

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 3571 OF 2021

Raigad Military School Trust

..... Petitioner

VERSUS

The State of Maharashtra & Ors.

..... Respondents

Mr. S.R.Nargolkar, a/w. Mr.Arjun Kadam for the Petitioner.

Mr.Manish Upadhye, A.G.P. for the State – Respondent nos. 1 to 3.

Mr.Akshay Shinde for the Respondent nos. 4 and 5 – MHADA.

CORAM: R. D. DHANUKA AND

M.M. SATHAYE, JJ.

DATE : 5TH JANUARY, 2023

P.C:-

Rule. Mr.Shinde, learned counsel for the respondent nos. 4 and 5 waives service. Learned A.G.P. waives service for the respondent nos. 1 to 3. Rule is made returnable forthwith.

2. By this petition filed under Article 226 of the Constitution of India, the petitioner seeks writ of certiorari for quashing and setting aside the notice dated 31st July, 2021 issued by the respondent no.3 and also the communication dated 29th December, 2017 issued by MHADA calling upon the petitioner to pay various amounts in respect of the plot

allotted to the petitioner described in the said notices.

3. It is the case of the petitioner that, the petitioner being a trust and the land being allotted for the purposes of school and playground, the petitioner is entitled to pay the lease rent at the concessional rate to MHADA.

4. It is a common ground that the MHADA vide letter dated 3rd September, 2008 has applied for payment of lease rent at concessional rate to be recovered from the petitioner in respect of the land allotted for the purposes of school and playground. The said revised proposal filed by the MHADA is still pending before the State Government. In the meanwhile, the respondents have issued recovery notice dated 31st July, 2021 and 29th December, 2017.

5. In view of the fact that, the MHADA itself has applied for permission to collect lease rent at the concessional rate of land from the petitioner and the said application is pending, the State Government as well as the MHADA cannot be allowed to proceed with the notice dated 31st July, 2021 and the communication dated 29th December,

2017 at this stage.

6. In our view, interest of justice would be met with if we direct the respondent no.1 to decide the said proposal submitted by the MHADA dated 3rd September, 2008 in accordance with law within 12 weeks from today. The order that would be passed by the State Government shall be communicated to the petitioner and also to the MHADA within one week from the date of passing such an order.

7. The petitioner would be at liberty to submit the representation to the respondent no.1 in support of the application made by the MHADA for seeking permission to collect the rent at the concessional rate. Such representation to be filed by the petitioner within three weeks from today with a copy to be served upon the MHADA.

8. In view of the fact that the application for seeking permission to allot the land at the concessional rate is pending, we quash and set aside the notice dated 31st July, 2021 and the impugned communication dated 29th December, 2017 annexed at Exh. D and E collectively.

9. It is, however, made clear that if the application made by the MHADA to the State Government is rejected for any reason, in that event, the MHADA would be at liberty to raise fresh demand notice upon the petitioner. If any order is adverse against the petitioner, no coercive steps would be taken by the State Government or MHADA for a period of two weeks from the date of communication of such adverse order.

10. It is made clear that this Court has not expressed any views on the merits of application made by MHADA to the State Government for seeking permission to collect the lease rent at the concessional rate. All the contentions of MHADA as well as the petitioners are kept open.

11. Writ petition is disposed off in the aforesaid terms. Rule is made absolute. No order as to costs. The parties to act on the authenticated copy of this order.

[M. M. SATHAYE, J.]

[R. D. DHANUKA, J.]