

**(1996) 11 AHC CK 0038**  
**In the Allahabad High Court**

**Case No :** Civil Miscellaneous Writ Petition No's. 4080 and 4175 of 1985

Kameshwar Prasad

APPELLANT

Vs

Municiple Board and Others <BR>Smt. Anju Walia Vs  
Adhishashi Adhikari, Nagar Palika and Others

RESPONDENT

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**Date of Decision :** 06-11-1996

**Acts Referred:**

Constitution of India, 1950 — Article 26

**Citation :** (1997) 1 UPLBEC 10

**Hon'ble Judges :** Ravi S. Dhavan, J;A.B. Srivastava, J

**Bench :** Division Bench

**Advocate :** Vishnu Sahai, for the Appellant; L.P. Naithani, for the Respondent

**Final Decision :** Dismissed

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## Judgement

A.B. Srivastava, J.—The petitioners in this bunch of writ petitions have impugned the order of Collector, Dehradun in his capacity as the Administrator of the Municipal Board, Mussoorie, cancelling the allotment and sale of flats, six in number, constructed under the Middle Income Group Housing scheme of the Central Government, in the area called Mount Rose, Camel Back Road, Mussoorie, in the district of Dehradun. The cause and questions being common, all these petitions have been heard together and are being disposed of by a common-judgment.

2 In order to make provision of housing for the people of the Middle income Group in the hill region of Mussoorie, two blocks of six houses each, were constructed from the loan advanced under the Middle Income Group Housing Scheme of the Government of India, by the Nagar Palika, Mussoorie. The conditions upon which the loan was sanctioned, inter alia provided that these houses will be constructed in accordance with the lay out plan prepared by the Chief Town and Village Planner U. P., and allotment thereof shall be made to the persons in the middle income group in accordance with scheme as formulated by the Government of India, and the instructions issued thereunder by the State

Government, from time to time. Initially the Nagar Palika used these flats as hotel for tourists. Subsequently, six out of the twelve flats were rented out to the officials of the Door Darshan posted in Mussoorie and were later sold to the said Department for occupation by their employees.

3 Six other flats bearing Nos. A-1 to A-6 Mount Rose, Mussoorie, which are subject matter of these writ petitions, were however, on the instructions of the Officer-in-charge of the Nagar Palika, Mussoorie offered for sale, by the Executive Officer, by means of an advertisement dated 4-3-1981 in a local newspaper "Damama", inviting applications from the desirous persons belonging to the Middle Income Group. The total cost of each flat was shown in the said advertisement to be approximately Rs. 55,000/-. On the petitioners, Kameshwar Prasad from Darbhanga in Bihar, Smt. Anju Walia from Chawri Bazar, Delhi, Smt. Dharma Chandrashekhar from Kolka Ji, New Delhi, Smt. Shaman Kawtra from Calcutta, Hansraj from Gurgaon in Harayana, and Krishna Lal Gupta an official of the Mussoorie Nagar Palika, allegedly responding to the advertisement and depositing a sum of Rs. 75,000/- each, allotment was made and possession over the flats along with all the fixtures and furnitures therein, was instantly delivered to them by the Executive Officer, and the Officer-in-charge of the Nagar Palika. Thereafter these flats, without any sanction of the Government or any competent authority, were transferred to the petitioners for the sum of Rs. 75,000/- each by means of a sale Deed dated 25-6-1982 and the same day, Lease Deeds about the land underneath were executed in their favour by the Executive Officer the then Officer-in-charge of the Nagar Palika, one J.T. Srivastava, being an attesting witness on both the instruments.

4. In the year 1993 on the incumbents to the two posts of Executive Officer and Officer-in-charge, Nagar Palika, Mussoorie being transferred the then Officer-in-charge of the Nagar Palika, Mussoorie, suspecting these transactions to be fishy, wrote a letter to the Government, pointing out the illegal transfer of these properties in favour of the petitioners and an enquiry was initiated. The facts brought forth as result of the enquiry were revealing to the extent that the entire transaction of lease and sale was found to be without authority or sanction and collusive, with none of the purchasers being from the Middle Income Group. What followed was notice to the petitioners; intimating the cancellation of transactions in their favour, and asking them to hand over possession of the flats in question to the Nagar Palika and obtain refund of the amount deposited by them.

5 The main contention upon which the pleadings of the petitioners rest are that, they being bona fide purchasers for consideration of the flats in question in an open bid, the respondent Nagar Palika or its Administrator had no authority in law, to cancel the said transactions. They were fully eligible to seek allotment and transfer of these flats meant for the Middle Income Group and, in any case, the impugned orders are unsustainable having been passed without affording any opportunity to show cause.

6. The facts as borne out from the material placed on record, indicate an appalling state of affairs in the matter of disposal of valuable public property, to underserving persons, at a throw away price, and in blatant violation of rules. There is no detail, nor can be, of the fact that the flats in question were not meant for rich men's housing rather, were built with the money lent from the public exchequer on easy terms to a local body, to provide habitation to the needy, that is, people in the middle income group. The term "middle Income Group" in reference to context is stated to connote persons whose annual income from all sources is below rupees fifteen thousands. None of the petitioners herein, however, can claim income wise, to belong to the said middle income group. Not an iota of evidence has been produced to indicate that their income was such as to render them eligible to offer bid in the matter of sale of the flats in question. No enquiry of any sort appears to have been made by the concerned officials of the respondent Nagar Palika, to ascertain this fact.

7. Obviously, the best and the only agency competent to certify the financial status of the petitioners, or for that matter any other prospective purchaser, would be the Collector of the district concerned, who alone through the administrative and revenue agencies at his command, could have been in a position to give a factual report to this regard. Neither any such enquiry appears to have been got made, nor any certificate of the concerned District Collector produced, yet the petitioners were presumed to pertain to the middle income group.

8. Even on record of these petitions there has not been placed any evidence, which may validly support the theory of the petitioners belonging to the middle income group. Apart from making a bald submission in this regard, four of the petitioners Smt. Anjuwalia, Mrs. D. Chandra Shekhar, Mrs. Shaman Kwatra and Hansraj, have not ventured to file an iota of material in this regard. Even a rejoinder affidavit to the counter, was not filed by the petitioner Mrs. D. Chandrashekhar.

9. Of the two others, petitioner Krishna Lal Gupta has filed a pay certificate, Annexure R. A. 1, which shows his salary to be Rs. 11,587.21 per annum, but not that he has no other property or source of income. The other petitioner Kameshwar Prasad has filed as Annexure "R. A 1" to his rejoinder, a document purporting to be a certificate from the Income Tax Officer, Darbhanga, putting him under the middle group of income, without giving any further particulars in support of his conclusions. These certificates, besides being laconic and incomplete, could also not be a substitute to the Collector's certificate in this regard. Otherwise also no rules have been cited, to show that an Income Tax Officer, or for that matter any agency other than the Collector of the District, could be competent to certify such a fact.

10. The petitioners in these cases thus are found to be lacking the very basis for seeking allotment, or sale, of the flats in question and the entire transaction in their favour stands vitiated on this count alone.

11. Yet another important factor in these cases, which goes to strike at the very root of these transactions, is that the executive officer who made these transfers or the officer-in-charge of the Nagar Palika, who initiated and attested the same, lacked the authority and power to do so. The property belonging to the Nagar Palika, and it having been built in execution of a public housing scheme, floated by the Government, the State Government and no other authority could be competent to demise the same and such decision could not be taken, nor executed, by any of their subordinates. In these cases however, no sanction or approval either of the State Government or the District Magistrate cum-Administrator appears to have been obtained. In fact annexures 1 and 2 to the petition, the notes recorded by the concerned officer-in-charge of Nagar Palika, Mussoorie, show that he himself in one breath put to proposal to transfer these flats by sale, in another approved the same.

12. Even a copy of the Middle Income Group housing scheme, as framed by the Central Government, in this regard has not been produced before the Court despite repeated directions to that effect. The only logical conclusion, to which this state of affair leads, is about the existence of an unholy nexus in the matter of disposal of valuable public property to a chosen few.

13. The reason for this is not far to find. One of the petitioners Krishna Lal Gupta in whose favour also the property has been demised, is himself an official of the Nagar Palika, Mussorrie. As the record indicates, he was the Head Clerk of the tourism section of Nagar Palika, Mussoorie, and was the care taker of these fully furnished flats. Clearly there existed fiduciary relationship between him and the local body, and this renders the transaction in his favour unconsciouable and, also reveals the reason for the veil of secrecy around the entire matter relating to transfer of these flats, to persons totally ineligible.

14. The collusive and obnoxious nature of these transactions is also eloquently borne out from the fact that, barring the one who is an official of the Nagar Palika itself, all the five other allottees are residents of far off places, outside the State of Uttar Pradesh, like, Calcutta, Delhi and Haryana. It is not a sheer coincidence, that not one person from the eligible income group in the town of Mussoorie for whose people the scheme primarily was, the district of Dehradun, or the State of U. P., the one who is an official excepted, could succeed in getting these flats, or compete with the petitioners. A middle income group person, from such distant places with income from all sources being below Rupees fifteen thousands per annum, could hardly be in a position to manage and maintain real estate in Mussoorie.

15. The most intriguing part of this entire episode, is the advertisement alleged to have been published, inviting offers for purchasing, these flats. The publication is claimed to have been made not in any national or even regional newspaper, having circulation , wide enough to reach the maximum number of people to fetch competitive bids, rather was published in a paper called "Damama" which hardly appears to have any circulation. Even the petitioners have not stated

about the said newspaper to have any circulation in the States or Districts of their abode. The only inference to which it leads is that there was virtually no publication and advertisement, and the petitioners were handpicked by the officials indulging in this collusive and clandestine transaction.

16. Referring to the advertisement, by means of which the flats in question were offered for sale, it has been vehemently contended on behalf of the petitioners that the cost of construction of these flats being Rs. 55,000/- each, as per the Nagar Palika itself, and the petitioners having purchased the same by paying Rs. 75,000/- each, the transaction obviously was to the benefit of the Nagar Palika and as such it does not lie in the mouth of the respondents, to assail the same as an unconscionable or clandestine bargain. In making these submissions however, the petitioners have conveniently lost sight of the fact that what was transferred was not merely building, rather the land underneath was also demised by means of a lease deed for 90 years. While Rs. 75000/- each were paid towards price of the flats for the purposes of safe thereof, no price or premium for the valuable site, upon which these constructions stood was paid to the Nagar Palika. Besides, what was transferred was not a mere superstructure, rather a fully furnished flat, having been furnished for the purposes of hotel. In fact, the report dated 29-5-1984 of the then Executive Officer, Nagar Palika, Mussoorie, Annexure "5" to the counter affidavit in writ petition No. 4080 of 1985, and the other connected Writ Petitions, goes to specifically show that, taking the cost of construction, the cost of land, and the interest paid on the loan obtained for these constructions, the cost of each flat was not below Rs. 81,341.24. Added to it was the furnishing at a cost of Rs. 61663/-- Thus even on a modest estimate these flats could not have been transferred for a sum of Rs. 75,000/- each. Then it has rightly been pointed out that being property acquired and constructed by public money, if at all these flats-were to be transferred, the proper procedure would have been to do it by a public auction, which could have fetched proper price, with reasonable proof its to the coffers of the local body, otherwise entrusted with the task of running the civic administration. The very fact that these steps were skipped over, and the properties were transferred for a song, goes to reveal the true character of these transfers, that they were intended to serve the interest of a chosen few, and the motive behind the same was anything but fair.

17. On behalf of the petitioners the act of the respondents of cancelling the allotment/auction of the flats in question, asking the petitioners to restore possession to the Nagar Palika and obtain refund of the amounts deposited by them, has further been assailed on the plea that the transfer in their favour was no different than that in favour of the Door Darshan. As such it is contended, repudiating these transactions while retaining those in favour of the Door Darshan, is discriminatory. This submission firstly loses sight of the fact that the transfer to the Door Darshan was not to a private party rather to a public institution of the Central Government, and the purpose was to provide accommodation to the officials of Door Darshan, which to an extent would be in

conformity with the scheme of the middle income group housing sponsored by the Central Government. Secondly, it is a well established principle that two wrongs do not make a right. If the transaction in favour of Door Darshan suffers from any illegality or infirmity, the same would also be liable to be set aside, and will not legalise the per se illegal, unfair and unconscionable, bargain in favour of the petitioners.

18. Yet another ground advanced by the petitioners in support of the claim to relief, laid in these petitions is that, the respondents not having given them any opportunity to show cause, or of being heard, their act of repudiating these transactions, is arbitrary and against the principles of natural justice. Suffice it to say, that in the context of the circumstances, and the manner in which these transfers came to be made in their favour, the petitioners cannot invoke the principles of natural justice or *audi alterem partem*. As stated above, the entire exercise from genesis upto execution of these transactions, was shrouded in secrecy and was a result of unholy nexus between the then officials in charge of the respondent Nagar Palika on the one hand, and the petitioners, one of whom was also an official and care taker of this property, on the other. The authorities concerned, before initiating the steps for cancellation of these transactions, held and in depth enquiry and it was only when the materials, coming to the fore, eloquently established the transactions in favour of the petitioners to be without any valid authority, unconscionable and fishy, that the transactions in their favour were, cancelled and they were asked to deliver back possession, and were permitted to obtain refund of the amounts paid, and thus adjusting the equities between parties.

19. Here this Court would also like to observe that -this case presents a glaring example of the benefit effects of keeping an elective body in suspended animation for a long spell, entrusting its vital functions to the bureaucracy, and thus creating situations where public properties could be dealt at will and squandered, without any corresponding accountability. Time has come when these entrusted with policy making, should take remedial measures, before it is too the situation becomes irreversible.

20. The petitioners, thus for all the above stated facts and have not made out any plausible ground to invoke the extraordinary jurisdiction of this Court to issue a prerogative writ in their favour. This Court thus declines to interfere in the matter, These petitions consequently are liable to be dismissed.

21. All these writ petitions thus are dismissed and be There shall be no order as to costs.