

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

WRIT PETITION NO.1481 OF 2019

Sahakar Nagar Pentagon	..Petitioner
versus	
Maharashtra Housing and	
Area Development Authority & Ors.	..Respondents

AND
WRIT PETITION NO.1482 OF 2019

Sahakar Nagar Shri Gurukrupa	
Co-op. Hsg. Soc. Ltd.	..Petitioner
versus	
Maharashtra Housing and	
Area Development Authority & Ors.	..Respondents

.....
Mr.Ashok Shetty with Ms.Rita Joshi and Mr.Swapnil Kamble for
Petitioner.

Mr.PG. Lad with Ms.Aparna Kalathil for Respondent No.1.

Mr.Hassan Khan for Respondent No.3.

Mr.Karl Tamboli with Mr.Yadunath Chaudhary for Respondent No.4.

Mr.Hemant Haryan, AGP for State.

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CORAM :- DIPANKAR DATTA, CJ &
G. S. KULKARNI, J.

DATE :- FEBRUARY 24, 2021.

PC :

1. These are two petitions. The petitioners are co-operative societies formed by the occupants of the buildings which are constructed on the plots belonging to Maharashtra Housing and Area Development Authority as leased out to the petitioners societies. The

layout is known as Sahakar Nagar – 3 layout which is on plot bearing CS No.14(pt) comprising of 11 buildings.

2. The case of the petitioners is that respondent No.1 Maharashtra Housing and Area Development Authority (for short, “MHADA”) passed two resolutions dated 5 May 2000 and 9 January 2004 being Resolution Nos.5580 and 5998 respectively for distribution of the non-residential and residential plots on proportionate basis. In pursuance thereto in December 2004, MHADA issued an advertisement inviting bids for sale of the said plots. The petitioners had submitted their offer for purchase of plots, so earmarked. An earnest money of Rs.4,68,000/- also came to be deposited by the petitioner-Sahakar Nagar Pentagon and of Rs.6,33,000/- deposited by the petitioner-Sahakar Nagar Shri Gurukrupa Co-op. Hsg. Soc. Ltd. However sometime in 2009, MHADA cancelled the said tender and returned the earnest money deposited to the petitioners on 30 January 2009. The petitioners felt aggrieved by such cancellation of tender by MHADA and as stated by the petitioners, from the year 2007 to 2018 requested MHADA to allot open plots. The petitioners have contended that however in regard to plot No.R-6 and R-7, the MHADA has now taken a decision to develop the said open plots by undertaking construction. Also on 15 July 2011 MHADA allotted plot R-6 and R-7 to building

No.4. It is contended that between the period from 2013 to 2015 MHADA also issued offer letters and NOC to eight societies permitting amalgamation of their residential plots and for re-locating them. Thereafter in August 2018, a private builder/respondent No.3-Ellora Project Consultant Pvt. Ltd. submitted plans for proposed amalgamated redevelopment of building Nos.5, 6 and 10. MHADA sanctioned the said plans and issued an intimation of approval. The petitioners although not concerned with the development of the other buildings pointed out discrepancies in the layout plan and requested MHADA to order an enquiry in the entire approval.

3. On the above backdrop, the petitioners feeling aggrieved by such action on the part of MHADA, have approached this Court. The prayers are quite similar. We set out the substantive prayers in writ petition No.1481 of 2019 which read thus:-

“a. That this Hon’ble Court may be pleased to issue Writ of Certiorari or Writ in the nature of Certiorari or any other appropriate Writ, order or direction, calling upon Respondent Nos. 1 and 2 to produce the record pertaining

(i) the approval of amended layout of portion of Sahakar Nagar – 3 layout granting Respondent Nos. 3 and 4 to carve out residential plots R-1 to R-5 and amenity plot No.1 and amalgamate at one location for the benefit of Building Nos.5, 6 and 10, disregarding and in contravention of the policy laid down by Respondent No.1 regarding distribution and allotment of open plots in the layout to existing Societies;

(ii) Allotting to Building Nos.5, 6 and 10 Scheme R-G Plot admeasuring 1300.16 sq. mtrs.

disregarding and in contravention of the policy laid by Respondent No.1 regarding Scheme R-G plots.

(iii) Allotting to building Nos.5, 6 and 10 plots at two locations as against amalgamated redevelopment of building Nos.5, 6 and 10 at one location and granting plots of larger area than total plot area as per lease deeds and tit-bit land to building Nos.5, 6 and 10.

b. That this Hon'ble Court may be pleased to issue a Writ of Mandamus or a Writ in the nature of Mandamus or any other appropriate Writ order or direction under Article 226 of the Constitution of India calling upon Respondent Nos.1 and 2 their successors in office subordinates, servants and agents directing them;

(i) To submit a report stating the reason for not allotting Plot R-3 to the Petitioner in spite of repeated request;

(ii) To submit a report stating the reasons for not bifurcating joint letter of offer dated 10th April, 2014, issued to Building Nos. 5, 6, 8, 9 and 10, even after Petitioner and Building No.8 opted out of joint development and in spite of specific request by Respondent No.3 to issue two separate offer letters one for joint redevelopment of building Nos.5, 6 and 10 and separate offer letter for redevelopment of Petitioner Building No.9 and Building No.8 respectively;

(iii) To submit report stating the reasons for issuing to building Nos.5, 6 and 10 NOC for IOD dated 8.9.2015 on the same terms and conditions as contained in offer letter dated 10th April, 2014 and in fact permitting additional Plot R-1 to be carved out and amalgamated at one location along with R-2 to R-5 and Amenity Plot -1.

c. That this Hon'ble Court be pleased to issue a Writ of Mandamus or a Writ in the nature of Mandamus or any other appropriate Writ order or direction under Article 226 of the Constitution of India, be pleased to quash and set-aside:

(i) NOC for IOD bearing No.CO/MB/REE/NOC/F-/1166/2015 dated 8.9.2015 issued by Respondent No.1 in respect of amalgamated redevelopment of Building Nos.5, 6 and 10.

(ii) Approved amended plan of the portion of Sahakar Nagar -3 layout and sanctioned building plan of amalgamated redevelopment of existing building No.5, 6 and 10 dated 8th August, 2018 being Exhibit 'GG' and 'HH' respectively to the Petition and Intimation of Approvals

dated 8th August, 2018 being Exhibits 'II' and 'JJ' respectively to the Petition;

(iii) Approved plans of the amalgamated redevelopment of Building Nos.5, 6 and 10 being Exhibits 'BB' and 'CC' to the Petition approved by Respondent No.2.

d. That this Hon'ble Court be pleased to issue a Writ of Mandamus or a Writ in the nature of Mandamus or any other appropriate Writ Order of direction under Article 226 of the Constitution of India, directing Respondent No.1;

i. to allot to the petitioner plot R-3 which is adjacent to the Petitioner plot in terms of MHADA RESOLUTION No.5998 dated 9th January, 2014;

ii. To allot to the Petitioner Amenity Plot -1, adjacent to the Petitioner's plot in terms of MHADA RESOLUTION;

iii. To allot to the Petitioner Scheme R.G. Plot jointly and proportionately with other Societies in terms of MHADA RESOLUTION No.5580 dated 5th May, 2000."

4. Mr.Shetty, learned Counsel for the petitioners has taken us through the relevant documents on record to contend that MHADA ought to have pursued the action taken to invite bids under the Resolution dated 9th January 2004 and allot the open Tit-Bit land in favour of the petitioners. He submits that MHADA permitted other societies to bid for such plots and on allotment of such plots in fact, also permitted construction. Hence the petitioners ought not to have been disqualified.

5. On a query made by the Court as to what would be the legal right to such allotment, Mr.Shetty is unable to point out any right

except what is contained in the said resolutions and the advertisement issued by MHADA inviting bids for allotment of open lands. Mr.Shetty has contended that some of the other buildings in the layout are permitted to undertake amalgamation of their respective lands and layout is being re-arranged which is illegal on the part of MHADA.

6. On the other hand, Mr.Lad, learned Counsel for MHADA would submit that what is undertaken by MHADA is reconstitution of a layout and redevelopment of the existing buildings/societies who were ready for such layout reconstitution and for such re-development. It is submitted that by such reconstitution of the layout, certain buildings would be relocated and on relocation, substantial area would become available which would be developed by MHADA itself, for public housing. Mr.Lad submits that the petitioners cannot have any grievance in regard to such action being taken by MHADA in public interest. He would also submit that the petitioners cannot have any grievance in respect of redevelopment and amalgamation which is agreed by the other existing societies *inter se* and to which MHADA has granted approval and purely in public interest. He has submitted that the petitioners have approached this Court with substantial delay as the cause of action accrued to the petitioners in the year 2009 when the tender was cancelled and EMD returned to the petitioners. He submits

that such prayer as made ought not to be granted and the petitions deserve to be rejected.

7. Mr.Tamboli, learned Counsel for the developers would also support the contentions of Mr.Lad. Additionally he submits that the petitioners cannot have any grievance in respect of redevelopment being undertaken by his clients in respect of other societies and which is being undertaken on amalgamated plots as approved by MHADA. He submits that the petitioners cannot claim any legal right in respect of any land which is now part of amalgamated layout. Mr.Tamboli would submit that in fact the petitioners had earlier agreed for a joint redevelopment and for such amalgamation, the petitioners had also entered into an agreement with his clients however after doing so the petitioners backed out and terminated such agreement. Mr.Tamboli submitted that being aggrieved by such action on the part of the petitioners, his clients have instituted a Suit bearing lodging No.893 of 2016 in this Court. There are interim orders passed in such suit. He submits that on this count alone, the petitions deserve to be dismissed as already there is a prior litigation between the parties.

8. Having heard learned Counsel for the parties and having perused the record, we are of the clear opinion that the petitions are barred by delay and latches. The cause of action to approach this Court

in respect of non-allotment of open plot of land in pursuance of the tender/advertisement issued by MHADA had accrued to the petitioners when the tender itself was recalled in the year 2009 and EMD refunded on 13 January 2009. The petitioners however chose not to assert their rights in a manner known to law and were content only in making representations. In our opinion, making repeated representations is no ground for the petitioners to resurrect a cause of action, which had accrued to the petitioners in the year 2009. In our opinion, the petitions deserve to be dismissed on the sole ground of delay and laches. In this context it would be apposite to refer to the decision of the Supreme Court in **Rabindra Nath Bose V. Union of India AIR 1970 SC 470**, wherein the Supreme Court has held it to be a settled principle of law that making of repeated representations is not a satisfactory explanation of delay. Such view has been reiterated in **State of Orissa Vs. Sri Pyarimohan Samantarav & Ors. AIR 1976 SC 2617**. In any case the explanation as made by the petitioners is far from satisfactory on the inordinate delay in approaching this Court.

9. Even otherwise it is quite clear that the petitioners were in a deep slumber over their rights. They were fully aware in regard to their position on the allotment of any open plot of land. They not only chose not to assert their rights but also acquiesced themselves in a

layout redevelopment by entering into agreement with the developers as pointed out by Mr.Tamboli and they later on backed out. Hence, this is not a case where the petitioners were not aware about such reconstitution of the layout and further redevelopment to be undertaken as approved by the MHADA. The petitioners have chosen a course of action to remain outside the redevelopment. On a query made to Mr.Lad, he has informed us that none of the rights in respect of the existing buildings of the petitioners as also the plots of land of the petitioners societies in any manner would be affected and that the petitioners would be entitled to utilize all the benefits which have accrued to the petitioners even qua redevelopment. The petitions are hence patently misconceived.

10. For the above reasons both the petitions stand summarily rejected. No costs.

11. Needless to observe that we have not examined any other rights of the petitioners if the petitioners intend to redevelop their land as permissible in law.

(G. S. KULKARNI, J.)

(CHIEF JUSTICE)

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