

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 8326/2019

PETITIONER : M/s. Sandeep Dwellers Private Limited,
through its Director Mr. Gaurav A. Agrawala,
having office at 3-C, "Gulmohar", Temple Road,
Civil Lines, Nagpur.

...VERSUS...

RESPONDENTS:

1. The State of Maharashtra, through Secretary,
Urban Development Department, Mantralaya,
Mumbai.
2. Nagpur Improvement Trust, through its
Chairman, Nagpur Improvement Trust,
Civil Lines, Nagpur.
3. The Chief Officer, Nagpur Housing and
Area Development Board (MHADA),
Civil Lines, Nagpur.
4. The State of Maharashtra, through Secretary,
Housing Development, Mantralaya, Mumbai.
5. Nagpur Municipal Corporation, through its
Commissioner, Civil Lines, Nagpur.

Shri Kartik Shukul, Advocate for petitioner
Shri A.A.Madiwale, AGP for respondent nos.1 and 4
Shri G.A.Kunte, Advocate for Respondent No.2
Shri PPKothari, Advocate for Respondent No.3

**CORAM : SUNIL B. SHUKRE AND
AVINASH G. GHAROTE, JJ.**
DATE : 01/12/2020.

ORAL JUDGMENT (PER : SUNIL B. SHUKRE, J.)

.1] Heard the respective counsel for the parties.

2] Rule. Rule made returnable forthwith. Heard finally with the consent of the learned Counsel for the parties.

3] The petitioner is a project proponent, who has in compliance with the requirement of notification dated 08.11.2013, as modified vide notification dated 03.09.2015, developed 13 portions of the plots for the purpose of making available the tenements constructed thereon to the beneficiaries under affordable housing scheme. The notification dated 08.11.2013 r/w notification dated 03.09.2015 envisages the prescribed procedure to be followed for allotment of the tenements. The procedure as applicable in the present case would be found in paragraph 2(c) of the notification dated 08.11.2013.

4] In this procedure, upon receipt of intimation regarding completion of the affordable housing tenements from the project proponent, a duty has been cast upon MHADA i.e. respondent No.3

here, to either purchase such affordable housing tenements or allot such tenements to the allottees selected through a lottery scheme within a period of six months and then the developer would be required to dispose of such tenements to MHADA or such allottees, as the case may be, at the construction rates in the ASR applicable to the land under the Scheme, on the date of grant of Occupation Certificate to such affordable housing tenements.

5] In the year 2016, however, there was a proposal which was published through notice dated 08.02.2016 for modification of the said regulation applicable to Inclusive Housing Scheme and this proposal was accepted when notification to that effect was published In Official Gazette on 27.02.2018. The effect of the modification was that the duty cast upon MHADA, which is in the nature of option, to purchase the completed tenements, was taken away and what was required to be done by MHADA was to make allotment through lottery scheme within a period of six months from the date of intimation regarding commencement of construction of the affordable tenements. There was no option left out for MHADA to make purchase of the tenements.

6] It is the contention of Shri Shukul, the learned counsel for the petitioner that such modification in the notification dated 08.11.2013 r/w notification dated 03.09.2015 cannot have any retrospective effect and therefore, in so far as the scheme of the petitioner is concerned, MHADA would be obliged to either purchase these tenements or to make its allotments by adopting lottery system. He further submits that it cannot be countenanced in law when the MHADA says that the present day situation is quite different where there are no takers for the immovable property and therefore, MHADA would like to wait till such allottees are available. In any case, as per settled law, it is further submitted that the modification which takes effect from 27.02.2018 cannot have any retrospective effect so as to affect the scheme of the petitioner.

7] The learned AGP submits that the reply filed on behalf of respondent No.1 is quite elaborate and although, on the date of sanction of the building permit, the scheme of the petitioner was governed by the notification dated 08.11.2013 r/w notification dated 03.09.2015, due to subsequent development, the scheme of

the petitioner would be covered by the modified notification dated 27.02.2018.

8] Shri Kothari, the learned counsel for respondent No.3 submits that there could be no dispute about the principle of law that any modification made to the notification, subsequently cannot take any retrospective effect unless it is so expressly provided for in the notification modifying the previous one. He submits that in the present case there is no such express provision. However, he further submits that in so far as the position of respondent No.3 is concerned, the respondent No.3 would have to go by the modified notification dated 27.02.2018 and unless and until any specific provision for availability of funds is made by respondent No.1, MHADA i.e. respondent No.3 would not be in a position to give effect to and implement the notification dated 08.11.2013 r/w notification dated 03.09.2015.

9] In the present case, it is not in dispute that building permit for the scheme of the petitioner received sanction of the authorities on 05.12.2017 and therefore, we find that on that date

i.e. in 2017 the modified Inclusive Housing Scheme was not in existence. The Inclusive Housing Scheme that as applicable to the petitioner was as given in notification dated 08.11.2013 r/w notification dated 03.09.2015. The Respondent No.1 also admits this position, when in paragraph No.7 of its reply, it has been unequivocally stated that on the date of 05.12.2017, the sanctioned regulation for Inclusive Housing was of the date of 08.11.2013 along with modified sanctioned regulation of the date of 03.09.2015. It is only in the subsequent portion of this paragraph, a reference has been made to the subsequent modification as brought into force with effect from 27.02.2018, when it was stated that even this modification would be applicable to the scheme floated by the petitioner. However, respondent No.3 in paragraph No.9 of its reply has stated that it had advertised availability of the tenements earlier on the basis of the rates as permitted under notifications of 2013 and 2015, but, in view of subsequent notification, fresh advertisement was issued in the year 2019. This subsequent notification was of the year 2018. In paragraph 4 and 7, it has been stated that initially the action was taken by MHADA in terms of the notifications of the year 2013 and 2015, but, as there were no

takers, the respondent No.3 was left with no option other than to invite fresh applications and allot the same to the allottees by resorting to the procedure given in the subsequent notification dated 27.02.2018. Thus, MHADA does not deny in so many words the applicability of the notification of the years 2013 and 2015 and it only says that it was constrained, due to unfortunate situation, to take refuge in the subsequent notification dated 27.02.2018. Thus, we see that even the respondent No.3 does not categorically deny the position that what would be applicable to the project proponent like the petitioner, would be the notifications of the year 2013 and 2015 and not of the year 2018. Such stand of the respondent No. 3 is also in consonance with the law settled by the Supreme Court in many of its decisions.

10] In the case of **Shri Vishwas Bajirao Patil vrs. State of Maharashtra and others**, in Writ Petition No. 12767 of 2015, a Full Bench of this Court had an occasion to deal with the question of prospective or retrospective operation of law. By referring to several judgments of the Apex Court, the Full Bench took the view that it is well settled that all the laws are presumed to be prospective unless

the legislature unequivocally expresses its intent for the operation of such provision retrospectively. The Full Bench takes support from such cases as, CIT vs. Essar Teleholdings Ltd.; (2018) 3 SCC 253; CIT vrs. Vatika Township (P) Ltd.; (2015) 1 SCC 1 and P.D. Aggarwal and ors vrs. State of U.P. and ors; (1987) 3 SCC 622.

11] On going through the subsequent notification of the year 2018, no intention of the rule making authority to allow subsequent notification's retrospective operation can be discerned and even if the authority had intended to give retrospective effect to the notification of the year 2018, we have our own doubts if it could have done so considering the nature of the scheme.

12] We have, therefore, no doubt in our mind that the notification dated 27.02.2018 would only have prospective operation and it cannot affect in any manner the tenements developed under the Inclusive Housing Scheme of the petitioner and what would be applicable to the petitioner would be the notification dated 08.11.2013 r/w notification dated 03.09.2015. The petition is thus allowed in terms of prayer clause (b).

13] We direct respondent Nos. 1 and 4 to ensure that the scheme as framed under notification dated 08.11.2013 r/w notification dated 03.09.2015 is given its full effect and is not frustrated on account of paucity of funds.

14] Rule is made absolute in the above terms. No costs.

JUDGE

JUDGE

Rvjalit