

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY****ORDINARY ORIGINAL CIVIL JURISDICTION****WRIT PETITION NO.1700 OF 2018**

Renu Vijay Rathod And Anr.

....Petitioners

vs

The State of Maharashtra And 2 Ors.

...Respondents

.....

Mr. Ram U. Singh, a/w. Mr. Vasant Rajnale, i/b. G.C. Mehta and Associates, for the Petitioners.

Mr. S.B. Gore, AGP, for Respondent No.1.

Ms. Manisha S. Jagtap, for Respondent Nos. 2 and 3 – MHADA.

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**CORAM : S.C. GUPTE, J.****DATED: 1 APRIL 2019****P.C.:**

. Heard learned Counsel for the parties. This writ petition challenges an order passed by Joint Chief Officer of MHADA on 19 April 2018, cancelling allotment of a MHADA tenement in favour of Petitioner No.1. The allotment was cancelled for breach of Regulation No.9 of Maharashtra Housing and Area Development (Estate Management, Sale, Transfer and Exchange of Tenements) Regulations, 1981. Regulation 9 provides that no person shall be eligible to apply for any MHADA tenement in a municipal area where he or his/her spouse or any of his/her minor children owns a house or a flat or a residential plot of land or holds on a hire-purchase basis or outright sale basis or on a rental basis from MHADA, as the case may be. According to the Joint Chief

Officer of MHADA, on the date Petitioner No.1 made her application for allotment, her husband was owning a tenement allotted by MHADA, building, namely, Flat No.1714, Building No.17, Prathmesh Cooperative Housing Society Ltd. at Goregaon East in Mumbai. The Petitioners' case is that Flat No.1714, referred to above, was allotted to the husband of Petitioner No.1 in the year 1994 and that it was sold by the Petitioner's husband sometime in the year 2004. It is submitted that Petitioner No.1, thereafter, made an application on 13 April 2005 for allotment of a new flat under a middle income group scheme of MHADA. In pursuance of a lucky draw held on 14 June 2005, Petitioner No.1 was declared successful and was allotted a tenement, being Flat No.204, in Building No.8 at Malad, Mumbai. She, thereafter, made an application for exchange of this flat with Flat No.504, 5<sup>th</sup> floor, Building No.9-B, New Dindoshi Nisarg Co-operative Hsg. Society Ltd., MHADA Complex, Malad (East), on payment of necessary exchange charges. The exchange flat was allotted to her. It is submitted that, thus, on the date she made her application for allotment, neither she nor her spouse had any MHADA tenement in her or his name.

2. The Petitioners rely on an agreement registered on 27 February 2015, which, *inter alia*, records that in the year 2004, the husband of Petitioner No.1 had put the purchaser in exclusive use and possession of Flat No.1714, Building No.17, Prathmesh Co-operative Housing Society, Goregaon East. The agreement also records that the purchaser had paid to the vendor a sum of about Rs.10 lakhs towards consideration for the flat. It is not possible to believe that this flat was dealt with by the husband of Petitioner No.1 in 2004; that in the year

2004 itself, he received full consideration in cash for this flat; and that in 2004, he put the purchaser in exclusive use, occupation and possession of the flat. If he had done so, there is no explanation why it took the parties 11 years to enter into an agreement or register the same. The case of MHADA, which was accepted by the Joint Chief Officer, that in the year 2005, when application was made for tenement, in pursuance of which Flat No.504, Building No.9-B, New Dindoshi CHS Ltd. was allotted to Petitioner No.1, her husband owned a tenement, namely, Flat No.1714, Building No.17, Prathmesh Co-operative Housing Society Ltd., Goregaon East, Mumbai, is clearly believable and the conclusion of the Joint Chief Officer does not indicate any perversity. The impugned order of the Chief Officer has been passed on a fair assessment of the material and the cancellation of allotment of the second flat, namely, Flat No.504, 9-B, New Dindoshi CHS Ltd. in favour of Petitioner No.1 does not suffer from any infirmity calling for a judicial review under Articles 226 or 227 of the Constitution.

3. There is, accordingly, no merit in the petition. The petition is dismissed.

**( S.C. GUPTE, J. )**