

# SUPREME COURT OF INDIA

B.S. Khurana

Versus

Municipal Corporation of Delhi

(M.B. Shah and S.N. Variava, JJ.)

Special Leave Petition (C) No. 13639 of 2000 with SLP (C) Nos. 13920-13921, 14385, 14386, 14398, 14403, 14405, 14393, 14411, 14400, 14406, 14402, 14615 and 14619 of 2000.

21.09.2000

## JUDGMENT

**M.B. Shah, J.** - The question involved in this group of special leave petitions is - Whether the employees of Municipal Corporation can claim any right for transfer of municipal quarters to them on the basis of the resolutions passed by the Municipal Corporation, which are not initiated or moved but objected to by the Municipal Corporation ? It is the contention of the petitioners that once the Corporation passes the resolution for such transfers, the Commissioner has to abide by it and on objection being taken by him the resolution cannot be nullified. The submission, in our view, is without any substance because of the specific statutory provisions under the Delhi Municipal Corporation Act, 1957 (hereinafter referred to as "the Act").

2. Facts of the present case reveal that since 1970 the Municipal Corporation had been passing resolutions, one after another, for transferring the quarters to its employees. The said resolutions are objected to by the Municipal Commissioner on one ground or the other. The Corporation was superseded three times on the same count. On one occasion, Corporation requested the Government to amend Section 200 suitably so as to empower the Corporation to transfer the immovable property. It is pointed out that the Corporation acquired land and formulated a scheme known as "Northern City Extension Scheme I" for residential purposes, with provisions also for a shopping area. On a plot of land measuring 2750 sq. yards on Mandelian Road a three-storey building was constructed. On 7.5.1968, the M.C.D. passed the first Resolution No. 143 and approved the proposal of sale of flats and shops by public auction. The said flats and shops were put up for public auction on 4.8.1968 and again 6.10.1968. All the shops were disposed of but as the bids received for residential flats were below the reserve price, the bids for flats were rejected. Thereafter, by resolution No. 433 dated 27.7.1970 the MCD decided that the flats may be allotted to the officers of the Corporation on the basis of their salary so that the Corporation may at least be in a position to get a reasonable return from the investment. It was further resolved that the cost of flats to be allotted to the officers be borne from the Revenue of the "General Account" and transferred to the "Remunerative Project Account". Again, by resolution No. 688 dated 4.12.1970, it was decided that the flats be sold to the municipal employees on "no profit no loss

basis" and the allottees be charged at 15% of the assessed cost in the first instance and the balance in easy instalments spread over a period of ten years.

3. The legal advisor considered the above resolution No. 868 and opined two difficulties in implementing the same i.e. (1) Section 200(d) of the Municipal Act, and (2) in some colonies the flats were built after taking loan from Central Govt./Delhi Admn. on the condition that the same will remain as municipal property and will not be sold to its employees. Hence, the matter was placed for review before the Corporation. The Corporation by its resolution No. 13 dated 25.4.1972 reiterated its earlier decision.

4. Thereafter, the Lt. Governor of Delhi in exercise of his powers conferred by Section 487 raised an objection to the passing of the aforementioned resolution which, in his opinion, was in violation of mandate of Section 200(d) and hence issued a show-cause notice as to why a direction may not be issued for making arrangement for proper performance of the duties. Again, legal opinion was obtained by the Corporation wherein the Corporation was informed that under Section 200(d) of the Act the Corporation cannot sell any immovable property below the market rate and the resolution was not consistent with the mandatory provisions of law. Again, by resolution No. 437 dated 31.7.1973 it was decided to reiterate earlier decision taken on dated 4.12.1970. It was also resolved that with a view to overcome the legal impediments in the way of the implementation of the resolution, it be urged upon the Government of India to suitably amend the provisions of Section 200 of the Delhi Municipal Act and also revise the terms and conditions of the loan advanced to the Corporation so as to empower it to transfer the quarters to its employees on 'no profit no loss' basis and also to sell plots of land on 'no profit no loss' basis to such of the desirous municipal employed who do not own in Delhi any property in his own name or in the name of any of his dependent.

5. Subsequently, the Corporation by resolution No. 937 dated 9.2.1979 resolved that in view of the Commissioner's letter dated 14.12.1978 unauthorised occupants of the municipal quarters in Nimri Municipal Colony be offered these quarters on hire purchase basis at the market value existing in 1974 plus interest upto dated @ 11% p.a. and that the offer be made to those who pay the first instalment within a period of 4 months from the date of offer. The Standing Committee also resolved on 12.4.1979 for transferring tenements constructed under the Low Income Housing Scheme at Nimri Colony to the allottees. This was objected by the Municipal Commissioner by a letter dated 5.2.1980 stating that 324 quarters cannot be transferred as the Corporation is already short of municipal accommodation and that it has received loan of Rs. 461 lacs from the Government of India and further quarters cannot be transferred except at a market rate in a fair competition. However, by resolution No. 1156 dated 28.2.1980, the Standing Committee resolved that the quarters in Nimri Colony be sold to allottees-employees at the market price. In response to the above resolution, the Corporation passed Resolution No. 1205 dated 10.3.1980 and decided to sell the municipal quarters in Nimri Municipal Colony to allottees-employees.

6. Subsequently, on 1.4.1980, the Central Government superseded the Corporation and one of the grounds for supersession was :

"The Corporation passed a Resolution to sell staff quarters in Nimri Colony to occupants/allottees ignoring the fact that the quarters were meant to serve as amenity to serving staff."

7. The Commissioner, on account of supersession of the elected representatives, in exercise of his powers under Section 490 of Act passed resolution No. 235 dated 23.7.1980 rescinding the earlier resolutions regarding transfer of tenements constructed at Nimri Colony to the allottees.

8. After elections, the Corporation passed fresh Resolution No. 924 dated 15.2.1984 restoring the earlier resolution for sale of quarters at Nimri Colony to allottees/authorised occupants at the market value of 1974. Although the Central Govt. superseded the earlier set of elected representatives for passing a resolution for sale, the Central Govt. did not take any action against the elected representatives for passing the same. Further, in spite of the letter of the Commissioner to the Corporation requesting to rescind resolutions dated 4.12.1970, 25.4.1972, the Standing Committee by resolution No. 1515 dated 21.2.1988 recommended to the Corporation that the resolution of 4.12.1970 be reiterated. Subsequently, by resolution No. 1076 dated 20.2.1989, the Corporation accepted the recommendations of the Standing Committee and reiterated its earlier resolution dated 4.12.1970 with recommendation of sale of the quarters at Nimri Colony at market value prevalent in 1974 to the present allottees/unauthorised occupants only.

9. On 27.12.1989, the Central Government issued notice to the Corporation to show cause as to why the Corporation to be not superseded. On 6.1.1990, the Ministry of Home Affairs superseded the MCD and appointed Chief Secretary to perform duties of Municipal Corporation of Delhi. On 18.1.1990 Lt. Governor directed the Corporation to rescind resolutions dated 4.12.1970, 25.4.1972, 31.7.1973, 21.12.1988, 20.2.1989 and 4.10.1989 except in so far as they related to part of the Nimri Colony. On 21.3.1990, the Commissioner, Municipal Corporation made recommendation for rescinding the resolution and on 22.3.1990 the Chief Secretary, Delhi exercising his powers of Administrator of the Corporation approved the proposal for rescinding the resolutions (1) dated 4.12.1970, (2) dated 25.4.1972, (3) dated 31.7.1973, and (4) dated 20.2.1989. No other resolution was passed by the Corporation. Hence, the earlier resolutions for transfer of the municipal quarters stood rescinded.

10. Civil Writ Petitions No. 1662/1988 etc. for implementing the earlier resolutions for transferring the quarters were filed before the High Court. In the said writ petitions also, subsequent resolution rescinding earlier resolutions was challenged. The learned Single Judge dismissed those petitions. L.P.As. No. 118 of 1989 etc. were filed before the High Court and the High Court dismissed the same. Hence these special leave petitions.

11. In our view, as stated earlier power to dispose of the immovable property under Section 200 vests in the Commissioner with the sanction of the Corporation. Further, under Section 200(d), consideration for such sale shall not be less than the value at which such immovable property can be sold in normal and fair competition. For this purpose, we would refer to various Sections relied upon by the learned Counsel for

the parties. The Act, under which the Municipal Corporation of Delhi is established provides for functions and duties of the Municipal Commissioner and as well as that of Standing Committee, Corporation and other bodies created under the Act. Sub-section (1) of Section 3 provides for establishment of Municipal Corporation of Delhi. Sub-section (2) thereof reads thus :

*"Sub-section (2) of Section 3 : The Corporation shall be a body corporate with the name aforesaid having perpetual succession and a common seal with power, subject to the provisions of this Act, to acquire, hold and dispose of property and may by the said name sue and be sued."*

The aforesaid sub-section *inter alia* makes it clear that subject to the provisions of the Act, Corporation shall have power to acquire, hold and dispose of property. Hence, no absolute power to dispose of the property is conferred on the Corporation.

12. Sections 42 and 43 of the Act provide for obligatory and discretionary functions of the Corporation. Thereafter, Section 44 states that for the efficient performance of functions of the Corporation, there shall be following municipal authorities namely :-

- (a) the Standing Committee;
- (b) the Wards Committee; and
- (c) the Commissioner;

13. Under Section 54, the Commissioner of the Corporation is to be appointed by the Central Government by a notification in the Official Gazette and his powers and functions are prescribed under Section 59. Relevant part thereof reads thus :-

*"Section 59 : Functions of the Commissioner. - Save as otherwise provided in this Act, the entire executive power for the purpose of carrying out the provisions of this Act and of any other Act for the time being in force which confers, any power or imposes any duty on the Corporation, shall vest in the Commissioner who shall also -*

- (a) exercise all the powers and perform all the duties specifically conferred or imposed upon him by this Act or by any other law for the time being in force;
- (b) .....
- (c) .....
- (d) ....."

14. Under this Section the entire executive power for the purpose of carrying out the provisions of the Act vest in the Commissioner who has to exercise all powers and perform all the duties specifically conferred or imposed upon him by the Act.

15. For our purpose, Section 200 is the relevant provision for finding out - whether the immovable property can be disposed of by the Corporation despite objections raised by the Commissioner. The said provision reads thus :-

*"Disposal of Property.* - With respect to the disposal of property belonging to Corporation, the following provisions shall have effect, namely :-

(a) the *Commissioner may in his discretion dispose of* by sale or otherwise, any movable property belonging to the Corporation not exceeding in value in each instance one thousand rupees, or such higher amount as the Corporation may prescribe, or let out on hire any movable property or *grant a lease of any immovable property belonging to the Corporation* including any right of gathering and taking fruits and the like, *for a period not exceeding one year at a time;*

(b) the Commissioner may, with the sanction of the Standing Committee -

(i) dispose of, by sale or otherwise, any movable property belonging to the Corporation the value of which does not exceed five thousand rupees;

(ii) *grant a lease* (other than a lease in perpetuity) *of any immovable property belonging to the Corporation;* or

(iii) *sell or grant a lease in perpetuity of any immovable property belonging to the Corporation* the value of the which does not exceed fifty thousand rupees or the annual rent of which does not exceed three thousand rupees;

(c) in case not covered by clause (b), the *Commissioner may, with the sanction of the Corporation, lease, sell, let out on hire or otherwise transfer any property,* movable or immovable belonging to the Corporation." His appointment is also to be made by the Central Government by notification in the Official Gazette. Similarly, the functions of the Standing Committee and other committees are also prescribed. In the light of the aforesaid statutory provisions, we have to consider the scheme of Section 200 which empowers the Commissioner to dispose of the moveable property or grant lease of any immovable property or to sell the same subject to the conditions provided thereunder. On the condition of obtaining sanction of the Corporation, the power to transfer immovable property, the value of which exceeds fifty thousand rupees vests in the Commissioner. Result is - the Commissioner can transfer such immovable property only after obtaining sanction of the Corporation. Obtaining of sanction by the Commissioner is mandatory. The effect of the non-observance of the statutory prescription would vitiate the transfer. This would also mean that the power to dispose of the property would vest in the Commissioner and not in the Corporation. No specific power is conferred upon the Corporation for such transfer. The scheme envisages checks and balances for disposal of immovable property on the power of the Commissioner. In the light of the aforesaid interpretation of Section 200, it is not necessary for us to deal with other contentions raised and dealt with by the High Court. In the facts and circumstances of the case, at no point of time, Municipal Commissioner has decided or agreed to transfer the Municipal quarters in favour of its employees/allottees. There is no legal right to claim ownership on the basis of the resolutions passed by the Corporation as the said resolutions are without any power or authority. Hence, there is no substance in these petitions.

17. Lastly, learned Counsel for the petitioners submitted that the petitioners are staying in the disputed quarters since more than 30 years. Therefore, in any case

sufficient time may be given to them for vacating the same. On this ground, we have heard the learned Counsel for the respondents. Considering the facts and circumstances of the case, particularly the stand taken by the Corporation of disposal of quarters in favour of its employees who are occupying the same, as prayed for, time to vacate is granted till the end of the academic year 2001, i.e. up to 30th April 2001 on their furnishing the usual undertaking to hand over peaceful and vacant possession of the premises on or before the said date and to pay regularly the licence fee as payable by the employee of the Corporation (not market or penal rent). However, this benefit would be given to those petitioners who file usual undertaking to vacate the premises before this Court and send a copy thereof to the Municipal Commissioner or the Delhi Jal Board within four weeks from today.

The special leave petitions are dismissed accordingly.

Petitions dismissed.