



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2760 OF 2022

Devika Natvarlal Rotawan ... Petitioner

Versus

State of Maharashtra & Ors. ... Respondents

Ms. Kunickaa Sadanand, for Petitioner.
Smt. Jyoti Chavan, Addl. G. P., for State.
Mr. N. R. Bubna, for Respondent Nos. 3 & 4.

CORAM: G. S. KULKARNI &
FIRDOSH P. POONIWALLA, JJ.
DATED: 13 March 2024

P.C.

1. Considering the contentions of the petitioner, who is a victim of the terrorist attack which took place on Mumbai on 26 November 2008, we had passed a detailed order dated 28 February 2024. The said order reads thus:

"1. On the backdrop of the order dated 13th October, 2020 passed by the Division Bench of this Court on the Petitioner's earlier Writ Petition (Writ Petition (L) No.4343 of 2020), this is a second round of the proceedings filed by the Petitioner.

2. The Petitioner is a victim of the terrorist attack which took place in Mumbai on 26th November, 2008. The Petitioner was then 9 years old when she was hit by a bullet fired by the accused Ajmal Kasab at the V.T. Station. She has undergone multiple surgeries. She has stated that at present she is suffering from several ailments for which she is under continuous medical treatment. She has also been a material witness for the prosecution, in the criminal trial of the accused involved in the terrorist attack, held before the Sessions Court at Mumbai. It is stated by the learned Advocate appearing for the Petitioner that even now she is required to attend the Court in related matters.

3. *The Petitioner's case is that from the age of 9 years, she has suffered severe hardship, and added to this, is her poor financial condition, requiring her to stay in slums. She states that indisputedly she belongs to the Economically Weaker Section (EWS) of the society. Now she is 25 years old and has to live her life with such disabilities and in utter poverty, however, with dignity. It is contended that whatever monetary / financial aid received was spent on her medical treatment, with nothing left which would enable her to have any resources to have roof over her head. The monetary compensation received by her was meager hardly to compensate part of her medical expenses, and no real compensation for her agony, pain and hardship suffered by her, for no fault of her.*

4. *It is under these exceptional circumstances, the Petitioner approached the State Government, that her case which is extraordinarily peculiar, be considered for the allotment of a tenement under the Economically Weaker Section (EWS) quota, as she is presently staying in slums, at the mercy of her parents. It is under these circumstances, the Division Bench of this Court had passed the order dated 13th October 2020 directing the State Government that the Petitioner's representation be considered.*

5. *This Writ Petition was filed on 30th May, 2022. It was so far listed on earlier five occasions. On 3rd January, 2024, the proceedings were adjourned so as to enable the learned AGP to inform the Court on the decision taken on the representation of the Petitioner. We had passed the following order;*

" 1. To enable Ms. Chavan, learned Additional Government Pleader, to inform the Court as to whether any decision was taken by the Chief Secretary, State of Maharashtra, in pursuance of the order dated 13th October 2020 passed by this Court in the previous Petition, being Writ Petition (L) No.4343 of 2020 stand over to 7th February 2024 "HOB".

2. Liberty to the Respondents to place on record Reply Affidavit, if any."

6. *Thereafter, the proceedings were listed before us on 7th February, 2024, when the Court was required to pass the following order adjourning the proceedings ;*

" 1. Only by way of indulgence we adjourn the proceedings to 28th February 2024 "HOB". There shall be no further extension of time."

7. *It is thus almost two years that the proceedings are pending. Today, the learned AGP under instructions of Mr. Narayan Mane, Under Secretary, Home Department who is present in the Court, has placed before us a decision taken by the Secretary as approved by the Chief Secretary albeit without any additional remark, which is interalia to the effect that the Petitioner's request for allotment of a tenement under the*

EWS quota cannot be considered. Such decision as taken by the Secretary is dated 21st February 2024. Having perused the said decision, we find it appropriate to take on record copies of the relevant pages No.1, 2, 3, 4, 5 and 6 of the said decision. The same be forwarded to the Official Translator so that the official translation is available on record.

8. We have perused the said decision. We find from the said decision that in the excruciating and glaring facts the case would present, the Petitioner's genuine and basic necessity for allotment of tenement from whichever quota ought to have been the primary consideration by the Secretary, to take such decision, in such exceptional case. Such approach is wholly lacking in the said decision as placed before us.

9. Significantly, the present case is not a routine and/or a normal case of demand for allotment of a tenement under the EWS quota. The Petitioner is a victim of a ghastly terrorist attack suffered at such tender age. Thus, while taking such decision, due consideration to the peculiarity of the genuine and bonafide need for allotment of a tenement and her welfare were legitimate factors, on the Petitioner's claim of her entitlement to the allotment of a tenement. She has not only suffered since the tender age of 9 years but continues to have a health condition which she suffers due to several surgeries. These issues were paramount in taking such decision. Another factor which has been overlooked is to the effect that absent, such deep set back the Petitioner has suffered, and that too at such young age, she would have otherwise lead a normal life. Certainly, she would have been in a better position with all abilities to progress in her life.

10. We may also observe that routinely allotments of tenements under several quotas take place. In several situations it is found by the Courts that the allotments do not meet the test of law. We are thus surprised, that when such a genuine case was presented before the concerned department, it certainly deserved more human sensitivity and particularly when the basic human rights of the Petitioner stood adversely affected, the Petitioner being a victim of a terrorist attack.

11. In our opinion it would be certainly expected from a "Welfare State" that wherever there is a deserving case of such exceptional nature and a genuine need / necessity of a person to be conferred with such benefit and more particularly, when the case involves enforcement of the basic fundamental / human rights guaranteed and recognized under Article 21 of the Constitution, the State needs to be alive to such necessity, and needs to exercise its discretion, for the welfare of such victim, by taking an appropriate decision in the spirit of the Constitutional ethos. The State, otherwise, routinely exercises its authority in cases which would not be par as in the present case. It also cannot be conceived that the State Government is helpless to make allotment of tenements from its appropriate and large pool of such tenements, available at the disposal of

the State Government or its authorities / bodies like the MHADA, Slum Authority, ULC, PAP tenements to name a few.

12. *Thus, not satisfied with the decision taken by the Secretary, Housing Department, for the reasons we have discussed, we direct the Secretary, Housing Department, to place the Petitioner's file, along with the present order, before the Hon'ble Minister for Housing, Government of Maharashtra, so that the Hon'ble Minister can consider the peculiar facts and circumstances of the case, and after due consideration of all the issues as highlighted by us, applying his mind, take an appropriate decision on or before the adjourned date of hearing.*

13. *We accordingly adjourn the proceedings to be listed on 13th March, 2024. (HOB)."*

(emphasis supplied)

2. Accordingly, directions were issued to the Secretary, Housing Department to place the petitioner's file for allotment of a tenement, along with our order, before the Hon'ble Minister for Housing, Government of Maharashtra, so that the Hon'ble Minister can consider the legal facts and circumstances of the case, and after due consideration of all the issues, as highlighted by us, take an appropriate decision on or before the adjourned date of hearing.

3. Today, Ms. Jyoti Chavan, learned Additional Government Pleader, has tendered a communication received by her from the Under Secretary, Housing Department, Government of Maharashtra, dated 12 March 2024, informing her that the Hon'ble Minister for Housing has granted approval for allotment of one tenement to the petitioner under the Economically Weaker Section (EWS) category as a special case, which would be granted either from the

tenements available with MHADA or with the SRA. We take the said communication on record, which is marked “X” for identification. The relevant contents of which read thus:

(Official Translation)

“In pursuance of the Writ Petition No. 2760 of 2022 filed in the Hon’ble High Court on the aforesaid subject, the Hon’ble High Court has passed the Order on the date 28.02.2024 as under:

“Thus, not satisfied with the decision taken by the Secretary, Housing Department, for the reasons we have discussed, we direct the Secretary, Housing Department, to place the Petitioner’s file, along with the present order before the Hon’ble Minister, Government of Maharashtra, so that the Hon’ble Minister can consider the peculiar facts and circumstances of the case, and after due consideration of all the issues as highlighted by us, applying his mind, take an appropriate decision”. Taking into consideration the aforesaid Order of the Hon’ble High Court, a proposal to make available a house to the Petitioner under MHADA or S.R.A. in Meagre Income Group, as a special case, was immediately submitted to the Hon’ble Minister, Housing and the Hon’ble Minister has granted approval thereto. In pursuance thereof, the said proposal is sought from MHADA and S.R.A.. You are requested to bring to the notice of the Hon’ble Court that it would take minimum 06-month time for the Government to receive the said proposal and to take further action in that regard.”

(emphasis supplied)

4. We heartily appreciate such decision taken by the Hon’ble Minister to allot to the petitioner a tenement which, according to us, would grant real justice to the petitioner, considering her suffering which we have noted in detail in our earlier order as noted hereinabove. It is stated that it would take about six months for the formalities in that regard to be completed. Let the

same be completed within such period and an appropriate tenement be allotted to the petitioner.

5. In this view of the matter, further adjudication of the petition is not called for. It is accordingly disposed of with a direction that, within six months from today, let the allotment be finalized and possession of the tenement be handed over to the petitioner.

6. Needless to observe that, for compliance of any formalities in regard to the allotment, the concerned officer either from the SRA or from MHADA shall request the petitioner to provide all the necessary documents. A copy of such communication can also be forwarded to the advocate for the petitioner.

7. We also appreciate the fair assistance of Ms. Jyoti Chavan learned AGP in adjudication of the present proceedings.

8. Disposed of. No costs.

(FIRDOSH P. POONIWALLA, J.)

(G. S. KULKARNI , J.)