(1990) 11 BOM CK 0042

In the Bombay High Court

Case No : Appellate Side Writ Petition No. 2665 of 1982

Ramrao L. Randive APPELLANT

Vs

Poona Housing and Area Development Board RESPONDENT

Date of Decision : 19-11-1990

Acts Referred:

MAHARASHTRA HOUSING AND AREA DEVELOPMENT ACT, 1976 — Section 28

Citation : (1990) 92 BOMLR 549 : (1991) MhLj 1012

Hon'ble Judges : Sujata Manohar, J;M.F. Saldanha, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

M.F. Saldanha, J.—This petition raises two points of considerable importance which pertain to the authority vested in the Regional Board constituted under the Maharashtra Housing & Area Development Act, 1976 which are summarised as follows:

a) Whether the Regional Board is invested with the authority to vary the schemes formulated for allocation of tenements to applicants belonging to different income groups, such as the lower income group, the middle income group and the higher income group, for which the income limits are specified.

b) Whether it is within the power of such Regional Boards to permit the transfer of an applicant who is allotted in one of the schemes to a higher income scheme, even if the same is on valid or reasonable considerations.

2 These two questions have fallen for determination in this case wherein the Regional Board of the Authority at Pune relaxed the minimum income limit of the higher income group scheme and permitted the petitioner to join that group by transferring his application which had been accepted for the middle income group scheme. At a subsequent point of time on a re-examination of the files the concerned officers of the Board, after referring the matter to the Government had refused to accept such a transfer and it was, therefore, contended that the

Authority was bound by the decision of the Regional Board on the basis of which the petitioner had made the payments for the higher income group scheme flat and consequently, that the respondents were estopped from denying him the allotment of the flat for which he had made the payment. A few relevant facts must necessarily be stated.

3. The petitioner in this case had applied for a tenement in the middle income group scheme at Gokhale Nagar of the Poona Housing and Area Development Board, i.e., the 1st respondent to this writ petition, According to the petitioner, he had applied for categorisation in the middle income group category by virtue of his income at the relevant time which was, admittedly, below Rs. 1,500.00. The petitioner was successful in the lucky draw and was allotted serial No. 108 and was also asked to pay the second installment of Rs. 1,500.00, which he accordingly did, and he further paid the balance amounts that were due from him against the cost of price of the middle income group tenement. It is relevant to point out that an advertisement in respect of this allocation was published in the newspaper on December 24,1977 and the petitioner was informed by the Board by a letter dated June 1,1978 about his having been a successful allottee. The petitioner''s income on the date of the application submitted by him is relevant.

4. According to the petitioner, in the month of August 1978, he learnt that there were unallotted flats in three schemes of the Board which belonged to the higher income group category. The petitioner himself admits that in or about August 1978, his income was Rs. 1,400.00 and that he was not eligible for the higher income group categorisation. According to the petitioner, he was of the view that if the income of his mother, who was residing with him, were to be added on to his income that he would then cross the Rs. 1,500.00 bar and consequently he would have been eligible for the higher group categorisation. The petitioner, therefore, applied to the Board asking for transfer of allotment to the higher income group. It appears that the Board initially by a letter dated December 5, 1978 communicated to the petitioner that his request cannot be granted. However, subsequent to this, it appears that the Board passed a resolution No. 102 granting the petitioner''s application. In this resolution, the Board expressed the view that since the income of the petitioner was negligibly less only by Rs. 100.00 and taking into consideration the likelihood that nine tenements would remain vacant on account of lack of response for the higher income group that the petitioner was being permitted to transfer his allotment to the higher income group category. Thereafter, by letter dated August 27, 1980, the Board informed the petitioner that his request for transfer had been granted and that he was now registered at serial No. 59 of the higher income group at Maharshi Nagar, Pune. The petitioner was also informed that the amount of Rs. 12,000.00 paid by him towards the middle income group tenement had been adjusted against the cost of the higher income group tenement and he was asked to pay a balance of Rs. 10,060.00. The petitioner paid up this amount, after which the Board once again by a letter dated November 29, 1980 informed the petitioner that he had to pay a deficit of Rs. 100/- which amount was also paid by him.

5. It is the case of the petitioner that in December 1981, when the possession of the tenements was being given, he made enquiries with the officers of the Board, whereupon the petitioner was informed that he was not eligible for the higher income group tenement and that his ease had been referred to the Government. The petitioner states that he made several applications to-the Secretary of the Housing Department, the Minister for Housing and the Chief Minister and that on August 18, 1982, the petitioner was informed by a letter issued by the Assistant Secretary, Housing and Special Assistance Department, Mantralaya, Bombay, that the petitioner''s request for the higher income group tenement was rejected and that he was directed to contact the officers of the 1st respondent for obtaining possession of the middle income group tenement. It is this order/ decision of the Government which the petitioner has challenged in the present writ petition.

6. At the time when the writ petition was admitted, the Board had been directed to keep one of the higher income group tenements vacant in the event of the petitioner succeeding in this writ petition. In the affidavit in reply filed by the Administrative Officer of the Board, it has been pointed out that there is no dispute about the fact that the petitioner by virtue of his income, which at the relevant time was Rs. 1,077.00 qualified for the middle income group tenement. The Board has contended that, admittedly, the petitioner did not qualify for the higher income group tenement because his income was below Rs. 1,500.00 p.m. at the time Of the advertisement and furthermore that the Regional Board at Pune had no powers either to relax the income limit in the matter of allotment of tenement or to grant a transfer from one scheme to another scheme in any case. Basically, the respondents have contended that the resolution whereby the petitioner contends that he was granted a transfer from one scheme to the other scheme was a resolution which was passed without jurisdiction.

7. Miss Kantharia, the learned advocate appearing on behalf of the petitioner, has contended that, in the first instance, the Regional Board at Pune has passed the resolution on very valid grounds because, admittedly, according to her, the response to the higher income group tenements was weak and tenements of higher income group were available for allotment at the relevant time. According to Miss Kantharia, there was nothing wrong, therefore, if the Board in a given case permitted the transfer of an applicant from the scheme of one income group to the scheme of another income group without depriving any other applicants. She has further contended that having passed the resolution and the petitioner having paid the money and the Board having registered the petitioner''s name in the higher income group category that it was impermissible for the respondents at a later point of time to take up the present contention that the petitioner is not now eligible for the higher income group tenement.

8. As against this, Mr. Rane, the learned Assistant Government Pleader appearing on behalf of the respondents, has taken us through the relevant provisions of the Maharashtra Housing and Area Development Act, 1976 and the Rules framed

thereunder, namely, the Maharashtra Housing and Area Development (Estate Management, Sale, Transfer and Exchange of Tenements) Regulations, 1981. To a query from the Court, Mr. Rane has pointed out on the basis of the relevant documents of the Department that the schemes in question are framed by the Government of India and that it was not permissible in any event for the Regional Board to make any variations whatsoever in the schemes in question. He has pointed out that the schemes categorise the applicants strictly on the basis of their income and that in the present case by having permitted the applicant who admittedly was below the prescribed income limit of Rs. 1,500.00 p.m. to join the higher income group scheme that the Board has essentially varied the scheme and permitted the relaxation which it was legally not empowered to do. Miss Kantharia, the learned advocate appearing on behalf of the petitioner, was unable to point out to us any specific provision permitting the Board to make any such variation in the case of an applicant who is admittedly not eligible and she was also not able to point out to us within the framework of the Act and the Regulations any provision under which a transfer of the present type is permissible.

9. A contention was sought to be advanced that the petitioner has contended that if the income of his mother, who was residing with him, were to be added to his income, in that event he would be technically qualified for the higher income group category. In the first instance, this position appears to be factually incorrect because the Regional Board itself, while passing the resolution, has stated that the income of the petitioner is Rs. 1,400.00 p.m. i.e., admittedly, below the prescribed minimum of Rs. 1,500.00 p.m.. Apart from this, under the relevant definitions in the Act, the term "income" is confined to the income of the applicant and the spouse and docs not take into account the income, if any, of the other members of the family, regardless of whether they are residing with the applicant or not.

10. It is necessary to refer to Section 28 of the Maharashtra Housing and Area Development Act, 1976, which sets out the functions, duties and powers of the Authority and the Boards. We have carefully scrutinized this provision, and we do not find any power to vary the schemes having been delegated to the Regional Board by the Authority. Furthermore, Regulation (22) of the Regulations framed under Clause (iii) of Sub-section (3) of Section 28 of the Act invests the Regional Board with only two categories of powers in respect of these schemes which are confined to variation in the price of the tenement and the power of the Board to utilise the additional Floor Space Index. It is, therefore, quite evident that the contention raised on behalf of the respondents to the effect that the Regional Board at Pune was not invested with the power to grant any relaxation vis-a-vis the higher income group scheme to the petitioner who was not, admittedly, qualified for the scheme must be upheld. We are further of the view that, having regard to the number of the applicants who are parties to these schemes, it would be neither healthy nor a correct procedure that the Regional Board be permitted to exercise any powers of this type. Miss Kantharia, the learned

advocate appearing on behalf of the petitioner, raised a submission to the effect that since the advertisements in relation to these schemes are issued by the Regional Board and since the entire management and control of the scheme is invested with the Regional Board, it is implicit that certain powers, such as to grant permission of transfer from one scheme to the other, are inherent in the powers invested in the Regional Boards. We are unable to accept the submission for the reason that the Act itself very clearly enumerates the functions, duties and powers of the Regional Boards, which are specified and are limited, and unless such powers are specifically vested in the Regional Board, either under the Act or by delegation, it would not be possible to invest such powers with the Regional Board or to hold that it has any inherent powers. In particular, Miss Kantharia relied on the wording of Sub-clause (i) of Section 28(1)(a) of the Act, which reads as follows:

Section 28(1)(a)(i)-housing accommodation in the State or any part thereof, sale, including transactions in the nature of hire-purchase of tenements in any building vested in, or belonging to, the Authority, letting, or exchange of property of the Authority.

11. According to the learned advocate, the term "or exchange" as appearing in this sub-clause presupposes the fact that the Regional Boards are invested with the power to permit an exchange of tenements between one scheme and the other. This, unfortunately, is not a correct interpretation, because Section 28(1)(a) of the Act deals with a situation whereby the Authority can direct the Boards to prepare and execute proposals, plans or projects in relation to housing accommodation and it is in relation to these projects that the subsequent part of the sub-clause refers to. Again, it is in relation to these projects that the subsequent approval of the Board is required to be sought. u/s 29 of the Act, it is only these proposals that are delegated to the Regional Boards. In the present case, in any event, these contentions are wholly academic for the simple reason that, admittedly, the petitioner''s income was below Rs. 1,500/- p.m. and he, therefore, did not qualify for the higher income group scheme as on the date of the application.

12 In the light of this position, the contention of the petitioner that he has made certain payments pursuant to the Board having accepted his transfer to the higher income group scheme, and consequently, that the tenement in that scheme must be allotted to him cannot be accepted for the reason that the petitioner was not qualified in the first instance and further that the Board had no power to grant such transfer. The payments made by the petitioner have been adjusted against the middle income tenement which has been allotted to him.

13. Mr. Rane, the learned advocate appearing on behalf of the respondents, has produced before us the file relating to this case on the basis of which he has pointed out that the petitioner has already been allotted a tenement in the middle income group scheme; that he had taken possession of the same and that right from the beginning according to the records maintained by the Board,

the petitioner is not staying in that tenement which is occupied by some other family. Miss Kantharia advanced a submission that the petitioner is prepared to pay whatever difference there exists between, the price of the tenement in the two schemes and that the tenement which has been kept vacant under the interim orders of this Court be allotted to the petitioner since the same is still available. This cannot be permitted for the reason that the petitioner is primarily not eligible for the allocation of that tenement. Respondent No. 1 would, therefore, be entitled to dispose of the tenement in question according to the Regulations of the Board. In the course of the arguments, Mr. Rane had drawn our attention to Regulation 14 of the Regulations, which very clearly specifics that if a tenement remains unallotted, the procedure that is required to be followed is that the Board shall re-advertise it. It is therefore, quite clear that the Board is not permitted to allot these tenements even if unallotted to applicants from the other income group categories.

14. In the result, the petition fails and stands dismissed. The interim order stands vacated with the direction that the Board shall compute the amount paid by the petitioner and the excess, if any, paid by him against the higher income group tenement shall be refunded to the petitioner. In the circumstances of the case, there shall be no order as to costs.

15. At this stage, Miss Kantharia, the learned advocate appearing on behalf of the petitioner prays for leave to appeal to the Supreme Court of India. In our opinion, this writ petition does not raise any substantial point of law of public importance. Hence the prayer is rejected.

