

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION  
WRIT PETITION (L) NO.3128 OF 2016

Anil Mahadeo Jaitapkar. .. Petitioner  
Vs  
The State of Maharashtra and Others. .. Respondents  
—  
Ms. Prabha U. Badadare for the Petitioner.  
Shri Kunal Bhanage, AGP for the Respondent No.1.  
Shri P.G. Lad for the Respondent Nos.2 and 3 MHADA.  
--

CORAM : A.S. OKA &  
SMT.ANUJA PRABHUDESSAI, JJ  
DATED : 16TH DECEMBER 2016

PC.

1. Submissions of the learned counsel appearing for the Petitioner were heard yesterday. Time was granted yesterday to the learned counsel appearing for the Petitioner to take instructions from the Petitioner on the question whether he wants a reasonable time to vacate the flat subject matter of this Petition. Today, the learned counsel states that the Petitioner desires that this Court should pass appropriate order. Additional compilations were tendered across the bar by the learned counsel appearing for the Petitioner during the course of hearing on the earlier date.

2. The challenge in this Petition under Article 226 of the Constitution of India is to the order dated 21<sup>st</sup> November 2016 passed

by the Estate Manager of Mumbai Housing and Area Development Board (for short “the said Board”) constituted by the Maharashtra Housing and Area Development Authority (for short “MHADA”) under the Maharashtra Housing and Area Development Authority Act, 1976 ( for short “the said Act”). By the said order, a direction has been issued to the Petitioner to forthwith vacate Flat No.B-503 which is subject matter of this Petition. The question in this Petition is whether by exercising the extra-ordinary jurisdiction under Article 226 of the Constitution of India, by setting aside the impugned order which is allegedly illegal, a patently illegal action of allotment of the said flat to the Petitioner can be restored.

3. Few admitted facts which are borne out from the compilation tendered across the bar by the learned counsel appearing for the Petitioner will have to be noted. On the basis of the Application made by the Petitioner who is in the employment of the State Government as a Security Officer in Vidhan Sabha, an allotment of a flat under 10% discretionary quota of the Hon'ble the Chief Minister was made to the Petitioner under communication dated 6<sup>th</sup> August 2001. A flat admeasuring about 438.37 sq. feet bearing Flat No.303 at Mulund, Mumbai was allotted to the Petitioner under order dated 6<sup>th</sup> August 2001 at the concessional price as per the various Government Resolutions which were in force at relevant time. The concessional price

for the said flat was Rs.1,52,114/- which was admittedly much lesser than the prevailing market value. The said flat was in a building constructed by the owner/developer of the land as per a scheme of housing for weaker sections under the Urban Land (Ceiling and Regulations) Act, 1976.

4. Admittedly, the Petitioner was placed in possession of the said Flat No.303 (for short "the first Flat"). On 1<sup>st</sup> February 2008, an Application was made by the Petitioner to the Additional Chief Secretary of the Urban Development Department seeking permission to sell the first flat on the grounds stated therein. On 26<sup>th</sup> February 2008, the Urban Development Department of the State Government granted permission to the Petitioner to sell the first flat subject to various conditions including the condition of the Petitioner giving an unconditional undertaking not to claim an allotment of flat in 2% and 5% quota as well as in any other scheme. Permission was granted on the condition of depositing nominal amount of Rs.250/- per sq. ft. On the basis of the said permission, the Petitioner submitted undertaking on oath dated 7<sup>th</sup> March 2008 in which he had undertaken not to claim any flat under 2% or 5% scheme or under any other scheme. On the basis of the undertaking, a final order permitting the Petitioner to sell the first flat was issued on 10<sup>th</sup> March 2008 by the Additional Collector and Competent Authority of Mumbai Urban Agglomeration stating

therein that the same has been issued as the requisite amount has been deposited by the Petitioner and the Petitioner has tendered the requisite undertaking on 10<sup>th</sup> March 2008.

5. It appears that the Petitioner who was a Security Officer of Vidhan Bhavan at the relevant time was the Chairman of a proposed Co-operative Housing Society. On the Application made by him, the MHADA made an allotment of a plot to the said proposed Co-operative Housing Society under Rule 16 of the Maharashtra Housing and Area Development (Disposal of Land) Rules, 1981 (for short “the said Regulations”).

6. In the second compilation tendered by the learned counsel appearing for the Petitioner, there is a letter dated 30<sup>th</sup> August 2001 addressed by the State Government to the Chief Executive Officer of MHADA granting approval for allotment of Plot No.27 (for short “the said Plot”) admeasuring 1260 sq. meters at Tilak Nagar, Chembur, Mumbai to the said proposed society of the Petitioner. It was specifically stated that the allotment was permitted to be made subject to various terms and conditions including the condition of eligibility of its members. In terms of the said order of the State Government, on 5<sup>th</sup> September 2001, a communication was issued by the Chief Executive Officer to the Petitioner in his capacity as the Chief Promoter or the

Chairman of the proposed Society recording the decision of the Government of allotment of the said plot. The first condition in the said letter provided that the allotment was made subject to the eligibility of the members of the Society. The Condition No.3 was very specific. An affidavit shall be filed by all members of the proposed society that they are not holding any residential premises or residential plot on ownership or rental basis or in the capacity of a member of a Co-operative Housing Society within the limits of the Municipal Corporation of Greater Mumbai. Condition No.3 also provided that the affidavit to state that member were not holding any tenement or a plot from MHADA. As stated earlier, on 9<sup>th</sup> August 2001, a letter of allotment was issued to the Petitioner allotting the first flat in 10% quota of the Hon'ble the Chief Minister. Therefore, in terms of Condition No.4 in the letter dated 5<sup>th</sup> September 2001, the Petitioner ought to have filed an affidavit disclosing that he was holding the first flat in Mumbai allotted by the State Government under the Hon'ble Chief Minister's Quota. In fact, by virtue of holding the first flat, the Petitioner was ineligible to become a member of the proposed society though he himself was the Chairman of the proposed society. Admittedly, the Petitioner did not disclose the fact of possessing the first flat allotted in 10% quota of the Hon'ble the Chief Minister even after receipt of the said letter dated 5<sup>th</sup> September 2001. Even the letter dated 21<sup>st</sup> December 2002 addressed to the Petitioner by MHADA makes it very clear that the allotment was

subject to compliance with the conditions in the earlier letters. Without disclosing the fact that he was holding a flat in Mumbai and that he was ineligible, the Petitioner in his capacity as the Chairman of the proposed society obtained a lease of the said plot from MHADA. We find that a Deed of Supplementary Lease dated 2<sup>nd</sup> November 2005 has been signed by the Petitioner himself. We may also note from the compilation of documents that on 30<sup>th</sup> September 2003, the Petitioner in his capacity as the Chairman took possession of the said plot. On 21<sup>st</sup> February 2003, the Petitioner in his capacity as the Chairman executed a Development Agreement in respect of the said plot. On 5<sup>th</sup> April 2010, the said Society of which the Petitioner was the Chairman allotted a flat admeasuring 56.20 sq. meter bearing Flat No.B-503 in B-Wing (for short “the second flat”) to the Petitioner on the said plot at Chembur in Mumbai.

7. From the letter of allotment dated 5<sup>th</sup> September 2001 issued by the Chief Officer of the MHADA, it is very clear that a person who was holding a premises either on ownership or lease basis in Mumbai was ineligible to become a member of the said Society. In fact, allotment of the plot was subject to the eligibility of the members of the Society. As stated earlier, the Petitioner himself was the Chairman of the Society. The Petitioner suppressed the fact that he was ineligible to become a member of the Society. Ultimately, he was allotted the second

flat in the building constructed on the said plot. We may note here that permission to sell the first flat allotted under 10% quota was granted to the Petitioner on 10<sup>th</sup> March 2008. Now, by the impugned order, the Petitioner has been directed to vacate the second flat.

8. As a condition precedent for grant of permission to sell the said flat in 10% quota, the Petitioner had admittedly tendered an undertaking not to claim any flat in 2% and 5% quota as well as in any other scheme. Firstly, the Petitioner ought to have disclosed the said undertaking while making an Application for allotment of a plot to MHADA in his capacity as the Chairman of the proposed Society. Secondly, the Petitioner ought to have disclosed to MHADA that he was ineligible to become a member of the Society. Thirdly, even at the time of getting an allotment of the second flat, the Petitioner did not disclose that he was ineligible to become a member of the Society which is allotted a plot on which the second flat has been constructed.

9. Thus, even going by the documents tendered by the Petitioner himself, the Petitioner could not have become a member of the Society which is allotted the said plot at Chembur, Mumbai. But the Petitioner continued to act as the Chairman of the Society admittedly when he was not eligible to become a member of the Society. Therefore, the Petitioner has indulged in suppression of the material fact.

10. The learned counsel appearing for the Petitioner submitted that in case of illegal allotment of flats under 2% and 5% quota Scheme, the State Government has shown indulgence and allowed the allottees of two flats under the 2% and 5% quota to retain one of the two flats. In the present case, the Petitioner is disentitled to retain the second flat as he has indulged in suppression of material facts while obtaining allotment of the said plot on which the second flat is situated.

11. The remedy under Article 226 of the Constitution of India is an extra-ordinary remedy. It is purely a discretionary remedy. The law on this aspect has been laid down in the decision in the case of *M.P. Mittal v. State of Haryana and Others*<sup>1</sup>. Paragraph 5 of the said decision reads thus:-

“5. Now there is no dispute that the appellant knowingly and deliberately entered into the Guarantee agreement, and is liable as Guarantor to make payment of the dividend due from Messrs Depro Foods Limited. Nor is it disputed that the amount due, with interest, stands at Rs 2,02,166 — in respect of the period ending with the year 1977. It was not contended that the appellant in fact does not possess sufficient funds or cannot avail of sufficient personal property for the purpose of discharging the liability. The record also shows that before instituting coercive proceedings, the Assistant Collector provided the appellant an opportunity to pay up the amount due from him, and that the appellant made no attempt to

---

1 (1984)4 SCC 371

discharge the liability. When that is so, we are of opinion that he is not entitled to relief in these proceedings. The appeal arises out of a writ petition, and it is well settled that when a petitioner invokes the jurisdiction of the High Court under Article 226 of the Constitution, it is open to the High Court to consider whether, in the exercise of its undoubted discretionary jurisdiction, it should decline relief to such petitioner if the grant of relief would defeat the interests of justice. The Court always has power to refuse relief where the petitioner seeks to invoke its writ jurisdiction in order to secure a dishonest advantage or perpetuate an unjust gain. This is a case where the High Court was fully justified in refusing relief. On that ground alone, the appeal must fail.”

(Underline supplied)

12. In the present case, if a relief is granted to the Petitioner by setting aside the impugned order, the grant of such relief would defeat the interest of justice. Moreover, grant of relief will enable the Petitioner to secure a dishonest advantage or perpetuate an unjust gain as he was never entitled to allotment of the second flat.

13. This is a fit case where the Writ Court should refuse to exercise its jurisdiction under Article 226 of the Constitution of India. Even otherwise, considering the admitted facts, we find nothing wrong with the order of eviction passed by the MHADA.

14. Accordingly, we pass the following order:

ORDER :

- (a) The Writ Petition is rejected;
- (b) Chamber Summons (L) No.409 of 2016 does not survive and the same is disposed of.

(SMT.ANUJA PRABHUDESSAI, J)

( A.S. OKA, J )