

**IN THE HIGH COURT FOR THE STATES OF PUNJAB
AND HARYANA AT CHANDIGARH**

C.W.P. No.1083 of 1987

Date of Decision:25.01.2010

Mohd. Sadik and others

....Petitioners

Versus

Chandigarh Administration through Labour Commissioner-cum-
Deputy Commissioner, U.T., Chandigarh and others

....Respondents

Present: Mr. Arun Jain, Sr. Advocate with
Mr. Amit Jain, Advocate
for the petitioners.

Mr. K.K. Saini, Standing Counsel for
respondent Nos.2 and 3.

None for Chandigarh Administration.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

1. Whether Reporters of local papers may be allowed to see the judgment ? **Yes**
2. To be referred to the Reporters or not ? **Yes**
3. Whether the judgment should be reported in the Digest? **Yes**

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K. KANNAN J.(ORAL)

1. The petitioners are all migrants from the State of Jammu & Kashmir and the residential allotments were made available to them after making the property in quarters Nos.1028 to 1038 by vacating of police lines. The relevant proceedings emanated from the Inspector General of Police by his communication dated 20.12.1983 to the Labour Commissioner-cum-Deputy Commissioner, U.T., Chandigarh that even apart from the quarters vacated by the police, the remaining quarters from

quarter Nos.1001 to 1027 and 1039 to 1060 shall also be handed over shortly.

2. By the impugned proceedings dated 19.02.1987, the Assistant Labour Commissioner, Chandigarh had issued notices to one Sadik Mohd., who is the first petitioner and to several other persons directing immediate vacation of the premises on the ground that the property was made available only for migrant labourers from Jammu and Kashmir, who had come to Chandigarh in search of work and it was not to be given on a permanent basis or to allow for persons to stay with their families permanently.

3. The contention of learned counsel for the petitioner is that many of the petitioners have spent enormous monies for making the respective properties in their possession for their convenient living and there was no basis for assumption that the property was being allotted to various persons only temporarily and that it was not to allow for permanent stay with families. By virtue of an interim order granted by this Court, it appears that all the petitioners have been permitted to be continued in the property.

4. At the time when the matter is taken up for hearing, learned Senior Counsel for the petitioner is present to make his submissions but there is representation on behalf of the Chandigarh Administration. The learned Senior Counsel, Sh. Jain

relies on the decision of this Court in *Agya Ram and others Vs. U.T. Administration and others 2009(2) R.C.R. (Civil) 596* that dealt with the case of an allotment under Capital of Punjab (Development and Regulation) Act, 1952 in respect of commercial booths/shops. The Court was considering the issue of persons, who were genuine and bona fide Kashmiri migrants and their entitlement to allotment under Rule 5-A of the above-said Act and the Rules framed thereunder. The Court had also directed that the respondents would consider the claim of the petitioners as well as other persons similarly situated to obviate their hardship.

5. It shall be possible for the Court to give any directions, if there is any scheme promoted by the State for accommodation of the migrant labour from Jammu & Kashmir. None of the petitioners is able to produce any Scheme before the Court or afford any form of proof as to how and in what manner of right they were allowed to obtain possession of the respective properties. All that could be discerned from the proceedings of the Inspector General of Police on 20.12.2003 is that the property was to be handed over to the Labour Welfare Officer of the Jammu & Kashmir at Chandigarh. The letter states the subject as vacation of sheds for migratory labourers of J&K but even in the body of the letter, no policy of the Administration is spelt out as to how the Labour Welfare Officer of Jammu & Kashmir,

Chadigarh shall deal with the property. If the decisions had been taken subsequently by the Assistant Labour Commissioner, it cannot be at his whims and fancies but it must reflect any changed policy consideration as to what types of persons would be directed to continue in occupation or to what classes of persons, the benefit of occupation of the residential houses be made. I do not have the assistance of the Chandigarh Administration to secure the thinking of the Administration as to how the migrants from Jammu and Kashmir have to be located.

6. In any event, the impugned proceedings at the instance of the Labour Commissioner that all the persons would be forcibly evicted from the premises with the help of police is absolutely untenable in tenor employed against persons, who were permitted to occupy the premises. The Administration shall consider whether the persons, who are in occupation of the various residential units have been in occupation under any specific authority granted to them. The Administration shall also be competent to make enquiries about the state of origin and the nature of the bona fides of their residential status. The Administration may also evolve a policy of accommodating any migrant labour and stipulate through a transparent decision making process of the class of persons that could require a economic and social support. A right to live would include a right to live with dignity and such a right should enure to all the

persons, who have taken to this city as their place of domicile. No force shall be employed for vacating any of the petitioners but the decision to either continue them or relocate them or even evict them shall be through a legal process and under the authority of law by following the procedure for eviction, which the Administration is entitled to invoke. The Administration shall be at liberty to obtain suitable representations and require proof of such details as the Administration may require in their pronounced policy of how the migrants from Jammu and Kashmir could be settled. This order is made only to secure to the petitioners a right not to be evicted otherwise than in course of law. This order shall not be construed as conceding to any of the petitioners any vested right in the property. The nature of right that the Administration desires to grant them, shall be in the manner that the law would allow in respect of allotment of properties within the city of Chandigarh.

7. Reserving to the respondents-Chandigarh Administration such power, the claim of the petitioners is allowed to guarantee to them the right to live in the respective property till evicted in the process known to law.

8. The writ petition is disposed of in the above terms.

(K. KANNAN)
JUDGE

January 25, 2010
Pankaj*