

Kastha Niwarak Grahnirman Sahakari ... vs President, Indore Development ... on 7 February, 2006

Equivalent citations: AIR 2006 SUPREME COURT 1142, 2006 AIR SCW 712, (2006) 2 SCJ 361, (2006) 1 WLC(SC)CVL 458, (2006) 2 ALL WC 1139, (2006) 1 KCCR 36, (2006) 2 SCALE 274, (2006) 3 MAD LW 265, (2006) 39 ALLINDCAS 85 (SC), MANU/SC/960/2006, 2006 (2) SCC 604, (2006) 2 SUPREME 121, (2006) 3 JCR 75 (SC)

Author: Arijit Pasayat

Bench: Arijit Pasayat, S.H. Kapadia

CASE NO.:

Appeal (civil) 1005 of 2006

PETITIONER:

Kastha Niwarak Grahnirman Sahakari Sanstha Maryadit, Indore

RESPONDENT:

President, Indore Development Authority

DATE OF JUDGMENT: 07/02/2006

BENCH:

ARIJIT PASAYAT & S.H. KAPADIA

JUDGMENT:

J U D G M E N T (Arising out of SLP (C) No. 6390/2002) ARIJIT PASAYAT, J.

Leave granted.

Challenge in this appeal is to the judgment rendered by a Division Bench of the Madhya Pradesh High Court in a Letters Patent Appeal upholding the view of the learned Single Judge that appellant is not entitled to benefits flowing from Resolution No.9 dated 31.1.1986 of the respondent.

The factual background in a nutshell is as follows:

The Indore Development Authority (hereinafter referred to as the 'Authority') adopted certain guidelines allowing the Housing Co-operative Societies to utilize the land owned by them by making plots for construction of houses for the benefit of their members. The relevant guidelines contained in the Circular dated 31.1.1986 are as follows:

"(1) Only those societies shall be taken into consideration which have got themselves registered as per the law by purchasing the land prior to the publication of the Declaration of Section 50(2) of the Authority in respect of the scheme.

(2) Those societies will also be taken into consideration which have got themselves registered after the publication of the Declaration of Section 50(2) but the application was moved by them before the Competent Authority for obtaining rebate under the Urban Land Ceiling Act prior to the above law.

(3) This will be mandatory for availing the benefit of these facilities that while entering into an advance agreement with the Authority, the Society should hand over the vacant and peaceful possession of the concerned land itself to the Authority. And it will be at liberty to move for revision etc. for enhancing the compensation. With regard to the handing over of the possession if there arises any court case or any other dispute then this facility would not be available. If any tenant or sub tenant or any other person holds the possession of the land then it will be the responsibility of the Society that it should make available the vacant possession to the Authority by removing them from the land. In the event of being not so, this scheme of allotment of land shall not be implemented."

The appellant was denied the benefit of the Circular on the ground that it did not fulfill the requisite conditions. Writ Petition (W.P. No.755 of 1994) was filed by the appellant praying for appropriate directions to the Authority to grant it the benefit of the Circular dated 31.1.1986. A learned Single Judge dismissed the Writ Application noticing that the appellant did not fulfill the requisite conditions. It was noted that the appellant claiming to be one of the interested societies applied to the Authority on 9.11.1987 and 28.12.1987. The Authority called upon the appellant to furnish certain details. By order of the Authority dated 1.10.1993 the benefit was declined. It was also noted by the High Court that the Circular in question dated 31.1.1986 was withdrawn by resolution No.93 dated 14.5.1993. Though a stand was taken by the appellant that certain other societies similarly situated were granted the benefit, the High Court noted that they stood on a different footing. Learned Single Judge noted that the appellant was not the owner of the land and it only claimed to be the potential purchaser having purportedly entered into certain agreements. That being so, it was held that the appellant had not acquired any legal right to get the benefit in terms of the Circular dated 31.1.1986. A Letters Patent Appeal was filed before the High Court which by the impugned order upheld the view of the learned Single Judge. It was specifically noted by the Division Bench that as the appellant- Society was not the owner of the land, it was not entitled to the benefit.

In support of the appeal, Mr. Mahabir Singh, learned senior counsel submitted that the real import of the Resolution is that the society should have got a tangible interest in the property. Appellant had entered into agreements for purchase of the land on 18.1.1982 and, therefore clearly fulfilled the conditions. In fact possession was taken on 5.5.1992. It was also pointed out that in the case of some others who had similarly situated the benefit had been extended. According to him, denial of appellant in such circumstances would amount to violation of Article 14 of the Constitution of India, 1950 (in short the 'Constitution').

In response, learned counsel for the respondent- Authority submitted that both learned Single Judge and the Division Bench have rightly noticed that the appellant did not fulfill the requisite conditions and, therefore, was not entitled to any relief.

First Clause, as quoted above, requires that only those societies were to be considered which had got themselves registered as per law by purchasing land prior to the publication of the Declaration of Section 50(2) of the Madhya Pradesh Nagar Tatha Gram Nivesh Adhiniyam, 1973 (in short the 'Adhiniyam'). Stand of the learned counsel for the appellant that what was mandatory was the registration and not the ownership of the land is clearly untenable. The conditions are cumulative i.e. (a) the society has to be registered; and (b) it must purchase the land prior to the publication of Declaration of Section 50(2) of the Authority in respect of the scheme. The second condition was admittedly not fulfilled. Clause 3 is also relevant. It provides that it will be mandatory for the society for availing the benefit of the scheme to hand over a vacant and peaceful possession of the concerned land to the Authority while entering into an advance agreement with the Authority. In other words, the advance agreement could be entered into but at that point of time the vacant and peaceful possession of the concerned land was to be handed over to the Authority. The appellants could not have done so because it was neither the owner nor in possession of the concerned land. It is to be noted that there is scope for advance agreement. It has been in that context specifically noted in Clause (3) that so far as handing over possession is concerned if there are court cases or any other dispute then the facility regarding handing over possession would not be availed. Therefore, the view expressed by the High Court is clearly in order.

So far as the allotment to non-eligible societies is concerned even if it is accepted, though specifically denied by the Authority, to be true that does not confer any right on the appellants. Two wrongs do not make one right. A party cannot claim that since something wrong has been done in another case direction should be given for doing another wrong. It would not be setting a wrong right, but would be perpetuating another wrong. In such matters, there is no discrimination involved. The concept of equal treatment on the logic of Article 14 of the Constitution cannot be pressed into service in such cases. What the concept of equal treatment presupposes is existence of similar legal foothold. It does not countenance repetition of a wrong action to bring both wrongs on a par. Even if hypothetically it is accepted that a wrong has been committed in some other cases by introducing a concept of negative equality the appellant cannot strengthen its case. It has to establish strength of its case on some other basis and not by claiming negative equality. (See *Union of India v. International Trading Co.* (2003(5) SCC 437).

Looked at from any angle, the appeal deserves to be dismissed which we direct. No costs.