High Court**

Skyline Contractors Pvt. Ltd. and Anil Kumar Vaswani — APPELLANT

Vs

State of U.P. and Others — RESPONDENT

**Date of Decision :** 18-04-2007

**Acts Referred:**

**Citation :** (2007) 3 AWC 3052

**Hon'ble Judges :** Rajes Kumar, J;B.S. Chauhan, J

**Bench :** Division Bench

**Final Decision :** Allowed

## Judgement

1. This writ petition has been filed for quashing the order dated 21.04.2006 cancelling the allotment of a plot in favour of the petitioner and further for issuing a direction upon the respondents to execute the lease deed in favour of the petitioner in respect of the said plot.

2. The facts and circumstances giving rise to this case are that an advertisement was issued inviting applications for allotment of plots. The petitioner submitted an application in respect of plot No. A-28, Sector 62, measuring 8000 sq. meters and deposited a sum of Rs. 13,20,000/- while submitting the application. The allotment order was issued on 17.04.2003 wherein the petitioner company was required to deposit the amount as follows:

1. Plot No. : A-28, Sector 62 2. Use : Institutional Purpose. 3. Type of property : INSTITUTIONAL 4. Area : 8,000 sq. m. 5. Allotment Rate : Rs. 5,199/- sq. m. 6. Total premium : Rs. 4,15,92,000/- 7. Allotment money (25%) : Rs. 1,03,98,000/- 8. Money Deposited : Rs. 13,20,000/- 9. Balance Allotment : Rs. 90,78,000/- Money 10. One year advance lease rent : Rs. 4,15,920/- 11. 75% balance amount to be deposited : Rs. 3,11,94,000/- in 10 half yearly installment with interest as per rule.

3. As per terms and conditions of the allotment, the petitioner was required to make the deposits as under:

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iv. After acceptance of the tender by the Chief Executive Officer, NOIDA, or any officer authorised by Chief Executive Officer, NOIDA, tenderer will be informed of such acceptance in writing. through allotment letter and he shall pay 25% of the premium in cash or through Bank Draft, drawn in favour of NOIDA payable at NOIDA/Delhi/New Delhi within 60 days thereof. If 25% amount is not paid, the deposit of Earnest Money will be forfeited. No extension of time shall be granted for deposit of the amount under any circumstances.

(v) Balance 75% of the premium will be deposited by the allottee in ten equal half-yearly instalments along with interest @ 10% p.a. on outstanding premium. First such installment will fall due within six months from the date of allotment. No extension for payment of installment will be granted and if the allottee fails to pay the installments within due dates, allotment will be cancelled and amount equivalent to 25% of premium will be forfeited in favour of the Authority. However, in exceptional circumstances, extension for deposit of installment/ interest will be granted at the sole discretion of Chief Executive Officer or any other officer authorised by him but it will be subject to payment of interest @ 17% p.a. compounded every half yearly on defaulted amount for defaulted period.

(Emphasis added.)

4. After receiving the allotment letter, petitioners did not deposit any amount, whatsoever for a period of two and half years. The respondent New Okhla Industrial Development Authority (hereinafter called the ''NOIDA Authority") vide letter dated 3rd May, 2005 asked the petitioners to produce the receipt of deposit, if any, made in pursuance of the allotment letter. The petitioners started making deposits in September 2005 and on 16.12.2005 wrote a letter to the NOIDA Authority to inform as what was the requirement of deposit of stamp duty etc. for execution of the lease deed. The NOIDA Authority cancelled the allotment vide order dated 21.06.2006 as the petitioners did not make the requirement of deposits as per clause 2 (iv) of the terms and conditions for allotment. Hence the present writ petition.

5. Shri Ravi Kant, learned Senior Advocate, appearing for the petitioners has submitted that undoubtedly, the petitioners failed to deposit the amount as per the terms and conditions of the allotment. However, as the amount deposited by them has subsequently been accepted by the NOIDA Authority, the terms and conditions incorporated for the purpose of allotment stood waived and the NOIDA Authority could not insist that as the petitioners failed to deposit the amount in time, the allotment in its favour was liable to be cancelled. More so, after cancelling the plot, the allotment has been made in favour of respondent No. 5 at a much cheaper rate and, therefore, there could be no justification for such a discrimination and the petition deserves to be allowed.

6. On the other hand, Shri V.P. Mathur, learned Counsel appearing for the NOIDA Authority has submitted that the Authority has enforced the terms and conditions

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incorporated in the scheme prepared for the purpose of allotment. More so, the respondent No. 5 has been allotted the land under a separate scheme meant for institutional purposes and being governed by different provisions, even if the respondent No. 5 had been allotted the said plot at a. cheaper rate, the petitioners cannot have any grievance whatsoever.

7. Shri R.N. Singh, learned Senior Advocate, appearing for respondent No. 5 has submitted that question of waiver does not arise unless it is made consciously and as the amount has been deposited by the petitioners without seeking time for extension and as it was hopelessly time barred, they are not entitled for any equitable relief, whatsoever.

8. We have considered the rival submissions made by learned Counsel for the parties and have perused the record.

9. Undoubtedly, the terms and conditions incorporated in the scheme provided that the allottee was bound to deposit 25% premium in cash or through bank draft within sixty days and in case the said amount is not deposited, the earnest money would stand forfeited and no extension of time would be granted for depositing the amount under any circumstance. The petitioners submitted their application knowing fully well the terms of the allotment, therefore, they cannot be permitted to take a complete somersault and submit that the condition is arbitrary or unreasonable and in case they failed to deposit as per the terms of the allotment, the allotment could not have been cancelled. More so, the impugned letter of cancellation dated 21.06.2006 itself made it clear that the petitioners themselves had deposited the amount at a much belated stage, i.e. after expiry of two and half years suo motu without taking any permission of the NOIDA Authority. Any unilateral act of the petitioner without any stipulation of such nature in the advertisement, cannot bind the opposite parties as there is no breach of any condition thereof. Therefore, this kind of acceptance does not amount waiver of the conditions incorporated in the scheme of allotment itself.

10. Waiver is an intentional relinquishment of a non-right. It involves conscious abandonment of a existing legal right, advantage, benefit, claim or privilege, which except for such a waiver, a party could have enjoyed. In fact, it is an agreement not to assert a right. There can be no waiver unless the person who is said to have waived, is fully informed as to his rights and with full knowledge, about the same, he intentionally abandons them. (Vide AIR 1935 79 (Privy Council) Basheshar Nath Vs. The Commissioner of Income Tax, Delhi and Rajasthan and Another, Madamsetty Satyanarayana Vs. G. Yellogi Rao and Others, Associated Hotels of India Ltd., Delhi Vs. S.B. Sardar Ranjit Singh, Jaswant Singh Mathur Singh and Anr. v. Ahmedabad Municipal Corporation and Ors. (1992) Suppl 1 SCC 5 ; M/s. Sikkim Subba Associates Vs. State of Sikkim, ; and Krishna Bahadur Vs. Purna Theatre and Others,

11. Therefore, in view of the above, we are of the considered opinion that as the petitioners failed to ensure compliance of the terms of allotment himself, they

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are not entitled for any equitable relief from a writ Court and the petition is laible to be dismissed.

12. Mr. Ravi Kant, learned Senior Counsel appearing for the petitioner has placed a very heavy reliance upon the judgment of the Hon''ble Supreme Court in Teri Oat Estates (P) Ltd. Vs. U.T., Chandigarh and Others, , wherein the Apex Court has held that the cancellation of an allotment should be as a last resort. The allotment should not be cancelled unless the intention or motive on the part of the allottee in not making due payment is evident. The Hon''ble Apex Court observed that the drastic power of resumption and forfeiture should be exercised in exceptional cases but that does not mean, that the statutory rights conferring the right on the authority should never be resorted. In exceptional circumstances, where the allottee does not make any payment in terms of allotment with motive, the order of cancellation should be passed. The Apex Court also made it clear that the sympathy or sentiment by itself cannot be a ground for passing an order in favour of allottees by the Courts nor a order can be passed in contravention of the statutory provisions.

13. The instant case requires to be examined in the light of the aforesaid observations of the Hon''ble Apex Court. The allotment was made in favour of the petitioner on 17.04.2003 with a clear stipulation that he would deposit 25%, i.e. a sum of Rs. 1,03,98,000/- (Rupees One Crore Three Lacs Ninety Eight Thousands Only) within a period of sixty days. The petitioner did not deposit a single paisa for a period of more than two and half years. The half yearly instalments to the tune of Rs. 31.20 lacs which became due on 16.10.2003, 16.04.2004, 16.10.2004 and 16.04.2005 were not deposited. The advance lease rent for one year to the tune of Rs. 4,15,920/- was also not deposited. In fact, the petitioner has deposited a sum of Rs. 13.20 lacs as an earnest money for consideration his application. He did not deposit a single paisa for about two and half years after the issuance of allotment letter. The period to make deposit had never been, extended by the NOIDA nor there was any provision to deposit the amount with penal interest in case of default of making deposits of instalments. The amount had been deposited after two and half years voluntarily by the petitioner without taking any order from the respondent authorities. In such a fact situation, we are of the considered opinion that the petitioner himself had no intention to perform his part of contract in terms of allotment letter. Thus, the ratio of the aforesaid judgment, so heavily relied by the learned Counsel for the petitioner, is not applicable in the facts and circumstances of this case.

14. So far as the allotment made in favour of respondent No. 5 is concerned, no prayer has been made by the petitioners for cancellation of the same. The submission that the allotment in favour of respondent No. 5 had been made at a much cheaper rate can also not be examined, as the allotment has been made under a different scheme meant for institutional purposes and admittedly the respondent No. 5 had been allotted the land for establishing an Information and Technology related centre. We are also not inclined to probe this issue at all for

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want of proper pleadings. The Court cannot travel beyond pleadings. (Vide Trojan and Co. Ltd. Vs. Rm. N.N. Nagappa Chettiar, Ashutosh Gupta Vs. State of Rajasthan and Others, and Uttar PradeshGram Panchayat Adhikari Sangh and Others Vs. Daya Ram Saroj and Others,

15. In view of the above, the petitioners did not ensure compliance of the terms of the allotment and deposit the money voluntarily after expiry of two and half years in contravention of the scheme which provided that no extension shall be granted and the 25 percent amount was required to be deposited within 60 days failing which the earnest money shall stand forfeited and are therefore not entitled for any relief. The facts and circumstances of the case do not warrant any interference. The petition is totally misconceived and is accordingly dismissed.

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