

Mahesh Kumar Bajpai Vs. Kanpur Development Authority and anr.

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SooperKanoon Citation : sooperkanoon.com/477279

Court : Allahabad

Decided On : Feb-21-2008

Reported in : 2008(2)AWC1184

Judge : V.M. Sahai and ;Ravindra Nath Misra, JJ.

Appellant : Mahesh Kumar Bajpai

Respondent : Kanpur Development Authority and anr.

Advocate for Def. : Sri. M.C. Tripathi

Advocate for Pet/Ap. : Sri. Anoop Trivedi

Disposition : Petition allowed

Judgement :

ORDER

V.M. Sahai and Ravindra Nath Misra, JJ.

1. In the year 1978, Kanpur Development Authority, Kanpur (in brief the authority) floated a scheme known as Barrah Grih Nirman Yojna-III, for construction of 111 houses for persons of middle income group on 'no profit no loss basis'. A brochure was also Issued laying down terms and conditions for the allotment of the said houses. The authority constructed as many as 111-M.I.G. houses under the said scheme. It invited applications for allotment of these houses as per terms and

conditions contained in the brochure, fixing the estimated cost of each house as Rs. 48,000. The petitioner and several other persons who were willing to have their own houses applied for allotment of the houses in the aforesaid scheme. They also deposited Rs. 500 as earnest money on 29.9.1978. After about seven years, on 24.12.1994, the respondents issued letters to the petitioners demanding the enhanced final cost of the houses viz., Rs. 2,08,000 as against the estimated cost of Rs. 48,000.

2. We have heard Sri Anoop Trivedi, learned Counsel for the petitioner and Sri M.C. Tripathi learned Counsel appearing for the respondents No. 1 and 2.

Having heard learned Counsel for the petitioner as well as Sri M.C. Tripathi, learned Counsel appearing for the respondents, we find that for the delay in allotment of the houses, the petitioner could not be blamed because they had applied for allotment of the houses well within the stipulated period and also deposited the earnest money as required by the terms and conditions mentioned in the brochure.

3. The notification dated 24.12.1994, by which the cost of each of M.I.G. house had been increased from Rs. 48,000 to Rs. 2,08,000, was challenged by some of the allottees in Civil Misc. Writ Petition No. 303 of 1995 and other connected Writ Petition No. 9478 of 1995 which were decided on 21.5.1997 and the enhancement notification dated 24.12.1994 was quashed. The respondents were directed to deliver possession of the houses on the cost fixed in the brochure by the authority. The authority challenged the judgment dated 21.5.1997 before the Apex Court by means of Civil Appeal No. 913-914/1998 913-914/1998 . The Supreme Court dismissed the appeal filed by the authority in Kanpur Development Authority v. Smt. Sheela Devi and Ors. (2004) 1 UPLBEC 662 : 2004 (1) AWC 739 (SC). In paragraph 21 of the decision the Apex Court clearly observed as below:

Contentions of the K.D.A. run contrary to the contents of its own brochure on which the respondents acted adjusting their financial affairs understanding that the cost of the houses would be fixed in terms of brochure and that too not exceeding 10% of the estimated cost fixed initially.

4. In view of the aforesaid observations of the Apex Court, the authority would be well within its right to demand Rs. 48,000 estimated cost of the construction of M.I.G. houses plus 10% escalation which would come to Rs. 48,00, total amount Rs. 52,800 from the petitioner for selling houses under the scheme. The argument of the learned Counsel for the respondents that the judgments of the Division Bench of this Court and the Apex Court do not apply to the case of the petitioner and would only apply to the petitioners of Writ Petition No. 303 of 1995 and Writ Petition No. 9478 of 1995, is misconceived. Once the notification dated 24.12.1994 by which final cost of the M.I.G. houses was worked out by the authority was quashed by the Division Bench of this Court and upheld by the Apex Court, the result would be that the authority was required to re-fix the final cost of the houses with regard to persons who were before the Apex Court as well as other similarly situated allottees standing on the same footings in view of the directions of the Apex Court.

5. Learned Counsel for the petitioner has urged that since final cost of the M.I.G. houses has been worked out as Rs. 52,800 against which the petitioner had deposited Rs. 1,08,000 with the authority he is entitled for refund. The deposit is not disputed by the counsel appearing for the authority, the petitioner is entitled for refund of Rs. 55,200 being excess amount already deposited by him with the authority.

6. In the result, this writ petition succeeds and is allowed. A writ of mandamus is issued to the respondents to execute the sale deed in favour of the petitioner by charging total amount of Rs. 52,800 towards the cost of M.I.G. house allotted to him under the Barrah Grih Nirman Yojna-III, Kanpur within a period of three months. The respondents are further directed to refund the amount of Rs. 55,200 to the petitioner which was deposited by him in excess with the authority by means of a bank draft within the aforesaid period of three months. The aforesaid directions shall be complied by the authority within the above mentioned period from the date of production of a certified copy of this order before the Kanpur Development Authority, Kanpur.

The parties shall bear their own costs.

