

Foreshore Cooperative Housing Society Limited, Bombay

Vs

Nivara Hakk Suraksha Samiti, Bombay and Others

With

Nivara Hakk Suraksha Samiti, Bombay and Others

Vs

State of Maharashtra and Others

Special Leave Petition (C) Nos. 16232 og 1990

(S. C. Agarwal, S. Ranganathan, N. D. Ojha JJ)

01.02.1991

ORDER

1. The Maharashtra Government allotted certain plots of land to the Foreshore Cooperative Housing Society Limited (hereinafter referred to as 'the Society'), a cooperative Society formed by some sitting and retired Judges of the Supreme Court and Bombay High Court. The land was originally allotted to the Society on a ground rent calculated at 8 per cent of the value of the land worked out at Rs. 2280 per sq. metre but, by a letter dated January 21, 1990 (the correct date appears to be January 2, 1990), the ground rent was reduced to six and a half per cent per annum on the value of the land calculated at the rate of Rs. 1050 per sq. metre. A writ petition was filed by the Nivara Hakk Suraksha Samiti, Bombay, by way of public interest litigation, challenging the validity of the above allotment and reduction in lease rent. The High Court, after hearing contentions of both the parties, upheld the allotment but set aside the reduction of the lease rent as per the letter dated January 21, 1990. The writ petitioners before the High Court as well as the Society have preferred these petitions for special leave before us.

2. In support of his petition, Shri Sebastian, learned counsel for the writ petitioners raised four contentions :

The first contention was that the allotment of land to the Society was in violation of paragraph 11 of the guidelines issued by the government for allotment of lands in the city of Bombay for housing purposes. He pointed out that under this paragraph the Collector was required to issue public notices regarding the availability of plots for allotment for housing purposes. Clause 4 of the guidelines provided for certain rules of priority in the matter of allotment and paragraph 7 required that the competitive merits of various applicants should be examined before any allotment was made. Learned counsel submitted that the allotment to the Society was made without observing these salutary guidelines. The High Court pointed out that paragraph 11 relied upon by the learned counsel itself contains an exception that the rule regarding prior publicity will not apply in cases where one or two plots are available for

disposal in isolation and held that the present case falls under this exception. Learned counsel submits that this finding of the High Court overlooks that this exception is not available in cases where, as here, a layout is prepared in accordance with the local development control rules making a number of plots available for disposal. He also submits that this was a case where more than two plots were allotted to the Society and that the exception is not attracted. So far as the first aspect is concerned, we may point out that though there is a reference to some layout, there is no material before us to conclude that a number of plots were allotted to various societies on the basis of a layout so prepared and that the allotment to the Society is not a case of allotment in isolation. Though learned counsel mentioned that allotment had been made to this Society as well as to a number of other societies of a vast area of land known as Queen's Barracks, no facts were placed on record before us or before High Court in support of this contention. On the contrary the contention as urged before the High Court was only that in the present case what had been allotted to the Society "were not just two plots but also the strip of land abutting thereon" and that, therefore, the exception does not apply. The High Court has pointed out that what was allotted to the Society was only two plots of land and that a part of abutting strip of land was allotted to the Society when it had been surrendered by a previous tenant on the land. The High Court came to the conclusion that, in the circumstances, the allotment to the Society was basically of the two plots and that the allotment of the strip of land abutting thereon did not take the case out of the exception made in Rule 11 of the guidelines. We see no reason to interfere with this conclusion which is primarily one of fact. In particular we may point out that what is being challenged is not the violation of any statute or rule but only certain guidelines which, it has been repeatedly pointed out in judgments of this Court, are more or less broad policy considerations from which minor deviations are permissible if the circumstances justify the same. In our opinion, the reference to "one or two plots" in the guidelines is not to be construed rigidly. Since the High Court has been satisfied that this was not a case of allotment of large number of plots but only two or even three plots in isolation, its conclusion that there is substantial compliance with the terms of the guidelines, does not call for any interference.

3. Shri Sebastian then argued that para 11 of the guidelines should be declared unconstitutional since there is no justification to dispense with the rule of publicity even in the allotment of one or two plots. This contention was repelled by the High Court by pointing out that there was nothing unreasonable about a government policy that press notes need not be issued where only one or two isolated plots are available for allotment and that all that was necessary is that even the allotment of such isolated plots must be bona fide and in the public interest. We agree. We would also like to point out that paragraph 11 is really intended to protect public interest and to ensure that land is allotted after due publicity so that all persons interested may compete therefor and their relative merits assessed but that an exception to provide for allotment of minor extents of land does not really constitute an objectionable inroad into the salutary public policy. We are, therefore, of the opinion that paragraph 11 is not unconstitutional as contended for by the learned counsel.

4. The third objection of the learned counsel was that the provisions of paragraph 10 of the guidelines has not been complied with. This paragraph requires that a society to which government land is granted for construction of residential flats/houses should enrol 20 per cent from amongst scheduled castes, scheduled tribes and nomadic tribe communities. There are two answers to this objection. The first is that the guideline applies only to cases where, under the rules of the

cooperative society, persons from the backward communities specified therein are eligible for membership. It does not appear to envisage enrolment of the members of such communities even where membership of the society is restricted to certain categories of persons among whom there is no eligible member from the backward communities or to require the amendment of the society's rules and regulations to ensure the presence of such members in the society. That apart the second objection which has been upheld by the High Court is that the government has exercised its powers of relaxation and has permitted the Society a relaxation from this rule on the understanding that one person from the communities mentioned, who was eligible to become such a member, should be admitted as a member subject to his willingness to accept the same. We are informed that such a person has also been admitted to the membership of the society. In view of this, this contention no longer survives.

5. The last contention raised by Shri Sebastian was that the plots in question were reserved in the draft development plan for "housing the dishoused" and that, therefore, the allotment of this land to the society for housing purposes was not proper. The High Court has pointed out that the plots have been dereserved under the powers vested in the Administrator of the Municipal Corporation under Section 50 of the Maharashtra Regional Town Planning Act. Learned counsel referred to the provisions of Sections 26 to 29 of the Act. But we agree with the High Court that the relevant provision is contained in Section 50 and that, since dereservation has been made under this section, the objection put forward does not survive. The reservation becomes material only at the stage of permission to construct on these plots and it is common ground that by the time the constructions were made dereservation had been effected. Learned counsel sought to contend that the dereservation was arbitrary. But, as rightly pointed out by Shri Ashok Desai, this is a totally new case that is being sought to be put forward on behalf of the writ petitioners. Their contention, even in their amended writ petition, was only that the land, having been reserved, could not be allotted to the society and this was rightly answered by the High Court by pointing out that it had been subsequently dereserved. The validity or the bona fides of dereservation were not put in issue and no material was also placed before the High Court or before us in support of any such contention. We, therefore, hold that there is no merit in this contention.

6. We may also point out that the petitioner does not represent any existing or proposed cooperative society. Since only cooperative societies are eligible for allotment its interests are not directly affected. Also, even as a public interest litigation, the petitioner should have come to court at a much anterior stage. We do not say that the petitioner has no locus standi or that the petition should have been dismissed on the ground of laches but these are matters which a court may legitimately take note of in deciding the question of relief.

7. For the reasons shortly stated above the contentions of the petitioners in S.L.P. No. 17045 of 1990 are without substance and the SLP is dismissed.

8. So far as the Society's petition for special leave is concerned, it relates to that portion of the order of the High Court which quashes the letter of the government dated January 21, 1990. Shri Desai submits that in setting-aside this decision of the government the learned Judges of the High Court have proceeded on the footing that the petitioner Society itself having agreed to a rent calculated on the basis of Rs. 2280 per square metre, it was "not open to the Society to go back on its acceptance of a second time of the lease rent on the basis of affordability". Learned counsel submits that the High Court has erred in applying some principle of estoppel in this context. He does not deny that, earlier, the Society had agreed to a lease rent fixed on the basis of Rs. 2280 per square meter but he submits there was nothing objectionable in law or equity for the Society to approach the government

for a reduction in the rent by pointing out certain features which, according to it, justify such reduction. Learned counsel submitted that even if the High Court felt that a reduction to the extent made by the government was not permissible the bench should have directed the matter to be restored to the government for its fresh consideration. There is substance in the contention of the learned counsel for the petitioner. We think he is right in submitting that no principle of estoppel can be applied in the circumstances to the case and that the Society was fully at liberty to apply to the government for the reduction of the rent even though the fixation was on a basis earlier agreed to. It is open to the government to consider any such representation and, if a proper case is made out, the government is certainly entitled to pass such orders as it may consider appropriate. The difficulty we find in the present case, however, is that the reduction has been given effect to by the government without any material to justify such reduction. All the circumstances which were placed by the Society for the consideration of the government for the reduction had been adverted to and, despite the earlier pleas of the Society on this material, the government had stuck to the stand that the rent should be fixed on the basis of a market value of Rs. 2280 per square metre. We are unable to find from the record any special circumstance brought to the notice of the government which could have justified the reduction of the rent which had been earlier fixed after due consideration. Learned counsel referred to certain aspects before us but these were not placed before the government at the time of reconsideration. In these circumstances, though we do not fully agree with the line of reasoning of the High Court on this aspect of the case, we are constrained to hold that the decision of the government on January 21, 1990 to reduce the rent on the basis of land value of Rs. 1050 per square metre is not based on any material that was not before the government when the lease rent was originally fixed. Since the question is one of fixing the price of public lands allotted for the use of a private co-operative society, we are of the opinion that any reduction or re-fixation should be made only on definite cogent material which was not considered at the time of original fixation or when some mistake is noticed or pointed out in the original fixation. For these reasons, we also agree with the order of the high Court insofar as it quashed the government decision dated January 21, 1990. S.L.P. No. 16232 of 1990, therefore, also stands dismissed. However, the Society will be at liberty, if so advised, to apply to the government afresh for a reconsideration of the original rent fixation on the basis of proper material and if any application is so filed it will be open to the government to deal with it and dispose it of in accordance with law.

9. In the result, both the petitions are dismissed but there will be no order regarding the costs.

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