

SUPREME COURT OF INDIA

Krishan Lal Gupta

Vs.

Adhishashi Adhikari

(M Punchhi and M Srinivasan JJ.)

20.11.1997

JUDGMENT

1. Leave granted in all these matters.

2. The Nagarpalika, Mussoorie built twelve flats out of which six were transferred by it to Doordarshan. The remaining six were meant to be transferred to people who were in the middle-income group. By a certain method and process, these were allotted to six persons, five of whom are separately the appellants before us in these five matters. The sixth one has not approached this Court. These five appellants challenge the order of the Division Bench of the High Court whereby their challenge to individual orders of cancellation of allotment of flats passed by the Administrator-cum-Collector, has been negatived. As is plain from the order of the High Court and otherwise undenied, the orders of the Collector were passed in the purported exercise of executive or administrative power, not amenable to any appellate jurisdiction. The High Court on that premise entered into the arena of facts in order to determine whether the allotments were well merited and whether there was any fraud practised by the allottees in obtaining the allotments. Competence of the officers of the Nagarpalika to transfer the flats to the appellants, was also gone into and it was discovered that the transfers had been effected without the prior approval of the Government. A host of other factors were brought within the controversy but no fault could be found to the price fixation. It is plain from the order of the High Court that the appellants have been worse off. Their rights in the property which they acquired in payment of good money, have been extinguished in jurisdiction which could well have been avoided since the then Administrator and the Collector were one and the same person and he had acted as a judge in his own cause. The High Court has

gone to approve the action of the Administrator-cum-Collector. This view of the High Court is under challenge before us.

3. We have heard learned counsel for the parties. It appears that amongst these five cases, some of the appellants have obtained registered transfer deeds from the Nagarpalika and others not yet but all were put in possession of the respective flats. The effort of the Nagarpalika was thus geared to undo the entire deal because the succeeding personnel of the Nagarpalika (jobs being transferable) thought that there was something fishy. Even so, the entire matter required a proper handling and definitely not in the hands of those who were parties to the original deal and those subsequent who suspected a clandestine deal. These were matters of large canvas which could not be determined in proceeding under Article 226 of the Constitution. A civil suit would have been the right remedy where everything would have been laid threadbare. In any case, the appellants' case could not have been prejudged in the manner in which it has been done by the High Court in exercising its extraordinary jurisdiction. We, therefore, allow the appellants' withdrawal of their writ petitions as preferred before the High Court and demolish the orders of the High Court, presenting a clean slate to the parties to settle their dispute in the civil court. Since the Nagarpalika, pursuant to the orders of the Collector/Administrator has sealed four of the flats out of the questioned five much after the decision of the High Court, it would be appropriate that the said seals are lifted and the flats put back in respective possession of the allottees. Let the seal of these flats be lifted within 15 days from the receipt of this order and possession be handed over to the respective allottees or their successors, if any. The possession of the allottees is extended protection for a limited period of six months to enable the allottees to move the civil court with an appropriate suit for declaration and injunction. During this time, the questioned orders of the Collector would remain suspended. The civil court, on the filing of the suit/suits, would be at liberty to consider grant of temporary injunctions in favour of the allottees pending suit. Failure to file suit/suits or obtaining the temporary injunctions would entail normal consequences.

4. In this manner, we allow these appeals, set aside the impugned orders of the High Court, permit withdrawal of the writ petitions preferred by the appellants in the High Court, squally permitting them to file suit/suits for declaration and injunction as also permitting them to seek any other reliefs which may legally be due. Should there be any defence of limitation put up, the Court dealing with the question would bear in mind that the appellants had bona Fridley been pursuing a remedy before the High Court as also in this Court. It is so ordered. No costs.