
(2001) 03 AHC CK 0073
In the Allahabad High Court
Case No : C.M.W.P. No. 18561 of 2000

Nasiruddin

APPELLANT

Vs

Nagar Nigam, Ghaziabad

RESPONDENT

Date of Decision : 22-03-2001

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 2001 All 255 : (2001) 2 AWC 1232

Hon'ble Judges : S.K. Jain, J;G.P. Mathur, J

Bench : Division Bench

Advocate : Akhilesh Misra and Sanjay Mishra, for the Appellant; Prem Chand, for the Respondent

Final Decision : Disposed Of

Judgement

G. P. Mathur, J.—This petition under Article 226 of the Constitution has been filed praying that respondent Nagar Nigam, Ghaziabad, be directed to execute a sale deed of Flat No. 20. Gandhi Nagar, Ghaziabad in favour of the petitioner and that it may be restrained from interfering in his possession over the said flat.

2. It is averred in the writ petition that the petitioner employed in Nagar Nigam, Ghaziabad in 1964 and retired as Nazir (Sadar) on 31.12.1999. The Municipal Board. Ghaziabad (which became Nagar Nigam in 1994) had constructed flats on Patel Marg and in Gandhi Nagar which were also allotted to its employees. The petitioner was allotted Flat No. 20 in Gandhi Nagar on 28.2.1989, for which he was required to pay Rs. 122.65 as standard rent. The State Government had issued a G.O. on 17.6.1993 granting approval to the Nagar Nigams to sell those flats which had been given on rent. The claim of the petitioner is that as the flat in question had been allotted to him and he is an erstwhile employee of the Nagar Nigam, the Nagar Nigam should be given a direction to execute a sale deed of the said flat in his favour in terms of the Government Order, A copy of the Government Order issued on 17.6.1993 has been filed as Annexure-2 to the writ petition. The heading of the Government Order is as follows :

"Disposal of such uneconomical properties of Nagar Palika/Maha Nagar Palika which had been given on rent."

Thereafter, the order recites that State Government is giving permission for disposal of the properties constructed by the Nagar Palika/Maha Nagar Palika which had been given on rent, subject to the conditions mentioned in the order.

3. Learned counsel for the respondent has submitted that the Government Order relates specifically to uneconomical properties and not to all the properties and no decision has been taken by the Nagar Nigam, Ghaziabad, that flats in Gandhi Nagar are uneconomical which may be sold. There is no averment in the writ petition that Nagar Nigam, Ghaziabad has taken any decision to the effect that flat in question comes within the category of uneconomical properties nor any such material has been placed on record. The Government Order gives permission for sale of only uneconomical properties and not for every kind of property of Nagar Palika/Maha Nagar Palika. That apart, the effect of the Government Order is limited to the extent that it grants permission for sale of uneconomical properties by the local bodies. It does not lay down that the properties must be sold. It is the discretion of the concerned Nagar Palika/Maha Nagar Palika whether to sell a property or not which may depend upon the facts and circumstances of the each case. The petitioner, therefore, cannot claim any legal right on the basis of the aforesaid Government Order that the Nagar Nigam, Ghaziabad is bound to sell the flat in question in his favour and consequently, no such writ as claimed by the petitioner can be issued.

4. Sri Sanjay Mishra learned counsel for the petitioner has submitted that the Nagar Nigam had sold some flats to the allottees and also to some retired employees and names of such persons have been given in paragraphs 9 and 10 of the writ petition. The stand of the Nagar Nigam in this regard is that the flats constructed on Patel Marg were for allotment to general public. But the residential quarters constructed in Gandhi Nagar were made exclusively for employees of Nagar Nigam who are in service and are discharging duties. These quarters are allotted on the basis of seniority and after retirement or transfer of an employee, they are allotted to the new incumbents. The flat in question was allotted to the petitioner, as he was a serving employee of the Nagar Nigam. Regarding flats on Patel Marg, the Nagar Nigam had passed a resolution for transfer of the same to the occupants as they were found to be uneconomical but no final decision has been taken regarding transfer and execution of the sale deed of such flats. The petitioner is occupant of the flat in Gandhi Nagar and for such flats, neither any resolution had been passed nor any decision has been taken to transfer the same to the existing occupants.

5. Learned counsel for the petitioner has next submitted that one Ganesh Dutt was also in occupation of a flat in Gandhi Nagar and even though he has retired, Nagar Nigam has not taken any steps to evict him. It is averred in paragraph 9 of the counter-affidavit that proceedings had been started to evict Ganesh Dutt. He, however, died and his wife filed a writ petition in the High Court in which an

order was passed that she will not be dispossessed except in accordance with law. Thereafter, the Nagar Nigam has initiated proceedings under U. P. Public Premises (Eviction of Unauthorised Occupants) Act and the said proceedings are pending. Since Nagar Nigam has already initiated proceedings for eviction of the family members of Ganesh Dutt, it cannot be said that the retired employees of Nagar Nigam have been allowed to remain in occupation of the flats in Gandhi Nagar.

6. Having considered the submissions made by the learned counsel for the parties, we are of the opinion that no writ can be issued commanding the respondent to either execute a sale deed of the flat in question in favour of the petitioner or to issue any direction to the respondent not to evict him.

7. For the reasons mentioned above, there is no merit in this writ petition, which is hereby dismissed summarily.