

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

OWP No. 135/2007

Reserved on : 30.05.2023
Pronounced on: 6 .09.2023

Shamsher Singh Manhas

.... Petitioner (s)

Through:- Mr. Rahul Pant, Sr. Advocate
with Mr. S. H. Rather, Advocate

V/s

State of J&K and others

....Respondent(s)

Through:- Mr. Sachin Dogra, Advocate

CORAM: HON'BLE MRS. JUSTICE SINDHU SHARMA, JUDGE

JUDGMENT

01. The petitioner has assailed the order of cancellation of allotment of Shop No. 5(B-2) situated at Lower Ground Floor, South Block, Bahu Plaza Rail Head Complex, Jammu, vide order dated 15.02.2007, passed by the Jammu Development Authority.

02. The Shop No. 5(B-2) measuring 605.62 Sq. ft. situated at Lower Ground Floor, South Block, Bahu Plaza Rail Head Complex, Jammu, was allotted to the petitioner pursuant to Advertisement Notice dated 22.02.2006 by the Jammu Development Authority vide order No. JDA/BP/2276 dated 22.02.2006. The allotment of the aforesaid Shop was made on the following conditions:

- “i) To begin with the Shop/Hall shall be allotted to you on lease hold basis for a period of 40 years.
- ii) Balance premium of Rs. 16,88,000/- shall be charged in remaining four monthly installment in the shape of Bank Draft in the name of Vice Chairman, JDA as per the schedule given below:-
 - a) 2nd installment of Rs. 4,22,000/- within 30 days from the date of issuance of this letter.

- b) 3rd installment of Rs. 4,22,000/- within 60 days from the date of issuance of this letter.
 - c) 4th installment of Rs. 4,22,000/- within 90 days from the date of issuance of this letter.
 - d) 5th installment of Rs. 4,22,000/- within 120 days from the date of issuance of this letter.
- iv) Delay in the payment of any installment shall attract penal interest @ 18% p.a for a maximum period of three months beyond which the delay shall empower the authority to cancel the allotment and forfeit the first installment.
- v) In addition to payment of premium, a monthly rent @ Rs. 5/- per sft. shall be charged from the allottee. The rate of rent shall be subject to a revision of minimum 10% after every three years. You shall procure the rent/lease deed forms & return to this office after filling it immediately after payment of last installment. The handing over possession of the premises allotted to you depends on expeditiously execution of the deed in the court. The entire process must be completed with 30 days from the payment of last installment falling which rent of the premises shall become payable even without taking over the possession if the delay is not due to this office.
- Other terms and conditions shall be the same as mentioned in NIT.”

03. The contention of the petitioner is that he was required to pay total premium in five monthly installments of Rs. 4,22,000/- each. The first installment was deposited by him within the stipulated period. The balance installments were to be paid in four equal installments. The petitioner, after deposit of the first installment, however, could not deposit the second installment within time i.e., on or before 22.03.2006 due to circumstances beyond his control. It is submitted that the petitioner could not do so as he suffered serious setback in his business and also from a very serious health ailment. It was after his recovery from the illness, he approached the respondents for information about the allotment, when he was informed by the

Ministerial Staff that his allotment is being cancelled. Before the petitioner could make a request for granting him sufficient time to deposit the installment, the respondents cancelled his allotment and forfeited the first installment vide order dated 15.02.2007. The Jammu Development Authority vide impugned order dated 15.02.2007, cancelled the allotment on the ground that the petitioner had discontinued payment of remaining installments and violated the Clause (IV) of Letter of Intent (LOI)/Allotment Letter.

04. The contention of the petitioner is that he had deposited the earnest money amounting to Rs. 4,22,000/- which was accepted by respondent No. 3 and he was willing to deposit the entire balance premium amount in one installment but the respondent-Authority without considering the same has cancelled his allotment vide impugned order dated 15.02.2007, and premium paid for the first installment was also forfeited. The respondents have cancelled his allotment and forfeited the first installment without issuing any notice to the petitioner regarding deposit of the balance amount or giving him any opportunity of being heard and, thus, violated the principles of natural justice.

05. The respondents submit that the petitioner, in terms of Allotment Order, was under an obligation to deposit the entire premium amount as per the schedule of allotment, i.e., in five equal installments of Rs.4,22,000/. The petitioner only deposited the first installment of Rs. 4,22,000/- and thereafter discontinued the payment of remaining four installments and failed to deposit the remaining amount even after 1½ years of the schedule dates beyond the maximum period of three months, thus, defaulted in payment of the installment and respondent-Authority was well within its right to cancel the said allotment.

06. The terms and conditions of the Letter of Intent/Allotment clearly provided that the petitioner was to deposit the entire amount, i.e., Rs. 21,10,000/- in five equal installments as per the schedule provided in the same. Though, the petitioner deposited the earnest money within the stipulated time but failed to deposit the 2nd, 3rd, 4th and 5th installments which were to be deposited within 30, 60, 90 and 120 days from the date of issuance of Letter Of Intent (LOI)/Allotment Letter dated 22.02.2006 which he failed to deposit.

07. Learned counsel for the petitioner has submitted that as per Clause (IV), delay in payment of any installment would only attract penal interest @ 18% per annum, therefore, the respondents should have charged penal interest which he is willing to pay instead of cancelling his allotment. As per Condition No. IV of the Allotment Letter, it is clearly stipulated that delay in the payment of any installment would attract 18% penal interest but the same is only for a maximum period of three months and delay beyond this period shall empower the Authority to cancel the allotment and forfeit the first installment. The petitioner admittedly has not deposited the remaining four installments within the stipulated time of 120 days from the date of allotment, i.e., 22.02.2006. The respondents, thus, were well within their right to invoke this Clause and cancel the allotment as well as forfeit the first installment.

08. It was next argued by the petitioner that he could not deposit the remaining amount as he was not handed over the possession of the shop, this argument too without any basis, as the allotment order clearly stated that after the payment of the last installment, the handing over of the possession of the allotted premises would depend on the expeditious

execution of the deed in the Court and the entire process must be completed within 30 days from the payment of last installment.

09. The petitioner by his own admission has failed to pay the remaining installments within 120 days from the date of issuance of letter of allotment and also failed to complete the process, due to which, neither the Lease Deed could be executed nor the premises could be handed over to him. Since handing over of the possession of the premises/shop is specifically mentioned in terms of Letter of Intent/Allotment and the same was to be completed with 30 days from the payment of the last installment and as the petitioner having failed to fulfill the terms of the Letter of Intent/Allotment, therefore, he cannot turn around to take this plea.

10. In any case, the petitioner has woken up from slumber after more than one and a half year and was ready to deposit the amount, that too, only after the allotment made in his favour was cancelled.

11. The condition to deposit all the installments was a condition precedent for execution of Lease Deed and possession. The petitioner having defaulted the aforesaid condition, the respondents have rightly invoked the condition of allotment and cancelled the same on the ground that delay would empower the authority to cancel allotment and forfeit the premium paid in one installment. It has been held by the Hon'ble Apex Court in '**Skyline Contractors Pvt. Ltd. and another Vs. State Of U.P. and others**', (2008 (8) SC 265), that '*in case a allottee fails to deposit the installment as per the terms and conditions of the allotment letter, then the authority is entitled to cancel the allotment.*'

12. The Hon'ble Supreme Court, while considering a similar proposition in '**Paulmech Infrastructure Pvt. Ltd. vs. State of Odisha and others**', **AIR 2021 SC 4840**, has held as under:

"18. Keeping these aspects in view, having noted that the appellant had failed to adhere to the terms indicated in the LOI dated 19.01.2010 and the payment required there under not being made even within the extended period, the Board of Directors of UAHCL were justified in deciding to terminate the LOI through their letter dated 10.12.2013. In fact, the prayer no. 3 seeking calculation of interest on the amount deposited and such amount is being sought to be adjusted towards the balance payments would in itself indicate that even to the knowledge of the appellant, the entire payments had not been made even as on the date of the filing the writ petition. In such circumstance, when the LOI has been rightly terminated, the directions sought in the writ petition to execute the lease agreement pertaining to 'Hotel Nilanchal Ashok Puri' does not arise and the prayers in that regard are liable to be rejected.

19. Having arrived at the above conclusion, the next aspect which would engage our attention is as to the manner in which the amount paid by the appellant is to be treated. The learned counsel for UAHCL would contend that the LOI provides that the one-time upfront amount to be paid is non-refundable, in that view, it is contended that the said amount is not liable to be refunded. Even otherwise due to the delay caused by the appellant and having obtained the status quo order from the court by litigating with regard to the subject matter UAHCL have been prevented from otherwise utilizing the property which has caused loss to them and the said amount would be adjustable towards the same is his contention."

13. The only other contention of the petitioner is that no opportunity of hearing was provided to him before cancellation of the allotment. The terms and conditions of the Letter of Allotment are clear and cogent, the delay in payment beyond the maximum period of three months would empower the authority to cancel the allotment and forfeit the first installment. The respondents have cancelled in terms of Letter of

Allotment. The petitioner having failed to fulfill the conditions of the Letter of Allotment, therefore, the authority rightly acted in accordance with the allotment letter, which did not provide for any notice to be given to the petitioner before cancellation of the allotment. This apart, even otherwise, if on undisputed and admitted fact, if only one view is possible, then even if no opportunity of hearing is provided, the impugned notice can be quashed.

14. In “**Aligarh Muslim University Vs. Mansoor Ali Khan**”, (2000) 7 SCC 529, it has been held that: -

“23. Chinnappa Reddy, J. in S.L.Kapoor's case, laid two exceptions (at p.395) namely, " if upon admitted or indisputable facts only one conclusion was possible", then in such a case, the principle that breach of natural justice was in itself prejudice, would not apply. In other words if no other conclusion was possible on admitted or indisputable facts, it is not necessary to quash the order which was passed in violation of natural justice. Of course, this being an exception, great care must be taken in applying this exception.”

15. In view of the aforesaid facts and circumstances, there is no merit in this petition and the same is, accordingly, **dismissed** along with connected application(s).

(Sindhu Sharma)
Judge

Jammu:
06.09.2023
Ram Murti/P.S

Whether the order is speaking : Yes
Whether the order is reportable : Yes