Allahabad High Court
Ravi Gautam vs State Of U.P. & Others on 18 December, 2014
Bench: Rajes Kumar, Vivek Kumar Birla

HIGH COURT OF JUDICATURE AT ALLAHABAD

RESERVED

AFR

Court No. - 32

Case :- WRIT - C No. - 59063 of 2009

Petitioner :- Ravi Gautam

Respondent :- State Of U.P. & Others

Counsel for Petitioner :- N.L. Pandey

Counsel for Respondent :- C.S.C.,Nisheeth Yadav,Ramendra P. Singh

Hon'ble Rajes Kumar,J.

Hon'ble Vivek Kumar Birla,J.

(Delivered by Hon'ble Vivek Kumar Birla, J.) Heard Sri N.L. Pandey, learned counsel for the petitioner, Sri Nisheeth Yadav appearing for Greater Noida Industrial Development Authority and learned Standing Counsel appearing for the State respondent no. 1.

The present writ petition has been filed challenging the order dated 23 October 2009, passed by Chief Executive Officer, Greater Noida, Industrial Development Authority (herein after referred to as 'Authority'), respondent no. 2, whereby his representation to issue allotment letter of the plot in question in his favour has been rejected. A further prayer has also been made to the effect that the respondents be directed to issue allotment letter in favour of the petitioner with regard to Plot No. R-6, which has been reserved for the petitioner in Recreational Area, City Park, Greater Noida.

As per record, the facts of the present case in brief are that a scheme was floated by the Authority for

allotment of institutional plots in the development area falling within the jurisdiction of the authority. The petitioner applied for one of the plot measuring 5000 sq. m. and in pursuance whereof Reservation Letter dated 18 December 2001 was issued, whereby it was provided that area measuring 5000 sq. m. was reserved in favour of the petitioner and the premium of the plot was calculated at the rate of Rs. 640/- per sq. m., which comes to Rs. 32,00,000/- and it was directed that ten percent of the total premium was to be deposited within 30 days from the date of the issuance of the said Reservation Letter dated 18 December 2001. In the aforesaid amount, Rs. 10,000/-, deposited by the petitioner, towards the registration amount, was adjusted. It was also provided that the formal allotment letter shall be issued only after the receipt of the reservation money; any request for extension of time to deposit the reservation money will not be considered in any case; and in case of default, offer shall stand cancelled. Since the petitioner could not deposit the amount within time, he applied for extension of time and time was extended vide letter dated 6th February 2002 by 30 days. When the petitioner failed to deposit the amount, within the time so extended, he again applied for extension of time vide his letter dated 16th February, 2002, on the ground that he had requested for three months time to deposit the money but only one month's time was granted, therefore, two months' further time may be granted to him for depositing of the amount. It is the case of the petitioner that he was granted further time to deposit the amount vide letter dated 23rd April 2002 and thereafter he deposited a sum of Rs. 3 lacs on 12th June 2002 in cash in Bank of Baroda. Subsequently, on 24th September 2004 the petitioner allegedly applied for permission to deposit the balance amount so due on the ground that he was orally suggested to apply for a bigger plot and that in the meantime he may deposit a sum of Rs. 3 lacs in lump sum and the balance amount may be deposited by him after allotment of the bigger plot and therefore he prayed that he may be permitted to deposit the balance amount and formalities of registry etc. be done in his favour. Subsequently, on 10th November 2004 the petitioner deposited a sum of Rs. 10,000/- by Bank Draft in Bank of Baroda. It is alleged that permission was granted to deposit the amount of Rs. 10,000/- and the amount was accepted by the respondents authorities. Allegedly, the petitioner made another application dated 5th October 2007 that the plot so reserved in favour of the petitioner vide Reservation Letter dated 18th December 2001 may be allotted to him and allotment letter be issued to that affect. It appears that vide office order dated 11 August 2008 a permanent committee of six officers of the Authority was constituted by the Chief Executive Officer to look into any type of the grievances of the allottees, so that they may not run from one officer to another officer for redressal of their grievances. It was provided in the aforesaid order dated 11 August 2008 that the Committee will forward its recommendation to the Chief Executive Officer of the Authority and after approval of the recommendation, the concerned Project Manager will inform the person having grievance in writing. The petitioner has placed on record as Annexure-9 to the petition, the recommendation of such Committee dated 3rd September 2008 to the effect that since the petitioner has already deposited 97% of the amount due within time, therefore, after taking interest and penal interest on Rs. 10,000/-, which was deposited without delay, allotment of the plot may be made in favour of the petitioner. Since as per allegations of the petitioner, no decision was being taken by the Authority regarding allotment of the plot in question, he filed a writ petition, being Civil Misc. Writ Petition No. 21444 of 2009 seeking a relief of mandamus by commanding the respondents to issue allotment letter in his favour. The said writ petition was disposed of with an observation that the petitioner may file a representation before the respondent no. 2, who shall decide the same by a speaking order preferably within three months from the date of the receipt of

the representation. Accordingly, the petitioner filed a representation dated 20.5.2009. However, when the same was not being decided, he filed a contempt petition,being Contempt Petition No. 3212 of 2009 wherein vide order dated 8.9.2009 notices were issued to the respondents. Subsequently, an affidavit of compliance was filed by the opposite party in contempt petition annexing the copy of the order dated 23rd October 2009, whereby the representation of the petitioner was rejected by the respondent no. 2. It is this order which is under challenge in the present petition.

The Development authority has filed its counter affidavit and in para 10 of the counter affidavit it is categorically stated that the petitioner has deliberately filed an illegible copy of the letter dated 23rd April 2002 whereby further extension of time to deposit the amount was refused and instead he was called upon to deposit the amount of Rs. 3,10,000/- within a period of three days, but within three days no such deposit was made and the petitioner on his own deposited a sum of Rs. 3 lacs in cash on 12th June 2002 without there being any authorisation or sanction from the respondent authorities extending the time period beyond 26th April 2002. The stand taken by the respondent authorities is that they have never permitted the petitioner to deposit a sum of Rs. 10,000/- on 10th November 2004 and there was absolutely no such authorisation or permission to the petitioner to deposit the same. It has been categorically stated that only Reservation Letter dated 18th December 2001 was issued in favour of the petitioner with a clear stipulation that amount due has to be deposited within 30 days from the date of the issuance of the letter; formal allotment letter shall be issued only after the receipt of the reservation money; the request for extension of the time to deposit the reservation money will not be considered in any case; and in case of default the offer shall stand cancelled.

Rejoinder affidavit has been filed by the petitioner wherein the contents of the writ petition have been reiterated and report submitted by one Nandan Prasad Arya Assistant Grade-II dated 3rd November 2007 has been placed on record whereby he had reported that sum of Rs. 3 lacs was deposited by the petitioner within time and therefore, the issuance of allotment letter in favour of the petitioner may be considered. It is to be noted that this report has been submitted by one Assistant Grade II only.

The contentions of Sri Pandey are threefold. One, that the extension of time was granted to the petitioner and he had deposited the amount within the time so extended by the authority and therefore it has to be treated as valid deposit and thus the petitioner is entitled for allotment of the plot in his favour. His second submission was that the Reservation Letter amounts to allotment of plot in favour of the petitioner and on fulfilment of the condition, the plot stood allotted in his favour and since there is no order of cancellation of plot so reserved in his favour vide letter dated 18th December 2001, he is entitled for allotment the plot in question. His third submission was that the petitioner has been discriminated as in few of other cases the Authority had permitted the extension of time for depositing the money and thereafter issued allotment letter in their favour and therefore, rejection of his claim by the Authority is in violation of Article 14 of the Constitution of India. He further submitted that on parity the petitioner is also entitled for the allotment of the plot in question. For this purpose he has placed reliance on few judgements.

Per contra, Sri Nisheeth Yadav, learned counsel, appearing for respondent authorities submitted that there could not have been any extension of time as per the Reservation Letter and therefore, the reservation of the plot in favour of the petitioner stood cancelled in the terms and condition of the Reservation Letter dated 18th December 2001. He further submitted that even if the time was treated to have been validly extended by the Authority, there is nothing on record to demonstrate that after the extension of time as granted vide letter dated 6th February 2002 by 30 days from the due date of deposit of reservation money, even this extended time was not availed of by the petitioner and that vide order of the Chief Executive Officer dated 20th April 2002 the extension of time was subsequently refused and the petitioner was permitted to pay the reservation money within 3 days from the date of the said letter. He further submitted that this grace period also ended on 26th April 2002 and as such the deposit of Rs. 3 lacs in cash on 12th June 2002 by the petitioner, directly in the Bank on his own, can not be treated to be a valid deposit and as such the reservation of the plot in favour of the petitioner automatically stood cancelled and hence no order of cancellation was at all required in this case. He further submitted that there is nothing on record to show that even the deposit of Rs. 10,000/- on 10th November 2004, made by the petitioner on his own, was ever approved by the concerned Authority i.e. the Chief Executive Officer and therefore, even this deposit was also not valid in the eyes of law. He further submitted that permanent committee so established vide office order dated 11 August 2008 could have only made its recommendation to the Chief Executive Officer and it is only after his approval the same could have been implemented. He further submitted that no such recommendation was ever approved by the respondent no. 2, hence the impugned order dated 23rd October 2009, passed by the respondent no. 2 is perfectly just and the present petition is devoid of merits. In support of his contentions he also relied upon few judgements of the Hon'ble Apex Court.

We have considered rival submissions made by learned counsel for the parties and have carefully perused the record.

In so for as the contention of the learned counsel for the petitioner that the extension of time was granted to the petitioner to deposit the amount, and therefore, the deposit of the amount be treated as valid deposit, as required in reservation letter dated 18th December 2001 is concerned, in our opinion for correct interpretation of the Reservation Letter, it is necessary to extract the same which is quoted as under:-

"Greater Noida Industrial Development Authority 169, Chitvan Estate, Sector-Gamma Greater Noida City Greater Noida, Distt. Gautam Budh Nagar 201306 (UP) Letter No. Inst/2001/2283 Date: 18 December 2001.

To Sh. Ravi Gautam, Gautam Niwas, Gautam Puri, Dadri, Distt. Gautam Budh Nagar (U.P.) Sub: Reservation Letter.

Sir, In reference to your application no. 002275 for the establishment of Community Center Cum Social and Cultural Activities in Greater Noida and the demand for 5000 sq. m. of land for the same, I have directed to inform you that :

1.Area request by you, measuring 5000 sqm has been reserved in Greater Noida. The total premium of the plot @ Rs. 64-/0 per sqm shall be Rs. 32,00,000/- (Rupees Thirty two lacs only).

2.As per the terms of the offer you are requested to deposit 10 % of the total premium of the plot amounting to Rs. 3,10,000/- (Rupees Three Lacs Ten Thousand Only), in which the registration amount of Rs. 10,000/- paid by you, has already been adjusted within 30 days from the date of the issue of this letter.

3.Formal allotment letter shall be issued only after the receipt of the reservation money.

The terms and conditions of allotment shall be as per the terms of the Brochure of the open-ended scheme as amended / informed time to time and shall be binding on the allottee.

Specifically, this is to mention here that the request for time extension to pay the reservation money not be considered in any case and in case of default the offer shall stand cancelled.

With best wishes Yours faithfully, (Ramesh Chandani) Officer on Special Duty Copy to:

GM (Planning) GM (Finance) Officer on Special Duty (emphases supplied by us) From a bare perusal of the aforesaid Reservation Letter dated 18th December 2001 we are of the opinion that amount as required was liable to be deposited within 30 days from the date of the issuance of the letter and under any circumstances no extension of time could have been granted to pay the reservation money and any extension of time so granted to the petitioner was without jurisdiction or authority and we hold accordingly. Consequently, the offer of the plot in favour of the petitioner vide letter dated 18th December 2001 stood cancelled automatically as admittedly the amount of Rs. 3,10,000/- was not deposited within 30 days from the date of the issuance of the reservation letter.

Even otherwise, the Reservation Letter clearly demonstrate that only 30 days time was granted to deposit Rs. 3, 10,000/- from the date of the issuance of the said letter dated 18th December 2001; formal allotment letter was to be issued subsequently after the receipt of the reservation money which was Rs. 3,20,000/- out of which reservation amount of Rs. 10,000/- was to be adjusted and thus a sum of Rs. 3,10,000/- was to be deposited by the petitioner within 30 days. Admittedly, the petitioner deposited Rs. 3 lacs only on 12th June 2002, which was not only an amount lesser than the required amount but was deposited much beyond the period of 30 days from the date of reservation letter dated 18th December 2001. Even assuming for the sake of arguments that the period for depositing the amount could have been extended, the said amount could have been deposited by 26th April 2002, the date on which even the extended period came to an end. There is nothing on record to demonstrate that time period from 26th April to 12th June 2002, the date on which Rs. 3 lacs was deposited by the petitioner, was ever extended by any competent authority. This amount was deposited on 12th June 2002 in cash by the petitioner on his own on a blank Chalan available with the Bank. There is no authorisation on Chalan approving or permitting the deposit on 12th June 2002. Therefore, the contention of the learned counsel for the petitioner that the deposit was made well within time is not substantiated by any documentary evidence on record. Not only this, a sum of Rs. 10,000/- was deposited by the petitioner on 10th November 2004 and

again there is nothing on record to demonstrate that this deposit was in any manner approved by any competent authority by extending the time to deposit the said amount. Therefore, even this deposit was made by the petitioner on his own to which no sanctity can be attached.

A bare recommendation of the committee dated 3rd September 2008 in favour of the petitioner that the amount of Rs. 10,000/- deposited on 10th November 2004 be validated after taking interest and penal interest on this balance amount of Rs. 10,000/- has not been approved by the competent authority i.e. Chief Executive Authority and therefore, is of no consequence. Even a bare glance over the aforesaid recommendation would demonstrate that the committee has treated the deposit of Rs. 3 lacs within time even without mentioning the fact of extension of time again and again granted in favour of the petitioner, and the date of expiry of time so extended and also the actual date of deposit of Rs. 3 lacs in cash by the petitioner. This recommendation suffers from non application of mind and appears to have been tailored to favour the petitioner. This recommendation was apparently based on the manipulated Report dated 3 Nov, 2007 prepared by a Assistant Grade-II, who reported that the deposits were made within time. Be that as it may, in any view of the matter, such recommendation was never approved by the competent authority i.e. Chief Executive Officer, who formed this committee with the condition that the recommendation of this committee shall be placed before him, and it is only after the approval of any such recommendation, the same shall be implemented.

Therefore, we find no force in the contention of the learned counsel for the petitioner that the extension of time was granted to the petitioner and he deposited the amount within the time so granted.

Coming to the next submission of the learned counsel for the petitioner that no order of cancellation was passed by the competent authority cancelling the plot reserved in his favour vide letter dated 18th December 2001, suffice to say that it was specifically provided in the aforesaid Reservation Letter that in case of default the offer shall stand cancelled. We have already held that extension of time if so granted to the petitioner was absolutely without authority and exercise of such power was contrary to the specific terms of the Reservation Letter, that the request for time extension to pay the reservation money will not be considered in any case. Therefore, no separate order for cancellation of plot was required in the present case. As the amount was not deposited even within the time period so extended (although the same was without jurisdiction) hence the offer of plot to the petitioner itself automatically stood cancelled. As a matter of fact, not only in the present petition but also in his earlier Writ Petition No. 21444 of 20049, the petitioner had prayed that respondents be directed to issue allotment letter in his favour, which clearly shows that petitioner was concious of his status that there existed no allotment in his favour, hence question of passing of any cancellation order does not arisen. Hence this contention of the petitioner is also rejected.

The third submission of the counsel for petitioner that the petitioner had been discriminated as in the case of Vocational Education Foundation time was extended by the authority and the allotment in its favour was restored. In this connection the petitioner has placed reliance on a judgement of this Court in Writ Petition No. 57964 of 2006 Vocational Education Foundation, Plot No. 4, Knowledge Park-J, Surajpur Kasna Road, Greater Noida and another vs. Greater Noida Industrial

Development Authority Noida decided on 26.4.2007, whereby a Division Bench of this Court while setting aside the order dated 18.9.2006, by which allotment of land in favour of Vocational Education Foundation was cancelled, the authority was directed to complete the formalities for execution of the lease deed. The learned counsel for the petitioner therefore submitted that the petitioner also stands on the same footing and the order dated 23.10.2009, rejecting the representation of the petitioner, be quashed and that he is also entitled for the issuance of the letter of allotment in his favour. He also placed before us the decision of Apex Court in Sube Singh and others vs State of Haryana and others (2001) 7 SCC 545, which has been relied upon by the Division Bench of this Court in the case of Vocational Education Foundation (supra).

We are unable to agree with the submission of the learned counsel for the petitioner. We may refer to a decision of Hon'ble Apex Court in Chandigarh Administration and another vs. Jagjit Singh and another (1995) (1) SCC 745. Para 8 of the said judgement which is quoted as under :-

"8. We are of the opinion that the basis or the principle, if it can be called one, on which the writ petition has been allowed by the High Court is unsustainable in law and indefensible in principle. Since we have come across many such instances, we think it necessary to deal with such pleas at a little length. Generally speaking, the mere fact that the respondent authority has passed a particular order in the case of another person similarly situated can never be the ground for issuing a writ in favour of the petitioner on the plea of discrimination. The order in favour of the other person might be legal and valid or it might not be. That has to be investigated first before it can be directed to be followed in the case of the petitioner If the order in favour of the other person is found to be contrary to law or not warranted in the facts and circumstances of his case, it is obvious that such illegal or unwarranted order cannot be made the basis of issuing a writ compelling the respondent authority to repeat the illegality or to pass another unwarranted order. The extraordinary and discretionary power of the High Court cannot be exercised for such a purpose. Merely because the respondent authority has passed one illegal/unwarranted order, it does not entitle the High Court to compel the authority to repeat that illegality over again and again. The illegal/unwarranted action must be corrected, if it can be done according to law indeed, wherever it is possible, the Court should direct the appropriate authority to correct such wrong orders in accordance with law but even if it cannot be corrected, it is difficult to see how it can be made a basis for its repetition. By refusing to direct the respondent authority to repeat the illegality, the Court is not condoning the earlier illegal act/order nor can such illegal order constitute the basis for a legitimate complaint of discrimination. Giving effect to such pleas would be prejudicial to the interests of law and will do incalculable mischief to public interest. It will be a negation of law and the rule of law. Of course, if in case the order in favour of the other person is found to be a lawful and justified one it can be followed and a similar relief can be given to the petitioner if it is found that the petitioners' case is similar to the other persons' case. But then why examine another person's case in his absence rather than examining the case of the petitioner who is present before the Court and seeking the relief. Is it not more appropriate and convenient to examine the entitlement of the petitioner before the Court to the relief asked for in the facts and circumstances of his case than to enquire into the correctness of the order made or action taken in another person's case, which other person is not before the case nor is his case. In our considered opinion, such a course -- barring exceptional situations -- would neither be advisable nor desirable. In other words, the High Court cannot ignore the law and the

well-accepted norms governing the writ jurisdiction and say that because in one case a particular order has been passed or a particular action has been taken, the same must be repeated irrespective of the fact whether such an order or action is contrary to law or otherwise. Each case must be decided on its own merits, factual and legal, in accordance with relevant legal principles. The orders and actions of the authorities cannot be equated to the judgements of the Supreme Court and High Courts nor can they be elevated to the level of the precedents, as understood in the judicial world. (What is the position in the case of orders passed by authorities in exercise of their quasi-judicial power, we express no opinion. That can be dealt with when a proper case arises.)"

In the aforesaid case also issuance of allotment letter and cancellation of plot was involved. In that case also extension of time was granted to the allottee for depositing the amount, which he failed to avail even within the extended time. Same is the case before us. First writ petition was rejected by the High Court. Second writ petition filed by the allottee was allowed by the High Court, which was challenged before the Apex Court and while setting aside the judgement of the High Court, the observation as noted in para 8 were made by the Hon'ble apex Court. Now it is the settled law of the land that a particular order in case of another person similarly situated can never be the ground for issuing a writ in favour of the petitioner on the plea of discrimination. Any order in favour of the other persons might be legal and valid or it might not be. That has to be investigated first before it can be directed to be followed in the case of the petitioner. If the order in favour of the other person is found to be contrary to law or not warranted in the facts and circumstances of his case, it is obvious that such illegal or unwarranted order cannot be made the basis of issuing a writ compelling the respondent-authority to repeat the illegality or to pass another unwarranted order.

Now coming to the question whether on facts the petitioner stood on identical footings as in the case of Vocational Education Foundation, M/s Ansal Properties and Industries Ltd and Mr. Ashok Kumar Gautam as claimed (as noticed in Annexure-17 to the present writ petition).

We have noticed that it is a case where letter of allotment had been issued in their favour and were subsequently cancelled where as in case of the the present petitioner only a letter of reservation was issued and according to which he was under obligation to deposit the reservation amount within 30 days from the date of issuance of the reservation letter otherwise offer of the plot will stand automatically cancelled. From the analyses made in the latest para on the basis of the record of the petition, it is clear that deposit was not made within 30 days or within extended time (although according to us that extension of time was without authority and jurisdiction of the authority), therefore, petitioner can not claim any parity with the case of such allottees.

We may refer to the decision of the Apex Court in the State of Orissa vs. Mamta Mohanty (2011) 3 SCC 436 in this regard. In paragraph 56 of the said judgement while relying upon various earlier decisions of the Apex Court it was held that it is a settled legal proposition that Article 14 is not meant to perpetuate illegality and it does not envisage negative equality. In paragraph 57 it was held that this principle also applies to judicial pronouncement and once the Court comes to the conclusion that wrong order has been passed it becomes solemn duty of the Court to rectify the mistake rather than perpetuate the same. It was also observed that to perpetuate an error is no heroism. To rectify it is the compulsion of judicial conscience. Paragraphs 56, 57 and 68 (xiv) are

extracted below:

"56. It is a settled legal proposition that Article 14 is not meant to perpetuate illegality and it does not envisage negative equality. Thus, even if some other similarly situated persons have been granted some benefit inadvertently or by mistake, such order does not confer any legal right on the petitioner to get the same relief. (Vide Chandigarh Administration & Anr v. Jagjit Singh & Anr., AIR 1995 SC 705; Yogesh Kumar & Ors. v. Government of NCT Delhi & Ors., AIR 2003 SC 1241; M/s Anand Buttons Ltd. etc. v. State of Haryana & Ors., AIR 2005 SC 565; K.K. Bhalla v. State of M.P. & Ors., AIR 2006 SC 898; Maharaj Krishan Bhatt & Anr. v. State of Jammu & Kashmir & Ors., (2008) 9 SCC 24; Upendra Narayan Singh (supra); and Union of India & Anr. v. Kartick Chandra Mondal & Anr., AIR 2010 SC (3455).

57. This principle also applies to judicial pronouncements. Once the court comes to the conclusion that a wrong order has been passed, it becomes the solemn duty of the court to rectify the mistake rather than perpetuate the same. While dealing with a similar issue, this Court in Hotel Balaji & Ors. v. State of A.P. & Ors., AIR 1993 SC 1048 observed as under:

"12. ...'2. ...To perpetuate an error is no heroism. To rectify it is the compulsion of judicial conscience. In this, we derive comfort and strength from the wise and inspiring words of Justice Bronson in Pierce v. Delameter (A.M.Y. at page 18:

"a Judge ought to be wise enough to know that he is fallible and, therefore, ever ready to learn: great and honest enough to discard all mere pride of opinion and follow truth wherever it may lead: and courageous enough to acknowledge his errors".

(See also re: Sanjiv Datta, Dy. Secy., Ministry of Information & Broadcasting, (1995)

68 (xix) The grievance of the respondents that not upholding the orders passed by the High Cou

We may also refer to judgement of Apex Court in the case of Baljit Kaur vs. State of Punjab (

"11. The respondent cannot claim parity with D.S. Laungia (supra) in view of the settled legal proposition that Article 14 of the Constitution of India does not envisage for negative equality. Article 14 is not meant to perpetuate illegality or fraud. Article 14 of the Constitution has a positive concept. Equality is a trite, which cannot be claimed in illegality and therefore, cannot be enforced by a citizen or court in a negative manner. If an illegality and irregularity has been committed in favour of an individual or a group of individuals or a wrong order has been passed by a Judicial Forum, others cannot invoke the jurisdiction of the higher or superior court for repeating or multiplying the same irregularity or illegality or for passing wrong order. A wrong order/decision in favour of any particular party does not entitle any other party to claim the benefits on the basis of the wrong decision. Even otherwise Article14 cannot be stretched too far otherwise it would make function of the administration impossible. [vide Coromandel Fertilizers Ltd. Vs. Union of India & Ors. AIR 1984 SC 1772; Panchi Devi vs. State of Rajasthan & Ors. (2009) 2 SCC 589; and Shanti Sports Club & Anr. vs. Union of India & Ors. (2009) 15 SCC 705].

12. Thus, even if some other similarly situated persons have been granted some benefit inadvertently or by mistake, such order does not confer any legal right on the petitioner to get the same relief. (Vide Chandigarh Administration & Anr vs. Jagjit Singh & Anr., AIR 1995 1 SCC 705; Smt Sneh Prabha vs. State of U.P. & Ors., AIR 1996 SC 540; Jalandhar Improvement Trust vs. Sampuran Singh, AIR 1999 SC 1347; State of Bihar & Ors. vs. Kameshwar Prasad Singh & Anr., AIR 2000 SC 2306; Union of India & Ors. vs. Rakesh Kumar, AIR 2001 SC 1877; Yogesh Kumar & Ors. Vs. Government of NCT Delhi & Ors., AIR 2003 SC 1241; Union of India & Anr. vs. International Trading Company & Anr., AIR 2003 SC 3983; M/s Anand Buttons Ltd. vs. State of Haryana & Ors., AIR 2005 SC 565; K.K. Bhalla vs. State of M.P. & Ors., AIR 2006 SC 898; and Maharaj Krishan Bhatt & Anr. vs. State of Jammu & Kashmir & Ors., (2008) 9 SCC 24)."

We may also refer to judgement of the Hon'ble Apex Court in the case of State of Kerala vs. K. Prasad (2007) 7 SCC 140. Paragraphs 13, 14, 15 and 16 are extracted as under:

"13. We may now deal with the plea of the respondents that they have been discriminated against. It is true that Article 14 of the Constitution embodies a guarantee against arbitrariness but it does not assume uniformity in erroneous actions or decisions. It is trite to say that guarantee of equality being a positive concept, cannot be enforced in a negative manner. To put it differently, if an illegality or irregularity has been committed in favour of an individual or even a group of individuals, others, though falling in the same category, cannot invoke the jurisdiction of the writ courts for enforcement of the same irregularity on the reasoning that the similar benefit has been denied to them. Any direction for enforcement of such claim shall tantamount to perpetuating an illegality, which cannot be permitted. A claim based on equality clause has to be just and legal.

14. Dealing with such pleas at some length, this Court in Chandigarh Administration & Anr. Vs. Jagjit Singh & Anr., has held that:

"if the order in favour of the other person is found to be contrary to law or not warranted in the facts and circumstances of his case, it is obvious that such illegal or unwarranted order cannot be made the basis of issuing a writ compelling the authority to repeat the illegality or to pass another unwarranted order. The extra-ordinary and discretionary power of the High Court under Article 226 cannot be exercised for such a purpose." (emphasis in original) This position in law is well settled by a catena of decisions of this Court. [See: Secretary, Jaipur Development Authority, Jaipur Vs. Daulat Mal Jain & Ors. and Ekta Shakti Foundation Vs. Govt. of NCT of Delhi]. It would, thus, suffice to say that an order made in favour of a person in violation of the prescribed procedure cannot form a legal premise for any other person to claim parity with the said illegal or irregular order. A judicial forum cannot be used to perpetuate the illegalities.

15. Adverting to the facts of the two cases, stated hereinabove, we are of the considered view that having been made aware of the fact that the relied upon orders of upgradation had been passed in utter disregard of the statutory rules, the Division Bench fell in grave error in importing the theory of discrimination, particularly when respondents' applications seeking upgradation, were per se not as per the prescribed procedure.

16. We are, therefore, of the opinion that the Division Bench was not justified in directing the State Government to accord the same treatment which had been given to two other schools, which had been upgraded ignoring the statutory rules and upgrade the respondents' schools. In this view of the matter, decision of the High Court is clearly unsustainable and deserves to be set aside."

Therefore, we are of the opinion that the judgement of this Court in the case of Vocational Education Foundation (supra) is of no help to the petitioner and the plea of discrimination and violation of Article 14 of the Constitution of India in the present case is hereby rejected.

The law laid down by Hon'ble Apex Court in the case of Chandigarh Administration and another vs. Jagjit Singh and another (1995) (1) SCC 745 (supra) is being consistently followed. Apart from the cases already referred to herein above, some of the other decisions are Anand Botton Ltd. vs. State of Haryana (2005) 9 SCC 164 (para 12) and Basawaraj vs. Special Land Acquisition Officer (2013) Vol 14 SCC 81 (para 8).

We are, therefore, of the opinion that it is not a case where the petitioner has been discriminated with others. On the contrary, we are of the view that the petitioner was a defaulter; no formal allotment letter had even been issued in his favour as contemplated in the letter dated 18th December 2001; and that the offer of land stood automatically cancelled due to non deposit of the amount within time and as such he is not entitled for any relief.

The order impugned in the present writ petition is perfectly just and legal.

The petition is devoid of merits and is accordingly dismissed.

Order Date :- 18.12.2014/SKS