(2008) 01 AHC CK 0202

Allahabad High Court

Case No: None

Asian Paints Ltd.	APPELLANT
Vs	
The New Okhala Industrial Development Authority and I.C.A. Domas Trust	RESPONDENT

Date of Decision: Jan. 31, 2008

Acts Referred:

- Constitution of India, 1950 - Article 14, 226

Hon'ble Judges: Rakesh Sharma, J; Ashok Bhushan, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

Ashok Bhushan and Rakesh Sharma, JJ.
Heard Sri Ravi Kant, learned Senior Advocate assisted by Sri Pushkar Mehrotra and Sri Anurag Khanna, learned Counsel for the respondent No. 1.

2. By this writ petition petitioner has prayed for quashing the order dated 17th August, 2006, 19th October, 2006, 13th November, 2007 and 14th September, 2007 passed by Noida Authority.

3. The brief facts of tine case for deciding the writ petition are; the petitioner applied for allotment of plot of about 1000 sq. meters for building training centre for its employees and officers from respondent No. 1. The land was allotted by letter dated 1.1.1996. A formal lease deed was executed on 26th April, 1996. The possession was delivered to the petitioner on 18th June, 1996. According to the lease deed, one of the conditions was that the allottee is to start construction of minimum area required as per by law within six months and complete the construction of the building within a period of two years from resumption of possession failing which the lessor may resume possession or demise it. The Clause 7 of the deed is quoted below:

That the Lessee will start construction within six months from the date of possession and will construct a minimum of area as per bye-laws of authority as applicable for building and put the same in operation as per plans approved by the Lessor within a period of 2(two) years from the dale of possession and shall obtain the completion certificate from building cell failing which a levy of 4% of premium cost per annum or part thereof as applicable will be charged on extension being allowed by the CEO or his duly authorized officer. In the event of extension not being granted, cancellation may be effected if site remains vacant after 2 years of possession and the Lessor may resume possession or demise it again, provided that the Lessee will be at liberty to remove construction if any, in such eventuality. Lessee shall inform the Lessor for inspection first at the time of basement, find, at the time of plinth erection and third at the time of total completion.

After expiry of two years no construction was made by the petitioner. A notice was issued by the Noida authority to the petitioner on 14.6.2006 that the petitioner having not made construction within the period prescribed, it may surrender plot and it may be entitled for refund of the amount after deduction. The petitioner, after receiving the notice, submitted reply praying for grant of time for completing the construction. The Noida authority, took a decision on 17th August, 2006 that the petitioner having violated the Clause 8 of the lease deed and could not complete the construction within the stipulated period, the allotment is liable to be cancelled and resumed the possession. The petitioner, thereafter, again submitted representation on 31st August, 2006 which was rejected on 19th October, 2006. On 13th November, 2006 an amount of Rs. 38,97,332/- was refunded through cheque by the Noida and the cheque was returned by the petitioner. On 14th September, 2007 the petitioner was informed that lease of the plot has been executed in favour of respondent No. 2 by the NOIDA. In the aforesaid background the petitioner has come up before this Court for quashing the orders passed by the Noida authority.

3. Sri Ravi Kant, Senior Advocate for the petitioner contends that period of two years as prescribed in Clause 8 of lease deed is not the essence of contract. He further contends that there was no good ground for refusing the extension of time for completing the construction. Reliance has been placed on the case of Teri Oat Estates (P) Ltd. Vs. U.T., Chandigarh and Others, .

4. Sri Anurag Khanna, learned Counsel for the respondent submitted that the petitioner having failed to complete the construction by 30th June, 1998 no error has been committed by the respondent in cancelling the allotment. He further contends that the plot has already been allotted in the year 2006 in favour of other party and there is no good ground to interfere in the impugned orders. He placed reliance a judgment of Division Bench of this Court in writ petition No. 20381 of 2007, Development Consultants Private Limited, Kolkata v. State of U.P. and Anr.

5. We have considered the submissions made by the learned Counsel and perused the record.

The allotment of plot to the petitioner was made by the NOIDA authority for construction of office. The condition of lease requires completion of construction within two years which has a purpose and object. There are large number of applicants who applied for allotment. The period of two years has been provided as a reasonable period to utilize and use the plot for which allotment has been sought. The fact that no construction was made by the petitioner within the time prescribed and thereafter for about eight years, gives sufficient cause to the respondent to invoke the Clause 7 of deed.

The object of allotment of plots either for residential, commercial or industrial purpose is to facilitate and fulfil the need of individual. Fixing a period of time for accomplishing the object for which allotment has been taken, is reasonable and justified. Whenever plots are advertised by local authorities there are large number of applicants who have genuine need and requirement. A person fulfilling the eligibility is chosen amongst several applicants. A person who is allotted a plot cannot be allowed to keep the plot vacant for years together which will not be serving the purpose of anyone. One of the objects for allotment is also planed development of the area and inaction on the part of allottee does not serve either purpose. The submission of learned Counsel for the petitioner that time was not an essence of the contract, cannot be accepted. Fixing a period for starting and completing the construction is with an object and purpose. It is further to be noted that there is no material on record which shows that the petitioner has even applied for sanction of map of building for making construction. In such circumstances the invoking of Clause 7 by Noida cannot be said to be unjustified.

6. The Judgment of TERIOAT Estates (P) Ltd (supra), as relied by the counsel for the petitioner is the case where the plot was taken in an open auction by the appellant. The purchase amount was to be paid in instalments with interest. After making payment of first instalment the appellant constructed a six-storey building including the basement floor and thereafter default was committed by the appellant then the Clause of Section 8 of Capital of Punjab (Development and Regulation) Act, 1952 was invoked. In paragraph No. 24 the Apex Court held:

It is, therefore, not a case where the court will have to take one stand or the other in the light of the statutory provisions. The question as to whether the extreme power of resumption and forfeiture has rightly been applied or not will depend upon the factual matrix obtaining in each case. Each case may, therefore, have to be viewed separately and no hard-and-fast rule can be laid down therefor. In a case of this nature, therefore, the action of the Estate Officer and other statutory authorities having regard to the factual matrix obtaining in each case must be viewed from the angle as to whether the same attracts the wrath of Article 14 of the Constitution of India or not.

The said case was on its own facts and does not help the petitioner in the present case.

7. The judgment of Division Bench in the case of Development Consultants Private Limited, Kolkata (supra), relied by the counsel for the respondent fully supports the case of respondent. In the said case the possession was taken on 13th March, 2001 and construction was not made within the prescribed period and the lease was cancelled. It has been held:

In the present case, petitioner was allotted the land in February, 2001 and the possession was given on 13.3.2001, but the petitioner could not start the construction within three years what to say within six months as provided in Clause 8 of the lease deed. Petitioner has not even moved any application for the extension of time as provided in Clause 9 of the lease deed. Thus, the respondent has no option except to cancel the lease deed vide order dated 30.11.2006. Even during the course of hearing on the representation filed by the petitioner, petitioner could not produce the balance-sheet of the last five years to substantiate its claim, which was required by the respondent No. 2. In this view of the matter, we are of the opinion that the petitioner intention was dishonest and not bona fide. In the circumstances, were are not inclined to exercise our extra-ordinary writ jurisdiction under Article 226 of the Constitution of India.

In view of the aforesaid we are not satisfied that there is any arbitrariness in invoking the Clause 7 by the Noida authority or the action of respondent suffers from any error which may warrant any interference by this Court under Article 226 of the Constitution of India.

The petition is dismissed.