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Court : Delhi

Decided On : Jan-25-1988

Reported in : AIR1988Delhi276; 1988(14)DRJ326

Judge : P.K. Bahri, J.

Acts : Constitution of India - Article 226

Appeal No. : Civil Writ Appeal No. 2578 of 1981

Appellant : Surender Nath

Respondent : Delhi Development Authority and anr.

Advocate for Pet/Ap. : D.P. Singh,; L.R. Singh,; L.M. Sanghvi and;

Judgement :

P.K. Bahri, J.

(1) The petitioner has sought a writ of certiorari for calling the records of the respondents and for quashing the letter dated May 5, 1981, issued by the Deputy Director (H) I of the Delhi Development Authority respondent No. 2 whereby the allocation of the flat in question made in favor of the petitioner on May 15, 1980, has been cancelled and a writ of mandamus requiring the respondents to treat the allocation of the flat made in favor on the petitioner as valid and still in force and require the respondents to accept the necessary Installments in respect of the said

flat without imposing any penalty.

(2) The facts giving rise to this particular petition, in brief, are that in response to the Self Financing Housing Registration Scheme 1977-78 the petitioner got himself registered under the said Scheme for allocation of a flat in Category Iii and vide letter dated May 15, 1980, the respondents informed the petitioner that he had been declared successful for the allocation of a flat in Category Iii type in Munirka Residential Self Financing Scheme on the ground floor in the draw of lots held on March 27, 1980. In the allotment letter he was informed that the total cost of the flat is about Rs.1,38,000.00 and he should pay Rs. 23,136.00 as the amount of first Installment within one month from the date of the issue of the said allotment letter. The said allotment letter was sent to the petitioner through registered post but the same was returned with the report of the postal authority as 'unclaimed'. It is the case of the petitioner that he generally was not available during the day time at his residential address at which the said registered letter was sent. The respondent again informed the petitioner vide letter dated June 16, 1980, that the letter of demand of first Installment had been received back as 'undelivered' and the date of issuance of letter for the purpose of calculating the period of one month for payment of Installment remains the same. As I he petitioner had received this particular letter sent by ordinary post after the expiry of the period of one month from the date of the issuance of the registered letter dated May 15, 1980, so the petitioner could not comply with the time limit for making the payment. Hence, he made a request vide letter dated June 26, 1980, that in future all such intimations regarding demand of Installments should be sent to him under certificate of posting as it was a serious matter that he could not receive the requisite intimation being sent by registered post and he prayed for extension of lime for depositing the first Installment. Ultimately the respondents extended the time till September 14, 1980, for depositing the first Installment plus the interest and the petitioner admittedly deposited Rs. 24,000.00 on September 13, 1980, vide challan No. 1205.

(3) It is the case of the petitioner that respondent No, 2 vide letter dated May 5, 1981, informed that the allotment of the said flat in his name has been cancelled due to non-fulfilment of the terms and conditions. The petitioner immediately sent

a letter dated May Ii, 1981, that he had not violated any terms and conditions of the allotment letter and he had not received any intimation for deposit of any other Installment and he had already made a request in his earlier letter that he be sent all communications by ordinary post under postal certificate. As the petitioner did not hear anything in the matter he again made a representation on May 22, 1981, to the Vice Chairman of the Delhi Development Authority reiterating all these facts. According to the petitioner, he was being assured that his representation was being considered and he would be given necessary intimation but later on he learnt that the respondents were trying to allot the flat in question to some other person who was on the waiting list and hence, the petitioner filed the present writ petition. It may be mentioned that the petition also referred to the fact that certain draw of lots has already been made in respect of allocating servant quarters and car garages to the allottees of flats. He has also wanted an injunction restraining the respondents from making any further allotment of such garages and servant quarters without including the name of the petitioner as one of the eligible applicants.

(4) At the outset, I may mention that counsel for the petitioner in all fairness did not press for any relief in respect of allotment of servant quarter and garage in view of the fact that the respondents have taken the plea in the counter that all garages and servant quarters stand duly allotted to other persons. Counsel for the petitioner has also at the Bar made a statement that if the petitioner is held entitled to retain the flat in question then the petitioner is ready and willing to pay even the interest livable on the delayed payment of Installments. At the time of admitting the writ petition, the Court had required the petitioner to deposit all the Installments which have become due which the respondents were to now communicate to the petitioner and I am told that the petitioner has deposited Rs. 25,000.00 on October 8, 1982 and Rs 64,700.00 on November 18, 1982.

(5) In opposing the writ petition the affidavit of Shri Nathu Ram, Secretary of the Delhi Development Authority has been filed. It has been pleaded in this affidavit that it has been the practice of the Delhi Development Authority to send registered letters of demand regarding the Installments to be paid and the registered letter had been issued to the petitioner but it was the petitioner who wanted to gain more

time for payment of Installments, so, he avoided receipt of the registered letter of demand in respect of the first Installment and the respondents showing grace had extended the period for payment of Installment but the petitioner again resorted to avoiding the delivery of the registered letter demanding the next Installment although the registered letters were issued not only at the residential address of the petitioner but also at his occupational address furnished by the petitioner himself but both times the registered letters were received back with the report of the postman as 'unclaimed' and thus, the allotment of the flat in the name of the petitioner was rightly cancelled by the respondents. It was asserted in the affidavit that there was no legal duty of the respondents to send the important letters of demand by ordinary post and there was nothing wrong in the respondents sending notices of demand by registered A.D. post. It was pleaded that the representation of the petitioner, against the order by which the allotment of the flat was cancelled, was duly considered and was rejected by the Vice Chairman vide his order dated November 6, 1981. In the counter-affidavit the petitioner reiterated his pleas and. mentioned that it is because of difficulty of his being delivered the registered letters, as he used to be not available at his residential address and also at his occupational address sometime in day time, he had categorically made a request in writing to the respondents that he be sent all intimations by ordinary post under postal certificate and as the respondents had failed to comply with his written request and had even failed to intimate the petitioner that his written request in this respect was not acceded to, the petitioner was unduly being punished for no fault of his without his being given any opportunity of hearing against the proposed action of the respondents for cancelling his allotment of the flat.

(6) Although no objection has been raised in the counter-affidavit: by the respondents that the writ petition is not maintainable yet Dr. L.M. Singhvi, who has argued the case on behalf of the respondents, vehemently urged that the writ petition is not maintainable inasmuch as the cause of action for filing the petition, if any, has arisen from the contract entered into between the petitioner and the respondents in respect of allotment of flat under Self Financing Housing Registration Scheme 1977-78 and so the writ petition should be dismissed on this score alone. It is, no doubt, a settled law that if a particular legal right flows purely from contractual transaction the writ jurisdiction of the High Court under Article 226

cannot be invoked. It is only for enforcement of legal rights flowing from any statutory provisions or from any performance of public duties and functions that the writ jurisdiction can be invoked by an aggrieved person. In M/s. Radhakrishna Agarwal and others v. State of Bihar & others, : [1977]3SCR249 , the Supreme Court has laid down the basic principles which have to be kept in view in order to determine in what type of cases writ jurisdiction under Article 226 can be invoked. The Supreme Court laid down as follows:

'BUT,after 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 rights and obligations of the parties inter se. No question arises of violation of Article 14 or of any other constitutional provision when the state of its agents, purporting to act within this field, perform any act. In this sphere, they can only claim rights conferred upon them by contract and are bound by the terms of the contract only unless some statute steps in and confers some special statutory power or obligation on the Slate in the contractual field which is apart from contract.'

The Supreme Court had approved three fold classification of such cases made in the judgment of the Patna High Court which was under appeal before it and it observed as follows :

'(I)Where a petitioner makes a grievance of breach of promise on the part of the State in cases where on assurance or promise made by the State he has acted to his prejudice and predicament, but the agreement is short of a contract within the meaning of Article 299 of the Constitution ;

(II)Where the contract entered into between the person aggrieved and the State is in exercise of a statutory power under certain Act or Rules framed there under and the petitioner alleges a breach on the part of the State ; and

(III)Where the contract entered into between the State and the person aggrieved is non-statutory and purely contractual and the rights and liabilities of the parties are governed by the terms of the contract, and the petitioner complains about breach of such contract by the State.'

(7) Examining the case in hand in the light of above principles enunciated by the Supreme Court, an irresistible conclusion can be reached that the facts of the present case fall in the second type of cases mentioned above because the present allotment of the flat to the petitioner has been made in compliance with the provisions contained in Delhi Development Authority (Management and Disposal of Housing Estates) Regulations, 1968. These Regulations have been framed under Section 57 of the Delhi Development Act, 1957. So they have statutory force. These Regulations elaborately lay down the procedure which is to be followed in issuing the public notices in framing the Schemes for allotment of the property and issuance of public notices, invitation of applications, scrutiny of the applications, draw of lots, allotment, intimation regarding allotment, the intimation to be sent regarding demands for payment of Installments, regulation 8, particularly, is relevant which is reproduced below :

'8.Manner of Payment of Disposal Price- (1) When a property is disposed of by sale, every applicant shall deposit a sum equal to 20 per centum of the disposal price of the property rounded to the next hundred Along with the application. Such deposit shall be non-interest bearing. (2) An applicant to whom the property has been allotted shall have to pay the balance amount of the disposal price (i.e. after adjusting the deposit) within such period as may be specified in the allotment letter. (3) If the applicant fails to pay the amount within the said specified period, the allotment shall be cancelled and a sum of money equal to 20 per centum of the deposit shall be forfeited and the balance refunded. (4) In the case of such applicants as have riot been allotted any property, the deposit specified in Sub-Regulation (1) shall be refunded. (5) The authority shall have the sole and exclusive right over the deposit till it is adjusted or refunded with or without deduction as provided in these regulations'

(8) The allotment has been cancelled by the respondents in exercising its right by virtue of this particular regulation. So, it is quite evident that this legal right of the petitioner to file the writ petition arises not only from any contractual obligations but also arises from the acts of the officers of the respondents which are statutory in nature. Counsel for the respondents has made reference to Divisional Forest Officer v. Bishwanath Tea Co. Ltd., : [1981]3SCR662 . In the cited case, a Tea

Company had taken certain land on lease for the purpose of cultivation and raising a tea garden under a particular lease-deed. The Company wanted to cut certain timber for utilising the same for building staff quarters without payment of full royalty but the Government informed that as the estate on which quarters were to be constructed did not fall within the grant from which the timber was to be felled and cut, full royalty had to be paid under Clause (2) of Part Iv of the lease deed. The Company paid the royalty demanded by the Government but filed a writ petition contending that upon true construction of the relevant clause of the grant as also proviso to Rule 37 of the Settlement Rules, the Company was entitled to cut and remove timber without payment of royalty and it wanted a direction to the Government to refund the royalty already recovered. A preliminary objection was raised by the Government. that the right, if any, flows from the contractual obligations which could. not be enforced by resort to Article 226. The writ was, however, allowed. The matter went to the Supreme Court. The Supreme Court held that unquestionably the rights and obligations between the parties were governed by the terms of the lease-deed inasmuch as the Company was claiming its right to the relief under Clause (2) Part Iv of the lease deed in question and. the attempt of the Company was to get out of the preliminary objection by raising a contention that the levy of the royalty was not supported by law and was an unreasonable restriction on the fundamental right to carry on trade as well as by a reference to Rule 37 of the relevant Rules. But the Supreme Court held that shorn of all embellishments the relief claimed by the respondent was referable to nothing else but the terms of the lease, namely, Clause (2) Part Iv, may be the term was a mere reproduction of the proviso to Rule 37 but that by itself was not sufficient to contend that what the respondent was doing was to enforce a statutory provision. It was pointed out that the proviso to Rule 37 was purely enabling provision and the Company was trying to enforce through the writ the right to remove timber without the liability to pay royalty not under the proviso to Rule 37 which was merely an enabling provision, but the specific term of lease agreed. to between the parties. So, the Supreme Court held that the writ jurisdiction could not be enforced. Counsel for the respondents has vehemently argued that in the present case also the petitioner's resort to the provision? of the said Regulations is merely a camouflage to cover up his rights which only flow from the contractual transaction.

I am afraid that this contention has no merit. In the present case, the rights flow from the statutory regulations completely. Regulations are not mere enabling provisions as was Rule 37 in the above cited case. Reference was also made to Premji Bhai Parmar & Others v. Delhi Development Authority & Others, : [1980]2SCR704 . In this case the petitioners had paid price and taken delivery of the flats allotted under Middle Income Group Housing Scheme. The writ was filed for getting the refund of some additional surcharge levied by the Delhi Development Authority over and above the price which was not levied on some other allottees of other schemes. The Supreme Court while dealing with the objection regarding maintainability of the writ petition held as follows:

'BUT after 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 were examines rights and obligations of the parties inter se. No question arises of violation of Article 14 or of any other constitutional provision...'

It was held that the purchaser had accepted the offer for allotment of flat knowing very well the prices at which they were being offered and there has been no fraudulent concealment in the information published in the brochures. This judgment is distinguishable inasmuch as there was no right asserted flowing from any statutory regulations as referred by me above. It was purely a question of contract as to what price has been fixed and agreed upon between the parties. Hence, the writ jurisdiction could not be invoked to assert a right arising out of a contract. I may mention that the aforesaid judgments have been considered by a Division Bench of this High Court in Civil Writ No. 1047/83, Mangat Ram v. Delhi Development Authority & Another. In this case a lease of the plot has been granted and the Delhi Development .Authority exercising its power under the terms of the lease had cancelled the lease and had proceeded to forfeit the plot. The writ was filed challenging the said act of the Delhi Development Authority and after discussing the case law on the point and particularly the aforesaid rulings the Division Bench held that the rights in contention in the writ arise from the contract and the writ petition was maintainable. In the present case, however, as discussed above, the right to cancel the allotment has been exercised by the respondents not merely on the basis of contract but also on the basis of statutory provisions. Hence, the present case is covered by type second of the cases referred to by the Supreme Court in the case of Radhakrishna (supra). Hence, the writ petition is maintainable to challenge the impugned act of the respondents in cancelling the allotment of the flat in the name of the petitioner. I negative this preliminary objection.

(9) Is true that in case the rights flow only from the contract then obviously the principle of rule of natural justice not being followed while cancelling the contract is not applicable, but where the rights flow from the statutory obligations or from public functions the respondents were not legally entitled to cancel the allotment of the flat in the name of the petitioner arbitrarily without resorting to principle of natural justice of giving a show cause notice to the petitioner prior to cancelling the allotment. In the present case, admittedly, no such show cause notice was given to the petitioner before passing the impugned order of cancellation and on this score the order of cancellation is liable to be quashed

(10) Even on merits, I find little justification for the respondents in passing the impugned order of cancellation of the flat when respondents for reasons unknown had failed to send a letter of demand to the petitioner by ordinary post under postal certificate as requested by the petitioner well in advance in writing. Ordinarily the respondents could have resorted to sending the letters of demand to the allottees by registered A.D. post as it is definitely a better method of effecting proper service of notice of demand but where the allottee has made ^'written request that he be sent intimation by ordinary post under postal certificate at his given address, then the respondents either should have complied with bids request or should have sent intimation to the petitioner that the respondents would not be sending the letters of demand to him as requested by him by ordinary post. In that case the petitioner would have been put on his guard to see that the registered letters which are sent by the respondents do not go back undelivered. It may be the occupation of the petitioner is such that the petitioner is not available at his given address when the postman comes to deliver registered letters and that is why the petitioner had sent a written request to the respondents for sending him the letters of demand under ordinary post and in case he had been intimated that his request

was not tenable he would have made certain special arrangements for receiving the registered letters. The petitioner was kept in ignorance about his request and the respondents went on in routine in sending the registered letters of demand to the petitioner at his residential address at first and then at his occupational address but both times unfortunately the letters were received back undelivered. There is no report of the postman that the petitioner had either avoided to receive the registered letters or had refused to accept the registered letters. Heavens would not have fallen if the respondents had also sent a letter under postal certificate to the petitioner as requested by the petitioner when the respondents received the two registered letters undelivered one after the other. Even then within the stipulated period of one month in which the Installment was to be paid the letter under ordinary post could have been sent to enable the petitioner to make the payment within the period of one month of even issuance of the registered letter. So, in the present case I am of the firm view that the respondents are not legally right in cancelling the allotment of the flat.

(11) I make the rule absolute and a How the writ petition and quash the letter dated May 5, 1981, by which the allocation of the flat made in favor of the petitioner was cancelled and also give direction to the respondents to transfer this flat to the petitioner in accordance with its rules and regulations. The respondent shall intimate to the petitioner the balance amount, if any, due towards the price of the flat plus interest for delayed payment of Installments within one month and the petitioner shall pay the said amount within one month of his receiving such intimation. The petitioner shall have costs of these proceedings quantified at Rs. 1,500.00 out of which half of the amount shall be paid to the Indian Council of Legal Aid and Advice, Lawyers' Chamber No. 3, High Court of Delhi, New Delhi.