



PRAKASH PATIL

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Darshan Patil

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 1042 OF 2003

1. **GORAI NAGAR MAHARASHTRA
GRIHANIRMAN VASAHAT
SANGHATANA**
A Society registered under Bombay
Public Trusts Act, having Registration
No. F-5256 & BOM/573/78 GBBSD
under Societies Registration Act, 1/31,
Maharashtra Housing Board Colony,
Gorai Nagar, Borivali (West), Mumbai
400 091.
2. **A.D. LOKHANDE,**
Working Chairman 1/31, Maharashtra
Housing Board Colony, Gorai Nagar,
Borivali (West), Mumbai 400 091.

... PETITIONERS

~ VERSUS ~

1. **STATE OF MAHARASHTRA**
Dept. of Housing, Govt. of
Maharashtra, Mantralaya, MUMBAI
400 032.
2. **MAHARASHTRA HOUSING AND
AREA DEVELOPMENT
AUTHORITY,**
Grihnirman Bhavan, Bandra (East),
Mumbai 400 050.
3. **PRESIDENT, MAHARASHTRA
HOUSING AND AREA**

...RESPONDENTS

and Mr P.G. Lad along with Ms Sayli Apte and Ms Shreya Shah for the respondent - MHADA (respondents 2 to 4). The 5th respondent was duly served. Mr Pandey had even waived service for the 5th respondent after this petition was admitted on 9th March 2004.

2. The dispute in this petition is about the allotment of a plot of land bearing City Survey No. 240 (Part) and Survey No. 25 (Part) situated Opp. Building No. 10, Old Maharashtra Grihanirman Vasahat, Gorai Nagar, Borivali (West), Mumbai - 400 091 ad-measuring about 1046.25 sq. mtrs. ("subject plot") by the 2nd, 3rd and 4th respondents- Maharashtra Housing and Area Development Authority ("MHADA"), based allegedly on directives of the State Government issued under Regulation 16 of the Maharashtra Housing Area Development (Disposal of Land) Regulations ("1982 Regulations").

3. On 20 March 2003, the Division Bench of this Court comprised H.L. Gokhale and Smt. Ranjana Desai, JJ., directed parties to maintain the status quo. This order dated 20 March 2003 reads as follows:-

"1. Place the petition for admission on 07th April 2003.

2. The dispute is about an open plot of land which has been allotted to Respondent No.5. The Petitioner is claiming that very plot. Presently the plot is vacant and open, except that, a board displaying the name of Respondent No.5 has been put up on this particular plot. All parties will maintain status quo with respect to this plot pending

admission. No construction of any sort including fencing will be carried out in this plot until further orders.

3. *Authenticated copy of this order be made available to the parties.”*

4. On 11 June 2003, the respondents were directed to file affidavits in reply at least a week before the returnable date. The State Government filed two affidavits dated 10 July 2003 and 10 December 2003. The division bench comprising R.M. Lodha and Anoop V. Mohata, JJ., upon perusing the State Government’s affidavits, made the following order on 10 February 2004:-

“ Though on behalf of the State Government, two affidavits have been filed, one on 10.7.2003 and the other on 10.12.2003, we find that both the affidavits do not answer the vital questions as to the criterion applied for consideration of the merits of the three claimants, namely, Gorai Nagar Maharashtra Grihanirman Vasahat Sanghatana (Petitioner herein), Ayyappa Seva Samiti (Respondent No.5 herein) and Berozgar Sai Seva Cooperative Society Limited and on what basis the claim of Respondent No.5 was found meritorius. Mr.Mattos, learned Assistant Government Pleader prays for time to file a comprehensive affidavit of a responsible officer on behalf of the State Government justifying the allotment of the subject plot to the Respondent No.5.

2. S.O. 9.3.2004.

3. *Parties may be provided an ordinary copy of this order duly authenticated by the Court Associate on payment of usual copying charges.”*

5. Despite the request of the learned AGP for granting time “*to file a comprehensive affidavit of responsible officer on behalf of the state government justifying the allotment of subject plot to respondent No. 5,*” an affidavit of only three paragraphs dated 09 March 2004 was filed by Shri Rajendra Maruti Bengle, Under Secretary, Housing Department, Government of Maharashtra, who had filed earlier two affidavits dated 10 July 2003 and 10 December 2003. The 1st and 3rd paragraphs of this affidavit are formal and the so-called justification for allotment of the plot to the 5th respondent is set out in paragraph 2. This could hardly be called a ‘*comprehensive affidavit of a responsible officer on behalf of the State Government justifying the allotment of said plot to the 5th respondent*’.

6. Thereafter, on 09 March 2004, this petition was admitted, and an ad-interim relief order dated 20 March 2003 was directed to remain in operation until the final disposal of this petition. The status quo has accordingly continued, and the subject plot is not built upon or otherwise dealt with by the 5th respondent.

7. The 1st petitioner – Society is an association of occupants of at least 27 buildings that MHADA has constructed under the low-income group housing scheme. There are pleading that about ten thousand persons occupy the 27 buildings now represented by the 1st petitioner. The petitioners pleaded that the subject plot, which is now allotted to the 5th respondent, was earmarked by MHADA in

its housing scheme as the plot to be used for constructing a social welfare centre.

8. Accordingly, the 1st petitioner applied to MHADA and the State Government for allotment of this plot vide application dated 7 June 1981. The petitioners have pleaded that MHADA, by communication dated 17 July 1981, informed the 1st petitioner that their request for allotment of the subject plot was under consideration. Petitioners have pleaded that they were following up on the issue of allotment with MHADA and were always informed that the matter was under consideration.

9. In paragraph No. 4(g), petitioners have pleaded that by communication dated 06 August 1993 (at Exhibit 'A', page No.47 of the paperbook), the MHADA informed the petitioners that in the meeting held on 28 February 1992, MHADA had decided that "*the plots which are within the jurisdiction of the regional authority for residential/ non-residential use should not be allotted individually or to any association, but that allotment of such plots could be made only after the necessary advertisement is published inviting applications for allotment of such plots and the applications received pursuant to such advertisements are scrutinised.*" Accordingly, the petitioners were informed that their application for allotment of the plot, which was made before any advertisement was issued inviting applications for allotment of the subject plot, could not be considerable.

10. The petitioners pursued the matter with MHADA and the State Government. Thereupon, MHADA, by its communication dated 21 December 1996, once again re-iterated the response contained in the communication dated 06 August 1993. This means

that the MHADA maintained that no individual applications would be entertained until an advertisement was issued informing the members of the public about the availability of the subject plot, and applications were invited, which could then be considered and allotment is made. The communication dated 21 December 1996 is also enclosed along with the petition at Exhibit 'B1' on pages 51 and 52.

11. Thus, the consistent stand of MHADA was that the subject plot would not be allotted unless a proper advertisement was issued informing members of the public about the availability of such a plot for allotment, applications are invited and considered. Such averments have been made in the petition and the same have not even been denied by the MHADA or the State Government by filing any proper response.

12. The petitioners pursued the matter of allotment, this time relying upon some alleged reservation which, according to them, applied to the subject plot. The petitioners also relied upon the fact that this plot was earmarked in the MHADA scheme to construct a socio-cultural centre. On the directions of the Housing Minister, a report was called from the MHADA regarding the allotment of the subject plot. The petitioners were called upon to submit documents and furnish information about their activities and their aims and objectives. All this correspondence is also placed on record along with the petition. The petitioners have pleaded that despite furnishing such information there was no response from the MHADA or the State Government.

13. In December 2002, however, the petitioners found some representatives of the 5th respondent visiting the subject plot. Upon enquiries, the representatives stated that the subject plot had already been allotted to the 5th respondent for constructing a temple. The petitioners pleaded that they were shocked and surprised and enquired with MHADA and the State Government. However, the MHADA and the State Government officials refused to divulge any information. Only after several efforts and persuasion did one of the officials of MHADA show the petitioners a letter dated 06 August 2002 addressed by the State Government to MHADA regarding the allotment of the subject plot to the 5th respondent. This letter dated 06 August 2002 is placed on record at Exhibit 'G' to the petition (pages 73 to 75 of the paperbook).

14. The petitioners have pleaded that whilst they were in the process of obtaining further details, on 25/26 January 2003, some persons representing the 5th respondent attempted to enter the subject plot and undertake some activities thereon. Therefore, the petitioners addressed a detailed representation dated 28 January 2003 to the State Government and MHADA protesting against the allotment of the subject plot to the 5th respondent in breach of their consistent stance that no allotment would be made until public advertisement was issued and applications were invited for such allotment. The petitioners also pointed out that there are several infirmities that affected the allotment of the subject plot to the 5th respondent.

15. The petitioners have pleaded that despite receiving the representation dated 28 January 2003, neither the State Government nor MHADA took any action. Therefore, on 13 March

2003, the petitioners instituted the present petition. As noted earlier, the status quo order was granted on 20 March 2003, and the status quo has been operative since then.

16. Mr Jalisatgi learned counsel for the petitioners, submitted that nothing was correct about the impugned allotment of the subject plot to the 5th respondent. He submitted that the State Government and MHADA had consistently held out that no allotment would be made without issuing public advertisements and inviting applications. He submitted that no public advertisement was ever issued, and the 5th respondent's application, which was made after the petitioners' application, was clandestinely considered and granted.

17. Mr Jalisatgi submitted that this was patent discrimination, which violated Article 14 of the Constitution of India. Mr Jalisatgi submitted that even otherwise, there was no transparency in the allotment, and despite this Court commenting upon the State Government's affidavits dated 10 July 2003 and 10 December 2003, no comprehensive affidavit was filed justifying the allotment of the subject plot to the 5th respondent.

18. Mr Jalisatgi submitted that the allotment of such plots was governed by the Maharashtra Housing Area Development (Disposal of Land) Rules, 1981 ("1981 Rules"). He submitted that under the 1981 Rules, there was a clear bar to the allotment of land for religious purposes. Mr Jalisatgi referred to the additional affidavit filed by the petitioners on 09 March 2004, to which was annexed an appeal dated 21 December 2002 made by the 5th respondent to the devotees to donate money for the construction of a temple and

community hall on the subject plot. He submitted that the allotment of the subject plot to the 5th respondent was violative of the provisions of the Maharashtra Housing and Area Development Act, 1986 (MHADA Act), 1981 Rules and 1982 Regulations. He submitted that such allotment violates Article 14 of the Constitution of India and was, therefore, arbitrary, *ultra vires* and unconstitutional.

19. Mr Lad learned counsel for the MHADA maintained that the allotment of the subject plot favouring the 5th respondent was entirely based on a directive from the State Government which the MHADA could not have disobeyed. He referred to Regulation 16 of the 1982 Regulations and submitted that the MHADA had only acted on the directives of the State Government.

20. Learned AGP also referred to Regulation 16 of the 1982 Regulations and relied upon the three affidavits dated 10 July 2003, 10 December 2003, and 09 March 2004 filed on behalf of the State Government. He submitted that for the reasons set out in these three affidavits, the subject plot was allotted to the 5th respondent, and there was no legal infirmity in the allotment.

21. Mr N.C. Jishnu, Secretary of the 5th respondent, has filed a detailed affidavit in this matter. Though the fifth respondent has not appeared in the matter, even though it was on the final hearing board and was adjourned on 15 July 2024 and 29 July 2024, this detailed affidavit on behalf of the fifth respondent is extensively considered because it spells out the fifth respondent's case and defence.

22. The 5th respondent has submitted that once the government allots a plot under settled and defined policies, rules, regulations, and the government's guidelines in force, the same cannot be questioned in the Court exercising jurisdiction under Article 226 of the Constitution of India. It is pleaded that a Writ Court can only interfere if malafides are involved, and since, in this case, no malafides were involved, the petition must be dismissed. The 5th respondent's affidavit relies on Rule 16 of the 1982 Regulations. The affidavit states that the allotment is in terms of Regulation 16 read with guidelines framed on the directions of the Lokayukta. The affidavit explains that the 5th respondent is a public trust involved in educational, charitable and social activities. The affidavit also states that the 5th respondent was allotted a plot measuring 3174 sq. mtrs. at Eksar, Borivali, under Regulation 16 of the 1982 Regulations by the committee headed by the then Chief Minister Shri Narayan Rane. However, within months of such allotment, there were elections, and Shri Vilasrao Deshmukh replaced Shri Narayan Rane as Chief Minister. The sub-committee headed by the new Chief Minister cancelled the allotment of the plot to the 5th respondent.

23. The affidavit states that the 5th respondent represented the government protesting against such cancellation. The affidavit states that the 5th respondent was informed that the sub-committee headed by the new Chief Minister had cancelled all the allotments made by the erstwhile Chief Minister. Therefore, all cases of cancellation will be reconsidered separately and independently.

24. The 5th respondent's affidavit states that its case was reconsidered. Still, instead of allotting the plot at Eksar, Borivali, measuring 3174 sq. mtrs., the 5th respondent was allotted the

subject plot for providing a community hall. The 5th respondent has stated that along with its case, even the applications of the petitioners and one Berojgar (Unemployed) Sai Seva Co-Operative Housing Society Ltd. (“**Berojgar Sai Seva CHSL**”) were also considered by the State Government. However, since the 5th respondent was found to be the most suitable, the subject plot was allotted to the 5th respondent. The 5th respondent in the affidavit, which was filed on 07 April 2003, has vehemently denied the allegation that the 5th respondent was interested in constructing a temple on the subject plot. Such denial is contained in paragraph 8(c) of the affidavit, which was sworn on 07 April 2003.

25. The petitioners have also filed a rejoinder and an additional affidavit in this matter.

26. The rival contentions now fall for our determination.

27. In this case, neither the MHADA nor the State Government could clearly state whether the allotment was under 1982 Regulations or 1981 Rules, or both. Still, heavy reliance was placed upon Regulation 16 of the 1982 Regulations, which refers to disposing of certain plots under the government's directives. The MHADA, in this case, has submitted that there was a directive from the State Government for the allotment of the subject plot to the 5th respondent. Since such a directive was binding upon the MHADA, MHADA had no option but to allot the subject plot to the 5th respondent.

28. Neither the MHADA nor the State Government have explained their consistent stand as borne out from the letters

MHADA addressed to the petitioners that no allotment would be made until public advertisement was issued informing the members of the public about the availability of the subject plot for allotment and after considering scrutinising all the applications that might be received pursuant to such public advertisement.

29. Admittedly, in this case, no public advertisement was issued, and the only reason that is reflected in the affidavit on behalf of the State Government is that the 5th respondent was earlier allotted a plot at Eksar, Borivali. After it was realised that such a plot was reserved for recreational purposes and could not have been allotted to the 5th respondent, the 5th respondent was allotted the subject plot after cancelling the allotment for the plot at Eksar, Borivali. There is no explanation for why no public advertisement was issued. There is no explanation as to why a fair and transparent procedure was not adopted. There is only a vague statement that applications of the petitioners and Berojgar Sai Seva CHSL were considered. The affidavit filed on 09 March 2004 admits that no comparative statement or other contemporaneous record regarding consideration of the applications of the petitioners, Berojgar Sai Seva CHSL and the 5th respondent is found on record. All these are serious infirmities that vitiate the impugned allotment.

30. Mr N. C. Jishnu, Secretary of the 5th respondent, solemnly stated on oath in his affidavit filed on 07 April 2003 that the 5th respondent will not construct or establish a temple or use the plot for any religious purpose. This statement was made in the context of the petitioners' allegation in the petition that the 5th respondent intended to construct a temple on the subject plot or otherwise use the subject plot for religious purposes. The petitioners had relied on

Rule 9 of the 1981 Rules that had prohibited the allotment of vacant land by MHADA for religious purposes.

31. However, petitioner No.2 has filed an affidavit dated 09 March 2004. To this affidavit was annexed an appeal made by the 5th respondent on 21 December 2002 to its devotees. This appeal specifically refers to the allotment of a plot of land in Borivali “*to raise our temple and community hall*”. The appeal specifically refers to the allotment of the subject plot ad-measuring 1046.25 sq. mtrs. at the old MHB Colony, just 1 KM away from the 5th respondent’s existing temple. This appeal states that as soon as the possession of the subject plot is secured, the 5th respondent proposes to conduct “Ashtamangalya Prasnam” by 5 Namboodiris from Kerala to identify the exact location for installing the deity, and thereafter, the construction will commence. The appeal states that the total project cost would be around Rs. 1.5 Crores, which is approximately Rs.1500 per sq. ft. An appeal was made to all the devotees and well-wishers to come forward with generous contributions. The President of the 5th respondent signs this appeal.

32. The 5th respondent filed no further pleadings to dispute the appeal dated 21 December 2002. In fact, it was the 5th respondent’s duty to have made disclosures about this appeal dated 21 December 2002 instead of the vehement denials in its affidavit filed on 07 April 2003 that it had no intentions of constructing any temple on the subject plot or otherwise using this subject plot for any religious purposes. Instead, incorrect statements were made in the affidavit to ward off the challenges to the allotment.

33. The two affidavits filed by the State Government do not answer the vital questions as to the criteria applied for consideration of the merits of the three claimants, namely, Gorai Nagar Maharashtra Grihanirman Vasahat Sanghatana, (petitioner No.1 herein), Ayyappa Seva Samiti (respondent No.5 herein) and Berojgar Sai Seva CHSL and on what basis the claim of the 5th respondent was found to be meritorious. This is what was precisely observed by the Division Bench comprising R.M. Lodha and Anoop V. Mohta, JJ., in their order dated 10 February 2004.

34. Therefore, the learned AGP had sought for some time to file a comprehensive affidavit of the responsible officer on behalf of the State Government justifying the allotment of the subject plot to the 5th respondent. Instead of filing such a comprehensive affidavit, Mr Rajendra Maruti Benge, Under Secretary, Housing Department, Government of Maharashtra, filed an affidavit dated 09 March 2003 comprising only three paragraphs, the first and third paragraphs being purely formal in nature.

35. Paragraph 2 of the said affidavit reads as follows:-

“2. I say that Regulation-16 of the MHADA (Disposal of Lands) Regulation 1982, confers powers on the State Government to allot plots of land, inter alia, reserved for amenities in any lay out prepared by the Authority in lands situate in any of the 9 agglomerations, more particularly mentioned therein including Greater Mumbai. Such plots shall be disposed of in accordance with the directions of the State Government. I say that necessary guidelines have been prepared by the Respondent No.1 for the exercise of the

powers under the said Regulation. A copy of the said guidelines is annexed and marked as EXHIBIT-IIA (Pages 34 to 36) of the affidavit in reply dated 7.4.2003 filed by the Respondent No.5 herein. I say that as per the records of the Respondent No.1, there is no comparative sheet prepared as regards the cases of the Petitioner, the Respondent No.5 and another claimant one Berojgar Sai Seva Co-operative Housing Society Ltd. The allotment of the subject plot was made to the Respondent No.5 and it was preferred for allotment of the subject plot, taking into consideration the fact that as per the application of the Respondent No.5, its activities were meant for the benefit of the local people and was inter alia, involved in rendering social work to people of all walks of life in educational, cultural, religious etc. Furthermore, the said Social Welfare Centre for which the subject plot was reserved was to be constructed by Respondent No.5 on its own responsibility and from its own resources, on receiving necessary permission from the Municipal Corporation of Greater Mumbai.”

36. The above affidavit virtually concedes that as per the records available with the State Government, no comparative sheet is prepared regarding the cases of the petitioners, the 5th respondent and the Berojgar Sai Seva CHSL. There is nothing disclosed in each of the affidavits or by way of official record that the cases of the petitioners and Berojgar Sai Seva CHSL were really considered or regarding the criteria which were adopted to adjudge the suitability of the 5th respondent. In such circumstances, the allotment

favouring the 5th respondent cannot be sustained and warrants interference.

37. Besides, as noted earlier, the question is not about considering the cases of just the petitioners, the 5th respondent and the Berojgar Sai Seva CHSL. In such matters, there is no explanation why no public advertisement was issued even though the petitioners were time and again informed that the subject plot would not be allotted until a public advertisement was issued and applications were invited from all the applicants. Ultimately, the State Government and MHADA were dealing with the public property. The allotment of public property had to be through a fair and transparent procedure in which equal opportunities were extended to all eligible persons/ associations etc. This would be more so because, in the present case, the petitioners were consistently informed in writing by the MHADA that the subject plot would not be allotted without inviting applications through public advertisements.

38. The circumstance that the 5th respondent was allotted a plot at Eksar, Borivali, was irrelevant. Therefore, perhaps, no reference is made to this circumstance in the State Government's latest affidavit. The allotment at Eksar, Borivali, was of a plot reserved for recreational purposes, and it was obvious that the 5th respondent did not want the plot for any recreational purposes. Still, the real reason was to construct a temple or use the plot for religious purposes. Therefore, if the Eksar, Borivali allotment was cancelled, there was no question of compensating the 5th respondent with an allotment of the subject plot. The cancellation of the Eksar, Borivali plot was *prima facie* correct and perhaps that is the reason why the 5th respondent did not even challenge the cancellation.

39. The minutes of the sub-committee referred to the cancellation of the Eksar plot as the main reason for allotting the subject plot to the 5th respondent. Since this was an extraneous and irrelevant circumstance, the allotment on such a basis cannot stand. This is possibly why the State Government's latest and allegedly comprehensive affidavit seeks to downplay this aspect.

40. In the case of *Ninad Gas Services & Anr. Vs State of Maharashtra & Ors.*¹ decided by the Division Bench of this Court comprising A.P. Shah and S.C. Dharmadhikari, JJ., it was held that the power under Regulation 16 of the 1982 Regulations is not unfettered or unbridled. The Court has observed that it is not as if blanket permission has been given to the State Government to override MHADA. The State Government is expected to be conscious of the fact that plots reserved for amenities or for purely commercial purposes in any layout prepared by MHADA cannot be directed to be disposed of by it as a Normal Course. Such plots could be directed to be disposed of in furtherance of schemes undertaken by the government and to be implemented by MHADA.

41. Further, the Division Bench has clearly held that Regulation 16 is in the nature of an exception to the general rule and is also coupled with duty and obligation. The Court observed that, therefore, the State is expected to use the provision in Regulation 16 "*rarely and in exceptional cases*". It is not expected of the State to utilise this power in such a manner to render the very purpose and object of the MHADA Act totally redundant and nugatory. The State cannot override public purpose and public interest.

¹ Writ Petition No. 75 of 2004 order dated 15 December 2004

42. The Division Bench also directed that in terms of the guidelines wide publicity should be given to the list of the available plots in leading newspapers and also in the District Collector's office. The Division Bench also directed that the manner of public advertisements, as stipulated in the 1982 Regulations, should be adhered to. Similarly, remarks of the MHADA made during the scrutiny of the applications should also be forwarded to the cabinet sub-committee. This will ensure that the MHADA is not bye-passed while making disposal under Regulation 16.

43. The impugned allotment is contrary to the law laid down by the Division Bench of this Court in the case of *Ninad Gas Services and Anr.* (supra). The directions issued have not been followed by making the allotment to the 5th respondent. There is no explanation in each of the three affidavits filed by the State Government that could sustain such an allotment. The MHADA has filed an affidavit but rightly has not even attempted to justify such allotment. MHADA's only submission was that this allotment was under the directives of the State Government, and the MHADA was at no liberty to disregard such directives.

44. For all the above reasons we allow this petition and quash and set aside the impugned allotment order/ decision dated 06 August 2022 or any other order allotting the subject plot to the 5th respondent.

45. Accordingly, the Writ Petition is allowed in terms of prayer clauses (a) and (c). Assuming that the possession was indeed granted to the 5th respondent, the MHADA is directed to resume the possession of the subject plot immediately.

46. No relief can be granted regarding the petition's prayer clause (b). However, as and when the MHADA/ State Government issues any public advertisement, it will be open to the petitioners, the 5th respondent, the Berojgar Sai Seva CHSL, or any other eligible applicants to apply for allotment of the subject plot. Such applications will then have to be considered under law, keeping in mind the observations in *Ninad Gas Services and Anr.* (supra).

47. The Petition is disposed of in the above terms.

48. There shall be no orders as to the costs.

(Arif S. Doctor, J)

(M. S. Sonak, J)