
(2015) 08 AHC CK 0023

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 41005 of 2009

Suman and Others

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 28-08-2015

Acts Referred:

Citation : (2015) 8 ADJ 323 : (2015) 112 ALR 858 : (2015) 5 AWC 5246

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

Bench : Division Bench

Advocate : Rajeev Kumar Pandey and N.K. Dwivedi, for the Appellant; Sanjay Singh Jatav, Shiv Nath Singh and Vivek Varma, Advocates for the Respondent

Final Decision : Allowed

Judgement

Krishna Murari, J—The petitioners, 19 in numbers, have approached this Court seeking a writ of Certiorari to quash the notices dated 9.4.2009, 25.4.2009, 26.5.2009 and 25.6.2009 (Annexure-14 to the writ petition) for payment of outstanding dues of EWS Flats allotted to them by the respondent No. 2 Kanpur Development Authority (hereinafter referred to as the "Development Authority"). The notices further specified that the calculation mentioned has been made on the basis of One time Settlement (OTS) and if the petitioners intended to take advantage of the said scheme they may deposit Rs. 200/- with the prescribed bank and produce the receipt, failing which this benefit of the scheme will not be extended. Further a writ of mandamus has been claimed commanding the respondents to execute sale-deed in favour of the petitioners as all the petitioners have deposited entire amount and interest furnished by the respondents vide statement of account/letter dated 13.12.2007. Aforesaid reliefs have been claimed in the background of the following facts:

The petitioners, who belong to the economically weaker section of the society, have applied for flats in pursuance of the advertisement published by the Development Authority in Hindi Daily newspaper "Dainik Jagran" on 14.9.1987 in respect of Yojna No. 40, Barra Bhag-2, Azad Kutiya, Kanpur Nagar. In accordance

with the provisions of the Scheme, the petitioners alleged to have deposited 1/4th of the cost in the UCo Bank and accordingly all the petitioners were issued allotment letters on different dates in the year 1988 and 1989 on a price ranging between 25,500/- to 30,000/-. The allotment letter stipulated a condition that after adjustment of 7600/-, the balance amount would be payable within 20 years in quarterly installment with 15% interest. The petitioners and various other allottees defaulted in making payment of installment resulting in a public notice published in "Dainik Jagran" dated 18.8.2007 requiring all the allottees in arrears of installment to deposit the balance payable by 22.8.2007, failing which allotment would be cancelled after 23.8.2007. Subsequently, another public notice dated 25.8.2007 was again published in Hindi daily Dainik Jagran" stating that 400 allotments of such persons who are defaulters have been cancelled pursuant to the earlier notice dated 18.8.2007. Aggrieved by the aforesaid, the petitioners alongwith certain other similarly situated allottees had approached this Court by filing writ petition No. 43533 of 2007. A Division Bench of this Court dismissed the writ petition by passing the following orders:

"Heard counsel for the petitioners and Sri M.C. Tripathi Advocate on behalf of the Kanpur Development Authority, Kanpur. The petitioners had been allotted flats by the Kanpur Development Authority on a meager prices of Rs. 24,000/- to 30,000/-. The allotment letters issued incorporated all the terms and conditions qua such allotment.

So far as the petitioner No. 1 is concerned, his allotment letter dated 16th June, 1988 Annexure-2 to the writ petition clearly reveals that the flat allotted to him was for a price of Rs. 30,000/- and he had deposited a sum of Rs. 7,600/- on the date of allotment, the balance amount had to be paid by him in three monthly equal installments over a span of twenty years. After adjusting the payment of Rs. 7,600/- against the total price of 30,000/-, the balance amount Rs. 22,400/- had to be paid by the petitioner with 15% interest as indicated above. Admittedly, the petitioner has not deposited a single installment in last 19 years.

Under challenge is a show-cause notice issued to the petitioners to deposit the entire payment or to vacate the premises. Hence this writ petition.

Learned counsel for the petitioner has not replied to the simple question as to under what circumstances, after the allotment, the payment has not been made. Similar is the position of the respondent Kanpur Development Authority. It has no explanation as to under what circumstances it could not show the courage too throw out the petitioners from their possession over the flat in question and could not auction the same to some other persons in case petitioners had not deposited any of the installments whatsoever.

Even today the only contention raised is that in one case in similar situation the flat has been allotted at cheaper rate. Therefore, the balance amount of 22,400/- cannot be recovered from the petitioner with interest. Article 14 is for a positive discrimination, it does not envisage in negative equality qua an order passed

illegally and for ulterior consideration, there arise no plea of discrimination nor gives a cause to the petitioners to agitate the issue before the Court. Therefore, we not only dismiss this writ petition but also direct the Vice Chairman, Kanpur Development Authority to make the recovery of entire balance amount with interest treating the petitioners to be defaulters from the very beginning and, in case they do not make the entire payment within four weeks, to take possession of the flat forcibly. In such a situation compensation for use and occupation of the flat for all these years must also be determined and recovered. The Kanpur Development Authority to make fresh allotment of the flats in question to some other persons by auction, in case deposit of outstanding amount is not made as indicated above.

With the aforesaid observations/directions the present writ petition is dismissed."

2. Specific case set up by the petitioners in the present writ petition is that after order dated 17.9.2007 passed by this Court they approached the respondents with the request to furnish the account so that they may deposit the entire balance within the stipulated time allotted by this Court. However, when no statement of account was furnished till September, 2007, some of the petitioners deposited some amount in respect of the dues as per their own calculation in the month of October, 2007 on different dates. Photocopy of receipt of deposit is on record as annexure-10 to the writ petition. Respondent No. 2 issued letter dated 13.12.2007 to all the petitioners mentioning the amount due against them and requiring them to make payment within 30 days from the date of receipt of the said letter.

3. It is categorically stated in paragraph 33 of the writ petition that thereafter some of the petitioners who had made certain deposit in October, 2008 deposited the balance after adjusting the said deposit and those petitioners who had not deposited anything, they deposited entire amount mentioned in the letter issued to them and the photocopy of the deposit made by them is on record as Annexure-12 to the writ petition. In paragraph 34 of the writ petition, it has been categorically stated as under:

That it is specifically stated here that all the petitioners have deposited entire amount and interest as mentioned in the letters dated 13.12.2007 issued to the petitioners within the stipulated period from the date of receiving of the aforesaid letters. It is further stated here that no amount is due against the petitioners regarding the E.W.S. Quarters allotted by the respondents."

4. The respondent authority issued fresh notices to the petitioners on different dates (collectively filed as annexure-14 to the writ petition). It has been mentioned therein the amount due against them and for the said purpose they have been asked to take benefit of O.T.S. and to deposit Rs. 200/- for availing the said benefit of O.T.S.

5. Alleging that they have already deposited the entire amount due as per notice/letter dated 13.12.2007 issued to them in pursuance of the earlier order dated

17.9.2007, the instant writ petition was preferred. A Division bench of this Court vide order dated 11.8.2009 while calling for a counter-affidavit passed the following order:

"Sri Sanjay Singh Jatav has accepted notice on respondent No. 2.

It is stated by the petitioners that immediately after judgment dated 17.9.2009 by which this Court directed that the petitioners have to pay interest treating the petitioners to be defaulters from the very beginning, the petitioners had immediately deposited the amounts due against them. Fresh notices were issued on 13.12.2007 working out the balance of payment without adjusting the amount deposited on 1.10.2007 (all other petitioners also deposited same amounts in October 2007).

It is stated that the petitioners made good the shortfall in December 2007. The respondents however have not adjusted the amounts deposited by them in October 2007 and have given fresh notice for depositing the entire amount all over again.

Learned counsel for the Kanpur Development Authority will seek instructions and give the calculation after adjusting the payments of each of the petitioners, in tabular form.

List on 26.8.2009.

As an interim measure, we provide that until 26.8.2009, no coercive action would be taken against the petitioners."

6. Even though the case has been called out in the revised list but no one has appeared on behalf of the Kanpur Development Authority though the name of S/ Sri Sanjay Singh Jatav, Shiv Nath Singh and Vivek Varma is shown in the cause list.

7. Counter-affidavit of respondent No. 2 filed through Sri Sanjay Singh Jatav is on record, which has been perused by us.

8. At the outset, it may be mentioned that though a counter-affidavit has been filed by the respondent No. 2 but as desired by the Court vide order dated 11.8.2009 to give calculation after adjusting the payment of each of the petitioners in tabular form has not been provided. The counter-affidavit is also very sketchy and there is no specific denial of the allegation made in the writ petition that entire outstanding amount as shown in the letter dated 13.12.2007 issued by the respondent in respect of the outstanding dues against the petitioners stands deposited by them. In paragraph 31, 32 & 33, specific averments have been made that when no statement of account was furnished till the month of September, 2007, some of the petitioners have deposited some amount against their dues in the month of October, 2007 on different dates and thereafter, the respondents have issued statement of account vide letter dated 13.12.2007 to all the petitioners mentioning the amount due against them and

required them to make payment within 30 days from the date of receipt of the letter. A categorical averment has been made in paragraph 33 that thereafter all the petitioners have deposited entire balance amount mentioned in the letter dated 13.12.2007 on different dates within stipulated time. The reply to the said paragraph of the writ petition in the counter-affidavit is reproduced hereunder:

"28. That the contents of paragraph No. 31 of the writ petition, refers deposit of part of cost price of the flats by some of the petitioners on different dates and is correct and is admitted but this will not serve the desired purpose.

29. That the contents of paragraph No. 32 of the writ petition, issuance of statement of account to allottees/petitioners on 13.12.2007 by the respondents is mentioned and is admitted being the matter of record.

30. That the contents of paragraph No. 33 and 34 are not correct and it is denied that the petitioners have deposited their balance/entire amount as mentioned in the letter dated 13.12.2007 within the stipulated period. As such, there paragraphs are not admitted."

9. It is to be taken note of that though paragraph 30 of the counter-affidavit to the reply of the averments made in paragraphs 33 & 34 of the writ petition with respect to entire demand having been deposited is denied but the respondent authority has failed to deny that the deposit alleged by the petitioners has been made. It has also failed to specify in the counter-affidavit the outstanding balance against the petitioners. Specific case set up by the petitioners is that when the statement of account was not furnished some of the petitioners deposited certain amount on different dates in October, 2007 and after notice dated 13.12.2007 entire amount has been deposited by all the petitioners of course after making adjustment by those petitioners who had deposited some amount in October, 2007 and for this reasons, the Court vide order dated 11.8.2009 required the Kanpur Development Authority to give calculation of outstanding in respect of each of the petitioners after adjusting the payment in a tabular form. Despite specific directions, the respondent has not come up giving calculation much less in a tabular form. Specific averments made in the writ petition regarding entire payment has been made in response to the notice and there was no outstanding dues does not stand categorically denied in the counter-affidavit nor any material has been produced to demonstrate any outstanding balance against any of the petitioners.

10. In the facts and circumstances, respondent authority since has failed to bring on record the details of outstanding balance against the petitioners though specifically required to do so vide order dated 11.8.2009, we are left with no option but to believe the averments made by the petitioners in the writ petition that all outstanding dues against them was deposited, the receipts whereof are on the record of the case as annexure 10 & 12 to the writ petition.

11. From a perusal of the counter-affidavit filed on behalf of respondent No. 2, we have not been able to find out any justifiable ground on the part of the

respondent authority to have issued impugned notice to the petitioners requiring them to deposit the amount calculated under One Time Settlement Scheme.

12. In view of the aforesaid facts and discussions, the impugned notices dated 9.4.2009, 25.4.2009, 26.5.2009 and 25.6.2009 (Annexure-14 to the writ petition) are not liable to be sustained and are hereby quashed.

13. Writ Petition stands allowed. A writ of mandamus is issued to the respondent Development Authority to execute sale-deed/lease deed in favour of the petitioners in accordance with law after following the formalities and the prescribed procedure within a period of two months from the date of production of a certified copy of this order before it.

However, there shall be no order as to costs.