
(2000) 02 AHC CK 0093

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition Nos. 7053 and 6232 of 2000

Zaqir Hussain

APPELLANT

Vs

Collector Allahabad and Others

RESPONDENT

Date of Decision : 11-02-2000

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2000) 02 AHC CK 0093

Hon'ble Judges : Palok Basu, J and S.K.Jain, J

Final Decision : Disposed Of

Judgement

1. These two writ petitions one of Zaqir Hussain, and the other Mohd. Aslam Ansari raised common questions and have been heard together.

2. Sri Mohit Kumar for Mohd. Aslam Ansari and Sri Vimlesh Srivastava for Zaqir Hussain have been heard at substantial length and both the supplementary affidavits have been examined. Sri U.K. Uniyal has appeared for the Allahabad Development Authority and the Vice Chairman, Sri Vishnu Pratap has appeared for the Collector, Allahabad who is the recovering official.

3. The petitioners are the allottees of different two shops in Nehru Commercial Complex in the locality known as Chowk Ghanta Ghar Allahabad, needless to say that this is the heart of the city and people clamour to get some shop here and there in that locality. From the pleadings made by the petitioners in the writ petition it appears that as per the original terms stated in the agreement the petitioners were required to pay instalments regularly every three months after paying a lump sum amount on allotment of respective shop to them. Both the petitioners have defaulted for the instalments fixed, there is no dispute on this aspect.

4. Recovery proceedings have started because of the aforesaid default and the amount claimed is supposed to include the upto date instalments, at the penal interest thereon. There is some dispute whether the instalments of Rs.

30,030.00 fixed in the case of Zaqir Hussain and Rs. 33,565 fixed in the case of Mohd. Aslam Ansari included the interest of the instalments added on compound basis (sic) the instalment amounts so fixed. The Court is proceeding on the basis (sic) the aforesaid two instalment amounts included the (sic) interest payable and therefore, the (sic).

5. Grievances have been raised in these petitions also by the petitioners with some of the contractual obligation which may be performed by the Allahabad Development Authority are still wanting.

6. Petitioners Counsel said that due to sudden financial stringency the petitioners failed to pay the amount even though both the petitioners have paid regular instalments for quite long period and in the case of Zaqir Hussain the default began after June 1998 and in the case of Mohd. Aslam Ansari the default began in 1994.

7. Sri U.K Uniyal, drew the attention of the Court to the earlier orders which were passed by this Court asking the Allahabad Development Authority to dispose of the representation on getting payments from the petitioners. He has said that the petitioners have not abide by the condition set out in that order. This may be so.

8. Nonetheless Sri Vimlesh Srivastava and Sri Mohit Kumar have stated that the petitioners Zaqir Hussain and Mohd. Aslam Ansari are prepared to pay Rs. 60,000/ in cash or in Bank draft with the Allahabad Development Authority on or before 29/2/2000 and then go on to pay (sic) a sum of Rs. 30,000/" on or before 24th March, 24th April and 24th May, 2000. They further said that in the event of honouring these payments the penal interest should not be charged.

9. The grievance was also made that upto date instalments paid by both the petitioners have not been adjusted and that may be one of the reasons and that is (sic) alleged (sic) amounts are indicated in the recovery certificates of a fact, Sri U.K. Uniyal has disputed this argument but has said that the representation of the petitioners shall be decided after the payments are made and this Court's order shall be abided by the Allahabad Development Authority in time.

10. In the recovery proceedings admittedly the Collector has proceeded with the matter and the shops of the petitioners have been attached, it was stated by the learned Counsel for the petitioners that locks have been put by Tehsildar on the two respective shops of the petitioners. It is in the fitness of the things that in case the petitioners deposit the lump sum amount, they must be permitted to get the possession of the shop so that they may go on to make payments mentioned above enabling the representation to be decided and bring to an end the litigation (sic) the allotment of the shops.

11. In view of the aforesaid discussions these two writ petitions are finally disposed of with the following directions:

(1) Recovery proceeding against the petitioner Zaqir Hussain and Mohd. Aslam

Ansari shall remain stayed till 29.2.2000 within which they will deposit Rs. 60,000/ in cash or by Bank Draft in the treasury of Allahabad Development Authority. The Allahabad Development Authority and the Collector, Allahabad will see that the petitioners get possession of the two shops within 24 hours of the deposits.

(2) In case the aforesaid amount is paid, the recovery proceeding shall remain stayed till 25.2.2000 to enable the petitioners to make payment of Rs. 30,000/ in cash or Bank Draft with the Allahabad Development Authority on or before 25.3.2000. If that deposit is made, the recovery proceeding shall again remain stayed till 25.4.2000 to enable the petitioners to deposit another amount of Rs. 30,000/ on or before 25.4.2000 and if that deposit is made the recovery proceeding shall remain stayed till June 30,2000 to enable the petitioners to make a representation before the Vice Chairman, Allahabad Development Authority before 30.4.2000. In the representation the petitioners may raise such question of facts and law as advised and may also claim waiver of levying penal interest on the petitioners. Normally, if the aforesaid payments are made it will be open to the Allahabad Development Authority to waive the penal interest of the petitioners. The order to be passed on the representation of the petitioners shall be delivered before 21.6.2000 and whatever further amount is payable by the petitioners in each case shall be directed to be paid in three equal monthly instalments thereafter that is on or before 30th August, 30th September and 30th October, 2000. If the payments are made by the petitioners, the Allahabad Development Authority will recall the recovery certificate.

(3) The failure of the deposits any of the amount would render automatic dismissal, of this petition, this order shall become non existent and the recovery proceeding shall proceed as on date.

12. Both the petitioners are thus disposed of finally.

13. Copy of the order may be furnished to the learned Counsel for the parties on payment of usual charges within seven days. Petition disposed of.