

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No.10670 OF 2018
(Arising out of SLP(C)No.11206 of 2018)

GHAZIABAD DEVELOPMENT
AUTHORITY & ORS.

... APPELLANTS

Versus

MACHHLA DEVI

... RESPONDENT

WITH

CIVIL APPEAL No.10671 OF 2018
(Arising out of SLP(C)No.12881 of 2018)

J U D G M E N T

N.V.RAMANA, J.

Civil Appeal No. 10670 of 2018
(arising out of SLP(C) No.11206 of 2018)

1. Leave granted.
2. Heard Mr. Rakesh Uttamchandra Upadhyay, learned counsel appearing on behalf of the appellants and Mr. K.

Radhakrishnan, learned senior counsel appearing on behalf of the respondent.

3. This appeal is directed against order dated 21.03.2018 passed by the High Court of Judicature at Allahabad in Writ Petition(C) No.7928 of 2018 wherein without issuance of notice to the Ghaziabad Development Authority (hereinafter referred to as the “**GDA**”) an order was passed in the favour of Machhla Devi (hereinafter referred to as the “**allottee**”). It is worthwhile to be noted that the impugned order in essence nullifies the detailed order of cancellation of allotment passed by the co-ordinate Bench of the same High Court dated 17.05.2016 in Writ Petition (C)No.28834 of 2004.

Facts in brief

4. The facts giving rise to the present dispute are that GDA launched a scheme known as Shastri Nagar Housing Scheme. The allottee had applied for a High Income Group Duplex “A” Category of house under hire-purchase scheme. Vide letter dated 05.10.1994, the allottee was informed of the allotment of House No.E-376. The estimated cost of the house was mentioned as Rs.4,33,248/-. The allottee had already paid the registration amount of Rs.5,000/- and the balance registration amount of Rs.38,325/- was required to be

deposited within a week from the issuance of letter dated 05.10.1994 by which the allotment was made. The remaining amount was to be paid in accordance with a payment schedule which had to be notified at a later date. The terms and conditions of allotment letter included that in the eventuality of default in payment to GDA within the prescribed time limit, a penal interest of 21% per annum would follow. Further in the eventuality of a further default for a period of three months from the due date along with penal interest, the allotment shall be treated as cancelled. It was also mentioned that possession could be taken pursuant to 50% of payment of the final cost of the house. The allottee deposited the amount of Rs.38,325/- on 17.10.1994. It is to be noted that the respondent thereafter deposited instalments without following any schedule and a lump sum amount from time to time was deposited as under-

S.No.	Date	Amount
1	19.12.1994	23,000
2	13.01.1995	10,000
3	30.08.1995	35,000
4	08.04.1996	20,000
5	11.09.1996	35,000
6	16.05.1997	35,000
7	18.05.1998	30,000

8	19.05.1998	30,000
9	19.01.2002	45,000

5. The total amount payable by the allottee increased as the balance amount of cost of the house included interest and for non-payment of the same in time also attracted a penal interest at the rate of 21%. The fact on record as alleged is that the respondent failed to make payment of substantial amount to the GDA. It is alleged that the husband of the respondent – Chandra Pal Singh was posted in U.P. Police and by influence of his position, she continued in unauthorised possession of said house.

6. In light of the non-payment of any amount by the allottee after 19.05.1998 for a period of almost three and half years, GDA treated the allotment cancelled. However, on the representation made by the allottee subsequently, a direction was made by GDA dated 07.05.2004 regarding depositing of Rs.20,00,000/- (Rupees twenty lakhs) within 15 days for the restoration of the cancelled allotment.

7. The respondent herein challenged the said cancellation of allotment by filing Writ Petition (C) No. 28834 of 2004 before the Allahabad High Court. The Allahabad High Court vide interim order

dated 29.07.2004 directed the GDA not to take coercive measures for 6 weeks, if the respondent deposits Rs.2 lakhs. This writ petition was dismissed finally by a detailed order dated 17.05.2016 with cost of Rs.5,000/- on the respondent herein.

8. Despite the final order of the High Court, the allottee continued with the unauthorized possession of the property. Accordingly, the GDA issued a letter to the District Magistrate, Ghaziabad dated 10.01.2018 for the eviction of the allottee from the property in question.

9. The respondent filed Writ Petition (C) No.7928 of 2018 before the Allahabad High Court for prayer of Writ of *Certiorari* for quashing the said letter dated 10.01.2018 and *mandamus* for not dispossessing her from the property in question. Adjudicating upon the said matter, the Allahabad High Court disposed of the writ petition by granting material relief to the allottee without issuance of notice to GDA on the first material date of hearing itself. This disposal of writ petition by the Allahabad High Court is in essence a nullification of the order dated 17.05.2016 of its own co-ordinate Bench in Writ Petition (C) No. 28834 of 2004. The High Court passed directions for acceptance of amount by the GDA and thereby regularized the allotment, the cancellation of which had been

upheld by a co-ordinate Bench of the same High Court on 17.05.2016. It is against this writ petition, that special leave petitions have been filed by both the GDA and the allottee as Special Leave Petition (C) No. 11206 of 2018 and 12881 of 2018 respectively.

Contentions on behalf of the appellants

10. The broad contentions raised by the Ld. Counsel on behalf of GDA are threefold.

11. *Firstly*, it is contended that *via* the detailed judgement of 17.05.2016 passed by a two Judge bench of the Allahabad High Court in Writ Petition Civil No. 28834 of 2004, the cancellation of allotment was upheld, and, thus, it attained finality. Hence, it was wrong and illegal on the part of the Allahabad High Court to interfere in the matter and pass directions to accept the monetary amount which is tantamount to regularization of the allotment.

12. *Secondly*, the High Court ought to have dismissed the Writ Petition No.7928 of 2018 as the allottee had approached it with unclean hands. The allottee had remained in unauthorized possession of the property in question for 14 long years by virtue of the influence of her husband who is in Uttar Pradesh Police.

13. *Thirdly*, the impugned order was passed without

issuance of notice to the GDA on the first material date of hearing, and, merely on the ground of statements made by the counsel. They assert that GDA had not issued any instructions regarding compromise of the matter and had notices been issued, the truth could have been discerned.

Contentions on behalf of the respondent

14. On the other hand, the learned counsel on behalf of the allottee has made twofold submissions.

15. *Firstly*, it is a settled law that a person in peaceful and settled possession cannot be forcefully dispossessed. The allottee claims its possession by virtue of allotment letter dated 05.10.1994 which was lawfully issued by the GDA. Accordingly, it is pleaded that there could be no dispossession except by due process of law.

16. *Secondly*, it is contended that the appellants owing to their own act of negligence, arbitrarily demanded exorbitant price of the property, and, thereafter forcibly sought to dispossess the allottee.

REASONING

17. It is abundantly clear that the allottee was allotted

House No. E-376 under the hire-purchase scheme *vide* letter dated 05.10.1994 by the GDA. The allottee's conduct of delayed payment with respect to the allotment is evident from the fact that even the balance registration amount of Rs. 38,325/- which was required to be deposited within a week from the issuance of letter dated 05.10.1994 was actually deposited on 17.10.1994. Further, the deposits made thereafter, were also done so without following any schedule as is evident from the facts stated hereinabove in para No.4. In fact, the last deposit of the balance amount above-mentioned was made almost after three and half years which led to cancellation of allotment by the GDA. It is only on the subsequent representation being made to the GDA that a direction was issued to deposit Rs.20,00,000/- within 15 days for the restoration of the cancelled allotment. In the light of this factual matrix it becomes clear that the allottee has not honored the stipulations of the hire-purchase scheme under which allotment of House No. E-376 was made to her.

18. Pursuant to this came the first round of litigation wherein the Writ Petition (Civil) No.28834 of 2004 was filed in the Allahabad High Court by the allottee, challenging the order of GDA seeking payment of Rs.20,00,000/- within 15 days for the

restoration of the cancelled allotment. This writ petition eventually culminated in an order dated 17.05.2016 wherein the same was dismissed for having no merit after a detailed reasoning and imposition of cost of Rs.5,000/- on the allottee. Despite the final order of the High Court, the allottee continued with the unauthorized possession of the property. This is indicative of the lack of *bona fides* on part of the allottee.

19. Accordingly, the GDA issued a letter to the District Magistrate, Ghaziabad dated 10.01.2018 for the eviction of the allottee from the property in question. It is pursuant to this letter, that the second round of litigation started.

20. The allottee's assertion is twofold. *Firstly*, the GDA owing to its act of negligence, arbitrarily demanded exorbitant price of the property and thereafter forcibly sought to dispossess the allottee and, *secondly*, it is a settled proposition of law that a person in peaceful and settled possession cannot be forcefully dispossessed which can only be done by following due process of law. The latter is very much true. However, it is to be noted that, the allottee claims possession by virtue of allotment letter which was lawfully issued by the GDA dated 05.10.1994. It is this very letter that incorporates the terms and conditions that the amount

is to be paid within the prescribed time limits failing which a penal interest at the rate of 21% would be charged, and, further, if default continues for a further period of three months from due date, inclusive of penal interest, then the allotment shall be treated as cancelled. The conduct of the allottee as evident from paragraphs 17 and 18 not only fall foul of the terms and conditions envisaged under the allotment letter issued under the hire-purchase scheme but also shows that she has approached the Court with unclean hands. With reference to the possession of the allottee, the eviction was sought pursuant to the order of the Allahabad High Court dated 17.05.2016 which upheld the cancellation of the allotment, and, thus, fulfils the due process of law requirement.

21. It is well-settled principle of law that unlawful possession of public property without having paid for the same would tantamount to unjust enrichment and would be against public interest. We find support for the abovementioned proposition in ***Delhi Development Authority v. Anant Raj Agencies (P) Ltd.***¹ wherein this Hon'ble Court speaking by Justice V. Gopala Gowda has noted that,

1 . (2016) 11 SCC 406

“38. The original lessee has been in unauthorised occupation of the property in question for around 30 years (till he executed a sale deed in favour of the respondent) and the respondent has been illegally inducted in possession of the same, by the original lessee, who himself was in unauthorised possession of the property. For around 17 years the respondent has been enjoying the property in question without any right, title or interest. Thus, both are liable to pay the damages for unauthorised occupation and DDA is empowered under Section 7 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 to claim damages from them. We record this finding in exercise of our appellate power in view of our finding and reasons assigned in this judgment holding that the concurrent finding is not only erroneous but also suffers from error in law in granting decree of permanent injunction in favour of the respondent who is not entitled in law for the same. There is a miscarriage of justice in granting the relief by the courts below in favour of the respondent. Further, keeping in view the public interest involved in this case and particularly having regard to the peculiar facts and circumstances of the case we have to allow

this appeal of DDA.

39. Since we have answered the points framed in this appeal in favour of the appellant DDA, we further, direct DDA to take possession of the property immediately without resorting to eviction proceedings, as the respondent has been in unauthorised possession of the property in question, by virtue of erroneous judgments passed by the courts below. The respondent has been unlawfully enjoying the public property which would amount to unlawful enrichment which is against the public interest.”

(emphasis supplied)

22. These observations were made in the context of a lease being granted by the Delhi Development Authority getting terminated by efflux of time despite which the lessee continued in unauthorized possession of the same. The same principle is applicable in our context wherein allotment of a house is made by GDA. The unauthorized occupation of public property is contrary to public interest. Further, the manner in which it is done by multiple rounds of protracted litigation shocks our judicial conscience wherein unauthorized possession of a public property of GDA has been continued for over 14 long years. It is nothing

but an abuse of process of law.

23. At this juncture, we found that the effect of the disposal of Writ Petition Civil No.7928 of 2018 by the Allahabad High Court is in essence a nullification of the order dated 17.05.2016 in Writ Petition Civil No.28834/04 of its own co-ordinate Bench. This approach is highly condemnable as, *firstly*, it is against judicial propriety to issue orders contrary to the orders of its own co-ordinate Bench, as the same had attained finality. Judicial discipline mandates respecting of orders of co-ordinate Benches of the High Court. *Secondly*, the manner in which the order is made without even issuance of notice to the GDA on the first material date of hearing goes against the cherished Principle of Natural Justice, *audi alteram partem*, the right to fair hearing. This is of immense importance *vis-à-vis* the assertion of the GDA that it had not issued any instructions regarding compromise of the matter that was ordered by the Allahabad High Court in its abovementioned order. Had the rule of *audi alteram partem* been followed and notices issued, the truth could have been discerned.

24. Thus, in light of the observations made above, the appeal is allowed. The order of the Allahabad High Court in Writ Petition Civil No.7928 of 2018 dated 21.03.2018 is set aside and it

is directed that the allottee be evicted forthwith. The appellants are at liberty to take the assistance of local police for getting the peaceful possession of the property in question.

25. There shall be no order as to costs.

Civil Appeal No.10671 of 2018
(arising out of SLP (C) No. 12881 of 2018)

26. Leave granted.

27. As the instant appeal is filed against the same impugned order dated 21.03.2018 passed by the High Court of Judicature at Allahabad in Writ Petition (C) No.7928 of 2018, the same is also disposed of in terms of the order passed in C.A. No.10670 of 2018 (arising out of SLP(C)No.11206 of 2018).

28. There shall be no order as to costs.

.....J.
(N.V. RAMANA)

.....J.
(MOHAN M. SHANTANAGOUDAR)

NEW DELHI;
OCTOBER 23, 2018.