REPORTABLE

2024 INSC 971

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5193 OF 2024

PROPOSED VAIBHAV COOPERATIVE HOUSING SOCIETY LIMITED ...APPELLANT

VERSUS

STATE OF MAHARASHTRA & ORS. ...RESPONDENTS

J U D G M E N T

SUDHANSHU DHULIA, J.

1. The appellant has filed this appeal challenging judgement dated 24.02.2012, whereby a Division Bench of the High Court of Bombay has dismissed the appellant's writ petition and declined to interfere in the allotment of land by the Respondent-State to Medinova Regal Co-operative Housing Society (hereinafter for brevity **"MRCHS"** or **"Respondent No. 5"**)

2. MRCHS is a proposed housing society and had applied, through its Chief Promoter Dr. C.N. Shenoy, to the Chief Minister of the State of Maharashtra for allotment of a plot bearing CTS No.629 Part D, E, F at Bandra on 11.10.2000. It was mentioned

in their application that the members of applicant society work in Tata Memorial Centre, a leading hospital and research institute for cancer, and these members do not own any house, despite living in Maharashtra for the last twenty years or so. Further, they had said that they have been residing at places which are at quite a distance from their workplace and thus find travelling difficult and time consuming, although as doctors they have to reach their hospital in time in order to respond to emergencies. On these grounds a request was made for allotment of land.

Three years later on 16.01.2003, the Revenue & Forest Department issued a Letter of Intent (**"LoI"**) in favour of MRCHS for sanction of one plot of land, out of two plots of equal area which will be created after subdividing the plot bearing C.S. No. 341 C.T.S. No. 608/1 and 608/2 at Bandra (**"subject plot"**). It is important to note that this plot is different from the plot for which the MRCHS had applied.

3. Around a month later, one Mr. Dilip D. Gijare informed the Collector that he has now become the Chief Promoter of MRCHS. Further, out of the 11 persons shown as members of MRCHS at the time of issuance of the Letter of Intent, 5 are ineligible and

have been substituted by inclusion of 8 new persons. Thus, the composition of the proposed MRCHS changes for the first time.

Meanwhile on 29.08.2003, the present appellant also applies for allotment of the subject plot in its favour.

Subsequently, the Joint Secy., Forest & Revenue Department prepares an Office Note dated 14.07.2004 detailing the Collector's findings that out of the original 15 members, 2 have not submitted their details, 5 have resigned and 4 are ineligible due to income limit. Further, out of the newly included 8 members, 5 are ineligible due to income limit as well. Thus, the Joint. Secy. opined that the LoI in MRCHS' favour should be cancelled. The Chief Minister remarked *"please resubmit the file with the latest position".*

4. Thereafter, the Joint Secy. again recommended cancellation of the LoI vide Office Note dated 21.09.2004. It was noted that even the new Chief Promoter of MRCHS, Mr. Dilip D. Gijare, has submitted his resignation and of the original 11 members, who were shown as members of MRCHS at time of issuance of LoI, none are eligible for membership. Thus, it was observed that the

main object of sanctioning the plot in favour of MRCHS is not getting satisfied. This is what was said:

> *"that out of 11 members alongwith Letter of Intent provided to [MRCHS], 5 members have given resignations and details two members have not been received. Remaining 4 members are not eligible because of income limit and out of 9 members who have been admitted fresh, 4 members from Tata Memorial Centre and 1 Private Surgeon and thus total 5 members are also not eligible as per income limit... Similarly resignation of Dr. Dilip D. Gihare, newly appointed Chief Promoter of the society has been submitted. It is being observed from the details submitted in this case by the Collector that total 5 members out of total 11 members of the list enclosed with [LoI] of Intent dated 16/1/2003 provided to [MRCHS] have given resignation and 2 members have not submitted their details... In this manner out of total 11 members whose names have been mentioned in list alongwith Letter of Intent of the Government dated 16/1/2003 provided to the society, not a single member can be considered to be eligible in the present circumstances for membership. Similarly earlier 9 members who have been recommended by the society and 9 members who have been proposed in connection with T.D.R. and names of such total 19 members have not been included in the list of Letter of Intent of Government dated 16/1/2003 provided to the society. From these details main object of the government of sanctioning plot of land under the subject to the society is not getting satisfied. Taking this fact into consideration as most of the members of Tata Memorial Centre is not being eligible for Membership, letter of Intent of the Government dated 16/1/2003 issued... for the allotment to [MRCHS] should be cancelled. However, submitted for orders."*

The Chief Minister again intervened and directed scrutiny of the second proposal by MRCHS. The composition of the proposed MRCHS has changed thrice already, yet they are afforded another opportunity by the Chief Minister.

This time, the Principal Secy. (Revenue) vide Office Note dated 17.05.2005 recommends cancellation of the LoI. He notes that after scrutiny of all 29 members, i.e., original and additional members, only 8 of them can be considered *prima facie* eligible while the condition of admitting 20% of MRCHS' members from the backward classes has still not been complied with. The reason that 8 members were only *prima facie* eligible is because they were in the private service (not working with Tata Memorial Centre) and could be considered only after submission of their income certificate, as provided by the Competent Authority.

On 03.04.2006, the Chief Minister sent the file back with the remarks *"Last opportunity be provided to the society and concerned Collector should complete the action."* This direction sounds more like a command given by the Chief Minister.

5. Once this direction was given by the Chief Minister, things started moving smoothly for MRCHS as the Joint Secy. found 13

members out of their 29 members to be eligible for granting final membership. Consequently, Letter of Allotment was issued in favour of MRCHS on 10.04.2008.

6. The entire history of how the plot came to be allotted to MRCHS shows nepotism and favouritism for a society which was not even eligible in the first place for this allotment. A perusal of the records shows that not a single member of the society, is a doctor at Tata Memorial Hospital. Leave aside a doctor, not one member is an employee of Tata Memorial Hospital which was the projection earlier and for which the plot was sought to be allotted. The composition of this society has also now completely changed from its original composition.

Further, the appellant has taken us through the office noting of MRCHS' file which clearly suggests that the concerned authorities were not favourably inclined to allot the plot to MRCHS and the matter kept lingering since the year 2000, on one pretext or the other and thereafter as late as in 2006 one last opportunity was given to MRCHS and after 8 years and countless changes in the membership of the society the land was allotted to them, that too a different plot than the one they applied for!

7. The appellant has also brought to our notice the Land Revenue (Disposal of Government Land) Rules, Maharashtra, 1971 (**"Rules"**) read with Government Regulations dated 09.07.1999 ("GR 1999"). Rule 27, which would be applicable for allotment in the present case is reproduced below:

> ***27. Grant of land housing schemes:*** *Building plots may be granted by the State Government for various housing schemes undertaken by any housing board, local authority or co-operative housing society constituted under any law for the time being in force, in occupancy rights under Section 40 on inalienable and impartible tenure on payment of such concessional occupancy price as the State Government may, from time to time fix, regard being had to the nature of the scheme, and in the case of a co-operative housing society, to the income of the members, thereof, such income being ascertained after making such inquiries as the State Government may think fit to make in this behalf…*

The relevant Clauses from G.R. 1999 are as follows:

> *6. When Chief Promoter of the Proposed Co-operative Housing Society submits application, for the Government Land, it will necessary to submit information of the land which is required for the society alongwith details of land viz. City Survey Number, Area, Local Plan in the scale of 1 : 4000, Property Card, 7/12 Extract, list of Members (alongwith the details of address of employment and residence, monthly income, domiciled at Maharashtra, whether members belongs to Backward Class or how) etc.*

11. Only applications are being considered when persons from the public get the information that government land is available for allotment and submit the same for such land and thereafter action is being taken. In view of that for want of information need persons should not be left out, Government is giving directions that apart from the area where only one or two plot of lands are separately available for allotment, for other area Collector should give press note in the local newspaper and provide information to the public that such plot of lands are available and applications should be invited from the public for the disposal of land within the period which will be specified in such press note. So that persons who are interested can establish societies and can submit the application for allotment of land within such specified period. After scrutinizing applications which will be received as per above, proposals should be submitted for the approval of the Government Authority.

12. As per above provisions, if there are more than two plots of land in any layout and when applications from any one or more of the Co-Operative Housing Societies for the available plot of land will be received, even though there is provision to invite applications from the public after giving press note in the Newspaper, as no touchstones or guidelines have been provided in it as to how selection of those societies to whom land is to be allotted out of the applications received in this manner and hence now Government is giving directions that when allotment of plot of land will be made after giving advertisement in the Newspaper, same should be made as per guidelines detailed hereunder:-

...

(4) If eligible Applicants of that respective groups are more than plot of lands available for that group of the Co-operative Housing Societies, it should be decided to which societies plots should be allotted after making public draw.

> ...
> *(8). As provided at Item No. 8 of Sr. No. 2 and 13. Number Five above, when allotment of plots will be made as per discretionary powers of the Government, at that time it will be necessary to state reasons for the allotment of those plot of lands to the specific societies in writing.*

These are the rules and regulations laying down a detail procedure for allotment of land to any Proposed Co-Operative Housing Society. As per these regulations, the Chief Promotor of the Proposed Society is required to submit specific details, like Survey Number, Area, local plan etc., of the land which is sought to be allotted. Clause 11 provides the mechanism by which the public can get to know that government land is available for allotment and can apply for the same. Also, if land is allotted under the discretionary powers of the government, then it is necessary to give reasons in writing as to why such allotment is made in favour of a particular society. Since there has to be transparency in matters of allotment of land by the government, adherence to the above rules and regulations becomes important in the cases of allotment, but unfortunately, all this is completely missing in the present case where allotment was made in favour of MRCHS in total violation of the prescribed procedure.

The State of Maharashtra issued another G.R. dated 25.05.2007 which revises the comprehensive orders for grant of land. Clause 6, 11 and 12 of GR 1999 becomes Clause 7, 12 and 13 respectively with minimal to no amendments. Major changes were made on the maximum income requirement, allowing people with higher incomes to become members of such societies who were seeking grants of land from the State.

8. As discussed above, Clause 6 of the G.R. dated 09.07.1999 provides that the Chief Promoter of the Society will submit details of the land. However, it must be noted that MRCHS had applied for a different plot than what they were ultimately allotted. Nothing has been brought to our notice which would even remotely indicate that the plot actually allotted to MRCHS was ever sought by them. This by itself vitiates the entire allotment.

Similarly, a perusal of the Letter of Intent as well as the Letter of Allotment does not disclose any reasons why MRCHS was allotted land under the discretionary quota, as provided for under Clause 12(8) GR 1999, where it specifically provides that reasons have to be disclosed as to why discretion is being

exercised. Non-disclosure of reasons shows that such an allotment is arbitrary.

9. Further, the Letter of Intent provides that *"complete information and Affidavits of all members of the society as stated above should be submitted by the society within 2 months from the receipt of this letter with the Collector, Mumbai Suburban District, failing which this Letter of Intent will stand automatically cancelled"*.

MRCHS' proposed members in their initial application were subsequently changed thrice, in order to somehow meet the eligibility criteria. When MRCHS replied to the Letter of Intent on 28.02.2003, the proposed society had removed 5 of its members out of the list of eleven earlier submitted alongwith their application. These names were deleted on the grounds that they were ineligible. Had this been the case, why were they included in the first place? The only purpose therefore why these names were shown were because they were all doctors of Tata Memorial Centre on whose names ostensibly MRCHS was trying to get the allotment made.

It was even noted by the Revenue & Forest Department, Govt. of Maharashtra that the main object behind sanctioning of the plot of land to MRHCS i.e., to provide housing to the doctors working at Tata Memorial Hospital in close proximity to their workplace can no longer be achieved, due to changes in the composition of the society.

10. In ***Angarki Coop. Housing Society Ltd.*** *v.* ***State of Maharashtra*****, (1997) 9 SCC 713** the application of Clause 11 of the G.R. dated 12.05.1983 was discussed. The erstwhile Clause 11 had slight differences but the purpose remained the same, i.e., for disposal of one or two plots. The following was noted by this Court whilst upholding allotment to be arbitrary:

> *"According to the learned counsel the plot may not be in isolation but what is permitted under the Resolution is the disposal of the plot in isolation. In other words the contention is that it is not the situation of the plot but the procedure of disposal of the plot which can be in isolation of the operative part of clause 11 of the Resolution... Only when there is an isolated plot, the question of following any isolated procedure in disposing of the plot would arise. In the present case, there was neither an isolated plot nor was any isolated procedure followed. What was done was wholly arbitrary and as such cannot be sustained."*

In this case as well, no documents have been placed on record by MRCHS or the State to show that when the Letter of Intent was issued in their favour, more plots were unavailable in the layout as prepared under Rule 24. Whereas, the appellants have brought on record Letter dated 15.11.2000 issued by the Collector noting that more plots were indeed available with the government for disposal. Further still, the plot that was allotted to MRCHS was divided into two from one large single plot. Thus, at the time of issuance of the Letter of Intent, there were two or more than two plots available. Further, MRCHS had applied for allotment of a different plot which is also at Village Bandra and part of the same Survey Number and hence at the very least there were more than two plots available for allotment in this layout when the Letter of Intent came to be issued in favour of MRCHS.

The concerned plots instead should have been allotted by the Collector, under Clause 12(4) of GR 1999, by way of a public draw after inviting applications through Press Notes, in order to bring transparency in the process of allotment.

11. In ***S.V. Asgaonkar*** *v.* ***MMRDA*****, (2018) 17 SCC 467** this Court upheld the dismissal of the appellant society's writ petition against the finding of ineligibility of its members. It was observed that *"the Society was conscious of the fact that eligibility of members has to be seen as on 11-12-2003 that is the date on which letter of intent was issued in pursuance of allotment. The Society having accepted the aforesaid clause of eligibility and accepted the offer of allotment as given by the Authority, we fail to see that how the eligibility as on 11-12-2003 be permitted to be questioned"*. However, in our case, not only were MRCHS' proposed members found ineligible, but the society was allowed to change its members frequently, starting from the point when it accepted the Letter of Intent in its favour.

12. Land is a precious material resource of the community and therefore the least which is required from the State is transparency in its distribution. In our opinion, therefore there has been a complete arbitrariness in the allotment in favour of MRCHS. As far as the present appellant is concerned, its case for allotment of a plot is a matter which is yet to be decided by the authorities, but the allotment of the plot in favour of MRCHS

is not proper, as it is violative of the procedure as well as eligibility criteria.

13. For the reasons stated above, we allow this civil appeal and set aside the order of the High Court of Bombay. Accordingly, the Letter of Allotment dated 10.04.2008 in favour of MRCHS stands quashed.

14. Interim order(s) shall stand vacated.

15. Pending application(s), if any, shall stand disposed of.

.....J.
[SUDHANSHU DHULIA]

.....J.
[AHSANUDDIN AMANULLAH]

New Delhi.
December 12, 2024.