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

WRIT PETITION NO. 2711 OF 2018

Upendra Lallubhai Shah .....Petitioner
v/s.
The Maharashtra Housing and Area
Development Authority (MHADA) & Ors. .....Respondents

Mr. Y.S. Jahagirdar, Sr. Advocate a/w. Jai Kanade i/b. Sanjukta Dey for petitioner.
Dr. Milind Sathe, Sr. Advocate a/w. Kamlesh Ghumre and Sonali Jadhav for respondent nos.1 to 3.
Mr. Venkatesh Dhond i/b. Aarti Dandekar for R.No.4.

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CORAM: B.P. DHARMADHIKARI AND
SMT. ANUJA PRABHUDESSAI, JJ.

DATE : 12th FEBRUARY, 2019

P.C.:

. Heard respective learned senior advocate. The matter is considered in the back drop of judgment dated 25/08/2016 delivered by this Court in AOST No.29476/2015 with connected matters as also the impugned order dated 04/09/2017.

2. As controversy arising for our determination is very limited, we do not find it necessary to reproduce the facts.

3. Contention of learned senior advocate Mr. Y.S. Jahagirdar is that show cause notice issued after the judgment of this Court is not in tune with the observations in judgment and the respondent no.1-MHADA while passing impugned order on 04/09/2017, has over looked the basic contention of petitioner. He submits that alleged cancellation of allotment way back in 2011 has not been evaluated in the light of contentions raised, mechanically that cancellation has been upheld and exercise of the fresh allotment has been undertaken.

4. Respective senior advocates appearing for respondent nos.1 to 3 and respondent no.4 support the impugned order. They submit that show cause was given to petitioner pointing out that exercise to be undertaken was of re-allotment and hence all steps towards that object formed subject matter of consideration. Accordingly, after proper show cause notice and opportunity of hearing, the impugned order has been passed.

5. Perusal of judgment dated 25.08.2016 delivered by this Court, particularly paragraph 7, narrates the grievance of the present petitioners. They have claimed that there was no cancellation of allotment in their favour and unless and until that allotment is

cancelled in accordance with the law, exercise of re-allotment could not have been undertaken. The defence of respondent no.1-MHADA is also mentioned in paragraph 19 of that judgment.

6. It is in this backdrop that in paragraph 43, learned Single Judge of this Court clarifies that MHADA was at liberty and free to adopt due process of law for re-allotment of the plots. The Court has also clarified that all its observations were only for the purpose of deciding appeal against order and it was open for MHADA to arrive at its own conclusions. This Court therefore used the words 're-allotment' which encompasses the entire process right from cancellation of earlier allotment if any, and thereafter, fresh allotment. In the light of this order while issuing show cause notice on 30/11/2016, the said authority has again pointed out its desire to adopt due process of law for “re-allotment”. Thus all contentions being raised by parties in Appeal from Order were open and could or should have been looked into by respondent no.1.

7. However, when respondent no.1 has passed impugned order dated 04/09/2017, validity of exercise of cancellation of allotment in favour of petitioners in 2011 has not been gone into. The petitioners

are therefore justified in complaining that the decision to re-allot has been taken without examining the issue whether in 2011 petitioners were given proper opportunity and a decision to cancel was then reached in 2011 after following rules and principles of natural justice.

8. Learned senior advocate for respondent no.1 has pressed into service the observations of respondent no.1 in paragraph 6 of the impugned order. These observations at the most bring on record the alleged wrongs committed by petitioners in 2011. However, it does not bring on record the adoption of due process by respondent no.1 due to those defaults before reaching the decision to cancel the allotment.

9. In this situation, we quash and set aside the impugned order dated 04/09/2017. We direct petitioners and respondent no.4 to appear before respondent no.1 on 01/03/2019. On that day or on any other date thereafter as per its convenience, respondent no.1 shall hear parties and take fresh decision in accordance with the law within next six weeks. With these directions, we partly allow Writ Petition with no order as to costs. Needless to mention that all other contentions of the parties are kept open.

(ANUJA PRABHUDESSAI, J.) **(B.P. DHARMADHIKARI, J.)**