

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.9605 OF 2019

Yasin Mahmood Sayyed

.....Petitioner

Versus

Bharat Shashikant Shah
and others

.... Respondents

Mr. Pradeep J. Thorat, Advocate for the Petitioner.

Mr. Manoj A. Patil, Advocate for the Respondent No.1.

Ms. Tejasvi Sarvaiya, Advocate i/b. Wadia Ghandy and Co.
for Respondent No.2.

Mr. Akshay Shinde, Advocate for Respondent Nos.3 & 4.

Mr. P.P. Pujari, AGP for the State.

CORAM : SARANG V. KOTWAL, J.

DATE : 10th MARCH, 2023

P.C. :

1. The subject matter of this petition is a tenement bearing Gala No.1954, building No.106, in Shree Swastik Co-operative Housing Society, Samata Nagar, Kandivali (East), Mumbai. It is the case of the petitioner that he had purchased that flat vide agreement dated 30.12.2004 from the respondent No.1 herein. There is some dispute about

the execution of that particular agreement. The Estate Manager of MHADA vide order dated 27.5.2013 had passed an order mentioning that the transfer of tenement in favour of the petitioner was cancelled. This order was challenged by the petitioner before the Chief Officer of MHADA. The said Authority vide order dated 14.8.2013 set aside that particular order passed by the Estate Manager and it was observed that the complaint made by the respondent No.1 regarding the agreement was in the nature of a civil dispute and till some order was obtained from the competent court it had to be held that the agreement was valid. This particular order was challenged by the respondent herein before a Division Bench of this Court in O.S. Writ Petition No.1153/2016. In that petition, on 30.11.2016, the following order was passed :

“1 Heard the learned counsel appearing for the Petitioner. Admittedly, the Petitioner executed an agreement dated 30th December 2004 in favour of one Yasin Mehmood Sayyed by which he agreed to transfer the tenement subject matter of this Petition which was allotted

to him to said Yasin. In clause 3 of the said agreement it is recorded that the Petitioner has surrendered all his rights, title, interest or claim over the said tenement forever in favour of the purchaser (Yasin) and that the purchaser Yasin is put in possession. Consideration mentioned in the said document is of Rs.4,85,000/. Admittedly, there is a receipt recorded on the said document by the Petitioner himself recording that he has received consideration of Rs.4,85,000/.

2. At this stage, the learned counsel appearing for the Petitioner seeks permission to withdraw the Petition with liberty to file appropriate proceedings before the Civil Court. Accordingly, the Petition is disposed of with liberty as prayed. All contentions on merits are kept open.”

2. After that, instead of going to the Civil Court pursuant to the liberty, the respondent No.1 chose to approach the Vice President & Chief Executive Officer of MHADA by way of an appeal. That appeal was allowed and the order dated 14.8.2013 was set aside. This order was apparently passed when the petitioner was not heard. Therefore, the petitioner challenged that order before another Division Bench of this Court by way of O.S. Writ

Petition No.1682/2018. The Division Bench vide order dated 2.7.2018 directed the Chief Officer of MHADA to give hearing to the petitioner.

3. After that, the Chief Officer heard the parties and passed the order dated 21.12.2018 and it was declared that the petitioner's possession was unauthorized and the respondent No.1 was held to be entitled for rights in respect of that particular tenement. That order was challenged in appeal by the petitioner and the Vice President & the Chief Executive Officer of MHADA dismissed the petitioner's appeal. This particular order is challenged before this Court.

4. Heard Shri Pradeep Thorat, learned counsel for the Petitioner, Shri Manoj Patil, learned counsel for the respondent No.1, Ms. Tejasvi Sarvaiya, learned counsel for the respondent No.2 and Shri Akshay Shinde, learned counsel for the respondent Nos.3 & 4.

5. Learned counsel for the petitioner submitted

that the Division Bench of this Court had given specific liberty vide order dated 30.11.2016 in O.S.Writ Petition No.1153/2016 to the respondent No.1 herein to file appropriate proceedings before the Civil Court. He submitted that after considering the rival submissions, this order was passed. After that, instead of approaching a civil Court, the respondent No.1 approached the MHADA authorities again. Learned counsel for the petitioner further submitted that apparently in both the rounds of litigation, contrary orders are passed by the authorities and, therefore, the order impugned in this petition is not sustainable.

6. Learned counsel for the respondent No.1 submitted that the respondent No.1 had three options, i.e. of approaching the MHADA authorities, approaching the Civil Court or filing a criminal complaint and, therefore, there was nothing wrong in going back to the MHADA authorities with his case.

7. I have considered these submissions and I have perused the impugned order. The impugned order is passed

by the Appellate Authority i.e the Vice President & Chief Executive Officer of MHADA. He has not discussed the effect of specific liberty given by the Division Bench of this Court to the respondent No.1 of approaching a Civil Court. The order passed by the Division Bench in O.S. Writ Petition No.1153/2016 and the specific liberty had important bearing on the entire proceedings. There is absolutely no discussion about that particular order and the effect of the liberty given by the Division Bench. Therefore, I am of the opinion that the said authority needs to consider the effect of the order passed by the Division Bench of this Court in O.S.Writ Petition No.1153/2016. Therefore, I am passing the following order :

:: O R D E R ::

- i. The order passed by the Vice President & Chief Executive Officer, MHADA dated 6.8.2019 is set aside.
- ii. The Appeal before the Vice President & the Chief Executive Officer of MHADA preferred by the petitioner shall be decided afresh.

- iii. The appeal is remanded back before the said Appellate Authority for considering the appeal afresh in the light of the observations passed by the Division Bench of this Court in O.S. Writ Petition No.1153/2016. The appeal be decided expeditiously and as far as possible within a period of three months from today.
- iv. All contentions of both the parties are specifically left open.
- v. With these observations, the Petition is disposed of.

Digitally signed
by
PRADIPKUMAR
PRAKASHRAO
DESHMANE
Date:
2023.03.14
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(SARANG V. KOTWAL, J.)