2022 INSC 561

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3784 of 2022

Anjana Saraiya ...Appellant

Versus

The State of U.P. & Ors. ...Respondents

J U D G M E N T

M. R. Shah, J.

1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 03.04.2019 passed by the High Court of Judicature at Allahabad in Writ - C No.56136 of 2006 by which the High Court has dismissed the said writ petition preferred by the appellant herein, the original writ petitioner has preferred the present appeal.

2. The appellant herein, a lady of about 55 years, was allotted a residential property being Plot No.415 admeasuring 150 square meters in Organized

Development Scheme, Phase-III, Pilkhuwa, District – Ghaziabad, Uttar Pradesh by the respondents under the category of Middle-Income Group. After being successful in the draw of lots, the appellant was allotted the said plot at a price of Rs.2,70,000/-. That the appellant herein made an upfront payment of Rs.94,500/- in the year 2003 itself and thereafter paid the first three instalments regularly and in time. However, thereafter there was a default in making the payment of installment nos. 4 to 7. According to the appellant due to the continuous ill-health of her husband she was in a financial crisis due to which she was unable to deposit the remaining instalments. That the petitioner was served with a notice dated 14.06.2006 from the Office of Municipal Council which, according to the appellant was served on her on 19.06.2006 by which the appellant was informed that due to non-deposit of the instalments of the balance amount the allotment has been cancelled. However, according to the appellant, even before the said notice was served upon her, she managed to

secure the money from her relatives and deposited the balance amount with interest i.e. Rs.1,39,000/- on 16.06.2006. Out of payment of Rs.1,39,000/- on 16.06.2006, an amount of Rs.1,04,128/- (for last four instalments) was towards principal amount and Rs.34,872/- was towards interest amount.

Thus, as on 16.06.2006 the appellant deposited the entire amount and cleared all the instalments along with the interest. Thereafter the appellant herein, the allottee, filed the writ petition before the High Court and prayed for the following reliefs:

> "(i) Issue a writ, order or direction in the nature of certiorari to quash the letter/notice/order dated 14.06.2006 against the allotment of Plot No.415, issued by the respondent no.3 (Annexure No.1 to this writ petition).
>
> (ii) Issue a writ, order or direction in the nature of mandamus commanding the respondents not to initiate any proceedings against the Plot No.415 of the petitioner in pursuance of letter/notice/order dated 14.06.2006 issued by respondent no.3.
>
> (iii) Issue a writ, order or direction in the nature of mandamus directing the respondents to complete the

registration proceedings and also direct the respondents not to allot the aforesaid plot No.415 to any other person except to the petitioner."

2.1 That pursuant to the interim order passed by the High Court the appellant deposited a further sum of Rs.50,000/- on 21.11.2006. Therefore, by the time the petition was heard by the High Court, against the total value of the plot i.e. 2,70,000/-, the appellant deposited a total sum of Rs.3,84,546/- (including interest). By the impugned judgment and order, the High Court has dismissed the said writ petition solely on the ground and by observing that the appellant did not fulfil the terms and conditions as provided under the Scheme and did not deposit the instalments regularly and as and when due and payable, therefore the authorities were within their rights to cancel the allotment. At this stage, it is required to be noted that in the meantime and on cancellation of the allotment the respondents refunded the entire money after deducting 20% of the deposited amount which was sent to the appellant through cheque which is not

encashed by the appellant. By the impugned judgment and order the High Court has dismissed the writ petition which has given rise to the present appeal.

3. Shri Kavin Gulati, learned Senior Advocate appearing on behalf of the appellant has submitted that as such against the total sale consideration of Rs.2,70,000/-, by now the appellant has deposited a total sum of Rs.3,84,546/- (including interest) which is lying with the respondent.

3.1 It is submitted that as such there was no deliberate and/or willful default on the part of the appellant in not depositing the instalments regularly as and when due and payable. It is submitted that due to the ill-health of her husband and she, being in financial difficulty, could not make the deposit of instalments in time. It is submitted that over and above the amount of Rs.50,000/- which has been deposited by the appellant pursuant to the interim order passed by the High Court, the appellant was ready and willing to pay

Rupees two lakhs for the compensation for the delayed payment. It is submitted that even as of now also the appellant is ready and willing to deposit a further sum of Rs.2 lakhs towards the compensation for the delayed payment and/or to regularize the payment of instalments.

4. Shri V.K. Shukla, learned Senior Advocate, appearing on behalf of the State of Uttar Pradesh and Shri Dinesh Kumar Garg, learned Senior Advocate, appearing on behalf of the respondent No.3 have supported the impugned judgment and order passed by the High Court.

4.1 It is submitted that under the Scheme and as per the allotment letter the appellant was required to deposit the amount of instalments regularly and as and when due and payable. It is submitted that after the first three instalments were paid, the appellant did not make the payment of the next four instalments and therefore the authority was well within its right to cancel the allotment. It is submitted that thereafter

having found that the appellant had not made the payment of the instalments regularly and as and when due and payable the allotment was cancelled. It is submitted that the High Court has rightly dismissed the writ petition.

5. Having heard learned counsel for the respective parties and in the facts and circumstances of the case, we are of the opinion that if on payment of a further sum of Rs.2 lakhs towards the compensation for the delayed payment of instalments, the account of the appellant be regularized and the allotment made under the Middle-Income Scheme in favour of the appellant who is a lady can be saved.

5.1 At this stage, it is required to be noted and it is not in dispute that at the time of allotment, the appellant made the upfront payment of Rs.94,500/- and thereafter made payment towards the first three instalments. However, thereafter because of the ill-health of her husband she was in financial difficulty and therefore she could not make the payment of the

remaining four instalments which she made on 16.06.2006 with interest. The aforesaid payments show her bonafides and that there was no deliberate, willful delay on the part of the appellant in not making the payment of instalments in time. Even thereafter the appellant has deposited a further sum of Rs.50,000/- pursuant to the interim order passed by the High Court and therefore by now the appellant has deposited a total sum of Rs.3,84,546/- (including interest) against the total value/cost of Rs.2,70,000/-. Therefore, now when the appellant is ready and willing to pay a further sum of Rupees two lakhs towards compensation for the delay in making the payment of instalments, we are of the opinion that the offer made by the appellant is a fair offer and by which, allotment of plot in favour of a lady which is made under the Middle-Income Group Scheme and the plot being still vacant and not allotted to any other person, the order of cancellation may be set aside.

6. In view of the above and for the reason stated above, the present appeal is allowed. On payment of a further sum of Rs.2,00,000/- (Rupees Two Lakhs) to be deposited in favour of the respondent within six weeks from today, the impugned judgment and order passed by the High Court is set aside. Consequently, the order dated 14.06.2006 cancelling the allotment of the plot in question is hereby quashed and set aside. On payment of a further sum of Rs.2,00,000/- (Rupees Two Lakhs) within the time stipulated hereinabove, the respondents are directed to hand over the vacant possession of the plot in question to the appellant and execute the necessary documents, if any, required to be executed within a period of four weeks thereafter. Present appeal is allowed to the aforesaid extent. There is no order as to costs.

.....J.
(M. R. SHAH)

.....J.
(B.V. NAGARATHNA)

New Delhi,
May 12, 2022.