

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

Writ Petition No. 3753 of 2000

- 1) Abdul Gani Rasul Inamdar,
Age 44 years, Occu: Service
R/o Aurangabad.
- 2) Chandrabhan Taterao Rajdeo
Age 36 years, Occu: Service
R/o Aurangabad.
- 3) Asaram Mahadu Khandare,
Age 32 years, Occu: Service
R/o Aurangabad.
- 4) Jagannath Shankarrao Sonwane,
Age 37 years, Occu: Service
R/o Aurangabad.
- 5) Satling Tukaram Waghole,
Age 35 years, Occu: Service
R/o Aurangabad.
- 6) Nanabhau Sapadu Bagul,
Age 33 years, Occu: Service
R/o Aurangabad.
- 7) Pandharinath Ramrao Shinde,
Age 34 years, Occu: Service
R/o Aurangabad.
- 8) Subhash Jagannath Rindhe,
Age 36 years, Occu: Service
R/o Aurangabad.
- 9) Balasaheb Appsaheb Shelar,
Age 37 years, Occu: Service
R/o Aurangabad.

- 10) Gangadhar Panditrao Ghorbhand,
Age 33 years, Occu: Service
R/o Aurangabad.
 - 11) Suresh Vithalrao Choudhari,
Age 36 years, Occu: Service
R/o Aurangabad.
 - 12) Bhagwan s/o Meethu Borade,
Age 34 years, Occu: Service
R/o Aurangabad.
 - 13) Gulab s/o Panditrao Pajai,
Age 38 years, Occu: Service
R/o Aurangabad.
 - 14) K.B. Patil,
Age 40 years, Occu: Service
R/o Aurangabad.
 - 15) Sudam Vithalrao Autade,
Age 37 years, Occu: Service
R/o Aurangabad.
 - 16) Dattu s/o Bhaurao Sangle,
Age 39 years, Occu: Service
R/o Aurangabad.
 - 17) Jagannath s/o Shamrao Kale,
Age 35 years, Occu: Service
R/o Aurangabad.
- .. Petitioners.**

Versus

- 1) The State of Maharashtra.
(deleted as per order
dated 13-9-2000)
- 2) Maharashtra Housing and Area
Development Authority,
Griha Nirman Authority,
Bandra (E), Bombay 400 51
Through its Secretary.

- 3) Maharashtra Housing and Area
Development Authority,
Aurangabad, Opp. Baba Petrol
Pump, CBS Road,
Aurangabad,
Through its Chief Officer,
Aurangabad.

.. Respondents.

Shri. Aashish T. Jadhavar, Advocate, for petitioner Nos.1
and 5.

Shri. A.S. Shinde, Assistant Government Pleader, for
State of Maharashtra.

Shri. C.V. Thombre, Advocate, for respondent Nos.2 & 3.

**Coram: T.V. NALAWADE &
SUNIL K. KOTWAL, JJ.**

Date : 12 July 2017

JUDGMENT:

1) The petition is filed for giving directions to respondent Nos.2 and 3 to allot houses/tenements to the petitioners as per the advertisement dated 21-3-1991 published by the respondents. Learned counsel Shri. Jadhavar for petitioner Nos.1 and 5 and the learned counsel for the respondents are heard. The counsels for other petitioners who have filed separate appearance did not turn up. As the contentions of all the petitioners are

similar, the petition is being decided on merits for all the petitioners.

2) On 21-3-1991 respondent No.3, MHADA published advertisement for allotment of tenements at Tisgaon, Aurangabad. It is the contention of the petitioners that in response to the advertisement they had submitted their applications for getting the tenements and their names were shown in the list of the persons who were entitled to get the tenements as per the scheme. It is contended that the petitioners had deposited the initial amount as mentioned in the advertisement and also as mentioned in subsequent correspondence. It is contended by the petitioners that on 18-3-1993 the respondents made correspondence with the petitioners informing that the price of the tenements was increased. It is contended by petitioners that by a correspondence dated 31-10-1998 the increased price was informed and the mode of payment was also informed. It is contended that the petitioners are entitled to get tenements as per the price published in the advertisement but the price was increased for no reason and so direction needs to be given

to the respondents to give the tenements at the rate initially informed.

3) When the petition was filed a direction was sought to the effect that the respondents should make construction as per the scheme published. During arguments it was submitted that the construction was completed, allotment was also made to the persons who had duly applied and who had paid the amount as per the scheme.

4) The submissions made show that at present in the aforesaid scheme which was published on 21-3-1991 no tenement is available which can be allotted to the petitioners. Some record is produced by the learned counsel for the petitioners which is in respect of the petitioners like Abdul Gani, Satling Waghole and Nanabhau Bagul. This correspondence shows that some amount was paid prior to 1998 and some amount was paid in 1998. The correspondence is produced to show that due to increase in the land cost which was given by CIDCO the respondents were required to increase the cost

of tenement. The mode of payment was mentioned in the correspondence. Admittedly the petitioners did not make payment as per the said mode. They were insisting that the amount which was published in the initial scheme in the year 1991 can be recovered from the petitioners and more amount cannot be taken for allotment of the tenement.

5) This Court has carefully gone through the correspondence in which the conditions of the scheme are mentioned. The record shows that approximate price of the tenement was published in the year 1991 and at least on two occasions the price was increased. In view of the condition mentioned in the advertisement it can be said that the respondents were entitled to increase the price. As the petitioners were not ready to pay more, the tenements were not given to them.

6) The question remains about the amount which is already paid by the petitioners. The record at least in respect of three petitioners is produced as mentioned above, and apparently they have paid more than

Rs.6800/-. There is possibility that the other petitioners had also paid the amount. The record does not show that any right was kept to forfeit the amount deposited by the petitioner. Such amount needs to be treated as deposit and so if the tenement is not given, the amount needs to be returned to the said persons. Only to that extent, this Court holds that relief can be granted and the respondents need to be made to return the amount with interest. In the result, following order :--

7) The petition is partly allowed. Respondent Nos.2 and 3 are to return the amount of the petitioners to whom tenement is not allotted, with the interest at the rate of 9% per annum and the interest will be payable from 1 January 1999 till the date of payment. Rule is made absolute in those terms.

Sd/-
(SUNIL K. KOTWAL, J.)

Sd/-
(T.V. NALAWADE, J.)

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