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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1327 OF 2018

Sheetal Subhash Khedekar

... Petitioner

Vs.

Mumbai Housing and Area
Development Board and Ors.

... Respondents

Mr. Ankit Kulkarni and Ms. Bhavana Mhatre for the Petitioner.

Mr. Mohansinh U. Rajput I/b. Mr. K.W. Wankhede for the Respondent No.1.

Mr. A.G. Damle, Senior Counsel a/w Mr. V.R. Gaikwad for the Respondent No.2.

Mr. Hemant Haryan, AGP for the Respondent No.3.

CORAM : A.S.OKA AND
M.S. SANKLECHA, JJ.

DATE : 30th APRIL 2019.

ORAL JUDGMENT (Per A.S. Oka, J.)

1 Parties were put to notice earlier that the petition will be disposed of finally at the stage of admission. Accordingly, we have heard the parties on the earlier date. Rule. The respondents waives service. Taken up for final disposal. The Mumbai Housing and Area Development Board (first respondent) is a regional Board of the Maharashtra Housing and Area Development Authority (for short "MHADA") established under the Maharashtra Housing and Area Development Authority Act, 1976 (for

short “the said Act of 1976”). The first respondent along with another unit of MHADA viz. Konkan Housing and Area Development Board published an advertisement in the year 2014 for sale of various tenements under construction by the first respondent - Board as well as the Konkan Board. In the facts of the case, we are concerned with the tenements in Scheme Code No.307 at Kolkalyan, Santacruz in Mumbai included in the advertisement.

2 Our attention is invited to the Maharashtra Housing and Area (Disposal of Lands) Rules, 1981 (for short “the said Rules of 1981”) framed by the State Government in exercise of various powers under the said Act of 1976. Rule 13 of the said Rules of 1981 provides for reservation for various categories in the tenements constructed by the MHADA or the Boards constituted under the said Act of 1976. Category 3 in Rule 13 is of freedom fighters. The said category is entitled to reservation of 2.5%. It appears that the petitioner and the second respondent applied in the same category of freedom fighters in respect of the tenements covered by Code No.307 noted above. The petitioner applied being next-of-kin of late Sudkoji Baburao Khedekar, a freedom fighter. She is his daughter-in-law. The second respondent applied in the same category claiming to be a dependent of Ramchandra Hari Katkar, a freedom fighter who is very much alive. According to the case of the petitioner, as the second respondent applied as a dependent of a freedom fighter who is still alive, the second respondent was not eligible to claim a tenement in 2.5% reservation for freedom fighters.

3 It appears to us that initially the Assistant Engineer of MHADA held the second respondent to be ineligible. However, on an appeal preferred by the second respondent, the Appellate Authority held the second respondent eligible by observing that the freedom fighter Shri Ramchandra Hari Katkar has given consent for allotment of the tenement to the second respondent who is the daughter of the said freedom fighter. The challenge in this petition is to the orders dated 26th October 2017 and 15th December 2017 (Exhibit – I and J to the petition). The prayer is that a writ of mandamus be issued directing the first respondent to allot a tenement in HIG category reserved for freedom fighters to the petitioner.

4 In this petition, we are called upon to interpret the definition of “freedom fighter” in Rule 2(d) of the said Rules of 1981 which reads thus :-

“(d) “Freedom Fighter” means a person who receives pension duly granted by the Government of Maharashtra or the Government of India or who has been awarded a Tamrapatra or Sanmanpatra on account of his participation in the National Movement for emancipation of India or the next-of-kin or dependent of such person, namely, the widow or widower, father, or mother, son, daughter, grand-son, granddaughter, son’s wife, grand-son’s wife, widow of predeceased son or grandson;”

5 The submission of the learned counsel appearing for the petitioner is that going by the definition of “freedom fighter” either the freedom fighter himself or the next-of-kin or dependent of a deceased freedom fighter is covered by the definition of the freedom fighter in Rule 2(d). He pointed out the interpretation put by the first respondent by inviting our attention to the document at page 35 which is a part of

instructions to the candidates. He submitted that by no stretch of imagination, it can be stated that next-of-kin or dependent of a freedom fighter can apply for allotment of a tenement reserved for freedom fighter during the lifetime of the freedom fighter.

6 The learned counsel appearing for the first respondent and the learned senior counsel for the second respondent as well as the learned AGP for the third respondent have made more or less identical submissions for opposing the petition. Their contention is that after the words “emancipation of India” and “the next-of-kin”, the word “or” is used in Rule 2(d). It is also pointed out that the word “or” appears between words “next-of-kin” and the words “dependents of such person”. The submission is that the definition is very clear which means that even during the lifetime of the freedom fighter, a person who is next-of-kin of the freedom fighter or a dependent of the freedom fighter will be governed by the definition of freedom fighter and therefore, such a person even during the lifetime of the freedom fighter is eligible for allotment of a tenement reserved for the category of freedom fighters. Our attention is invited to the dictionary meaning of “next-of-kin” which means close relative or close relative related by blood. Their submission is that in view of the dictionary meaning, a person who is related by blood to a surviving freedom fighter is covered by the definition of freedom fighter and therefore, there is nothing wrong if the second respondent is held to be eligible. Reliance is placed on the Government Resolution dated 19th May 2014 issued by the General Administration Department of the State Government in support of the said contention. As far as the rule of

interpretation is concerned, reliance is placed by the learned AGP on the decision of the Apex Court in the case of *P. Kasilingam and Ors. Vs. P.S.G. College of Technology and Ors.*¹.

7 We have given careful consideration to the submissions. The first respondent is the unit of MHADA which is duly established under the said Act of 1976. Any property vesting either in MHADA or in first respondent is the public property. MHADA or the first respondent are statutory bodies. Both bodies are agencies and instrumentalities of the State and therefore, the same are the State under Article 12 of the Constitution of India. Whenever such authority is the owner of an immovable property, it must act like a trustee while disposing of the public property. Moreover, all public properties can be disposed of only in fair and transparent manner. The law is laid down on this aspect by the Apex Court in several cases including the case of *Akhil Bhartiya Upbhokta Congress Vs. State of Madhya Pradesh and Ors.*² Paragraph 64 to 66 of the said decision read thus :-

“64. In *New India Public School v. HUDA* [(1996) 5 SCC 510] , this Court approved the judgment of the Division Bench of the Punjab and Haryana High Court in *Seven Seas Educational Society v. HUDA* [AIR 1996 P&H 228 : (1996) 113 PLR 17] , whereby allotment of land in favour of the appellants was quashed and observed: (*New India Public School case*[(1996) 5 SCC 510] , SCC p. 515, para 4)“4. A reading thereof, in particular Section 15(3) read with Regulation 3(c) does indicate that there are several modes of disposal of the property acquired by HUDA for public purpose. One of the modes of transfer of property as indicated in sub-section (3) of Section 15 read with sub-

1 1995 Supp (2) SCC 348

2 (2011) 5 SCC 29

regulation (c) of Regulation 5 is public auction, allotment or otherwise. When public authority discharges its public duty the word 'otherwise' would be construed to be consistent with the public purpose and clear and unequivocal guidelines or rules are necessary and not at the whim and fancy of the public authorities or under their garb or cloak for any extraneous consideration. It would depend upon the nature of the scheme and object of public purpose sought to be achieved. In all cases relevant criterion should be predetermined by specific rules or regulations and published for the public. Therefore, the public authorities are required to make necessary specific regulations or valid guidelines to exercise their discretionary powers; otherwise, the salutary procedure would be by public auction. The Division Bench, therefore, has rightly pointed out that in the absence of such statutory regulations exercise of discretionary power to allot sites to private institutions or persons was not correct in law."

65. What needs to be emphasised is that the State and/or its agencies/instrumentalities cannot give largesse to any person according to the sweet will and whims of the political entities and/or officers of the State. **Every action/decision of the State and/or its agencies/instrumentalities to give largesse or confer benefit must be founded on a sound, transparent, discernible and well-defined policy, which shall be made known to the public by publication in the Official Gazette and other recognised modes of publicity and such policy must be implemented/executed by adopting a non-discriminatory and non-arbitrary method irrespective of the class or category of persons proposed to be benefited by the policy. The distribution of largesse like allotment of land, grant of quota, permit licence, etc. by the State and its agencies/instrumentalities should always be done in a fair and equitable manner and the element of favouritism or nepotism shall not influence the exercise of discretion, if any, conferred upon the particular functionary or officer of the State.**

66. We may add that there cannot be any policy, much less, a rational policy of allotting land on the basis of applications made by individuals, bodies, organisations or institutions de hors an invitation or advertisement by the State or its agency/instrumentality. By entertaining applications made by individuals, organisations or institutions for allotment of land or for grant of any other type of largesse the State cannot exclude other eligible persons from lodging competing claim. Any allotment of land or grant of other form of largesse by the State or its agencies/instrumentalities by treating the exercise as a private venture is liable to be treated as arbitrary, discriminatory and an act of favouritism and/or nepotism violating the soul of the equality clause embodied in Article 14 of the Constitution.”

(emphasis added)

8 Needless to add that the procedure adopted for disposal of public property will cease to be fair if it is arbitrary or unreasonable which is violative of Article 14 of the Constitution of India.

9 As provided in Rule 13 of the said Rules of 1981, in respect of the tenements to be disposed of for residential use, the first respondent or MHADA is required to maintain reservations for various categories mentioned in Rule 13. One of the said reservations is for freedom fighters. The reservation is of 2.5%. The object is to ensure that the freedom fighters get residential tenements at a concessional rate.

10 In this petition, we are not concerned with any challenge to the reservation provided in Rule 13. For giving effect to the said reservation, if a scheme is floated by the first respondent which provides for allotment of tenements reserved for freedom fighters to the freedom

fighter themselves or to the legal representative or dependents of the deceased freedom fighters, perhaps, such a scheme will not infringe Article 14 of the Constitution of India.

11 We have already quoted Rule 2(d). There cannot be any dispute that dependent of freedom fighter means widow or widower, father, mother, son, etc. The very fact that the words “widow” or “widower” have been used by clause (d) shows that when the Rule refers to dependent of a freedom fighter, it refers to a freedom fighter who is no more. Otherwise, the framers of the Rules would not have referred to “widow” or “widower” of a freedom fighter.

12 The first part of the definition covers the freedom fighter himself or herself. Now the question is because there is a word “or” used in between the words “next-of-kin” and “dependent”, whether it can be said that even next-of-kin (blood relative) of a freedom fighter will become a freedom fighter within the definition of Rule 2(d) even when the concerned freedom fighter is alive. In other words, the question is whether the words used in Rule 2(d), “widow or widower” are the suffix of the words “dependent of such person” or of both the words the “next-of-kin” and “dependent of such person”. If the meaning which is sought to be given by the respondents is assigned, any blood relative of a freedom fighter will be empowered to claim that he is a freedom fighter within the meaning of the definition even during the lifetime of the freedom fighter. If such an interpretation is accepted, the meaning of “next-of-kin” will not remain confined to relationships mentioned in the subsequent part of the Rules starting with the word “widow” or “widower”.

13 If the interpretation put by the respondents is accepted, a blood relative (next-of-kin) of a freedom fighter irrespective of the nature of his relationship with the freedom fighter, will be entitled to claim that he or she is a freedom fighter within the meaning of clause (d) of Rule 2 even during the lifetime of the freedom fighter. The effect of that will be that any person claiming to be next-of-kin of a freedom fighter who is very much alive will be entitled to compete for allotment of tenements reserved for freedom fighters with the freedom fighters who are very much alive. If such an interpretation is accepted, the provisions of Rule 13 which provide for a reservation of 2.5% tenements for freedom fighters will become manifestly arbitrary inasmuch in the name of the reservation for freedom fighters, during their lifetime, a person who is related by blood to the freedom fighters will be entitled to seek allotment of the premises reserved for freedom fighters. It is well settled that by adopting rule of purposive interpretation, an endeavour of the Court should be to put such an interpretation which will save a statutory instrument from the vice of unconstitutionality. If the interpretation sought to be put by the respondents is accepted, the reservation provided for freedom fighters and the definition in clause (d) of Rule 2 will attract the vice of unconstitutionality. Therefore, we reject the interpretation put by the respondents and hold that the person who is covered by the categories of next-of-kin or dependent in the definition in clause (d) of Rule 2 of the said Rules of 1981 will be next-of-kin or dependent of a freedom fighter who is no more on the date on which the applications are invited for allotment of tenements reserved for freedom fighters.

14 In the present case, the freedom fighter through whom the second respondent is claiming is very much alive. Therefore, going by the interpretation which we have put to Rule 2(d), the second respondent was ineligible. There is one more factor which we must mention which may not be conclusive but is relevant. Even the document of the first respondent containing instructions to those who intended to participate in the process of allotment (page 35 of the petition) proceeds on the footing that next-of-kin of a deceased freedom fighter will be entitled to apply. Accordingly, the petition must succeed and the impugned order deserves to be quashed and set aside.

15 As a consequence of setting aside the impugned order, the first respondent will have to consider the case of the petitioner for eligibility and if the petitioner is held to be eligible, necessary steps will have to be taken for allotment of the reserved tenement to the petitioner.

16 Accordingly, we pass the following order :-

ORDER

- (i) Rule is made absolute in terms of prayer clause (a);
- (ii) Within a period of one month from the date on which this order is uploaded, the first respondent shall consider whether the petitioner is otherwise eligible for allotment of a tenement. If the petitioner is found to be eligible, within a period of two months from the date on which this judgment and order is uploaded, steps shall be taken for

allotment of a tenement reserved for freedom fighters to the petitioner subject to the petitioner complying with all material terms and conditions;

- (iii) Rule is made absolute on above terms;
- (iv) All concerned to act upon an authenticated copy of this order;
- (v) On the prayer made by the respondents, the execution and operation of this judgment and order will remain stayed for a period of two months from the date on which the said order is uploaded.

(M.S. SANKLECHA, J.)

(A.S.OKA, J.)