



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.8782 OF 2018

1. Shivaji S/o. Sambhaji Khule,
Age : 61 years, Occu. Labourer,
R/o. Indiranagar, Sangamner,
Tq. Sangamner,
District : Ahmednagar.
 2. Jalindar S/o. Kacharu Lahamge,
Age : 47 years, Occu. Labourer,
R/o. Vidyanagar, Sangamner,
Tq. Sangamner,
District : Ahmednagar.
 3. Purushottam S/o. Bisanlal Joshi,
Age : 50 years, Occu. Labourer,
R/o. Bazar Peth, Sangamner,
Tq. Sangamner,
District : Ahmednagar.
 4. Shivaji S/o. Gavram Kasar,
Age : 38 years, Occu. Labourer,
R/o. Janatanagar, Sangamner,
Tq. Sangamner, District : Ahmednagar.
 5. Sunil S/o. Baburao Khare,
Age : 60 years, Occu. Labourer,
R/o. Rangargalli, Sangamner,
Tq. Sangamner,
District: Ahmednagar.
 6. Goraksha S/o. Yashwant Rahane,
Age : 34 years, Occu. Labourer,
R/o. Krushnanagar, Gunjalwadi, Sangamner,
Tq. Sangamner,
District : Ahmednagar.
- ... **Petitioners**

VERSUS

1. The State of Maharashtra,
Through its Chief Secretary,
Road Transport Department,
Mantralaya, Mumbai-32.

2. Maharashtra State Road Transport Corporation,
Through its Managing Director,
Central Office, Maharashtra Transport Bhavan,
Dr. Anandrao Nair Road,
Mumbai-400 008.
3. Maharashtra State Road Transport Corporation,
Through its Chief Engineer,
Central Office, Maharashtra Transport Bhavan,
Dr. Anandrao Nair Road,
Mumbai-400 008.
4. Maharashtra State Road Transport Corporation,
Through its Divisional Controller,
Ahmednagar Division,
Central Bus Stand, Ahmednagar.
5. Depot Manager,
Sangamner Bus Stand, Sangamner,
District: Ahmednagar.
6. Suresh S/o Dadasaheb Kokane,
Age : 39 Occu. Business,
R/o Dhandarphal (Kh.),
Tq. Sangamner Dist. Ahmednagar.
7. Anil S/o Gulabrao Walwe,
Age : 36 yrs., Occu. - Business,
R/o Dhandarphal (Bk.)
Tq. Sangamner Dist. Ahmednagar.
8. Machhindra S/o Shrikisan Katore,
Age : 45 Occu. - Business,
R/o Sangvi, Dhandarphal (Kh.),
Tq. Sangamner, Dist. Ahmednagar.
9. Devidas S/o Bhaskarrao Deshmane,
Age : 37 yrs., Occu. - Business,
R/o Dhandarphal (Bk.),
Tq. Sangamner, Dist. Ahmednagar.
10. M/s. R. M. Katore,
having office at A/6 Murli Shakuntal Complex,
Oppo. Market Yard, Sangamner,
Dist. Ahmednagar, the sole proprietary of

Mr. Ramhari Mohan Katore,
Age : 50 yrs., Occu. Business,
R/o Govind Nagar, Sangamner,
District Ahmednagar.

... Respondents.

WITH

CONTEMPT PETITION NO.65 OF 2021
IN WRIT PETITION NO.8782 OF 2018

1. Shivaji S/o. Sambhaji Khule,
Age : 63 years, Occu. Labour,
R/o. Indiranagar, Sangamner,
Tq. Sangamner,
District : Ahmednagar.
2. Jalindar S/o. Kacharu Lahamge,
Age : 49 years, Occu. Labour,
R/o. Vidyanagar, Sangamner,
Tq. Sangamner,
District : Ahmednagar.
3. Purushottam S/o. Bisanlal Joshi,
Age : 52 years, Occu. Labour,
R/o. Bazar Peth, Sangamner,
Tq. Sangamner,
District : Ahmednagar.
4. Shivaji S/o. Gavram Kasar,
Age : 40 years, Occu. Labour,
R/o. Jantanagar, Sangamner,
Tq. Sangamner, District : Ahmednagar.
5. Sunil S/o. Baburao Khare,
Age : 62 years, Occu. Labour,
R/o. Rangargalli, Sangamner,
Tq. Sangamner,
District: Ahmednagar.
6. Goraksha S/o. Yashwant Rahane,
Age : 36 years, Occu. Labour,
R/o. Krushnanagar, Ghulewadi, Sangamner,
Tq. Sangamner,
District : Ahmednagar.

... Petitioners

VERSUS

1. The State of Maharashtra,

Through its Chief Secretary,
Road Transport Department,
Mantralaya, Mumbai-32.

2. Ranjit Singh Deol,
Age : Major, Occu. Service,
Managing Director,
Maharashtra State Transport Corporation,
Central Office, Maharashtra Transport Bhavan,
Dr. Anandrao Nair Road,
Mumbai-400 008.
3. Rajendra K. Javanjal,
Age : Major, Occu. Service,
Chief Engineer,
Maharashtra State Transport Corporation,
Central Office, Maharashtra Transport Bhavan,
Dr. Anandrao Nair Road,
Mumbai-400 008.
4. Kailas Chandakant Kalbhor,
Age : Major, Occu. Service,
Divisional Engineer,
Maharashtra State Transport Corporation,
Ahmednagar Division,
MSRTC Nagar, Ahmednagar.
5. Balasaheb Nanasaheb Shinde,
Age : Major, Occu. Service,
Incharge Depot Manager,
Sangamner Bus Stand, Tq. Sangamner,
District: Ahmednagar.
6. Rani B. Varpe,
Age : Major, Occu. Service,
Depot Manager,
Sangamner Bus Stand, Tq. Sangamner,
District: Ahmednagar.
7. Ajay Wamanrao Bhosale,
Age : 57 yrs., Occu. - Service,
Regional Executive Engineer,
MSTC, Nasik Division,
MSRTC, Nasik, Nasik.

8. Ramhari Mohan Katore,
Age 50 yrs., Occu. Business,
R/o Govind Nagar, Sangamner,
District Ahmednagar. ... **Respondents.**

...

Advocate for Petitioners : Mr. S. S. Dixit.
AGP for Respondent-State : Mr. A. S. Shinde.
Adv. for respective Respondents : Ms. R.D. Reddy (Absent).
Advocate for Respondent No.4 : Mr. D. S. Bagul.
Advocate for Respondent No.6 to 9 : Mr. Nikhil S. Jaju.
Advocate for Respondent No.10 : Mr. Vinod Y. Bhide.
Advocate for Respondent No.6 in CP : Mr. Parag V. Barde.
Advocate for Respondent No.4 in CP : Mr. S. S. Bora.

...

**CORAM : S. G. MEHARE, AND
SHAILESH P. BRAHME, JJ.**

**RESERVED ON : 05.02.2025
PRONOUNCED ON : 05.03.2025**

JUDGMENT : (Per S. G. Mehare, J.) :-

1. Rule. Rule made returnable forthwith and heard finally by consent of the parties.
2. The petitioners who are specially abled filed this writ petition for allotting the shops in the complex constructed by the respondents Nos 1 to 5 at Sangamner. They have claimed that they have a preferential right in such premises as they have reservation under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation Act, 1995 ("The Act" for short). The respondent/ MSRTC has

developed the land on build, operate and transfer (BOT Scheme) through a builder respondent No.10. It is further case of the petitioners that the shops in the complex should have been allotted at the prime location to make their life convenient considering their special ability. The Government of Maharashtra under the above Act has framed the action plan in 2011 for protecting the rights of such persons.

3. The contesting respondent had initially opposed the petition on the ground that since the development is not with the Government aid therefore job reservation for such persons in entire premises does not apply to the MSRTC being a Corporation. However, after a long struggle, the Principal Secretary (Transport), Mantralaya, Mumbai in a meeting dated 01.04.2019 informed that Government Resolution dated 25.07.2007 shall be followed and 3% shops shall be reserved and be given to the disabled persons. After said meeting, immediately 5 shops were reserved in the complex at Sangamner Bus Stand out of 169 shops. All the petitioners were served with letter dated 01.04.2019 calling them for a meeting proposed on 03.04.2019 for discussion. The conscious decision was taken to reserve the five shops for disabled persons. However, the petitioner did not consent to take the

shops and refused to accept the shops in the said meeting. Even they did not sign the minutes of the meeting. Out of six, five petitioners were present in that meeting. Since the petitioner refused to take the shops, the Contractor was informed that the reserved five shops should be allotted to the disabled person on concessional rate if any. Other disable persons respondent Nos.6 to 9 approached to him immediately. Out of five shops, the Contractor allotted the four shops to respondent Nos.6 to 9. Only one shop remained vacant. The registered lease deed also executed in favour of respondent Nos.6 to 9.

4. The petitioner has stated that the shops were allotted on the first floor on the extreme backside of the premises, which was in violation of the action plan scheme. The lift facility was also not suitably available. Considering their disablement and the rights protected under the Act, they should have been given a shop on the ground floor. This has not been done deliberately. For this substantial reason, they denied to get those shops. Since the respondents were not interested to allot the shops to the petitioners, they have deliberately produced the another respondent Nos.6 to 9 and suddenly without considering the rights prior in time illegally allotted the shops

to them. Therefore, allotment to respondent Nos.6 to 9 is in contravention and violation of the rights of the petitioners who were claiming the shops first in time. Respondent Nos.6 to 9 were served and appeared through Mr. Jaju. However, respondent Nos.6 to 9 did not file affidavit-in-reply.

5. Respondent No.10/Contractor has filed affidavit-in-reply. His reply is mostly identical to the reply of the contesting respondent/MSRTC. He has given the details of floating of the tender executing his agreement. In addition to it, he has come with the case that efficacious remedy lies before the Commissioner under the Act of 1995 (09.09.2016). He has submitted that since there was no condition for reserving 3% of the shops for the specially abled person, he would suffer financial loss if the shops are given on concessional rate. In such a situation, his financial interest needs to be protected and if the Court comes to the conclusion that the petitioner deserve allotment of the shops, his right be protected and he is entitled to recover the damages from MSRTC. In his affidavit-in-reply, dated 23.04.2023 he submits that as on that date, he was holding for 11 shops vacant for which he is paying rent to the MSRTC, he did not parted with his possession to any third party. If the petitioners choose them and/or in the case of

Courts direct so, he has given the description of those shops. If the petitioners desire on the terms specified in his agreement as developer with MSRTC, those are available for the petitioners.

6. Heard the respective learned counsels at length and gone through the petition, affidavit-in-reply and rejoinder with the abled assistance of the respective learned counsels.

7. Learned counsel for the petitioners referred to the Government Resolutions dated 25.07.2007, 25.02.2015 and Section 47 of the Act of 2016 (old 1996). Referring to the above Government Resolutions and the provisions of the Act, he has pressed into service the arguments that the specially abled persons have the protection. The very object of the Act was to give the equal opportunities, protection of the rights and full participation by the person with disability. Only for disability, they cannot be discriminated. Section 43 of the old Act of 1995 provides for the schemes for preferential allotment of land for certain purposes. As per the Section, the Governments and local authorities should have framed the schemes in favour of the persons with disabilities, for the preferential allotment of land at concessional rate for house, setting up business, setting up of special recreation centres,

establishment of special schools, establishment of research centres and establishment of factories by entrepreneurs with disabilities.

8. The identical provision in the Act of 2016 has incorporated under Section 37(c). Reading the above sections, the schemes to achieve the object of the Act should have been framed by the State Government. Pursuant thereto, the State of Maharashtra has published the action plan for such persons. The facts reveal that after a long battle, the contesting respondent/MSRTC agreed to allot five shops to the petitioners. However, the dispute arose on the location. Admittedly, the shops reserved for the petitioners or like persons were on the first floor. However, the petitioners denied the same for the reason that it was not on the front side of the building and ground floor. A small dispute arose on the facility of the elevator.

9. The question is “can the shops on first floor be kept reserved for the persons like petitioners”?

10. In the action plan, at point No.3.54 it has been provided that if any such tenaments are to be allotted to such persons, it should be given on the front side and if the claimants are more than the tenaments reserved draw by lots should be drawn.

11. It has been argued by the learned counsel for the contesting respondents that since the shops were five and the petitioners were six, they were fighting against each other.

12. When the dispute was pending before the Court and on denial with reasons to get the shops on the first floor, the contesting respondent/MSRTC seems to have hastily conferred the powers upon respondent No.10 to allot the shops and he without following the procedure allotted the shops to respondent Nos.6 to 9. It also seems that when the scheme was floated, they were not the applicants.

13. Learned counsel for the petitioners rely on the case of *Shivaji Vishwanath Dongre Vs. State of Maharashtra and others ; 2006 (1) Mh.L.J. 417*. In this case, it has been held that the petitioner is entitled to invoke extra-ordinary writ jurisdiction of the High Court for implementation of the provisions of the Act. Therefore, the objection as regards the non maintainability of the writ petition was discarded. Here in the case, the objection has been raised by respondent No.10 that an alternate efficacious remedy is available to the petitioner. In view of the above judicial pronouncement, we deem it fit to entertain this writ petition under the extra-

ordinary jurisdiction under Article 226 of the Constitution of India.

14. After examining the record with able assistance of the respective learned counsels, we find that the shops reserved for the disabled persons were apparently allotted to respondent Nos.6 to 9 in contravention of the action plan of the Government. Allotting the tenaments on concession is not showing the mercy upon such person. Their physical disability should be borne in mind while allotting the tenaments. Therefore, the Government has correctly laid down the condition in the action plan that the tenaments should be allotted to such persons in the front and at convenient place in the project. As per this action plan, if there are more candidates than the tenaments reserved, the allotment should have been done by a lottery. But, the facts reveal that making the reason of the ahead denying the shops on the first floor, the contesting respondent/MSRTC unauthorisedly and illegally authorized respondent No.10 to take the decision and allot the shops to respondent Nos.6 to 9. No procedure laid down in the action plan has been followed. Therefore, the allotment of the shops to respondent Nos.6 to 9 are apparently illegal and not binding upon the petitioners. We are satisfied that the

petitioners were the persons who put their rights into action and after a great battle they could succeed to establish that the scheme and the provisions of the Act also apply to the building constructed by the MSRTC. If the claimants are more than the tenaments, the respondent/MSRTC should have allotted it by lottery. Therefore, we do not find substance in the argument of the respondents that since the claimants were six and tenaments were five, they were fighting amongst themselves. After scanning the facts of the case and reading the relevant provisions of law, we are of the opinion that the writ petition deserves to be allowed. Hence, the following order :

ORDER

- (i) Writ petition is allowed.
- (ii) The petitioners with disability are entitled to the allotment of the tenaments to the extent of the reservation i.e. 3% of the total tenaments on the front side of the building/premises.
- (iii) The contesting respondents/MSRTC is directed to proceed with for the allotment of the tenaments by taking care of the rights of respondent No.10 on the ground floor and the front side.

- (iv) The allotment of the tenaments on the first floor to respondent Nos.6 to 9 stands cancelled.
- (v) Contesting respondent/MSRTC should follow strictly the procedure for allotment of the shops as mentioned above by lottery if the claimants are more than the tenaments reserved under the Act. The process of re-allotment and reserving the tenaments for the persons with disability on the front side should be done within three (3) months from today.
- (vi) In view of the above, Contempt Petition stands disposed of.
- (vii) Rule made absolute. No order as to costs.

(SHAILESH P. BRAHME, J.)

(S. G. MEHARE, J.)

15. After pronouncement of the judgment, learned counsel for contesting respondent/M.S.R.T.C. seeks stay to the judgment pronounced for eight (8) weeks, as the respondents want to impugn judgment and order before the Supreme Court. For completing the process, this Court has already granted three (3) months.

16. In the circumstances, of granting reasonable time, the present order would not be implement. The respondents have breathing time to move the supreme Court. Hence, we decline the prayer.

(SHAILESH P. BRAHME, J.)

(S. G. MEHARE, J.)

...

vmk/-