

Arun

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 4715 OF 2021

Saleha Begum Meezanur Rahman ...Petitioner
Versus
Maharashtra Housing and Area Development ...Respondents
Authority & Ors

WITH
WRIT PETITION NO. 4716 OF 2021

Hamida Begum Ajaz Sayyed ...Petitioner
Versus
Maharashtra Housing and Area Development ...Respondents
Authority & Ors

Mr Sanjeev Sawant, i/b Abhishek P Deshmukh, for the Petitioner in
both matters.

Mr Ashutosh Kulkarni, with Aadesh Konde Deshmukh, for
Respondent-MHADA in both matters.

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CORAM G.S. Patel &
Madhav J. Jamdar, JJ.
DATED: 6th December 2021

PC:-

WRIT PETITION NO. 4715 OF 2021:

1. Rule. Respondents waive service. By consent, Rule is made returnable forthwith and the matter is taken up for hearing and final disposal.

2. The challenge in this Writ Petition is to the action of the Respondents in holding that the Petitioner has been found ineligible for being allotted a rehab tenement. Mr Sawant points out that for nearly 40 years since January 1980, the Petitioner has been awaiting this allotment. The same Authorities had earlier found her eligible but, because of an allegation made against one of the Government's own officers, it is now purportedly stated that the Petitioner is in fact ineligible.

3. The property in question, situated at Kamithapura was declared as dilapidated in 1980. A decision was taken to demolish the building and to reconstruct it. There was a survey of persons in occupation and a list of occupants or tenants was prepared by Executive Engineer, E Ward. On 22nd January 1980, a notice was issued under Section 77(b) of the Maharashtra Housing And Development Authority Act directing all occupants to vacate the premises within seven days. In the notice to vacate of 22nd January 1980 at Exhibit "B", it is the name of the Petitioner that is specifically mentioned. The original occupant was one Bholanath Tiwari. He transferred his right, title and interest in the premises to the Petitioner by an Agreement dated 31st August 1982. There is no dispute that the Petitioner paid the requisite transfer fees to the Respondents. Until 2015, the project was at a standstill and there was no reconstruction. On 26th September 2018, an allotment letter was issued to the Petitioner for transit accommodation by the

Deputy Chief Officer of the Repairs and Reconstruction Board. A copy of this is at Exhibit “E” at page 29. This specifically mentions the name of the Petitioner as the occupant and confirms eligibility. This document will have to be read with the document at page 27 which is of 2015 in an answer to an RTI query filed by the Petitioner. That response was on 17th March 2015 at Exhibit “D” and this also confirms that the Petitioner was eligible.

4. Following the allotment letter, the Petitioner filled out the necessary application form and submitted the documents required.

5. It seems that between 7th December 2018 and 29th January 2019, the Authorities concluded that the Petitioner was ineligible.

6. We are informed that the Government has taken serious exception to acts of a certain officer of the Government in the performance of his duties. The specific submission is that only 94 persons were eligible but additional names from 95 to 100 were allegedly “illegally” included by this officer. That officer was transferred or shifted. The other officer who took his place then re-examined the issue and found the Petitioner to be ineligible entirely on the basis of the so-called or alleged illegality by the Government officer.

7. Mr Sawant’s submission is simple. The Petitioner is not accused or charged anywhere in any proceeding of any misdealing or illegality herself. She has been found eligible twice before in 2015 and again in 2018. It was she who was given the notice to vacate in

January 1980 and it is her name that appears on it. She has paid the requisite fees and submitted the documentations. It simply cannot be, he submits, and we think quite correctly, that the Petitioner should have to suffer after 40 years of awaiting an accommodation only because there is an allegation against some officer of the Government. The Petitioners will lose her only shelter and the roof over her head. She will be rendered entirely homeless.

8. We say nothing at all about any action the Government proposes to take or has taken against the errant officer. Those proceedings will continue. But Mr Sawant is correct, we believe, in saying that merely because there are allegations against the officer, the consequences cannot be visited in this harsh and unforgiving manner on the Petitioner. We note that the original occupant, Tiwari, is not claiming rehabilitation or re-accommodation. The entitlement of the original occupant is not disputed at all. Now if the original occupant has transferred his title and is laying no claim to re-accommodation in his own name, and the only person who was occupying the original tenant's premises was the present Petitioner, we see no reason why the authorities should arbitrarily disqualify or render the Petitioner ineligible. As we have noted, the only reason for this so-called ineligibility is because of the alleged illegalities said to have been committed by the Government officer.

9. We are not inclined to sustain this action of the Government. Prayer clause (b) is for a Mandamus. We note that in paragraphs 14 and 15, the Petitioner has twice said that she has made representations but has received no justice and her requests have gone unheeded.

10. Mr Sawant identifies from page 44, a letter dated 26th November 2019 of the Repair Board that Unit/Tenement/Gala No. 1/511 of CS No. 1A/782, 2/783, 783, 784, 785, 786 and 787, Chinchpokli, Mumbai is currently available for allotment. This is as far as the Petitioner is aware.

11. We make the Petition absolute in terms of prayer clause (b) in respect of this tenement. Should it for any reason not be available, then the Respondents are directed to identify another premises in the same building for allotment to the Petitioner. They must do so within four weeks from today.

12. The Rule is made absolute in these terms. There will be no order as to costs.

WRIT PETITION NO. 4716 OF 2021:

13. For the reasons set out above this Petition is also made absolute but in respect of the Unit/Tenement/Gala No. A-301 of CS No.135.

14. All concerned will act on production of a digitally signed copy of this order.

(Madhav J. Jamdar, J)

(G. S. Patel, J)