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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRI. PUBLIC INTEREST LITIGATION (ST) NO.24 OF 2017

Ketan Tirodkar	)	
402, Vasant Kunj,	)	
Dr. Ambedkar Road,	)	
Dadar East, Mumbai-14.	)	..Petitioner

Versus

1] Hon'ble Bombay High Court	)	
Via Registrar General,	)	
High Court Building	)	
Mumbai-20.	)	
	)	
2] State of Maharashtra	)	
Via Hon'ble Chief Minister	)	
Mantralaya, Mumbai-32.	)	
	)	
3] Maharashtra Housing	)	
Area Development Authority	)	
Via CEO, Kalanagar, Bandra	)	
Mumbai-51	)	..Respondents

Mr. Ketan Tirodkar, Petitioner in person, present.

Mr. S.R. Nargolkar for Respondent No.1.

Mr. A.A. Kumbhakoni, Advocate General a/w Mr. Akshay Shinde, with Mr. Deepak Thakare, GP and Mr. P.P. Shinde, APP for Respondent No.2.

Mr. A.A. Kumbhakoni, Advocate General a/w Mr. Akshay Shindey, Ms. Aparna Murlidharan and Ms. Sayli Apte i/b Mr. P.G. Lad for Respondent No.3 – MHADA.

**CORAM: B. R. GAVAI &
SMT. BHARATI H. DANGRE, JJ.**

**Judgment reserved on : 4th May, 2018
Judgment pronounced on : 29th October, 2018**

JUDGMENT: (Per B.R. Gavai, J.)

1] Rule. Rule is made returnable forthwith. Respondents waive service. Heard, by consent of parties.

2] Petitioner in person has approached this Court seeking various reliefs, including directions to Respondent No.1 to file an affidavit annexing the permission granted by the Hon'ble Chief Justice of Maharashtra to 39 Judges to apply for a plot of land from Respondent No.3 – Maharashtra Housing and Area Development Authority. He has also prayed for quashing and setting aside allotment of plot of land admeasuring 33,300 square feet in Oshivara Village in Andheri Taluka bearing CTS Nos. 2A, 2B and 3 (All partly)

given to Surabhi Co-operative Housing Society (proposed), formed by 39 judges of this Court.

3] Petitioner, who is a citizen of India, claims to be a public spirited citizen and acting in public interest. Petitioner claims that, by using the provisions of Right to Information Act, he has sought various information from various authorities and on the basis of the said information, had filed various public interest litigations in this Court for espousing the public causes. This PIL has been filed by the Petitioner basically claiming that, 39 Judges of this Court conspired with the bureaucrats to grab a plot of land from the State Housing Wing viz. the Maharashtra Housing and Area Development Authority for building a private Housing Society. It was the contention of the Petitioner that, the allotment done to the said Society was in breach of the law laid down by Division Bench of this Court in Writ Petition No.882 of 2011 alongwith companion matters vide Judgment and Order dated 20th March, 2014.

4] Since in the Petition certain allegations were made with regard to the Maharashtra Housing and Area Development Authority (hereinafter referred to as “MHADA”) and since it was not a party-respondent to the PIL, Petitioner was granted leave to implead MHADA as party-respondent to this PIL. As per leave granted by this Court, Petitioner had impleaded MHADA as Respondent No.3 on 28th February, 2018. When the matter was listed before this Court on 20th April, 2018, a specific contention was raised by the Petitioner that, in

respect of the plot which was the subject matter of the present PIL, initially, MHADA had finalized a Scheme for construction of tenements for Middle Income Group. However, subsequently, the said Scheme had been abandoned and altered to accommodate Judges of this Court. We had therefore adjourned the matter so as to enable the learned Counsel appearing for Respondent/MHADA to take specific instructions in that regard.

5] Thereafter, the matter was listed before this Court on various dates. Taking into consideration the importance of the matter, we had requested learned Advocate General to appear in the matter.

6] When the matter was listed on 3rd May 2018, the matter was extensively heard. On the said date, learned Advocate General stated that, the contention of the Petitioner that MHADA had finalized a Scheme for construction of tenements for Middle Income Group and subsequently the said Scheme was abandoned so as to accommodate Society of the Judges of this Court, was not correct.

7] Petitioner in person, though had initially objected to the entire Scheme, submitted that he was not averse to Judges of this Court who are domiciled in the State of Maharashtra, getting benefit of the Scheme framed by the State Government for getting preferential residential accommodation. Petitioner in person stated that, the lawyers, after sacrificing their flourishing practice, accept the Office of a Judge. He submitted that, it is impossible for a Judge to purchase

decent accommodation from the open market due to sky rocketing prices of the real estate. He therefore submitted that, he had no objection if the State Government frames a Scheme and allots residential accommodation to the Judges on preferential basis. He, however, submitted that, he had a serious objection to Condition No.4 of the Government Resolution dated 8th February, 2007 vide which the requirement of domicile in Maharashtra was exempted in favour of the Judges. Petitioner in person submitted that, he was not opposed to Judges, who are domiciled in the State of Maharashtra, getting benefit of the Scheme. He submitted that, waiver of such condition was neither rational nor reasonable but it was an arbitrary exercise of power. He submitted that, on account of waiver of the said condition, the persons who have occupied the Office of a Judge of this Court even for a few months, are getting benefit of preferential allotment which is totally unjust and arbitrary. He submitted that, there was no rationale in waiving the condition, which would result in granting unjust enrichment to the person who has served as a Judge of this Court for a couple of months, though he is not domiciled in the State of Maharashtra for requisite number of years.

8] Petitioner in person also highlighted one another aspect. He submitted that, bureaucrats, politicians, after availing of preferential allotment for residential accommodation under various Schemes framed by the State of Maharashtra, have again got similar allotments on more than one occasion and thereby unjustly enriched themselves. He submitted that on account of liberal condition

imposed by the State Government that a person would be entitled to allotment of residential accommodation on preferential basis only if he does not own a house in the particular Revenue District, there are instances that taking disadvantage of this lacuna, some persons have obtained allotments in different Revenue Districts. He gave an instance, that since Thane is a different District and since new Mumbai falls in Raigad District, some persons have obtained allotments in Mumbai, Thane and New Mumbai, which, as a matter of fact are now part of the same urban agglomeration. He submitted that, on one hand, lakhs of people are not having basic accommodation and there are persons who, on account of lacuna in the State Government's policies, have indulged in profiteering by getting more than one preferential allotments at concessional prices.

9] The another objection that was raised by the Petitioner was that, though in the said proposed Society, very junior judges who were not even confirmed on the date of the allotment, were given the benefit of the said Scheme, many senior Judges of this Court who are otherwise entitled to get benefit of the said Scheme were denied the same. He therefore submitted that, such an approach was arbitrary and discriminatory.

10] The learned Advocate General submitted that, the PIL which was filed on the premise that a plot of land was being allotted to the Society of the Judges, was itself erroneous. He submitted that, no such plot of land was being allotted to any Co-operative Society of

Judges of this Court. He submitted that MHADA was an Authority which is created under the Maharashtra Housing and Area Development Act, 1976 (hereinafter referred to as “the said Act”) for providing housing facilities for all types/categories of citizens. He submitted that, the PIL is on the wrong premise, that MHADA was created only for the purpose of providing houses to the citizens falling in the categories belonging to Lower Income Group and Middle Income Group. He submitted that since its inception, MHADA has framed various Schemes for providing houses not only to poor and dis-housed persons but also for Economically Weaker Sections (EWS), Lower Income Group (LIG) and also for Higher Income Group (HIG). He submitted that, the citizens who come in the Higher Income Group, includes persons who have an income of more than Rs 9 lakhs per annum. He submitted that, though ceiling of minimum income was provided for category of Higher Income Group, no such upper ceiling was provided. The learned Advocate General submitted that, as per the provisions found in the said Act and the Rules and Regulations framed thereunder, MHADA was entitled to outright sale of the residential accommodation for appropriate consideration / sale price as determined by MHADA. It is submitted that, there is full-fledged mechanism provided for calculating the sale price and the prices of different types of tenements are determined in accordance with the said mechanism. He submitted that, the entire exercise undertaken by MHADA was well defined and well documented, leaving no scope for arbitrariness at the hands of the Officers of MHADA.

11] The learned Advocate General submitted that, under the rule making powers, as found in the said Act, the Maharashtra Housing and Area Development (Disposal of Land) Rules 1981 (hereinafter referred to for the sake of brevity as “the said Rules of 1981”) have been framed. He further submitted that, under Rule 17 of the said Rules of 1981 there is a provision for making of supplemental Regulation for proper implementation of the Rules, especially for implementation of the Housing Scheme. The learned Advocate General submitted that, in accordance with Rule 17 of the said Rules of 1981, with the prior sanction of the State Government, the Maharashtra Housing and Area Development (Estate Management, Sale, Transfer and Exchange of Tenements) Regulations 1981 (hereinafter referred to as “the said 1981 Regulations”) have been framed on 29th December, 1981. He submitted that, under Regulation 13(2) of the said Regulations, MHADA was entitled to construct a Housing Scheme for specific category or categories and implement the same. However, this can be done only with the approval of the State Government.

12] The learned Advocate General submitted that, the State Government, for providing guidelines for implementing the Scheme for specific categories, has issued Government Resolution dated 8th February, 2007. He submitted that, one of the categories under the said Resolution was the Hon'ble Judges of the Supreme Court, Hon'ble Judges of the High Court and Judges of the subordinate Courts. He

submitted that, however, insofar as this category and other two categories i.e. present and past members of Legislative Assembly, Legislative Council and Parliament and permanent employees of the State and Central Government are concerned, vide the said Government Resolution, the requirement of domiciled in the State of Maharashtra for 15 years has been waived. He submitted that, vide the said Government Resolution itself, the State Government had relaxed the requirement with regard to issuance of advertisement for implementation of the Scheme under Regulation 13(2).

13] The learned Advocate General submitted that, the State Government, while taking into consideration that number of persons applying from the category of Judges of High Court or Judges of Supreme Court was very less, it found that requirement of issuance of advertisement or holding of lottery system was not necessary insofar as that category is concerned and as such, the said requirement was waived vide Government Resolution dated 12th August, 2015.

14] The learned Advocate General therefore submitted that since the State Government found that, number of candidates eligible for a particular category is much less as compared to the availability under the Scheme implemented under Regulation 13(2) of the said Regulations, for that particular category, requirement of issuance of advertisement was waived and as such, it cannot be said that the said action is either arbitrary or unreasonable.

15] The learned Advocate General submitted that, the entire file for sanctioning the Scheme under Regulation 13(2) of the said Regulations for a specific category of Hon'ble Supreme Court Judges and Hon'ble High Court Judges, has been moved in totally transparent manner. He submitted that, perusal of paragraph 13 of the affidavit-in-reply dated 1st May, 2018 sworn by Shri Nagesh Chintamani, Executive Engineer of Bandra Division of Mumbai Board, a Unit of MHADA, would reveal that the file has been moved in totally transparent and fair manner and there is no substance in the allegations of favouritism etc. He therefore submitted that the Petition deserves to be dismissed.

16] When the matter was to conclude on 3rd May 2018, finding substance in the submissions of the Petitioner, that allowing one person to get benefit of the allotment of houses/tenements from the State Government on a priority and at a concessional rate, on more than one occasions would amount to permitting such a person to indulge into profiteering and at the same time, depriving other eligible homeless citizens of being allotted such tenements/houses, we had requested the learned Advocate General to seek instructions from the State Government as to whether the State Government was willing to formulate such a policy, which would avoid such an anomalous situation. We had therefore directed the matter to be kept on 4th May, 2018 at 11.00 A.M.

17] When the matter was called out on 4th May, 2018, the learned

Advocate General stated that, due to paucity of time, he was not in a position to meet the Hon'ble Chief Minister personally but he had taken telephonic instructions from him. He made a statement that the State Government was willing to formulate a policy which would ensure that, one person would be entitled to allotment of only one house/tenement in the entire State. He, however, submitted that, while doing so, various aspects will have to be taken into consideration. He submitted that if a particular person has been allotted a house/tenement from any of the Government Schemes in other parts of the State and if he wants an allotment, for example in the urban agglomeration of Greater Mumbai, then such a person cannot be deprived of getting an allotment at Mumbai. He submitted that, however, this would be permitted only if such a person surrenders the house/tenement earlier allotted to him to the State Government, which can be offered to any other person. He, however, submitted that, if such a person sales the earlier house/tenement allotted to him on preferential basis at concessional rate, at a market rate and indulges in profiteering or such a person transfers such house/tenement to any of his relatives only in order to become entitled for another allotment, such a person would not be considered for allotment on the second occasion. He submitted that, for considering all these aspects and formulating a concrete policy, some time would be required. He submitted that a period of six months would be required to examine all these aspects and formulate concrete policy. He, however, submitted that, the State has, in principle, accepted the policy of one person being entitled to

allotment of one house/tenement from the State Government on a preferential basis at concessional rate and only in the exigency carved out hereinabove i.e. on earlier house/tenement being surrendered to the State Government, he would be entitled to for consideration for fresh allotment of tenement or house.

18] It could thus be seen that the main grievance of the Petitioner appears to be two-fold. The first grievance appears to be that, the allotment of flats in Surabhi Co-operative Housing Society (proposed), has not been done as per seniority of the Judges and the Society has adopted a principle of pick and choose while giving membership of the Society. The second grievance appears to be more generalistic in nature. The grievance appears to be that, some persons have taken advantage of the allotment of houses/tenements in Government Schemes at concessional rates on more than one occasions, thereby indulging into unjust enrichment.

19] Insofar as the first grievance of the Petitioner is concerned, the learned Advocate General has made a categorical statement that the flats are offered to all the Judges and whoever has opted, have been made members of the Society. The learned Advocate general has further made a statement that, in all, 63 tenements would be constructed in the building to be constructed for the said Society. He submitted that, at the moment, only 39 Judges have been enrolled as members of the said Society and as such, 24 flats are still available for allotments. It could thus be seen that if any other judges are also

willing to become members of the Society, there is still enough scope to accommodate them. In that view of the matter, the said grievance of the Petitioner can be taken care of by directing the Registrar General of the Bombay High Court, to offer membership of the said Society to all the Judges as per their seniority and the Respondent/MHADA can be directed to enroll such of the Judges who give their willingness to become members of the said Society, if they are otherwise entitled as per Regulations of MHADA and the policy of the State Government; as is reflected herein and in the statement made by the learned Advocate General.

20] Insofar as the second grievance with regard to one person taking benefit of more than one Government Schemes, thereby getting houses/tenements at concessional rate on more than one occasion is concerned, we find substance in the said submission. The Government, under whatever name, floats the Schemes at the rates which are lesser than the market rates, in order to provide shelter to the persons who are not having house/flat in a City where they propose to settle. As already discussed hereinabove, the MHADA itself under Regulation 13(2) of the said Regulations is entitled to construct the Housing Scheme for specific category or categories and implement the same with the prior approval of the State Government. Under the said Government Resolution dated 8th February, 2007, different categories have been carved out; one is of the Judges of the Supreme Court and High Court and Judges of the subordinate Courts and the other is of the Members of Legislative Assembly, Legislative

Council and Parliament and permanent employees of the State and Central Government.

21] As rightly pointed out by Shri Tirodkar, it is not possible for Judges of this Court who, after sacrificing their practice, have answered the call to serve the Nation and the Society, by becoming Judges of the Courts, to purchase a flat/house from the open market in a City like Mumbai. Equally, the honest persons serving in the services of Union of India like IAS, IPS, IFS etc. whose salaries are much lesser, as compared to their counter-parts in private sectors, would find it difficult to purchase a flat from the open market. As such, as pointed by Mr. Tirodkar, there should be nothing wrong if Government floats a Scheme for special category of these persons. However, having one house/tenement from any of the Government Schemes floated by the State Government or Instrumentalities under its control and having multiple houses/tenements from the State Government, are two different things. We have no hesitation to observe that, if a person gets advantage of allotment of the tenements/houses from the Government at a concessional rate on more than one occasions, it would amount to nothing else but using the Office for unjust enrichment. The Judges hold an important Constitutional Office and as such, they are expected to be the persons of highest moral standards. It is always criticized that unlike Executive and the Legislature, Judiciary is not answerable to any one. The answer given is that, the Judges are accountable to their own conscience. We are sure that no person holding high Constitutional

Office of a Judge of the High Court would even think of indulging in using his Office for unjust enrichment. It is therefore just and appropriate that one person should be entitled to hold only one tenement/house allotted from the Government, subject to exception as stated by the learned Advocate General. It would equally apply to all the categories, who would get benefit from Government of allotment of house/tenement under the Schemes under the control of the State Government or its instrumentalities.

22] We appreciate the stand taken by the State Government that, the State Government was willing to formulate the policy, which would ensure that one person would be entitled to allotment of only one house/tenement in the entire State. As submitted by the learned Advocate General, that this should be with a rider that, if a person, who has already been allotted a house/tenement in earlier Scheme, wants to go for a better Scheme, he should be permitted to upgrade to better Scheme; however this shall be subject to his surrendering the earlier allotment of house/tenement to the Government or its Instrumentalities.

23] We are of the considered view, that if the Government is directed to formulate the policy as per the statement made by the learned Advocate General, the concern of the Petitioner in person about unjust enrichment would be duly taken care of.

24] In view of the aforesaid observations, we are of the considered

view that none of the grievances of the Petitioner remains unsatisfied.

25] The PIL is therefore disposed of in the following terms:-

(i) The Registrar General of the Bombay High Court shall seek option from the Judges of the Bombay High Court as per their seniority for willingness for allotment of tenements in the building to be constructed by Respondent No.3/MHADA for Judges of the High Court and Supreme Court and intimate the names of such of the Judges who have opted for the said Scheme to Respondent No.3/MHADA for allotment of flat/tenement in the said Scheme.

(ii) The State Government shall formulate a Scheme wherein, it would be provided that a person who has already been allotted house/tenement in any of the Schemes framed by the State Government or any of the Authorities subordinate to the State Government, would be entitled for only one house/tenement in such of the Schemes under any name. The said policy shall, however, provide an exception for upgradation of house/tenement i.e. if a person is allotted an house/tenement in any other place

other than Mumbai and he wants allotment of house/tenement in the Urban Agglomeration of Mumbai, he would surrender the same to the State Government or Authorities under it, so as to be entitled for allotment in a better Scheme. Equally, if a person has been allotted a smaller house/tenement in the Urban Agglomeration of Mumbai in any of the Government Schemes and if he wants to upgrade to better house/tenement, he would be entitled to be considered for such allotment, only after he surrenders his earlier house/tenement allotted to him.

(iii) While surrendering the earlier house/tenement to the State Government or its Authorities, the person surrendering the same would be entitled to refund of the amount at the rate the State Government is offering for the said tenement to be surrendered at the time of surrender and not at the market rate of the tenement to be surrendered.

(iv) To clarify, we direct that no person would be entitled to hold more than one house/tenement at one time from any Government Scheme or Schemes framed by the

State or any of the Authorities subordinate to it.

(v) The said policy shall be framed within a period of six months from today.

(vi) Rule is made absolute in the aforesaid terms.

(SMT. BHARATI H. DANGRE, J.)

(B. R. GAVAI, J.)