

SUPREME COURT OF INDIA

S.V. Asgaonkar

Vs.

The Mumbai Metropolitan Region Development Authority

C.A.No.3488 of 2018

(A.K.Sikri and Ashok Bhushan,JJ.,)

09.04.2018

JUDGMENT

Ashok Bhushan,J.,

SLP(C)No.26056 of 2012

1. This appeal has been filed against judgment dated 19 . 06. 2012 of the High Court of Bombay by which Writ Petition No.8224 of 2011 filed by the appellants has been dismissed.

2. Brief facts of the case giving rise to this appeal are:

The Mumbai Metropolitan Region Development Authority has been constituted under the Mumbai Metropolitan Development Authority Act, 1974. The Authority has framed Regulations, namely, Mumbai Metropolitan Region Development Authority (Disposal of Land) Regulations, 1977 which were also amended vide Notification dated 29.04.1997. The Authority in accordance with the Regulations is empowered to dispose of its land.

3. The appellants were employees of Mumbai Metropolitan Region Development Authority (hereinafter referred to as 'Authority'). The Resolution dated 07.06.1997 was passed by the Authority granting permission to allot the land of Authority situated at Chitalsar Manpada Village, District Thane admeasuring about 13,700 sq.mtr. to the proposed Co-operative Housing Society of the employees of the Mumbai Metropolitan Region Development Authority for the purpose of construction of houses on lease hold basis for a period of 80 years. The Resolution by condition No.3 provided that Housing Society will have to pay an amount at the rate of Rs.1400/- per sq. mtr. for a period of 80 years as premium. Letter dated 05.11.1998 was issued to the proposed Society informing about the Resolution dated 07.06.1997 and the terms and conditions thereof. A Co-operative Housing Society of the employees of the Authority was registered on 25.06.1999 under the Maharashtra Co-operative Societies Act, 1960. The Society in reference to the above wrote letters dated 23.07.1999, 19.11.1999 and further dated 09.12.1999 wherein it made three requests, namely:

(a) The rate of Rs. 1400/- per sq. mtr. is the rate of developed plots and, therefore, the land falling under road and compulsory open spaces should be made available free of cost.

(b) Instead of insisting on payment of the premium in one or two instalments, the Society may be permitted to pay the land cost in yearly instalments spread over 10 to 15 years.

(c) Pending the final decision, advance possession of the plot of land be given to the Society by charging a token amount @ 2% of the estimated cost of the land.

4. On 09.07.1999, the Government of Maharashtra had issued Government Resolution pertaining to the Govt. land to be allotted to the Housing Society. The document contained various terms and conditions under which Government land can be allotted to the Co-operative Housing Society. The letter dated 09.12.1999 of the Society was not favourably responded by the Authority. Again letter dated 26.02.2001 was sent by the Society to the Authority requesting to put up a proposal for consideration of the Authority in the forthcoming meeting for allotment of land to Society on similar terms as that of the allotment of land to the MMRDA Class-IV Employees Co-operative Housing Society. Reminder dated 27.04.2001 was again sent by the Society. The Authority vide its letter dated 03.05.2001 wrote to the Society where the Authority requested the Society to go through the terms and conditions given in the Resolution dated 09.07.1999 and communicate its willingness so that further action be taken in the matter. Copy of Government Resolution dated 09.07.1999 was forwarded to the Society to communicate its willingness as per terms and conditions given in Government Resolution dated 09.07.1999.

5. The Authority in its meeting dated 01.09.2003 resolved to allot the land to the Society as per the terms and conditions dated 09.07.1999. In the Resolution it was further stated that the allotment will be made at the rate of Rs.2500/- per sq.mtr. In the above respect, the condition No.(c) contained in the Resolution dated 07.06.1997 was modified. A letter dated 11.12.2003 was issued by the Authority to the Society relating to grant of land area 13,700 sq.mtr. as per Resolution dated 01.09.2003. The letter further stated that the list of eligible members may be approved by submitting proposal with necessary proofs in that respect and verifying the eligibility of members, the built up area will be allotted to the members and thereafter possession of land will be given by executing lease. The Society vide letter dated 10.06.2004 submitted final list of eligible members as requested by the Authority as on 11.12.2003. In response to the letter of the Society, further, letter dated 09.12.2005 was issued to the Society informing allotment of land to the Society admeasuring 10,700 sq.mtr. with total premium to be paid, along with the letter list of non-eligible members with remarks "not in the service on the date of LOI" including the names of the appellants was also furnished.

6. The appellants aggrieved by the aforesaid communication dated 09.12.2005 filed Writ Petition No.8224 of 2011 praying for quashing the communication dated 09.12.2005 holding the appellants as non-eligible. Further, to issue mandamus, directing the respondents to include the names of the present appellants as persons being eligible to receive tenements/flats. Prayer to strike down condition No.8 of Annexure-A of the Government

Resolution dated 09.07.1999 was also made. The High Court vide its judgment dated 19.06.2012 dismissed the writ petition. The High Court held that the proposal dated 27.04.2001 submitted by the Society was neither in continuation of the earlier allotment letter issued by the Authority in the year 1997 nor has any nexus in respect thereof. The allotment dated 01.09.2003 was made on the basis of fresh proposal. It was one of the conditions of the Government Resolution dated 09.07.1999 that only such employees who were in the employment on the date of allotment of the land would be eligible to be the members of the Society. The appellants on that day being not in employment of respondent No.1, they have not rightly been held eligible. With the aforesaid observation, the writ petition has been dismissed. Challenging the said judgment this appeal has been filed.

7. Shri Huzefa Ahmadi, learned senior counsel appearing for the appellants submits that the appellants were fully eligible for allotment of land. He submits that the allotment of land has to be treated as allotment made on 07.06.1997 on the basis of which Letter of Intent dated 05.11.1998 was issued. He submits that the appellants were eligible on the date of Resolution dated 07.06.1997 as well as on 05.11.1998 they being in service on the above relevant dates they could not be held to be not eligible relying on the date 11.12.2003 on which date letter was issued on the basis of Resolution 01.09.2003. He submits that subsequent Resolution dated 01.09.2003 was in continuation and in modification of earlier Resolution dated 07.06.1997, hence, the eligibility has to be seen on the date when Resolution dated 07.06.1997 was passed. The appellants being eligible on the original date when the Resolution was passed, the view taken by respondent No.1 that they are not eligible for allotment was erroneous. It is further submitted that the appellants being members of the Society and eligible for allotment, they will not lose the eligibility merely on the ground that a subsequent Resolution dated 01.09.2003 was passed. He submits that the view of the High Court that the allotment was made on the basis of a fresh proposal made by the Society, is incorrect. The allotment is consequent to earlier proposal which culminated into the Resolution dated 07.06.1997.

8. Shri Shivaji M. Jadhav, learned counsel appearing for the respondent refuting the submissions made by the appellants contends that a fresh allotment was made on 01.09.2003 on the basis of Government Resolution dated 09.07.1999 which is separate allotment having no relation to the earlier Resolution dated 07.06.1997. He submits that the appellants being not in service of the Authority on the date when Letter of Intent was issued i.e. 11.12.2003, they have rightly been excluded from the list of eligible members. He submits that the High Court has taken correct view of the matter.

9. We have considered the submissions of the learned counsel for the parties and perused the records.

10. The High Court has dismissed the writ petition taking the view that allotment dated 01.09.2003 was passed on the fresh proposal submitted by the Society and the Resolution dated 01.09.2003 being passed on separate and distinct proposal, eligibility on 07.06.1997 is not relevant. Whether the above reason given by the High Court for dismissing the writ petition is correct or not is the first issue which needs to be answered in this case.

11. In pursuance of Resolution dated 07.06.1997 Letter of Intent dated 05.11.1998 was issued in which following terms were mentioned for allotment of land:

- "1. The Association of employees will form the proposed Co-operative Housing Society of the Employees within a period of 60 days from the date of receipt of Authority's letter and to get the said Society registered within a period of 6 months.
2. Land will be allotted for a period of 80 years on lease hold basis.
3. The employees of the Authority of the Housing Society will have to pay an amount at the rate of Rs.1400/- per sq.mtr. as per the market rate fixed by the Town Planning Department, Thane for a period of 80 years as a premium.
4. The provision of the Mumbai Metropolitan Region Development Authority (Disposal of Land) Regulations will be applicable to this allotment of land."

12. The letter dated 05.11.1998 refers to Disposal of Land Regulations. At this juncture, we may notice the above Regulations which were amended on 29.04.1997. The amended Regulation, 1997 has been brought on the record by the appellants themselves through rejoinder-affidavit. In the Amendment Regulation Clause (iA) has been added which is to the following effect:

"(iA) If half of the premium shall not be paid within one month or in case of Government within two months, if permitted by the Metropolitan Commissioner, the Agreement concluded with the Authority shall stand determined and the Earnest Money deposited by Intending Lessee along with its tender or offer shall stand forfeited to the Authority without prejudice to the rights and powers of Authority to recover compensation for loss or damage, if any suffered in consequence of such breach of the Intending Lessee to so pay half of the premium to the Authority. Likewise, if the balance premium shall not be paid within twelve months as provided hereto before, the Agreement concluded with the Authority shall stand determined and the Earnest Money paid by him along with its tender or offer together with 25 per cent of the premium shall be forfeited to the Authority without prejudice to the right and Powers of the Authority to recover compensation for loss or damage, if any, suffered in consequence of such default of the Intending Lessee."

13. The Disposal of Land Regulations as amended being applicable, it was required for the Society to make payment of premium within the time prescribed by the Authority. Admittedly, the Society did not make the payment of premium and has submitted a request for permitting to make payment by instalments spread over 10 to 15 years. It was further prayed that the land falling under road and compulsory open spaces will be made available free of cost. The Society requested for relaxation of various conditions which were not granted by the Authority at any point of time. The Resolution dated 07.06.1997 and consequent allotment dated 05.11.1998 did not fructify into allotment of land and lapsed as per Disposal of Land Regulations as amended in 1997, Regulation (iA). In the meantime

the Government of Maharashtra has issued Resolution dated 09.07.1999 providing various terms and conditions for allotment. In the present case, we are concerned with one of the conditions which is condition No.8 of Annexure-A. Annexure-A is "Eligibility for approval to the members of the Co-operative Housing Societies who intend to obtain Government land by paying concessional occupancy charges/ lease rent". Condition No.8 which is a part of Annexure-A to the Resolution is to the following effect:

"8. It is a pre requisite that the Government Employee will be in the service on the date on which the indent letter will be issued to the Co-operative Housing Society, and only then such employee will be treated as eligible for membership."

14. The Society itself has made various applications to the Authority after Resolution dated 07.06.1997. One of the applications dated 09.12.1999 is Annexure P-5 where the allotment on certain modified terms and conditions was prayed for, which was never granted. Again an application dated 26.02.2001 was given by the Society where it has referred to the Resolution made on 07.06.1997 by which proposal for allotment to MMRDA Employees Co-operative Housing Society was passed. Prayer was made in the letter dated 26.02.2001 to put up a proposal for consideration of the Authority for allotment of land to Society.

15. Again letter dated 27.04.2001 was submitted by the Society to the Authority where it was requested to put up a proposal for consideration of the Authority in its forthcoming meeting in accordance with Government of Maharashtra Resolution dated 09.07.1999. It is useful to quote the prayer made in paragraph 4 of the aforesaid letter:

"4. You are now requested to put up a proposal for the consideration of the Authority in its forthcoming meeting for the allotment of earmarked MMRDA land at Chitalsar Manpada to the MMRDA Employees Co-operative Housing Society, Chitalsar Manpada, Thane in accordance with the Government of Maharashtra Resolution No. LCA-1095/P.K.37/95/J-1 (together with its Annexures) dated 9th July, 1999 as was approved by the Authority for the allotment of land to the MMRDA Class-IV Employees Co-operative Housing Society at Panchpakhadi. We are in a readiness to make the necessary payment for taking the possession of the land of 13,700 sq.mtr. area on the terms prescribed in the above referred Government of Maharashtra Resolution.

Thanking you,
Yours faithfully, Sd/-
(A.V. Ghangurde) Chairman"

16. In response to letter dated 27.04.2001, the Authority wrote a letter dated 03.05.2001 to the Society forwarding the Resolution dated 09.07.1999 and requesting the Society to go through the terms and conditions and communicate Society's willingness so that further action be taken. The Society vide letter dated 10.05.2001 communicated its willingness to abide by the Resolution dated 09.07.1999 and thereafter Resolution dated 01.09.2003 was passed for allotment of land. In pursuance of Resolution dated 01.09.2003, letter dated

11.12.2003 was issued by the Authority to the Society. The Authority vide letter dated 11.12.2003 informed that lease premium may be charged at Rs.2500/- per sq.mtr. instead of Rs. 14 0 0/- per sq. mtr. as was earlier approved. From the aforesaid sequence of events, it is clear that the allotment dated 01.09.2003 was a fresh allotment of land on a higher premium that is Rs.250 0/- per sq. mtr. Earlier allotment dated 07.06.1997 had lapsed due to non-fulfilment of the conditions as required by the Disposal of Land Regulations, 1977 as noted above. Thus, the allotment dated 01.09.2003 was on the basis of the fresh proposal relying on the Government of Maharashtra Resolution dated 09.07.1999. We, thus, are of the view that the High Court is right in its conclusion that allotment dated 01.09.2003 was on the basis of fresh proposal of the Society and same has no nexus with respect to Resolution dated 07.06.1997.

17. Learned counsel for the appellants relying on Resolution dated 01.09.2003 submits that the Resolution dated 01.09.2003 clearly mentions that it modifies condition No.3 contained in earlier Resolution dated 07.06.1997 which clearly means that Resolution dated 01.09.2003 is in continuation of earlier Resolution, hence, the eligibility of the members have to be seen on 07.06.1997 or 05.11.1998. He relies on the following portion of Resolution dated 01.09.2003:

”RESOLVED THAT, in exercise of power conferred under Sub-Section 2 of Section 3 of the Mumbai Metropolitan Region Development Authority Act, 1974 and making modification in Condition No."c" contained in its resolution dated 727 passed in the 88th meeting held on 7. 6.1997 and as proposed in paragraph 6 of the item note, the authority allots the land situated at Chitalhar, Manpada, Thane to the MMRDA employees cooperative housing society on the following terms and conditions."

18. It is true that Resolution dated 01.09.2003 modifies condition No.(c) as was contained in Resolution 07.06.1997. Condition No.(c) was with regard to amount of premium per sq.mtr. which was Rs.1400/-. The Resolution dated 01.09.2003 modifies the said amount as Rs.2500/- per sq. mtr. The modification of above condition has been specifically mentioned since earlier the Authority has offered the plot on Rs. 1400/- per sq. mtr. which was subsequently made as Rs.2500/- per sq.mtr. As noted above the Resolution dated 07.06.1997 itself was not honoured by the Society and it lapsed as per statutory Regulations noted above.

19. The fresh allotment was made on 01.09.2003 in pursuance of which Letter of Intent was issued on 11.12.2003, thus, the eligibility has to be seen as per condition of Annexure-A of the Government Resolution dated 09.07.1999. On the strength of Resolution dated 01.09.2003 in so far as it modifies the rate of premium per sq.mtr., it cannot be said that the same allotment which was made on 07.06.1997 has been continued on 01.09.2003 and the eligibility of members has to be pegged on the date of Resolution dated 07.06.1997 or 05.11.1998 i.e. issue of Letter of Intent. We, thus, do not find any substance in the above submission of the learned counsel of the appellants.

20. The submission of the learned counsel for the appellants that eligibility with regard to being in service has to be seen on the date 07.06.1997 or 05.11.1998, thus, cannot be acc-

epted. The Society itself Has given approval vide its communication dated 10.05.2001 to consider the allotment to the Society in its forthcoming meeting on 17.05.2001 on the basis of Government of Maharashtra Resolution dated 09.07.1999. It is thus clear that the Society itself has requested for a fresh consideration and fresh Resolution on the basis of the eligibility laid down by Resolution 09.07.1999. After after issuance of allotment letter dated 11.12.2003 by which list of eligible members was asked for, in response to which Society has sent its communication dated 10.06.2004 stating the following:

"...The final list of members eligible as on 11.12.2003 by scrutiny of said list as per terms and conditions under the Government Resolution through the Land Branch will be accepted to the Society. Also, the waiting list of total 33 members has been present till date through the Society and it will be sent to the Land Branch at the necessary time."

21. Thus, the Society was conscious of the fact that eligibility of members has to be seen as on 11.12.2003 that is the date on which Letter of Intent was issued in pursuance of allotment. The Society having accepted the aforesaid clause of eligibility and accepted the offer of allotment as given by the Authority, we fail to see that how the eligibility as on 11.12.2003 be permitted to be questioned.

22. There is one more fact which needs to be noted. The Authority has proposed allotment of 13,700 sq.mtr of land which is apparent from its Resolution dated 01.09.2003 as well as letter dated 11.12.2003. After scrutinising the list of eligibility, ultimately, the allotment was made only for land admeasuring 10,700 sq.mtr. by letter dated 09.12.2005. The Authority had not taken into consideration the area for non-eligible members while finalising the list and due to the aforesaid reasons the area allotted to the Society has been reduced from 13,700 sq.mtr. To 10,700 sq.mtr..

23. Taking into consideration the aforesaid facts and circumstances, we are of the view that no relief can be granted to the appellants. The High Court did not commit any error in dismissing the writ petition. We do not find any infirmity in the judgment of the High Court. The appeal is dismissed.