

Ramesh Kumar Shukla Vs. Allahabad Development Authority and Others

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Court : Allahabad

Decided On : Feb-21-2000

Reported in : 2000(2)AWC1555; (2000)2UPLBEC1089

Judge : D.S. Sinha and; Ratnakar Dash, JJ.

Acts : [Constitution of India](#) - Articles 132 and 226

Appeal No. : C.M.W.P. No. 5638 of 1989

Appellant : Ramesh Kumar Shukla

Respondent : Allahabad Development Authority and Others

Advocate for Def. : S.C., ;Ashok Mohiley and ;Vineet Saran, Advs.

Advocate for Pet/Ap. : G.N. Chandra, ;Triveni Shanker, ;Ram Pratap Singh, ;K.P. Upadhyay and ;Murlidhar, Advs.

Judgement :

D. S. Sinha, J.

1. Heard Sri Murlidhar. the learned senior advocate appearing for the petitioner. Sri Ashok Mohiley, the learned standing counsel of the respondent Nos. 1 and 2, and Sri M. P. Sarraf, holding brief of Sri Vineet Saran, the learned counsel representing the respondent No. 3, permitted to be impleaded by the order of the

Court dated November 22, 1994, at length and in detail.

2. The acts and events constituting the facts of the case, as they emerge from the pleadings before the Court, are these :

'The Allahabad Development Authority, Allahabad, the respondent No. 1, hereinafter called the 'Development Authority', issued a notification in the newspaper 'Northern India Patrika' dated November 20, 1987, inviting applications for allotment of plots in Ashok Nagar Extension Scheme of the Development Authority. According to the notification, the registration of the applications for allotment opened on November 21, 1987 and the last date appointed for registration was December 20, 1987. The procedure for allotment of the plots, adopted under the Rules, was by drawing lottery.'

3. The Secretary of the Development Authority addressed to the petitioner a communication dated September 28, 1988, a copy whereof is Annexure-1 to the petition, notifying that the petitioner had been allotted a plot bearing No. B--38 measuring 162 sq. meter at the rate of Rs. 510 per sq. meter. The communication further informed the petitioner that out of total estimated price of the plot amounting to Rs. 82,620, the sum of Rs. 15,000 deposited by him as registration fees had been adjusted towards the price of the plot and called upon him to pay the balance amounting to Rs. 67.620 in four equal quarterly instalments of Rs. 16,905. The first instalment was payable upto October 31, 1988, the second instalment was payable upto January 31, 1989, the third instalment was payable upto April 30, 1989 and the fourth instalment was payable upto July 31. 1989.

4. The communication dated September 28, 1988, warned the petitioner that in the event of default in payment of the instalment by the appointed date, the allotment shall be cancelled. It also informed the petitioner that if the payment of the instalment was allowed to be made after due date, it would be accepted with 15 per cent interest per annum. Besides this warning. the communication contained many other stipulations which are not relevant for determination of the controversy raised in the petition.

5. The petitioner deposited the first instalment in time. In respect of second instalment which was payable upto January 31, 1989, he issued a cheque dated January 31, 1989, for Rs. 16,905 drawn on the State Bank of India. Daraganj Branch, Allahabad in favour of the Development Authority. The Development Authority sent the cheque to its bankers for collection. On February 8, 1989, the Chief Accounts Officer of the Development Authority learnt that the cheque of the petitioner was dishonoured. Thereupon the dealing clerk put up before the Joint Secretary of the Development Authority a note dated February 14, 1989 apprising him about the factum of dishonouring of the cheque. On the same date, the Joint Secretary directed that the allotment in favour of the petitioner be cancelled and requisite information be sent to him as is evident from Annexure-C.A. 2 appended to the counter-affidavit of Sri K. P. Srivastava filed on behalf of the Development Authority. Accordingly, the petitioner was informed vide letter dated February 15, 1989, A copy whereof is Annexure-4 to the petition.

6. On February 22, 1989, the petitioner submitted a hand written application enclosing therewith another cheque dated February 22, 1989.

7. In the meantime, the plot in dispute was allotted to Sri Shashi Kant Duggal, the respondent No. 3, who had duly applied for allotment of the plot on December 19, 1987 and was in the waiting list at serial No. 1. The requisite allotment letter No. 4583 dated February 15, 1989 was sent to Sri Duggal and he was required to deposit the costs of the plot amounting to Rs. 82,620 minus Rs. 15,000, already deposited by him by way of registration fee, in four equal quarterly instalments.

8. The respondent No. 3 chose to and deposited the entire amount of Rs. 67,620 in lump sum, and he was delivered possession of the plot in question on February 24, 1989.

9. By means of instant petition under Article 226 of the [Constitution of India](#), the petitioner seeks to challenge the order dated February 15, 1989, cancelling the allotment of the plot in dispute in his favour. He has prayed for other reliefs also, which are incidental and consequential to the relief of quashing of the cancellation order.

10. The writ petition was filed on March 16, 1989. It received consideration of the Court on March 19, 1989. Parties were directed to exchange affidavits. Further, the Court restrained the respondent Nos. 1 and 2 from executing any lease deed in respect of the plot in question in favour of any person other than the petitioner.

11. On the day when the petition was filed and the interim order was passed, the disputed plot had already been allotted in favour of the respondent No. 3. on February 15, 1989. and he had also been delivered possession on February 24, 1989. completing the transaction regarding the allotment and lease of the disputed plot in favour of the respondent No. 3, and creating a legally cognizable right in his favour. Significantly, the petitioner did not implead him as respondent. He also did not disclose all these facts in the petition. These facts were brought to the notice of the Court by the Development Authority in its counter-affidavit filed on April 9, 1990. along with the stay vacation application, after serving upon the counsel of the petitioner a copy thereof,

12. On July 10, 1990. Sri Shashi Kant Duggal moved an application praying that he may be impleaded to the petition as respondent No. 3. Along with the application, he filed counter-affidavit also disclosing therein the relevant facts and circumstances of the case.

13. After the lapse of more than five years from the date of filing of the writ petition, and more than four years from the date of service of the counter-affidavit of the Development Authority bringing on record the factum of the allotment of the plot in favour of Sri Shashi Kant Duggal and delivery of possession thereof to him, the petitioner woke up and moved the application dated October 3, 1994. praying for impleadment of Sri Shashi Kant Duggal as respondent No. 3. On this application, the Court directed impleadment of Sri Shashi Kant Duggal as respondent No. 3.

14. Had the petitioner disclosed in his writ petition the facts noticed above, the Court is of the opinion, he would not have succeeded in getting the interim order dated March 19, 1989. The petitioner is clearly guilty of suppression of the material facts and getting the interim order dated March 19, 1989, by suppression of the material facts. He did not approach the Court with clean hands, Thus, he has forfeited claim for any relief from this Court in exercise of its special and

extraordinary jurisdiction under Article 226 of the [Constitution of India](#), indeed, he has incurred the liability of having his petition dismissed in limine.

15. Otherwise also, on merits, the Court is afraid, the petitioner is not entitled to the reliefs prayed for by him. It is not disputed that one of the conditions of allotment of the plot in dispute in favour of the petitioner was that in the event of default in payment of the instalments of the price of the plot by the stipulated date, the allotment would be cancelled. It is not in dispute that the petitioner had committed default in paying the second instalment of the price which was payable by January 31, 1989.

16. At this juncture, it is relevant to notice that on January 31, 1989, when he had issued the cheque in favour of the Development Authority for paying the second instalment, the petitioner did not have the requisite balance in his account in the Bank to cover the amount of the cheque. The petitioner was fully aware of the fact that he did not have requisite balance at his credit to cover the amount of the cheque issued in favour of the Development Authority in respect of the second instalment. The inevitable happened. The cheque was bounced.

17. Thus, in terms of the stipulation contained in the allotment order, the allotment in favour of the petitioner was liable to be cancelled. The Development Authority, therefore, did not act illegally in passing the impugned order of cancellation of allotment in favour of the petitioner. The Court is further of the opinion that the Development Authority did not commit any illegality in passing a fresh order of allotment in favour of the respondent No. 3. The allotment of the disputed plot in favour of the respondent No. 3 having been legally made more than 11 years back is, in the absence of any fault on his part, not liable to be interfered with by the Court in exercise of its special, extraordinary, discretionary and equitable jurisdiction under Article 226 of the [Constitution of India](#).

18. There is yet another important aspect worthy of notice. The last date for making application for allotment of the plot, in terms of the notification issued by the Development Authority, was December 20, 1987. But. the petitioner had applied for allotment of the plot after expiry of the said date. According to the respondents, the petitioner had applied on January 4, 1988 and according to the petitioner, he

had applied on December 21, 1987. It is not necessary to adjudicate whether the petitioner made the application for allotment of the plot on December 21, 1987 or January 4, 1988. In any event, he had applied after the last date fixed for submission of the application, which was December 20, 1987. This being the position, it is rightly contended by the counsel of the respondent No. 3 that the petitioner could not be an applicant for allotment of the plot lawfully, and was clearly not entitled for participating in the process of allotment by lottery. Also viewing the matter from this angle, the Court is of the opinion that the petitioner does not deserve to be granted any relief.

19. All told, the petition lacks merit and is dismissed summarily. The interim order dated 19.3.1989 shall stand vacated. On the facts and circumstances of the case, there is no order as to costs.

20. Sri Triveni Shanker, the learned counsel appearing for the petitioner, makes an oral application to determine the question whether a certificate in the nature referred to in clause (i) of Article 132 or clause (i) of Article 133 may be given in respect of instant case.

21. After giving anxious consideration to the prayer made by the learned counsel of the petitioner and taking into account the facts and circumstances of the case, the Court is of the opinion that instant case does not involve any substantial question of law either as to the interpretation of the Constitution or of law of general importance which needs to be decided by the Hon'ble Supreme Court. Thus, the prayer is rejected.