

**IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD**

**(Sl. No.127)**

**Court No. - 29**

**Case :-** WRIT - C No. - 23545 of 2014

**Petitioner :-** Malti Verma

**Respondent :-** State Of U.P. And 4 Others

**Counsel for Petitioner :-** Vivek Kumar Singh, Vivek Srivastava

**Counsel for Respondent :-** C.S.C., P.K. Tripathi, Vivek Varma

**Hon'ble Mahesh Chandra Tripathi, J.**

**Hon'ble Anish Kumar Gupta, J.**

1. Heard Sri Sayujya Singh, Advocate holding brief of Sri vivek Kumar Singh, learned counsel for the petitioner, Sri P.K. Tripathi, learned counsel appearing for the Kanpur Development Authority as well as the learned Standing Counsel for the State-respondents.

2. The instant writ petition has been filed by the petitioner praying for following relief:

*"(i) Issue a writ, order or direction in the nature of certiorari to quash the order date 20.08.2013 passed by respondent no.4.*

*(ii) Issue a writ, order or direction in the nature of certiorari to quash the Government order dated 20.10.1999 alternatively Sub Clause-15 of the Government Order dated 20.10.1999.*

*(ii)a. Issue a writ, order or direction in the nature of mandamus directing the respondent authorities to allot the excess land to the petitioner at the rate on which the plot was allotted to her initially in 2009.*

*(iii) Issue a writ, order or direction in the nature of mandamus directing the respondent authorities to execute the sale deed of allotted plot of petitioner forthwith on the rates applicable in 2009."*

3. Briefly stated case of the petitioner is that pursuant to an advertisement issued by the Kanpur Development Authority (in short 'KDA') for offering the allotment of plots in Jawaharpuram Green City Project, Sector-4, Kanpur Nagar, the petitioner had applied for allotment of a plot of 300 sq m. and deposited the registration amount on 17.12.2008. On 19.03.2009, an allotment letter was issued by the KDA allotting the plot no. 45 of the said scheme to the petitioner herein at the rate of Rs. 5,100/- per sq m. In the said allotment letter, the facility of payment in installment was also provided. However it was further provided that if an allottee deposits the entire allotment money as a single premium, he/she will be entitled for 5% rebate. The petitioner obtained loan from HDFC Bank so as to enable her to make the payment in one go and claimed the 5% rebate on payment of entire amount as a single premium. Thereupon she

deposited the entire allotment money with the KDA on 17.04.2009. Thereafter a request was made to the KDA to execute the sale deed vide letter dated 09.06.2009. However, the KDA did not execute the sale deed, then the petitioner again wrote letters dated 09.03.2010, 28.04.2011, 01.03.2012 and 31.03.2012 for the same.

4. When the KDA failed to execute the sale deed despite repeated requests made by the petitioner, she wrote a letter dated 28.08.2012 and 01.07.2013 to the Vice-Chairman, KDA. The copies of the aforesaid letters were also sent to the Principal Secretary, Housing and the petitioner approached the office of respondent no.4, Joint Secretary, KDA on 20.09.2013, then she was handed over a letter dated 20.08.2013 whereby it was informed that as per the site plan the area of the plot allotted to the petitioner has been increased to 434.87 sq. m. instead of 300 sq. m. Thus there is increase in the area of plot by 134.87 sq. m., which is to be allotted to the petitioner in terms of the Government Order dated 22.10.1999, according to which 10% of the original area out of the excess area shall be allotted to the petitioner on the same rate, on the basis of which the original allotment was made for remaining area. The allottee would be required to make the payment at the current rate, for which a consent letter along with the affidavit was required to be submitted by the petitioner. Since the said Government Order dated 22.10.1999 was referred in the letter dated 20.08.2013, the petitioner repeatedly asked the KDA to provide the copy of the said Government Order to the petitioner vide letters dated 03.10.2013, 20.09.2013, 11.11.2013 and 04.01.2014 and simultaneously she also applied under the Right to Information Act. However, the same was not provided to her by KDA. Subsequent thereto, the petitioner filed the instant writ petition on 21.04.2014 before this Court.

5. In the counter affidavit filed by the KDA, the copy of said Government Order was enclosed. The petitioner filed an amendment application which was allowed thereby permitting the petitioner herein to challenge the said Government Order. The relevant clause of the said Government Order, reads as under:

'मानक क्षेत्रफल से वास्तविक क्षेत्रफल बढ़ने पर:-

यदि लीज प्लान प्राप्त होने पर भूमि की मात्रा आबंटित क्षेत्रफल से बढ़ती है, तो बढ़े हुये क्षेत्रफल में आबंटित क्षेत्रफल से 10 प्रतिशत अधिक तक पुरानी दर से तथा उसके अतिरिक्त बढ़े हुए क्षेत्रफल की नई दर लगायी जायेगी।”

6. The contention of the petitioner in the instant petition is that the KDA has advertised the plot of 300 sq. m. for which an allotment was applied by the petitioner and the allotment of the plot no. JAWB 113-A-45 of an area of 300 sq. m. was allotted to the petitioner at the rate of Rs. 5,100/- per sq. m. for which she had to take loan from the bank as per her capacity. After four years of such allotment, the condition of purchase of additional area is being imposed by the KDA which is an arbitrary exercise of power and the petitioner has already paid the entire amount with regard to an area of 300 sq. m. well within time, which is not disputed by learned counsel for the KDA. Therefore, learned counsel for the petitioner submits that she cannot be compelled to purchase the additional area

at an enhanced rate. The petitioner had made a categorical statement at the time of admission of the instant writ petition that she is ready to purchase the additional area, if the same is allotted to the petitioner at the same rate to which the original allotment was made in favour of the petitioner. It is the choice of the petitioner to purchase an additional area but she cannot be compelled by the KDA to purchase the additional area.

7. On 08.04.2024, a statement was made by learned counsel for the KDA that so far as the additional area of the said plot is concerned, no separate plot can be carved out looking at the width of the land. Thus on 08.04.2024, the following order was passed:

*"1. Heard Shri Sayujya Singh, Advocate holding brief of Shri Vivek Kumar Singh, learned counsel for the petitioner and Shri P.K. Tripathi, learned counsel appearing for the Kanpur Development Authority as well as the learned Standing Counsel for the State respondents.*

*2. Present writ petition is preferred seeking following reliefs:-*

*"i. issue a writ, order or direction in the nature of certiorari to quash the order dated 20.08.2013 passed by respondent no.4 (Annexure No.1)*

*ii. issue a writ, order or direction in the nature of certiorari to quash the Government order dated 20.10.1999, alternatively Sub-Clause-15 of the Government order dated 20.10.1999 may be quashed.*

*(ii)a. Issue a writ, order or direction in the nature of mandamus directing the respondent authorities to allot the excess land to the petitioner at the rate on which the plot was allotted to her initially in 2009.*

*iii. to issue a writ, order or direction in the nature of mandamus directing the respondent authorities to execute the sale deed of allotted plot of petitioner forthwith on the rates applicable in 2009.*

*iv. to issue any other writ, order or direction as this Hon'ble Court may deem fit in the circumstances of the case.*

*v. to award cost of the petition to the petitioner."*

*3. Learned counsel for the petitioner vehemently submitted that the Kanpur Development Authority (KDA) had floated a scheme on 22.11.2008 for allotment of residential plots under 'Jawaharpuram Green City Project'. The petitioner was allotted the plot no.45 @ Rs.5100/- per sq. mtr. and in terms of the allotment letter dated 19.03.2009, the entire amount was already deposited by her but till date the KDA had not ensured the execution of the sale deed of the allotted plot. He submits that on account of inaction on the part of the KDA, the petitioner is suffering irreparable loss as she had purchased the said plot for residential purpose but till date, neither the sale deed has been executed by the KDA nor the map has been sanctioned and meanwhile, the cost of the construction has been increased manifold. He submits that the matter is pending since the year 2014. The KDA claims that the adjacent to the petitioner's allotted plot, some additional land is there, which cannot be carved out and therefore, adjacent plot may be settled with the present plot in view of the Government order, wherein the petitioner is to pay 10% excess land at the old rate and for the remaining excess land the present rate is to be realized. He further submits that the excess land, which is adjacent to the petitioner's allotted plot, would not serve any purpose to*

*the KDA as per lay out plan and separate plot cannot be carved out as its width is very narrow. At present, the petitioner is not in a position to purchase the excess land at the exorbitant market rate but in view of this factual situation, the rightful claim of the petitioner cannot be denied.*

*4. Sri P.K. Tripathi, learned counsel for the KDA vehemently opposed the writ petition and submits that as per relevant Government order, the excess land can be settled by the KDA as per mandate of the Government order but he has acknowledged that the width of the land is so less and no separate plot can be carved out as per lay out plan. He submits that some breathing time may be accorded so that he may seek appropriate instructions in the matter.*

*5. On his request the matter is passed over.*

*6. As the matter is pending since 2014 and considering the urgency, as has been pressed by learned counsel for the petitioner, let this matter be again listed on 22.04.2024 in top ten of the cases. "*

8. Subsequent thereto, on instructions, learned counsel for the KDA submitted that the additional land was offered to the petitioner in terms of the Government Order dated 22.10.1999 on 20.08.2013 subject to fulfilling the conditions. Thereupon this Court observed that this Court cannot take a different view than that of the Government Order and it was ordered that in case the petitioner is not willing to accept the offer, she is at liberty to press for return of money in view of the Government order and challenge to the Government order was declined by this Court vide order dated 10.05.2024 which reads as under :

*"1. In response to the order dated 08.04.2024, Sri P.K. Tripathi, learned counsel appearing for the Kanpur Development Authority has received instructions date 19.04.2024, which is taken on record.*

*2. Sri P.K. Tripathi, learned counsel for the Kanpur Development Authority submits that in view of the Government Order dated 22.10.1999, an offer was made to the petitioner vide notice dated 20.08.2013 offering the additional land with certain terms and conditions.*

*3. Considering the facts in the matter and as the Kanpur Development Authority has taken an objection, this Court passed a detail order on 08.04.2024. At this belated stage, we are not inclined to take a different view to the Government Order 22.10.1999.*

*4. In case the petitioner is not willing to accept the offer in terms of the notice dated 20.08.2013, he is at liberty to press the return of the money in lieu of the allotment letter.*

*5. Confronted with the situation, once the Court declined to accept any challenge to the Government Order dated 22.10.1999, learned counsel for the petitioner states that some time may be accorded so that he may get the instructions in the matter.*

*6. List this case on 15.05.2024 in top ten of the cases. "*

9. Pursuant to the order dated 10.05.2024, learned counsel for the petitioner submits that the petitioner is ready and willing to accept the additional land as

per the Government Order dated 22.10.1999 at the same rate which was prevalent in the 2013, When such offer was made by the KDA thereupon this Court passed the following order on 06.08.2024:

*"1. Heard learned counsel for the petitioner, Mr. Pradeep Kumar Tripathi, learned counsel for the Kanpur Development Authority (in short "K.D.A.") and perused the record.*

*2. In response to the order dated 08.04.2024, learned counsel for the petitioner submits that it is an admitted situation that in view of the allotment letter dated 19.03.2009, the entire sale consideration has already been made good but till date the sale deed has not been executed. Initially, an objection was raised by the K.D.A. on the ground that adjacent to the petitioner's allotted plot, some additional land is there, which cannot be carved out as a separate land. In this backdrop, on the previous occasion too, a pointed query was being made whether the petitioner is inclined to get the sale deed executed along with additional land which was offered by the K.D.A. in the year 2014. Learned counsel for the petitioner, on the basis of the instructions, submits that even though the petitioner insists the rate @ 5100/- per sq. mtr., which was prevalent in the the year 2009 but as the offer was made in the year 2014, he is ready to get the sale deed executed along with additional land as per the rate fixed in the year 2014.*

*3. In view of the aforesaid facts and circumstances of the case, we deem it appropriate that in case the petitioner is ready to give an undertaking through an affidavit within a weeks, definitely, on the next date fixed, we shall proceed to pass a final order in the matter.*

*4. In the meantime, Mr. Pradeep Kumar Tripathi, learned counsel for the K.D.A. may also get the necessary instructions in the matter.*

*5. Let the matter be listed on 28.08.2024 in the top ten cases of the additional cause list."*

10. Pursuant to the said order, an undertaking has been filed by the petitioner today in Court in the following terms:

*"17. That the petitioner will deposit amount for 10% of the enhanced area i.e. 30 Sq. Mt. at the rate of Rs. 5100/- per sq.mt. at which the plot was allotted to the petitioner in the year 2009 and the remaining amount for the rest of the enhanced area i.e. 104.87 sq.mt. at the rate prevailing as on 20.08.2013. For depositing the said amount as informed by K.D.A. some reasonable time may also be granted to the petitioner."*

11. Learned counsel for the KDA submits that since the instant offer was made in the year 2013 and the same was challenged by the petitioner in the instant petition and the offer was not accepted, therefore, the rates prevalent to in the year 2013 cannot be applied for the remaining area of 104.87sq.m. for which the petitioner would be liable to make payment at the current rate as per the Government Order dated 22.10.1999.

12. Looking at the entire facts and circumstances of the case specifically the fact that the petitioner had applied for the plot of 300 sq.m. in the year 2009, she had paid the entire allotment money in the year 2009 itself and however, the KDA failed to execute the sale deed till 2013 despite repeated request made by the

petitioner without assigning any reason. It is only on 20.08.2013, the KDA has informed with regard to the site plan and availability of the additional land. Due to non-execution of the sale deed for sufficiently long time the petitioner despite making payment could not utilize the said property for about 15-16 years.

13. At this stage, if the petitioner is compelled to make the payment of 104.87 sq.m. of the enhanced area at the current rate that will be too harsh on the petitioner as she has also sustained the losses due to non-execution of sale deed in favour of the petitioner for about four years after making the full payment by the petitioner. Thus, to balance the equities, the Court has offered the petitioner to make the payment of 10% of the original allotted area at the rate of original allotment i.e. Rs. 5,100/- per sq.m. and for the remaining area of 104.87, she will be liable to pay at the prevalent circle rate as on 20.08.2013 when first time, the offer was made by the KDA along with simple interest at the rate of 6% per annum. Learned counsel for the petitioner after taking instructions from the petitioner has submitted that the offer is acceptable to the petitioner. In view thereof, to balance the equities, the instant writ petition is **disposed of** with the following directions:

(i) The petitioner shall be liable to pay at the rate of Rs. 5,100/- per sq.m. for the additional area of 30 sq.m. being 10% of the original allotted area. No interest shall be payable on this amount.

(ii) So far as the remaining area i.e. 104.87 sq.m., the petitioner herein shall be liable to make payment at the circle rate prevalent on 20.08.2013 and the amount so calculated will be paid by the petitioner with interest at the rate of 6% per annum from 20.08.2013.

(iii) The KDA shall calculate and communicate the amount in terms of the aforesaid directions within two weeks from the date of submission of the certified copy of this order. On receipt of such calculation, the petitioner shall make the payment of the entire amount due within a further period of six weeks.

(iv) Thereafter, the KDA shall execute the sale deed within further period of four weeks from the date of payment so made by the petitioner.

**Order Date :- 20.8.2025**  
Ashish Pd.

**(Anish Kumar Gupta,J.) (M.C. Tripathi, J.)**