
(2019) 04 UK CK 0163

In the Uttarakhand High Court

Case No : Writ Petition (M/S) No. 1588 Of 2017

Shaukat Ali

APPELLANT

Vs

State Of Uttarakhand & Others

RESPONDENT

Date of Decision : 29-04-2019

Acts Referred:

Citation : (2019) 04 UK CK 0163

Hon'ble Judges : Sharad Kumar Sharma, J

Bench : Single Bench

Advocate : Prabhat Bohra, K.N. Joshi, Ajay Singh Bisht

Final Decision : Disposed Off

Judgement

Sharad Kumar Sharma, J

1. The petitioner in the present writ petition is dissatisfied with the conditions of the residential accommodation which was allotted to him by the respondents on 30.05.2015 which according to the pleading was in dilapidated condition and was not at all habitable by the employees of the Nagar Palika, particularly the petitioner, and hence he had preferred the present writ petition for the following relief:-

(i) Issue a writ, order or direction in the nature of mandamus commanding respondent no.1 to 4 to improve the condition of residential accommodation allotted to the petitioner (contained as Annexure No.1 to this writ petition) by way of renovation/maintenance and Issue a writ, order or direction in the nature of mandamus commanding respondent no.1 to 4 for removal of heavy & high pressure water pipe crossing beneath the floor of the residential accommodation of the petitioner such that petitioner and his family can live in hygienic environment which is protected from direct exposure of harsh climatic conditions or alternatively Issue a writ, order or direction in the nature of mandamus commanding respondent no.3 & 4 to allot any other residential accommodation fit for dignified human living available in residential properties of Nagar Palika

Parishad, Nainital.

(ii) Issue a writ, order or direction in the nature of certiorari to quash government order dated 23.12.2016 (contained as Annexure no.6 to this writ petition) by which illegal occupation of such public properties are being regularized by way of sale in favour of unauthorized occupants, which is direct violation of legitimate right of petitioner to occupy proper dignified residential accommodation as an employee of Nagar Palika Parishad Nainital.

(iii) Issue any other relief, which this Hon'ble Court may deem fit and proper in the circumstances of the case be passed in favour of the petitioner.

(iv) Cost of the petition be awarded in favour of the petitioner.

2. The basic grievance of the petitioner was that looking to the climatic conditions, staying of the staff where accommodation is situated does not humanly satisfy and have habitable condition and is absolutely in an unhygienic circumstances, which is prevailing and hence, he has prayed for from the respondent No.4, that either to repair the accommodation in question or alternatively to allow the petitioner to occupy any other suitable accommodation, which is suitable for the living purpose according to the status of his employment. The record which has been brought on record by the petitioner himself, he has submitted that he is a Class IV employee of the Nagar Palika Board. After his appointment as Beldar since 2002, since then he has been residing in the residential accommodation in question after the allotment made to him.

3. The coordinate bench of this Court while calling for the counter affidavit and while issuing direction to seek instructions from the respondents, had passed certain interlocutory order based on the statement of Executive Officer directing the Executive Officer of Nagar Palika who was present in person, on 10.07.2017, who too had extended the assurance that he would be looking into the matter and he will get the necessary repair done and the work of roof and the remaining works were also assured to be done.

4. Consequent thereto the counter affidavit was filed and in the said counter affidavit it has come on record that the respondent has taken sufficient steps in the case of the petitioner in compliance of that interlocutory order with regard to maintenance of the residential accommodation, as claimed by the petitioner and has further stated that the directions given by the Court that had already been complied and all the said repair or maintenance has been done and completed by the Municipal Board, the petitioner if is still dissatisfied he ought to have resorted to recourse available to him under the law, at least the writ jurisdiction cannot be invoked to determine the level of satisfaction of repair work done by respondent No.4, of the residential accommodation allotted to the employee of the department. Whether it is, in an appropriate condition, are the questions which has to be determined by the regular civil court or any another competent forum where the evidences may be appropriated by the court determining the level of

satisfaction of habitable condition of the accommodation as expected by the petitioner.

5. Considering the pleadings which have been raised by the petitioner in the writ, though the Nagar Palika claims to have already repaired the accommodation of the petitioner, but still for the purpose of taking a pragmatic view this writ petition is disposed of with the directions to the Municipal Board to consider and pass an appropriate order on the representation of the petitioner as submitted by him on

1. 03.2017, where he has claimed that he would be entitled for the maintenance of the accommodation to the level of his expectation. The writ petition so far as relief No.1 is concerned is disposed of with the above directions.

6. So far as the second relief is concerned where the petitioner has contended that the Municipal Board had proceeded with making illegal allotments or had permitted the illegal occupants, to permit and occupying the accommodation by way of sale made in their favour, once it again it is an issue which cannot be gone into by the writ court and that to particularly in the absence of those persons in whose favour the alleged sale deed is said to have been made by the Municipal Board since the so called beneficiaries of the alleged sale as claimed by petitioner, they had not been made parties in the writ petition. However, still this aspect too can be looked into by the respondent No.4 while considering the representation of the petitioner.

7. Subject to the above observation the writ petition stands disposed of.

8. However there would be no order as to cost.