
(2015) 06 BOM CK 0209
In the Bombay High Court
Case No : Writ Petition No. 2185 of 1999

Gulabrao

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 11-06-2015

Acts Referred:

Urban Land (Ceiling and Regulation) Act, 1976 — Section 20, 21

Citation : (2015) 06 BOM CK 0209

Hon'ble Judges : V.A. Naik, J;C.V. Bhadang, J

Bench : Division Bench

Advocate : R.S. Parsodkar, Counsel, for the Appellant; N.R. Patil, Asstt. Govt. Pleader, Advocates for the Respondent

Final Decision : Dismissed

Judgement

V.A. Naik, J—By this petition, the petitioner seeks a direction to the respondents to allot a flat to the petitioner in the 10% Chief Minister's quota having an area above 500 sq.ft. as per his application, dated 26/05/1997. By amending the petition, the petitioner also challenges the order of the respondent No. 2-Additional Collector and Competent Authority (Housing), cancelling the allotment of the flat of the petitioner.

2. The petitioner claims to have retired from the defence services after attaining the age of 62 years on 13/09/1989. The petitioner had applied for a residential flat in Mumbai in the 10% Chief Minister's quota by an application. The application seeking allotment of a residential flat is not annexed to the petition. According to the petitioner, on 15/10/1988, the State of Maharashtra informed the petitioner that he was eligible for allotment of flat admeasuring 800 sq.ft., in the category of "dire need" from the 10% Chief Minister's quota. According to the petitioner, the petitioner was entitled to a flat admeasuring 800 sq.ft., but on 23/04/1997, the respondent No. 2 allotted a flat admeasuring 24 sq.mtrs., i.e. 240 sq.ft. to the petitioner. The petitioner conveyed to the respondent No. 2 that the flat allotted to the petitioner was small in size and was not convenient to the

petitioner. The petitioner, therefore, claimed a bigger flat as the flat allotted to him was not acceptable to him. It is claimed that the petitioner sent representations to the respondent No. 2 from time to time, but they were not favourably considered. The petitioner, therefore, filed the instant petition seeking a direction to the respondents to allot a flat of an area of more than 500 sq.ft. as per his application, dated 26/05/1997. Since the allotment of the flat admeasuring 24 sq.mtrs. was cancelled during the pendency of the writ petition, the petitioner has impugned the cancellation order, dated 26/06/2000 by the instant petition.

3. Shri Parsodkar, the learned counsel for the petitioner, submitted that the petitioner was allotted a flat of 800 sq.ft. from 10% discretionary quota of the Government by the communication, dated 15/10/1988 and hence, the respondents were not justified in allotting a flat admeasuring 24 sq.mtrs. to the petitioner on 23/04/1997. It is submitted that despite the issuance of several representations to the respondents, the respondents did not allot a flat admeasuring 800 sq.ft. to the petitioner. It is submitted that the petitioner was ready to abide with all the conditions for allotment of a flat admeasuring 800 sq.ft., but the respondents did not accede to the request. It is stated that the flat admeasuring 24 sq.mtrs. was smaller than the flat to which the petitioner was eligible and since the locality in which the same was situated was also not convenient, the petitioner had declined to accept the said flat. It is stated that before cancellation of the allotment of the flat admeasuring 24 sq.mtrs., it was necessary for the respondents to hear the petitioner. It is stated that the order cancelling the allotment, dated 26/06/2000 is passed without giving an opportunity of hearing to the petitioner. The learned counsel for the petitioner relied on the judgment of the Hon"ble Supreme Court, reported in Government of Andhra Pradesh and Another Vs. Maharshi Publishers Pvt. Ltd. and Others, AIR 2003 SC 296 : (2002) 9 JT 277 : (2003) 1 SCC 95 . It is also canvassed that certain persons whose names were placed below the name of the petitioner in the list prepared by the Government in the year 1988 were allotted the flats before the petitioner and the petitioner was deprived of the allotment.

4. Shri Patil, the learned Assistant Government Pleader for the respondents, supported the action of the respondents. It is stated that two housing schemes were floated by the Government Under Sections 20 and 21 of the Urban Land (Ceiling and Regulations) Act, 1976 and flats were allotted as per the procedure laid down in the Government Resolution, dated 20/09/1994. The petitioner was included in the list from the "dire need of space category" and he was placed at Sr. No. 38. The petitioner was informed regarding the allotment and placement as per his seniority vide letter, dated 15/10/1998. It is submitted that the petitioner was never allotted 800 sq.ft. flat by the communication, dated 15/10/1998 and it was only conveyed to the petitioner by the communication that the petitioner was eligible for sanction of one flat from the 10% quota in accordance with the discretionary powers of the Government. It is stated that the petitioner did not continue to reside on the address stated in the application

and since the address of the petitioner was changed and he had failed to inform about the new address to the respondents, the address of the petitioner was found with great difficulty and the petitioner was allotted a flat. Initially, it is submitted that the petitioner was allotted a flat having an area 40.08 sq.mtrs., but the petitioner did not accept the said flat on the ground that he was entitled to a flat of 800 sq.ft. The said flat was, therefore, allotted to one V.B. Mitra. It is stated that the petitioner was again allotted a flat in Borivali, admeasuring 24 sq.mtrs., but the petitioner did not accept the said allotment also. It is stated that by the communication, dated 21/06/1997, the petitioner had informed that he was not willing to accept the allotment of a flat having smaller area and wanted a flat at a convenient place and not at a place at the address at Borivali. It is stated that the petitioner was offered the allotment of flat on two occasions, but the petitioner did not accept the same and hence there was no other alternative for the respondents but to cancel the allotment of the flat admeasuring 24 sq.mtrs. by the impugned communication. It is stated that the petitioner had concealed material facts while applying to the respondents for allotment and the petitioner does not appear to be eligible for allotment.

5. On hearing the learned counsel for the parties and on a perusal of the documents annexed to the writ petition, it appears that the relief sought by the petitioner cannot be granted. Firstly, the petitioner was never informed by the communication, dated 15/10/1988 that he was allotted a flat of 800 sq.ft. The communication merely refers to the application made by the petitioner for allotment of one flat of 800 sq.ft. from 10% quota of the Government. By the said communication, dated 15/10/1988, the petitioner is only informed that the petitioner is eligible for sanction of one flat from the 10% quota in accordance with the discretionary powers of the Government from the "dire need of space category". The entire case of the petitioner is based on an assumption that the petitioner was allotted a flat admeasuring 800 sq.ft. by the communication, dated 15/10/1988, when it is not so. The petitioner was only held eligible for allotment of a flat and his name was placed in the waiting list. We do not find any communication from the petitioner to the respondents in regard to the allotment for a period of nearly ten years and communications are issued by the petitioner to the respondents, as could be seen from the annexures to the petition, from the year 1997. It appears from a reading of the affidavit-in-reply that the petitioner was allotted a flat admeasuring 40.08 sq.mtrs., but the petitioner had refused to accept the said allotment. This fact is not disputed by the petitioner in his rejoinder. Thereafter, the petitioner was admittedly allotted a flat admeasuring 24 sq.mtrs. The communication annexed to the petition clearly shows that the petitioner was not ready to accept a flat admeasuring 24 sq.mtrs. on the ground that he was eligible for allotment of a flat of 800 sq.ft. and the flat that was sought to be allotted to him was not convenient for his residence. For seeking the relief as sought in the petition, the petitioner has not placed the necessary facts and details before this Court. The petitioner has not filed a copy of the scheme under which the petitioner claimed the allotment in the 10%

discretionary quota. There is also nothing on record to show that the petitioner was actually allotted a flat admeasuring 800 sq.ft. The communication, dated 15/10/1988 on which the petitioner bases his claim only refers to the eligibility of the petitioner for allotment of a flat in the 10% government quota. This is not a case where the petitioner was actually allotted a 800 sq.ft. flat and then the flat was wrongfully denied to the petitioner after the allotment and after the completion of the formalities and payment of the entire amount. In fact, in this case, the petitioner has not paid any amount towards the consideration of the flat except an amount of Rs. 1,000/- that was required to be paid at the time of submission of the form and affidavit in the year 1998-99. The reliance placed by the counsel for the petitioner on the judgment, reported in Government of Andhra Pradesh and Another Vs. Maharshi Publishers Pvt. Ltd. and Others, AIR 2003 SC 296 : (2002) 9 JT 277 : (2003) 1 SCC 95 is, therefore, ill founded. The case before the Hon"ble Supreme Court is clearly distinguishable on facts. The judgment would not apply to the facts of this case. In the facts of the case, we do not find any illegality in the order of the respondents cancelling the allotment of the flat admeasuring 24 sq.mtrs. The petitioner was offered flats admeasuring 40.08 sq.mtrs. and 24 sq.mtrs. and on both the occasions as could be reflected from the averments in the writ petition and the affidavit-in-reply filed on behalf of the respondents that the petitioner had refused to accept the allotment. Since the flats allotted to the petitioner were not acceptable to the petitioner, the petitioner cannot blame the respondents for cancellation of the allotment. The petitioner was not ready to accept either of the flats allotted to the petitioner and was also not ready to comply with the formalities. The offer to allot the flats admeasuring 40.08 sq.mtrs. and 24 sq.mtrs. on two occasions was not fructified, as the petitioner refused to accept the allotment. With the refusal on the part of the petitioner to accept the allotment of flat admeasuring 24 sq.mtrs., the petitioner cannot claim that he ought to have been heard before the cancellation of allotment of the 24 sq.mtrs. flat. There are no documents placed on record to show the right in the petitioner to seek the allotment of a flat admeasuring 800 sq.ft. The prayer made by the petitioner in this petition is not based on the eligibility of the petitioner on the basis of the communication, dated 15/10/1988 but is based on his application, dated 26/05/1997. The application of the petitioner, dated 26/05/1997 does not give any cause of action to the petitioner to seek the allotment, more so when the petitioner has based his right on the eligibility-allotment, dated 15/10/1988. We have already stated and we reiterate that the communication, dated 15/10/1988 which forms the basis for seeking the relief does not offer an allotment of flat admeasuring 800 sq.ft. to the petitioner. Though much has been said on behalf of the petitioner about the illegal allotment of flats to the persons, who were placed below the petitioner in the list of proposed allottees, the petitioner has neither produced the list nor mentioned the names of the persons to whom the flats were allotted, before the allotment was offered to the petitioner. There is nothing on record to show that any person placed below the petitioner, in the list of proposed allottees, was allotted a flat before the petitioner was offered the same. In the absence of any material to

show any right in the petitioner to seek the allotment of a flat admeasuring 800 sq.ft. in an area of the choice of the petitioner, the relief sought by the petitioner cannot be granted.

6. In the result, the writ petition fails and is dismissed with no order as to costs.

7. Rule stands discharged.