Avinash Singh Vs. Commissioner and ors.

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Court : Allahabad

Decided On : May-14-2003

Reported in : 2003(4)AWC3012

Judge : M. Katju and ;R.S. Tripathi, JJ.

Acts : Constitution of India - Article 226

Appeal No. : C.M.W.P. No. 8219 of 2001

Appellant : Avinash Singh

Respondent : Commissioner and ors.

Advocate for Def. : Ateeq Ahmad Khan, Adv.

Advocate for Pet/Ap. : S.C. Tiwari, Adv.

Disposition : Petition dismissed

Judgement :
ORDER

M. Katju, J.

1. Heard learned counsel for the parties.

2. This writ petition has been filed for a writ of certiorari to quash the impugned orders dated 15.2.1999 and 16.12.2000, Annexure-1 and Annexure-4 to the writ petition. The petitioner has also prayed for a mandamus directing the respondents to exclude the entire alleged amount of interest from betterment charge in respect of house No. 928 in village Vinaykapur, district Kanpur Nagar ignoring the impugned orders. The petitioner has also prayed that the respondents be directed to sanction and approve the map submitted by the petitioner and permit the petitioner to raise constructions.

3. It is stated in paragraph 3 of the writ petition that the petitioner has deposited the entire amount of betterment charge of about Rs. 60,439.50. However, the petitioner is challenging the demand of interest of Rs. 53,828.95 by the impugned order. A true copy of the order dated 16.12.2000 has been annexed as Annexure-1 to the writ petition. In paragraph 5 of the writ petition it is alleged that the petitioner is the owner and in possession of plot No. 928 situate in village Vinaykapur about which on 11.1.1984 the petitioner filed an application for fixation of betterment charge annexing the copy of the sale-deed and photocopy of the receipt of assessment duly received by subordinate office of respondent No. 2 on 11.1.1984, A true copy of the same has been annexed as Annexure-2 to the writ petition. It is alleged in paragraph 6 of the writ petition that in the year 1984 the petitioner deposited 1/4 of betterment charge i.e., Rs. 15,082 and thereafter the petitioner moved an application for sanction of building plan and was ready to deposit the balance 3/4 part of the betterment charge. A true copy of representation is Annexure-3 to the writ petition. However, by the order dated 15.2.1999 the petitioner was directed to deposit a sum of Rs. 94,200.67 upto 28.2.1999 or otherwise to deposit Rs. 1,38,613 in six instalments each after six months. The petitioner moved a representation vide Annexure-5 to the writ petition. In paragraph 11 of the writ petition it is stated that the petitioner has deposited 1/4 amount in the year 1984 and since then he is continuously making efforts for a decision regarding the betterment charge and he is not liable to pay interest. However, his prayer for excluding interest was rejected by the impugned order dated 20.1.2000, Annexure-6 to the writ petition. The petitioner on 27.2.2000 deposited 3/4 of the betterment charge vide Annexure-7 to the writ petition.

4. The petitioner filed a writ petition in which he was directed to make a representation but the respondents are insisting for payment of interest on betterment charge.

5. The respondents have filed a counter-affidavit.

6. In paragraph 4 of the same it is stated that there is no controversy at all about betterment charges relating to house/plot No. 928. The Kanpur Development Authority passed an order dated 5.3.2001. Annexure-C.A.-1 to the affidavit by which it decided the representation made in pursuance of the High Court order dated 5.12.2000. By the said order it was directed that since the petitioner had committed default in payment of betterment charges, hence he could be given two options :

Either he should pay the betterment charge in accordance with the revised policy of 1996 or he should pay balance betterment charges at the rate prevailing at the time of this decision.

The petitioner was asked to inform the Vice-Chairman of the Kanpur Development Authority within 15 days about his option. He was given the reminder dated 20.4.2001 because he did not reply to the letter dated 5.3.2001.

7. In paragraph 5 of the counter-affidavit it is stated that vide letter dated 15.2.1999, the petitioner was informed in detail about the steps to be taken on his part in the matter and the amount, which he has not paid. The objection filed by the petitioner against the letter dated 15.2.1999, has been rejected by the respondent No. 1 who is the appropriate authority. A subsequent representation filed on 21.7.2000 and 24.7.2000 were rejected by the detailed order dated 5.3.2001 vide Annexure-C.A.-1 to the counter-affidavit. The petitioner was given two options but he did not take any steps despite the reminder. In paragraph 8 of the counter-affidavit it is denied that petitioner was directed by the Kanpur Development Authority in the year 1984 to deposit 1/4 of the betterment charges. In paragraph 9 of the same it is stated that petitioner has not filed any papers in proof of having submitted the building plan for its approval before the authority concerned and he has not submitted any proof of having deposited any amount of

1/4 betterment charges nor having deposited 3/4 of betterment charges which he ought to have deposited. It is denied that the petitioner was always willing to deposit 3/4 betterment charges. As per his own case he alleges to have sent letter dated 23.12.1997, for the first time after about 13 years of depositing 1/4 amount. The petitioner was informed by letter dated 9.11.1998, that the amount deposited by him is not the 1/4 amount vide Annexure-3 to the counter-affidavit. In paragraph 14 of the counter-affidavit it is stated that since the petitioner did not deposit the amount he is liable to be paid interest. No right has accrued to the petitioner for regularisation of his unauthorized construction merely by paying 1/4 of the amount.

8. On the facts of the case, we find no merits in this petition.

9. As per the scheme published by the Kanpur Development Authority during the year 1988 and 1992 for regularisation of unauthorized possession and payment of betterment and development charges, the amount of 1/4 as well as 3/4 of the amount was to be deposited by the applicants in accordance with the terms of the scheme on self-assessment. It was specifically mentioned in the advertisement and notices published by the Kanpur Development Authority that the applicant cannot claim any right while depositing the 1/4 or 3/4 of the amount. A decision will be taken in the matter strictly in accordance with the terms and conditions of the scheme. True copies of the advertisements are Annexure-C.A.-5 and Annexure-C.A.-7 to the counter-affidavit. As stated in paragraph 20 of the counter-affidavit, if the deposit of 3/4 and 1/4 of the amount was not made by the applicant, then he has to pay betterment and other charges as per the current rate applicable or to pay interest on the amount.

10. The petitioner has not made the deposit in accordance with the terms of the scheme and hence he was not entitled to the benefit of the scheme after a lapse of over 10 years. The petitioner failed to avail the option given to him vide order dated 5.3.2001. Hence, he can have no grievance. He did not even-avail of the opportunity given thereafter by letter dated 20.4.2001.

11. On the facts of the case, we find no merit in this petition. The petitioner has committed default all through and this is not a fit case for interference under Article 226 of the Constitution. The petition is dismissed.