

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER (STAMP) NO.29476 OF 2015
WITH
CIVIL APPLICATION (STAMP) NO.29478 OF 2015

Pramod Jamnadas Gokani	]	
Aged about 74 years; Occupation : Business,	]	
Residing at : Building No.B-11, Tenement No.184,	]	
Rajawadi C.H.S. Ltd., Chittranjan Nagar,	]	
Rajawadi, Ghatkopar (East), Mumbai – 400 077	]	 Appellant

Versus

1. Bombay Housing and Area Development	]	
Authority, having its Head Office at Griha	]	
Nirman Bhavan, Bandra (East), Mumbai-400051.	]	
	]	
2. Pramod Co-op. Housing Society,	]	
Having its office at Chittranjan Nagar,	]	
Rajawadi, Ghatkopar (East), Mumbai-400077	]	
	]	
3. Global Oricon Developers,	]	
A registered Partnership Firm,	]	
carrying business at Ground Floor,	]	
Amba Ashish, Road No.10, Daulat Nagar,	]	
Borivali (East), Mumbai – 400066.	]	 Respondents

ALONG WITH

APPEAL FROM ORDER (STAMP) NO.29481 OF 2015
WITH
CIVIL APPLICATION (STAMP) NO.29482 OF 2015

Upendra Lallubhai Shah	]	
Aged about 76 years; Occupation : Business,	]	
Residing at : Building No.B-11, Tenement No.182,	]	
Rajawadi C.H.S. Ltd., Chittranjan Nagar,	]	
Rajawadi, Ghatkopar (East), Mumbai – 400 077	]	 Appellant

Versus

1. Bombay Housing and Area Development	]	
Authority, having its Head Office at Griha	]	
Nirman Bhavan, Bandra (East), Mumbai-400051.	]	

- | | |
|---|--------------------|
| 2. Pramod Co-op. Housing Society, |] |
| Having its office at Chittranjan Nagar, |] |
| Rajawadi, Ghatkopar (East), Mumbai-400077 |] |
| |] |
| 3. Global Oricon Developers, |] |
| A registered Partnership Firm, |] |
| carrying business at Ground Floor, |] |
| Amba Ashish, Road No.10, Daulat Nagar, |] |
| Borivali (East), Mumbai – 400066. |] Respondents |

ALONG WITH

**APPEAL FROM ORDER (STAMP) NO.29466 OF 2015
WITH
CIVIL APPLICATION (STAMP) NO.29471 OF 2015**

Priti Pramod Gokani	]
Aged about 73 years; Occupation : Business,	]
Residing at : Building No.B-11, Tenement No.185,	]
Rajawadi C.H.S. Ltd., Chittranjan Nagar,	]
Rajawadi, Ghatkopar (East), Mumbai – 400 077	] Appellant

Versus

- | | |
|--|--------------------|
| 1. Bombay Housing and Area Development |] |
| Authority, having its Head Office at Griha |] |
| Nirman Bhavan, Bandra (East), Mumbai-400051. |] |
| |] |
| 2. Pramod Co-op. Housing Society, |] |
| Having its office at Chittranjan Nagar, |] |
| Rajawadi, Ghatkopar (East), Mumbai-400077 |] |
| |] |
| 3. Global Oricon Developers, |] |
| A registered Partnership Firm, |] |
| carrying business at Ground Floor, |] |
| Amba Ashish, Road No.10, Daulat Nagar, |] |
| Borivali (East), Mumbai – 400066. |] Respondents |

ALONG WITH

**APPEAL FROM ORDER (STAMP) NO.29484 OF 2015
WITH
CIVIL APPLICATION (STAMP) NO.29486 OF 2015**

Kamlesh Jayant Acharya]
Aged about 50 years; Occupation : Business,]
Residing at : Building No.B-11, Tenement No.183,]
Rajawadi C.H.S. Ltd., Chittranjan Nagar,]
Rajawadi, Ghatkopar (East), Mumbai – 400 077]
Through the Constituted Attorney]
Mrs. Urvashi Sanjay Gor,]
R/at : 2nd Floor, Flat No.9, Kailas Kutir,]
Rajawadi, Ghatkopar (East), Mumbai – 400077.] Appellant

Versus

1. Bombay Housing and Area Development]
Authority, having its Head Office at Griha]
Nirman Bhavan, Bandra (East), Mumbai-400051.]
]
2. Pramod Co-op. Housing Society,]
Having its office at Chittranjan Nagar,]
Rajawadi, Ghatkopar (East), Mumbai-400077]
]
3. Global Oricon Developers,]
A registered Partnership Firm,]
carrying business at Ground Floor,]
Amba Ashish, Road No.10, Daulat Nagar,]
Borivali (East), Mumbai – 400066.] Respondents

Mr. B.G. Ligade for the Appellant in AO(St.)/29476/2015.

Mr. G.S. Godbole, Sr. Advocate, i/by Mr. Parag M. Tilak and Mr. Akshay Petkar, for the Appellant in AO(St.)/29466/2015.

Mr. D.D. Madan, Sr. Advocate, i/by Ms. Sanjulta Dey and Ms. Shivani Samel, for the Appellants in AO(St.)/29481/2015 and AO(St.)/29484/2015.

Mr. Milind Sathe, Sr. Advocate, i/by Mr. K. Ghumre, for Respondent No.1.

Mr. Navroze Seervai, Sr. Advocate, a/w. Mr. Joel Carlos, for Respondent No.2.

Mr. A.Y. Sakhare, Sr. Advocate, i/by Ms. A. Dandekar, for Respondent No.3.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 25TH AUGUST 2016.

ORAL JUDGMENT :

1. Admit. Appeals are heard finally, with the consent of learned counsel for the parties at the stage of admission itself.

2. As all these four Appeals involve common questions of fact and law, they are heard together and are being decided by this common Judgment.

3. These Appeals are preferred by the original plaintiffs against the orders passed by the City Civil Court, Mumbai, thereby rejecting the Notices of Motion preferred by the appellants-plaintiffs vide its orders dated 5th October 2015. The Notices of Motion were preferred seeking the relief of interim injunction restraining the respondents herein from interfering with the suit plot or taking forcible possession thereof or creating third party rights by respondent No.1-MHADA in favour of respondent No.2 or any other third party. Another prayer made in the Notices of Motion was for appointment of Court Commissioner, under Order XXVI Rule 2 of Code of Civil Procedure, 1908, to visit the suit plots and submit a report showing the existing position thereat.

4. Facts of the Appeals, which are common in the sense, except for the change in the number of the suit plot and the measurement thereof, are mostly, more or less, the same.

5. Appellants herein are the members and shareholders of Rajawadi Co-operative Housing Society Limited. They are in respective possession and enjoyment of their tenements bearing their numbers from 182 to 185 in Building No.11, situate at Rajawadi Co-operative Housing Society Limited, Chittranjan Nagar, Rajawadi, Ghatkopar (East), Mumbai-400077. When the appellants came to know that respondent No.1-MHADA had decided to allot the tit-bit plots adjacent to their tenements on lease basis, appellants made applications for allotment of the said plots. Around the year 1996-97, the said applications were considered by respondent No.1-MHADA and appellants' request for allotment of the tit-bit plots, which are herein referred to as "suit plots", was granted and respective areas of the said plots were given on lease rent, as stated in the letters of allotment, and on payment of premium. By the subsequent letter issued by respondent No.1-MHADA, appellants were called upon to pay the lease rent and, according to the appellants herein, they had paid the lease rent of one year and also the premium. The possession of the suit plots was

also handed over to the appellants some time in the year 1997; the possession receipts were also executed in writing. The affidavits and undertakings were also filed accordingly, as demanded by respondent No.1-MHADA.

6. It is further case of the appellants that one D.J. Bhagtani, who was the occupant/tenant of tenement No.181, was also allotted the tit-bit plot, which was adjacent to his tenement. In respect of the said tit-bit plot, respondent No.2 herein has filed S.C. Suit No.6165 of 1996 in the City Civil Court, Mumbai against respondent No.1-MHADA and Rajawadi Co-operative Housing Society Limited. In that suit, the very issue of allotment of tit-bit plot to D.J. Bhagtani was considered and the legality of the said allotment was upheld. However, after the dismissal of the said suit, respondent No.2 started staking claim over the suit plots contending, *inter alia*, that these suit plots, which were in possession of the appellants, are being allotted to respondent No.2 by respondent No.1-MHADA and respondent No.2 is, therefore, entitled to carry out construction thereon.

7. The grievance of the appellants herein is that, they are in peaceful possession of the suit plots since the date of their allotment in the year 1996-97 and they had also paid the lease rent and premium. They have

not received any notice cancelling their allotment or calling upon them to handover possession of the said plots to respondent No.1-MHADA and in such situation, respondent No.1-MHADA cannot allot these suit plots to respondent No.2. Moreover, unless and until possession of the suit plots is taken over from the appellants by following the due process of law, respondent No.2 cannot initiate any process for construction over the suit plots. It is contended by the appellants herein that, if any alleged allotment of the suit plots is made by respondent No.1-MHADA in favour of respondent No.2, the said allotment is totally illegal, null and void and, therefore, both, respondent No.1-MHADA and respondent No.2, be restrained from causing any interference in their possession over the suit plots or creating any third party interests therein.

8. Respondent No.3 is the Builder & Developer, who is carrying out construction on behalf of respondent No.2 and hence is impleaded in the suit, and the relief of interim injunction is sought against respondent No.3 also.

9. Along with the Suits, the appellants preferred the Notices of Motion seeking the relief of interim injunction, as stated above.

10. These Notices of Motion came to be resisted by respondent No.1-MHADA admitting the fact that the suit plots were allotted to the appellants in the year 1996-97 in pursuance of the allotment letters, subject to certain terms and conditions, as stated in the allotment letters. Those terms and conditions specifically provide that the appellants shall pay premium of the plots, as stated in the allotment letters, and also the lease amount. It is submitted that the appellants have paid lease amount only for one year. Since then, the appellants have not paid a single *pai* towards the lease amount. It was submitted by respondent No.1-MHADA, that one of the conditions in the allotment letters was to the effect that, no separate lease of the said suit plots will be allowed until the lease is granted in favour of the Co-operative Societies of the allottees of the buildings, in which the tenements are situate and the suit plot areas will, till then, vest in respondent No.1-MHADA, but allotted to the appellants. Further condition in the allotment letters provided that, if Co-operative Housing Societies of the allottees of the buildings, in which the said tenements are situate, are not interested in purchase of the said tit-bit plots and if sub-division of the tenements and adjacent plots is allowed by the Revenue and Municipal Authorities, then, only the appellants-allottees will become entitled or eligible for grant of the lease of the said plots.

11. Thus, the contention raised by respondent No.1-MHADA to the reliefs claimed by the appellants was to the effect that the allotment of plots was subject to these various terms and condition and none of these terms and conditions are fulfilled by the appellants-allottees. Neither the Rajawadi Co-operative Housing Society, in which the tenements are situate, has asked for the lease or shown any interest in purchase of the suit plots, nor the sub-division of the said tenements and adjacent plots is requested or permitted. In these situations, it is submitted that the lease was never crystallized. The status of the appellants in the suit plots, even till the date, remains only that of the allottees. Moreover, as a result of the non-compliance on the part of the appellants of the terms and conditions laid down in the allotment letters, the allotment automatically stood cancelled entitling respondent No.1-MHADA to handover or further re-allot the suit plots to any other third party.

12. It is submitted that, accordingly, respondent No.1-MHADA has allotted these tit-bit plots to respondent No.2-Society, as the said Society has fulfilled the terms and conditions of the policy of respondent No.1-MHADA and it was done for a sufficiently larger premium. It was urged that the appellants-allottees are not entitled to hold the suit plots in view of the breach of the terms and conditions and the suit plots being adjacent to

respondent No.2-Society, respondent No.1-MHADA, being the competent authority for allotment of the said plots, has, accordingly, allotted the same to the respondent No.2-Society. The appellants, therefore, cannot raise any grievance over the same.

13. The similar contentions are advanced on behalf of respondent Nos.2 and 3. As regards respondent Nos.2 and 3, they have submitted that the allotment of suit plots to them is done by respondent No.1-MHADA as per the rules and in accordance with the revised policy of the MHADA to allot the plots to the Societies and not to the individual members as such. It was submitted that respondent No.3 has purchased these plots for construction and redevelopment of respondent No.2-Society, which is a slum area, and, therefore, in the larger public interest, neither respondent No.1-MHADA, nor respondent No.2 or respondent no.3 can be expected to wait for unlimited and infinite period; especially, the appellants having been committed the breach of the terms and conditions of the allotment letters and their lease having not been fructified and crystallized. Thus, according to these respondent Nos.2 and 3, they are fully entitled for the use and occupation of the suit plots and to carry out construction and redevelopment thereon. Having regard to the public interest involved in redevelopment of the society for the slum

affected people, if the relief of interim injunction is granted, not only they will suffer irreparable loss and hardship, but even public interest at large of slum-dwellers will also be affected.

14. On these Notices of Motion, Trial Court heard learned counsel for the parties and vide its impugned order, was pleased to allow the same holding that, as the appellants have failed to comply with the terms and conditions of the allotment letters, they have no more right to remain in possession of the suit plots and as the suit plots are already allotted by respondent No.1-MHADA, by following the due process of law, in favour of respondent No.2 and respondent No.3 has also made substantial investment therein, it will be the respondents, who will suffer irreparable loss and hardship. Accordingly, the Trial Court rejected the appellants' Notices of Motion for restraining the respondents from interfering with the suit plots or dispossessing the appellants from possession thereof or creating third party interests therein.

15. This order of the Trial Court is challenged in these Appeals by learned senior counsel for the appellants, Mr. D.P. Madan by submitting that the Trial Court has committed a grave error in rejecting the Notices of Motion; especially, when the appellants are in lawful possession of the suit

plots. According to learned senior counsel for the appellants, even accepting or assuming that the appellants have committed the breach of some of the terms and conditions, even then, possession of the appellants, which was acquired lawfully, cannot be disturbed without giving them any notice of termination of allotment or calling upon them to handover possession of the suit plots. According to learned counsel for the appellants, therefore, the impugned orders passed by the Trial Court need interference so as to be quashed and set aside.

16. Per contra, learned counsel for respondent No.1-MHADA has taken this Court through the various correspondence exchanged between the parties; especially, the allotment letters in respect of the suit plots by submitting that the terms and conditions of the allotment letters have not at all been complied with, neither the Co-operative Housing Society of the appellants has asked for lease of the suit plots, nor the appellants or their Housing Society have asked for sub-division of the suit plots and demarcation thereof. In such situation, it is urged that the MHADA cannot keep the suit plots vacant and idle. MHADA is duty bound to dispose of the suit plots for construction activity and the very object for which MHADA is established is to promote construction activity so as to make maximum premises available for residence. It is submitted, in pursuance

of the said object, that, after following the due process of law, respondent No.1-MHADA has allotted the suit plots to respondent No.2. It is urged by learned counsel for respondent No.1-MHADA that the rights and interests created in favour of the appellants by the allotment letters were never crystallized. Therefore, the appellants have no vested rights in the suit plots. Their rights came to an end automatically, the moment they committed the breach of those terms and conditions.

17. On behalf of respondent Nos.2 and 3, it is urged that, as the allotment of the suit plots is done after following the due process of law, in favour of respondent No.2 and as respondent No.3 has made substantial investment in purchase of the suit plots by paying the premium and also in the construction activity, if any order of interim injunction is granted, respondent Nos.2 and 3 will suffer irreparable loss and hardship. Thus, according to learned counsel for respondents Nos.1 to 3, the impugned order passed by the Trial Court, being just, legal and correct, in the limited scope of jurisdiction of this Court, while deciding the order passed by the Trial Court in its equitable discretion, this Court should be slow in interfering with the said discretion.

18. Having heard learned counsel for the appellants and respondents

and after going through the entire record and proceedings of all these four Appeals, this Court may note some admitted facts. These facts are to the effect that, on the basis of the applications given by the appellants in the year 1996-97, when they came to know that respondent No.1-MHADA has decided to allot tit-bit plots adjacent to the tenements of the occupants-tenants, the plots were regularly allotted to the appellants. The allotment letters are produced on record to that effect, coupled with the possession receipt proving that the possession of the suit plots was also handed over to the appellants. Thereafter appellants furnished the requisite undertakings, they also paid the premium and the lease rent of one year. Thus, since the year 1996-1997, the appellants are in peaceful and lawful possession of these suit plots.

19. Respondent No.1-MHADA is not disputing the fact that the suit plots were allotted to the appellants and also the possession of the suit plots was handed over to the appellants. The execution of possession receipt, handing over and taking over of physical possession of these suit plots by MHADA to the appellants is also not disputed by respondent No.1-MHADA. This fact cannot be disputed also, considering the possession receipts produced on record. It is also admitted fact on record that respondent No.1-MHADA has not issued a single letter or notice to the

appellants that as they have not complied with the terms and conditions of the allotment letters, allotment of the suit plots made in their favour is cancelled and they should handover possession of the suit plots to respondent No.1-MHADA. There is not a single intimation issued by MHADA to the appellants, calling upon them to clarify whether the appellants intend to comply with the terms and conditions or calling upon them to explain or show cause as to why the allotment of the suit plots made in their favour should not be cancelled in view of the alleged breach of the terms and conditions.

20. It is pertinent to note that even the allotment letters nowhere provide that on failure of the appellants to comply with the terms and conditions laid down in the allotment letters, the allotment will be cancelled automatically or they will be deprived from possession of the suit plots. In such situation, when the appellants are, admittedly, in possession of the suit plots, which possession was handed over to them lawfully on the basis of the allotment letters, the question arising for consideration is, *whether respondent No.1-MHADA can, on its own, without taking recourse to any action, as stated above, allot the suit plots to respondent No.2?* Needless to state that, the answer has to be in the negative, because due process of law or the rule of law, which, we, in India, follow, requires that when the party is in legal and authorized possession, such

possession cannot be disturbed without following the due process of law. No such process of law appears to be followed by respondent No.1-MHADA of cancelling the allotment of suit plots to the appellants and of taking over possession of the suit plots from the appellants, to hand over the same to respondent No.2.

21. As regards the submission of learned counsel for respondent No.1-MHADA that the allotment was subject to certain terms and conditions, and much reliance is placed on the term and condition relating to the payment of lease rent; it is admitted position that the lease rent of the first year has been paid, but subsequent thereto, the appellants have committed default in payment of the lease rent. However, a document is filed on record in the compilation to show that, in the year 2011, the appellants had offered to pay the entire lease amount, which was due till then. The said lease amount is, however, not accepted by respondent No.1-MHADA on the count that there are no papers with them. Therefore, now MHADA apparently cannot raise contention about the breach of the said condition. Moreover, assuming that there was breach of that condition, MHADA was expected to give an opportunity to the appellants in respect of the suit plots. No opportunity was also, as stated above, given to the appellants before cancelling the said allotment on the ground

of non-payment of lease rent or otherwise. Respondent No.1-MHADA has not done so.

22. The next condition in the allotment letter is term and condition No.2(1). It can be reproduced as follows :-

“2(1). The tit-bit area will be held only along with the said tenement and not separately. In case of transfer of tenement, the tit-bit area will automatically stand transferred.”

23. Now, as per this term and condition, the tit-bit area was to be held only along with the said tenement and not separately. Now, admittedly, all the appellants are in possession of their respective tenements and, therefore, they can hold the said tit-bit areas along with the tenements. They have not transferred the said tit-bit areas or alienated the same separately. Hence, prima facie, there is no breach of this condition.

24. The next term and condition provides that in case of transfer of tenement, the tit-bit area will automatically stand transferred. Now, admittedly, as stated above, the appellants have not transferred the

tenements. Hence, there is no question of appellants committing breach of this term and condition.

25. The important condition is condition No.2(2), which reads as follows:-

“2(2). No separate lease will be allowed and until the lease is granted in favour of the Co-operative Society of the allottees of the building in which the tenement is situated, the tit-bit area will vest in MHADA Board but allotted to the applicant.”

26. Now, as per this term and condition, on which much emphasis is laid by learned senior counsel for respondent No.1-MHADA, no separate lease was to be allowed in respect of these tit-bit areas and until the lease is granted in favour of the co-operative society or the allottees of the building in which the tenement is situated, the tit-bit area will vest in MHADA, but allotted to the applicant. As per learned senior counsel for respondent No.1-MHADA, the Rajawadi Co-operative Housing Society has not asked for the lease and as a result thereof, no separate lease could be executed in favour of the appellants. Therefore, these tit-bit areas still vest in respondent No.1-MHADA.

27. It may be true that the lease is not crystallized. It may also be true that the tit-bit areas still vest in respondent No.1-MHADA, but this term and condition itself specifies that the tit-bit areas still remain allotted to the appellants-applicants and as stated above, that allotment is not yet cancelled on the count that the Co-operative Housing Society has not asked for execution of the lease. That allotment is not cancelled on any other ground also. The fact also remains that the appellants still continue to be in possession of the said tit-bit areas. In such situation, merely because the tit-bit areas still vest in respondent No.1-MHADA, because the Lease-Deed is not executed, respondent No.1-MHADA cannot re-allot the same to some third party, like, respondent No.2, without cancelling the allotment made in favour of the appellants. As stated above, none of the terms and conditions in these allotment letters specify or lay down that on failure of the appellants to comply with these terms and conditions or any other condition, the allotment will stand automatically cancelled. Therefore, submission made to that effect also cannot be accepted.

28. The third term and condition, on which again much emphasis is laid by learned counsel for respondent No.1-MHADA, reads as follows :-

*“2(3). If Co-operative Housing Society; of the allottee of
the building in which the said tenement is situated,*

is not interested in purchase of the said tit-bit and if sub-division of the said tenement and adjacent plot is allowed by the Revenue and Municipal Authorities, then the applicant may become eligible for grant of lease of the said land in his name. However, decision about F.S.I. will remain uncharged till it is reviewed by the MH&ADB and if fresh decision is granted.”

29. As per this term and condition, if the Co-operative Housing Society, in which the tenements are situated, is not interested in purchase of these tit-bit areas and if sub-division of the suit tenements and adjacent plots is allowed by the Revenue and Municipal Authorities, then only the appellants may become eligible for grant of lease of the suit land in their name. According to learned senior counsel for respondent No.1-MHADA, the Rajawadi Co-operative Housing Society has not shown any interest in purchase of these tit-bit areas. Even the appellants have also not asked for sub-division of their tenements and adjacent plots. Therefore, there is no question of allowing or permitting such sub-division. Hence, according to learned senior counsel for respondent No.1-MHADA, in view of non-compliance of this term and condition, that Society not being interested in

purchase of the tit-bit areas, and appellants not asking for subdivision of the said tenements and adjacent plots, the appellants cannot become eligible for grant of lease of the said land in their name.

30. It may be perfectly true that, as on today, the appellants have not asked for sub-division. Similarly, the Co-operative Housing Society, in which the tenements are situated, has also not shown any interest in purchase of the tit-bit areas, but then, at the most, on that ground respondent No.1-MHADA can consider the appellants as not eligible for grant of lease of the said plot in their favour and cancel the allotment. But, respondent No.1-MHADA cannot take the law in its hands, without cancelling the allotment and taking over possession of the suit plots from the appellants, re-allot the suit plots and hand over possession thereof to some third party; especially, when the allotment letters do not lay down any time-line for compliance of these terms and conditions. It nowhere says that within a particular period, if neither the Society showed interest in purchase of the tit-bit areas, nor the appellants asked for sub-division of the suit plots and if asked, but not allowed, the appellants will loose their allotment and possession. Thus, the allotment letters are conspicuously silent about all these submissions, which are advanced at bar by learned senior counsel for respondent No.1.

31. Thus, what emerges is that the terms and conditions are, no doubt, yet to be complied with, but the time for compliance of these terms and conditions being not laid down, the appellants can and may be at liberty to comply with those terms and conditions now also. Apart from that, as the allotment letters nowhere say that in view of non-compliance of these terms and conditions, the allotment will be cancelled and possession will be taken over and thereafter actually the possession is taken over by giving notice to the appellants, even if appellants' rights to get lease is not fructified, their possession cannot be termed as illegal or unauthorized. So also, their allotment cannot be cancelled unilaterally, without giving notice or opportunity to the appellants and further directly re-allotting the same to respondent No.2.

32. As to the submission of learned senior counsel for respondent No.1-MHADA that MHADA cannot keep these plots idle, the object of the MHADA being to make the maximum area available for the housing purposes and, accordingly, as the allotment in favour of the appellants has not fructified into the lease agreement, the property remained vested in MHADA and, therefore, MHADA has rightly allotted the same in favour of respondent No.2, that too for the public interest, all these submission

and contentions can well be accepted. No one can dispute the object of the MHADA, no one can attribute even mala fides or ulterior motive to MHADA. The only issue for consideration is, *whether the MHADA has followed the due process of law while doing so?* As stated above, MHADA may be justified in cancelling the allotment and re-allotting the suit plots to respondent No.2 or some third person, but for that purpose also, some procedure is laid down or is expected to be followed as we always believe in and uphold the rule of law and when the allotment letters do not provide for automatic cancellation of the allotment on breach of the terms and conditions and, admittedly, when the appellants are in possession of the suit plots and that too on the basis of the legal document.

33. As to the submission that the appellants are not in physical possession of the suit plots or the plots are lying vacant, this submission cannot be accepted in view of the possession receipts, which are executed by respondent No.1-MHADA in favour of the appellants while handing over physical possession of suit plots to the appellants and there is no document to show that the said physical possession was taken over by MHADA.

34. As to the submission that MHADA has re-allotted these suit plots to

respondent No.2 for public interest or respondent No.3 has invested substantial amount therein, the fact remains that whatever MHADA has done in re-allotment of the suit plots, it was done not in accordance with the rule of law, by cancelling the allotment of the appellants and taking over possession from them. Hence, these submissions hold no merits.

35. Similarly, the submission that, in view of the change in policy of MHADA, now the tit-bit plots are to be allotted in favour of the co-operative society and not in favour of the individual members, in the first place, the said policy has come into effect subsequent to the allotment of plots to the appellants. Even accepting that, according to this policy, MAHDA intends to re-allot these plots to the Co-operative Housing Society, even then, for that purpose, the first thing which MHADA has to do is to cancel the allotment of the suit plots in favour of the appellants, take over possession of the plots from the appellants and then do as per their revised policy. But without cancelling the allotment or without taking over possession by following the due process of law or by giving opportunity of hearing or showing cause to the appellants, MHADA cannot, howsoever laudable its object may be, re-allot the suit plots to any other third party.

36. Thus, looking at it from any angle, one aspect clearly emerges is that the possession of the appellants, which is on the basis of the lawful document of allotment letter and which allotment is yet not cancelled, needs to be protected, at-least till the decision of the suit or at-least till MHADA adopts proper procedure for cancellation of the said allotment and take over possession of the suit plots.

37. It is pertinent to note in this respect that respondent No.1-MHADA and respondent No.2 are also aware of the dismissal of the S.C. Suit No.6165 of 1996, which respondent No.2 has filed against MHADA and Rajawadi Co-operative Housing Society in respect of tit-bit plots situated in the same Society, adjacent to tenement No.181 and which was allotted to one Mr. D.J. Bhagtani. Against the Judgment in the said Suit, admittedly, no appeal is preferred and, therefore, MHADA was very well aware about the legal position, as the allotment and possession of the D.J. Bhagtani over the tit-bit plot, adjacent to his tenement No.181, was upheld therein and the suit of respondent No.2 was dismissed. Despite that, respondent No.1-MHADA has proceeded to re-allot the suit plots in favour of respondent No.2. In such situation, whatever consequences, either respondent No.2 or MHADA incur on such re-allotment, they have to blame themselves for the same.

38. The submission is also advanced by MHADA that these suit plots are adjacent to the Society of respondent No.2 and, therefore, allotment of these tit-bit plots to respondent No.2 is justified. For that purpose, reliance is also placed on the map showing demarcation area, whereas learned senior counsel for the appellants has placed reliance on the lay-out map and the photographs to show that they are adjacent to appellants' tenements. It needs to be stated that, this Court does not intend to enter into that controversy for the simple reason that the allotment letters reveal that these tit-bit plots were allotted to the appellants, being adjacent to their tenements. Therefore, it is not a case that the suit plots were not or are not adjacent to the tenements of the appellants. If despite that, they are more adjacent to the Society of respondent No.2, then, in that situation also, respondent No.1-MHADA has to take proper steps for cancelling the allotment made in favour of the appellants, then take over possession of the suit plots and thereafter to re-allot the same. But without following the due process of law, if respondent No.1-MHADA re-allots the suit plots to respondent No.2 and respondent Nos.2 and 3 proceed with construction thereon, then, naturally, the appellants will suffer irreparable loss and hardship.

39. In my considered opinion, the Trial Court has not considered these vital aspects of the case; that of appellants being in lawful and physical possession of the suit plots. As per the settled position of law, the party in possession is required to be protected against dispossession during pendency of the suit, at-least or until the due process of law for dispossession is followed. As the Trial Court has overlooked this important and vital aspect of the controversy involved in these matters, the impugned orders of the Trial Court need to be interfered with. It may be stated that this Court is aware of the fact that when the Trial Court has exercised its discretion, this Court should be slow in interfering with that exercise. However, then, when the impugned orders passed by the Trial Court are not in tune with the settled position of law and as a result of the said orders, the appellants will be dispossessed and their allotment of the suit plots will be interfered with, without following the due process of law, the impugned orders passed by the Trial Court cannot be allowed to be continued or upheld and need to be quashed and set aside.

40. As a result, all these four Appeals are allowed. The impugned orders passed by the Trial Court rejecting the Notices of Motion filed in the Suits stand set aside.

41. Respondent Nos.1 to 3 are hereby restrained from interfering with the suit plots or taking forcible possession thereof or creating third party rights therein, either in favour of respondent No.2 or any other person, till disposal of the suit.

42. Appeals having been disposed of, all the pending Civil Applications therein do not survive and the same are disposed of.

43. However, at this stage, it is clarified that respondent No.1-MHADA is at liberty and free to adopt the due process of law for re-allotment of the suit plots, if necessary. It is further clarified that all the observations made here-in-above, are made only for the purpose of deciding these appeals and the trial is not to be swayed by them.

[DR. SHALINI PHANSALKAR-JOSHI, J.]