

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5446 OF 1995

Saifee Ebrahim Khambati .. Petitioner
vs.
Maharashtra Housing and
Area Development Board and ors. .. Respondents

Ms Varsha Palav for the Petitioner.
Ms Kranti S. Anand for Respondent No.3.
Mr. Vinay Bharge i/b Utangale & Co. for Respondent No.4.

CORAM : M. S. SONAK, J.
DATE : 22 JANUARY 2016.

P.C. :-

1] This matter was called out earlier, at the request of learned counsel appearing for Respondent No.4, the matter was kept back upto 4.00 p.m. At 4.00 p.m., learned counsel for the Petitioner and learned counsel for Respondent No.3 were heard. At this stage, Mr. Vinay Bharge who appears for Respondent No.4, once again applied for adjournment. After the matter is heard, there is no question of grant of any further adjournment in the matter. Therefore, there is no option but to proceed with final disposal of this petition.

2] The Petitioner, in the present petition, had a structure which was consumed for purposes of road widening. In terms of the policy then existing, by allotment letter dated 3 January 1981, the Maharashtra Housing Area and Development Board (MHADA)

allotted the Petitioner Plot No. F12, ad-measuring 136 sq. ft (suit plot). However, though the allotment order was issued, the actual possession of the suit plot was never granted to the Petitioner. The Petitioner therefore, made several representations and took out several proceedings for the purposes of obtaining the physical possession of the suit plot in terms of allotment letter dated 3 January 1981.

3] Ultimately, it transpired that the suit plot was in possession of Respondent No.3 and therefore, the possession thereof could not be handed over to the Petitioner. The authorities, took up a plea that it is the Petitioner, who has sub-let the suit plot in favour of Respondent No.3. On this basis, a charge-sheet was filed against both the Petitioner as well as Respondent No.3, alleging therein that the Petitioner has unlawfully sub-let the suit plot to Respondent No.3 and that the Respondent No.3 is an unauthorised occupant in respect of suit plot.

4] In pursuance of certain orders made by this Court, the charge-sheet was disposed of by the competent authority, MHADA vide judgment and order dated 5 August 1994. In the said judgment and order, the following issues came to be framed :

	<u>Issues</u>	<u>Finding</u>
1]	Whether the applicant made out the case of subletting against respondent No.1 and 2 as alleged ?	No
2]	Whether the applicant prove that the respondent No.2 is in unauthorised possession of plot No. F.12 ?	No.
3]	Whether the respondent No.2 proved that censused structure being pitch No. 257 is on the same plot No. F-12 S.G. Barve Marg is regularised under census in 1976 and the same has been protected as per Govt. Circular No. SCS 11176 D-4, dt. 4.2.76 ?	Yes
4]	Whether the respondent No.1 is entitled to get the possession of land of a plot No. F-12, which occupied or in possession of respondent No.2 ?	No
5]	What relief order and cost.	As per order.
5]	The Petitioner, instituted an appeal before the appellate authority being Appeal No. 167 of 1994, by the judgment and order dated 5 December 1994, the appeal was however, dismissed.	
6]	This petition is therefore, directed against the orders dated 5 August 1994 and 5 December 1994 made by the competent authority and the appellate authority.	

7] Ms Varsha Palay, learned counsel for the Petitioner, has submitted that there is no dispute whatsoever that the Petitioner was allotted plot No. F12 vide allotment order dated 3 January 1981. If the impugned orders are perused, there is a categorical finding that the Petitioner has at no stage, whether authorisedly or unauthorisedly, sub-let the suit plot to Respondent No.3. Although, the two orders also hold that Respondent No.3 is not an unauthorised occupant that by itself, is no reason to deny the Petitioner at least an alternate plot or premises, in lieu of the allotment of suit flat vide allotment letter dated 3 January 1981. The Petitioner submits that the impugned orders, to the extent, they deny the Petitioner the suit plot are *ex-facie* without jurisdiction, illegal null and void. The Petitioner, cannot be left in a lurch, particularly after the land of the Petitioner was consumed for the purposes of road widening and thereafter a specific allotment letter was issued in his favour being allotment letter dated 3 January 1981.

8] Ms Kranti Anand, learned counsel for Respondent No.3, submitted that both the impugned orders very categorically record that the Respondent No.3 was not an unauthorised occupant insofar as the suit plot is concerned. Ms Anand submits that she has no

concern with the case set out by the Petitioner except that the authorities could never have allotted the suit plot to the Petitioner because Respondent No.3 was in valid and authorised possession of the suit flat.

9] Learned counsel for Respondent No.4, though offered an opportunity, did not make any submissions in this petition. Therefore, the matter will have to be decided on the basis of record.

10] The record also indicates that ultimately the suit plot was also consumed for some public project and in pursuance thereof, the alternate premises have already been allotted to Respondent No.3. Learned counsel for Respondent No.3 states that upon the suit plot construction of public project has come up and therein, Respondent No.3 has been accommodated and that Respondent No.3, as of today, is in the said premises.

11] In pursuance of Civil Application No. 952 of 2005 taken out by the Petitioner, this Court on 8 July 2005, made the following order:

. *“Stand over for two weeks.*
. *In the meanwhile, the S.R.A. To ensure that an area of 136 sq. ft. is not alienated from the scheme in question, in view of Exh. “C” to the petition”.*

12] Further, on 25 August 2006, the aforesaid civil application was

disposed of by maintaining the same order. The order dated 25 August 2006 reads thus:

. *Heard learned counsel for the applicant and the State.*
2. *On this application the following interim order was passed on 8.7.2005:*

. *"Stand over for two weeks.*

. *In the meanwhile, the S.R.A. To ensure that an area of 136 sq. ft. is not alienated from the scheme in question, in view of Exh."C" to the petition".*

3. *Smt. Palav, learned counsel for the applicant submits that the civil application be allowed in the aforesaid terms. Keeping the submissions of Mrs. Palav in view and considering the prayers in the application, this civil application is disposed of in terms of the aforesaid interim order. Certified copy expedited.*

13] From the aforesaid, it does transpire that Respondent No.3 has already been accommodated in the alternate premises at the very site and further, in relation to the scheme in question, in pursuance of interim orders made by this Court, premises ad-measuring 136 sq. ft. are available with the MHADA/SRA, since there were specific directions that this portion be not alienated during pendency of this petition. It is reasonable to proceed on the basis that the MHADA/SRA has complied with orders made by this Court, which, in any case, they are duty bound to comply with, unless, reversed or varied in accordance with law.

14] If the impugned orders are perused, it is clear that the charge against the Petitioner that he had sublet the suit plot to Respondent No.3 has not been proved. However, it is held that the suit plot cannot be allotted to the Petitioner, because Respondent No.3 is occupying the suit plot in his own right. In the impugned order dated 5 August 1994, the competent authority has accepted the position that the Petitioner was allotted the suit plot vide allotment letter dated 3 January 1981 and that he was quite fortunate in this regard. The competent authority, however, has expressed regrets at the manner in which the fortune of the Petitioner has turned out to be his misfortune on account of allotment to him, a plot which was validly possessed by Respondent No.3. The impugned order, in fact, states that the MHADA ought not to have allotted to the Petitioner, the suit plot, which was validly in possession of the Respondent No.3. For all these reasons the impugned order made by the competent authority has held that the possession of Respondent No.3 cannot be disturbed. The appellate authority has upheld this order made by the competent authority by observing that such order is perfect, legal and there does not appear any reason to modify it.

15] Now, there is no reason to interfere with the impugned orders insofar as they hold that the Petitioner has not sublet the suit plot to Respondent No.3 and that Respondent No.3 is in valid and authorised possession of the suit plot in his own rights. However having said this, the two authorities were not at all justified in refusing to make some consequential orders, so that the Petitioner is allotted at least some alternate premises in lieu of allotment vide allotment letter dated 3 January 1981. The impugned orders, themselves state that the Petitioner has not committed any illegality either by way of subletting the suit flat to Respondent No.3 or otherwise. The impugned orders acknowledge that a valid allotment order has been issued in faovur of the Petitioner. If therefore, the plot which was allotted by the MHADA to the Petitioner was really unavailable, MHADA was required to be directed to make alternate allotment, so that the Petitioner is not left in a lurch . To this extent, the impugned orders, warrant interference.

16] As noted earlier, on account of subsequent developments, the suit plot is no longer in existence. Upon the same, a new scheme has already come up. In the said scheme, Respondent No.3 has already been accommodated. By the interim orders made by this Court,

MHADA/SRA was directed to ensure that area of 136 sq.ft. is not alienated in the scheme in question. Therefore, it is reasonable to proceed on the basis that such area is available for allotment to the Petitioner. MHADA/SRA cannot, in the facts and circumstances of the present case, deny such allotment and possession to the Petitioner. Such allotment would be governed by the terms and conditions set out in allotment order dated 3 January 1981.

17] Accordingly, the impugned orders are modified. The MHADA/SRA is directed to allot the Petitioner within a period of three months from today of premises having area of 136 sq. ft., in the scheme in question, which premises, MHADA/SRA was restrained from alienating in terms of the interim order referred to hereinabove. If for any reason, the said premises are not available, the MHADA/SRA will be duty bound to allot an alternate premises, having the same area to the Petitioner within a period of three months from today. The MHADA/SRA is directed accordingly.

18] Rule is accordingly, made absolute to the aforesaid extent. There shall however, be no order as to costs.

(M. S. SONAK, J.)