

(2008) 04 BOM CK 0104

In the Bombay High Court

Case No : Writ Petition No"s. 5913 and 5914 of 2007 and 16 of 2008

Arun Ganpatrao Kale and Others

APPELLANT

Vs

Nagpur Improvement Trust

RESPONDENT

Date of Decision : 21-04-2008

Acts Referred:

Citation : (2008) 6 MhLj 84

Hon'ble Judges : R.C. Chavan, J;A.M. Khanwilkar, J

Bench : Division Bench

Advocate : S.P. Kshirsagar, for the Appellant; S.K. Mishra in W.P. Nos. 5913 of 2007 and 16 of 2008 and N.W. Sambre, Government Pleader in W.P. No. 5914 of 2007, for the Respondent

Final Decision : Allowed

Judgement

A.M. Khanwilkar, J.—Heard learned Counsel for the parties. Rule. Rule made returnable forthwith by consent. Mr. Sambre, learned Government Pleader waives notice for respondent. All these petitions can be disposed by common judgment.

2. The short question involved in these petitions is, whether the Authority was justified in cancelling the allotment of flats already made in favour of the respective petitioners who had applied pursuant to the advertisement dated 23rd March, 1999. One of the conditions which, according to the Authority has been breached in case of each of the petitioners, is that the annual income of the respective petitioner and his/her spouse exceed sum of Rs. 54,000/-. The eligibility of income criteria, however, has been stipulated in the terms and conditions for allotment as notified on 23rd March 1999, in particular under Clause 10 thereof. It is common ground that besides the Terms and Conditions notified by the Authority, there are no other rules or regulations which are applicable to answer the point in issue. According to the petitioner, the terms and conditions advertised and notified only refer to annual income of the "applicant" and not the annual income of applicant and his/her family members or spouse.

3. For considering the grievance of the petitioners, it would be apposite to straightway advert to Clause 10 of the notified terms and conditions which reads thus-

Annual income of the applicant shall not exceed Rs. 54,000/-" (free translation).

Going by the plain language of the aforesaid notified condition, it clearly provides for the income limit of the "applicant" and not combined income of the applicant and his/her family members, spouse or dependents. If the Authority had intended to do so, it should have expressly notified that position in the advertisement itself- as is explicitly made clear in Clause 11 of the notified terms and conditions - to the effect that the applicant or his/her spouse or living children should not own any plot or house within the limits of Nagpur Improvement Trust or Nagpur Municipal Corporation.

4. In our opinion, therefore, the stand taken on behalf of the respondent that the respondent was justified in cancelling the allotment already made in favour of the applicant on account of the fact that the combined annual income of the applicant and his/her spouse or family members exceeded sum of Rs. 54,000/- per annum cannot be sustained. As no other question arises for our consideration, we are inclined to allow this petition by setting aside the impugned order (s) of the respondent Authority and restoring the status-quo ante as obtained in the form of letter of allotment issued in favour of respective petitioners.

Petition disposed of accordingly with no order as to costs.