

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH, NAGPUR

WRIT PETITION NO. 1009/2022

(Sou. Malini Pravin Palhade vs. State of Maharashtra & Others)

Office Notes, Office Memoranda of
directions and Registrar's orders

Court's or Judge's order of

CORAM : A.S. CHANDURKAR & ANIL L.PANSARE, JJ.

DATED : 8th December, 2022.

Heard Mr. A.K. Lulla, learned counsel for the Petitioner, Ms. N.P. Mehta, learned AGP for Respondent Nos.1 to 3, Mr. Mayank Sharma, learned Advocate for Respondent No.5 and Ms. Meghna Munshi, learned Advocate for Respondent No.6.

2. By this petition, the Petitioner seeks directions to the Respondent No.5-Municipal Council, Shegaon to allot Shop No.24 in the Shopping Complex constructed on Plot no.32 within the jurisdiction of Shegaon Municipal Council, Shegaon. The Respondent No.5 has issued an advertisement calling upon general public to participate in e-auction for allotment of shops. The auction was to be held from 20th January, 2022 to 24th January, 2022. There were, in all 26 shops, of which Shop No.24 was reserved for handicapped persons.

3. The petition as such was filed by the couple, both being handicapped. In the hearing at the interim stage, it transpired that the Petitioner No.2 was an Advocate and accordingly the Petitioners sought to delete the name of Petitioner No.2 from the array of parties and that the claim for the shop made in the writ petition was restricted to

Petitioner No.1. It further transpired that the Petitioners have not applied pursuant to the aforesaid advertisement. The reason assigned was that the Petitioners are below poverty line and could not afford to deposit the amount.

4. Simply put, the case of the Petitioner, as argued by Mr. Lulla, learned counsel for the Petitioner, is that the Petitioner is a physically challenged person having disability to the extent of 68 *per cent*. She had applied for allotment of commercial premises for livelihood. She has filed an application in this regard on 23rd September, 2020. The Petitioner thereafter made representations, however, there was no response from the Respondent no.5 nor was the shop allotted to her.

5. Thus, the Petitioner is seeking the relief of allotment of shop without participating in the auction process.

6. We fail to fathom as to how the direction as sought by the Petitioner could be granted without the Petitioner having participated in the auction process. Mr.Lulla, learned counsel for the Petitioner, however, has relied upon the provisions of Sections 24(d), 27 and 34 of the Rights of Persons with Disabilities Act, 2016 (in short, “the Act of 2016”), to contend that the Petitioner is entitled for permanent source of income under the scheme as launched by the Respondents under the Act of 2016.

7. Section 24 of the Act of 2016 provides that the appropriate Government shall within the limits of its economic capacity and

development formulate necessary schemes and programmes to safeguard and promote the right persons with disabilities for adequate standard of living to enable them to live independently or in the community. Sub-Section 3(d) of Section 24 provides for support to women with disability for livelihood and for upbringing of their children, whereas Section 27 of the Act of 2016 deals with rehabilitation of the persons with disabilities. Section 34 provides for reservation in the employment in Government establishment.

8. As could be seen, Section 24 of the Act of 2016 provides that the appropriate Government shall formulate necessary schemes for livelihood of differently-abled persons. Section 27 thereof provides for rehabilitation of such persons and Section 34 provides for reservation in the employment. Mr.Lulla has not pointed out to us any scheme that stipulates allotment of shop on the basis of application made by such persons. In other words, the Petitioner has failed to show that the shop under question could be or should be allotted to the Petitioner directly under any scheme or the provisions of the law.

9. The Petitioner has relied upon the Government Resolutions (in short “GRs”) in support of her claim, viz. dated 26th April, 2001, 25th July, 2007, 6th August, 2008. These GRs, in our view, are of no assistance to the Petitioner. Mr. Mayank Sharma, learned counsel for Respondent No.5 has rightly pointed out that the aforesaid GRs provide for allotment of land and not the shop to the differently-abled persons. These GRs provides for allotment of 200 sq.ft. of land in terms of Rule 31 of the Maharashtra Land Revenue (Disposal of Government Lands) Rules, 1971 (in short “Disposal Rules, 1971”).

10. Further, the learned counsel for the Respondent no.5 has referred to Section 31-A of the Disposal Rules,1971 which provides that a building site to the extent of 200 sq.ft. may be granted on the recommendation of the appropriate authority to the persons with disability for the construction of the shop, if such person desires to start the business of running a juice centre, telephone booth, xerox centre etc. He has drawn our attention to Section 2 of the Maharashtra Land Revenue Code,1966 which provides, under definition clause (5), that a building site would mean a portion of land held for building purposes. Ms.Mehta, has supported the stand taken by the Respondent No.5. Thus, it is argued and rightly so, that the scheme as it exists today, would make the person like the Petitioner entitled for allotment of land and not the shop.

11. It further transpires that as many as four differently-abled persons were found eligible for participation in the auction for allotment of Shop No.24. The Respondent No.6 has quoted the highest bid of ₹ 9,00,000/- and the shop is being allotted to him. The Respondent No.6 possesses hearing impairment disability to the extent of 58 per cent. The medical certificate dated 10th August, 2012 to that effect is annexed. The Petitioner, however, raised a grievance that the certificate does not indicate the certificate number. The learned counsel for the Petitioner has also pointed out that the blank space which discloses the relation of permanent nature of disability is blank. We, however, note that the certificate does not indicate hearing disability and that the disability is 58 per cent. In any case, this Court under the writ jurisdiction cannot go into this aspect, in absence of any cogent, convincing or undisputed

evidence in that regard. The fact remains that the Respondent No.6 has tendered disability certificate and is found to be eligible for allotment of Shop No.24, having quoted the highest bid.

12. Put together, the Petitioner has failed to make out a case in her favour. Neither, the provisions in the Act of 2016 nor the GRs relied upon by the Petitioner would support her claim. The Petitioner has failed to show any right existing in her favour for allotment of Shop as sought and, therefore, with complete sympathy to the Petitioner, the discretionary relief under the writ jurisdiction cannot be granted in her favour.

13. The Respondent No.5 shall refund to the Petitioner the amount of Rs. 25,000/- deposited by her with the Respondent No.5 pursuant to order dated 25th April, 2022.

14. The petition is dismissed accordingly.

[ANIL L. PANSARE, J.]

[A.S.CHANDURKAR, J.]

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