

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 743 OF 2014

Vijay Nagorao Kale,
Age: 28 years, occup. Business &
Contractor, R/o Jay vijay building Krushi
Sarathi Colony, Vasmat Road,
Infront of University gate, Vasmat Road,
Parbhani Tq & Dist. Parbhani.

...PETITIONER

versus

1. The Chief Officer,
Aurangabad MHADA
C.B.S. Road, Aurangabad,
Tq. & Dist. Aurangabad.
2. The State Manager,
Office C.O., Aurangabad MHADA
C.B.S. Road, Aurangabad.
Tq. And Dist. Aurangabad.
3. The State of Maharashtra,
Through its Chief Officer,
MHADA, C.B.S. Road, Aurangabad.
Tq. And Dist. Aurangabad.

...RESPONDENTS

.....

Mr. V.P. Kadam, Advocate for Petitioner
Mr. A.B. Kadethankar, Advocate for respondents No. 1 to 3

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CORAM : SUNIL P. DESHMUKH, J.

DATE : 2ND SEPTEMBER, 2015

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard the learned counsel for parties finally, with consent.

2. After hearing learned counsel for appearing parties, it appears that petitioner had been allotted tenement by respondents and that

pursuant to the same he had raised loan through financier for payment of price of the tenement. Respondents had given consent to mortgage said tenement as security towards repayment of finance.

3. Subsequently, the petitioner was issued reminder in February, 2011, for compliance of deficiencies referred to under the letter which were in respect of income tax return, domicile certificate and affidavit to the effect that the petitioner does not own landed or house property in Aurangabad city and photographs of petitioner himself and his family members.

4. It is the contention of the petitioner that he has duly complied with all requirements. Subsequently, in May, 2011 once again, it appears communication had been made by respondents for domicile certificate, income tax return and affidavit to the effect that he or his family members do not own landed or house property in Aurangabad city.

5. Learned counsel for petitioner submits that accordingly requisite information had also been supplied. However, again by letter dated 11-11-2011 addressed to the petitioner some more queries were made. Those queries too have been clarified and satisfied by the petitioner, according to learned counsel. Said letter was subject-matter of challenge in appeal bearing No. 19 of 2013 before the appellate authority. Said appeal came to be dismissed under order dated 29-11-2013, against which present petitioner is before this court.

6. The appeal has gone against the petitioner, for, he had not submitted the documents i.e. domicile certificate, income tax return and affidavit depicting that petitioner or any person from his family viz; wife and children held any landed or house property in Aurangabad city or for that matter they are not members of any co-operative housing society and and such affidavit had not been filed.

7. In respect of last query, the appellate authority has found that such affidavit had been filed by the petitioner and his family members. However, the appellate authority tends to observe that income tax returns in respect of relevant years had not been furnished by the petitioner.

8. Learned counsel for petitioner submits that he had solicited the information under the Right to Information Act which depicts that income tax returns for relevant year had already been submitted by the petitioner. He further refers to that third ground in respect of submission of domicile certificate to the effect that petitioner is residing from last fifteen years in Maharashtra also does not bear any water, for, requisite domicile certificate from competent authority had also been furnished. He, therefore, submits that the appellate authority without application of mind to the available record, the income tax returns and domicile certificate submitted by the petitioner while considering his application for allotment of tenement and further correspondence made between him and the respondents authority in this respect, has passed impugned order.

9. The learned counsel for respondent has some reservations about aforesaid contentions by the petitioner, however, submits this can be got verified.

10. Learned counsel for petitioner refers to the decision in *writ petition No. 9166 of 2013 (Sunita D/o Uttamrao Shirodkar and another Vs. Maharashtra Housing and Area Development Authority, Aurangabad)* and other companion matters wherein the facts and issues are little different than the ones involved in the present matter which in the estimate of learned counsel for petitioner are more serious deficiencies than those are stated in present matter. The court had in said case remanded the matter for reconsideration.

11. Under the circumstances and in view of submissions and decision which has been referred to by learned counsel for petitioner, I deem it appropriate similar treatment be meted out to present matter.

12. Accordingly, impugned order dated 29-11-2013 in appeal No. 19 of 2013 passed by appellate authority stands set aside. The appeal filed by the petitioner stands restored to its position as had been subsisting immediately before passing of impugned order.

13. The appellate authority to consider the appeal afresh and decide the same on its own merits having regard to the contentions of the parties, facts, circumstances and the record. The appellate authority shall decide the appeal as expeditiously as possible, preferably within the period of two months from the date of receipt of writ of this order.

14. Writ petition, as such, stands allowed. Rule is made absolute accordingly.

Sd/-
(**SUNIL P. DESHMUKH, J.**)

MTK