

A UP HOUSING AND DEVELOPMENT BOARD

v.

RAMESH CHANDRA AGARWAL

(Civil Appeal No. 4529 of 2019)

B MAY 01, 2019

**[DR. DHANANJAYA Y CHANDRACHUD AND
HEMANT GUPTA, JJ.]**

- U.P. Awas Evam Vikas Parishad-Registration and Allotment of Plot and Houses Rules, 1979 – rr.15,30 – Appellant-U.P. Housing and Development Board floated a housing scheme – In 1982, respondent deposited an amount necessary for registration – In 1993, respondent filed a consumer complaint against the appellant – District Forum gave liberty to the respondent to seek allotment at the current market value under any of the schemes of appellant – Aggrieved, Respondent filed appeal before the State consumer Disputes Redressal Commission (SCDRC) which was dismissed – National Consumer Disputes Redressal Commission (NCDRC) directed appellant to make an allotment to the respondent for a total sum of Rs.2,50,000/- in any of the flats available in the Mandola Vihar Yojna, Ghaziabad – On appeal, held: Clause 5 of the Registration booklet indicated that mere registration does not confer a right for allotment – Further, r.30 of the Rules, 1979 indicated that after the Board advertises the availability of a scheme in the newspaper, every registered applicant is at liberty to submit a consent letter for participation in the draw of lots – Applicant must show readiness and willingness to participate in a draw of lots in retrospect of a specified scheme – In view of the clear position in the brochure and the Rules of 1979, the respondent had no vested right to seek an allotment – As a registered applicant, the respondent was at liberty to seek to participate in the draw of lots by indicating his consent to the appellant – NCDRC committed error in issuing direction to the appellant to make an allotment to the respondent – Thus, the order of NCDRC set aside.*

In 1982, the appellant-Board floated a scheme for Economically weaker sections. The respondent deposited an amount of Rs.500 for registration. In terms of the Rules, 1979

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registered applicants were required to furnish their written consent for being included in the draw of lots. None was provided by the respondent. The respondent filed a consumer complaint in 1993. The District Forum directed respondent to secure allotment at the current value fixed by the appellant. Aggrieved, the respondent filed an appeal which was dismissed by SCDRC. The NCDRC issued a direction to the appellant to make an allotment to the respondent for a sum of Rs.2,50,000/- . Hence the present Special Leave Petition.

Allowing the appeal, the Court

HELD : 1. The appellant is governed by the terms and conditions advertised in its Registration Booklet and U.P. Awas Evam Vikas Parishad-Registration and Allotment of Plot and Houses Rules, 1979. Clause 5 of the Registration Booklet indicates that mere registration does not confer a right for allotment. Rule 15 makes a provision to the effect that the Board is not bound to allot a house or plot to every registered holder. Rule 30 indicates that after the Board advertises the availability of a scheme in the newspaper, every registered applicant is at liberty to submit a consent letter for participation in the draw of lots. Mere registration does not oblige the authority to include every registered applicant in the draw of lots. The applicant must show readiness and willingness to participate in a draw of lots in respect of a specified scheme. This is evident from Rule 30(2) . A set of priorities is provided in Rule 30 (5). In view of the clear position in the brochure and the Rules of 1979, the respondent had no vested right to seek an allotment. As a registered applicant, the respondent was at liberty to seek to participate in the draw of lots by indicating his consent to the appellant. After paying an initial sum of Rs 500 in 1982 and a further sum of Rs 500 in 1985, the respondent did not pursue any remedies until 1993 when he moved the District Forum. The order of the District Forum gave liberty to the respondent to seek allotment at the current market value under any of the schemes of the appellant. The NCDRC was manifestly in error in issuing a direction to the appellant to make an allotment to the respondent for a total sum of Rs 2,50,000 in any of the flats available in the Mandola Vihar Yojna, Ghaziabad. There is no rationale basis or justification for the amount of Rs 2,50,000 which has been fixed by the NCDRC.

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- A This direction proceeds purely on the basis of the *Ipse dixit* of the forum. The appellant, as a public authority, could not have been compelled to enter into a contract with the respondent. There was no contractual entitlement of the respondent to the allotment of a flat much less for an allotment at a specified price.
- B In its effort to render justice, the NCDRC has adopted a view which is contrary to the basic principles of contract governing the law on the subject. [Para 15] [736-E-H; 737-A-C]

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- C From the Judgment and Order dated 11.12.2018 of the National Consumer Disputes Redressal Commission, New Delhi in Revision Petition No. 2631 of 2016.

Vishwajit Singh, Ms. Vijaya Singh, Advs. for the Appellant.

Mr. Ramesh Chandra Agarwal, Respondent-in-person .

- D The Judgment of the Court was delivered by

DR. DHANANJAYA Y CHANDRACHUD, J.

1. Leave granted.

- E 2. In 1982 the appellant floated a scheme for Economically Weaker Sections. The respondent deposited an amount of Rs 500, initially in 1982, for registration. Later, in 1985, an additional amount of Rs 500 was deposited when the registration fee was enhanced to Rs 1000. Clause 5 of the Registration Booklet provided as follows:

- F “The registration of a person does not in any way confer any right or guarantee that the Board is bound to allot a plot or house to him, nor will he be entitled to claim any compensation if he is not allotted the property as desired by him.”

- G 3. The appellant is governed by the UP Awas Evam Vikas Parishad-Registration and Allotment of Plots and Houses Rules, 1979¹. Rule 15 provides as follows:

“Board is not bound to allot the houses/plots to every registration holder. Those who are not allotted the land/house by the Board are not entitled to claim the dues/amount spent.”

H ¹ Rules of 1979

4. Rule 30 contains the following stipulations: A

“Sending Application Form, Written Consent is necessary:

(1) In the event of availability of property in any Scheme, intimation to effect shall be published in newspapers through advertisement or written intimation shall be sent to the registered persons through registered post or both means of communication. Apart from description of available proper, date of allotment draw, place and time shall also be mentioned in the said written intimation. B

(2) Application form in prescribed format shall be available at the place mentioned in the aforesaid intimation as well as in the office of Estate Management officer of the city. Merely getting his/her name registered with the parishad, the name of a registered person shall not automatically be included in the lottery draw. It would be compulsory for the registered person to submit written consent letter (in prescribed format) for each and every scheme before the date of lottery draw so that his/her name could be included in the draw. C

(3) Application form can also be sent through registered post so as to reach in the concerned office before the last date. The Parishad shall not responsible for postal delay. D

(4) The willing buyer must ensure that he is providing true and correct information in the application form. In complete and conditional form shall not be entertained. At any point of time, if it is found that the applicant has concealed any vital/relevant fact or has provided incorrect information, his application form shall be subject to rejection and if a plot or house has already been allotted to him/her, the Housing Commissioner shall have the power to cancel his allotment and to make deduction and to impose fine as provided in Rule 45. E

(5) Priority will be given to the willing buyers, whose registration was done in first phase over those who were registered in the second phase. Similarly, persons registered in the second phase shall get priority over the buyers registered in the third phase, etc. F

Provided that the Parishad shall reserve the right to invite application for allotment from registered persons of only one phase or more than one phases of any scheme. The Parishad further G

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- A reserves the right to grant liberty to a particular class to participate in the registration phase. The particular class, so granted liberty, shall take benefit of priority in the registration phase, e.g. willing buyers of reserved class, who were registered in the first phase shall get priority over those reserved class buyers who were registered in the second phase.”
- B 5. The first advertisement was published by the appellant in 1992. In terms of the above Rules, registered applicants were required to furnish their written consent for being included in the draw of lots. None was provided by the respondent.
- C 6. The respondent filed a consumer complaint on 30 August 1993, nearly eleven years after the date of registration. In the meantime, a second advertisement was published by the appellant on 15 January 1995. By an order dated 5 April 1995, the District Consumer Disputes Redressal Forum, Ghaziabad² disposed of the complaint by directing that the respondent, at the highest, may secure an allotment, if he so desires at the current value fixed by the appellant.
- D 7. Against this order of the District Forum, the respondent filed a first appeal before the State Consumer Disputes Redressal Commission³.
- E 8. On 25 September 1995, the appellant published an allotment notice indicating the proposed allotment of vacant properties. On 28 August 1996, the appellant enhanced the registration amount and all existing registered applicants were required to pay the difference in order to keep their registration alive for future schemes. On 1 November 2002, the appellant issued an office order providing that those applicants who failed to get an allotment in the draw of lots could be entitled to refund of the registration monies. However, it was made clear that unsuccessful applicants would have to apply afresh for any new scheme.
- F 9. Between 27 October 1998 and 28 April 2015, the appeal filed by the respondent was listed before the SCDRC at Lucknow on eight dates of hearing. Neither the respondent nor his counsel appeared.
- G Eventually, by an order dated 28 April 2015, the appeal was dismissed by the SCDRC in the absence of any representation by the respondent. The respondent then filed a revision before the National Consumer Disputes Redressal Commission⁴ on 18 August 2016. During the course

² District Forum

³ SCDRC

H ⁴ NCDRC

of the hearing, the appellant filed an application to place on record relevant documents including the Registration Booklet, the office order dated 1 November 2002 and the Rules of 1979. The appellant also sought to produce copies of the advertisements which were published from time to time.

10. On 26 July 2018 the NCDRC directed the appellant to explore whether any plots/flats were available in any scheme of the appellant and to place relevant data including the particulars for allotment on affidavit.

11. In pursuance of the above direction, the appellant filed an affidavit on 8 August 2018 indicating the following position.

“That ... the flats which are available today are subject to auction wherein the rates are fixed according to the size of the flat, the location of the flat i.e. Ground floor, first floor, second floor and third floor. A perusal of the auction booklet of the answering respondent with regard to the aforesaid scheme of the Parishad would show the price at which the left over flats under different schemes are provided to general public. The allotment is done by way of auction and a perusal of the auction rates for Mandola Vihar Yojna, Ghaziabad residential flats is Rs.12.61 lakhs for ground floor; Rs.11.37 lakhs for first floor; Rs.11.23 lakhs for second floor and Rs.11.09 lakhs for third floor.”

12. The NCDRC decided the revision by its order dated 11 December, 2018 which is impugned in the present appeal. A direction has been issued to the appellant to allot a flat on the ground floor in the Mandola Vihar Yojana, Ghaziabad to the respondent subject to his paying a sum of Rs 2,50,000 towards consideration for the flat within a period of six weeks from the date of the passing of the order.

13. Assailing the judgment of the NCDRC, it has been urged by Mr Vishwajit Singh, learned counsel for the appellant that in the present case the respondent merely got himself registered for allotment. There was no allotment to the respondent. Moreover, it was submitted that the Rules for allotment which have been adverted to earlier, more specifically Rules 15 & 30, indicate that mere registration does not confer an entitlement to the allotment of a flat and every registered applicant is required to furnish written consent for participating in the draw of lots. In the present case, it was submitted that the appellant did nothing of the

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- A kind and eventually filed a consumer complaint only after eleven years after the date of registration. Learned counsel submitted that even before the SCDRC, the respondent consistently remained absent. Before the NCDRC, the appellant filed a statement indicating the current prices for the allotment of residential flats in the Mandola Vihar Yojana. It has been urged that the NCDRC by compelling the appellant to allot a flat to the respondent for a sum of Rs 2,50,000 has acted in a manner contrary to law. There was no contract between the appellant and the respondent.
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14. On the other hand, the respondent, who appeared in person, has submitted before the Court that after he registered himself with the appellant in 1982, he had from time to time made queries with the appellant in regard to the likelihood of his being allotted a flat in any of the schemes of the U.P. Awas Evam Vikas Parishad. The respondent submitted that he was never informed of any scheme or of any allotment in his favour. The respondent urged that the order which has been passed by the NCDRC is just and equitable. Having waited since 1982 for an allotment,

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- D he cannot be now compelled to get an allotment at the current market value.

15. The appellant is governed by the terms and conditions advertised in its Registration Booklet and by the Rules of 1979. Clause 5 of the Registration Booklet indicates that mere registration does not confer a right for allotment. Rule 15 makes a provision to the effect that the Board is not bound to allot a house or plot to every registered holder. Rule 30 indicates that after the Board advertises the availability of a scheme in the newspaper, every registered applicant is at liberty to submit a consent letter for participation in the draw of lots. Mere registration does not oblige the authority to include every registered applicant in the draw of lots. The applicant must show readiness and willingness to participate in a draw of lots in respect of a specified scheme. This is evident from Rule 30(2). A set of priorities is provided in Rule 30 (5). In view of the clear position in the brochure and the Rules of 1979, the respondent had no vested right to seek an allotment. As a registered applicant, the respondent was at liberty to seek to participate in the draw of lots by indicating his consent to the appellant. After paying an initial sum of Rs 500 in 1982 and a further sum of Rs 500 in 1985, the respondent did not pursue any remedies until 1993 when he moved the District Forum. The order of the District Forum gave liberty to the respondent to seek allotment at the current market value under any of the schemes of the

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appellant. The NCDRC was manifestly in error in issuing a direction to the appellant to make an allotment to the respondent for a total sum of Rs 2,50,000 in any of the flats available in the Mandola Vihar Yojna, Ghaziabad. There is no rationale basis or justification for the amount of Rs 2,50,000 which has been fixed by the NCDRC. This direction proceeds purely on the basis of the *Ipse dixit* of the forum. The appellant, as a public authority, could not have been compelled to enter into a contract with the respondent. There was no contractual entitlement of the respondent to the allotment of a flat much less for an allotment at a specified price. In its effort to render justice, the NCDRC has adopted a view which is contrary to the basic principles of contract governing the law on the subject.

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16. In the circumstances, we allow the appeal. The impugned order of the NCDRC shall stand set aside. There shall be no order as to costs.

Ankit Gyan

Appeal allowed.