
(2019) 05 UK CK 0022
In the Uttarakhand High Court
Case No : Special Appeal No. 366 Of 2013

Lakhan Lal Chauhan & Others	Vs	APPELLANT
State Of Uttarakhand & Others		RESPONDENT

Date of Decision : 02-05-2019

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2019) 05 UK CK 0022

Hon'ble Judges : Ramesh Ranganathan, CJ; N.S. Dhanik, J

Bench : Division Bench

Advocate : Kishore Kumar, M.C. Pant, J.C. Pandey, Sandeep Kothari

Final Decision : Disposed Off

Judgement

Ramesh Ranganathan, CJ

1. Heard Sri Kishore Kumar, learned counsel appearing on behalf of Sri M.C. Pant, learned counsel for the appellants, Sri J.C. Pande, learned Brief

Holder appearing for the State Government and Sri Sandeep Kothari, learned counsel appearing on behalf of the second respondent. Though his name

was printed in the cause list, neither is Sri Aditya Singh, learned counsel for the respondent-writ petitioner, present nor is there any representation on

his behalf. Since this appeal relates to the year 2013, and all matters prior to 2014 have been identified for expeditious disposal and are listed every

Wednesday and Thursday in the weekly list, we see no reason to defer hearing of this Special Appeal.

2. This appeal has been filed, by the then Corporators of the Haridwar Nagar Nigam, seeking leave to prefer an appeal against the order of the

learned Single Judge in WPMS No. 2027 of 2013 dated 22.08.2013. The respondent-writ petitioners herein filed WPMS No. 2027 of 2013 seeking a

writ of mandamus directing the second respondent (Haridwar Nagar Nigam) to grant freehold rights, of Quarter Nos. 9 & 11 located in Devpura

Colony, in favour of petitioner nos. 1 & 2, since the entire amount was already deposited by them within one month; and to issue a writ of mandamus

directing the second respondent to expedite the process in getting the name of the petitioners registered as owners of Quarter Nos. 9 & 11, pursuant

to G.O. dated 24.06.2000 and 10.05.2000.

3. Facts, to the limited extent necessary, are that the Government launched a policy in the year 1955 to construct residential units for persons with

lower income, pursuant to which residential quarters were constructed in the year 1958-1959. Three options were given, in respect of these quarters,

to the allottees i.e. (a) for sale at a higher price, (b) for sale on one-time payment, and (c) for sale without any profit on standard rent. The Nagar

Palika Parishad, which constructed the quarters, decided to let them out at standard rent. Later, these quarters were declared uneconomical, and a

resolution was passed, by the Nagar Nigam Parishad, on 08.10.1993 to sell the quarters situated at Devpura & Vichitra Vatika Colony, Haridwar.

Pursuant thereto, the President of the Nagar Palika Parishad, Haridwar wrote to the Secretary of the Nagar Vikas Vibhag, Uttar Pradesh proposing

to sell these quarters to the authorized occupants. This proposal was forwarded by the District Magistrate by his letter dated 24.07.2000. The Joint

Secretary, Uttar Pradesh Shasan, Lucknow, enclosed a copy of G.O. dated 24.06.2000, along with his covering letter dated 11.10.2000, directing that

the matter be complied with in accordance with the G.O. dated 24.06.2000.

4. The Chairman of the Valuation Committee and the Executive Engineer, P.W.D. are said to have evaluated the cost of the quarters as per the

directions laid down in G.O. dated 24.06.2000 and, thereafter, a decision was taken by the Committee, which was formed under the said G.O., to sell

these quarters. This Government Order is said to have been approved by the Nagar Palika Parishad, by its resolution dated 26.02.2004, and, pursuant

thereto, notice is said to have been issued on 05.04.2004 to the first petitioner, as an occupant of the quarters, asking him to give his consent to

purchase the quarters by depositing 25% of the total assessed value of Rs. 11,04,714/- within one month; and, if the remaining 75% were deposited at

one time, then 10% deduction would be allowed on the total assessed cost; and

if deposited in four installments, interest would have to be paid.

5. The first petitioner claims to have deposited 25% on 22.04.2004, and the second petitioner on 19.12.2004. Both the petitioners claim that they did

not deposit the remaining 75%, on the ground that the matter was referred by the Nagar Palika Parishad, by its letter dated 31.07.2004, for the

approval of the Government. Thereafter, Government Order dated 10.05.2010 was issued directing the District Magistrate to get the quarters

converted into freehold property in favour of the petitioners.

6. The District Magistrate directed the Executive Officer to take action in the matter as decided by the Committee constituted in terms of G.O. dated

26.06.2000, and notices are said to have been served on the petitioners on 03.09.2011, by the Accounts Officer, to get the property registered in their

names; and to deposit the entire amount within 15 days. A notice was also issued on 19.08.2011 calling upon them to submit an affidavit to the effect

that no litigation was pending in any Court. Both petitioner nos. 1 & 2 claim to have deposited 25% on 13.09.2011. The first petitioner claims to have

deposited 75% of the amount on 13.09.2011, and the second petitioner is said to have deposited the said amount on 13.09.2011 after deducting 10%.

Pursuant to another notice, the second petitioner claims to have deposited the balance 10% also. On the ground that the property was not registered in

their favour, though it was declared uneconomical, the petitioners invoked the jurisdiction of this Court.

7. At the stage of admission, and even without a counter affidavit being filed by any of the respondents, the order under appeal was passed on

22.08.2013, wherein the learned Single Judge noted that the petitioners' complaint was that, inspite of the amount as desired by the Nagar Nigam,

Haridwar being deposited by them, the subject property was not registered in their favour; and directions be issued to the second respondent to get the

property registered and executed in their favour. After noting that this factual position was not denied by the counsel for the Nagar Nigam, and that he

had admitted thereto, the learned Single Judge observed that the learned Additional C.S.C. did not also dispute the Government Orders issued by the

State Government. The Writ Petition was disposed of directing the Nagar Nigam to take appropriate action, in the matter, within six weeks from the

date of production of a certified copy of the order.

8. The present appeal was filed along with an application seeking leave to prefer an appeal against the order passed by the learned Single Judge.

Leave was granted. In the appeal, the appellants herein stated that, in terms of the Housing Policy framed by the State of U.P. in the year 1955,

housing facility was required to be provided to the economically weaker sections; rent facility was provided to local bodies in terms of the Government

Order dated 19.05.1958; thirty houses were constructed which were allotted to persons belonging to the economically weaker sections, who were

employees in the Nagar Palika and in other departments; though rent was fixed in the year 1958 at Rs. 53/- per month, rent was not enhanced, and

Rs. 53/- continued to be charged per month even in the year 1993; then the G.O. was issued, after the State of Uttarakhand was created, constituting

a Committee headed by the District Magistrate to dispose of these buildings; the District Magistrate, Haridwar convened a meeting on 31.10.2001 to

evaluate the land and building at the circle rate, and to have also pointed out the names of the occupants who had died during the pendency of the

matter before the Nagar Nigam; and G.O. dated 19.08.2005 was issued mandating all local bodies that no property of the local bodies should be

transferred.

9. A reference is also made by the appellants to certain notings wherein it was stipulated that buildings would be allotted in the names of original

allottees and, in case they died and others were illegally residing in these buildings, then no action should be taken to convert it into freehold property,

and the unauthorized occupants were liable to pay market rent, they were liable to vacate the said building, and the earlier G.O. dated 24.06.2000

should be strictly complied with.

10. In their appeal the appellants also contended that the Government, in its order dated 10.05.2010, had stipulated that no action should be taken in

respect of dead persons, or unauthorized occupants, for changing the subject property into freehold property; and it was stipulated that the buildings,

which were allotted to the persons who died, should be made freehold in the names of their legal heirs. This, the appellants contend, was contrary to

the Government Orders in force.

11. Reliance is also placed by the appellants, on the provisions of the U.P. Z.A. and L.R. Act and Nagar Palika Adhiniyam, to contend that the land

cannot be converted into freehold land. It is further contended that no mandamus could have been issued, without ascertaining the respondent-writ petitioners' legal right over the property; and, in absence of any plea in the writ affidavit as to how they had occupied the subject property, the respondent-writ petitioners should not have been allowed to continue in the subject premises.

12. When the matter came up before it, a Division Bench of this Court, in its interim order in SPA No. 366 of 2013 dated 01.10.2013, directed that status quo be maintained; and, as a result thereof, no further steps were taken by the Nagar Nigam to register the land in favour of the respondent-writ petitioners.

13. The submission of Sri Kishore Kumar, learned counsel for the appellants, is that the respondents-writ petitioners had not established their right, if

any, over the subject property; they had not even adduced any evidence to show that they were either the original allottees or the legal heirs of such

allottees; while the houses were initially allotted, on payment of rent, to employees who belonged to the economically weaker sections, these properties

were occupied by others thereafter; unless and until it is established that these buildings are still in the occupation either of the original allottees or of

their legal heirs, the property, in the occupation of the respondent-writ petitioners, cannot be converted into freehold, as that would amount to

conferring an undue benefit on unauthorized occupants, by alienation of the subject property in their favour; except for the benefit of the socially

backward sections of society, transfer of Government property, or that of the Nagar Nigam, can only be made at the market value prevailing on the

date on which the property is sought to be transferred and registered, and not at a price prevailing several decades earlier; and, while the action of the

respondents in seeking to alienate these properties in favour of the respondent-writ petitioners, is itself illegal, undue advantage is now being taken of

the order, passed by the learned Single, to hurriedly alienate the subject property in favour of the respondents-writ petitioners.

14. The relief sought for by the respondent-writ petitioners, in the writ petition (which resulted in the order under appeal being passed) is for a

mandamus to be issued to the respondents. 'Mandamus' means a command. It differs from the writs of prohibition or certiorari in its demand for

some activity on the part of the body or person to whom it is addressed. Mandamus is a command issued to direct any person, corporation, inferior

courts or Government, requiring him or them to do some particular thing therein specified which appertains to his or their office and is in the nature of

a public duty. A mandamus would lie to any person who is under a duty imposed by a statute or by the common law to do a particular act. (Director of

Settlements, A.P. v. M.R. Apparao : (2002) 4 SCC 638). The chief function of a writ of mandamus is to compel performance of the public duties

prescribed by a statute and to keep subordinate Courts/tribunals, and officers exercising public functions, within the limits of their jurisdiction. (Lekhraj

Satramdas Lalvani v. N.M. Shah, Deputy Custodian-cum-Managing Officer : AIR 1966 SC 33; 4Rai Shivendra Bahadur (Dr) v. Nalanda College :

AIR 1962 SC 1210; Umakant Saran Dr v. State of Bihar : AIR 1973 SC 96;4 and Bihar Eastern Gangetic Fishermen Coop. Society Ltd. v. Sipahi

Singh : (1977) 4 SCC 145).

15. One of the conditions for exercising power under Article 226, for issuance of a mandamus, is that the Court must come to the conclusion that the

aggrieved person has a legal right, and that such a right has been infringed. The applicant has to satisfy the Court that he has a legal right to the

performance of a legal duty by the party against whom the mandamus is sought. The duty that may be enjoined by a mandamus may be one imposed

by the Constitution, a statute, common law or by rules or orders having the force of law. (Director of Settlements, A.P. v. M.R. Apparao : (2002) 4

SCC 638; and Kalyan Singh v. State of U.P. : AIR 1962 SC 1183). No one can seek a mandamus without a legal right. There must be a judicially

enforceable right as well as a legally protected right before one, suffering a legal grievance, can ask for a mandamus. A person can be said to be

aggrieved only when he is denied a legal right by someone who has a legal duty to do something or to abstain from doing something. (Halsbury's Laws

of England, 4th Edn., Vol. I, para 122; State of Haryana v. Subash Chander Marwah : (1974) 3 SCC 220; Jasbhai Motibhai Desai v . Roshan Kumar

Haji Bashir Ahmed : (1976)1 SCC 671; Ferris: Extraordinary Legal Remedies, para 198; and Mani Subrat Jain v. State of Haryana : (1977) 1 SCC

486). In order that mandamus may issue to compel an authority to do something, it must be shown that the statute imposes a legal duty on that

authority, and the aggrieved party has a legal right under the statute to enforce its performance. (The State of Haryana Vs. Subash Chander

Marwaha and others : (1974) 3 SCC 220; Dr Rai Shivendra Bahadur v. Governing Body of the Nalanda College : AIR 1962 SC 1210.)If there is no

statutory basis for the claim, and there is no provision in the statute imposing an obligation, it would not furnish a ground for issuance of a writ of

mandamus. (Union of India v. E. Merck India : (1998) 9 SCC 412).

16. Any claim by the respondents-writ petitioners, for the subject property to be transferred in their favour, would, ordinarily, not be examined in writ

proceedings under Article 226 of the Constitution of India, as it is not referable to any statutory provision, plenary or subordinate. A writ of mandamus

is issued only when there is a statutory violation, or a failure to discharge a statutory obligation, on the part of the official respondents. Neither the writ

affidavit, nor the order under appeal, refer to any statutory provisions having been violated. While the validity of the action of the Government, in

alienating the subject land in favour of the petitioners, cannot be examined in this appeal which has been preferred, against the order passed by the

learned Single Judge in a writ petition wherein the respondent-writ petitioners had sought registration of the subject property in their favour, suffice it

to hold that, in the absence of any such statutory violation, or failure to discharge a statutory obligation, on the part of the respondents, no mandamus

could have been issued by the learned Single Judge directing that the subject property be registered in favour of the respondent-writ petitioners. Any

grievance, which the respondents-writ petitioners may have against the Government or the Nagar Nigam, for not registering the subject property in

their favour, could only have been agitated by way of a Suit before the Civil Court of competent jurisdiction; and could not have been the subject

matter of writ proceedings under Article 226 of the Constitution of India.

17. We consider it appropriate, in such circumstances, to set-aside the order under appeal, making it clear that we have not expressed any opinion on

the validity or otherwise of the Government Orders, implementation of which was sought in the writ petition. In case, the Government proceeds to act,

pursuant to the orders issued by them earlier, it is always open to the appellants herein to avail their judicial remedies.

18. With the aforesaid observations, the Special Appeal is disposed of. No costs.