

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

WRIT PETITION NO. 1701 OF 1997

Foreshore Co-operative Housing
Society ... Petitioners.

V/s.

The State of Maharashtra and anr. ... Respondents.

WITH

WRIT PETITION NO. 2181 OF 2016

WITH

CHAMBER SUMMONS NO.226 OF 2016

Samata Co-operative Housing
Society Ltd. (Formerly known as
Foreshore Co-operative Housing
Society Ltd.) and anr. ... Petitioners.

V/s.

The State of Maharashtra and ors. ... Respondents.

Mr. Milind Sathe, Senior Advocate I/b Madekar and Co. for the
Petitioners in both petitions.

Mrs. Jyoti Chavan, AGP for the Respondents – State in WP
No.1701 of 1997.

Mr. A.L. Patki, Addl. G.P. for the Respondents – State in WP
No.2181/2016.

CORAM : R.M. BORDE AND V.L. ACHLIYA, JJ.

DATE OF RESERVING THE JUDGMENT : 23th January 2019.

DATE OF PRONOUNCING THE JUDGMENT : 30th January 2019

COMMON JUDGMENT: (Per R.M. BORDE, J.)

1] Heard Mr. Milind Sathe, learned Senior Advocate for the
petitioners in both the petitions, Mrs. Jyoti Chavan, learned AGP

for the respondents – State in Writ Petition No. 1701 of 1997 and Mr. A.L. Patki, Addl. G.P. for the respondents – State in Writ Petition No. 2181 of 2016.

2] Both these petitions are presented by the same petitioner i.e., Samata Co-operative Housing Society Ltd., which was formerly known as Foreshore Co-operative Housing Society. Though Writ Petition No. 1701 of 1997 is presented by Foreshore Cooperative Housing Society, the name of the Society has undergone change during pendency of the petition and as such, the second petition, i.e., Writ Petition No. 2181 of 2016 is presented by the said Society in the name of Samata Co-operative Housing Society Ltd..

3] On 2nd February 1998, Rule was issued in Writ Petition No.1701 of 1997. Since the issues are interlinked and the petitioner Society is common in both these petitions, the petitions are being disposed of by common judgment and order.

4] The State Government, considering the request made by the petitioner Society, initially communicated its decision to allot plot Nos.2 and 3 from Queens Barracks area to the petitioner Society. In view of communication dated 15th October 1981, it was also informed that the terms of lease will be discussed, settled and communicated in due course. The State Government

communicated its decision to fix the valuation of the land leased to the petitioner Society at the rate of Rs.1050/- per square meter and to fix the rate of lease rent at 6^{1/2}% per annum by communication dated 21st January 1990.

5] The allotment made to the petitioner Society of plot of land and the decision dated 21st January 1990 were challenged before this Court in a Public Interest Litigation (Writ Petition No. 659 of 1990) and this Court had by its judgment and order dated 17th August 1990 set aside the reduction allowed by the State Government in the lease rent from 8% to 6.5% on the basis of market value of Rs.1050 per sq. meter instead of Rs.2280/- per sq. meter. The matter was carried to the Hon'ble Supreme Court by both the parties and the Hon'ble Supreme Court by an order dated 1st February 1991 confirmed the decision of this High Court. However, the Hon'ble Supreme Court granted liberty to the petitioner Society to apply to the Government afresh for reconsideration of the original rent fixation and it is observed that if Housing Society presents an application, it would be open to the Government to deal with it and dispose of the same in accordance with law. Accordingly, the petitioner Society made such applications on 13th March 1991 and 11th March 1993. The said applications were rejected by the order impugned in the first petition. The decision has been rendered by the State Government without extending an opportunity of being heard to the petitioner Society.

6] The question that has been raised in the first petition, i.e., Writ Petition No. 1701 of 1997 is as to whether the rent for the subject plot should be charged at 8% of the market value fixed at Rs.2280/- per sq. meter or it should be 6.5% of the market value fixed at Rs.1050 per sq. meter and as to whether such rent should be charged with effect from 16th November 1983 when a portion of land (2629 meters) was handed over or whether it should be from 23rd November 1984 when balance portion of land (900.46 sq. meters) was handed over.

7] It is not a matter of controversy that the decision rendered by the State Government of rejecting the applications tendered by the petitioner Society is without extending an opportunity of hearing to the petitioner Society. Since we are of the opinion that the State Government ought to have extended an opportunity of hearing to the petitioner Society to raise its contentions and thereafter should have proceeded to decide the application, we do not deem it necessary to serialize the grounds on which the petitioner Society claim the reliefs as regards reduction in the lease rent or as regards merits and demerits of those contentions.

8] The demand notice issued by the respondents on 7th June 2016 and further demand notice dated 25th November 2016 during pendency of the first petition necessitated the presentation of another petition bearing Writ Petition No. 2181 of 2016 by the

petitioner Society. A demand has been made claiming separate rent for commercial user of the subject plot. In view of demand notice dated 25th November 2016, earlier demand notice dated 7th June 2016 has been withdrawn. By virtue of demand notice dated 7th June 2016, the petitioner Society has been called upon to pay sum of Rs.7.20 crores (approximately) for commercial user of 15% of the plot area during the period between 1st October 1989 to 30th September 2004 at 15% rate and from 1st October 2004 to 31st May 2016 at 10.25% rate of the Ready Reckoner value. For raising demand, the area put for commercial user to the extent of 448.74 sq. meters is considered as imaginary area computed at 15% of the total plot area. During pendency of the petition, as has been recorded above, in view of demand notice dated 25th November 2016, the respondents proceeded to withdraw earlier demand notice dated 7th June 2016 and claimed the amount of Rs.4.40 crores (approximately) calculated in respect of user of commercial area for the period between 1st October 1989 to 8th July 1999 and 9th July 1999 to 31st December 2016. The orders/demands impugned in the second writ petition relate to fixation of rate for commercial user of the portion of the property.

9] It is recorded in the demand notice itself that it is based on an imaginary area calculated at 15%, whereas according to the petitioner Society, the actual area put for commercial user is less. The petitioner Society have not been extended an opportunity of hearing before fixation of rent for commercial user. It was

incumbent upon the respondents to extend an opportunity of hearing to the petitioner Society before fixation of the rent for area put to commercial user. The petitioner Society has raised the question as to whether there is any liability for such additional payment for commercial user either in law or in terms of allotment or as per Government Resolution (for short "G.R.") dated 14th June 1988 and 7th September 2007. According to the petitioner Society, if the liability exists, then what would be quantum of such liability and for which area the liability shall relate, i.e., whether actual area put for commercial use or 15% of the plot area shall have to be determined. The respondents shall have also to determine the duration of such liability or the duration during which such liability be computed. The petitioner Society has also questioned the competence of the Collector to take such decisions. It shall have to be determined whether the State Government needs to take decision in view of the orders of the Hon'ble Supreme Court and the relevant provisions of Maharashtra Land Revenue Code, 1966 as well as on the consideration of the Government Resolutions and the communications made to the petitioner Society.

10] It has not been disputed before us that the demands have been raised by respondent No.2 based upon certain adverse findings recorded by Controller and Auditor General (CAG). It has been pointed out that no additional rent had been determined or demanded by the respondent No.1 – State Government which was

required to be prescribed as an additional rent. According to the petitioner Society, since no additional rent ever has been prescribed by the respondent No.1, there is no question of any additional valuation being done as per G.R. dated 14th June 1988 and that too by application of commercial user charges, even though purported Ready Reckoner Rates were never considered by respondent No.1. It is also contended that said G.R. is not applicable to the present case. The additional rent is required to be prescribed by the State Government as set out in the permission granted by it dated 28th January 1987 and such permission, in any event, is much prior to the G.R.. There are several other objections raised in the petition as well as in the additional affidavit presented in Writ Petition No. 2181 of 2016. It is desirable that the objections raised in the matter shall be dealt with by the respondent - State Government after extending an opportunity of hearing to the petitioner Society.

11] It is also contended by the petitioner Society that the respondents have not completed the allotment of plot of land in view of G.R. dated 25th October 1983 and have not executed necessary lease documents and the directions in that regard shall be issued. The petitioner Society contend that vide G.R. dated 12th December 2012, a policy decision has been taken as regards conversion of Class - 2 occupancy lands granted to Cooperative Housing Societies on ownership basis as set out in the said G.R.. It would be open for the petitioner Society to make an appropriate

application for conversion of their land tenure of holding from Leasehold to Class - 1 occupancy. If the petitioner Society tenders an application within specified period, the respondents shall decide it expeditiously.

12] For the reasons set out above, both these petitions stand disposed of with following directions:

(a) The communications dated 31st December 1994, 16th December 1995 and 13th December 1996 informing the decision of the State Government to the petitioner Society about rejection of their representations dated 13th March 1991 and 11th March 1993 regarding fixation of the lease rent at 6.5% at market value of Rs.1050 per sq. meter is set aside and the respondent – State Government through Principal Secretary, Revenue and Forest Department is directed to decide the aforesaid representations afresh, after extending an opportunity of hearing to the petitioner Society expeditiously;

(b) The demand notice dated 25th November 2016 made in respect of fixation of rent for commercial user of portion of the subject plot is also set aside and the Collector, Mumbai City is directed to decide the issue after consideration of the objections raised by the petitioner Society as regards their liability to pay demand, quantum of such demand, total period for which such liability can be imposed, if any, or any

other issue that would be raised by the petitioner Society after extending an opportunity of hearing to the petitioner Society expeditiously;

(c) The respondents are directed to take steps to complete allotment of plot of land under G.R. dated 25th October 1983 and to execute necessary lease documents in that behalf as expeditiously as possible and preferably within two months from today;

(d) If the petitioner Society tenders an appropriate application within a period of four weeks from today for conversion of their land tenure of holding from leasehold to Class-1 occupancy, the same shall be decided in accordance with law, as expeditiously as possible and preferably within two months from the date of tender of such application;

(e) If the State Government proceeds to impose any liability and raise demand adverse to the interest of the petitioner Society, such decision shall not be implemented for a period of eight weeks from the date of its communication to the petitioner Society so as to enable it to raise appropriate challenge before an appropriate forum;

13] In view of aforesaid directions, Rule is made absolute to the extent as specified insofar as Writ Petition No. 1701 of 1997 is concerned and Writ Petition No. 2181 of 2016 stands disposed of.

14] In view of disposal of Writ Petition No. 2181 of 2016, Chamber Summons No.226 of 2016 does not survive and the same is also disposed of.

15] There shall be no order as to costs.

(V. L. ACHLIYA, J.)

(R.M.BORDE, J.)