

(2010) 03 AHC CK 0164

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 12190 of 2007

Rekha Tiwari

APPELLANT

Vs

U.P. Awas Evam Vikas Parishad, Lucknow and Others

RESPONDENT

Date of Decision : 10-03-2010

Acts Referred:

Uttar Pradesh Awas Evam Vikas Parishad Bhukhando Tatha Bhawano Ke Panjikan
Evam Pardeshan Sambhandhi Niyam, 1979 — Regulation 32, 33, 34, 48

Citation : (2010) 03 AHC CK 0164

Hon'ble Judges : Ashok Srivastava;ACJ, J and Amitava Lala, J

Final Decision : Dismissed

Judgement

Ashok Srivastava, J.—Ashok Srivastava, J. According to the petitioner she is a teacher by profession. She is living alone since 1972 after her judicial separation from her husband. Due to certain personal reasons she wants to settle down at Kanpur and for the purpose she is in need of a residential accommodation in some housing scheme, preferably a scheme sponsored by the respondent No.1. In furtherance thereof she made efforts and in this regard she also met the Chief Minister of Uttar Pradesh with an application praying therein that she may be allotted House No. HIGL/884 Type 67/162 in Keshav Puram Yojna I Kalyanpur Kanpur (for short the disputed accommodation). In her application she emphasized her difficulties and genuine need for having the particular accommodation allotted to her. The petitioner has further stated that the Chief Minister had appreciated her difficulties and therefore, under his direction his O.S.D. sent a letter to the Commissioner (Housing), U.P. Awas Evam Vikas Parishad (Kanpur Zone), Lucknow directing him to allot the disputed accommodation to the petitioner. The petitioner completed the necessary formalities and sent a letter to respondent no.1 for allotment of the disputed accommodation in her name on compassionate ground which was duly considered by the Housing Commissioner and the disputed accommodation was allotted to the petitioner. As a consequence the said property was segregated and kept out of normal mode of allotment. A general allotment through lottery

took place on 20.12.2006 and respondent no.1 kept out the name of the petitioner as well as the disputed accommodation from the lottery draw. Thereafter the petitioner waited for some time for a formal approval of the Commissioner (Housing) in this regard. In the meantime respondent no.3 intervened in the matter as he was interested that the disputed accommodation be allotted to respondent nos. 4 & 5, who were allotted through lottery flat No. L410 and had applied for a change of their flat with the disputed accommodation. Due to illegal pressure exercised by respondent No.3, the respondent nos. 4 & 5 succeeded in getting the disputed accommodation allotted in their names by way of exchange. As a consequence an order dated 22.2.2007 was passed by the Dy. Commissioner (Housing) through which it was directed that the disputed accommodation be allotted to respondent nos. 4 & 5.

2. In the circumstances mentioned above, the petitioner has prayed that a writ of certiorari be issued quashing the impugned orders/letters dated 22.2.07, 31.1.07 and 3.1.07 and writ of mandamus be also issued commanding respondent Nos. 1 & 2 to issue a letter of allotment of the disputed accommodation in favour of the petitioner.

3. The claim of the petitioner has been contested by all the 5 respondents. Respondent nos. 1 to 3 have filed their counter affidavit jointly whereas a joint counter affidavit has been filed from the side of respondent nos. 4 & 5 . Two rejoinder affidavits have also been filed from the side of the petitioner.

4. The respondent nos. 1 to 3 (hereinafter called as the official respondents) have admitted that the petitioner got herself duly registered with them for allotment of a flat. This fact has not been disputed by respondent nos. 4 & 5 (hereinafter called as the private respondents) too. The official respondents have not denied the fact that the name of the petitioner and the disputed property was kept out of normal mode of allotment through lottery. It is also not denied that the draw of lottery had taken place on 20.12.2006 in which neither the petitioner had participated nor the disputed accommodation was put to the lottery draw. It is worth mentioning here that the records show that 24 flats were available for allotment regarding which draw was to be made and there were 116 registered applicants in the fray. The official respondents have further stated that the allotment of the disputed accommodation was pending approval of the Housing Commissioner, but it was never allotted to the petitioner under Regulation 48 of the U.P. Awasth Evam Vikas Parishad Bhukhandi Tatha Bhawano Ke Panjikaran Evam Pardeshan Sambhandhi Niyam, 1979 (for short 1979 Regulation). It has been further stated by the official respondents that it is well within the discretion of the Housing Commissioner to allot any residential plot or house in a Scheme of the Parishad in favour of an applicant, but there has been no allotment in favour of the petitioner by the Housing Commissioner and therefore the petitioner can not claim that the disputed accommodation was finally allotted to her. It has been further stated that the allotment of a house on 'compassionate ground' can not form a basis upon which the Housing Commissioner can exercise his

discretion under the Regulations in favour of any person and in the instant case there were some more applications pending approval which were placed before the Housing Commissioner on 25.1.2007 and after due consideration the disputed accommodation was allotted to the private respondents. Referring to the annexure 8 to the writ petition it has been submitted by the official respondents that it is merely a request for taking further action in accordance with law and the hope of the petitioner to get a house of her own choice can not be equated as her right. It has been further stated that the private respondents had completed all the formalities regarding change of the flat allotted to them through process of lottery and the disputed flat was allotted to them on merits by the Housing Commissioner, considering all the aspects of the matter.

5. The private respondents have stated that the writ petition is not maintainable as 1979 Regulations specifically provide for exclusive jurisdiction of Civil Court in such matters and therefore, the petitioner should have filed a civil suit. It has been further stated that the petitioner has no locus standi for filing the present writ petition as she had chosen not to participate in the allotment proceedings through lottery and no allotment order has ever been passed in her favour whereas the private respondents are the lawful owner of flat No. L410 in the same scheme and following the lawful procedure they applied for a change of flat and the Housing Commissioner after due consideration accepted their prayer and allotment of the disputed accommodation was made in their favour in place of flat No. L410. It has also been contended by the private respondents that the Chief Minister of the State has no role to play in allotment proceeding which is conducted by the Awas Evam Vikas Parishad which is an autonomous body. The 1979 Regulation does not contain a provision under which a request can be made to any authority for allotment of a particular plot to a particular applicant. While denying the existence of any such resolution the private respondents have submitted that the Housing Commissioner does not have power to segregate a particular plot or keep aside a registered aspirant from the process of allotment conducted by way of lottery and further stated that such segregation or exercise can not be said, in any way, to be in the interest of Parishad, rather it will amount to breach of public policy.

6. Two rejoinder affidavits have been filed by the petitioner in which she has reiterated the facts already given by her in her petition. She has filed a few more annexures alongwith her rejoinder affidavits.

7. We have heard the learned counsel for the parties and perused the records.

8. It is admitted case that the petitioner had applied for allotment of a flat in the above mentioned scheme. The normal procedure of allotment of a flat has been prescribed in 1979 Regulation. Regulation 34, in unequivocal terms says that a plot/building shall be allotted by a lottery drawn publicly. It has also been mentioned in the same Regulation that all the applicants shall be sent written information regarding the place, date and time of the lottery and such information shall be made public by publishing the same in news papers and

promulgation through other similar sources. It is the admitted case of the petitioner that she did not participate in the draw made through lottery and that her name and the disputed flat were kept segregated. The main contention of the petitioner is that since the Housing Commissioner kept her name and the disputed accommodation out of the draw of lottery, it means that the disputed flat was allotted to her and the Housing Commissioner and the respondent no.1 are bound under law to approve its allotment in her favour. It is her further contention that the segregation process by itself means that the respondent no.1 as well as the Housing Commissioner have decided that keeping in view her request the said flat was allotted to her and giving an approval of the same is nothing more than a formality. This contention has been vehemently opposed by the official respondents. They have categorically stated that there were few more applications pending before the Housing Commissioner regarding the same flat and after due consideration the Housing Commissioner took the decision that this flat should be exchanged by flat No. L410 which was allotted through lottery to private respondents.

9. Reference of Regulation 48 has been made by the petitioner. Regulation 48 states that notwithstanding anything contained in this Regulation, in special circumstances and in the interest of the Parishad, the Housing Commissioner shall have power to take a decision not prescribed herein and keeping in view the need of the hour it shall be within the power of the Housing Commissioner to change the allotment process and mode of payments.

10. Learned counsel for the petitioner Sri Satish Chaturvedi has argued that since the flat in question was segregated for allotment in favour of the petitioner awaiting formal approval of the same, the flat in question stood allotted in her favour. It has been further submitted that the decision taken by the Housing Commissioner on 20.12.2006 to segregate the flat from normal mode of allotment and the fact that the application of the petitioner was kept out of lottery draw simply means that the Parishad had actually allotted the same in favour of the petitioner. It has been further submitted by Mr. Chaturvedi that the allotment of the disputed flat in favour of the private respondents is bad as it was done under the orders of the respondent No.3, who did not have any authority to pass such an order. It has also been argued from the side of the petitioner that due to her difficulties and genuine need the petitioner had requested the Chief Minister of U.P. for allotment of the particular flat which was duly considered by him and in this background the Commissioner exercised his powers in favour of the petitioner.

11. In our opinion this argument does not have any force. From the perusal of Regulation 48 it is evident that the law has given certain powers to the Housing Commissioner keeping in view certain unforeseen contingencies and difficulties which may arise any time before the Parishad. While giving this power to the Housing Commissioner the law has put two riders which are:

1. There should be some special circumstance.

2.The decision should be taken in the interest of Parishad.

12. It may be true that the petitioner is living separately from her husband since long but she has the capacity to purchase a HIG Flat in the Metropolitan City of Kanpur which indicates her reasonably good financial status also. Therefore, one can not say that she is a poor lady having no means. From the records it is evident that the husband of her real sister is the Provident Fund Commissioner of Uttarakhand State who too had approached the officers of the Parishad with request that the disputed accommodation be allotted to the petitioner. This fact is evident from the notings of the officers on various letters which are available on record. It is also clear from the records that in the event of the death of the petitioner, her sister who is the wife of the Provident Fund Commissioner will be her nominee. This by itself shows her good relationship with the sister who is the wife of a very senior officer of a State and therefore it is clear that the petitioner does not belong to the weaker section of the society.

13. In our opinion the purpose for which the petitioner wants to be allotted the particular flat in her name is, in infact, not her "need" but is her "convenience". Allotment of a particular property to a particular individual in such a circumstance by violating the regulations can not be permitted. Keeping away a particular property by a Government agency from the reach of some 115 registered and genuine aspirant under the garb of ?inherent powers of the Housing Commissioner? just to fulfill the desire of an individual having high connections and political approach is not permitted by law. Such an allotment can not be in the interest of the Parishad and such circumstance can never be termed a special circumstance. Exercising his power under Regulation 48 by the Housing Commissioner under such circumstances will only be an abuse of his power.

14. Fortunately no such decision has been taken by the authority concerned. However, if in the facts and circumstances of the instant case, such a decision by the Housing Commissioner would have been taken in favour of the petitioner, by no stretch of imagination it could be said that this decision was in the interest of the Parishad or there existed special circumstances which compelled the Housing Commissioner to take a decision in her favour. It is true that Regulation 48 gives certain extra ordinary jurisdiction and powers to the Housing Commissioner. But while exercising such powers the Commissioner must act in an honest way and in a manner which is not unduly favourable to any individual. If circumstances so demand a change in the process of allotment may be made by the Commissioner. But such a change or amendment in policy must be made public so that equally situated persons may also try, get, or make an effort to get the benefit of changed or amended policy.?Show me the person and I will show you the law? policy can not be allowed to be adopted by the State or its instrumentalities. Regulation 48 is an extra ordinary provision. It gives a discretion to the Housing Commissioner to meet unforeseen contingencies. Discretion means sound judgment and it must not be arbitrary. Regulation 48 has not been created to

fulfill or to be used as a tool to fulfill the desire of a person. It is definitely not desirable that this discretion should be exercised in favour of a person having political connections or high profile relationship just to allow him to grab his convenience. The Housing Commissioner is law bound to take an honest and truthful decision keeping in view the interest of the Parishad while exercising his powers under this Regulation. This power has not been given to him to permit him to assume an autocratic character so that he may do whatever he likes, fair or foul. This is definitely not the purpose of law. The purpose with which such power has been conferred upon the State authority is that he must act as a responsible government servant with due honesty and desired fairness, keeping in view the welfare of the institution to which he belongs and to discharge his duties in the most impartial, transparent, free and fair manner. Therefore, the Housing Commissioner can not be permitted to misuse this inherent powers.

15. It appears that the petitioner has failed to appreciate the underlying spirit of Regulation 48. If the name of the petitioner and the disputed plot have been kept out by the Housing Commissioner he had acted in an illegal manner because there is no regulation in the 1979 Regulations for such segregation. Therefore we can not direct him to do another illegal act (of allotment of the disputed accommodation in favour of the petitioner) on the strength of an illegality already committed by him. There is no provision in the Regulation which prescribes that a separated lady be given any preference in an allotment. Regulation 32 speaks of reservation and Regulation 33 of preferences. The case of the petitioner does not fall in any of these two categories. The papers filed by the parties show that in the instant matter the segregation has been done as if every thing was an inhouse affair. The petitioner had tried to influence the Housing Commissioner as well as the Parishad politically as well as administratively. Annexure 2 of the affidavit to the writ petition can not be said to be an allotment order passed by the Chief Minister of the State. In fact by this letter only the prayer of the petitioner had been forwarded by the Office of the Chief Minister to the Housing Commissioner.

16. We do not find that there is any circumstance in favour of the petitioner in this case. If she had decided not to participate in the lottery draw, it was her own decision for which respondents can not be held liable.

17. It appears that the disputed flat has not been allotted to any registered applicant in the lottery draw dated 20.12.2006 though as against 24 flats there were some 116 aspirants. Had the disputed flat not been segregated from the lot of the flats put to the lottery draw it must have been allotted to anyone of the aspirants. By doing so the respondent No.1 has done something which is not fair. In these set of circumstance we are not happy with the procedure adopted by the official respondents while allotting the disputed flat in favour of the private respondents on exchange basis. But we can not pass any order in this regard because that matter is not in issue before us in this writ petition.

18. To sum up the matter we are of the view that mere segregation of the name

of the petitioner and disputed accommodation and not putting them to the process of lottery does not confer any right in favour of the petitioner, specially when no formal order has been passed in this regard by the Housing Commissioner.

19. Thus we find no force in this petition and accordingly it is dismissed.

20. There shall be no order as to costs.