(2019) 03 UK CK 0088

In the Uttarakhand High Court

Case No : Special Appeal No. 765 Of 2017

Shanti Lohani APPELLANT

Vs

State Of Uttarakhand And Others RESPONDENT

Date of Decision : 15-03-2019

Acts Referred:
Constitution Of India, 1950 — Article 226

Citation : (2019) 03 UK CK 0088

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

Bench : Division Bench

Advocate : Anil Kumar Joshi, J.C. Pande

Final Decision : Dismissed

Judgement

Ramesh Ranganathan, CJ

1. This appeal is preferred against the order passed by the learned Single Judge in Writ Petition (M/S) No. 1960 of 2015 dated 25.07.2017. The appellant herein filed the writ petition seeking a writ of certiorari to quash the orders dated 05.05.2014 and 15.04.2015 passed by the Tehsildar, Sitargang as well as the District Magistrate, Udham Singh Nagar; a mandamus directing the respondents to execute the sale deed in favour of the petitioner for House No. 9, by giving her the benefit of the order dated 01.02.1984 passed by the Union of India; and a writ of mandamus directing the respondents to execute a sale deed, in favour of the petitioner, in the same manner in which the same had been executed in favour of other similarly situated persons.

In the order under appeal, the learned single Judge has noted that the appellant-writ petitioner was allotted a departmental accommodation by the District Assistant and Rehabilitation Officer, Rurdrapur on 13.10.1983; the Government of India had framed a scheme for allotment of land, situated at Rudrapur, to Burma Refugees; the petitioner was also to be allotted the same house with appurtenant land, where she was residing, at the prevailing market rate;

however, while sale deeds were executed in favour of certain others, no sale deed was executed in the appellant -writ petitioner's favour.

Before the learned Single Judge, the appellant-writ petitioner contended that the Tehsildar, Sitargang had earlier determined the value of the house to be Rs.5,24,653/-, and the value of the land to be Rs.14,56,218/-, i.e a total sum of 19,80,871/-; subsequently, the District Magistrate, by his order dated 14.04.2015, had asked the petitioner to deposit Rs.1,07,86,800/- for getting the sale deed executed in her favour; and, since the land in question was 570.77 sq. mts, the valuation made by the State Authorities, taking into consideration the prevailing circle rate in 1984, was excessive.

The learned Single Judge also noted the contentions, urged on behalf of the State, that the land was allotted to the petitioner on a certain consideration to be given by her, which she did not comply with in time; therefore, the allotment order issued in her favour was cancelled; and by a fresh order dated 15.04.2015, Rs.1,07,86,800/-was determined on the basis of the present market value of the land, which was Rs.20,000/- per sq. mts. The learned Single Judge noted the contention of the petitioner that the maximum land value, which could have been charged, was at the circle rate which was prevailing in the year 2015. While quashing the impugned orders dated 05.05.2014 and 15.04.2015, the learned Single Judge directed the District Magistrate, Udham Singh Nagar to determine the value of the land, and the dwelling house, afresh on the basis of the market value, on the basis of the latest sale deed etc. but in no circumstance it could be less than the circle rate as prevailing in the year 2015. The learned Single Judge further observed that, after determination of the value of the land and the dwelling house by the State Authorities, in case the petitioner failed to deposit the amount within one month from the date a communication was received by her from the authorities, the allotment made in her favour shall be cancelled.

Mr. A.K. Joshi, learned counsel for the appellant-writ petitioner, would draw our attention to several earlier orders passed by this Court commencing from the order passed by a Division Bench in Writ Petition (M/B) No. 837 of 2005 dated 05.04.2007, whereby the State Government was directed to re-examine the case of the appellant-writ petitioner; and if they were similarly situated to those in whose favour sale deeds had been executed earlier, a sale deed should also be executed in favour of the petitioner in the same manner, ignoring the cancellation of allotment, within one month from the date of production of a certified copy of the order. While the petitioner had filed a contempt case, for non compliance of the said order, it is represented by Mr. A.K. Joshi, learned counsel for the appellant-writ petitioner, that the said contempt case was closed.

Thereafter, the petitioner again filed Writ Petition (M/S) No. 2329 of 2012. A learned Single Judge of this Court, by his order dated 03.09.2013, quashed the order dated 16.10.2007, whereby the appellant-writ petitioner's representation had been rejected. The learned Single Judge had directed the Tehsildar to take steps for restoration of possession of House No. 9 Shaktifarm, Sitarganj, District

Udham Singh Nagar to the petitioner within two weeks, and to execute a sale deed in her favour, of House No. 9, by giving her the benefit of the order dated 01.02.1984.

In compliance with the judgment in Writ Petition (M/S) No. 2329 of 2012 dated 03.09.2013, the Tehsildar requested the appellant-writ petitioner to deposit Rs.5,24,653/- towards the cost for construction, and Rs.14,56,218/- towards the cost of land, for executing the sale deed in her favour. The appellant-writ petitioner filed Contempt Case No. 169 of 2014 contending that the State Government could not ask for the present day valuation to execute the sale deed; and rather the sale deed should have been executed at the rates prevailing in the year 1984. In his order, in Contempt Case No. 169 of 2014 dated 19.09.2014, a learned Single Judge of this Court observed that nowhere in the judgment, in Writ Petition (M/S) No. 2329 of 2012 dated 03.09.2013, was it observed that the sale deed had to be executed as per the rate prevailing in the year 1984; it was beyond the jurisdiction of the Contempt Court to express any opinion as to whether a sale deed had to be executed as per the rate prevailing in the year 1984 or at the present rate; and this question could only be adjudicated before the appropriate forum. The appellant-writ petitioner was permitted to withdraw the contempt case, with liberty to question the order dated 05.05.2014 seeking adjudication of the rate, at which the sale deed should be executed.

The appellant-writ petitioner, thereafter, filed the present writ petition, and the order under appeal came to be passed. The circular on which the appellant-writ petitioner had placed reliance upon, in the earlier writ petition filed before this Court, is the circular issued by the Government of India dated 01.02.1984. Para-3 of the said circular merely stipulates that the value of the structures may be worked out on the basis of the present day cost of material, less depreciation on account of age. Para-3 of the said circular can only mean the value of the structure as on the date on which the land and the structure were to be transferred, i.e. the day on which the sale deed was executed. The appellant-writ petitioner chose not even to comply with the proceedings issued by the Tehsildar dated 05.05.2014 wherein the rate of construction was prescribed as Rs.5,24,653/-, and the cost of the land as Rs.14,56,218.

The subject property still belongs to the Government. The rate at which Government property can be alienated can only be the market rate prevailing on the date on which a sale deed is executed. The appellant-writ petitioner claims that, others in whose favour sale deeds were executed, were granted the benefit of the rates prevailing in the year 1984 when the circular was issued. The petitioner cannot seek parity in illegality. Even if the State Government had conferred an illegal benefit on others, that would not justify this Court directing them to perpetuate the illegality (Chandigarh Administration vs Jagjit Singh: AIR 1995 SC 705).

Transfer of public property, at a rate prevailing three decades earlier, would run contrary to larger public interest. Public property should be sold, except in exceptional circumstances, only by way public auction, or by a fair and transparent mode, whereby the property is alienated in favour of the highest bidder. The appellant-writ petitioner claims that the subject land and building should have been alienated in her favour, and a sale deed executed, at the rate prevailing three decades earlier. The jurisdiction which this Court exercises, under Article 226 of the Constitution of India, is only in larger public interest. Larger public interest would not be served by permitting public properties to be sold at rates prevailing three decades earlier.

The learned Single Judge has, by the order under appeal dated 25.07.2017, directed that the land and the building be transferred in the appellant-writ petitioner's favour on the basis of the market value, relying on the latest sale deeds. Interference, in an intra-Court appeal, would be justified only if order under appeal suffers from a patent illegality. We find no such infirmity in the order under appeal warranting interference in an Intra-Court appeal. The appeal fails and is, accordingly, dismissed. No costs.