SKYLINE CONTRACTORS PVT. LTD. & ANR. A

v.

STATE OF U.P. & ORS.

CIVIL APPEAL NO. 4272 OF 2008

JULY 9, 2008 B

[A.K. MATHUR AND ALTAMAS KABIR, JJ.]

URBAN DEVELOPMENT:

Cancellation of allotment of plot for non-payment by allottee –Allottee not making deposits within the time stipulated in the allotment order –Deposits made after a gap of two and half years – Development Authority canceling the allotment and making fresh allotment in favour of another person – High Court upholding the cancellation – Held: Allottee having failed to make the payment within stipulated period and meanwhile third party interests having intervened and a fresh allotment order made in favour of another person, order of High Court needs no interference. C D

The appellants made an application for allotment of a plot admeasuring 8,000 square meter and made an initial deposit of Rs.13,20,000/-. On 17.4.2003, an order of allotment was issued in favour of the appellants requiring them to deposit 25% of the premium amount with respondent-Development Authority within 60 days. It was further mentioned in the order that if the required amount was not deposited within the specified period, applicants' earnest money would be forfeited. The balance 75% of the premium amount was required to be deposited in ten equal half-yearly instalments. The appellants did not deposit any amount for a period of 2½ years after receipt of the allotment letters. On 3.5.2005, the respondent Development Authority asked the appellant to produce receipts of deposits, if any, made in pursuance of the allotment letter. Three months after receiving the said letter, the ap- E F G

A pellants started making deposits in September 2005. The Development Authority cancelled the allotment by order dated 21.6.2006 on the ground that the appellant had failed to make the deposits in accordance with the terms and conditions of allotment. The appellants filed a writ peti-
B tion before the High Court contending that the respondent Development Authority having accepted the deposits was estopped from canceling the allotment. The stand of the respondents was that since the appellant failed to deposit any amount other than the initial deposit of
C Rs.13,20,000/- within the time stipulated in the allotment order and unilaterally deposited the amounts two and half years after the allotment order was made, the appellants were not entitled to any relief; and that since third party interests had intervened and fresh allotment of the plot
D had been made in favour of respondent no.5, the reliefs sought for by the appellants in the writ petition could not been granted. The allottees having failed in the writ petition before the High Court, filed the instant appeal.

Dismissing the appeal, the Court

E HELD: The appellants did not make any deposits, other than the initial deposit of Rs.13,20,000/-, in terms of the allotment order for a period of 2 ½ years from the said order, and made deposits unilaterally only after a communication was received from the respondent-Develop-
F ment Authority asking for proof of deposits, if any, made. The reason given for not making the deposits, as per the allotment order, is not very convincing. Since the deposits subsequently made by the appellants were not accepted by the respondent-Development Authority and,
G particularly, when third party interests have intervened and a fresh allotment order has been made in favour of respondent No.5 and no prayer has been made in the writ petition for setting aside such allotment, the appellants are not entitled to the relief claimed. However, the appel-
H lants will be entitled to withdraw the deposits made by

them towards the balance of the premium amount. [para 17-19] [598-A,B,C,D,E]

R.K. Saxena v. Delhi Development Authority **AIR 2002 SC 2340; and** *Teri Oat Estates(P) Limited v. U.T. Chandigarh and another* **2004 (2) SCC 130 - held inapplicable.**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4272 of 2008

From the final Judgment and Order dated 18/4/2007 of the High Court of Judicature at Allahabad in C.M.W.P. No. 51537/ 2006

Shail Kr. Dwivedi, A.A.G. Arun Bhardawaj, Dr. A.M. Singhvi, Ratnakar Dash, Mahesh Agarwal, Rishi Agarwal, Arvind Kumar, Gaurav Goel, E.C. Agrawala, Manu Nair, Mark D' Souza, S.N. Purohit (for M/s. Suresh A. Shroff & Co.), D.K. Goswami, Anuvrat Sharma and Ravindra Kumar for the appearing parties.

The Judgment of the Court was delivered by

ALTAMAS KABIR,J. 1. Leave granted.

2. The appellants herein filed a writ petition before the Allahabad High Court for quashing an order dated 21.6.2006 issued on behalf of the New Okhla Industrial Development Authority (hereinafter referred to as 'NOIDA')cancelling the allotment of Plot no.A-28 in Sector 62 made in favour of the appellant.

3. Admittedly, the appellant made an application for allotment of the aforesaid plot measuring 8000 square meters pursuant to an advertisement published on behalf of the NOIDA inviting such applications and made an initial deposit of Rs.13,20,000/- while submitting the application. On 17.4.2003 an order of allotment was issued in favour of the appellant whereby the petitioner was required to deposit 25 per cent of the premium amount in cash or by a bank draft in favour of NOIDA within 60 days of such allotment. It was categorically stipulated that if the said amount was not deposited within the time speci-

A fied the depositor's earnest money would be forfeited and no extension of time would be granted for deposit of the said amount under any circumstances. The balance 75% of the premium amount was required to be deposited by the allottee in 10 equal half-yearly instalments along with interest at the rate of B 14% per annum on outstanding premium. Here also, it was categorically stipulated that no extension for payment of instalments would be granted and if the allottee failed to pay the instalments within due dates the allotment would be cancelled and the amount equivalent to 25% of the premium would be C forfeited in favour of the NOIDA. In exceptional circumstances, however, the Chief Executive Officer of NOIDA was vested with the discretion to extend the time for making deposits, which would be subject to payment of interest @ 17% per annum compounded every half yearly on the defaulted amount for the defaulted period.

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4. As has been noticed by the High Court in its judgment impugned in this appeal, the appellants did not deposit any amount for a period of two and a half years after receipt of the allotment letter. The Authority wrote to the appellant on 3.5.2005 E requesting the appellant to produce receipts of deposits, if any, made in pursuance of the allotment letter. Three months after receiving the said letter the appellant started making deposits in September 2005 and on 16.12.2005 wrote to the NOIDA asking for details with regard to the deposit of stamp duty, etc. F for execution of the lease deed pursuant to the allotment made in its favour. Despite the said letter, the NOIDA cancelled the allotment made in favour of the appellants by its order dated 21.6.2006 on the ground that the appellant had failed to make the deposits as per clause 2(iv) of the Terms and Conditions for G allotment. As stated hereinbefore, the writ petition was filed challenging such cancellation.

5. On considering the submissions made on behalf of the parties the High Court rejected the plea of the appellants that although the appellants had failed to deposit the premium H amount in keeping with the terms and conditions of the allot-

A ment, the said amount subsequently deposited by the appellants had been duly accepted by the NOIDA which had accordingly waived such terms and conditions and the allotment made in the appellant's favour could not have been cancelled on the ground that the same had not been deposited in time. The High Court also rejected the other submission made on behalf of the appellants that the NOIDA had acted wrongly in re-allotting the plot in question to the Respondent No.5 at a much cheaper rate than was demanded from the appellants. The High Court held that having failed to make the deposits within the time stipulated in the allotment letter the voluntary deposits subsequently made two and half years after the issuance of the allotment letter, without the approval of the NOIDA, could not be accepted as valid deposit and the appellants were not, therefore, entitled to any relief. Certain judgments of this Court which have been relied upon before us by the appellants had also been considered by the High Court which came to the conclusion that the same were not applicable to the facts and circumstances of the instant case. The High Court, therefore, held the writ petition to be completely misconceived and dismissed the same.

6. The same arguments as was advanced before the High Court have also been advanced before us with special emphasis on the letter dated 15.5.2003 written on behalf of the appellant to the NOIDA with reference to the allotment letter of 17.4.2003. Referring to the said letter, learned counsel for the appellant submitted that it had been mentioned therein that a modified allotment letter would be issued to the appellants along with a statement of account of the balance amount payable on account of typographical discrepancy in the allotment letter, but that neither had such modified letter been given to the appellant nor had any statement of account been issued as promised. It was also sought to be highlighted that in the letter it had been specifically mentioned that the officials of NOIDA had refused to accept the payment on account of some internal inquiry and/or procedural changes being effected by NOIDA.

7. It was urged that since no reply was received to the said

A letter no further payments were made in terms of the allotment letter till the appellants received the letter written on behalf of the NOIDA on 3.5.2005 asking the appellants to produce proof of deposit of the allotment amount which was required to be deposited by 16.2.03. It was urged that once the said letter was B received, deposits were made on 6.12.2005 making up a total sum of Rs.3,80,20,000/- after giving credit for deposit of the initial amount of Rs.13,20,000/-. It was reiterated by counsel that having accepted the aforesaid deposits, the NOIDA was estopped from cancelling the allotment by its order dated C 21.6.2006.

8. In support of his submission learned senior counsel referred to several decisions of this Court regarding the manner in which public authorities should conduct themselves while extending benefits to private individuals by way of contracts and D agreements.

9. Learned counsel firstly referred to the decision of this Court in R.K. Saxena v. Delhi Development Authority (AIR 2002 SC 2340) where a similar set of facts were under consideration. In the said case, after making the initial deposit of 25 per E cent of the auctioned price, the auction purchaser prayed for extension of time to deposit the balance of 75 per cent which was required to be paid within 60 days from the date of issuance of the demand letter. In the said case also the Chairman, Delhi Development Authority, was vested with discretion to ex- F tend the time for such payments up to a maximum period of 180 days, subject to payment of interest on the balance amount @ 18 per cent per annum. The demand letter for payment of the said amount was issued on 3.1.1996 but only a part thereof was deposited on 19.2.1996 with a prayer for further extension G to make the balance payment. Such prayer was granted and further time was granted for the said purpose. Pursuant to said extensions certain amounts were deposited towards the balance 75 per cent, but ultimately when on 2.9.1996 further extension was sought for there was no reply to the letter though vari- H ous sums deposited thereafter were accepted by the Authority

despite the fact that such deposits were made after the stipulated time. It was also brought to the notice of the Court that the entire balance amount had since been paid for the plot in question. Since, despite having accepted the delayed payment the plot was not delivered to the appellant, legal notices were issued on its behalf and subsequent thereto the allotment was cancelled and the earnest money was forfeited. The writ petition filed in the High Court against said cancellation of allotment was dismissed on 29.2.2000 by the High Court which held that after the expiry of the period stipulated in the agreement the allottee could not have deposited the balance amount unilaterally without any demand being issued to him after the extended dates and no relief could be given to the allottee. Learned counsel pointed out that when the said matter was carried to this Court, this Court held that the order of the High Court could not be sustained particularly when both the delayed payments and the interest amount thereupon were accepted by the respondent-authority. This Court observed that the moment those payments were accepted there was deemed extension of time and that it was only one and half years after the legal notices had been sent to the Authority that the allotment order was cancelled. This Court held in the facts of that case that after accepting the delayed payment the respondent-authority could not have cancelled the allotment.

10. Reliance was also placed on the decision of this Court in Teri Oat Estates (P) Limited v. U.T. Chandigarh and another [(2004) 2 SCC 130] where the concept of disproportionate action was applied in a similar case where the lessee defaulted/delayed in payment of instalments of premium, interest thereon and ground rent in terms of the letter of allotment but it was found that the same had been occasioned due to a situation beyond the control of the lessee and not on account of any wilful or dishonest intention on the part of the lessee. Keeping in mind the principles of proportionality, this Court not only held that the lessee/appellants therein had not only shown their bona fides in making payments before the High Court but they had also shown

A their willingness to make payment on the difference amount and pursuant to the orders passed by this Court had not only paid the entire amount due, but had also paid the ground rent upto 1998-99 and 10 per cent penalty on the forfeited amount of the entire consideration money. While allowing the appeals, this B Court observed that the land in question for all intents and purposes had been transferred in favour of the lessee who was merely required to pay the balance amount of 75 per cent of the consideration amount in instalments. While also deprecating the conduct of the lessees in not making an endeavor to pay the C instalments within a reasonable period, this Court in consonance with the doctrine of proportionality observed that after the letter of allotment had been issued in favour of the lessee/appellant it had been put in possession of the property and had raised a six-storied building on the said land. It was also observed that it D had paid a part of the first instalment and had during the pendency of the proceeding before the High Court paid a substantial amount, together with interest @ 12 per cent per annum, as enhanced from time to time. This Court was, therefore, of the view that the resumption of the plot by the Estate Officer was too drastic and such power of resumption and forfeiture should E be exercised only as a last resort. Of course, it was also indicated that such an observation did not mean that the power of resumption and forfeiture should never be resorted to if the intention of the allottee was dishonest or with ill-motive or the payments in terms of the allotment were made with a dishonest F view or dishonest motive.

11. Learned counsel submitted that having regard to the aforesaid decision it must also be held in this case that cancellation of the allotment six months after the entire balance amount G had been deposited could not be sustained and the High Court had erred in dismissing the writ petition filed by the appellant company challenging the cancellation of the allotment made in its favour.

12. The learned counsel appearing both for the State of H U.P. and NOIDA supported the decision of the High Court and

submitted that since the appellant had failed to deposit any amount, other than the initial deposit of Rs.13,20,000/-, within the time stipulated in the allotment order and had unilaterally deposited the balance amount 2½ years after the allotment order was made and, that too, after a letter had been addressed to the appellant asking for proof of deposit of the said amounts, it was not entitled to any relief. It was urged on behalf of the NOIDA that the deposits said to have been made by the appellant after receipt of the said letter, had been made unilaterally and had not been accepted by the NOIDA. Accordingly, the appellant could not derive any benefit from the decisions cited on its behalf since in all the said cases, the deposits, though made out of time, had subsequently been accepted by the concerned authority.

13. It was also submitted that since third party interests had intervened and the plot had since been allotted in favour of the respondent NO.5, the relief sought for by the appellant in the writ petition could not be granted.

14. Similar submissions were made on behalf of the respondent No.5, in whose favour the plot in question had been allotted after the allotment in favour of the appellant was cancelled.

15. It was submitted that the reason sought to be given on behalf of the appellant for non payment of the premium amount was extremely dubious and had been rejected by the NOIDA in its discretion. The decisions cited on behalf of the appellant could not be applied to the facts of this case, since in the present case, the deposits subsequently made by the appellant had not been accepted by the NOIDA. It was lastly urged that, in any event, no relief could be granted in favour of the appellant, since no prayer had been made in the writ petition for cancellation of the allotment made in favour of the respondent No.5.

16. Having considered the submissions made on behalf of the respective parties, we are not inclined to interfere with the order of the High Court in the present appeal.

A 17. There is no dispute that the appellant did not make any deposits, other than the initial deposit of Rs.13,20,000/-, in terms of the allotment order. There is also no dispute that the deposits ultimately made 2½ years after the allotment order had been passed, had been made unilaterally and only after a com-
B munication was received from the NOIDA asking for proof of deposits made and, that too, three months after receipt of such letter.

18. We are inclined to accept the submissions made on behalf of the respondents that the reason given for not making
C the deposits, as per the allotment order, is not very convincing. We are also inclined to accept the other submissions made on behalf of the respondents that since the deposits subsequently made by the appellant had not been accepted by the NOIDA, the ratio of the decisions cited on behalf of the appellant would
D not apply to the facts of this case, particularly, when third party interests have intervened and a fresh allotment order had been made in favour of the respondent No.5 and no prayer has been made in the writ petition for setting aside such allotment.

E 19. We, therefore, have no option but to dismiss the appeal, but without any order as to costs. The appellant will be entitled to withdraw the deposits made by it in favour of the respondents towards the balance of the premium amount.

R.P. Appeal dismissed.