

Rakesh Kumar Arora Vs. Lucknow Development Authority and Others

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Court : Allahabad

Decided On : Apr-26-2000

Reported in : 2000(3)AWC2126

Judge : R.H. Zaidi and ;Bhanwar Singh, JJ.

Acts : [Constitution of India](#) - Articles 14 and 226

Appeal No. : Writ Petition Nos. 738 (M/B) of 1996

Appellant : Rakesh Kumar Arora

Respondent : Lucknow Development Authority and Others

Advocate for Def. : C.S.C.

Advocate for Pet/Ap. : B.K. Saxena, ;Sanjay Kumar, ;W.U. Ahmad and ;S. Hifaizat Husain, Advs.

Judgement :

Bhanwar Singh, J.

1. The petitioner has invoked this Court's jurisdiction under Article 226 of the [Constitution of India](#) praying for a writ in the nature of certiorari quashing the decision of the opposite parties as contained in their letters dated 26.9.1995 and 16.11.1995 as also the cancellation order dated 14.1.1997 (Annexures-8, 10 and

11 respectively). Further a writ of mandamus commanding the opposite parties to provide and deliver possession of shop No. 1. Basement, Janpath Market. Lucknow to the petitioner upon the sale consideration calculated at the rate of Rs. 2.500 per sq. metre instead of Rs. 4.500 per sq. metre, has also been sought for.

2. The petitioner's case is that he applied for allotment of a godown-cum-shop No. 24 at Vyavasayik Kendra (Basement), Janpath Market. Hazratganj, Lucknow constructed by the opposite party No. 1, namely, the Lucknow Development Authority. The said Development Authority, vide letter dated 10.8.1979, asked the petitioner to submit a Bank Draft of Rs. 2,000. The petitioner complied with the letter and submitted on 18.8.1979 a Bank Draft of the requisite amount with the opposite parties. The allotment was to be made on the basis of principle of 'first come, first serve' and since the petitioner was the first to approach the Development Authority, he was entitled for allotment of the shop. The opposite party No. 1 arbitrarily allotted shop No. 24 to one Sri Haseen Kidwal even though his application was received on 3.8.1979, i.e., more than three weeks' later to the petitioner's application. The petitioner approached the opposite parties and offered to have shop No. 34 instead of 24 allotted in his name. The Development Authority was not inclined to accept the offer as a consequence, the petitioner was obliged to file a Writ Petition, bearing No. 4435 of 1986. Rakesh Kumar Arora v. Lucknow Development Authority and others, praying for a writ of mandamus commanding the opposite parties to allot shop No. 34 in the basement of Janpath Market. This Court vide its order of June 7, 1986. commanded the opposite parties to allot the said shop No. 34 or any other shop at the basement of the Vyavasayik Kendra, Janpath Market without charging any premium within six weeks from the date of the order. However, the said order was not carried out by the opposite parties. Eventually, the aforesaid writ petition of the petitioner was finally decided by this Court vide its Judgment dated 27.9.1993 whereby the opposite parties were directed to consider the petitioner's case for allotment of a suitable shop in Vyavasayik Kendra, Janpath Market. Hazratganj, Lucknow, in accordance with rules and without charging any premium. It is relevant to mention here that during the pendency of the aforesaid writ petition, the opposite parties informed the petitioner that shop No. 34 was provisionally allotted to him but since it was under unauthorised occupation, he had to wait till the proceedings under Public Premises

Act being finally disposed of. However, the Development Authority regularised the occupation of the unauthorised occupant, Smt. Laxmi Dixit. The petitioner was then left with no option except to request for some other suitable shop and in this context, he moved written letters dated 28.10.1986, 16.12.1986, 8.1.1987 and 21.2.1987. However, after the judgment, the petitioner continued to make approaches before the opposite parties for getting a shop in the basement or elsewhere. The opposite parties vide letter dated 2.3.1995, informed him that he had been allotted shop No. 1 in the basement of Vyavasayik Kendra, Janpath Market, Hazratganj, Lucknow on the basis of sale consideration like other basement shop-keepers. The petitioner on its own deposited a sum of Rs. 1,30,000 through pay orders with the opposite parties for being credited towards the sale consideration of the said shop but the petitioner was informed vide letter of September 26, 1995 that he had to deposit a sum of Rs. 7,72,600 by 30.11.1995 as the sale consideration of the shop in question besides a sum of Rs. 1,41,100 for general stamps of the sale deed. The petitioner lodged his protest and reiterated his right to have the shop on the basis of the price as prevalent in the year 1986. The opposite parties informed the petitioner vide letter dated 16.11.1995 that the then rate of the plinth area was Rs. 4,500 per sq. metre and he was accordingly required to pay on the same basis. The petitioner came to know that the Development Authority allotted in November, 1995, three different shops to three applicants on a lesser rate than asked from the petitioner. In this way, the opposite parties were treating the petitioner in a discriminatory manner. The opposite parties' decision to charge higher rates from the petitioner was not at all sustainable. All the petitioner's requests and protests failed to yield any favourable result. In the meantime, the opposite parties cancelled the allotment order vide order dated 14.1.1997 without giving the petitioner any opportunity of hearing or to show cause. The opposite parties' action was illegal, arbitrary, mala fide and against the principles of natural justice. It was in these circumstances that the petitioner filed this writ petition.

3. The opposite parties did not file any counter-affidavit despite numerous opportunities having been granted for the purpose. This Court, in its order of October 7, 1999, allowed as a last opportunity ten days' more time to file counter-affidavit but even this did not deter the opposite parties and no counter-affidavit

was filed. However. Ganga Ram, the Section Officer of Development Authority filed a reply to the supplementary affidavit of the petitioner dated 28.10.1999 and submitted along with it on 3.11.1999 a letter dated 26.3.1999 of the then Vice-Chairman wherein it was recited that shop No. 1 being in occupation of Estate Department could not be allotted to Rakesh Kumar Arora and in case It fell vacant, it would be sold by way of public auction in which the petitioner could also participate. Sri Ganga Ram asserted in his affidavit that the allotment letter in respect of shop No. 1, Basement. Janpath Market was Issued to the petitioner by mistake. As the said shop was at the time of submitting the affidavit in possession of the Estate Department of U. P. Government, it was not possible to hand over its possession to the petitioner. As a matter of fact, the petitioner was asked to deposit Rs. 7,72,600 as sale consideration of the aforesaid shop by 30.11.1995 but instead of depositing the said amount in time, the petitioner filed this writ petition. During the pendency of this writ petition, the Development Authority issued the impugned letter of January 14. 1997 thereby cancelling the allotment of shop No. 1 in favour of the petitioner.

4. We have heard the learned counsel on both the sides and perused the record.
5. The grounds, inter alia, on the basis of which the petitioner has sought for the reliefs as Indicated earlier are that the orders dated 26.9.1995 and 16.11.1995 are violative of Articles 14 and 16 of the [Constitution of India](#) and the cancellation order dated 14.1.1997 issued by the Development Authority is illegal, arbitrary and unreasonable as the order of allotment dated 2.3.1995 was made in compliance of this Court's order dated 27.9.1993.
6. A bare look at the relevant records would show, as can be observed at the very outset that it is a case of continuous harassment and victimisation of the petitioner at the hands of the authorities of the Lucknow Development Authority who have acted in an unbecoming manner. The petitioner has been running from pillar to post for over a period of two decades but the opposite parties seem to be adamant on one ground or the other--by hook or crook to thwart the petitioner's claim. It may be recalled that the petitioner, on applications being invited in July, 1979, i.e., 21 years before, applied for allotment of shop No. 24. The Scheme for allotment of

shops in basement of Janpath Market was open to public on the basis of 'first come first serve' principle. The petitioner submitted his application on July 10, 1979 with the requisite sum of Rs. 2,000. In accordance with the terms and conditions of the Scheme, the petitioner was entitled to have the said shop allotted in his name but the opposite parties moving without fair play and without any justification allotted the said shop to one SriHaseen Kidwal who had moved 21 days' after the submission of the petitioner's application. It was the glaring example of malpractice and mismanagement appearing in the office of the Lucknow Development Authority, officers of which have not come forward before this Court to file an affidavit offering thereby some plausible reason for their having deviated from the principle of 'first come, first serve'. It would have been futile for the petitioner to fight a battle against the authorities who did not bother for the terms of the Schemes floated by the Development Authority and, therefore deterred by their malpractices, the petitioner reconciling with his poor position, applied for allotment of shop No. 34. The opposite party No. 1 assured the petitioner for favourable orders. However, seeing the authorities reluctant to do so, the petitioner was obliged to file a Writ Petition No. 4435 of 1986, Rakesh Kumar Arora v. Lucknow Development Authority and others. This Court, vide its order dated 7.6.1986, directed the opposite parties to allot shop No. 34. basement of the Janpath Market or any other shop at the basement of the Vyavasavik Kendra Janpath Market. Hazratganj. Lucknow. without charging any premium from him within six weeks from the date of order. The Development Authority did not comply with the order and on one excuse or the other went on deferring compliance thereof. Finally, the said writ petition was disposed of vide judgment of 27.9.1993. The final judgment was pronounced by this Court on an assurance of the counsel for the Development Authority that there would be no objection to consider the request of the petitioner for allotment of another shop afresh provided the shops were available in that market. On this assurance, the Division Bench of this Court, vide its judgment of September 27, 1993. dismissed the writ petition but with a direction to the Lucknow Development Authority to consider the case of the petitioner for allotment of some other suitable shop. The relevant paras are worth to be quoted :

'We have heard learned counsel for the Lucknow Development Authority also. He has no objection to consider the request of the petitioner for the allotment of another shop afresh provided the shops are available in that market. He has also stated that he is not aware if the practice of charging of any premium which was being followed earlier by the Lucknow Development Authority, is still in force or not.

Under the circumstances, we dismiss the writ petition with regard to the allotment of shop No. 34 to the petitioner and his claim for possession over that shop in pursuance of the allotment made under the above mentioned interim order. We, however, direct the Lucknow Development Authority to consider the case of the petitioner for allotment of some other suitable shop in Vyavasaylk Kendra. Janpath Market. Lucknow, in accordance with rules, without charging any premium, if there is no rule regarding the same still in operation for charging the premium provided the shops are available.'

7. The writ petition of the petitioner was, no doubt dismissed but as is obvious, with a direction to the Development Authority to consider the petitioner's claim for allotment of a shop in Janpath Basement of course subject to a shop being available and it is also clear that this direction was issued on the assurance of the counsel for the Development Authority that the petitioner's request for allotment of another shop would be considered. Since the disputed shop No. 34 was allegedly in unauthorised occupation of some other person, it could not have been allotted to the petitioner and probably this fact was also in the background of the petitioner's writ petition having been dismissed of course with a direction as referred to above. The Development Authority seems to have obliged the unauthorised occupant by regularising her illegal possession but did not bother at all to take care of the petitioner who was a bona fide applicant under the Scheme, However, carrying out the direction of this Court issued in Writ Petition No. 4435 of 1986 as quoted above, the Lucknow Development Authority, vide its letter of March 2. 1995. allotted shop No. 1 of Janpath Basement. It is significant to quote the contents of the letter as below :

^izs'kd]

izHkkjh vf/kdkjh js UV

y[ku fodkl izkf/kdj.k]

6] txnh'k pUnz cksl ekxZ]y[kuA

lsok esa]

Jh jkds'k dqekj vjksM+k]

13] [;kyhxat] y[kuA

fnukd % 2-3-1995

fo'k; % tuiFk ekds ZV csles UV esa nqdkuvkcafVr fd;s tku ds IEcU/k esaA

egksn;]

d`i;k mijksDr fo'k;d viusizkFkZuk&i;= fnukd 18-1-1995 dk lanHkZ ysaA bl dk;kZy; ds i= la[k227@iz-v- js UV@94 fnukd 26-8-1994 }kjk vkidks ;g voxr dj;k;k x;k Fkk fd ekuuh;mPp U;k;ky; esa izLrqr fjV ;kfpdk la[k 4435@1986] jkds'k dqekj vjksM+k cukey[ku fodkl izkf/kdj.k esa ekuuh; mPPk U;k;ky; }kjk ikfjr vkns'k fnukd27-9-1993 ds vuqiky esa tuiFk ekds ZV csIEks UV esa tc dksbZ nqdku fjDr gksxh mlsvkids i{k esa fu;ekuqlkj vkCkafVr djus ij fopkj fd;k tk;sxkA

bl IEcU/k esa mik/;{k egksn; dsvkns'k fnukd 7-2-1995 }kjk vkids i{k esa vU; csles UV nqdkunkjksa dks Hkkfrfodz; ewY; ysdj nqdku la[k&1 vkCkafVr dj nh xbZ g SA bl IEcU/k esaizhfe;e@fodz; ewY; dh x.kuk dkfLVax foHkkx }kjk dj;k;h tk jgh gS] rFkk dkfLVaxizklr gksus ds i'pkr~ vkidh ;Fkk'kh?kz rn~uqlkj /kujkf'k tek djus gsrq voxrdjk;k tk;sxkA

Hkonh;

oh-ds-xqIRkk

izHkjH vf/kdkjh js UV**

8. From a perusal of the above quoted letter, It appears that the Lucknow Development Authority came alive to its assurance submitted before the Court on the date of the Judgment dated 27.9.1993 being pronounced. The said assurance has been categorically referred to in the last two lines of the first para which clearly reveals that it was undertaken on behalf of Lucknow Development Authority to allot a shop to the petitioner whenever a shop would be vacant. The contents of the second para would reveal that the shop No. 1 was allotted to the petitioner under orders dated 7.2.1995 of the Vice Chairman of the Lucknow Development Authority, Sri V. K. Gupta. Officer Incharge - Rent, holding charge of Janpath Market (Basement), vide his letter referred to above conveyed this decision of Vice Chairman to the petitioner. It was also communicated that the cost of the plot was being calculated and the petitioner would be shortly Informed of the same. More than six months after, Sri V. K. Gupta wrote another letter dated 26.9.1995 to the petitioner and thereby asked the petitioner to deposit Rs. 7,72,600 by 30.11.1995 besides a sum of Rs. 1,44,100 required for purchase of general stamps. This letter may be quoted as below :

^fnukd % 26-9-1996

fo'k; % tuiFk ekds ZV fLFkr nqdku la[;k&1CksLkes UV dh /kujkf'k ds IEcU/k esaaA
egksn;]

mijksDr nqdku la[;k&1 ij :-7]72]600-00 fnukd 30-11-1995 rd tek djas rFkk tujy
LVSEi : 1]44]100-00 rFkkokVj ekdZ 30 dk;kZy; esa izLrqr djsaA mDr fu/kkZfjr frFk
rd /kujkf'k u tek djusij fu;ekuqlkj n.M C;kt Hkh ns; gksxkA

Hkonh;

Ckh-ds-xqlrk

la;qDr lfpo & oh-**

9. On receipt of the aforesaid letter, the petitioner moved the Secretary of the Development Authority a representation dated 10.11.1995 (Annexure-9) praying for details of the calculations arrived at by the Lucknow Development Authority

while demanding the price of the shop. This letter was replied by Sri V. K. Gupta vide his letter dated 16.11.1995 demanding the price at the rate of Rs. 4.500 per sq. metre. In this context, it is noteworthy that so far as the compliance of this Court's judgment passed in Writ Petition No. 4435 of 1986 was concerned, it was complete when the Vice Chairman took a decision on 7.2.1995 to allot shop No. 1 of Janpath Basement to the petitioner. Further the said compliance stood reiterated and reaffirmed on behalf of the Lucknow Development Authority when Sri V. K. Gupta communicated the said allotment vide his letter of March 2, 1995 to the petitioner. Further communication of 26.9.1995 and 16.11.1995 strengthen the Development Authority's decision regarding allotment of shop No. 1 to the petitioner. The petitioner being burdened with the accelerated price as against the price quoted in the year 1979. filed the present writ petition to seek relief for allotment of the shop on the original price and not on the sale price of the year 1995 as contained in the letters dated 16.9.1995 and 26.9.1995 of the Development Authority. It appears that the petitioner's action of knocking the door of this Court annoyed the authorities of the Development Authority and, therefore, swayed by their anger, they cancelled the allotment of shop No. 1 in favour of the petitioner vide letter dated 14.1.1997. This mala fide cancellation is reflected in the affidavit of Ganga Ram who has asserted that the petitioner. Instead of depositing the amount of Rs. 7,72,600 before 30.11.1995. filed this writ petition. As a matter of fact, the petitioner had a point and rightly so to assert his claim for the shop being allotted to him on the original price as prevalent in the year 1979 as he was the first to Invoke the principle of 'first come, first serve' as floated in the Scheme. An injustice was done to him when his claim for shop No. 24 was rejected without any sound reason. He therefore, went on to fight for his cause and took recourse to legal proceedings. He did not do any wrong by invoking this Court's jurisdiction under Article 226 of the Constitution of India while filing his earlier writ petition. It was different that the said writ petition was dismissed on the assurance of the counsel for the Development Authority to offer another shop for allotment. So, the cancellation of the shop No. 1 in this background obviously seems to be tainted with arbitrariness and mala fides. The cancellation letter, as maybe quoted below, apparently, exposes the mala fides of the Development Authority.

^dk;kZy; y[ku fodkl izkf/kdj.k]

izs'kd %&

vij lfpo]

y[ku fodkl izkf/kdj.k]

6] txnh'k pUnz cksl ekxZ]y[ku

lsok esa]

Jh jkds'k vjksM+k]

13] [;kyhxat] y[kuA

i=kad 550@js.V

fnukd % 14-1-1997

fo'k; % tuiFk ekds ZV fLFkr xksnkela-&1 ds fujLrhdj.k ds IEcU/k esaA

egksn;]

vkidks izkf/kdj.k }kjk i= la-240@ts-,l-lh- fnukd 2-3-1995 =qfVo'k fuxZr gqvk Fkk] D;ksafd mik/;{k egksn; }kjiwoZ esa gh ;g fu.kZ; fy;k tk pqdk Fkk fd tuiFk ekdZsV] gtjrxat esa dksbZ Hkhnqdku fjDr ughs gS vkSj tc Hkh dksbZ nqdku Hkfo'; esa fjDr gksxh rc vkidsizkFkZuk&i;= ij vkcaVu gsrq fu;ekuqlkj fopkj fd;k tk,xkA vr% iwoZ esa fuxZr i=la;k 240@ts-,l-lh- fnukd2-3-1995 ,oa i= fnukd 26-9-1995 ,rn }kjk fujLrfd;k tkrk g SA Hkfo'; esa tuiFk ekds ZV esa tc dksbZ nqdku fjDr gksxh rcvkids vkcaVu izkFkZuk i= ij ekuuh; mPp U;k;ky; ds vkns'k fnukd 27-9-1993 fjV ;kfpdkla- 4435 vkQ 1986 ds vuqikyU essa fopkj fd;k tk,sxkA

Hkonh;

HkwisUnz flag

vij lfpo**

The contention of the inadvertence in making allotment of shop No. 1 is proved to be hollow and baseless on the face of a long lapse of time in between the allotment made and cancellation issued.

10. It may be recalled that shop No. 1 had been allotted to the petitioner vide order of February 7, 1995, as conveyed by means of letter. Annexure-7. The contents of the said letter have already been quoted above and it unambiguously recites allotment of shop No. 1 in the name of the petitioner subject to its price including premium being determined by the 'costing department'. This letter was despatched to the petitioner on March 2, 1995. The petitioner filed this writ petition in the beginning of 1996. In the meantime, several letters were exchanged between the petitioner and the authorities. The Joint Secretary, as mentioned earlier, asked the petitioner vide letter of September 26, 1995 to deposit the amount of Rs. 7,72,600 in addition to the cost of general stamp. Till then, the allotment of the shop due to inadvertence did not come to the notice of the authorities. Thereafter, the petitioner sent the letter of November 10, 1995, raising objections against the determination of the price and then the Authority replied vide letter dated 16.11.1995 that the price had been calculated in accordance with the rate prevalent in the year 1995. There was then a long silence until January 14, 1997, on which date, the Addl. Secretary despatched a letter Annexure-11, pointing out the mistake which had crept in while issuing the allotment order of shop No. 1 in the name of the petitioner. It was not mentioned at any stage until the year 1999 when query was made from the Chief Minister's office that the said shop was in possession of the Estate Department. How the Estate Department came to have the shop allotted in its name seems to be shrouded in mystery which should be enquired into by the Chairman of the Development Authority. As a matter of fact, the entire episode needs to be probed and it is necessary because the Development Authorities all around are under the clouds of suspicion so far as their functioning is concerned. The authorities indulged with impunity in malpractices just to oblige a few privileged persons and this is done at the cost of poor citizens who cannot fight their battle with the unscrupulous authorities. Under the similar circumstances, the petitioner is running from pillar to post from the year 1979 to have a shop allotted under the then floated Scheme based on 'first come, first serve' principle. It was an Irony of fate that though the petitioner was first to

apply in respect of shop No. 34 and now probably, he is the last in the queue to fight for his cause. The Development authorities Including Vice-Chairman have obviously acted in an unfair, unreasonable and arbitrary manner and their conduct In cumulative way comes within the ambit of deliberate mischief. How the Lucknow Development Authority after complying with the High Court's order dated 17.9.1993 (petitioner's earlier Writ Petition No. 4435 of 1986) as is recited in the letter dated 2.3.1995 could have retracted in January, 1997. merely on the excuse of Inadvertence is just unthinkable. For nearly two years, the authorities kept on corresponding with the petitioner by asking him to pay the price at the latest rate and during these two years, the Estate Department was no where in picture. The Development Authority has not taken care to come forward and file a counter-affidavit explaining all the facts and circumstances under which different decisions were taken nor the relevant file/record pertaining to the shop in question was filed for perusal of this Court. As a consequence, it can be held that the officers/officials of the Lucknow Development Authority are guilty of arbitrary decisions vis-a-vis the matter of allotment in favour of the petitioner.

11. Having regard to the discussions made above, we are inclined to hold that the cancellation of shop No. 1 in basement of Janpath Market in the name of the petitioner was illegal as based on arbitrary and mala fide decisions and, therefore, it deserves to be quashed.

12. In the result, this writ petition succeeds. A writ of certiorari quashing the impugned order dated 14.1.1997. Issued by the Lucknow Development Authority, as contained in Annexure-2 to the writ petition, is issued. Further, a writ of mandamus is issued commanding the opposite parties to hand over the possession of the aforesaid shop No. 1 to the petitioner within a period of one month from today. However, since a long period of two decades has elapsed after the Scheme was floated and in the meantime, value of the properties has accelerated many times and the advantage of the price hike will also be beneficial to the petitioner, It will be fair and in the interest of both the parties to direct the petitioner to pay the price as demanded. He is accordingly directed to pay the same price as referred to in letter dated 26.9.1995.

