

Ram Nagar Allottees Association and ors. Vs. Lucknow Development Authority

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Court : Allahabad

Decided On : Sep-12-2003

Reported in : 2004(2)AWC1770

Judge : Tarun Chatterjee, C.J. and ;N.K. Mehrotra, J.

Acts : [Constitution of India](#) - Article 226

Appeal No. : Writ Petition Nos. 8497 and 4216 (M/B) of 1986

Appellant : Ram Nagar Allottees Association and ors.

Respondent : Lucknow Development Authority

Advocate for Def. : Mahesh Chandra and ;Umesh Chandra, Adv.

Advocate for Pet/Ap. : Umesh Kumar Srivastava, ;Ved Prakash, ;B.C. Agrawal, ;K.K. Tiwari and ;N.C. Hajela, Adv.

Disposition : Application dismissed

Judgement :

Tarun Chatterjee, C.J.

1. The writ petitioner Nos. 2 to 8 who are members of an unregistered society, have been allotted house by the Lucknow Development Authority (for short 'L.D.A.') under Ram Nagar Housing Scheme, Lucknow. An advertisement was published in the news paper on 24th January, 1984 inviting applications for providing a house at a cost of Rs. 50,000. The advertisement disclosed that plot area of each house shall be 115.5 sq. metre, and plinth area 47 sq. metre with a provision for construction of one additional room in future. It was also mentioned that the preference shall be given to those, who would like to have houses in Self-Financing Scheme. Pursuant to the aforesaid advertisement, the writ petitioners applied for registration after depositing a sum of Rs. 5,000 in the Bank. The writ petitioners thereafter found that the L.D.A. unilaterally and arbitrarily reduced the plot area to 73.92 sq. metre and plinth area to 32.9 sq. metre from plot area 115.5 sq. metre and plinth area 47 sq. metre, as mentioned in the advertisement. It was also mentioned in the booklet that the houses would be completed by 31st December, 1984 and in case of delay, the money deposited shall not be returned. Since the houses were to be allotted by lottery system, hence an advertisement was published in the Northern India Patrika on 19th July, 1984 for drawal of lottery. In the said lottery, the writ petitioner Nos. 2 to 8 were found to be successful and they were allotted house Nos. 80, 79, 76, 54, 98, 172 and 33 respectively along with others. In some of the cases of the writ petitioners, a tripartite agreement was also executed amongst the employer (Government of India) ; the L.D.A., and the writ petitioners and after obtaining loan amount, they deposited the requisite money with the L.D.A. in Self Financing Scheme with a legitimate expectation to get a house. However, subsequently, it was informed by the L.D.A. that the houses would be given to the writ petitioners in the same scheme at another place provided they agreed to deposit a further sum of Rs. 23,000 for each house which was in addition to Rs. 50,000 already deposited by them. In those letters, it was also mentioned that in case the writ petitioners failed to submit their consent by 15th June, 1986 (in some letters it was mentioned by 20th June, 1986, it would be deemed that they were not interested to have the houses and their allotment shall stand automatically cancelled. According to the writ, petitioners, these letters were posted after expiry of the date, mentioned therein. In paragraph 14 of the writ application, it has been alleged that the writ petitioner Nos. 2, 5 and 8 were served

with the letter on 20th June, 1986 respectively.

2. By a notice dated 15th October, 1986 to the L.D.A. the writ petitioners demanded possession of the houses proposed to be given to them at a cost of Rs. 50,000. Instead of considering the demand of the writ petitioners, the L.D.A. made a publication in the newspaper dated 13th November, 1986 that a fresh lottery will be drawn on 26th November, 1986 amongst those, who would give their consent by 25th November, 1986 to pay enhanced amount. According to the writ petitioners, the L.D.A. having promised to give possession of the houses by completing them on or before 31st December, 1984 and even after realising the full amount, instead of handing over possession of the allotted houses, it demanded an illegally and arbitrarily enhanced amount of Rs. 23,000 for each of the house already allotted. Accordingly, the writ petitioners filed the present writ applications for handing over possession of one house each for Rs. 50,000 and other incidental reliefs and also executing a deed of transfer in their favour for the same and get its registration done. It was further prayed by the writ petitioners that the L.D.A. be directed to pay interest @18 per cent per annum to each of the writ petitioners.

3. The factual aspect of the matter was controverted by the L.D.A. in its counter-affidavit. One of the main contentions raised by the L.D.A. is that these writ applications filed by the writ petitioners for breach of contract between them and the L.D.A. were not maintainable and even if there was any violation of any terms and conditions of such breach of contract, remedy lay by instituting a civil suit for specific performance of the contract or for damages. It was also alleged by the L.D.A. in the counter-affidavit that since disputed questions of fact were raised by the writ petitioners in these writ applications, it was not desirable to adjudicate them in writ jurisdiction under Article 226 of the Constitution as evidence must be led which cannot be done by the writ court,

4. In the facts and circumstances as stated hereinabove, a short point arose for our consideration in these writ applications is whether the writ applications can be entertained for the alleged breach of contract in between the writ petitioners and the L.D.A. It is true that L.D.A. is a 'State' within the meaning of Article 12 of the

Constitution. Therefore, it cannot be disputed that the writ petitions can be held to be maintainable against the L.D.A. but the question is when the writ petitioners or 'other authority' entered into a simple non-statutory contract with Government or 'other authority', which is not entered into for public purposes, can the writ applications filed by the writ petitioners be said to be maintainable only on the basis that there was some violation of some of the terms and conditions of the non-statutory contract of the parties. In our view, when the parties to the contract were acting within realm thereof, the writ court should not exercise its power under Article 226 of the Constitution entertaining any application for enforcement of any alleged rights arising out and based on such agreement.

5. The law is now well settled that Article 226 of the Constitution is not the appropriate forum for enforcing any remedy for breach of a contract. Way back in the year 1959, the Supreme Court in *C.K. Achyut Menon v. State of Kerala*, AIR 1959 SC 490, clearly held that a contract which is even entered into by the Government, stands on no different footing from a contract held with a private party. The breach of contract, if any, may entitle the person aggrieved to sue for damages or in appropriate cases, even specific performance, but he cannot complain that there has been a deprivation of the right to practice any profession or carry on any occupation, trade or business as contemplated by Article 19(1)(g) of the Constitution. The Supreme Court has consistently upheld and followed this view and our attention has not been drawn to any subsequent pronouncement by the Apex Court of our country. In *Radha Krishna Agarwal v. State of Bihar*, AIR 1977 SC 1496, the Supreme Court further clarified the position and reaffirmed the same principle and held that when the State or its agents have entered into the field of ordinary contract the relations are no longer governed by the Constitutional provisions but by the legally valid contract which determines the rights and obligations of the parties inter se, No question where the State or its agents purporting to act within this field performs any act. In that case, the Supreme Court further laid down that no order can be issued under Article 226 of the Constitution to compel the authorities to remedy a breach of contract. Same view was also expressed by the Supreme Court in *Hara Shankar v. Deputy E and T Commissioner*, AIR 1975 SC 1121 and *Divisional Forest Officer v. Bishwanath Tea Co. Ltd.*, AIR 1981 SC 1378, In a very recent decision of the Supreme Court

in *G. Bassi Reddy v. International Crops Research Institute and Anr.*, (2003) 4 SCC 225, the Supreme Court again held that a writ application under Article 226 of the Constitution cannot be held to be maintainable in view of the fact that the contract was not a statutory one nor statutorily controlled nor such contract performs a public or statutory duty or a public function. Therefore, we are of the firm opinion that for enforcement of a breach of contract even if it is against a statutory authority, would not be maintainable in law.

6. In order to appreciate the true implication of the aforesaid decisions we have to keep in our mind certain distinctive features. A right derived from an agreement or a contract may be infringed by breach thereof. In all such cases, the usual remedy available to the aggrieved, under law, is the suit for specific performance of contract or damages. It does not matter that the party committing the breach is a private, individual or the State and or its instrumentalities. In all such cases, the parties to the agreement or contract having entered into a contractual relationship, they could be governed exclusively by law relating to contract. But at the same time, a right derived from an agreement with the State may as well be infringed by the State by way of breach thereof but by some administrative action taken in exercise of any statutory power or in exercise of its sovereign power.

7. Let us test the factual position of this case. There was a non-statutory agreement between the writ petitioners and the L.D.A. From the averments made in the writ applications, as noted hereinafter, it is clear to us that in the writ petitions the writ petitioners are seeking to enforce the breach of contract entered into by the L.D.A. with them. One of the main reliefs that was claimed by the writ petitioners was for a direction upon the L.D.A. to hand over possession of one house each for Rs. 50,000 which, according to the writ petitioners, was initially the considered amount for purchase of such house. It was also one of the main prayers in the writ applications to direct the L.D.A. to execute a deed of transfer in respect of such house and to get its registration done. In our view, in view of the aforesaid principles, laid down by a series of decisions of the Supreme Court, as noted herein-earlier, such reliefs cannot be granted in a writ jurisdiction as that would amount to grant a decree for specific performance of the contract. That apart the writ applications are not entertainable on the ground that the matter of

increase or enhancement in the price of the houses cannot be adjudicated upon without directing the parties to lead evidence. Such increase or enhancement in the price of the houses cannot be done, in view of the concluded contract entered into between the writ petitioners and the L.D.A. In our view, the question as to whether the L.D.A. was competent to enhance the price of the houses when it was provided for in the scheme, can also not be gone into in the writ jurisdiction as that will also require some evidence to be led. Accordingly, we are of the view that for breach of non-statutory contract, if any, the writ applications cannot be held to be maintainable.

8. In view of our discussions made hereinabove, we are, therefore, of the view that it is difficult to hold that the writ petitioners are not enforcing any term of the contract or not seeking a decree for specific performance of the contract while invoking the writ jurisdiction of this Court. Therefore, it must be held that the writ applications cannot be held to be entertainable in law.

9. That apart, we find from the averments made in the writ applications, which were vehemently denied by the L.D.A. by filing a counter-affidavit that disputed questions of fact had arisen which, in our view, cannot be gone into in the writ jurisdiction of this Court directing the parties to adduce evidence on such issues. In any view of the matter, from the various averments made in the writ applications and the averments made in the counter and rejoinder-affidavits, we are of the firm opinion that disputed questions of fact had arisen in the present writ applications, which also cannot be decided in writ jurisdiction by this Court without asking the parties to lead evidence on such disputed questions of fact. Accordingly, we are of the view that for breach of the non-statutory contract it was open to the writ petitioners to file a suit for specific performance or even damages and they cannot be permitted to raise such issues by filing the writ applications in this Court.

10. We also find support of our view from a Division Bench decision of this Court in *Tarun Kumar Chhabra v. U. P. Avas Evam Vikas Parishad and Ors.*, 1990 (2) UPLBEC 1330, and also from the decision of the Supreme Court in *Bareilly Development Authority and Anr. v. Ajay Pal Singh and Ors.*, 1989 (1) AWC 425 (SC) : (1989) 2 SCC 116.

11. Accordingly we are of the view that the writ petitions are not maintainable in law, and therefore, they are liable to be dismissed. However, this order shall not prevent the writ petitioners from taking appropriate steps for redressal of their grievances before the appropriate forum, including the civil court where question of payment of interest may also be adjudicated, if such a suit is not barred by limitation. We make it clear that we have not gone into the merits of the disputes raised by the parties before us and all such questions are left open to be decided by the appropriate forum, in accordance with law.

12. For the reasons aforesaid, the writ applications are dismissed. There will be no order as to costs.

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