

(2007) 11 AHC CK 0106
In the Allahabad High Court
Case No : Writ Petition No.5129 of 1988

Urmila Arora

APPELLANT

Vs

U.P.Avas Evam Vikas Parishad, Lucknow and Others

RESPONDENT

Date of Decision : 14-11-2007

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2007) 11 AHC CK 0106

Hon'ble Judges : H.L.Gokhale, CJ and Devi Prasad Singh, J

Final Decision : Allowed

Judgement

H.L. Gokhale, CJ.

1. Heard Ms. Nandita Bharti, learned counsel for the petitioner and Mr. Mahesh Chandra, learned Advocate, who appears for the respondents corporation.

2. The writ petition is filed by a resident of Bareilly. She had applied for allotment of a house in a Housing Scheme, which was floated by Respondent No.1 U.P. Avas Evam Vikas Parishad. The Scheme was floated in September, 1985. There were houses of different types under that Scheme. The writ petitioner had opted for house, which was classified as BD1 and the cost of the house was Rs.1.69 lacs. The petitioner deposited the initial amount of Rs.17,000/ along with the application on 20.9.1985. According to the petitioner, number of houses to be constructed was 13 and there were 23 claimants. Subsequently, a lottery was drawn and the petitioner was successful in that lottery, and she was given Serial No.6 on 8.1.1986. The petitioner paid remaining amount in equal installments of Rs.38,000/. As per the Scheme, the cost of the land was not included in this construction cost. The Scheme was based on Selffinancing and BD1 was higher income group.

3. Later on when the layout was prepared, it was found that the land available for each of the houses was about 182 Sq. meters extra. A letter was written to all the allottees by the respondents on 31.3.1986, calling upon them to make the

additional payments in the range of Rs.25,000/ to Rs.30,000/. It is the case of the petitioner that she conveyed her acceptance and, in fact, three of the installments were paid after this letter and the petitioner had recorded her willingness to pay this additional amount for the extra land.

4. It is the case of the petitioner that the respondents added two more houses in the Scheme. The case of the respondents is that those two houses were not new houses, but were the part of the initial Scheme. Subsequently, a lottery was drawn once again with respect to the actual allotment of particular houses to the successful allottees. A meeting was called for that purpose and it was adjourned from time to time. Ultimately, a meeting was called on 26.6.1988. That day was found to be on Sunday and, therefore, it was preponed to 25.6.1988. The case of the respondents is that on the earlier date itself everybody was intimated that the meeting will be held on 25.6.1988 and the signatures of all those present were taken. The further case of the respondents is that the petitioner had also signed on that notesheet. As against this case of the respondents, the case of the petitioner is that although she had signed the note sheet of the earlier meeting, at a later stage she received a specific letter that the meeting will be held on 26.6.1988. She, therefore, went on 26.6.1988 and not on 25.6.1988. She learnt on the subsequent day that the meeting had been held on 25.6.1988 and the allotments have been finalized. She learnt that she has been allotted one out of the two houses, which according to her, were houses added later on in that Scheme. The case of the respondents, on that other hand, is that those two houses are of the part of the original Scheme.

5. The grievance of the petitioner is that the 13 houses of the Self Finance Scheme are in a different part of a developed area, and the two houses, which according to her are subsequently added, are in another part of the development scheme. Ms. Bharati, learned counsel for the petitioner, has shown us the plan, and it is clear that as far as two houses, being House No.14 and No.15 are concerned, they are in an area where the adjoining houses are of Lower Income Group, or of the Weaker Sections. This was one of the reasons why the petitioner declined to shift in the house, which was sought to be allotted to her. She insisted on one of the houses of the original 13 houses to be allotted to her, which are in a better developed area and, therefore, she filed the present writ petition.

6. The second prayer of this writ petition is to direct the respondents to allot a residential house of BD1 Grade in the district of Bareilly to the petitioner. The respondents have filed their counter affidavit.

7. When the matter was first heard by a Division Bench on 19.7.1988, it directed an order of status quo. This order was subsequently modified on 12.12.1988 to the extent that out of the original 13 houses, possession over one house shall not be given to any one till the disposal of the writ petition. All other houses were to be allotted and possession be given to the respective allottees.

8. Now it appears that in view of this order, the respondents persuaded one of the initial 13 allottees to shift to one of the other two houses, being House No.14 and No.15.

9. Mr. Mahesh Chandra, learned counsel appearing for the respondents, is instructed by the Assistant Housing Commissioner from Bareilly, who is respondent No.2 as well as the Deputy Housing Commissioner, who is having his office at Lucknow. Both of them are present in Court. On their instructions, Sri Mahesh Chandra, states that it was way back, almost in the year 1989 itself, after this order dated 12.12.1988 that one of the houses fell vacant inasmuch as one of these initial 13 houses shifted to one of the two other houses, being Houses No.14 and No.15.

10. On a query from the Court, the Officers have informed that the person, who shifted, has not shifted under any protest, nor he has left any claim for the house, which was originally allotted to him. Thus, it is clear that from the year 1989 itself one out of these initial 13 houses is still lying vacant after the order was passed on 12.12.1988. It is rather strange and unfortunate that although there was no claimant for this house apart from the petitioner, this fact was neither brought to the notice of the petitioner nor informed to the Court.

11. Much later, in the year 2003, in pursuance to an order passed by this Court on 14.7.2003, the respondents wrote to the petitioner on 21.8.2003 that the house, which was lying vacant, could be allotted to her. This will however be subject to her making a payment of additional amount of Rs.10.54,280/ for the extra land of about 182 Sq. Meters. The petitioner was not in a position to pay this additional amount and, therefore, did not take possession.

12. Now when the matter has reached for final hearing, Ms. Bharati, learned counsel for the petitioner, submitted that it is unconscionable on the part of the respondents to demand this additional amount of Rs.10,54,280/. She submits that right from the year 1989, there was no claimant for this house apart from the petitioner. Nothing prevented the respondents from informing the petitioner and the Court that the said house was so lying vacant and in which case she would have paid the amount, which was required at that point of time and would have taken possession.

13. Mr. Mahesh Chandra, on the other hand, submitted that the respondents are not alone responsible for this situation. The petitioner ought to have been vigilant. Since the offer was made in August, 2003, the respondents are calling upon the petitioner to make the payment at the rate, which was prevalent in August, 2003. This is in accordance with the Rules of the first respondentsCorporation.

14. We have noted the submission of both the learned counsel. From the narration of the facts, it is very clear that the officers of the first respondentsCorporation have acted in most bureaucratic manner. The order passed by the High Court on 12.12.1988 restrained them from allotting one

house to anybody else. In view of the fact that one of the allottees had shifted, there was no claimant other than the petitioner for that house. In all fairness, the respondents ought to have brought it to the notice of the petitioner and to the Court that since there is no claimant for this house, this house be allotted to the petitioner. Instead of doing that, they waited until the year 2003, when they wrote that if she wanted that house, she could get it by paying an additional amount of Rs.10,54,280/.

15. The officers of a public body are expected to act in a fair, reasonable and human manner. That flows from the mandate of Article 14 of the Constitution of India. This is a case where the petitioner had deposited the entire amount for the house. There is much substance in her submission that she was being given a house in other part of the Scheme than what was originally contemplated. She is supported by the plan of the particular area. This being the position, she did not take possession of a house, which according to her was not in the area wherein she wanted to move in. Assuming that there was an error on her part in not remaining present when final allottees were considered on 25.6.1988, the callousness on the part of the respondents is very clear when they did not care to inform the petitioner as well as to the Court that there was no claimant for one house out of the 13 houses right from the year 1989. On the top of it, they are asking her to pay Rs.10,54,280/ only because the allotment is now sought to be done in July/August, 2003. The petitioner is certainly not responsible for this situation and the stand taken by the respondents just cannot be accepted.

16. For this reason, it is not possible to accept the plea of Mr. Mahesh Chandra, that the respondents are entitled to claim the price for added land as in August, 2003. The petitioner is entitled to get the house along with added land at the rate, which was prevalent when all others were allotted and given possession of their houses in the year 1989. She has already paid the amount for construction of the house. It is only the price for the added extra land, which is required to be paid. The respondents will calculate the appropriate amount as above and call upon the petitioner to make that payment.

17. Mr. Bharati, learned counsel appearing for the petitioner is instructed by the husband of the petitioner. On his instructions, she states that the petitioner is ready and willing to pay this additional amount as expected and paid by other allottees in the year 1988/89. The respondents will communicate this price to the petitioner within four weeks from the date of this order. It will be open to the respondents to claim other appropriate charges and they will communicate the same to the petitioner within the aforesaid period.

18. Inasmuch as this house is lying vacant right from the time it was constructed in the year 1988/89, it is possible that it must not be in a proper condition as of now. The respondents will bring it to the proper condition. It will be their responsibility and then the petitioner will take possession thereof. We may clarify that there are two houses in that block. They are numbered as B22/2 and B22/3. The petitioner is allotted House No.B22/3. The respondents will see to it that the

house is brought to the same position, as is the other adjoining house, being House No.B22/2. This will be as per the original specification. The respondents will put the house in order within two months after receiving the amount from the petitioner.

19. In view of these directions, which are given above, we refrain from imposing any cost. The writ petition is allowed in the aforesaid terms.

(Petition allowed)