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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.8318 OF 2010

Ms Renjitha Alphanso & anrs. ...Petitioners
vs.
Jhoney Joseph & Anr. ...Respondents

Mr.Sathyanarayanan R. Iyer for the Petitioners
Ms M.P.Thakur, AGP for the respondent Nos.1 and 2

CORAM : A.S.OKA, &
A.A.SAYED, JJ.
DATE : JULY 27, 2016

ORAL JUDGMENT: (PER A.S.OKA,J.)

1 Heard the learned counsel for the petitioners. The second petitioner is the husband of the first petitioner. It is pointed out that the second petitioner is a disabled person. The petitioners have made a grievance as regards the failure to provide any reservation in the 5% and 2% quota of the Hon'ble the Chief Minister in the allotment of flats vesting in the State Government. A specific grievance is as regards the failure to provide for the reservation in the quota of Hon'ble the Chief Minister in relation to flats available at Pratiksha Nagar, Sion, Mumbai. In this petition, the petitioners are relying upon certain articles of UN Convention on the Rights of Disabled. The contention of the petitioners is that the State Government is under an obligation to provide a specific quota in the allotment of flats vesting in it to the persons

with disabilities. Reliance is placed on Article 28(1) of the UN Convention which provides that the Government must recognise the right of persons with disabilities to an adequate standard of living for themselves and their families including adequate food, clothing and housing.

2 As far as the prayer made for grant of reservation in the Hon'ble the Chief Minister's 2% and 5% quota in the matter of allotment of the flats vesting in the State is concerned, this Court in the case of Chandrabhan Sukhadeo Sangle vs. Urban Development Department and others¹ held that the relevant Government Resolutions under which the said quota was provided are arbitrary and violative of Article 14 of the Constitution of India. This Court restrained the State Government from acting upon the said Resolutions. The said decision has attained finality in as much as the State Government has accepted the same. In the said decision, this Court has observed that it will be open for the State Government to come out with a fair and transparent policy for the allotment of flats in 2% and 5% quota.

3 The learned counsel for the petitioner invited our attention to various provisions of the Persons with Disabilities (Equal Opportunities, protection of Rights and Full Participation) Act, 1995. Our attention is invited to the affirmative actions specified in Chapter VII of the said Act of 1995.

1 (2014) 3 Bom.Cases Reporter 692

Section 42 provides that the State Government shall by a notification make a scheme to provide aids and appliances to the persons having disabilities. Section 43 is material which reads thus:

"43 Schemes for preferential allotment of land for certain purposes – The appropriate Governments and local authorities shall by notification frame schemes in favour of persons with disabilities, for the preferential allotment of land at concessional rates of-

- (a) house;
- (b) setting up business;
- (c) setting up of special recreation centres;
- (d) establishment of special schools;
- (e) establishment of research centres;
- (f) establishment of factories by entrepreneurs with disabilities."

4 Thus, it is the obligation of the appropriate Governments and Local Authorities to frame a scheme for the benefit of the persons with disabilities for preferential allotment of land at concessional rates for house, setting up business etc.

5 There are several Local Authorities in the State which are dealing with the allotment of lands and/or premises. In view of mandate of section 43, the Government as well as the Local Authorities will have to frame a scheme for preferential allotment of lands for housing the persons with disabilities.

The Authorities will have to consider of framing a scheme for providing residential houses to the persons with disabilities at concessional rates.

6 Though a writ of mandamus as prayed for in this petition cannot be issued directing the Respondents to take a policy decision in a particular manner, we propose to allow the petitioners to make a representation to the State Government calling upon the State Government to frame a scheme as contemplated by section 43 and also calling upon the State Government to issue directions to the Local Authorities under its control to take steps for formulation of the scheme as provided under section 43 of the said Act of 1995.

67 Hence, we dispose of the petition by passing the following order:

(i) Though in the light of law laid down by this Court in the case of Chandrabhan Sukhadeo Sangle (*supra*), a writ cannot be issued in favour of the petitioners as prayed in prayer (G) to (cc), we permit the petitioners to make a representation to the State Government calling upon the State Government to frame a scheme as contemplated under section 43 and calling upon the State Government to direct the Local Authorities under its control to frame such schemes;

(ii) If such a representation is made by the petitioners, appropriate decision shall be taken by the State Government on the said representation within a period of three months from the date of which representation is made. On the failure of the State Government to take decision within stipulated period, we permit the petitioners to take out appropriate application in this disposed of petition;

(iii) Rule is disposed of on above terms.

(A.A.SAYED, J.)

(A.S.OKA, J.)