

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5595 OF 2013

Pramod S/o. Pandurang Patil,
 Age : 55 Years, Occu. : Service,
 R/o. : 304, Dharmasita Park, 'A' Bldg.,
 Opp. Gangeshwar Tower, Raju Nagar,
 Dombivli (West), Tq. : Kalyan,
 Dist. : Thane

.. **Petitioner**

Versus

1. The State of Maharashtra,
 Through its Secretary,
 Ministry of Urban Development,
 Mantralay, Mumbai
2. The Chief Engineer / Officer,
 MHADA, Nashik Housing Area
 Development Authority,
 Ram Ganesh Gadkari Chowk,
 Near Income Tax office, Old Agra Road,
 Nashik, Tq. and Dist. : Nashik
3. The Executive Engineer / Officer,
 MHADA, Nashik Housing Area
 Development Authority, Divisional Office,
 Old Collectorate Office premises,
 Behind Kamlabai Girl's School,
 Sakri Road, Dhule,
 Tq. and Dist. : Dhule
4. The Dy. Engineer / Authorized Officer,
 Nashik Housing Area Development Authority,
 MAHADA, Sub Divisional Office,
 MAHADA Colony, Near Railway Gate,
 Jalgaon, Tq. and Dist. : Jalgaon

.. **Respondents**

Shri Amol Chalak h/f Shri S. B. Talekar, Advocate for the Petitioner.
 Shri B. V. Virdhe, A. G. P. for Respondent No. 1.
 Respondent No. 2 served.
 Smt. Renuka Ghule Palve, Advocate for Respondent Nos. 3 and 4.

CORAM : S. V. GANGAPURWALA AND
K. K. SONAWANE, JJ.
DATE : 04TH JULY, 2016.

ORAL JUDGMENT (Per S. V. Gangapurwala, J.) :-

1. Rule.

2. Rule returnable forthwith. With the consent of parties taken up for final hearing.

3. Pursuant to the advertisement dated 19.01.2003 in Daily Lokmat inviting applications for Higher Income Group (H. I. G.) Scheme on Survey No. 199/2 at Bhusawal regarding allotment of tenement, the Petitioner applied alongwith demand draft of Rs. 46,000/-. The Petitioner is not allotted the tenement as such has filed the present petition.

4. Mr. Chalak, the learned counsel for the Petitioner submits that the Respondents were expected to complete the scheme within 12 to 18 months from the date of advertisement. In March, 2005 the Respondent No. 3 expressed its inability to execute the scheme due to unavoidable reasons on the said Survey No. 199/2, however invited consent for other tenements to be constructed on Survey No. 299/1 and 2 and 300/1 at Bhusawal. In order to avoid cancellation Petitioner gave his consent. The learned counsel submits that, upon enquiry it revealed that land Survey No. 199/2 was under reservation and dispute. Thereafter, vide letter dated 26.04.2006 the Respondent No. 4 informed that the cost of premises has now increased to Rs.7,74,610/- with further rider that it may increase in future. In order to avoid cancellation Petitioner gave his consent. The Petitioner was informed by the Respondent No. 4 vide letter dated 22.01.2007 that the Petitioner is selected in the draw. The learned counsel submits that, thereafter, the Respondent demanded additional amount of Rs. 54,000/- and also vide another letter asked for the revised amount of Rs.9,35,000/-. The Respondent kept on demanding the increased amount however did not complete the work

as per the advertisement. The Petitioner filed a complaint before the Consumer Dispute Redressal Forum which came to be dismissed for want of jurisdiction. The appeal also met the same fate. Thereafter, on 25th September, 2012 the Respondent No. 2 informed the Petitioner that the application is rejected and further amount of Rs. 8,960/- is deducted from the deposited amount and asked the Petitioner to take refund of the remaining amount.

5. The learned counsel submits that, the Petitioner had applied pursuant to the advertisement. The Respondents were bound by the terms and conditions of the advertisement and they could not have unilaterally changed the site and increased the cost. According to the learned counsel, even the Petitioner had given consent for the enhanced amount still the Respondent did not adhere to their obligation. The Petitioner is entitled to the possession of the tenement as per the advertisement. The Petitioner was and is ready and willing to perform his part of the obligation.

6. Mrs. Palve, the learned counsel for Respondent Nos. 3 and 4 submits that time to time the Petitioner was intimated about the status of the land and the tenement as there was some dispute with the original land. The site was changed. Because of the delay, the cost increased and the Petitioner is bound to pay the increased cost. The terms and conditions are explicitly clear in this regard. The learned counsel submits that the Petitioner does not have any vested right to claim the tenement.

7. When the matter was being argued we had asked the learned counsel for the Respondents as to whether the tenement is vacant. Upon instructions the learned counsel submits that one tenement is kept vacant which was meant for the Petitioner. The learned counsel further informs that the cost of the said tenement now is Rs. 16,23,420/- and if, the Petitioner is ready to pay the said amount the

Respondents would allot the said tenement to the Petitioner.

8. Mr. Chalak, the learned counsel for the Petitioner on instructions from the Petitioner states that the Petitioner is ready to pay the said amount of Rs. 16,23,420/- after adjusting deposited amount of Rs.46,000/- however the possession shall be given as stated in the advertisement.

9. As now both the parties have shown their willingness it is not necessary to go into the merits of the contentions of the respective counsels. Considering the consensus of the parties we pass the following order -

A] The Petitioner shall pay an amount of Rs. 16,23,420/- minus Rs. 46,000/- already paid to the Respondents within four (4) weeks from today.

B] On receipt of the said amount the Respondents shall hand over possession of the tenement to the Petitioner in the Higher Income Group (H. I. G.) as per the advertisement immediately on receipt of the said payment.

10. Rule is accordingly made partly absolute. No costs.

[K. K. SONAWANE, J.]

[S. V. GANGAPURWALA, J.]

sam/July.16