
(2015) 02 AHC CK 0018

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 2002 of 2015

Vineet Sachdeva

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 03-02-2015

Acts Referred:

Uttar Pradesh Industrial Area Development Act, 1976 — Section 12

Uttar Pradesh Urban Planning and Development Act, 1973 — Section 41(3)

Citation : (2015) 2 ADJ 698 : (2015) 4 ALJ 62 : (2015) 109 ALR 594 : (2015) 2 AWC 1734 : (2015) 127 RD 515 : (2015) 2 UPLBEC 1008

Hon'ble Judges : Harsh Kumar, J.;Arun Tandon, J.

Bench : Division Bench

Advocate : T.P. Singh and Siddharth Nandan, for the Appellant; Suresh Singh, Advocates for the Respondent

Final Decision : Allowed

Judgement

1. Heard Sri T.P. Singh, learned Senior Counsel assisted by Sri Siddharth Nandan, learned Advocate for the petitioner and Sri Suresh Singh, learned counsel for the respondents. The writ has been filed for quashing of the impugned orders dated 12.11.2014 and 2.11.2012 contained in Annexure Nos. 1 and 8 respectively.

2. The controversy raised by means of present writ petition revolves around interpretation to be placed upon Clause 10(ii) and (iii) of Terms and Conditions of the Residential Plot Scheme 2009(1) of YEIDA.

3. The copy of the brochure titled "Terms and Conditions of the Residential Plot Schemes 2009(1) of YEIDA" in English and Hindi has been filed as Annexure-2 to the writ petition. Clause 10A in English at page 30 and Clause 10 d in Hindi at page 37 of the writ petition reads as under:

"10. ELIGIBILITY TO APPLY:

A. General Category:

(i) The applicant must be competent to contract and shall have attained the age of majority.

(ii) All Indians/Non-Resident Indians who are neither in any way prohibited by the Government of India nor by U.P. Government under any specific rules to purchase any immovable property in U.P., shall be eligible to apply. Persons eligible as above can apply under any category only for one plot.

(iii) No person shall be eligible to get allotment for more than one plot in this scheme."

4. The relevant facts in short leading to this petition are as follows:

Yamuna Expressway Development Authority published an advertisement for settlement of Residential Plot Scheme-2009 wherein prospective candidates were called upon to apply for allotment of plots falling within the territorial jurisdiction of the said development authority. These plots were categorized in five categories i.e. A, B, C, D, and E. The petitioner before this Court submitted two applications for plots one each falling under the categories "D" and "E". After draw of lots, the petitioner was found to have been selected for allotment of two plots one falling in categories "D" and the other in category "E". The petitioner on being made aware that he has been selected for two plots, himself surrendered the allotment, which was made in respect of plot falling under category "E", as this allotment was subsequent in point of time, meaning thereby he expressed his willingness for keeping the plot first allotted, falling under the category "D". This according to the petitioner was done in conformity with clause 10(iii) as quoted above. 5. However, under the order impugned dated 2.11.2012 the authority has proceeded to cancel the allotment made in respect of plot falling under category "D" also.

6. Feeling aggrieved, the petitioner approached this Court by means of Writ Petition No. 9577 of 2013, which was disposed of requiring the petitioner to approach the State Government under Section 12 of U.P. Industrial Area Development Act, 1976 read with Section 41(3) of the Urban Planning and Development Act, 1973.

7. The State Government under the order impugned dated 12.11.2014, has maintained the decision of the Development Authority. Both, the State as well as Development Authority have recorded a finding that in view of clause 10(ii) the applicant could have submitted only one application in respect of one plot only in any of the five categories. Since the petitioner had submitted two applications, he has rightly been held disqualified from the zone of consideration for allotment.

8. Sri T.P. Singh, learned Senior Counsel assisted by Sri Siddharth Nandan, learned counsel for the petitioner points out that on simple reading of Clause 10 (ii), it is apparent that the applicant was entitled to make applications in respect of one plot falling in each of the five categories and it is on this reading of the clause that the petitioner had submitted two applications, one for plot falling

under category "D" and the other falling under category "E". The petitioner was intimated about his selection in respect of plot falling under category "D" prior in point of time. In view of provisions of Clause 10(iii) quoted above, on being informed of his selection for the second plot falling in category "E", he immediately surrendered the same.

9. Counsel for the petitioner submits that the impugned orders passed by respondents are based on misreading of the said clause 10(ii) and, being bad in law are liable to be quashed.

10. Sri Suresh Singh, learned counsel for the respondents, on the contrary supports the order of the development authority as well as State Government, and submits that development authority has restricted the making of more than one application by any person for one plot only in respect of any of the five categories. This is what he interprets from the reading of the clause 10(d)(ii). It is the case of respondents that the words makes it clear that in respect of all the categories, only one application could have been made for allotment of one plot.

11. Heard counsel for the parties and examined the records.

12. We are of the considered opinion that there is substance in the submissions made by the counsel for the petitioner. From a simple reading of Clause 10(A)(ii) or 10(d)(ii) of the Brochure, we find that a person was entitled to make more than one application under the scheme, i.e. one application each in respect of one plot of each category. Meaning thereby that a person was entitled to submit as many as five applications at a time one each for a plot in each of the five different categories. But he would be entitled for allotment of one plot in any of the categories under the scheme.

13. In fact under clause 10(A)(iii) or 10(d)(iii) lead to such interpretation, inasmuch as if clause (ii) permitted making of one application by a person only that there would have been no need to make a provision under clause (iii) disqualifying a person from allotment of more than one plot in the scheme. The petitioner was therefore correct and did not commit any error/wrong, in submitting two applications, one for plot falling under category "D" and the other for the plot falling under category "E". We may record that the petitioner was more than fair in surrendering the allotment of plot offered to him falling under the category "E", as under clause 10(A)(iii) a person could be allotted only one plot under the entire scheme. The petitioner has decided to retain the allotment made in his favour in respect of plot falling under category "D" and surrendered plot allotted under category "E". There is no justification to deprive him from the plots allotted in his favour in category "D".

14. For the said reasons, the order passed by the Development authority and that passed by the State Government are held to be bad.

15. In view of discussions made above, the allotment of the plot in favour of the petitioner falling under the category "D" is fully justified under the scheme and is

restored subject to the fulfillment of conditions of allotment by the petitioner, in accordance with the allotment order.

16. We may clarify that if any person has been awarded two plots under the same scheme, may be in different categories, the development authority would be justified in canceling the allotment of one of the two plots, which was offered later in point of time irrespective of the fact that such allottee, has transferred the second plot in favour, to some third person.

17. On simple reading of clause 10(iii), it is clear that a person upon allotment of a particular plot within the scheme in any of the five categories, stands disqualified for allotment of any other plots, subsequently in same or any other category. The Development authority will be justified in proceeding for cancellation of later plot in accordance with law.

18. The writ petition is allowed subject to the observation made. We further require the development authority to notify the revised schedule in the matter of payment of installment etc. to the petitioner within two weeks of the receipt of the certified copy of this order.