

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

WRIT PETITION NO. 9166 OF 2013

1. Sunita d/o Uttamrao Shirodkar,
Age: 40 years, Occ: Service,
R/o. CL-9, 71/4, 12th Scheme,
Shivajinagar, Aurangabad.
 2. Rameshwar s/o Manikrao Surase,
Age: 44 years, Occ: Service,
R/o. CL-9, 7/14, 12th Scheme,
Shivajinagar, Aurangabad.
- ...Petitioners

versus

1. Maharashtra Housing and Area
Development Authority, Aurangabad.
 2. Aurangabad Housing and Area
Development Authority,
Griha Nirman Bhavan, CBS Road,
Aurangabad, Through its
Chief Officer.
 3. Aurangabad Housing and Area
Development Authority,
Griha Nirman Bhavan, CBS Road,
Aurangabad. Through its Estate
Manager.
- ...Respondents

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Mr. P.F. Patni, Advocate for petitioners.
Mr. V.P. Kadam, A. G. P. for respondent/State.
Mr. A.B. Kadethankar, Advocate for respondent No. 2.

WITH

WRIT PETITION NO. 8929 OF 2013

Machindra s/o Dagadu Sonwane,
Age: 50 years, Occ: LIC Agent,
R/o. H-1/6, MHADA Colony,
Near Griha Nirman Bhavan,
Aurangabad.

...Petitioner

versus

1. Maharashtra Housing and Area Development Authority, Aurangabad, through the Chief Officer, Aurangabad Housing & Area Development Authority, Griha Nirman Bhavan, CBS Road, Aurangabad.
2. The Chief Officer-cum-Appellate Authority, Aurangabad Housing & Area Development Authority, Griha Nirman Bhavan, CBS Road, Aurangabad.
3. The Estate Officer, Aurangabad Housing and Area Development Authority, Griha Nirman Bhavan, CBS Road, Aurangabad.
4. The State of Maharashtra, through its Secretary to Minister of Housing, Mantralaya, Mumbai-32. ...Respondents

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Mr. B.A. Dhengle, Advocate for petitioner.
 Mr. A.B. Kadethankar, Advocate for respondent Nos. 1 to 3.
 Mr. V.P. Kadam, A. G. P. for respondent/State.

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WITH

WRIT PETITION NO. 8933 OF 2013

Smt. Jyotsna w/o Shrihari Sakhare,
 Age:48 years, Occ: LIC Agent,
 R/o. C/o. L-3, 3/5, Ramnagar, Aurangabad
 Tq. and Dist. Aurangabad. ...Petitioner

versus

1. The State of Maharashtra, Through Secretary, the Maharashtra Housing and Area Development Department, Mantralaya, Mumbai.

2. The Chief Officer and Appellate Authority, Aurangabad, Housing and Area Development Board, Graha Nirman Bhavan, Mahavir Stambha, CBS Marg, Aurangabad, Tq. & Dist. Aurangabad.
3. The Manager (Property) Aurangabad Housing and Area Development Board, Griha Nirman Bhavan, Aurangabad. ...Respondents

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 Mr. D.J. Choudhary, Advocate for petitioner.
 Mr. V.P. Kadam, A. G. P. for respondent/State.
 Mr. A.B. Kadethankar, Advocate for respondent Nos. 2 and 3.

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WITH

WRIT PETITION NO. 8950 OF 2013

Dileep Madhavrao Joshi,
 Age: 60 years, Occ: Service,
 R/o. Balajinagar, Aurangabad. ...Petitioner

versus

1. Maharashtra Housing and Area Development Authority, Aurangabad.
2. Aurangabad Housing and Area Development Authority, Griha Nirman Bhavan, CBS Road, Aurangabad, Through its Estate Manager.
3. Aurangabad Housing and Area Development Authority, Griha Nirman Bhavan, CBS Road, Aurangabad, through its Chief Officer. ...Respondents

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Mr. S.V. Adwant, Advocate for petitioner.
Mr. A.B. Kadethankar, Advocate for respondent Nos. 1 to 3.
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CORAM : N.W. SAMBRE, J.

RESERVED ON: 2nd DECEMBER, 2014

PRONOUNCED ON: 05th MARCH, 2015

ORDER :

. Heard learned Counsel for the respective parties. With the consent of the parties, the petitions are taken out for final disposal at admission stage.

2. The issue raised and to be decided in the petitions is since common, these petitions are disposed of by this common order.

3. The petitioners are the applicants before the respondent Maharashtra Housing and Area Development Authority (hereinafter shall be referred to as 'Board' for sake of brevity), who applied to the said Board for allotment of tenements which are developed by the respondent-Board for allocation to the candidates from the higher income group category. The said allotment is governed by the provisions of the Maharashtra Housing and Area Development (Estate Managements, Sale, Transfer and Exchange of Tenements) Regulations 1981 (hereinafter shall be referred to 'Regulations' for the sake of brevity).

4. The Regulation No.9(1)(A) of the said Regulations prescribed that the candidate will not be eligible to apply for allotment of tenement in the municipal area if such applicant, his spouse or minor children own a house or a flat or a residential plot of land etc.

5. The petitioners have come out with a common factual back ground that in response to an advertisement in local newspaper calling eligible persons from the higher income group to apply for allotment of the tenement.

6. The petitioners claiming to be eligible as per conditions and Regulations incorporated in an advertisement applied for allotment of the tenements. The said allotment was by draw of lots and the petitioners were allotted respective tenements.

7. The petitioner was informed by respondent-Board that in view of escalation in the cost of construction, there was hike in the cost of tenement and as such, required to pay more amount from their pocket towards the consideration.

8. The petitioners further claim that the respondent-Board has also issued certificate confirming allotment and also extended all

facilities for the purpose of obtaining loan from the financial institution.

9. Perhaps, either upon the complaint or certain information received, the respondent-Board having noticed that the petitioners or their family members as is mentioned in the Regulation No.9 holds a property in the municipal limit, has issued a notice calling upon the petitioners that they are not entitled for the allotment. The petitioners suffered an order of cancellation of allotment, which was confirmed in the appeal. As such, present petitions.

10. The petitioners, while questioning the legality and validity of the orders cancelling the allotment, would urge that the decision of the respondent-Board in cancelling the allotment made in their favour is hit by the principles of promissory *estoppel*. According to the petitioners, it is upon promise made by the Board that the petitioners have transferred their property which was held by them even if latter in any point of time after allotment and invested the said amount either in repaying the loan obtained for purchase of the present tenement or have paid the said amount to the Board towards consideration of tenement. It is further stated that having done so, have acted on a promise made by the Board. They would further urge that the transfer of the tenement which was held by them which

is taken as a cause for cancellation of the allotment stood transferred on the date of execution of the document irrespective of the date on which such transfer document of earlier held tenement was registered. In addition to above, the petitioners submit that the conditions on which cancellation is ordered is directory and not mandatory in nature. The petitioners submit that principle of equity of *estoppel* would squarely applied to the respondent-Board. As such, according to them, they are entitled for quashing of the impugned orders.

11. The following few details of each of the petitioners are required to be taken note of.

12. In Writ Petition No. 8929 of 2013 preferred by petitioner Macchindra Dagadu Sonawane, the violation of Regulation No. 9 is alleged as the said petitioner was found to be owner of tenement No.2/13 on the date of application, which he claimed to have transferred in 1995. However the instrument of transfer of the said tenement was notarized in 2011. The Board held that the application preferred by the petitioner was prior to the said transfer document i.e. 2011 and a such, on the date of application, the petitioner was disqualified from applying, and has sworn false affidavit. In addition to above, the Board has noted that the petitioner is in possession of tenement No.1/6 of the Board on rental basis.

13. So far as writ petition No. 8933 of 2014 preferred by Smt. Jyostna Shrihari Sakhare is concerned, the husband of the petitioner was found to be owner of tenement No. N-2/M-1/12/01 & 1A in the 9th scheme of A-122 type at N-2, sector-M-1 of C.I.D.C.O., Aurangabad. The petitioner claims that, the said tenement was sold by husband of the petitioner in the year 2003 vide unregistered instrument and the instrument was registered in the year 2012. The respondent Board noticed that, the tenement though shown to have been transferred in 2003, however, the said transfer is with intention to avoid disqualification as on the date of application, the said document was not registered.

14. So far as writ petition No. 8950 of 2014 preferred by Mr. Dileep Madhavrao Joshi is concerned, the respondent-Board has noticed that, on the date of application, the petitioner was found to be owner of residential house No. 4-18-34/6, Bagsherganj, Aurangabad, which the petitioner claimed that, he is not owner of the said property as it was sold by him in 1992 vide unregistered instrument. It was noticed that, the said transfer deed lacks recognition under the law.

15. So far as writ petition No. 9166 of 2013 preferred by Mrs.

Sunita Uttamrao Shirodkar is concerned, the respondent-Board has noticed that, on the date of application, the husband of the petitioner was found to be owner of tenement No. CL-9-71/4 at Shivajinagar, Cidco, Aurangabad, which the petitioner claimed to have transfer in 2001 vide unregistered instrument which Board has disbelieved for the same reasons.

16. The above referred facts discloses that the cancellation is based on the ground that, the petitioner or his family members holding tenement within Municipal limit of Aurangabad city on the date of application.

17. The Board in support of its claim, has relied upon Regulation/Rule No. 9(1)(A) of the Regulations 1981 read thus :

“ A person shall not be eligible to apply for any tenement in municipal area if he or his/her spouse or his/her minor children own a house or a flat or a residential plot of land or holds on a hire-purchase basis or outright sale basis or on a rental basis form the Maharashtra Housing & Area Development Authority a house or a flat or a residential plot of land in his/her name or in the name of his/her minor children as the case may be, in such a municipal area.”

18. Perusal of said Regulation provides that, it begins

that disqualification clause for making an application. In case if it is noticed that, the applicant hold property as mentioned therein within Municipal limit such applicant is disqualified from applying. Perusal of the orders passed by the respondent-Board would reflect that, the Board has noticed or rather it was brought to the notice of the Board that, the said applicant or his family members holds certain property on the date of application. The perusal of explanation of the petitioner reflects that, all of them have come out with the case of transfer of the said tenement may be documents are registered, in some cases later in point of time. In such eventuality, the contentions which are sought to be raised by the petitioners that, the orders impugned are hit by the principles of promissory *estoppel* having regard to the provisions of section 47 of the Registration Act is required to be taken into account. It is the case of the petitioners that, the time from which registered document operate is required to be taken into account. They have relied upon the judgment of the Apex Court in the matter of **Ittianam and ors. Vs. Cherichi alias Padmini** reported in **2010 8 S.C.C. 612** so as to draw support to the contention that transfer of the property will take effect not from the date of registration but from the date of execution the document.

19. The petitioners have also placed reliance upon the judgment of this Court in the matter of Writ Petition No. 1174 of 2014 (Subhash Nanarao Deokar Vs. Chief Officer, MHADA, Aurangabad & ors.) decided on 10/03/2014 so as to canvass same proposition, as according to the petitioners, the Board was directed by this Court to reconsidered the claim in the similar set of facts.

20. The issue of promissory *estoppel* which is sought to be raised in the present petitions, has two facets:- (1) same is identified under Section 115 of the Evidence Act and (2) is also termed to be a principle of equity recognized under the Administrative Act. The object of said principle is to prevent a person from taking advantage of condition or a situation when the person with knowledge of such fact conducted himself to lead the other party to believe that, he would not do so as he did. The said *estoppel* also operates against the Government and also Public Bodies as is held by the Apex Court in the matter of **Century Spinning & Manufacturing Company Ltd. and anr. Vs The Ulhasnagar- Municipal Council and anr.** reported in **AIR 1971 S.C.C. 1021**. The Apex Court has held that, for applicability of promissory *estoppel*, a party must establish that, representation was made by Government or Public Body and on such

representation, the petitioners have acted and because of subsequent order have suffered prejudice. However, the exception that could be noticed is operation of the said doctrine or principle, is same would not operate against statutory provisions and cannot be extended or applied if a promise is obtained by playing fraud. It is also mandatory that while claiming relief relying upon the principle of doctrine of *estoppel*, a clear and positive foundation is required to be laid in the claim. Promissory *estoppel* is being a mixed question of fact and law, claimants are duty bound to provide material and data in support of the same.

21. In the present case, what is noticed by the Board is on the date of application, the petitioners were disqualified as in view of requirement under Regulation No.9. The Board, as such, has proceeded to pass the order against the petitioners cancelling their allotment and which order was upheld in appeal.

22. Perusal of the orders impugned reflects that what is taken into account is holding of the property on the date of application and non-disclosure of the same. The Board also noticed that the property which is claimed by the petitioner, never stood transferred prior to the date of application. It is required to be noted that the respondent-Board has lost sight of the

provisions of Section 47 of the Registration Act as is incorporated in the judgment of **Ittianam** (supra) which is followed by this Court in Writ Petition No.1174 of 2014. The said aspect of the matter is neither dealt with by the Board nor by the appellate authority.

23. In that view of the matter, in my opinion, having regard to the back ground of invoking the principle of promissory *estoppel*, it is expected of the Board to give clear finding as to whether on the date of application, the petitioners were not holding property as is contemplated under Regulation No. 9 in the light of provisions of Section 47 of the Registration Act. In that view of the matter, the petitions preferred by the petitioners questioning the cancellation of their allotment are required to be partly allowed by quashing the orders impugned and by remanding the matters back to respondent-Board for consideration of the claim of the petitioners afresh in the light of observations made herein above on the aspect of promissory *estoppel*, so also provisions of Section 47 of the Registration Act.

24. It is expected of the Board to cause fresh inquiry in the mater and call explanation from the petitioners afresh. The petitioners will be at liberty to furnish all relevant documents

including that of explanation on affidavit and the Board shall decide the claim of the petitioners expeditiously, in any case within period of three months from the date of communication of this order. The petitioners are directed to submit explanation within period of one month from the date of passing this order alongwith relevant documents and appropriate affidavit.

25. The writ petitions, as such, stand allowed in above terms.

[N.W. SAMBRE, J.]

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