

pmw

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

WRIT PETITION NO.2177 OF 2017
WITH
CHAMBER SUMMONS (L) NO.165 OF 2018

Anil Mahadeo Jaitapkar	... Petitioner
Vs.	
The State of Maharashtra and Ors.	... Respondents

Mr. A.Y. Sakhare, Senior Counsel for the Petitioner.
Mr. G.W. Mattos, AGP for the Respondent Nos.1 and 4.
Ms. Aparna Murlidharan I/b. Mr. P.G. Lad for the Respondent Nos.2 and 3.
Mr. Kishor Patil for the Applicant in CHSWL/165 of 2018.

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

DATE : 12th MARCH 2019.

P.C. :

1 The petitioner was in the employment of Government of Maharashtra as a Security Officer. He was employed in Vidhan Sabha. On 6th August 2001, the petitioner was allotted a residential flat in Mulund at Mumbai under the 10% discretionary quota of the Hon'ble the Chief Minister. The allotment was at concessional price of Rs.1,52,114/-. The flat allotted to the petitioner was in building constructed by the owner of the land in implementation of the Scheme for housing for weaker sections as provided under the provisions of the Urban Land (Ceiling and

Regulations) Act, 1976. The said flat is hereinafter referred to as “the first flat”. An application was made in February 2008 by the petitioner to the Additional Secretary of the Urban Development Department seeking permission to sell the first flat. Accordingly, on 26th February 2008, a permission was granted to the petitioner to sell the flat subject to various terms and conditions including the condition of the petitioner giving an unconditional undertaking not to claim allotment of flat in 2% and 5% quota as well as any other Scheme. On the basis of the said permission, the petitioner submitted an undertaking on oath dated 7th March 2008 in which he had undertaken not to claim any flat under 2% or 5% Scheme or under any other scheme.

2 The petitioner was the Chairman of a proposed Co-operative Housing Society. On his application, the Maharashtra Housing and Area Development Authority (for short “MHADA”) constituted under the Maharashtra Housing and Area Development Act, 1976 made allotment of a plot to the said Co-operative Housing Society under Rule 16 of the Maharashtra Housing and Area Development (Disposal of Land) Rules, 1981 (for short “the said Rules”). Accordingly, a plot of land admeasuring 1260 square meters was allotted to the proposed society of which the petitioner was the Chairman. In fact, the petitioner is a signatory to the Supplementary Deed of Lease dated 2nd November 2005. In the letter of allotment dated 5th September 2001 it was mentioned that a person who was holding a premises either on ownership or lease basis in Mumbai was ineligible to become a member of the said Society. As per the finding recorded by this Court in judgment and order dated 16th December 2016

in Writ Petition (L) No.3128 of 2016 filed by the petitioner, the fact that the petitioner was ineligible was suppressed by him while applying and obtaining allotment of the plot. After obtaining allotment of plot on 21st February 2003, the petitioner in his capacity as the Chairman of the Society executed a development agreement in respect of the said plot. After development was completed on 5th April 2010, a flat admeasuring 56.20 square meters bearing Flat No.B-503 (for short “the second flat”) was allotted to the petitioner. We may note here that when allotment of the plot was made under the letter dated 5th September 2001, the petitioner was ineligible to become a member of the society inasmuch as the petitioner was already an allottee of a flat in 10% quota which was permitted to be sold in March 2008.

3 An order was made on 21st November 2016 by the Estate Manager of Mumbai Housing and Area Development Board constituted under the Maharashtra Housing and Area Development Act, 1976 (for short “the said Act of 1976”). By the said order, the petitioner was directed to forthwith vacate the second flat. It was this order which was subjected to a challenge in Writ Petition (L) No.3128 of 2016 which was dismissed by the aforesaid judgment and order dated 16th December 2016. While dismissing the petition, this Court held that the petitioner could not have become a member of the Society in which the second flat was situated. Though he was disqualified to become even a member, he initially acted as the Chief Promoter and thereafter, continued to act as the Chairman of the said Society. Going by the averments made in the petition, the said judgment and order has attained finality. Thus, the order calling upon the petitioner to vacate the second flat has attained finality.

4 On 7th March 2016, the petitioner made a representation to the Principal Secretary of the Housing Department. In the said representation, the petitioner contended that he was willing to pay Ready Reckoner price in respect of the second flat. The petitioner claimed that he was allotted the second flat in 2% quota. He contended that possession of the second flat should be regularised.

5 The prayer made in this petition under Article 226 of the Constitution of India is firstly to issue a writ of mandamus to apply the Government Resolution dated 11th September 2014 to the case of the petitioner. The second prayer is for challenging the notice dated 21st November 2016 which was challenged in the earlier petition and which challenge failed by virtue of the aforesaid judgment and order dated 16th December 2016. By way of amendment, a prayer was made for setting aside the action of the second and third respondents taken on 5th June 2017 of taking over forcible possession of the second flat. The last substantive prayer added by way of amendment is for issuing a writ of mandamus enjoining the State Government to take proper decision on the representation dated 27th June 2017 which is a similar representation to the one which we have referred earlier.

6 The learned senior counsel appearing for the petitioner invited our attention to Exhibit – R which is letter dated 11th September 2014 addressed by the Urban Development Department of the State Government to the Additional Collectors and Competent Authority of various Urban Agglomerations in the State. It refers to allotment of 5%

quota of flats in the buildings constructed by invoking various Schemes under the Urban Land (Ceiling and Regulations) Act, 1976 (for short “ULC Act”). He pointed out that in the said letter, it is mentioned that the possession of those allottees who were allotted two tenements in 5% Scheme should be regularised in respect of one tenement by taking Ready Reckoner value of the same from him. He pointed out that though affidavit-in-reply filed by MHADA records that representations made by the petitioner have been rejected, however, copies of the decisions are not provided to the petitioner. He submitted that in any event, the State Government has not rejected the said representation.

7 The learned senior counsel appearing for the petitioner tendered across the Bar a letter dated 11th June 2018 addressed by the Urban Development Department to District Collectors and Competent Authorities of various Urban Agglomerations in the State informing them about the policy decision taken by the concerned Sub-Committee of the Cabinet on 10th April 2018. It records a decision that if two flats have been allotted to anyone under 5% Scheme, in case of the second flat, Ready Reckoner price should be recovered from the allottee. It also records that offence registered against those who have obtained illegal allotment of two flats be withdrawn. The learned senior counsel submitted that the same policy decision will apply to the case of the petitioner.

8 We have carefully considered the submissions made by the learned senior counsel appearing for the petitioner. We have considered the documents on record and the affidavits. By the decision of this Court in the case of *Chandrabhan Sukhadeo Sangle Vs. Urban Development*

*Department and another*¹, this Court held that the Schemes of the State Government of allotting 2% and 5% or 10% quota of flats available to the State Government at concessional price was arbitrary and illegal and the State Government was restrained from making allotment under the said Schemes.

9 Now, coming back to the facts of the case, the petitioner was allotted the first flat in 5% quota at concessional rate. In the year 2008, the petitioner was permitted to sell the first flat subject to petitioner giving undertaking not to claim allotment of any other flat either in 2% or 5% Scheme or under any Scheme. By suppressing that he was allotted a flat in 5% quota, the petitioner as a Chief Promoter of a proposed Co-operative Housing Society applied for and obtained allotment of a plot of land from MHADA. The said allotment was made in the year 2001. The petitioner is a signatory to a Lease Deed in respect of the said plot executed in the year 2005 in his capacity as the Chairman of the said Society. He is a signatory to the development agreement in favour of the developer on 21st February 2003 as the Chairman of the Society. Eventually, he was allotted a flat in the said building in the year 2010. In the subsequent representations made by the petitioner for permitting him to retain the second flat, he has specifically stated that the allotment of the second flat was in 2% Scheme. Going by the admitted facts recorded in the judgment and order dated 16th December 2016 when the petitioner was allotted the second flat on 5th April 2010, the undertaking given by him in the year 2008 not to claim allotment in 2% or 5% Scheme or any other Scheme was very much binding on him. Still the allotment of second flat subject matter of this

petition was obtained by the petitioner on 5th April 2010 in breach of the undertaking and by suppressing the undertaking. Therefore, in the facts of the case, the petitioner could not have even applied for allotment of the second flat as he was bound by his own undertaking on oath and consequently, could not have been allotted the second flat. Moreover, by the order dated 21st November 2016 passed by the Estate Manager of the Mumbai Housing and Area Development Board, the petitioner was ordered to be evicted from the said flat. The said order has attained finality by virtue of the dismissal of his earlier petition by the aforesaid order dated 16th December 2016 and that is why the petitioner has been dispossessed. Going by the averments made in the petition, the petitioner has been dispossessed on 5th June 2017. The petitioner was dispossessed on the basis of a lawful order dated 21st November 2016 which was confirmed by this Court by the aforesaid decision. Therefore, no fault can be found with the same.

10 The petitioner has described the letter dated 11th September 2014, to which we have made a reference, as a Government Resolution. It is in fact a letter addressed to the Competent Authorities of all the Urban Agglomerations which records regularisation of possession of certain allottees who were allotted flats in 5% Scheme.

11 The policy decision which is reflected in letter dated 11th June 2018 which is taken on record and marked as 'L1' provides that even if two residential flats are illegally allotted in 2% or 5% Scheme, the possession of the second one should be regularised by taking Ready Reckoner value. Allotment of second flat in either 2% or 5% Scheme is

illegal. Now, the Government is providing for regularising such possession by taking Ready Reckoner value. The said action is completely contrary to the law laid down by the Apex Court in the case of *Akhil Bhartiya Upbhokta Congress v. State of M.P.*², wherein the Apex Court reiterated well settled law that allotment of any public property has to be made in a fair, reasonable and transparent manner. By adopting such a policy, the State Government is disposing of illegally allotted flats to the beneficiaries of the illegal allotment without following a fair and transparent procedure.

12 Apart from this, in the facts of the case, the petitioner was prevented by his own undertaking on oath even from applying for allotment of the second flat. In fact, the order of cancellation of the second flat has been confirmed by this Court by the aforesaid decision.

13 Apart from the fact of illegality of the decision of the State Government which is reflected from letter dated 11th June 2018, the conduct of the petitioner is such that he is dis-entitled to any relief. It is well settled that jurisdiction of this Court under Article 226 of the Constitution of India is equitable and discretionary. Hence, no relief can be granted to the petitioner. The petition is rejected.

(M.S. SANKLECHA, J.)

(A.S.OKA, J.)