

Sonali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 1859 OF 2021

Mohammad Usman Shaikh ...Petitioner
Versus
The State of Maharashtra & Ors ...Respondents

Ms Anita Castellino, i/b Bruno Castellino, for the Petitioner.
Mr Kamlesh Ghumre, with Sonali Jadhav, for Respondents Nos. 2 to 6 (MHADA).
Mrs Uma Palsuledesai, AGP, for Respondent-State.

CORAM G.S. Patel &
Madhav J. Jamdar, JJ.
DATED: 4th January 2022

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1. The Petition was filed on 24th February 2021. There is also an order of 25th November 2021. Respondents Nos. 2 to 6 were represented and appeared. This is noted only to show that the Petition was served and further that despite service, there is even now no Affidavit in Reply.

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

3. The Petition seeks a quashing and setting aside of a letter of cancellation dated 10th December 2019 issued under the signature of the Deputy Chief Officer of MHADA and to confirm an earlier letter dated 26th November 2019 making an allotment of permanent alternative accommodation in favour of the Petitioner. The prayer in clause (a) is incorrectly worded in that it seeks a mandamus for quashing. Ms Castellino seeks leave to amend to reword the prayer as one for a certiorari. We grant leave. Amendment to be carried out within one week without need of the reverification.

4. The second prayer is for a mandamus to allot to the Petitioner permanent alternate accommodation being tenement No.1/411 of 271 sq ft.

5. The facts are not contentious. The Petitioner was one of the original tenants of a building No. 99 at Temkar Street, Mumbai 400008. He was a tenant of old room No.31 on the second floor. That building was dilapidated. It had to be repaired and reconstructed. MHADA issued a notice to have the entire building vacated. The Petitioner and his family shifted to a transit camp at Sion in Room No. 412, Chawl No.20. The original building was demolished in 1978. The Petitioner moved to a transit camp. It seems that at some point Respondents demanded possession of even the transit camp premises and the Petitioner and his family had to live elsewhere at their own expense. The Petitioner and his family were in transit since 1978. Altogether about 32 years have by now passed since the Petitioner had surrendered even the transit accommodation. It was not until 2021 that the Respondents offered

the Petitioner permanent alternative accommodation. In short, the Petitioner has been without permanent housing for 42 years.

6. The Respondents prepared a Master List to decide the *inter se* seniority between those who are to be reaccommodated in the reconstructed premises. Eligibility is decided against various documents. The dispute is not about the area that is to be provided.

7. It is not in dispute that on 26th November 2019, following a full verification of all documents, the Petitioner was allotted permanent alternate accommodation in tenement No. 1/411 of 271 sq ft. at Chinchpokli (E) against payment of Rs.66,645/-, which the Petitioner deposited. It was only thereafter that the Petitioner received a letter dated 10th December 2019 from the 6th Respondent saying that this allotment had been 'cancelled'. A copy of that letter in the original Marathi is at **Exhibit "A"**. A translation is provided. Even the original does not indicate at all the slightest reason for any such cancellation. There followed on 26th October 2020 another letter from the 6th Respondent asking for production of original documents and confirming that the Petitioner had earlier being held eligible.

8. It is in these circumstances that the Petitioner contends that the entire action of the Respondents is arbitrary, unreasoned, unreasonable, irrational and cannot be sustained. The Petitioner was not given any reason for the cancellation. The Petitioner was given no hearing. Even to this day we find no justification whatsoever offered by the Respondents for this cancellation. The fact that the

Petitioner was granted an allotment letter after verification displaces any argument that the Petitioner was not an original occupant / tenant or was not eligible. The Respondents themselves have found the Petitioner once to be eligible. They have gone further. Acting on that finding of eligibility, they have granted the Petitioner an allotment of the permanent alternative accommodation. If this has to be cancelled, it must be for good, discernible, justifiable and stated reasons. Cancellations of allotments are not a matter of whim or caprice of the housing board.

9. The cancellation by the Respondents of the allotment on 10th December 2019 cannot be sustained. It is quashed and set aside. The allotment letter of 26th November 2019 is reinstated and confirmed. The Petitioner is not required to produce any further documents of eligibility. Respondents Nos. 2 to 6 are directed to allot to the Petitioner the promise and assured accommodation of tenement No. 1/411 of 271 sq ft at Chinchpokli (E), Mumbai.

10. The Petitioner is also not required to make payment to the Respondents of any further amount as maintenance charges since the Petitioner has already paid Respondents' initial demand. The Petitioner will be liable to pay maintenance from the date of possession.

11. Respondents Nos. 2 to 6 are to give possession of the premises in question to the Petitioner by 24th January 2022.

12. Rule is made absolute in these terms. In the facts and circumstances of the case, there will be no order as to costs.

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

(Madhav J. Jamdar, J)

(G. S. Patel, J)