



Pradnya

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 11717 OF 2023**

Balasaheb Gangaram Shinde ...Petitioner
Versus
The State of Maharashtra and anr. ...Respondents

Mr. Machhindra Patil, *for the Petitioner.*
Mr. S. D. Vyas, Addl. G.P. *a/w Ms. Rupali Shinde,*
AGP for the Respondent No.1-State.
Mr. P. G. Lad *a/w Ms. Shreya Shah, for the*
Respondent No.2-MHADA.

**CORAM M.S. Sonak &
Kamal Khata, JJ.**
DATED: 10th June 2024

PC:-

- 1.** Heard Mr Machhindra Patil, learned counsel for the Petitioner, Ms Rupali Shinde, AGP appears for the State (Respondent No.1) and Mr P. G. Lad; learned counsel, appears for Respondent No.2.
- 2.** Mr. Lad, learned counsel for Respondent No.2, raises a preliminary objection to the entertainment of this Petition. He points out that against the impugned order dated 06th July 2023 made by the Chief Officer withdrawing the allotment, the Petitioner has an alternate remedy of instituting an Appeal under

Regulation 18(4) of the Maharashtra Housing and Area Development (Estate Management, Sale, Transfer and Exchange of Tenements) Regulations, 1981 (MHADA Regulations).

3. Regulation 18 of the MHADA Regulations reads as follows:-

“18. Power to withdraw allotment. -

(1) Notwithstanding anything contained in Regulation 17 the Chief Officer may, before any tenements are handed over and occupied by the applicants, review any decision regarding allotment and may by order withdraw the allotment duly made under clause (1) of Regulation 17 if he is satisfied that on the basis of any fresh evidence before him, the allotment of the tenement is required to be withdrawn.

(2) Every such order withdrawing an allotment shall be communicated in writing to the applicant, along with the grounds on which the allotment has been withdrawn.

(3) The order of the Chief Officer withdrawing the allotment shall, subject to an appeal to the Chief Executive Officer, be final and binding on the applicant.

(4) Any applicant, who is aggrieved by the decision of the Chief Officer, may, within a period of fifteen days from the date of receipt of the order, file an appeal before the Chief Executive Officer stating in brief the grounds for appeal.

(5) Every appeal shall be decided by the Chief Executive Officer within a period of three weeks from the date of filing of the appeal and every order rejecting the appeal shall state briefly the grounds for such rejection."

4. The objection is well-founded. Considering the alternate remedy available to the Petitioner, it would not be appropriate for this Court to exercise its extraordinary jurisdiction under Article 226 and/or 227 of the Constitution of India.

5. The Petition, therefore, is not entertained. Still, the liberty is granted to the Petitioner to avail of the alternate remedy of the Appeal in terms of Regulation 18(4) of the MHADA Regulations quoted above. However, it is noted that the Petitioner had instituted this Petition on 18th July 2023 to question the impugned order dated 06th July 2023. The Petitioner was pursuing this Petition bonafide. Accordingly, we feel that if the Petitioner now institutes an Appeal by 24th June 2024, the same must be decided by the Appellate Authority on its own merits and in accordance with law without non-suiting the Petitioner on the ground of limitation prescribed in Regulation 18(4) of the MHADA Regulations.

6. Mr Patil, on instructions, states that the Petitioner will institute the Appeal by 24th June 2024. If such an Appeal is filed by 24th June 2024, the Appellate Authority, after considering Regulation

18(5) provisions, must dispose of such an Appeal on or before 15th July 2024. The Regulation contemplates making a reasoned order should the Appellate Authority wish to decide against the Petitioner. Even this mandate must be complied with by the Appellate Authority.

7. The Appellate Authority must communicate its decision/order to the Petitioner on 22nd July 2024. In case such a decision aggrieves the Petitioner, liberty is reserved to the Petitioner to challenge the same in accordance with the law by raising all permissible grounds, including the grounds raised in the present Petition.

8. All contentions of all parties except the issue of limitation in instituting the Appeal are left open for the decision of the Appellate Authority in the first instance.

9. The Petition is disposed of in the above terms without any order for costs.

10. All concerned to act on an authenticated copy of this order.

(Kamal Khata, J)

(M. S. Sonak, J)