

(2022) 12 BOM CK 0012
In the Bombay High Court
Case No : Writ Petition No. 4068 Of 2018

Malvi Suvarnakar Sanstha

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

Date of Decision : 02-12-2022

Acts Referred:

Constitution Of India, 1950 — Article 14

Nagpur Improvement Trust Land Disposal Rules, 1983 — Rule 3(a), 5, 5(2), 6, 22(6), 26

Citation : (2022) 12 BOM CK 0012

Hon'ble Judges : A. S. Chandurkar, J; Anil L. Pansare, J

Bench : Division Bench

Advocate : Anand Parchure, A. S. Fulzele, Girish A. Kunte, A. C. Dharmadhikari, Rahul D. Dhande

Final Decision : Partly Allowed

Judgement

Anil L. Pansare, J

1. Heard Mr. Anand Parchure, learned Counsel for the Petitioner, Mr. A. S. Fulzele, learned Additional Government Pleader for the Respondent No.1, Mr. Girish A. Kunte, learned Counsel for the Respondent No.2, Mr. A. C. Dharmadhikari, learned Counsel for the Respondent No.3 and Mr. Rahul D. Dhande, learned Counsel for the Respondent No.4.

2. Rule. Rule made returnable forthwith. Heard finally by consent of the parties.

3. The Petitioner – Society has putforth the following substantive prayers :

“(i) To quash and set aside the Government resolution dated 9/6/2017 (Annexure XII) and communication dated 11/5/2018 (Annexure XI).

(ii) Direct the respondents to consider the request of the petitioner-society for allotment of plot no.8 in khasra No.538, mouza Nagpur (Precinct Manewada) tahsil/district Nagpur.”

4. It is the case of the Petitioner that the Petitioner – Society is registered under the Societies Registration Act as also under the Bombay Public Trust Act. The Society is formed purely with a view for upliftment of citizens of Malvi Survanakar community in the social, educational, economic and industrial development by lawful method. The Petitioner – Society, in order to achieve the purpose of the Society, was desirous of acquiring Plot No.8, Khasra No.538, mouza Nagpur (Precinct Manewada), Tahsil and District Nagpur, which is one of the plots in the layout belonging to the Respondent No.2 – Nagpur Improvement Trust. Accordingly, the Petitioner made representations demanding the aforesaid plot with a specific contention that the Plot Nos.6 and 7 therein were already allotted to the Respondent No.4 – Teli Samaj Sabha and that allotting all three plots to the said community would create monopoly.

5. Despite such demand, the Respondent No.1 vide impugned Government Resolution dated 9th June, 2017 allotted Plot No.8 to the Respondent No.3 - Shri Santaji Jagnade Maharaj Smarak Samiti, a Society belonging to Teli community for management, maintenance and repair of the Community Hall (Samaj Bhavan) to be constructed thereon. The allotment has purportedly been done under Rule 26 of the Nagpur Improvement Trust Land Disposal Rules, 1983 (for short, 'the Land Disposal Rules'), thereby relaxing the statutory procedure prescribed under Rule 5(2) of the Land Disposal Rules, by which the lands vested in and acquired by the Respondent No.2 could be disposed of.

6. The Petitioner is further aggrieved by the communication dated 11th May, 2018, by which the Petitioner has been informed that Plot No.8 has already been disposed of in terms of the Government Resolution dated 9th June, 2017, and that therefore, the request made by the Petitioner for allotment of the said Plot cannot be accepted.

7. Mr. Parchure, learned Counsel for the Petitioner has drawn our attention to the letter dated 18th February, 2010 issued by the Respondent No.1 in favour of the Respondent No.2, recommending allotment of the Plot Nos.6 and 7 of the said layout in favour of the Respondent No.4 – The Teli Samaj Sabha. The letter refers to the communication made by the then Member of Parliament, who according to the learned Counsel for the Petitioner, belongs to Teli community. The Member of Parliament has recommended to allot Plot Nos.6 and 7 to the Respondent No.4 at the nominal rate (Re.1/-). The plots were allotted to the Respondent No.4 for the purpose of management, maintenance and repair of the Community Hall (Samaj Mandir) constructed thereon.

8. Mr. Parchure, has then referred to the letter dated 23rd January, 2012 issued by the Respondent No.2 in favour of the Respondent No.1 mentioning therein that the Petitioner has made application for allotment of Plot No.8 with a specific contention that Plot Nos.6 and 7 have already been allotted to Teli community. The letter then refers to the further contention of the Petitioner that Teli community is making applications in different names for allotment of Plot No.8 and that Respondent No.3 - Shri Santaji Jagnade Maharaj Smarak Samiti also

belongs to Teli community, and therefore, if Plot No.8 is allotted to the said Samiti then all the three plots, viz – Plot Nos. 6, 7 and 8 would be allotted to one community. The letter then refers to a request made by the Petitioner for allotment of Plot No.8 on the same terms and conditions, upon which Plot Nos.6 and 7 have been allotted to the Respondent No.4. The letter then mentions that Plot No.8 is reserved for public/semi public utility. It then mentions that at present there are no Rules to allot the plots for public/semi public utility and that the demand of the Petitioner has been referred to the Government of Maharashtra for sanctioning, and accordingly a request is made to take appropriate decision at the Government's level on the application dated 16th August, 2011 made by the Petitioner – Society. Despite this, Mr. Parchure contends that, the Plot No.8 has been allotted to the Respondent No.3 and not to the Petitioner, that too, by taking aid of Rule 26 of the Land Disposal Rules, which is not permissible.

9. As against, Mr. Fulzele, the learned Additional Government Pleader submits that the Respondent No.1 was well within its powers to allot the Plot No.8 to the Respondent No.3.

10. Mr. Kunte, learned Counsel for the Respondent No.2 submits that the plot and the proposed construction thereon has been allotted to the Respondent No.3 only for the purpose of management, maintenance and repair of the Community Hall (Samaj Mandir) and that the ownership is retained with the Respondent No.2. On the point of special nature of the case and the reasons to be given in writing in terms of the Rule 26 of the Land Disposal Rules, he submits that the allotment has been made on the condition that the Respondent No.3 shall pay to the Respondent No.2 some part of the income earned by the Respondent No.3.

11. Thus, according to the learned Counsel for the Respondent No.2, special reason is that the Respondent No.2 will receive certain amount out of the income earned by the Respondent No.3.

12. Mr. A. C. Dharmadhikari, learned Counsel for the Respondent No.3 submits that the Petitioner owns sufficient property and is not really in need of Plot No.8. He further contends that the challenge of the Petitioner in essence is to the letter dated 11th May 2018 and not to the Government Resolution dated 9th June, 2017. He submits by referring to the preamble of the said Government Resolution that the Respondent No.2 had only recommended allotment of Plot No.7 in favour of the Respondent No.3 vide its Resolution dated 4th October, 2008. The said recommendation was pending sanction with Respondent No.1. In the year 2009 the Respondent No.2 made a recommendation to allot Plot No.8 instead of Plot No.7 in view of a request made by the Respondent No.3 to that effect. Thus, according to him, the impugned Government Resolution cannot be said to be allotment order, but is in the nature of exchange of plots. He further submits that the request of the Respondent No. 3 for allotment of plot was pending since the year 2008, and therefore, the claim being first in time, the Respondent No.1 has rightly accepted the application of the Respondent No.3 by

allotting Plot No.8 in exchange of Plot No.7. In the circumstances, according to learned Counsel for the Respondent No.3, assigning special reason was not necessary.

13. Mr. Parchure, learned Counsel for the Petitioner has made an attempt to point out through rejoinder that the contention of the Respondent No.3 that the Petitioner owns sufficient land is not correct. However, we need not go into the aforesaid controversy, as according to us, the moot question is whether the exercise undertaken by the Respondent Nos.1 and 2 for allotment of Plot No.8 is in tune with the Land Disposal Rules.

14. Firstly, we do not agree with the submissions made by Mr. Dharmadhikari, learned Counsel for the Respondent No.3 that by the impugned Government Resolution dated 9th June, 2017, the Respondent No.2 has not allotted Plot No.8 to the Respondent No.3, but has merely ordered exchange of plots and that instead of Plot No.7, Plot No.8 has been allotted. It is so, because according to his own submission, Plot No.7 was not allotted to the Respondent No.3, but was recommended for allotment by the Respondent No.2. In absence of allotment of Plot No.7 in favour of Respondent No.3, the question of exchange of plots will, thus, not arise.

15. Secondly, mere reading of the impugned Government Resolution would indisputably disclose that Plot No.8 has been allotted to the Respondent No.3 for thirty years, that too, by giving go-bye to the statutory procedure contemplated under Rule 5(2) of the Land Disposal Rules. The procedure under the said Rule has been relaxed by the Respondent No.1 by invoking Rule 26 of the Land Disposal Rules, which according to the Petitioner was not permissible.

16. We will first take a look at the relevant provisions, viz – Rule 5 and Rule 26 of the Land Disposal Rules, which read thus :

“ PART III – Manner of Disposal of Land

5. General.

(1) No piece of Government land vested in or managed by the Trust shall be transferred except with the general or special sanction of the Government given in that behalf.

(2) Except as otherwise provided in sub-rule (1) and in Part VI of these rules, all other lands vested in and acquired by the Trust shall be disposed of by the Trust by –

(i) holding public auction; or

(ii) inviting tenders by public advertisement; or

(iii) making offers to or accepting offers from any Government, Local Authority, Public Sector undertaking or a body corporate which is owned or controlled by Government;

(iv) inviting applications from persons or bodies of persons who are eligible for allotment of plots under rule 4, by public advertisement to be published at least in one leading local newspaper each in Marathi, Hindi and English on the basis of predetermined premium or other considerations or both and deciding these applications by drawing lots, if necessary, as it may determine, from time to time, in accordance with the rules hereinafter appearing.

(v) Land for public amenities such as for primary school, vehicle stand, public latrine or urinal, public library, reading room, hospital, dispensary or such other purpose may be transferred to the Corporation of the City of Nagpur either free of premium and ground rent or at nominal premium and ground rent as the Trust may determine in each case.

(3) Except as otherwise provided in sub-rule (1) and in Part VI of these rules, the buildings vested in and acquired by the Trust shall be disposed of by the Trust by –

(i) inviting applications; or

(ii) calling for public tenders; or

(iii) auction;

along with such land and on such terms as may be agreed to by the Trust and the transferee having regard to the use for which the building is intended, by public advertisement to be published at least in one leading newspaper each in Marathi, Hindi and English on the basis of predetermined premium or other considerations or both by deciding these applications by drawing of lots, if necessary.

26. Relaxation of rules.

The Government may, for the reasons to be recorded in writing, relax any of these rules in respect of a case which, in its opinion, is of a special nature.”

17. Bare reading of Rule 5(2) of the Land Disposal Rules will show that all the lands vested in and acquired by the Respondent No.2 could only be disposed of in terms of Sub-rule (2) of Rule 5 of the Land Disposal Rules, viz – (i) by holding public auction; or (ii) by inviting tenders by public advertisement; or (iii) by making offers to or accepting offers from any Government, Local Authority, Public Sector Undertaking or a body corporate which is owned or controlled by Government. The Respondent No.3 is not a body governed by the Government, but is a private Society, and therefore, does not fall under the 3rd category mentioned above. So far as private entities/individuals are concerned, the plot/land can only be disposed of, either by holding public auction or by inviting tenders by public advertisement. This ensures transparency in the business of the Respondent No.2 as it ensures giving opportunity to all those interested in acquiring the land vested with the Respondent No.2. The procedure also ensures getting highest bid for the land. The Respondent No.2, being local civic

government body, is expected to adhere to the statutory procedure as contemplated under the aforesaid Rules, of course, with the exception envisaged under Rule 26 of the Land Disposal Rules, where the Government in a case of special nature may relax the Rules by assigning reasons in writing.

18. In the present case, the Respondent No.1 thought it proper to relax the statutory procedure prescribed under Rule 5(2) of the Land Disposal Rules, and since we did not find in the pleadings of the Respondent, the special nature of the case or the reasons in writing for allotment of Plot No.8 in favour of the Respondent No.3, we enquired with learned Counsel for the Respondent Nos.1 and 2 as to what is/was that special nature of the case, the answer was that the Respondent No.2 will get share in the profit of income earned by the Respondent No.3. In other words, the special nature is that the Respondent no.2 will earn certain amount, which is not even fixed in the impugned Government Resolution.

19. In our view, if earning amount is the only special reason, the appropriate course of action was to stick to Rule 5(2) of the Land Disposal Rules, as auctioning the land or disposing it of by inviting tenders by public advertisement would have attracted the best/highest bid for the plot/land. The case under question was thus not of a special nature, nor is there any valid reason recorded in writing for relaxing Rule 5(2) of the Land Disposal Rules. The power to relax Rule is expected to be exercised in just and equitable manner, so also in exceptional cases and not under any influence, be it a political or other.

20. The learned Counsel for the Petitioner has rightly relied upon the Judgment of the Co-ordinate Bench of this Court in the case of

Transport Nagar Free Zone Co-operative Society Limited V/s Nagpur Improvement Trust & another, 2005(3) Bom.C.R. 485. The Court while dealing with allotment of 140 plots to the Petitioner therein which were allotted by relaxing the procedure prescribed under Rules 5 and 6 of the Land Disposal Rules, has held in paragraph Nos. 26, 27 and 32 as under :

"26. So far as the contention of the petitioner that the application of the petitioner dated 30th November, 1983 was made to the respondent No.2 not under provisions of Land Disposal Rules, 1955 but under Rule 26 of the Land Disposal Rules, 1983 which empowers the State Government for reasons to be recorded in writing, relax any of the Rules in respect of a case which in its opinions if of a special nature is concerned, before we consider Rule 26 of 1983 Rules, it will be appropriate to consider the scheme of the 1983 Rules. Rule 5 deals with the manner of disposal of land and respondent No.1 Trust is entitled to dispose of the land of the Trust in the following manner;

(i) By holding public auction;

(ii) By inviting tender by inviting public advertisement;

(iii) By making offer to and accepting offer from the Government, local authorities, public sectors etc.

It is pertinent to note that there is no provision in 1983 Land Disposal Rules to transfer the land by direct negotiation with the private party which was stipulated in Rule 3(a) of the Land Disposal Rules of 1955. In 1983 Rules, disposal of lands to the private individuals is permitted only by holding public auction or by inviting tenders by public advertisement. So far as Rule 6 of the Land Disposal Rules, 1983 is concerned, it deals with the disposal of land for commercial, residential and industrial purposes and contemplates that such disposal shall be by inviting tender or by public auction to be held after giving due publicity as to the date, place, time and particulars of the Trust land to be auctioned. The land in question being from the industrial zone, the only method of disposal is provided under Rule 6 is by inviting tenders or by public auction and therefore, the question of allotting land by any other method would not only be impermissible in law but would be void ab initio. Rule 26 of 1983 Rules empowers the State Government for reasons to be recorded in writing, relax any of the Rules, however, when there is no Rule in 1983 Rules, which provides disposal of land by any other method than inviting tender or by public auction, the question of relaxing the same does not arise. The power of relaxation of Rules contemplated in Rule 26 presupposes existence of Rule, however, for want of Rule, question of relaxing the same does not arise. It must be borne in mind that under Rule 26 the Government is not empowered to create altogether different procedure for disposal of land which is completely de hors of the existing Rules and therefore, any action taken by the State Government under the garb of power of relaxation of Rules under Rule 26 by evolving altogether different procedure for disposal of land of the Trust would be totally impermissible in law and such action would be null and void.

27. In the instant case, the State Government vide order dated 21-9-1989 allotted 140 plots to the petitioner by evolving completely different procedure than the one which is totally de hors of Rules 5 and 6 of the Land Disposal Rules, 1983 which in our considered view, for the reasons stated herein above, is totally impermissible in law therefore, the order of allotment cannot be sustained in law. Similarly, Rule 26 of 1983 Rules empowers the State Government to relax any Rule, if it is necessary, in the special circumstances, for the reasons to be recorded in writing for such relaxation and not otherwise. In the instant case, the order of allotment dated 21-9-1989 is completely silent in regard to the reasons as to why the State Government thought it fit to exercise power of relaxation in case of the allotment of plots to the petitioner nor there is any whisper about special nature of the transaction. In other words, the State Government has given no reasons as to why they are relaxing the Rules. There is also absolutely nothing mentioned about the special nature of transaction which necessitated the State Government to exercise power of relaxation of Rules vested in it under Rule 26. The order of allotment simply states that as per provisions of Rule 26 of N.I.T. Land Disposal Rules, 1983, the State Government was allotting 140 plots to the Petitioner. In absence of reasons to be recorded in writing as to why the State Government is required to relax the Rules and in absence of special

circumstance or nature of transaction, the State Government cannot exercise the power of relaxation under Rule 26 of the Land Disposal Rules, 1983 and since the impugned order of allotment is silent on these aspect, the same is unsustainable in law in view of the scheme of Rule 26 of the Land Disposal Rules of 1983.

32. The Apex Court in case of (J.C.Yadav and others V/s State of Haryana and others), reported in A.I.R.1991 S.C.857, had occasion to deal with the scope and object of power to relax the Rule conferred on the Government under Rule 22(6) for the Haryana Service of Engineers Class 1, P.W.D. (Public Health Branch) Rules, 1961, and the relevant observation in this regard are in para 6 of the judgment which reads thus :

“The Rule confers power on the Government to dispense with or to relax the requirement of any of the Rules to the extent and with such conditions as it may consider necessary for dealing with the case in just and equitable manner (emphasis supplied). The object and purpose of conferring this power on the Government is to mitigate undue hardship in any particular case, and to deal with a case in a just and equitable manner. If the Rules cause undue hardship or Rules operate in an inequitable manner in that event the State Government has power to dispense with or to relax the requirement of Rules.”

It is, therefore, evident that the power to relax Rule though conferred on the Government, it is necessarily required to exercise in just and equitable manner and to mitigate undue hardship, if any, caused in a particular case. In the instant case, similar power is conferred on the State Government under Rule 26 of the N.I.T. Land Disposal Rules, 1983, and the Government is expected to exercise the same in a just and equitable manner and such power is not conferred on the government to give go-bye to the statutory procedure contemplated under such Rules nor such power can be exercised to do under favour to any individual. Similarly, if the exercise of such power results in destroying the very scheme of the Rules, such power cannot be exercised by the State Government.”

21. It is, thus, clearly held that the power under Rule 26 is not meant to create altogether different procedure for disposal of land. It is also held that in absence of reasons to be recorded in writing as to why the State Government is required to relax the Rules and in absence of special circumstance or nature of transaction, the State Government cannot exercise the power of relaxation under Rule 26 of the Land Disposal Rules. Lastly, it is held that the power to relax Rule, though conferred on the Government, the necessary requirement would be to exercise the said power in just and equitable manner and to mitigate undue hardship, if any, caused in a particular case.

22. We may like to note here that in paragraph 26 of the aforesaid Judgment, the Co-ordinate Bench has held that when there is no Rule in the 1983 Rules for disposal of certain category of plots, the question of relaxing the rules does not arise. The letter dated 23rd January, 2012 (Annexure-IX) issued by the Respondent No.2 in favour of the Respondent No.1 indicates that the plot under

question is a public utility plot and that no Rule exists for disposal of such plots. If that be so, in absence of any Rule to dispose of such plot/land, the relaxation of rule would be imaginary. We need not go any further in this line, since the parties before us have not really canvassed their argument on the point of non-existence of Rule for disposal of the public utility lands.

23. Nonetheless, we do not approve the stand taken by Respondent Nos.1 and 2 for relaxing the procedure prescribed under Rule 5(2) of the Land Disposal Rules for disposal of the plot under question for the so called special reason that the Respondent No.2 will be benefited out of the income earned by the Respondent No.3.

24. Further, the importance of adherence to the statutory procedure in the matters of allotment of land has been dealt with by the Hon'ble Supreme Court in the case of Akhil Bhartiya Upphokta Congress V/s State of M.P. and others, (2011) 5 SCC 29. The relevant observations find place in paragraphs 66 and 67, which read thus :

"66. We may add that there cannot be any policy, much less, a rational policy of allotting land on the basis of applications made by individuals, bodies, organisations or institutions de hors and invitation or advertisement by the State or its agency/instrumentality. By entertaining applications made by individuals, organisations or institutions for allotment of land or for grant of any other type of largesse the State cannot exclude other eligible persons from lodging competing claim. Any allotment of land or grant of other form of largesse by the State or its agencies/instrumentalities by treating the exercise as a private venture is liable to be treated as arbitrary, discriminatory and an act of favouritism and/or nepotism violating the soul of the equality clause embodied in Article 14 of the Constitution.

67. This, however, does not mean that the State can never allot land to the institutions/organisations engaged in educational, cultural, social or philanthropic activities or are rendering service to the society except by way of auction. Nevertheless, it is necessary to observe that once a piece of land is earmarked or identified for allotment to institutions/organisations engaged in any such activity, the actual exercise of allotment must be done in a manner consistent with the doctrine of equality. The competent authority should, as a matter of course, issue an advertisement incorporating therein the conditions of eligibility so as to enable all similarly situated eligible persons, institutions/organisations to participate in the process of allotment, whether by way of auction or otherwise. In a given case the Government may allot land at a fixed price but in that case also allotment must be preceded by a wholesome exercise consistent with Article 14 of the Constitution."

25. It is, thus, held that the State cannot exclude the other eligible persons, bodies, organisations or institutions from lodging competing claim by entertaining applications made by individuals, organisations, institutions for

allotment of land. The exception by way of relaxation is permissible only under exceptional circumstances for which the State Government has to record reasons in writing and make out the special nature of the case for relaxing the Rules.

26. In the present case, the Plot No.8 has been allotted to the Respondent No.3 only on the basis of a request made in the form of letter without assigning any cogent reason and without disclosing the special circumstance or special nature of the case for allotment of said plot, without following the procedure prescribed under Rule 5(2) of the Land Disposal Rules. Such exercise of allotment of plot has deprived similarly placed persons from even tendering their bid to acquire the plot. The act of Respondent Nos.1 and 2 is, therefore, against the constitutional mandate under Article 14 of the Constitution of India. The impugned Government Resolution, therefore, is bad in law and is liable to be set aside. We hope and trust that the Respondents shall adhere to the prescribed procedure for disposal of the said plot. We, accordingly, proceed to pass following order.

ORDER

(i) The Writ Petition is partly allowed.

(ii) The Government Resolution dated 9th June, 2017 is quashed and set aside.

(iii) We direct the Respondents to allot Plot No.8, Khasra No. 538, mouza Nagpur (Precinct Manewada), Tahsil and District Nagpur, if it decides to allot the same, strictly in accordance with the Nagpur Improvement Trust Land Disposal Rules, 1983.

27. Rule is made absolute in above terms. No costs.

28. In view of disposal of the Writ Petition, pending Civil Application No. 2533/2018 does not survive. The same stands disposed of accordingly.