

Smt. Sarada Devi, Cuttack Vs. Cuttack Development Authority

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Court : Orissa

Decided On : Sep-27-2013

Appellant : Smt. Sarada Devi, Cuttack

Respondent : Cuttack Development Authority

Judgement :

HIGH COURT OF ORISSA: CUTTACK W.P.(C) No.2456 of 2004 In the matter of an application under Articles 226 and 227 of the Constitution of India. -----Smt. Sarada Devi, aged about 62 years, W/o. Late Ramniwas Chetani, C/o. Shree Bhartya Bihar, Near Pravat Cinema Hall, At: Buxibazar, Town/Dist: Cuttack Petitioner Opp. Party -VersusCuttack Development Authority For Petitioner : M/s. Bidyadhar Mishra, K. Mishra & G. Agarwal For Opp. Party : Mr. Dayananda Mohapatra [For Cuttack Development Authority]. ----- P R E S E N T: THE HONOURABLE SHRI JUSTICE I. MAHANTY AND THE HONOURABLE SHRI JUSTICE B.N.MAHAPATRA Date of Judgment: 27.09.2013 B.N. Mahapatra, J.This writ petition has been filed with a prayer for issuance of a writ in the nature of mandamus directing opposite partyCuttack Development Authority to issue final allotment order to the petitioner and handover possession of Plot No.83-C/464 in Sector-8, Bidanasi Project Area allotted in her favour within a specified time.

2. Petitioners case in a nut-shell is that she is a landless widow. She had applied for a plot on 18.05.1991 in Abhinab Bidanasi 2 Project Area, Cuttack bearing Regd. No.C-952 and deposited the initial deposit of Rs.20,000/-. The petitioner was intimated by the CDA vide letter No.16777/CDA dated 18.08.1995 (Annexure-

1) that she had been provisionally selected for allotment of C category plot in Sector 8/Sector-11 in Bidanasi Project Area on payment of sixteen quarterly instalments basis. Therefore, the petitioner was asked to submit her willingness by 31.10.1995 accepting the allotment along with first instalment of Rs.4,740/-. Accordingly, the petitioner submitted her willingness and deposited the first instalment of Rs.4740/- towards cost of the plot allotted in her favour. The petitioner also deposited all the subsequent instalments totaling to Rs.95,840/- in time with the CDA towards entire cost of the plot. The CDA by its letter No.17827/CDA dated 23.10.1999 (Annexure-2) intimated the petitioner that the escalated cost of C category plot has been fixed to Rs.1,44,056/- and asked the petitioner to pay the differential amount of Rs.48,216/[Rs.1,44,056/- - Rs.95,840/], along with interest of Rs.2,200/-, thus the total amount of Rs.50,416/- within three months from the date of issue of letter. As per the selection held on 03.12.1999 the plot bearing No.83-C/464 in Sector-8 was allotted in favour of the petitioner and after selection, the CDA by its letter No.3153 dated 04.02.2000 (Annexure-3) intimated the petitioner to pay Rs.50,416/- along with the additional cost of Rs.4,322/- towards situational advantage. Since the husband of the petitioner was suffering from cancer which was detected in the month of 3 February-March, 1999 and ultimately the husband of the petitioner expired on 22.06.1999, the petitioner could not deposit the amount as directed vide letter dated 23.10.1999 (Annexure-2) and also could not deposit Rs.4,322/- as required under Annexure-3. With much difficulty, the petitioner deposited Rs.50,000/- on 15.05.2002 before the CDA along with an application indicating therein to allow her two months time to deposit the balance amount and requested the CDA to intimate her about the balance amount to be paid. The said letter did not yield any result. However, the petitioner to show her bona fide, deposited another Rs.50,000/- on 04.02.2003. Since the opposite party did not take any step for issuance of final allotment order and handing over possession of the plot, the petitioner made an inquiry in the office of the CDA and came to know that the CDA with ulterior and mala fide intention was trying to allot the said plot to another person on the influence of the Minister canceling her allotment. Hence, the present writ petition.

3. Mr. Agarwal, learned counsel appearing for the petitioner submitted that Bidanasi Project was started with an aim to allot a piece of land to the poor

landless person having no land within the town, but the CDA in violation of the basic aim for which such project was taken up, illegally to harass a widow did No.hand over possession of the plot to her though she has paid the entire amount of the land. The attempt of the CDA to cancel the petitioners plot and allot the said plot to another person on the influence of the Minister is illegal and mala fide. As 4 husband of the petitioner was suffering from cancer during the relevant time and ultimately expired on 22.06.1999 and the petitioner spent a lot of money for his treatment, she could No.pay the amount as directed vide letters dated 23.10.1999 and 04.02.2000 towards differential cost and situational advantage. The demand of interest of Rs.2,200/- by CDA is illegal and without any basis as the petitioner has No.defaulted in making payment of instalment and has paid all the instalments in time. The petitioner is also No.liable to pay the escalation cost because of the delay on the part of the CDA in No.handing over the plot in time.

4. Mr. D. Mohapatra, learned counsel appearing for opposite party-CDA submitted that the petitioner having failed to deposit the escalation amount even after repeated reminders issued including reminder No.18099/CDA dated 16.08.2001, the CDA has cancelled the plot with intimation to the petitioner vide letter dated 16.04.2002. Thereafter, the petitioner requested the CDA vide letter dated 06.05.2002 for revocation of the cancellation of plot and to allow her to deposit the balance amount within 10 days which she failed to do. Without any permission of the CDA, petitioner deposited Rs.50,000/- on 15.05.2002 with further request to allow her two months time to deposit the balance amount. The CDA in its letter No.3357 dated 01.02.2003 informed the petitioner that her request for revocation of cancellation order No.7848 dated 16.04.2002 has No.been considered by the authority and she was requested to submit the original money receipt or deposit slip within one 5 month of issue of the order to enable CDA to refund the amount. The petitioner thereafter suo motu deposited further amount of Rs.50,000/in the account of the CDA on 04.02.2003. Mr. Mohapatra submitted that the plot of the petitioner has been cancelled and any deposit thereafter suo motu will No.entitle the petitioner for revocation of the cancellation and accordingly her prayer was rejected. Concluding his argument, Mr. Mohapatra prayed for dismissal of the writ petition.

5. On the rival contentions of the parties, the following questions fall for consideration by this Court: (i) Whether any right accrues in favour of the petitioner in view of the communication made to her vide letter No.16777/CDA dated 18.08.1995 that she has been provisionally selected for allotment of C category of plot in Sector-8/Sector-11 in Bidanisi Project Area requiring her to make payment of full consideration money of Rs.95,840/- including initial deposit of Rs.20,000/- in 16 quarterly instalments and on payment of full consideration money in time in respect of said plot?. (ii) Whether the opposite party-CDA is justified in demanding Rs.78,077/- as outstanding against the petitioner as on 31.10.2001 as reveals from letter of CDA dated 16.04.2002 under Annexure-A/1 ?. (iii) Whether in the facts and circumstances of the case, the CDA is justified in canceling the plot bearing No.83-C/464 allotted in favour of the petitioner in Sector-8 vide intimation order No.7848 dated 16.04.2002 ?. (iv) Whether opposite party-C.D.A. is justified in issuing letter No.3357/C.D.A. dated 01.02.2003 (Annexure- B/1) rejecting the petitioners request for revocation of cancellation order No.7848 dated 16.04.2002 (Annexure-A/1). (v) 6. What order ?. The undisputed facts are as follows: The petitioner in her application dated 18.05.1991 applied for allotment of C category plot along with deposit of Rs.20,000/- as initial deposit and Rs.100/- for processing fees. The petitioner vide letter No.16777/CDA dated 18.08.1995 (Annexure-1) was intimated that she has been provisionally selected for allotment of C category plot in Sector8/Sector-11 in Bidanasi Project Area on payment of 16 quarterly instalments basis. In the said letter she was further requested to submit her willingness on 31.10.1995 accepting the allotment along with first installment of Rs. 4,740/-. In the said letter a detailed chart was given indicating the initial deposit of Rs.20,000/- already made and to make further deposit in 16 quarterly instalments, each installment at the rate of Rs.4,740/- totaling to Rs.95,840/- starting from 31.10.1995 to 31.07.1999. Accordingly, the petitioner submitted her willingness and deposited first installment of Rs.4,740/- towards cost of the plot allotted in her favour. The husband of the petitioner died on 22.06.1999 as evident from the death certificate dated 04.01.2000 (Annexure-4) issued under Section 17 of the Registration of Births and Deaths Act, 1969. Vide letter No.17827/CDA dated 23.10.1999 (Annexure-2), the CDA intimated the petitioner that she has already paid Rs.95,840/- towards cost for allotment of C category plot in Sector-8

of Bidanasi Project Area against the provisional 7 cost of the plot as per communication made vide letter No.16777/CDA dated 18.08.1995 (Annexurer-1). In the said letter dated 23.10.1999 under Annexure-2, the petitioner was requested to participate in person or through authorized representatives for selection of plot on 05.11.1999 at 11 A.M. in the office premises of CDA, Arunodaya Market, Cuttack. It was further intimated to the petitioner that in the meanwhile the final cost of the project had been worked out and there had been escalation in the final cost of the plot and the escalation cost of C category plot had been fixed for Rs.1,44,056/-. Therefore, the petitioner was requested to pay differential cost of Rs.48,216/- (Rs.1,44,056/- - Rs.95,840/-) in accordance with the provisions at paragraph 2.2 of the brochure No.1/91 along with interest of Rs.2,200/- on defaulted amount of payment of instalment totaling to Rs.50,416/-. The date for selection of plots was postponed from 05.11.1999 to 03.12.1999. As per the selection held on 03.12.1999, the plot bearing No.83-C/464 in Sector-8 was allotted in favour of the petitioner. Vide letter No.3153/CDA dated 04.02.2000 (Annexure-3), the petitioner was asked to pay further amount of Rs.4,322/- towards situational advantage.

7. Letter No.7848 dated 16.04.2002 under Annexure-A/1 to the preliminary counter filed by the CDA shows that a sum of Rs.78,777/- was outstanding against the petitioner as on 31.10.2001. This letter further reveals that the show cause reply of the petitioner was found to be unsatisfactory and did No.merit consideration. The provisional 8 allotment order issued in favour of the petitioner was cancelled with forfeiture of 25% of the initial deposit amounting to Rs.5,000/- only as per the terms of the allotment. The registration No.34C0952-38 and plot No.83C/464 were also cancelled. Petitioner paid Rs.50,000/- on 15.05.2002 and another Rs.50,000/- on dated 04.02.2003. Letter No.3357/CDA dated 01.02.2003 (Annexure-B/1) reveals that the request of the petitioner for revocation of cancellation Order No.7848 dated 16.04.2002 has been rejected. Annexure-C/1 attached to the preliminary counter filed by CDA shows that the petitioner requested the ViceChairman, CDA, Cuttack to allow her to deposit the balance dues as she has no other plot in Cuttack town. Thereafter, the present writ petition is filed and this Court vide order dated 23.09.2004 passed the following interim order in W.P.(C) No.2456 of 2004 and Misc. Case No.2577 of 2004: 2. 23.9.2004 .In the

meanwhile, Plot No.83C/464 in Sector-8, Bidanasi Project Area will No.be allotted to any other person if No.already allotted. If the said plot has been allotted in favour of any third party, possession of the said plot will No.be delivered to such person, if possession has No.been handed over already.

8. On the above backdrop, we have to deal with the questions referred to supra.

9. Question No.(i) is whether any right accrues in favour of the petitioner in respect of Plot No.83-C/464 in Sector-8 , Bidanasi Project Area. 9 As admitted by both the parties, the initial cost of C category plot allotted in favour of the petitioner was fixed at Rs.95,840/and the petitioner was directed to pay the said cost of the plot in 16 quarterly installment including Rs.20,000/- already paid towards initial deposit. Admittedly, the petitioner deposited the said amount within the stipulated period as reveals from letter No.17827/CDA dated 23.10.1999 of opposite party-BDA. The relevant portion of the said letter is extracted below: This is further to intimate you that you have already paid Rs.95,840-00 (Rupees Ninety five Thousand eight hundred forty) only towards the cost for allotment of a C category plot in Sector-8 of Bidanasi Project against the provisional cost of the plot Rs.95,840-00 communicated to you vide this office letter No.16777 dt. 18.8.95.

. Further as per the selection held on 03.12.1999, the plot bearing No.83C/464 was allotted in favour of the petitioner.

10. Law is well-settled that when the order of allotment is communicated to the person concerned, legal right is conferred upon the said person. The Honble Supreme Court in the case of Sethi Auto Service Station & Anr. Vs. Delhi Development Corporation & Ors., 2009(1) SCC 180 held as under:14. It is trite to state that notings in a departmental file do No.have the sanction of law to be an effective order. A noting by an officer is an expression of his viewpoint on the subject. It is no more than an opinion by an officer for internal use and consideration of the other officials of the department and for the benefit of the final decision-making 10 authority. Needless to add that internal notings are No.meant for outside exposure. Notings in the file culminate into an executable order, affecting the rights of the parties, only when it reaches the final decision-making authority in the department, gets his approval and the final order is communicated

to the person concerned.

22. From the afore-extracted notings of the Commissioner and the order of the Vice-Chairman, it is manifest that although there were several notings which recommended consideration of the appellants case for relocation but finally no official communication was addressed to or received by the appellants accepting their claim. After the recommendation of the Technical Committee, the entire matter was kept pending; in the meanwhile a new policy was formulated and the matter was considered afresh later in the year 2004, when the proposal was rejected by the Vice-Chairman, the final decisionmaking authority in the hierarchy. It is, thus, plain that though the proposals had the recommendations of the State Level Coordinator (Oil Industry) and the Technical Committee but these did No.ultimately fructify into an order or decision of DDA conferring any legal rights upon the appellants. Mere favourable recommendations at some level of the decision-making process, in our view, are of no consequence and shall No.bind DDA. We are, therefore, in complete agreement with the High Court that the notings in the file did No.confer any right upon the appellants as long as they remained as such. We do No.find any infirmity in the approach adopted by the learned Single Judge and affirmed by the Division Bench, warranting interference. (underlined for emphasis) (Also see Bachhittar Singh v. State of Punjab and another, AIR 1963 SC 395 11. In view of the above legal position and admitted facts, we are of the considered opinion that right accrues in favour of the petitioner to be allotted with C category plot bearing No.83C/464 in Sector-8, CDA, Bidanasi Project Area in view of the communication made to the petitioner vide letter No.16777/CDA dated 18.08.1995 that she has been provisionally selected for allotment of C category of plot in Sector

8. Sector-11 in Bidanisi Project Area requiring her to make payment of full consideration money of Rs.95,840/- including initial deposit of Rs.20,000/- in 16 quarterly instalments and on payment of full consideration money in time in respect of said plot.

12. Question No.(ii) is whether the opposite party-CDA is justified in demanding Rs.78,077/- as outstanding against the petitioner as on 31.10.2001 as revealed

from Annexure-A/1. To deal with question No.(ii), it is relevant to refer to letter No.No.17827/CDA dated 23.10.1999 in which the CDA requested the petitioner to pay the differential amount of Rs.48,216/-, i.e., escalation cost of the plot minus payment already made in accordance with the provisions as paragraphs 2.2 of brochure No.1/91 and interest of Rs.2,200/- on defaulted amount of payment of instalment totaling to an amount of Rs.50,416/- within three months from issue of this letter. Opposite party vide its letter No.7848 dated 16.04.2002 (Annexure-A/1) stated that a sum of Rs.78,777/- was outstanding against the petitioner as on 31.10.2001. Nothing is stated in the counter affidavit as to how within a period of two years, the outstanding of Rs.50,416/- enhanced to Rs.78,777/-, i.e., enhanced by more than 50%, which appears to be unreasonable. Therefore, doubt comes to the mind about efficacy of proper maintenance of accounts as well as care taken by CDA while raising demand against the allottees who are landless persons. This is a very sad state of affair

13. Question Nos.(iii) and (iv) being interlinked, they are dealt with together. Once a plot is allotted in favour of an applicant and he has paid the cost of the said land initially fixed within the time stipulated, right accrues in favour of the applicant to take delivery of the land and get the land transferred in his favour. After full payment of the cost of the land measuring 40 x 60 ft initially fixed, a plot bearing No.83C/464 in Sector-8, CDA, Bidanasi Project Area was earmarked for the petitioner and the petitioner was asked to pay further Rs.50,416/- towards escalation cost and interest for default payment. We may note here that so far charging of interest of Rs.2,200/- is concerned, the petitioner has denied the same on the ground that she has deposited all 16 instalments towards cost of the plot measuring 40 x 60 ft. without any default. This aspect is required to be examined by the CDA authorities.

14. Petitioners case is that due to untimely death of her husband as evident from the Certificate of Births and Deaths under Annexure-4, she was unable to pay the extra demand towards escalation of the cost and for locational advantage of the plot and interest in time. Whatever may be the reason, once the entire cost of the plot initially fixed has been paid, the said plot should No.have been cancelled for non-payment of some additional demand raised towards escalation cost etc. In

case of default, CDA may charge interest for default as it usually does. Instead of adopting the same, CDA has cancelled the provisional 13 allotment order allotting a plot in favour of the petitioner. CDA is No.justified to cancel the allotment of the plot in favour of the petitioner, who has already shown her bona fide by paying entire cost of the plot determined by the CDA within the stipulated time. The bona fides of the petitioner is further proved from payment of Rs.50,000/- on 15.05.2002 and another Rs.50,000/- on 04.02.2003. Of course, the same is paid after cancellation of the allotment of plot.

15. At this juncture, it will be beneficial to refer to the judgment of the Honble Supreme Court in the case of Teri Oat Estates (P) Ltd. v. UT, Chandigarh, (2004) 2 SCC 130, wherein it has been held: 22. One of the questions which, therefore, must always be posed by the Estate Officer, while initiating a proceeding under Section 8-A of the Act, is as to whether the drastic power of resumption and forfeiture has been taken recourse to as a last resort. The order of the Estate Officer dated 13-8-1992, does No.say so. No reason has also been assigned in the said order.

24. It is, therefore, No.a case where the court will have to take one stand or the other in the light of the statutory provisions. The question as to whether the extreme power of resumption and forfeiture has rightly been applied or No.will depend upon the factual matrix obtaining in each case. Each case may, therefore, have to be viewed separately and no hard-and-fast rule can be laid down therefor. In a case of this nature, therefore, the action of the Estate Officer and other statutory authorities having regard to the factual matrix obtaining in each case must be viewed from the angle as to whether the same attracts the wrath of Article 14 of the Constitution of India or not.

16. In any event, for the reasons stated above, we are of the view that the CDA is No.justified in cancelling the plot on 16.04.2002 for non-payment of the additional cost of the plot, particularly, when the 14 original cost of the land has been fully paid within the stipulated period. The CDA is also No.justified in rejecting the petitioners request for revocation of cancellation order.

17. Law is well settled that every action of the State and its instrumentality should be fair, legitimate and above board and without any affection or aversion. (See Haji T.M. Hassan Rawther Vs. Kerala Finance Corporation, AIR 1988 SC 157; E.P. Royappa Vs. State of Tamil Nadu, AIR 1974 SC 555 and State of Andhra Pradesh & Anr., vs- Nalla Raja Reddy, AIR 1967 SC 1458).

18. Law is also well settled that the writ jurisdiction is discretionary in nature and must be exercised in furtherance of justice. The Court has to keep in mind that its order should not defeat the interest of justice. It should not permit an order to secure dishonest advantage or perpetuate an unjust gain or approve an order which has been passed in contravention of the statutory provisions. [See Champalal Binani Vs. CIT, West Bengal, AIR 1970 SC 645; K.D. Sharma Vs. Steel Authority of India Ltd. & Ors., (2008) 12 SCC 481.]. In Jamshed Hormusji Wadia v. Board of Trustees, Port of Mumbai & Anr., AIR 2004 S.C.1815, the apex Court observed that the Court is concerned with substantial justice and prevent to perpetuate grave injustice to parties and whenever the order is one which shocks the conscience of the Court or suffers on account of disregard to the form of legal process or violation of the principles of natural justice provided by the statutory provisions, the Court must interfere. The Court would never do injustice. It will not allow injustice being perpetuated just for the sake of upholding technicalities. In Ashutosh v. State of Rajasthan & Ors., AIR 2005 SC 3434, the apex Court held that substantial justice must be given preference over technicalities and Court must do justice at all costs and at the same time the Court should not forget that justice should be tempered with mercy.

19. It is submitted by Mr. Mohapatra that the plot in question has not been allotted to any other person.

20. In taking into consideration the totality of the facts, we pass the following order:
(i) Till letter dated 23.10.1999 was issued asking the petitioner to pay Rs.50,416/-, there was no outstanding against her. Thereafter, the petitioner has also paid Rs.50,000/- on 15.05.2002 and further Rs.50,000/- on 04.02.2003. Therefore, we direct opposite party CDA to calculate the interest at the same rate for which the petitioner is defaulted and also on Rs.1,00,000/- already paid by the petitioner as

stated above. The same should be calculated and intimated to the petitioner within a period of two weeks from today. It is open to the petitioner to raise objection if any, on the calculation of interest that would be made by the CDA within a period of two weeks from the date of receiving communication from CDA. 16 If any amount is found to be paid by the petitioner to the opposite party-CDA or vice-versa, the same shall be paid within a period of two weeks from the date of final determination of dues. The plot shall be transferred in favour of the petitioner immediately after settlement of dues but No.later than four weeks from the date of settlement of dues.

21. With the aforesaid observations and directions, the writ petition is allowed. No order as to costs. B.N.Mahapatra,J.I. Mahanty,J.I agree. ..
I.Mahanty,J.Orissa High Court, Cuttack The 27th September, 2013/ss/ssd/skj

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