

U.P. HOUSING & DEVELOPMENT BOARD & ANR. A

v.

NAMIT SHARMA

(Civil Appeal No. 4020 of 2010)

FEBRUARY 03, 2021 B

[ASHOK BHUSHAN AND R. SUBHASH REDDY, JJ.]

Uttar Pradesh Awas Evam Vikas Parishad Bhukhando Tatha Bhavano Ke Panjikaran Evam Pradeshan – r.47 – In 1982, respondent's grandfather got himself registered in a scheme for an HIG plot in appellant's Housing Scheme – Before his death, he nominated respondent as his nominee – In 1997, respondent sought transfer of the registration in his name and for allotment of an HIG plot – Request refused by Housing Commissioner – Writ petition filed by respondent – Division Bench directed allotment of a plot to the respondent against his grandfather's registration – On appeal, held: Respondent's grandfather only got himself registered which made him eligible to participate in the process of allotment – Nothing on record indicates that at any point of time any allotment of plot was made in his favour – Mere registration in the name of respondent's late grandfather which registration also came to an end after Government order dtd. 11.10.02 which made all the old registrations ineffective permitting applicants to get refund, there was no right left in the respondent to claim even registration much less an allotment – Endorsement dtd. 31.12.04 relied on to contend that there is an order passed by the Commissioner in exercise of power u/r.47 in respondent's favour, is not an order passed by the Commissioner but only a recommendation made by an official person – Further, respondent's prayer to allot Plot No.1/41 is malafide as the same was allotted to his father – High Court did not give any cogent reason as to on what basis direction was issued to allot a plot to the respondent – Mere statement of the counsel for the Board that 19 plots are vacant cannot be utilized for issuing such direction when otherwise respondent had no right for allotment – High Court erred in issuing the direction to allot a plot to the respondent – Uttar Pradesh Avas Evam Vikas Parishad Adhiniyam, 1965 – s.95(1) – Housing.

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- A *Uttar Pradesh Awas Evam Vikas Parishad Bhukhando Tatha Bhavano Ke Panjikaran Evam Pradeshan – r.47 – Power of Housing Commissioner – Discussed.*

CIVIL APPELLATE JURISDICTION: Civil Appeal No.4020 of 2010

- B From the Judgment and Order dated 07.07.2009 of the High Court of Allahabad, Lucknow Bench, Lucknow in Writ Petition No.3315 (M/B) of 2005.

Vishwajit Singh, Pankaj Singh, Ms. Ridhima Singh, Ms. Vijaya Singh, Sushmit Chauhan, Advs. for the Appellants.

- C Dr. Manish Singhvi, Sr. Adv., Prashant Kumar, Advs. for the Respondent.

The following Order of the Court was passed:

ORDER

- D Heard Shri Vishwajit Singh, learned counsel appearing for the appellants and Dr. Manish Singhvi, learned senior counsel appearing for the respondent.

This appeal has been filed against the order dated 07.07.2009 of the Division Bench of the Allahabad High Court, Lucknow Bench in

- E Writ Petition No.3315(M/B) of 2005, by which order the writ petition filed by the respondent has been disposed of with a direction to opposite party to the writ petition to allot one plot to the respondent against the Registration No.L.W/P-2951(6). Appellant aggrieved by the said judgment has come up in this appeal.

- F The brief facts necessary to be noticed for deciding this appeal are:

One Shri M.L. Sharma, the grandfather of the respondent got registration in his name in a scheme for HIG plot in the Housing Scheme of the appellant. On 16.09.1982 his application was registered with Registration No.L.W./P-2951(6). Shri M.L. Sharma wrote a letter to

- G the appellant on 15.09.1983 that he has nominated his grandson i.e. respondent as his nominee and his mother Smt. Sudha Sharma as his guardian till he attains majority. Shri M.L. Sharma died on 09.06.1984. The Parishad sent a letter to Shri M.L. Sharma to deposit an additional amount of Rs.3,000/- as registration money due to escalation in price.

- H However, pursuant to aforesaid request no additional amount was

deposited rather Smt. Sudha Sharma wrote a letter to Parishad to refund the entire registration amount. Parishad wrote a letter on 22.08.1988 to Smt. Sudha Sharma to send the requisite documents i.e. Death Certificate etc. to complete the formalities necessary for obtaining a refund of the registration amount. The respondent wrote a letter dated 26.08.1997 to the Parishad requesting Parishad to transfer the Registration No.L.W./P-2951 from his grandfather's name to his name and allot him a H.I.G. plot in the Housing Scheme. The father of the respondent Dr. N.N. Sharma had also applied in the Housing Scheme and was allotted a plot. A Government order dated 11.10.2002 was issued providing guidelines for refund of registration money of unsuccessful applicants under various housing schemes of the State. In the Government order it was further directed that old registration of unsuccessful candidates would not be renewed under any circumstances and the unsuccessful candidates would have to apply afresh for registration. In compliance of the Government order dated 11.10.2002, the Parishad has also issued an advertisement in the newspaper dated 14.03.2003 to that effect and letter dated 14.09.2004 was also issued to the respondent regarding deposited amount against Registration No.L.W./P-2951(6). The respondent was communicated that registration is not valid and after completing the formalities mentioned therein he may seek refund of registration amount. The respondent wrote a letter dated 31.12.2004 wherein he reiterated his request for transfer of registration in his name and allot a plot. In the letter respondent mentioned that House No.1/41, Vikas Nagar is lying vacant and the said house should be allotted to him against the registration of his grandfather. A recommendation was also made on the letter dated 31.12.2004.

On 18.03.2005, the Housing Commissioner refused to accept the request of respondent-Namit Sharma to transfer the registration of his grandfather Shri M.L. Sharma in his name. On 21.05.2005 another letter was issued by the office of the Parishad to the respondent informing that by virtue of Government order dated 11.10.2002 the registration in the name of his grandfather Shri M.L. Sharma is not there, hence, it is not possible to make any allotment of plot. It was further communicated that amount deposited can be taken back and respondent was intimated that if you are interested in getting any property of the Parishad, you can participate in the allotment process against specific property published from time to time after depositing required token money against the said property.

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- A The respondent filed a Writ Petition No.3315/2005 praying for quashing the order dated 18.03.2005 of the Housing Commissioner and issue a writ order in the nature of mandamus commanding the respondent to consider and allot a vacant plot after transferring the registration in the respondent's name. The Writ Petition No.3315/2005 filed by respondent was disposed of by the High Court by the impugned order against which this appeal has been filed. The operative portion of the High Court's order is as follows:

“We, therefore, dispose of the writ petition with a direction to the opposite parties to allot one plot to the petitioner against the Registration No.L.W./P-2951(6) within six weeks from the date a certified copy of this order is produced after completing the required formalities by the petitioner.

- Shri Vishwajit Singh, learned counsel appearing for the appellants/ Parishad submits that the High Court committed error in directing allotment of plot to the respondent. Neither the registration, which was initially in the name of respondent's grandfather, was valid nor there was any registration in favour of the respondent or any allotment of plot in favour of respondent or his grandfather so as to give any right to claim allotment. It is submitted that the respondent was communicated that registration is not valid and by virtue of Government order dated 11.10.2002 all old registrations were made ineffective permitting the applicants to get refund as per the procedure prescribed. It is submitted that respondent was communicated more than once that the registration of his grandfather is now no longer valid and he can obtain the refund of the deposited amount and may apply afresh registration and participate in the process of allotment. Neither the respondent ever got registered afresh nor participated in the process of allotment. The High Court committed error in directing for allotment in favour of the respondent to whom neither the Parishad ever allotted any plot nor any right was claimed by the respondent for allotment. It is submitted that the allotment of plots in the scheme, in which the respondent was claiming, were all by draw of lots and the respondent's grandfather was never allotted any plot at any point of time. It has also been submitted that one HIG house was allotted to the father of the respondent, namely, Dr. N.N. Sharma, the request of transfer the allotment with another plot did not materialize as he did not fulfill the certain conditions mentioned in the letter permitting transfer. The plot No.1/41 stood allotted to the father of the respondent, who had been handed possession.

Dr. Manish Singhvi, learned senior counsel appearing for the respondent, refuting the submissions of learned counsel for the Parishad contends that firstly the order passed by the High Court was on the basis of consent given by the appellant to allot a plot to adjust against 19 plots which were vacant hence the appellant was precluded from challenging the order of the High Court. He further submits that in favour of the respondent there was already allotment by the Housing Commissioner in exercise of power under Rule 48 which order was passed on the application of respondent on 31.12.2004. He submits that the Housing Commissioner has power, in special circumstances, to pass any order and in exercise of power order was passed on 31.12.2004, hence, the High Court's order does not suffer from any error.

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We have considered the submissions of learned counsel for the parties and perused the record.

From the facts which have been brought on the record there is no dispute that initially the grandfather of the respondent Shri M.L. Sharma deposited an amount of Rs.2000/- as registration money and he was allotted a registration bearing Registration No.L.W./P-2951(6) on 16.09.1982. Before the death of Shri M.L. Sharma he wrote a letter to the Parishad nominating his grandson i.e. respondent for his registration. There is material on record to indicate that after the death of Shri M.L. Sharma further additional amount towards registration as demanded was paid. The Parishad wrote a letter to the mother of the respondent to send requisite documents for obtaining refund. The State Government has issued Government order on 11.10.2002 under which State Government issued guidelines for refund of registration money of unsuccessful applicants. The copy of the Government order has been brought on the record as Annexure P-7.

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Paragraphs 2 and 3 of the Government order are relevant which are to the following effect:

“2. I have been directed to inform you that with a view to make the aforesaid arrangement more transparent, it has been decided after due consideration that the registration money of the unsuccessful candidates must be returned to their Bank account through account payee cheque/bank draft or other prevalent procedures within 15 days from the date of lottery draw by all the Development Authorities and the Avas Vikas Parishad. In case

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- A of non-refund of the registration money within 15 days, the interest payable on the refundable amount would be recovered from the salary of the officer/employee responsible for the delay. The concerned officer/employee would be held fully responsible for the delay in refund.
- B 3. In this connection, it has also been decided that the unsuccessful candidate will have to be applied open for a new scheme and the old registration of such unsuccessful candidates would not be renewed under any circumstances.”
- After the aforesaid Government order, communication was also
- C issued to the respondent on 14.09.2004 informing that Registration No.L.W/P-2951(6) was not valid and therefore cannot be transferred to him. The respondent was requested to complete the formalities for refund of the deposited amount towards registration. The another order which has been brought on the record by the appellant is the letter dated 21.05.2005 issued by the Estate Officer where respondent was again informed that the Registration No.LW/P-2951(6) of your grandfather is not valid registration and it is not possible to transfer the registration in the name of respondent. The writ petition was filed thereafter by the respondent being Writ Petition No.3315/2005.
- E There is nothing on record to indicate that at any point of time any allotment of plot was made in favour of Shri M.L. Sharma, the grandfather of the respondent. Only Shri M.L. Sharma got himself registered on 16.09.1982 with Registration No.L.W./P-2951(6) which made him eligible to participate in the process of allotment. Learned counsel for the appellant has submitted that the allotment was made
- F only by draw of lots. Paragraphs 2 and 3 of the Government order dated 11.10.2002, already extracted above, also indicate the draw of lots for allotment. There being no draw of lots in favour of Shri M.L. Sharma, the grandfather of the respondent, there is no question of allotment of any plot to the respondent.
- G Now we come to the submission of Dr. Manish Singhvi that the order of the High Court is based on the consent of the appellant, hence appeal should not be entertained. It is true that the High Court has noticed the following submissions of learned counsel appearing for the respondent in the writ petition:
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“Learned counsel for the opposite parties on the basis of the instruction submits that 19 plots of different sizes are available for allotment in Sector 11 of the Vikas Nagar Extension Scheme of U.P. Awas Evam Vikas Parishad and the petitioner can be adjusted against the 19 plots which are available.” A

The aforesaid statement was that plots are available and on which the respondent can be adjusted but the fact of availability of the plot does not give any entitlement to a person who has no right to claim allotment. Any allotment has to be made in accordance with the procedure prescribed and the Rules of the Parishad. No allotment can be given in the facts of present case to the respondent when he never participated in the process of allotment nor there was any allotment in his father or in favour of his grandfather. The above statement cannot be read to mean that the respondent consented for allowing the writ petition. The High Court after noticing the aforesaid statement of the counsel proceeded to examine the claim of the writ petitioner on merits which consideration is to the following effect: B

“It is admitted case of the parties that the grandfather of the petitioner Late Sri M.L. Sharma was registered with the U.P. Awas Evam Vikas Parishad having the Registration No.L.W./P-2951(6) for the allotment of an HIG plot in the Ram Sagar Mishra Colony now known as Indira Nagar Colony, Lucknow. On 15.9.1983 Sir M.L. Sharma nominated his grandson i.e. the petitioner as his nominee against the said registration who on attaining the age of majority submitted an application before the opposite parties for transfer of the Registration No.L.W./P-2951(6) in his favour. The petitioner has also annexed the copies of the order passed on 25.5.1999 and 31.12.2004 on the application moved by the petitioner. The opposite parties have placed before us the communication dated 3.5.2009 which reveals that 19 plots of different sizes are available for allotment in Vikas Nagar Vistar Yojna, Lucknow.” C

The High Court in the above conclusion has noted the application moved by the respondent dated 31.12.2004, on which application the order passed therein Dr. Manish Singhvi, appearing for the respondent, has made much emphasis. The application filed by the respondent dated 31.12.2004 has been brought on the record in which application respondent made following prayers: D

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- A “In the prevailing circumstances I once again request your goodself to transfer the registration number cited above from my grandfather’s name to my name in the light of letter dated September 15, 1983, which stands received in the Housing Board and to allot house/plot to me at the earliest possible. It is to bring to your kind notice that House No.1/41, Vikas Nagar, Lucknow is lying vacant and the said house be considered to be allotted to me.

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Dated 31.12.2004

Yours faithfully

Sd/- illegible

(Namit Sharma)

B-1/14, Sector-Q, Aliganj,
Lucknow 226 024 (U.P.)”

- D On the said application there is an endorsement to the following effect:

“By hand:

Joint Housing Commissioner (Lucknow)

- E While using the powers conferred under Rule 48, the request made in para (a) may please be accepted under special circumstances.

Sd/- Illegible

31.12.2004"

- F Dr. Manish Singhvi has taken pains to contend that the above order dated 31.12.2004 is the order passed by the Housing Commissioner in exercise of power under Rule 48 where Commissioner has power to pass any order. Learned counsel for the respondent submits that the correct Rule is Rule 47 of the Uttar Pradesh Awas Evam Vikas Parishad Bhukhando Tatha Bhavano Ke Panjikaran Evam Pradeshan Sambandhi Viniyam, 1979 where regulation framed under Section 95(1) of the Uttar Pradesh Avas Evam Vikas Parishad Adhiniyam, 1965. The Rule 47 provide that notwithstanding anything in the regulation in special circumstance, in the interest of the Board, Housing Commissioner is empowered to take any decision including he shall have right to change the allotment process and process for payment. There can be no dispute to the right of the Housing Commissioner given by Rule 47 as noted

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above. However, the endorsement dated 31.12.2004 on which Dr. Manish Singhvi has placed much reliance is not an order passed by the Housing Commissioner but only a recommendation made by some official person to Joint Housing Commissioner, Lucknow. The recommendation was also on the application of the respondent which was of the same date. The submission is completely misconceived without any merit that there is an order passed by the Commissioner in favour of the respondent in exercise of power under Rule 47. We may notice one more fact which is relevant. In his application dated 31.12.2004 the respondent has made a prayer to allot plot No.1/41 to him which plot was already allotted to his father Dr. N.N. Sharma who was also given possession of the plot on 06.10.2003. Dr. N.N. Sharma made a request to change his plot 1/41 to plot 1/171 which was approved with some conditions on 15.05.2004, which conditions were never complied. Plot No.1/41 having been allotted to father of respondent, his prayer to allot plot No.1/41 was malafide and incorrect. After the aforesaid application dated 31.12.2004 and recommendation made therein letter was issued to the respondent on 21.05.2005 where it was mentioned that the registration is not valid and there is no question of transfer of registration in favour of the respondent and if he is interested he may participate in the allotment process.

We, thus, find no substance in the submission of Dr. Manish Singhvi that there was an order passed by Housing Commissioner allotting plot in favour of the respondent. It is further to be noticed that for allotment of any plot of Housing Board there is a process which all applicants have to follow. As contended by counsel for the Parishad allotments were made by draw of lots of all eligible registered applicants. It is not a case of the respondent that at any point of time any draw of lot was made in which respondent's grandfather was declared successful. Mere registration in the name of Late grandfather of the respondent which registration also came to an end after issuance of the Government order dated 11.10.2002 there was no right left in the respondent to claim even registration but to say of allotment of a plot. The Parishad having communicated the respondent time and again to apply for refund of the amount which was deposited at the time of registration by his grandfather.

The High Court has not given any cogent reason as to on what basis direction was issued to allot one plot to the respondent. The mere statement of the counsel for the Board that 19 plots are vacant cannot be utilized for issuance of direction for plot to respondent who has

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- A otherwise no right for allotment. Allotment of plot to respondent in such a manner would have deprived the other applicants who must be awaiting for allotment of property or who must be eligible for allotment of property. We, thus, are of the considered opinion that the High Court committed error in issuing the direction to allot a plot to the respondent.
- B In view of the above, we allow the appeal and set aside the order of the High Court dated 07.07.2009 and dismiss the writ petition filed by the respondent.

Divya Pandey

Appeal allowed.