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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.1956 OF 2009

Mahendra Bakliwal ...Petitioner
vs.
1 The State of Maharashtra
2 The Chief Minister of Maharashtra ...Respondents

Mr.Mahendra Bakliwal the Petitioner in person
Mr.Manish Pabale, AGP for the respondent Nos.1 and
2.

CORAM : A.S.OKA, &
A.K.MENON, JJ.
DATE : APRIL 25, 2017

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

1 We have heard the submission of the petitioner appearing in person. We must note here that when submissions of the petitioner appearing in person were heard on the earlier date, we had invited his attention to the decision of a Division Bench of this Court in the case of Chandrabhan Sukhadeo Sangle vs. Urban Development Department and others passed in Writ Petition No.882 of 2011¹.

2 After granting the petitioner an opportunity to deal with the said decision, we had kept the matter today for final hearing. Today, the petitioner appearing in person has tendered written submissions. The petitioner who was the then journalist by profession is claiming allotment of a

¹ 2014 (3) ABR page 141

residential premises in 2% discretionary quota of the Hon'ble the Chief Minister in a scheme under the Government Resolution (for short "GR") dated 18th August 1994. According to the case of the petitioner appearing in person, when he made an application for grant of a tenement under the said discretionary quota, the then Hon'ble Chief Minister passed an order making allotment of a residential tenement to the petitioner. According to the case of the petitioner, a list of allottees was prepared in which his name appeared at serial 548. The petitioner has placed reliance on the correspondence made by him including the letter dated 30th September 2008 addressed by him to the Hon'ble Chief Minister requesting him to inform him as to when the allotment will be made as per the said list. As the petitioner was not actually allotted a flat in the 2% discretionary quota, the present petition is filed for seeking a writ of mandamus directing the State Government to allot a tenement out of 2% reserved tenements under Higher Income Group category. The petitioner is relying upon a letter dated 20th August 1991 issued by the State Government recording that he is eligible to receive allotment of a flat under 2% discretionary quota of the Hon'ble Chief Minister in the category of 3.6 of the journalists.

3 In the case of Chandrabhan and others (supra), this Court referred to all the GRs conferring power on the Hon'ble Chief Minister to allot flats in 2% and 5% (earlier 10%) discretionary quota. This Court

has referred to the GRs starting from 18th August 1994 onwards which were modified from time to time. The last of the Government Resolutions issued on 30th November 2011 which superseded all earlier Government Resolutions including the one dated 18th August 1994. In clauses (b) and (c) of paragraph 26 of the said Judgment reads thus:

“(a) The prayers made by the petitioners for allotment of flats stand rejected;

(b) We declare that the impugned Government Resolution dated 30th November 2011 (which supersedes all earlier Government Resolutions on the subject) is arbitrary, irrational and illegal. The State Government is hereby restrained from making any further allotment on the basis of the impugned Government Resolution dated 30th November 2011. We clarify that this restraint will not apply to allotment of the flats as service quarters as observed in paragraph 25 above.”

(emphasis added)

4 Therefore, there is a declaration issued by this Court that the GR dated 30th November 2011 which supersedes all other GRs including the one dated 18th August 1984 are arbitrary, irrational and illegal. In fact, the finding of this Court is that the same are violative of Article 14 of the Constitution of India. Liberty was granted to the State Government to come out with a fair and transparent policy for allotment of flats under 2%

and 5% (10%) quota. It is not in dispute that the said Judgment has not been challenged by the State Government. As of today, the State Government has not come out with a new policy. The petitioner has invoked discretionary and equitable jurisdiction of this Court under Article 226 of the Constitution of India. As stated earlier, this Court has held that the policy which confers power on the Hon'ble Chief Minister to make allotment of flats from 2% Quota is arbitrary, illegal and unconstitutional. It is, therefore, not possible for us to issue a writ of mandamus enjoining the State Government to implement the policy which is held to be arbitrary and unconstitutional.

5 We have perused the written arguments tendered by the petitioner. The main contention is that as this petition ought to have been heard prior to 20th March 2014 when the decision in the case of Chandrabhan Sukhadeo Sangle (supra) was delivered. The submission seems to be that if the petition would have been heard earlier, he would have been entitled to the relief prayed for. It is not as if that only one petition of the year 2009 filed by the petitioner was not heard earlier. In fact, the weekly cause list of this week shows that even the writ petitions of the year 2003-2004 are on the weekly cause list.

6 It is true that the petitioner was held eligible for an allotment of a flat in 2% discretionary quota. There is an affidavit dated 20th

July 2010 filed by the Deputy Secretary of the Government of Maharashtra Shri P.L.Pathak. In the said affidavit, it is contended that as per the directions issued by this Court under order dated 26th November 2009, one flat was kept vacant. It is further stated in the said affidavit that by GR dated 23rd February 2007, the entire waiting list of eligible applicants was scrapped. In paragraph 9, there is a categorical statement made that by an application dated 30th November 2008, the petitioner again applied for allotment of a tenement. It is further stated that the petitioner was allotted a tenement in the Lower Income Group category vide letter dated 28th January 2009. A copy of the said letter is annexed to the affidavit of Shri Madhav Narayan Kale, Under Secretary Government of Maharashtra, Housing Department, Mantralaya, Mumbai which is dated 6th March 2009. It is stated in the affidavit dated 23rd February 2003 of Shri Shrikant Laxmanrao Pulkundwar, Under Secretary, that the petitioner did not accept the said allotment. We may note here that in the letter dated 28th January 2009, it was stated that a flat at Dindoshi, Mumbai in Lower Income Group was allotted to the petitioner for which the petitioner was required to make necessary compliance within a period of three months from that date.

7 We may note here that in the affidavit in rejoinder, the petitioner has disputed of having received the letter dated 28th January 2009. However, thereafter, he never showed any inclination

to accept the offer contained in the said letter. on the contrary, he has come out with a case that the flat allotted to him was not suitable. Ultimately, the prayer of the petitioner is that he be allotted a flat in discretionary quota in the Higher Income Group Category. There is no right in the petitioner to claim allotment of a particular category of flat as a matter of right. It is not in dispute that the flats in 2% and 5% quota were being allotted at a concessional price. Therefore, we are unable to issue a writ of mandamus as prayed for and therefore, writ petition is rejected. Rule is discharged with no order as to costs.

8 If under any other scheme or any other provision of law, the petitioner is entitled to an allotment of a residential tenement from the State Government, it will be open for him to make an application which will be decided in accordance with law.

(A.K.MENON,J.)

(A.S.OKA,J.)