

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

WRIT PETITION NO. 161 OF 2017

Pandurang S/o Shankar Sanas
Age 56 years, Occ. Service,
R/at 'Pradip Smruti', Ground Floor,
Room No. 101, Mahagiri Koliwada,
Thane (Ekvira Mitra Mandal),
Thane (W) – 400 601

.. Petitioner

v/s.

1. The State of Maharashtra
Through Government Pleader,
High Court Bombay, Mumbai
2. Maharashtra Housing and Area
Development Authority,
Having office at 'Griha Nirman Bhawan',
Kalanagar, Bandra (E),
Mumbai – 400 051
Through its Chief Officer
3. Maharashtra Housing and Area
Development Authority,
Having office at 'Griha Nirman Bhawan',
Kalanagar, Bandra (E),
Mumbai – 400 051
Through its Deputy Chief Officer (Marketing)
4. Maharashtra Housing and Area
Development Authority,
Having office at 'Griha Nirman Bhawan',
Kalanagar, Bandra (E),
Mumbai – 400 051
Through its Executive Engineer and
Appellate Authority

5. Mumbai Zilla Madhyavarti Sahakari Bank
Maryadit, 'Mumbai Bank Bhavan',
207, Dr. D.N. Road, Fort,
Mumbai – 400 001
Through its General Manager
6. Assistant Registrar, Co-operative Societies
Mumbai Zilla Madhyavarti Sahakari Bank
Maryadit, 'Mumbai Bank Bhavan',
207, Dr. D.N. Road, Fort,
Mumbai – 400 001
7. Special Recovery & Sales Officer,
Co-operative Societies, Maharashtra State
Mumbai Zilla Madhyavarti Sahakari Bank
Maryadit, 'Mumbai Bank Bhavan',
207, Dr. D.N. Road, Fort,
Mumbai – 400 001

.. Respondents

Mr. V.R. Patil for the petitioner

Mr. P.G. Lad a/w Ms. Aparna Murlidharan and Ms. Sayli Apte for the
respondent – MHADA

Mr. M.A. Sayed, AGP for the respondent – State

**CORAM : A.S. OKA &
M.S. SANKLECHA, J.J.**

DATED : 16th APRIL, 2019

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

1. Heard the learned Counsel for the parties. Rule. The learned
Counsel for the respondents waives service. Rule is made returnable
forthwith.

2. The Submissions of the learned Counsel appearing for the parties were heard on the earlier date. This petition concerns allotment of a tenement to the petitioner who was working in Morarji Gokuldas Spinning and Weaving Mill (for short "the said Mill). The said Mill was the victim of the strike declared by all the Textile Mills Workers in Mumbai in January, 1982. As in case of several Textile Mills in the city, this Mill closed down.

3. As per Regulation 58 of the Development Control Regulations for the city of Mumbai of the year 1991, the property of the said Mill was put to development. As per the provisions of Regulation 58, the Mill workers were entitled to allotment of residential tenement in the re-developed property subject to satisfying eligibility criteria.

4. The petitioner is relying upon a letter dated 30th September, 2012 which is styled as First Intimation of allotment of Tenement. It records that a draw was conducted on 28th June, 2012 for allotment of residential tenements in the re-developed property of the said Mill. The letter records that the petitioner's application has been accepted in the said Lottery and the petitioner's name appears at Serial No.317 of the order of priority in the list of successful candidates. Two

qualifications / criteria were incorporated in the said letter of allotment. The first one was that the Mill worker or his family members should not be residing in a chawl / structure constructed on the land of the Mill. The second one was that the worker must be working in the Mill on 1st January, 1982 or thereafter. By the said letter, the petitioner was called upon to submit the documents. According to the case of the petitioner, requisite documents were submitted. After the submission of documents, on 30th May, 2013 a provisional offer letter was issued to the petitioner. The First Intimation of allotment of Tenement and the provisional offer letter were issued by the Mumbai Housing and Area Development Board (for short “the said Board”) which is a unit of Maharashtra Housing and Area Development Authority, established under the Maharashtra Housing and Area Development Authority Act, 1976 (for short “the said act of 1976). In the provisional letter of offer, the petitioner was informed that the competent Authority of the said Board after scrutiny of the documents has held the petitioner to be eligible and accordingly, he has been allotted Gala No.1811 in Building No.1/B-Kandivali, admeasuring about 225 sq.ft. A tentative price of Rs.7,50,000/- was also mentioned in the said provisional offer letter.

5. The petitioner applied to the fifth respondent for sanction of the loan. Accordingly, the said respondent sanctioned a loan of Rs.6,75,000/-. The petitioner is relying upon the letter of allotment, a copy of which is annexed as Exhibit-E to the petition. According to the case of the petitioner, there is a mark of franking of date i.e. 19th December, 2013 on the said document. According to the petitioner, it records that the petitioner has paid the requisite amount.

6. The case of the petitioner is that the actual possession of the allotted tenament was not handed over to the petitioner as he did not fulfill the demand of illegal gratification made by the concerned Officers. In fact, the petitioner's case is that on 7th January, 2014, he filed a complaint with Anti Corruption Bureau.

7. On 25th September, 2014, the said Board issued a letter to the petitioner informing the petitioner that he is held to be ineligible. We must note here that there is no dispute between the parties that out of the seven reasons of ineligibility mentioned in the said letter, only one reason is applicable to the petitioner; namely clause 2.4 which records that there is no evidence produced by the petitioner to show that he was working in the said Mill for continuous period of 240 days. This

letter is the subject matter of challenge in this petition. According to the case of the petitioner, he preferred an appeal for challenging the said letter. The appeal was rejected by the Deputy Chief Officer of the said Board by the communication dated 18th June, 2014.

8. The petitioner has relied upon the proceedings initiated by the fifth respondent for recovery of the loan. As the petitioner stopped paying installments, recovery proceedings were initiated under Section 101 of the Maharashtra Co-operative Societies Act, 1960. The petitioner could not pay the outstanding amount as per the demand notice dated 20th June, 2016. Therefore, the petitioner's residential premise has been attached. In this petition, there is also a challenge to the Recovery Certificate issued in favour of the fifth respondent – bank and further action taken on the basis of the Recovery Certificate.

9. The submission of the learned Counsel appearing for the petitioner is that even in the First Intimation of allotment of Tenement, the condition of working in the concerned Mill for a continuous period of 240 days was not incorporated and only condition which was incorporated relating to the service was that the concerned worker, who is selected in a draw, should be employed with the Mill as on 1st

January, 1982 or thereafter. His submission is that the condition regarding continuous working for a period of 240 days is later on invented by the respondents.

10. The learned Counsel appearing for the second to fourth respondents relied upon the affidavit of Shri. Kiran S. Kasne, Deputy Chief Officer of the said Board. He pointed out a Government Circular dated 3rd August, 2012 which is annexed to the said affidavit. He pointed out that the petitioner has not fulfilled the requirement of producing evidence to show that he was serving in the said Mill for a continuous period of 240 days and, therefore, the petitioner is ineligible. He also invited our attention to the copy of the order passed on the appeal preferred by the petitioner. He, therefore, submits that no interference is called for especially when refund of Rs.7,50,000/- was received by the petitioner.

11. We have considered the submissions. Firstly, we must refer to the first intimation of allotment of a tenement, which admittedly does not incorporate a condition that the Mill worker should have worked continuously for a period of 240 days in the concerned Mill. We had called upon the learned Counsel appearing for the second to fourth

respondents to produce the file. There is a document on record showing that the said Mill issued a certificate to the petitioner that he was working in the Weaving Department as Learner Weaver from 6th July, 1981 to 15th January, 1982. As noted earlier, not only that the First Intimation of allotment of Tenement dated 13th September, 2013 was issued to the petitioner but a provisional offer letter dated 30th May, 2013 was also admittedly issued to the petitioner. The said letter specifically records that according to the documents submitted by the petitioner, he was found to be eligible and in fact the description of the premises allotted to him has also been incorporated in the said letter. The documents annexed to the petition show that the loan was sanctioned to the petitioner by the fifty respondent – bank and the petitioner availed of the said loan. The petitioner is relying upon the allotment letter, a copy of which is annexed as Exhibit-E to the petition. By the first impugned communication dated 25th September, 2014, the Deputy Chief Officer, Marketing (of the said Board) informed the petitioner that he was ineligible as he has not produced any documents to show that he has worked for continuous period of 240 days in the said Mill. Surprisingly, such a condition is not mentioned in the First Intimation of allotment of Tenement dated 13th September, 2012. The said condition is invented two years after the said letter was served

upon the petitioner. Not only that, the provisional offer letter dated 30th September, 2013 clearly records that after scrutiny of the documents submitted by the petitioner, he was found to be eligible.

12. Though the second to fourth respondents have filed affidavit-in-reply, they have not filed on record any contemporaneous document to show that any time before the draw was conducted on 28th June, 2012 and till the letter of provisional offer dated 30th September, 2013 was issued, the petitioner was made aware about the alleged condition of continuously working of 240 days in the Mill. As stated earlier, the said condition is invented two years after the First Intimation of allotment of Tenement was issued and more than one year after the provisional offer letter making an allotment of the specific tenement was issued. Even a copy of an advertisement pursuant to which the petitioner applied for allotment is not produced to show that such a condition was incorporated therein.

13. Reliance is placed in the affidavit-in-reply on the Government Circular dated 3rd August, 2012. We have carefully perused the said Circular. It is not a Government decision. It merely records that after holding deliberations with the Union, the procedure for scrutiny of the

documents submitted by the workers who were successful in draw was finalized. The circular reproduces the agreed procedure for the scrutiny of documents. In the said Circular, there is a reference to the requirement of having working for continuous period of 240 days in the Mill. There is no policy decision taken by the State Government to that effect which is placed on record. Similarly, no such decision taken by the second respondent or the said Board is placed on record.

14. It will be necessary to make a note about the manner in which the appeal preferred by the petitioner has been decided by the Appellate Authority of the said Board. A copy of the proceedings of the appeal has been annexed to the affidavit-in-reply. It records that the Assistant Labour Commissioner has declared the petitioner as ineligible. The Appellate Authority further mentioned that the responsibility of determining the eligibility of Mill workers is of the Labour Department. As per the decision of Assistant Labour Commissioner, the petitioner has been found to be ineligible. There is no finding recorded by the Appellate Authority that there was a decision of the competent Authority laying down a criteria of working for continuous period of 240 days. Thus, the order of the Appellate Authority shows complete non-application of mind. We, therefore, hold that the petitioner cannot

be held to be ineligible on the basis of the condition invented subsequently. Hence, he is entitled to an allotment of the flat / Gala.

15. Now we turn to the stand taken by the learned Counsel for the respondents that the refund amount has been transferred to the petitioner's bank account by the said Board. Certain documents have been annexed to the reply in support of the said contention at Exhibit-D. The first document is a letter dated 4th October, 2016 addressed by the Assistant Accounts Officer of the said Board to the Chief Manager of Bank of Maharashtra, Bandra (E), Mumbai. It records instructions to the said bank to transfer a sum of Rs.6,75,000/- in the account of beneficiary as per the annexure to the said letter. The annexure to the said letter mentions the name of the petitioner and the account details of the petitioner. Apart from the fact that any document showing actual transfer of the refund amount of Rs.6.75 lakhs by the said Board to the account of the petitioner is not produced, it is an unilateral act on the part of the said Board. It is pertinent to note that according to the said Board, the amount was directed to be transferred as late as on 4th October, 2016. There is nothing placed on record by the respondents to show that the amount was transferred after intimation to the petitioner and after obtaining consent of the

petitioner. Therefore, even assuming that there is such an unilateral transfer of the amount, it will not defeat the rights of the petitioner.

16. The second part of the challenge is to the action taken by the fifth respondent for recovery of loan amount. Admittedly, a loan was taken by the petitioner from the fifth respondent and, therefore, it is difficult to find fault with the action of recovery only on the ground that allotment of the flat was not made to the petitioner. Admittedly, the petitioner availed the loan facility. Therefore, no relief can be granted in terms of the prayer made against the bank.

17. Therefore, the petition must succeed in part and we pass the following order :-

ORDER

(i) The impugned communication dated 25th September, 2014 (Exhibit-F to the petition) and the order of the Appellate Authority of the said Board are hereby quashed and set aside;

(ii) As the petitioner fulfilled the eligibility criteria as mentioned in the First Intimation of allotment of Tenement dated 13th September, 2012, we direct the second to fourth respondents

to allot Gala No.1811, more particularly described in the provisional offer letter dated 30th May, 2013 (Exhibit-B to the petition) to the petitioner and place the petitioner in possession thereof within a period of two months from the date on which this order is uploaded;

(iii) If the amount of consideration paid by the petitioner is already received back by him, he will re-deposit the said amount with the concerned Authority of the second to fourth respondents within a period of one month from the date on which this order is uploaded;

(iv) In the event, the said Gala No.1811 has been already allotted to a third party, a similar Gala having the same area shall be allotted by the second to fourth respondents to the petitioner within a period of two months from the date on which this order is uploaded;

(v) Needless to add that the petitioner will have to comply with all procedural requirements such as execution of agreement, registration thereof etc.;

(vi) The prayers made regarding quashing the recovery proceedings initiated by the fifth to seventh respondent are rejected;

(vii) Rule is made partly allowed in the above terms. No order as to costs.

(M.S. SANKLECHA, J.)

(A. S. OKA, J.)