
(2010) 12 UK CK 0150

In the Uttarakhand High Court

Case No : Writ Petition No. 696 of 2008 (M/S)

Smt. Poonam and Others

APPELLANT

Vs

U.P. Avas Avam Vikas Parishad and Others

RESPONDENT

Date of Decision : 27-12-2010

Acts Referred:

Citation : (2010) 12 UK CK 0150

Hon'ble Judges : Brahma Singh Verma, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

B.S. Verma, J.—Since the controversy involved in all these writ petition is similar, therefore they are being decided by this common judgment.

2. In all these writ petitions, the Petitioners have sought a writ in the nature of certiorari quashing the part of the impugned allotment order dated 27-3-2008, whereby the arbitrary demand of prices was made from the Petitioners @ Rs. 7840/- per square meter and also done arbitrary fixation of plot size. Annexure-4 to all the writ petitions is the allotment order.

3. Briefly stated the facts of the case, giving rise to these writ petitions, are that Respondent No. 1 U.P. Avas Avam Vikas Parishad (in short "Parishad") launched a scheme in the name of "Indira Nagar Yojana Dehradun". The code of the scheme is 057, copy of information brochure is annexed as Annexure No. 1 to the writ petitions. All the Petitioners got registered themselves for residential plots measuring upto 80 square meters and 81 square meters to 170 square meters mentioned in the brochure @ Rs. 3135/- per square meter. The requisite registration amount of registration fee @ 5% of total price of the plot @ Rs. 3135/- per square meter was deposited by the Petitioners within the stipulated period as mentioned in the brochure. Since the plots to be allotted were fewer in number than the application forms drawing lots took place, all the Petitioners were selected in a preferential order and on 6.1.2005 the Respondents informed

the Petitioners that in continuation of their registration, their names have been selected by way of lottery for residential plots, of which area has been mentioned in these letters dated 6.1.2005. The Petitioners further alleged that though short listing of the applicants took place on 6.1.2005, but the actual allotment and carving of plots was not done. The Respondents took no steps towards development of the property so that allotment of the fully developed plots as assured through the information brochure of the scheme could not be done. Therefore the Petitioners met with Respondents on various occasions but no concrete steps were taken and one of the Petitioners Smt. Poonam Bhatia filed a writ petition No. 1981 (M/S) of 2007 and another writ petition No. 1873 (M/S) of 2007 was filed by Petitioner R.N. Gupta. In the aforementioned writ petitions the Respondents were directed to file their counter affidavit. In the meanwhile Petitioners came to know that under some clandestine arrangement with a private developer the Respondents are planning to hand over all these plots to the aforesaid private developer and therefore Lokayukta was approached by filing complaint against the misdeeds of Officers of the "Parishad".

4. It is further alleged in the writ petitions that only after intervention of this Hon"ble High Court and Lokayukta, that the Respondents had now decided to proceed with allotment but the Respondents have arbitrarily increased the price to the tune of Rs. 7840/- per sq. mt. Thus the rate has been increased by about 150%. The action of the Respondents is illegal and unwarranted. Vide press release issued by the Respondent the rates of plots were further increased to the tune of Rs. 4060/- with effect from 1.4.2006. The Respondent again increased the price @ 7000/- per sq. mt w.e.f. 29-7-2007. The Petitioners have been made allotment vide order dated 27.3.2008 @ Rs. 7840/- per sq.mt. The areas of the plots allotted to the Petitioners have also been fixed arbitrarily. In order to show the intentional delay in allotting the plots by the Respondents Petitioner filed copy of inspection memo dated 28-8-2007, which shows that there was discreet plan of allotting the plots to some private builder. The grievance of the Petitioners is that the delay in making allotment is on the part of the Respondents. The plots were not developed as was assured and despite of registration in the year 2004, the allotments were made in the year 2008 and the price of the plots has been fixed in an arbitrary manner, which is not sustainable in the eyes of law.

5. The Respondents filed counter affidavits in all the writ petitions with similar versions. The Respondents have alleged that by way of a brochure open registration w.e.f. 1.10.2004 to 30.10.2004 applications were invited from general public. In this scheme four flats for H.I.G. were offered and 45 plots upto 80 sqm. And 25 plots of 80 sqm. To 170 sqm. were offered. The terms and conditions were specifically mentioned in the brochure. The rate was given @ Rs. 3,135/- per sqm. It is further specifically mentioned that the rate shown in the table against the property is tentative and the actual cost of the property payable by the allottee would be the cost as determined by the Respondent board at the time of allotment. For corner plot, it is made clear that 10% extra charges would be payable as corner charges. After drawing lottery the successful candidates

were informed by the letters dated 6.1.2005.

6. Further contention of the Respondents is that the Housing Commissioner is empowered to fix the rate of land on yearwise basis and for the purposes a meeting was convened on 26.7.2007 at headquarters and in that meeting after due consultation with senior officials of the board the rate of the land for the year 2007-2008 were fixed and the date of newly fixed rate was also fixed with effect from 27-7-2007. Thus in Indira Nagar Yojana Dehradun the rate of land was determined Rs. 7000/- per sqm. w.e.f. 27.7.2007 for the year 2007-2008. A further 12% free hold fees is also charged and thus the rate of land was fixed at Rs. 7840/- per sqm and on the date of allotment i.e. 14.3.2008 it was the rate chargeable from the allottees. It is further mentioned in the counter affidavit that the Respondent board fixed the date for allotment of the plots by lottery draw on 14-3-2008 in Lucknow and accordingly an information was published in daily news paper "Amar Ujala" on 2.3.2008 and separate notices were also sent to each of the prospective allottee of the short listed list. Some of the Petitioners were allotted plots in the category of 81 sqm. to 170 sqm. and some were allotted below this category. The Petitioners were asked to deposit the amount demanded by 30-4-2008, failing which the allotment would be cancelled and allotted property would be allotted to other persons. The Respondents also alleged that change in size of some of the plots was due to the plots being in the corner and corner charges were also charged for this change.

7. The Respondents on the point of increase in rate of plots have contended that the price would be paid by the Petitioners/allottee fixed on the date of allotment and not at the date of registration as has been clearly indicated in the brochure. If the price of plots is beyond the capacity of any of the Petitioners, he may forego his claim and the plot would be allotted to another person. This revision in the rates is not only done for Dehradun but for each and every city where the housing schemes are running. Out of total 70 plots 37 of the scheme have already been handed over to the allottees and sale deeds have been executed.

8. The Petitioners also filed rejoinder affidavits and alleged that the short listing of the successful applicants did take place on 6-1-2005 and allotment of plots in the year 2008 is an arbitrary action on the part of the Respondents. The Respondents themselves with malafide intention delayed the development work of the plots and for this delay the Petitioners cannot be allowed to suffer.

9. I have heard learned Counsel for the parties and have gone through the record.

10. At the outset it is pertinent to mention here that it is admitted to parties that "Indira Nagar Yojna Dehradun" was launched by Respondent "Parishad" in the year 2004; that the Petitioners among other applicants moved applications for allotment of plots in their favour; that the rate of plots was fixed at Rs. 3135/- per sqm and 5% of the total price of plot was to be deposited latest by 31-10-2004 and that the Petitioners were among other successful applicants

after drawing lottery by the Respondents and intimation of preferential order was sent to them by Respondent vide information dated 6.1.2005. The Petitioners also deposited the required registration fee with the Respondent in the form of bank draft.

11. The only dispute between the parties is that the Respondent did not allot the plots to the Petitioners in the year 2005 and the allotments were made vide orders dated 27-3-2008 and that too at an increased price of plots @ Rs. 7840/-.

12. The only controversy to be decided by this Court in these writ petition is

Whether the Respondents have intentionally delayed the allotment of plots in favour of the Petitioners against the terms of the brochure and the impugned allotment orders issued at an increased rate are against the terms and conditions of the brochure and the rates have been fixed arbitrarily or the Respondents were authorised to do so, and its effect?.

13. Learned Senior Counsel appearing on behalf of the Petitioners has submitted that the delay in making allotment of plots is on the part of the Respondents. The plots were not being developed as has been assured by the Respondents and despite registration of plots in favour of Petitioners in the year 2004, the allotments were made in the year 2008 and the price has been fixed in an arbitrary manner and the Petitioners cannot be allowed to suffer for the lapses on the part of the Respondents. Learned Counsel in support of his contention has cited before me the case of Kanpur Development Authority Vs. Smt. Sheela Devi and Others etc., .

13. On the other hand learned Counsel appearing on behalf of the Respondents has vehemently rebutted the above contention of learned Senior Advocate and submitted that the rates have been revised within the scope of the brochure. Specific provision was there in the brochure for revision of price of plots allotted to the allottee. It is also specifically mentioned in the conditions of brochure that the rates shown in the table are approximate and the actual rate of property would depend upon the type of property and work carried upon it.

14. According to the Respondents the Housing Commissioner is empowered to fix the rate of land on year-wise basis and for that purpose a meeting was convened on 26.7.2007 at headquarters and in that meeting after due consultation with senior officials of the board the rate of the land for the year 2007-2008 were fixed and the date of newly fixed rate was also fixed with effect from 27-7-2007. Thus in Indira Nagar Yojana Dehradun the rate of land was determined Rs. 7000/- per sqm. w.e.f. 27.7.2007 for the year 2007-2008. A further 12% free hold fees is also charged and thus the rate of land was fixed at Rs. 7840/- per sqm and on the date of allotment i.e. 14.3.2008 it was the rate chargeable from the allottees. The Respondents have also alleged that the rates fixed by Housing Commissioner have been fixed at the prevalent market rates of the property. It is further mentioned in the counter affidavit that the Respondent board fixed the date for allotment of the plots by lottery draw on 14-3-2008 in Lucknow and

accordingly an information was published in daily news paper "Amar Ujala" on 2.3.2008 and separate notices were also sent to each of the prospective allottee of the short listed list. Some of the Petitioners were allotted plots in the category of 81 sqm. to 170 sqm. and some were allotted below this category. The Petitioners were asked to deposit the amount demanded by 30-4-2008, failing which the allotment would be cancelled and allotted property would be allotted to other persons. It is therefore, quite clear that the Housing Commissioner of the Respondent "Parishad" was required to revise the price of the property year-wise and the action on the part of Respondent in revising the rates of its property is within its powers and this action cannot be termed as arbitrary on the part of Respondents.

15. So far as so called delay on the part of Respondents is concerned, it is to be mentioned here that the Respondents had to do development work including sewerage, road, electricity, water supply work etc besides levelling the plots etc. The Respondents also stated in the counter affidavit that the development at site was stopped in view of the order dated 19-8-2006 passed by the head office of the board and when on 18-1-2008 the administrative and financial sanction was given by the head office, the development was started and in all the 70 plots the development work including the laying sewer/ water and electrification is in progress. Letter dated 20-12-2006 written by Executive Engineer to Joint Avas Commissioner, Annexure No. 7, has been filed in order to show that the work was stopped for want of administrative sanction. Therefore, the delay in development work cannot be said to be intentional, rather it was stopped on technical ground for want of administrative and financial sanction by the head office.

16. I have also gone through the case Kanpur Development Authority Vs. Smt. Sheela Devi and Others etc., , cited by learned Counsel for the Petitioners, in support of his argument, and I find that the facts of the cited case are totally different to the case in hand and the same is of no help to the Petitioners. In the cited case the applications were kept pending for a long period of more than 18 years for no fault of the applicants. In the instant case Housing Commissioner of the Respondent was legally authorised to fix the rates of property year-wise and the escalated rates have been fixed in accordance with the prevalent market rates of the property. The allotments as well as the possession of the plots were to be made after the development work including sewerage/electrification/water connection etc. and this work took time due to technical difficulties as well as for want of administrative sanction of the headquarter.

17. It is also to be mentioned here that in the brochure period of registration of properties has been mentioned as 01-10-2004 to 30-10-2004, but no specific period has been mentioned about the allotment and handing over of the possession of the property in favour of successful applicant and this fact also weakens the claim of the Petitioners.

18. I have also perused the terms and conditions mentioned in the brochure

Annexure No. 1 to the writ petitions which are reproduced as below-

uksV

1- rkfydk esa n"kkZ;h x;h izfof"V;ka la"kkSF/kr @ ifjofrZr gks ldrh gSa A

2- U;k;ky; ds vkns"kkuqlkj vFkok vU; fdUgha dkj.kksa ls ;fn ifj"kn }kjk lwfpr fd;s x;s vkoafVr IEifr ds ewY; esa ifjorZu djuk iM+k rks rn~uqlkj vkoaVh dks Hkqxrku djuk gksxk A

3- izns"ku ds le; ifj"kn }kjk fu/kkZfjr @ Lohd`r IEifr ewY; ns; gksxk A rkfydk esa nf"kZr ewY; vuqekfur gS A

4- IEifr dh okLrfod ykxrk izdkj,oa fuekZ.k dk;Z ij fuHkZj djsxh A

5- vkosnu & i= ds dkye la- 1] 2 o 5 esa lwpuk;sa vafdr djrs le; rkfydk ds dkye la- 4] 5 rFkk 6 ds vuqlkj lwpukvksa dks Li"V o lgh&lgh vafdr djsa A vkosnu & i= Hkjus ls iwoZ iw.kZ iqfLrdk vo"; i<+ ysa A

6- IEifr;ksa dh la[;k esa dHkh @ c`f) gks ldrh gS A ftl gsrq dksbZ Dyse ekU; ugha gksxk A

7- IHkh IEifr;ka ?h & gksYM "kqYd ns; gksxk A

8- Hkouksa @ Hkw[k.M rkfydk esa nf"kZr ;kstuk esa gh ykWWjh }kjk vkofVr fd;s tk;sxa A

9- fd"rksa esa vkoafVr Hkouksa dk ewY; i`"B & 5 ij n"kkZ;h xbZ,d eq"r ns; / kujkf"k ds vfrfjDr fu;ekuqlkj O;kt lfgr IEeq[k vafdr leku ekfld fd"rksa esa ns; gksxk rFkk fd"rksa esa vkoafVr Hkw[k.Mksa dk ewY; fu;ekuqlkj O;kt lfgr 4 o"kksZa dh leku ekfld fd"rksa esa ns; gksxk A

10- fdukjs dh IEifr ij 10% dkuZj pktZ vfrfjDr ns; gksxk A

Therefore, from perusal of above terms and conditions appended with the brochure, it is quite clear that the rates of plots shown in the table were revisable. Condition No. 2 specifically empowers the "Parishad" to revise the rate of allotted property and the allottee was liable to pay that revised rate. Condition No. 3 also makes it clear that the rate shown in the table was approximate and not final. Condition No. 4 also authorises the Parishad to fix the actual price of property depending upon its type, and work carried on it. Condition No. 6 also provides that there may be increase or decrease in the property and for this no claim shall be entertained. Condition No. 7 further prescribes that on all the properties 12% free-hold fee would be payable. Condition No. 10 further provides that on the corner property 10% corner charge shall also be payable.

19. The Respondents have also alleged that out of 70 plots 37 allottees have executed sale deed in favour of "Parishad" and they have accepted the proposal and started depositing the payment of instalments.

20. Therefore, in view of specific terms and conditions of the brochure, as well as

in the facts and circumstances of the case mentioned in foregoing paragraphs, I do not find any substance in the claim raised by the Petitioners and the Petitioners are not entitled to get the relief claimed by them. All the writ petitions are liable to be dismissed.

21. All the writ petitions are dismissed.

22. Let a copy of this order be placed in all the writ petitions.