

Steve Kanika
v.
New Okhla Industrial Development Authority (Noida) & Anr.
(Civil Appeal No. 9815 of 2024)
27 August, 2024
[Ahsanuddin Amanullah* and Ujjal Bhuyan,* JJ.]

Issue for Consideration

The appellant's father had applied for allotment of a plot under the Respondent No.1/New Okhla Industrial and Development Authority (NOIDA) in the year 2006. The father of the appellant had passed away on 08.11.2007. After an open lottery held on 01.10.2009, the father of the appellant was allotted a plot on 26.10.2009. However, NOIDA on 21.09.2011 cancelled the allotment on the ground that it was made in favour of a dead person on the day such draw of lots was held.

Headnotes[†]

Allotment – Allotment of plot/land – Appellant submitted that the application was made to NOIDA by the late father of the appellant in his individual capacity and there cannot be any denial of the fact that whatever civil right a person has passes on to the next generation/Legal Representatives upon his death:

Held: The fact remained that the father of the appellant had properly applied and was satisfying all the prerequisite conditions for allotment which was followed by actual draw of lots and issuance of allotment letter; undoubtedly though after his passing away – The demise of the appellant's father would not negate the right which stood vested in the appellant – The appellant is the Legal Representative and heir of his father – In the instant case, vide letter dated 10.11.2009, the appellant had intimated NOIDA about the demise of his father on 08.11.2007 – With the letter dated 23.11.2009, the appellant, alongwith documents, had also submitted a Demand Draft for Rs.7,46,825/-, which continues to be with NOIDA till date, as averred by the appellant – What prompted NOIDA to accept the Demand Draft in the first instance, and then retain the same even after cancelling the allotment has not been explained – Further, there

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is no explanation as to why it took NOIDA two years to cancel the allotment, once, admittedly, it was in the know of the death of the appellant's father – Had the cancellation followed in close proximity to 10.11.2009 or had NOIDA refused to accept the Demand Draft or returned it soon thereafter, the fate of this case could have taken a different turn – On an overall circumspection, the appellant has made out a case for the Court's intervention – NOIDA directed to issue fresh allotment letter in the name of appellant. [Paras 8, 10, 11]

Case Law Cited

Greater Mohali Area Development Authority v. Manju Jain [\[2010\]](#)
[10 SCR 134](#) : (2010) 9 SCC 157 – distinguished.

List of Keywords

Allotment; Allotment of plot; Death of original allottee; Draw of lots; Cancellation of allotment; Civil rights; Legal Representative; Intimation of death; Acceptance of demand draft; Fresh allotment letter.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 9815 of 2024
From the Judgment and Order dated 21.10.2019 of the High Court of Judicature at Allahabad in WC No. 71420 of 2011

Appearances for Parties

P.S. Patwalia, Sr. Adv., Ms. Ayshwarya Chandar, Advs. for the Appellant.

Anil Kaushik, Sr. Adv., Ms. Arunima Dwivedi, Shashank Shekhar Singh, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Judgment

Ahsanuddin Amanullah & Ujjal Bhuyan, JJ.

Heard Mr. P.S. Patwalia, learned senior counsel for the appellant and Mr. Anil Kaushik, learned senior counsel and Mr. Shashank Shekhar Singh, learned counsel for the Respondents No.1 and 2 respectively. Leave granted.

2. The issue involved in this case is simple.

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FACTUAL OVERVIEW:

3. The appellant's father had applied for allotment of a plot under the Respondent No.1/New Okhla Industrial and Development Authority (hereinafter referred to as 'NOIDA') in the year 2006. Be it noted, the appellant had been authorised to apply as such in his own behalf for a company, pursuant to consent and no-objection by the other Directors of the company. After an open lottery held on 01.10.2009, the father of the appellant was allotted a plot on 26.10.2009, for which an allotment letter of even date was issued in favour of the appellant's father. The allotment was of Plot No.144, Block-C, Sector-100, Noida, admeasuring 176.40 sqr. metres.
4. However, in the interregnum, the original allottee i.e. the father of the appellant had passed away on 08.11.2007.
5. In that view of the matter, NOIDA on 21.09.2011 cancelled the allotment on the ground that it was made in favour of a dead person on the day such draw of lots was held. Assailing the said action, the appellant filed a writ petition *viz.* Writ C No. 71420/2011 before the High Court of Judicature at Allahabad, which was dismissed on 21.10.2019 (hereinafter referred to as the 'Impugned Order') by a Division Bench.

SUBMISSIONS:

6. Learned senior counsel for the appellant submitted that the application was made to NOIDA by the late father of the appellant in his individual capacity and there cannot be any denial of the fact that whatever civil right a person has passes on to the next generation/Legal Representatives upon his death. Thus, in the present case, it was contended that the moment the father passed away, the appellant stepped into his shoes. As such, it was submitted that all rights which had accrued in favour of the late father of the appellant i.e., a right to be considered in the draw of lots devolved to the appellant. Upon subsequently succeeding in the draw of lots, the allotment letter was also issued. Mr. Patwalia contends that the allotment was wrongly cancelled by NOIDA.
7. *Per contra*, learned senior counsel for NOIDA submits that the law does not require the allotment of the plot to flow merely upon being successful in the draw of lots. Mr. Kaushik submitted that success in the draw of lots does not create any right. Further, it was contended that the person in whose favour the allotment having been made

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being dead, such allotment in law could not be sustained and rightly NOIDA had cancelled the allotment, more so, for the reason that the appellant never chose to inform the NOIDA of the passing away of his father, doing so only after the allotment letter was issued. In support of his contentions, learned senior counsel referred to the decision of this Court in *Greater Mohali Area Development Authority v Manju Jain*, (2010) 9 SCC 157, the relevant being at Paragraphs No.21.¹

ANALYSIS, REASONING AND CONCLUSION:

8. Having considered the matter, we find merit in the contentions urged by the appellant. The fact remained that the father of the appellant had properly applied and was satisfying all the prerequisite conditions for allotment which was followed by actual draw of lots and issuance of allotment letter; undoubtedly though after his passing away. In our view, the demise of the appellant's father would not negate the right which stood vested in the appellant. The appellant is the Legal Representative and heir of his father.
9. The objection taken by the learned senior counsel for NOIDA has been evaluated and the judgment *supra* relied upon by him has been examined by us. The objection cannot be accepted due to NOIDA's conduct which we deal with *infra*. We do not think the judgment is applicable in the extant facts and circumstances. *Manju Jain* (*supra*) is distinguishable for more reasons than one:
 - (i) The respondent therein took a 'vague' plea that the allotment letter was never communicated to her;
 - (ii) The amounts sought for were never deposited by her, and;
 - (iii) The ratio laid down was that '*if an order is passed but not communicated to the party concerned, it does not create any legal right which can be enforced through the court of law, as it does not become effective till it is communicated.*'²
10. In the case at hand, *vide* letter dated 10.11.2009, the appellant had intimated NOIDA about the demise of his father on 08.11.2007. Further,

1 '21. Mere draw of lots/allocation letter does not confer any right to allotment. The system of draw of lots is being resorted to with a view to identify the prospective allottee. It is only a mode, a method, a process to identify the allottee i.e. the process of selection. It is not an allotment by itself. Mere identification or selection of the allottee does not clothe the person selected with a legal right to allotment. (See DDA v. Pushpendra Kumar Jain [1994 Supp (3) SCC 494: AIR 1995 SCC 1].)'

2 Para 24 of *Manju Jain* (*supra*).

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the appellant informed NOIDA that being a whole-time Director of the company, just like his father, he was competent to execute a contract with NOIDA. By way of letters dated 23.11.2009 and 18.10.2010, the appellant requested NOIDA to move forward with the allotment. With the letter dated 23.11.2009, the appellant, alongwith documents, had also submitted a Demand Draft for Rs.7,46,825/- (Rupees Seven Lakhs Forty-Six Thousand Eight Hundred and Twenty-Five only), which continues to be with NOIDA till date, as averred by the appellant. What prompted NOIDA to accept the Demand Draft in the first instance, and then retain the same even after cancelling the allotment has not been explained. What is also hard to comprehend is why it took NOIDA two years to cancel the allotment, once, admittedly, it was in the know of the death of the appellant's father since at least 10.11.2009. Had the cancellation followed in close proximity to 10.11.2009 or had NOIDA refused to accept the Demand Draft or returned it soon thereafter, the fate of this case could have taken a different turn.

11. On the first day of listing of the writ petition, the High Court on 13.12.2011 had directed NOIDA not to allot the plot in question in anybody else's favour. This order continued during the pendency of the writ proceedings. Before this Court, on the first day of hearing i.e., 02.06.2020, the parties had been directed to maintain *status quo* as on the said date. In the wake of the sequence of events, as has played out, and on an overall circumspection, the appellant has made out a case for the Court's intervention.
12. For the reasons aforesaid, NOIDA is directed to issue fresh allotment letter within four weeks from today in the name of the appellant on the same terms and conditions as was mentioned in the original letter of allotment dated 26.10.2009 with the modification that the time-limit would run from today.
13. The Impugned Order is set aside; the appeal is allowed accordingly.
14. I.A.s No. 42353/2020 and 42349/2020 are allowed. I.A. No. 42504/2020 is disposed of.

Result of the case: Appeal allowed.

[†]Headnotes prepared by: Ankit Gyan