

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3439 OF 2014

The Kasturba Nagar CHS Ltd.

..... Petitioner

VERSUS

**Kisan A. Maheshwari,
(Since deceased through legal heirs) & Ors.**

..... Respondents

Mr. Vikram V. Pai, i/b. Mr. Vinay M. Bhate for the Petitioner.

Mr. Sangram Chinnappa for the Respondent no.1.

Mr. S.D. Rayrikar, A.G.P. for the Respondent nos. 2 to 4.

Ms. Gayatri Singh, Senior Advocate for the Respondent no.5.

CORAM : R.D. DHANUKA, J.

RESERVED ON : 20th FEBRUARY, 2018

PRONOUNCED ON : 13th MARCH, 2018

ORDER :

1. By this writ petition filed under Article 227 of the Constitution of India, the petitioner has impugned the order dated 9th February, 2014 passed by the learned Revenue Minister, Government of Maharashtra, order dated 24th May, 2013 passed by the learned Additional Commissioner, Konkan Division, Mumbai and order dated 3rd December, 2011 passed by the learned Collector, MSD. Some of the relevant facts for the purpose of deciding this petition are as under :-

2. On or about 17th October,1977, the State of Maharashtra had allotted a plot out of survey no.14(Part) at Chembur, admeasuring about 2787.5 sq.yards equivalent to 2313.6 sq.meters for the sum of Rs. 16,725/-. Pursuant to the said allotment of the plot, the petitioner entered into an agreement dated 17th October,1977 with the Additional Collector, B.S.D. on various terms and conditions mentioned therein. It is the case of the petitioner that the petitioner had to construct part of the compound wall and thereafter commenced the construction on the said plot after obtaining commencement certificate on 8th February, 1980 which was granted only for the construction of the plinth. The petitioner completed the construction upto the plinth by May 1981. The petitioner could not complete the construction of the building within two years in view of the alleged shortage of cement. The petitioner was granted two years extension of time upto 30th November, 1983 by the learned Additional Collector, B.S.D. Further extension was thereafter granted till 30th November,1985.

3. It is the case of the petitioner that the petitioner completed the construction of one building sometimes in the year 1986 and thereafter completed the construction of two more buildings. The petitioner could not construct 72 tenaments as were required to be constructed in terms of the agreement dated 17th October, 1977. It is the case of the petitioner that the members who had paid their respective contribution were allotted the tenaments and they have been residing in

those tenements since last more than 25 years.

4. It is the case of the petitioner that in the year 1988, the Government of Maharashtra passed a resolution and notified with regard to utilization of 15% of the land for the other purpose than the land allotted for specified purpose. On 15th February, 1989, the officer in charge intimated to the petitioner by a letter dated that they have no objection if the Municipal Corporation grants necessary permission using the premises for commercial purpose and also allowed the petitioner to allot the galas to any third party if the Bank of Baroda was not ready to occupy the portion of the land.

5. In the year 1998, one of the member of the society Mr.Khimji Malshi Sodam filed a dispute in the Co-operative Court in Mumbai against the petitioner. The said dispute was dismissed by the Co-operative Court by an order dated 16th February,1998 holding that the tenements shall be made available to the said members when the society shall construct third and fourth floor on 'A' Building after payment of entire cost of construction by him.

6. On 21st June, 2002, the Collector, Mumbai Suburban District passed an order directing that the land allotted at survey no.14 of Village Chembur admeasuring 2787.5 sq. meters allotted to the petitioner be resumed to the respondent no.4.

7. During the period between 2003 and 2005, the respondent no.1 filed a

writ petition bearing (L) No.3359 of 2003 in this court against the order dated 21st June, 2002. This court directed the respondent no.1 to approach the Additional Commissioner, Konkan Division, Mumbai on 26th September,2005, with his grievances.

8. On 30th November, 2006, the learned Additional Commissioner, Konkan Division, Mumbai dismissed the appeal of the respondent no.1 and partly allowed the appeal of the petitioner.

9. Sometimes in the year 2007 the respondent no.1 filed a writ petition bearing no.2202 of 2007 before this court challenging the order dated 30th November,2006 passed by the Additional Commissioner, Konkan Division, Mumbai. Since at the time of hearing of the said writ petition, an objection was raised about the alternate remedy available against the said order passed by the Additional Commissioner, Konkan Division, Mumbai by way of an appeal before the State Government under section 248 of the Maharashtra Land Revenue Code, 1966, the said writ petition was rejected. The Additional Commissioner, Konkan Division, Mumbai remanded the matter back to the Collector, Mumbai Suburban District.

10. It is the case of the petitioner that on 6th August,2009, the petitioner passed a resolution for expelling the respondent no.1 as a member of the society.

It is the case of the petitioner that the respondent no.1 did not challenge the said

resolution before the competent court of law.

11. On 3rd December, 2012, the respondent no.2 passed an order against the petitioner. The petitioner challenged the said order by filing an appeal (217 of 2012) before the learned Additional Commissioner, Konkan Division. By an order dated 24th May, 2013, the learned Additional Commissioner, Konkan Division rejected the said Appeal No.217 of 2012 filed by the petitioner. The petitioner thereafter preferred a Revision Application bearing no.4211 of 2013 before the learned Minister. The learned Revenue Minister passed an order dated 9th February, 2014 dismissing the said Revision Application.

12. This court passed an order on 11th April, 2014 in this petition directing the parties to maintain *status-quo* till next date. This writ petition is contested by the respondent nos.1 and 2 to 4. The respondent no.1 as well as respondent nos. 2 to 4 had filed a detailed affidavit opposing this writ petition.

13. Mr.Pai, learned counsel for the petitioner invited my attention to various annexures to the writ petition and submits that the petitioner society is having balance FSI of 5825.18 sq.ft. with 100% TDR and on the basis of such FSI and TDR, the petitioner would be able to construct atleast another 17 tenements with the approval of the authority and the tenements can be allotted to the members on the waiting list if they pay the construction cost as per present market rate. It is submitted by the learned counsel that out of the original 72 applicants,

18 were available at the time of formation of the petitioner society. Out of them the names of 7 persons have been removed from the list of the members of the society on account of their death or resignation, 3 members have cancelled membership after constructing 3 wings by the petitioner, 42 members have been allotted their respective flats. 20 persons are kept in the waiting list on account of non-payment of the construction cost on their part. 11 members are expelled by passing a resolution by the petitioner and as per court's order. Total 9 members are kept in waiting list. He submits that those members who have expired, none of the legal heirs have produced their heir-ship certificate or letters of administration in their name and have not even requested the petitioner to accept them as members of the society.

14. It is submitted by the learned counsel that if the impugned order passed by the learned Minister for Revenue upholding the order passed by the authority is not set aside, gross hardship would be caused to the petitioner and various members of the society. He submits that the petitioner had not committed any violation of the terms and conditions of the allotment of the land by the State Government and more particularly the condition prescribed in the agreement entered into between the petitioner and the State Government.

15. It is submitted that except respondent no.1 whose membership is also already expelled by the petitioner, no other member has opposed this petition. The

respondent no.1 has been opposing this petition with vested interest. He submits that in any event, without prejudice to the rights and contentions of the petitioner, if the respondent no.1 is ready and willing to pay the construction cost as per prevailing market rate as on today, the petitioner is ready and willing to consider the membership of the respondent no.1 even today.

16. Ms.Gayatri Singh, learned senior counsel for the respondent no.1 invited my attention to some of the annexures to the writ petition and submits that the respondent no.1 is one of the 71 original members of the petitioner who were originally refugee who migrated from Karachi (Pakistan) during the period of partition of the country and belong to the Scheduled Caste. The respondent no.1 represents the said original members who had not been allotted the tenaments as per the agreement dated 17th October,1977. She invited my attention to 16 conditions prescribed in the agreement dated 17th October,1977 entered into between the petitioner and the Additional Collector for Bombay and Bombay Suburban District. She submits that it was clearly mentioned in the said agreement that the allotment of the tenament was required to be made strictly to the 'displaced persons members'. The construction on the plot of land of three buildings consisting 72 tenaments of the specified area for residential purpose was to be completed within two years according to the layout prepared by the Town Planning and Valuation Department.

17. It was provided that the extra tenements on the ground floor may be considered for allotment to Bank of Baroda, taking into consideration their genuine requirement, at the market rate for their extension counter of multi-service agency. It was provided that no sale, assignment, lease or otherwise transfer of the said land or any portion thereof was permissible without permission of the Government in writing. The petitioner was to comply with the rules and regulations under the Town Planning Act and Municipal Corporation Act. Condition No.6 prohibited the use or permission to use the said land and building erected thereon from any other purpose without the previous sanction of the Additional Collector, BSD. One of the condition provided that upon failure of the society to comply with those conditions, the allotment of land to the society would be cancelled and the same may be resumed by the Government without any compensation.

18. It is submitted by the learned senior counsel that the petitioner however violated the conditions by allotting the flats/tenements to outsiders. The petitioner issued share certificates and transferred/allotted flats directly to non members without prior permission of the Collector, BSD. She submitted that the petitioner did not complete the construction within two years and kept on extending the time limit for construction on one or the other pretext. Out of the 72 tenements, only 48 tenements have been constructed till date and that also not in

accordance with the layout prepared by the Town Planning and Valuation Department. The petitioner has used the ground floor of the buildings/premises for commercial purposes without obtaining any necessary permission from the Collector, BSD.

19. It is submitted that without obtaining prior permission from the Collector, BSD, Mr.Suman Ladhubhai Roshia had destroyed the compound wall and constructed Galas which were given on rental basis. Several tenaments constructed by the petitioner are being used for commercial use. She invited my attention to the enquiry report submitted by the collector and would submit that most of the commercial tenaments are occupied by the members of the same family who had been illegally allotted such tenaments by the petitioner for such commercial purposes. Several flats are allotted to the members of the then chairman Mr.Ladhubhai Velji Roshia illegally. The respondent no.1 had booked a flat in A-1 Building and had paid various amount towards said tenament. Out of 48 constructed tenaments only 11 tenaments have been allotted to the original members, 18 tenaments were allotted to non-members without prior permission of the Additional Collector, BSD. The remaining tenaments have been purported to have been transferred to non-members by the original members, who were actually never allotted the tenaments. The petitioner could not have permitted such transfer without prior permission of the Additional Collector, BSD in favour of outsiders.

20. It is submitted by the learned senior counsel that Mr.Khimji Harji Lakhia, the original member whose name was at serial no.58 of the list who died on 14th December, 1992 and was shown to have been sold his allotted tenament on 23rd February, 1993 to Mr.Hansraj Hiralal Rathod, an outsider by way of sale deed. The said sale deed bears a forged signature of the said original member Mr.Khimji Hirji Lakhia who had already expired on the date of execution of the said sale deed. The son of the original member had filed a complaint before the Collector, BSD on 10th October,2007. Several other original members have been defrauded in a similar manner by the petitioner society. She invited my attention to several such averments made in the affidavit in reply filed by her client pointing out a large scale fraudulent activities of the petitioner thereby violating the condition of allotment made by the State Government of the land in favour of the petitioner.

21. Learned A.G.P. invited my attention to the allegations made by the State Government in the affidavit in reply filed by the respondent nos. 1 to 3. He also invited my attention to various conditions of allotment made by the Government while allotting the land to the petitioner. He submits that the petitioner has committed large scale violation of the terms and conditions of the allotment of land. He invited my attention to various observations made by the authorities against the petitioner.

22. Mr.Pai, learned counsel for the petitioner in rejoinder submits that

none of the respondents would benefited if the possession of the flat is resumed by the State Government. The petitioner is ready and willing to proceed with the construction of the remaining tenaments. He submits that some of the original members of the petitioner society have transferred their tenaments to third party. Such transfer was not within the control of the petitioner. Learned counsel however does not dispute that though the society was fully aware of the terms and conditions of the allotment of the plot, the petitioner had permitted such transfer by the original members in favour of the third party.

23. A perusal of the record clearly indicates that the allotment of land made to the petitioner was subject to the compliance with 16 conditions. A perusal of the record further indicates that though the petitioner was granted number of extension to complete the construction of 72 tenaments, the petitioner could not construct more than 48 tenaments. Out of those 48 tenaments, very few original members have been occupying the tenaments. Most of the tenaments are transferred/allotted to third parties who are not the original members. Some of the original members have sold their tenaments to third party, non-members. The petitioner has not disputed that the petitioner had granted NOC in favour of such members to transfer thus tenaments to third party. Several tenaments on the ground floor are being used for commercial use which is other than the residential use permissible under the terms and conditions of the letter of allotment. The

petitioner admittedly did not apply for any such permission of the learned Additional Collector, BSD for change the user. The authority had submitted a report after visiting the site to the collector pointing out large scale violation of the conditions of allotment made by the State Government to the petitioner. The petitioner though was granted opportunity by all the authorities to explain such gross violation committed on the part of the petitioner, the petitioner could not justify the breaches committed by the petitioner.

24. A perusal of the order passed by the authority and the last order passed by the learned Minister of Revenue clearly indicates that the findings of fact are rendered about gross violation committed by the petitioner. In spite of the extension granted by the State Government to the petitioner for completing the construction of 72 tenaments, the petitioner has not shown any progress except constructing 48 tenaments. The most of the original members are admittedly not even allotted the tenaments. Some of the original members who have expired, their legal heirs are not allotted the tenaments. Most of the tenaments are occupied by the family members of the ex-chairman of the petitioner society. In these circumstances, in my view, all authorities have rightly rendered the findings of fact against the petitioner for violation of the terms and conditions of allotment and have rightly passed an order of resumption of land in question from the petitioner. None of the findings of fact rendered by the authorities against the

petitioner are perverse and thus cannot be interfered with by this court. I am not inclined to accept submission of the learned counsel for the petitioner that no prejudice would be caused to the original members including the respondent no.1 if the land is not resumed by the Government. The State Government has shown enough indulgence to the petitioner by taking liberal approach in last several years. The authorities have rightly thus not shown the further indulgence to the petitioner. The petitioner has also forged the signature of a member on the agreement after his demise and sold the flat.

25. The petitioner has sought to bring new allegations about position of flats and member for the first time. Be that as it may, even these additional and new allegations are not substantiated.

26. The report submitted by the authority before the learned collector clearly shows large scale violation of the terms and conditions of the allotment by the petitioner. I am thus not inclined to show any further indulgence to the petitioner by interfering with the impugned order passed by the authority. The petition is totally devoid of merits. I, therefore, pass the following order :-

- (a) Writ petition is dismissed.
- (b) There shall be no order as to costs.

(R.D.DHANUKA, J.)