

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.1687 OF 2019

**SUNIL MANIKCHAND PAHADE
VERSUS
CHIEF EXECUTIVE OFFICER AND VICE PRESIDENT, MAHARASHTRA
HOUSING AND AREA DEVELOPMENT AND ANOTHER**

...

Advocate for Petitioners : Mr. Pramod F. Patni
Advocate for Respondent Nos. 1 & 2 : Mr. A. B. Kadethankar

...

CORAM : NITIN B. SURYAWANSHI, J.

DATE : 25th AUGUST, 2022

PER COURT :

1. By this petition, filed under Article 227 of the Constitution of India, petitioner challenges decision of respondent No.2 Chief Officer, Aurangabad Housing and Area Development, Aurangabad, which is confirmed by respondent No.1 Chief Executive Officer and Vice President, Maharashtra Housing and Area Development, Mumbai.

2. Tenement at 721/5 (House) R-28, N-7, CIDCO, Aurangabad, was allotted to petitioner vide allotment letter dated 22/03/1994. On 30/12/2014, complaint was lodged by one Anil Jaiswal stating that, though the petitioner owned house within the limits of Aurangabad Municipal Corporation at the time of allotment of tenement, however, by giving incorrect information petitioner got the tenement allotted in his favour.

3. Inquiry was conducted in the said complaint and petitioner was called upon to submit his reply. Petitioner submitted his reply accepting that he owned house C.T. Survey No.8111 (Municipal House No.3/14/22) out of Sheet No.44 at Mohalla Fenibazar, Panadariba road, situated within the limits of Aurangabad Municipal Corporation. Since the petitioner owned the said house, respondent No.2, by order dated 10/08/2015, canceled the allotment of tenement in favour of petitioner, as per Rule 9 of the Maharashtra Housing and Area Development (Estate Management, Sale, Transfer and Exchange of Tenements) Regulations, 1981 (for short 'the said Regulations').

4. Petitioner challenged the said order by filing Appeal No.159/2015, before respondent No.1 Chief Executive Officer. The said appeal came to be dismissed by order dated 16/01/2016. These orders are impugned in the present petition.

5. Heard learned advocate for petitioner and learned advocate for respondents.

6. Learned advocate for petitioner assailed the impugned orders contending that petitioner had entered into an agreement of sale of the property C.T. Survey No.8111 in the year 1988. He had accepted the amount of consideration in the year 1988 itself and

only the sale deed was executed on 03/03/2001. The property was sold to the tenant who was occupying it. By relying on *Ittianam and Others Vs. Cherichi Alias Padmini, (2010) 8 SCC 612* and *Hamda Ammal Vs. Avadiappa Pathar and Others, (1991) 1 SCC 715*, he submits that the documents after its' registration relates back to the date of execution and hence, sale deed executed in the year 2001 will relate back to the year 1988 and in that view of the matter, the authorities were not justified in canceling allotment of tenement in favour of petitioner. He submits that this legal aspect is not taken into consideration while passing the impugned orders and therefore, the impugned orders are liable to be quashed and set aside.

7. Learned advocate for respondents, on the other hand, supports the impugned orders. He submits that respondents were justified in canceling allotment of tenement of petitioner in respect of Rule 9 of the said Regulations. He further submits that the citations relied upon by learned advocate for petitioner would not assist the petitioner, as the same are in respect of execution of sale deed and in the present case only agreement was allegedly executed. He, therefore, submits that there is no substance in the writ petition and the same is liable to be dismissed.

8. Relevant provision of Rule 9 of the said Regulations is

reproduced herein below:-

"9. Application for tenements:-

(1) Any person desirous of getting a tenement for bona fide residential purposes may, in pursuance of the notice displayed under Regulation 7, apply in Form I. The application shall be accompanied by such particulars as specified in the Forms. Persons below the age of 18 years shall not be eligible to apply for any tenement.

[(1A) A person shall not be eligible to apply for any tenement in municipal area if he or his/her spouse or his/her minor children own a house or a flat or a residential plot of land or holds on a hire - purchase basis or outright sale basis or on a rental basis form the Maharashtra Housing and Area Development Authority a house or a flat or a residential plot of land in his/her name, or in the name of his/her minor children as the case may be, in such a municipal area.]

(2)"

9. It is clear from Rule 9 that, any person desirous of getting a tenement for *bona fide* residential purpose may, in pursuance of the notice displayed under Regulation 7, apply in Form-I. Sub-clause (1A) of clause (1) of Rule 9 further stipulates that, a person shall not be eligible to apply for any tenement in municipal area if he/she or his/her spouse or his/her minor children owns a house or a flat or a residential plot of land or holds on a hire – purchase basis or on rental basis a house or a flat or a residential plot of land in his/her name or in the name of his/her minor children as the case may be, in such a municipal area.

10. Form-I provided under Regulation 9(1), in clause 5A, also requires applicant to mention whether the applicant and/or his/her spouse owns a house or a flat or a residential plot of land, in

the municipal area in which tenements notified for allotment are situated. It further requires the applicant to give details of such house or flat owned by him. It is obvious that the petitioner has suppressed the fact that he owned house C.T. Survey No.8111 (Municipal House No.3/14/22) out of Sheet No.44 at Mohalla Fenibazar, Panadaribaroad, situated within the limits of Aurangabad Municipal Corporation, when he applied for allotment of tenement. In view of Rule 9(1)(1A), the petitioner was not eligible to apply and was not entitled for allotment of tenement. It is clear from record that petitioner has obtained allotment by suppressing the fact that he owned the residential house within Aurangabad Municipal Corporation area.

11. Though the petitioner contends that he has disposed of the said house in the year 1988 by entering into agreement of sale, however, copy of the same is not forthcoming. Admittedly, petitioner has executed sale deed of the said house in the year 2001. Though in the sale deed it is mentioned that consideration amount was paid in the year 1988, that by itself is not sufficient to come to a conclusion that petitioner has completed said transaction in the year 1988 itself.

12. In view of the fact that sale deed of the said house is executed in the year 2001, it is clear that when petitioner applied

for allotment of tenement, he owned the said house within the limits of Aurangabad Municipal Corporation. In these facts, respondent No.2 was justified in canceling allotment of petitioner.

13. In *Hamda Ammal* (supra), the Hon'ble Apex Court was considering the provisions of Order 38 Rule 5 and 10 and Section 64 of the Code of Civil Procedure. It is held that the sale deed executed prior to attachment before judgment can be registered subsequently and will prevail over the attachment. The Hon'ble Apex Court in those facts held that, under Section 47 of the Registration Act, 1908, documents after it's registration relates back to date of execution of sale deed and sale deed executed prior to attachment can be registered.

14. In the case in hand, the sale deed itself is executed in the year 2001 and not in the year 1988. Hence, this ruling does not assist the petitioner.

15. In *Ittianam and Others* (supra), the Hon'ble Apex Court held that the registered document operates from date of execution and not from date of registration of document concerned.

16. Admittedly, in the present case, sale deed is registered in the year 2001 and therefore, on the date on which petitioner applied for allotment of tenement, he owned the house within the

limits of Aurangabad Municipal Corporation and hence, he was ineligible for allotment of tenement.

17. Both the authorities have recorded concurrent finding of fact which are not liable to be interfered with in exercise of extraordinary writ jurisdiction. Writ petition, being devoid of merits, is dismissed. No costs.

(NITIN B. SURYAWANSHI, J.)

SVH