

Munni Devi Vs. Allahabad Development Authority and ors.

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Court : Allahabad

Decided On : Jan-23-2002

Reported in : 2002(1)AWC877; (2002)2UPLBEC1024

Judge : Palok Basu and ;Lakshmi Bihari, JJ.

Appeal No. : C.M.W.P. No. 5659 of 2001

Appellant : Munni Devi

Respondent : Allahabad Development Authority and ors.

Advocate for Def. : N.C. Rajvanshi, Adv.

Advocate for Pet/Ap. : Shailendra, Adv.

Disposition : Petition dismissed

Judgement :

Palok Basu and Lakshmi Bihari,JJ.

1. Smt. Munnl Devi has filed this writ petition with the prayer that the order dated 20.1.2001 (Annexure-12) passed by the Allahabad Development Authority (for short A.D.A.) directing her ejectment from flat No. E.W.S. 6 in a scheme known as 'Agnipath' (hereinafter referred to as flat in scheme) be quashed. The other prayer, which is not connected with the ejectment, is that the petitioner should be directed

to pay Rs. 10,000 only against flat No. 6.

2. When the petition was filed, a Division Bench entertained the matter, admitted it and status quo as on the date. i.e.. 16.2.2001 was directed to be maintained. The A.D.A. and the prospective allottees of the said accommodation flat No. E.W.S. 6 filed counter-affidavits with applications to vacate the stay order. Rejoinder-affidavit has also been filed by the petitioner. Under the pressing urgency felt by the respondents who are allottees-applicant in response to the advertisement made by the A.D.A., date was fixed in the matter, and the petition is being finally disposed of after hearing the learned counsel for the parties at the admission stage.

3. Sri Shailendra, learned counsel for the petitioner has been heard at length. Entire writ petition, counter and rejoinder-affidavits have been examined. Sri N. C. Rajvanshi has appeared for the opposite party No. 3. who is allottee of flat No. E.W.S. 6 in the said scheme. Sri B. B. Paul has appeared for the A.D.A., and Sri M. P. Singh, learned standing counsel, has appeared for the police station in-charge. Civil Lines, Allahabad.

4. Issues are not too long to be decided in the instant case. The petitioner alleges that she was living with her family in a quarter in the land upon which the scheme has been executed. She has further pleaded that she was not alone, rather there were more persons. They were dispossessed from the land with an assurance that they will be allotted alternative accommodations. Reference has been made to the Interim order which was passed in earlier writ petition in which A.D.A. had made a statement that alternative accommodations shall be afforded to those who were occupying the out houses in the land in question. In due course, the quarters have come to be constructed in which apart from other quarters, there are two quarters which were numbered as E.W.S. 6 and E.W.S. 7. The petitioner's case proceeds that at some point of time she was, like other dispossessed persons, allotted temporary accommodation which was subsequently damaged in the year 1996 in a strong hailstorm in Allahabad. It is said that subsequently, the petitioner's alternative accommodation was fixed by the respondent No. 1 and that being the flat No. E.W.S. 6 which is a ground floor accommodation. Further pleading of the

petitioner is that her husband is having a disability of 40% on the right leg because of polio attack in that leg.

5. The A.D.A., on the other hand, accepts that alternative accommodation was provided after displacement from the land in question. It further admits that by way of alternative accommodation all the displaced persons were to be provided with some or other quarter in the scheme. Consequently deposit of Rs. 500 by each of the displaced person as registration fees was permitted. Upon this, the petitioner says, she had deposited Rs. 500 as registration fees as a result of which she was entitled to be allotted a flat in the land in the scheme.

6. The allotment order which has been, issued in favour of the petitioner indicates that flat No. E.W.S. 7 has been allotted to her vide allotment letter dated 11.10.2000. Similarly, respondent No. 3 as well as respondent No. 1 claimed that through the process of lottery etc. which was to be invoked for allotment of all the flats, the flat No. E.W.S. 6 was allotted to respondent No. 3, therefore, thereafter the petitioner should have honoured the allotment order and should have shifted to flat No. E.W.S. 7 and the allottee i.e.. respondent No. 3 should have occupied the flat No. E.W.S. 6 long ago. But all that was thwarted by the petitioner by filing the instant petition which in effect prevented the A.D.A. from taking lawful action to throw her out of flat No. E.W.S. 6. which on account of pendency of the case, is being illegally occupied by the petitioner without any valid order of allotment.

7. In view of the fact summarised above, only two arguments which have been placed by the learned counsel for the petitioner are that--(1) The respondent No. 1, the A.D.A., and its officials had permitted the petitioner to occupy flat No. E.W.S. 6 after destruction of temporary accommodation which took place on account of storm, and (2) Since the husband of the petitioner is polio affected handicapped citizen, it would be convenient for her to have flat No. E.W.S. 6 instead of flat No. E.W.S. 7 which stands allotted to her. She relied on medical report which indicated only 40% disability on the right leg of her husband.

8. Sri N. C. Rajvanshi appearing for the allottee-respondent No. 3 has said that the alleged ground of polio is neither here nor there. The petitioner does not have any disability whatsoever as the allottee is the petitioner Munni Devi and not her

husband. The second argument of Sri Rajvanshi is that even if the petitioner is taken to be bona fide allottee but it has to be relatable only to the actually allotted quarter and not the one which she forcibly occupies.

9. Sri B. B. Paul appearing for the A.D.A, has said that A.D.A. never admits the case put up by the petitioner ; and that at no point of time flat No. E.W.S. 6 was allotted to her or for that matter any quarter of other allottees. It is consistent case of Sri Paul through the counter-affidavit that the petitioner has forcibly entered flat No. E.W.S. 6. It has been specifically denied that at any point of time, the petitioner was admitted as allottee in flat No. E.W.S. 6. He has also relied upon the fact that no amount of instalment relating to E.W.S. 6 was ever paid by the petitioner.

10. On examining the materials produced, it is true and correct that no allotment order, whatsoever, exists in favour of the petitioner relating to quarter No. E.W.S. 6. The argument of disability of the husband is not of any benefit to the petitioner for three reasons :-- (1) The allotment has not been made in favour of the husband. Petitioner Munni Devi is lady and she is not disabled, (2) The argument that the husband of the petitioner has some disability. 40% disability on the right leg does not make a person immovable and puts no restriction on climbing stairs etc. and (3) The fact that the petitioner came out with a wrong assertion that there was a valid allotment order in her favour as a result of which she had entered flat No. E.W.S. 6. This has been found to be absolutely wrong and based upon conjectures and falsehood. The A.D.A. has never allotted the said quarter to the petitioner. It never admitted the petitioner in that quarter as its allottee.

11. In view of the aforesaid discussion, the writ petition has no legs to stand. The petitioner, therefore, should herself vacate the flat No. E.W.S. 6. It is hereby directed that the petitioner will vacate the flat in question within one month from today.

12. The writ petition is dismissed. It will be open to the petitioner to approach the respondent No. 1 to take lawful action in regard to allotment of quarter No. E.W.S. 7.

13. The parties shall bear their own costs.

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