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**(1987) 05 BOM CK 0002**

**In the Bombay High Court**

**Case No :** Writ Petition No's. 390 and 602 of 1987

V.M. Bhandari

APPELLANT

Vs

State of Maharashtra

RESPONDENT

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**Date of Decision :** 18-05-1987

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation :** (1987) 89 BOMLR 397 : (1987) MhLj 930

**Hon'ble Judges :** S.M. Daud, J

**Bench :** Single Bench

**Final Decision :** Dismissed

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## Judgement

S.M. Daud, J.—These petitions under Article 226 of the Constitution are directed against an order for allotment of plots from the Cross Maidan at Bombay to various respondents by the first respondent, which is the State of Maharashtra. The order of allotment impugned is that bearing G.R. No, CRM 1085/54893/SYS-1 dated July 15, 1986.

2. The Cross Maidan is one of the few available open spaces in this metropolis and the openness of such spaces survives mainly on account of the vigilance of public spirited citizens bringing to the notice of this Court the persistent attempts made to take over the Maidan or parts thereof for non-recreational-cum-commercial exploitation. Bhandari, petitioner in W.P. No. 39,0 of 1987, claims to be the owner and publisher of a Hindi periodical titled "Prachand". On July 19, 1984 he addressed an application to the Social Welfare Department of the Government of Maharashtra, seeking permission to organise an exhibition of publications, the exhibition to be located in the entire Cross Maidan for a period of 3 months commencing from November 1, 1935 and ending with January 31, 1986. He was informed that the application had to be in the prescribed form and accompanied by a fee of Rs. 51/-. Bhandari did the needful and was further informed that allotments would be made in the- month of January, 1985 and that this<sup>1</sup> would be done on the basis of "applications received serially". Allotment of

plots from Government Maidans, in particular the Cross Maidan, had generated controversy which in due course came before this Court in the form of Writ Petitions. One such Writ Petition was that bearing No. 1495 of 1985. On March 10, 1986, in an appeal against an interim order passed in the aforesaid Writ Petition, the Division Bench hearing the appeal expressed its dissatisfaction with the attitude of the State Government in regard to allotment of plots from Cross Maidan. It opined that allotments were being irregularly made without proper guidelines and presumably for "collateral purposes", such purposes ranging right from favouritism to corruption. The State was called upon to explain how it was carrying out its obligations. This order was made on March 10, 1986 and on March 13, 1986, the State framed rules, hereinafter to be referred to as "the March 1986 rules". This having been done, on March 17, 1986, the Division Bench opined that the appeal before it did not survive. It was, however, made clear that the Bench had not applied its mind to rules nor stamped its approval about the rules' propriety or legality.

3. On July 15, 1986, the G.R. assailed in these petitions came to be issued. Thereunder, beginning from January 5, 1987 and lasting till May 31, 1987, plots of different sizes were shown as allotted to four institutions, the first being Marathwada Mitra Mandal (MMM), and three others, who are respondents 2 to 4 to Bhandari's petition. For the sake of convenience these respondents will hereinafter be referred to by the acronyms SPSS, MJA and TJA respectively. The G.R. contained terms and conditions on which the allotments have been made and two conditions relevant to this judgment read; -

(1) Each institution is required to pay Rs. 10,000/- as security deposit before taking possession of the plot with the office of the Executive Engineer, Presidency Division, Bombay.

(2) Each institution is required to pay the prescribed rent before taking actual possession of the plot in the office of the Executive Engineer, Presidency Division, Bombay.

Three clauses from the March 1986 rules read as under: -

(4) Applications for allotment of plots on Government Maidan during the block year (vide (2) above) will be entertained only during the period from 1st January to 31st March of the preceding block year, i.e. three months before the commencement of the block year. All these applications received during this period will be considered together by Government on merit of each of the case.

(9) Possession of plots on Maidan, for which allotment is made, will be given by the Executive Engineer, Presidency Division, Bombay, after execution of "Agreement Bond" on stamp paper and on payment of requisite Security Deposit and rent for the use of plot on Maidans for the entire period in advance atleast two months before the commencement date of use of plot on Maidans otherwise allotment made shall stand cancelled, automatically.

(19) Government reserves the right to relax any of the conditions in these Rules in deserving cases for good and sufficient reasons to be recorded in writing by Government.

A change was made in the rules on September 30, 1986 which requires that the entire ground rent be deposited in the office of the Executive Engineer within 2 months of the date of order of allotment of the land or before taking of actual possession by the allottee, whichever date be earlier. Writ Petition No. 602 of 1987 has been moved by one H.P. Shukla and inasmuch as the same is not pressed, I will say no more in relation thereto in this judgment.

4. Bhandari's petition was lodged with the office on February 4, 1987. The first allottee viz. MMM was in occupation of the plot in the Cross Maidan from January 5, 1987 and its tenure was to expire on February 23, 1987. The MMM is not impleaded to this petition and till February 24, 1987 Bhandari did not show any earnestness about prosecuting the petition. It was on February 24, 1987 that the matter came up before Bharucha J. That learned Judge admitted the petition and the order passed by him reads thus: -

Rule, Expedited. There appears, prima facie, to be disregard even of such guidelines as have been framed in regard to the allotment of the Cross Maidan. The guide-lines were framed by the State Government by reason of a direction of a Division Bench of this Court. They do not meet the requirements of the direction. And, such as they are, they are breached. A perusal of an earlier affidavit filed on behalf of the State Government suggests that the petitioner's application was not even considered. A perusal of the present affidavit does not remove that impression. There are, it appears prima facie, breaches also in the allotment of two related bodies and, perhaps, in the matter of the collection of fees. The Cross Maidan is public property. Its allotment cannot be arbitrarily made. Where it appears to have been so made, it must be stopped. If the allottees, are innocent and suffer damage by reason of such stoppage, they must recover in a suit. Hence interim relief in terms of prayer (c).

Prayer (c) sought an interim injunction to prevent the handing over of any portion of the Cross Maidan to respondents 2 to 6 or any of them.

5. Against the above order of Mr. Justice Bharucha, the SPSS and MIA preferred appeals bearing Nos. 289 and 290 of 1987. These appeals came up before a Division Bench on March 2, 1987. The Bench recorded the submissions made by counsel representing the SPSS and MJA. It, however, made clear that in the matter of framing of guide-lines for allotment of plots in the Cross Maidan, there had been impropriety. To remedy this situation, the Bench directed the issuance of a suo-motu notice and proceedings against the State to show cause as to why allotment of the Cross Maidan be not stayed until proper guidelines were formulated, shown to the Court and got approved. That has led to the registration of Suo-motu Writ Petition No. 1266 of 1986. However, the appeals lodged by SPSS and MJA were dismissed.

6. The questions that I have to answer here arise out of the reliefs claimed in Bhandari's petition and the consequences of the prevalence of the interim injunction until now. Bhandari wants the G.R. of July 15, 1986 to be quashed and a direction to the Government to consider all applications for Maidan plots including his own. The complaint about non-consideration of his application despite a promise to do so on a priority basis is without substance. There was no commitment to consider his application, much less, on a priority basis. He was informed of the formalities vis-a-vis the person to whom to apply, when and how. This also was on account of the intervention of Member of Parliament Vidya Charan Shukla on his behalf. The claim that his application was not considered is belied by the assertion to the contrary appearing in the State's return. Reliance placed upon the averments of such a return in another case is an indication of desperation. Forget the above and let us see if Bhandari can claim any relief. He has a personal axe to grind and is not litigating in the public interest. The period for which Bhandari wanted the Maidan was 3 months from November 1985 to January 1986. The impugned G.R. covers allotments from January 5, 1987 to May 31, 1987. Bhandari did not seek an allotment for 1987. Whatever the merits of his plea about his being kept in the dark about the process of allotment etc. on the date he lodged the petition i.e. February 4, 1987, there was then no subsisting or enforceable claim of his.

7. Last is the disqualification flowing from delay and collusion. Bhandari came to Court much after the impugned G.R. was issued. The explanation that he expected information as to how his application had fared and that the delay caused is because of his not being based in Bombay, carry no conviction. With the claim for the full maidan and the boost sought for his contemplated venture, the least expected from Bhandari was to come fast for succour to a Court of law. On the other hand belated as the initiation of the case was, Bhandari did nothing for 20 days after the lodgment of the petition. MMM being the first allottee was in occupation and enjoyment of a plot in the Maidan and could not have been happy with the impending closure pursuant to its tenure coming to an end on February 23, 1987. It had not been impleaded as a respondent to Bhandari's petition and the petitioner had shown no anxiety to get the matter before a Judge till February 23, 1987. Came February 24, 1987 and the interim injunction. One person not affected thereby were the MMM and technically there was no impediment to the grant of an extension to it. Even if an extension could not be had, the hated rivals viz. SPSS, MJA and TJA, could be stopped in their tracks. No wonder that Bhandari is accused of colluding with MMM and worse. Injunctions - interim or perpetual-originate from the equity jurisdiction of Courts. Litigants acting belatedly and to favour or at the behest of a business crony are not entitled to any indulgence. Whatever be the failings in the order of allotment, Bhandari does not even have a figleaf covering to move this Court for relief.

8. This brings me to the allottees plea for restoration of the impugned G.R. with a shift in the dates of their tenure. The argument is that but for the unwarranted interim injunction granted in Bhandari's petition, they could have exploited their

privileges under the allotment order. The allotments when made, were perfectly valid and there was nothing improper in the grant of plots to them. Every Court, more so a writ court, was bound to do the right thing to a suitor injured by the promulgation of a fiat, which on scrutiny is found to be unjustified. The last of the impugned allotments end on May 31, 1987. Hardly any time remains for the exploitation of the plots in the calendar year 1987. Leaving the allottees to prosecute claims for damages, is no solution. In fact, they cannot move against the State Government for it has done nothing to come in the way of the allottees. That apart, a claim of this nature to fructify into cash in their hands, will take years. In the meantime many claims and counterclaims will have spawned. The allottees and people claiming under them have invested huge sums for the projected All India Handloom exhibition. The aggrieved can be compensated by directing the Government to reschedule their tenure as from January 1, 1988. This is because the monsoon will soon be with us and the period thereafter is reserved for a Circus. I have been referred to three authorities, viz. *S. Chokalingam v. N.S. Krishna* AIR [1964] Mad. 404 *S.M. Deshmukh Vs. Ganesh Krishnaji Khare*, *Martand Ramchandra Potdar Vs. Dattatraya Ramchandra Potdar*, dealing with restitution and the duty of Courts under that head.

9. The obligation to restitute arises if an injury has been caused to the claimant. The argument that the G.R. of July 15, 1986 is valid as the March 1986 rules have not even been challenged, ignores a patent infirmity. Cross Maidan is public property, primarily meant for recreational purposes. If portions thereof are to be let out for non-recreational, and, in particular, commercial exploitation, this must be by well settled norms. The basic norm in alienation of public property is a widely publicised intent to alienate, preceding the actual alienation. It is no answer to say that SPSS, MJA and TJA were the most deserving amongst the persons applying. Open grounds to exhibit or peddle wares in Bombay, are treasure mines and the opportunity to get such grounds for that purpose, cannot be restricted. Admittedly no such publicity preceded the G.R, of July 15, 1986. That the allottees knew of the availability and Bhandari was made cognisant thereof is not enough. Had the availability been duly advertised, many more bidders - perhaps some as deserving, if not more than the allottees, would have come forth. Public property, has to be dealt with in an open and fair manner. The allottees have benefitted by a deviation in the basic norm and cannot therefore, claim to having been legally injured. Not open to them is the restitution claimed. The State Government may or may not be liable, though I see no reason how it can retain recoveries" already made from the allottees. Busybodies like Bhandari may or may not be liable. That is not the question to be decided today.

10. Having regard to the foregoing, the petitions fail. Writ Petition No. 390 on merits, and 602 because of a nolle prosequi. Rules discharged with parties being left to bear their own costs.