

CASE NO.:
Appeal (civil) 2506 of 2007

PETITIONER:
POWAI PLANT CO-OPERATIVE HOUSING SOCIETY (PROPOSED)

RESPONDENT:
POOJA ESTATE CONSULTANT & CONSTRUCTION & Ors.

DATE OF JUDGMENT: 14/05/2007

BENCH:
C.K. THAKKER & TARUN CHATTERJEE

JUDGMENT:
J U D G M E N T

CIVIL APPEAL No.2506 OF 2007
Arising out of
Special Leave Petition (Civil) Nos. 15495-96 OF 2005
WITH
CIVIL APPEAL No.2507 OF 2007
Arising out of
Special Leave Petition (Civil) Nos. 19846-47 OF 2005

MAHARASHTRA HOUSING & AREA
DEVELOPMENT AUTHORITY & ANR

\005. Appellant

VERSUS

POOJA ESTATE CONSULTANT
& CONSTRUCTION & Ors.

\005 Respondents

C.K. THAKKER, J.

Leave granted.

Present appeals have been filed against the judgment and order dated February 25, 2005 passed by a Division Bench of the High Court of Judicature at Bombay in Writ Petition No. 10243 of 2004 and an order dated April 25, 2005 in Review Petition No. 56 of 2005.

To appreciate the controversy raised in the present appeals, few relevant facts may be noted.

The Maharashtra Housing and Area Development Authority ('MHADA' for short) is a statutory authority constituted under the Maharashtra Housing and Area Development Act, 1976 (hereinafter referred to as "the Act"). One of the functions of MHADA is to construct residential tenements/flats for Low Income Groups, Middle Income Groups and Other Poorer Sections of the society and to provide them residential accommodation at lower costs. As per the said mandate, MHADA took up Mass Housing Project and constructed several flats in Building Nos. 23A and 23B at Veer Savarkar Nagar, Powai, Mumbai in 1995. The Act enables the State Government to frame rules (Section 184) for the purpose of carrying into effect the provisions of the Act. Likewise, it authorises MHADA to make regulations with the previous sanction of the State Government for all or any of the matters which have to be or may be prescribed or provided by the regulations under the Act (Section 185). In exercise of the power under Section 184 of the Act, the State Government has framed rules known as the Maharashtra Housing and Area Development (Disposal of

Land) Rules, 1985. Similarly, in exercise of power under Section 185 of the Act, MHADA framed regulations known as the Maharashtra Housing and Area Development (Estate, Management, Sale, Transfer and Exchange of Tenements) Regulations, 1981. Rules framed by the State Government as also Regulations made by MHADA provide for allotment of residential tenements by inviting applications from members of public who are eligible for such allotment.

MHADA, in accordance with the provisions of law released public advertisements for sale of 165 Non-Deluxe Flats. Between 1995 and 2002, eight such advertisements were released in several leading newspapers for allotment of flats, but there was practically no response from public. In 2003, as also in 2004, two more advertisements were issued but again there was negligible response from public. MHADA also considered appointment of Estate/Property Agents to boost up sale and disposal of flats since huge amount of crores of rupees had been blocked up. Pooja Estate Consultant & Construction (original petitioner-first respondent-herein) was appointed as an authorised property agent of MHADA. But it also could sell only 12 flats. The agency of Pooja came to an end on October 7, 2003 which was not renewed thereafter. A policy decision was then taken to make allotment of flats through Co-operative Housing Societies (Proposed) under the 'Bulk Purchase Scheme'. As per the said decision, an offer was made by the Powai Planet Co-operative Housing Society (Proposed) (appellant) and since it was the only society, which had applied, a decision was taken to sell flats to the appellant subject to the terms and conditions mentioned in the Resolution passed by MHADA. The terms and conditions were accepted by the appellant-society and a Letter of Intent was issued to the Chief Promoter of appellant-society on October 25, 2004 stating therein that its request was accepted by MHADA. It was also communicated by MHADA to the appellant vide its letter dated November 17, 2004 that the offer made by the appellant-society was accepted and that the society had paid an amount of Rs.27,50,000/- (Rupees twenty seven lakhs, fifty thousand only) towards EMD.

When Pooja came to know about the resolution passed by MHADA to sell flats to the appellant-society, it approached the High Court complaining against the said action. It was inter alia contended by the petitioner that it had come to know pursuant to an advertisement issued by MHADA on May 27, 2004, that certain vacant tenements of MHADA were to be sold to members of public on "first come first served" basis. Since buyers did not come forward to purchase the flats, MHADA entertained applications under the 'Bulk Purchase Scheme'. On August 23, 2004, appellant-society made such application for purchase of flats. According to the first respondent, it was well-known consultation and construction concern and was having vast experience as an estate agency of MHADA. It was also interested in purchase of flats and, accordingly, applied on September 9, 2004 for purchase of 100 flats. According to the first respondent, Letter of Intent was issued to the appellant on October 25, 2004. Since the first respondent applied on September 9, 2004 and the decision was taken by MHADA and Letter of Intent was issued thereafter on October 25, 2005, it was clear that when the decision was taken by MHADA, application of the appellant-

society as also of the first respondent (Pooja) were before MHADA. It was, therefore, incumbent on MHADA to consider both the applications and to take appropriate decision on merits. The grievance of the first respondent, however, was that its application was never considered by MHADA and a decision was taken to sell all flats to appellant-society. The action was, therefore, illegal, unlawful and was liable to be set aside.

The Division Bench of the High Court heard the parties and noted that even though both the parties, i.e. the appellant herein as also first respondent Pooja were before MHADA when the decision was taken on October 25, 2004, the application of the first respondent was not considered which was illegal and improper. The Court, therefore, allowed the petition observing that it was left "with no option but to quash the Letter of Intent dated 25th October, 2004" issued in favour of the appellant-society. The Court directed MHADA to re-advertise sale of flats in one national (English) newspaper and one vernacular (Marathi) newspaper and after receiving all the offers, consider all offers in accordance with law and take an appropriate decision. A Review Petition filed against the aforesaid decision was summarily rejected observing that no case had been made out for review.

The aforesaid decisions have been challenged by both, the society as also by MHADA in this Court.

On September 12, 2005, notice was issued, parties were allowed to file affidavits and further affidavits and the matter was ordered to be placed for final hearing.

We have heard the learned counsel for the parties.

The learned counsel for the appellant-society contended that the High Court has committed an error of law and of jurisdiction in setting aside action and decision of MHADA even though it was legal, valid and in accordance with law. It was submitted that a resolution was passed by MHADA to dispose of flats under the 'Bulk Purchase Scheme' to a Co-operative Society (Proposed) and the said decision was in consonance with law. It was not a case of a 'tender', 'offer' or 'public advertisement' by MHADA. There was, therefore, no question to consider other offers and the petition filed by the first respondent was misconceived and ill-founded. The High Court was in error in allowing the petition on the ground that since the first respondent herein-petitioner before the High Court, applied on September 9, 2004 and the decision was taken on October 25, 2004, it was obligatory on MHADA to consider the offer of first respondent also. It was a policy decision and the petition ought to have been dismissed by the High Court. It was stated that in the affidavit-in-reply filed before the High Court, MHADA expressly stated that it was not a case of public advertisement of disposal of flats by inviting offers and MHADA was not required to consider the offer said to have been made by the first respondent on September 9, 2004. It was also urged that in Review Petition, once again the attention of the Court was invited to the fact that it was on the basis of policy decision of disposal of flats under the 'Bulk Purchase Scheme' that flats were sold to the appellant herein but the review was also dismissed summarily.

Even on merits, the order passed by the High Court is not sustainable. It was stated that so far as the appointment of first respondent as Estate/Property Agent of MHADA is concerned, it was a matter of past. The said agency came to an end on October 7, 2003 and after the

expiry of the said term, the agency was not renewed by MHADA. It was, therefore, not open to the first respondent to apply nor it was the duty of MHADA to consider the offer made by the first respondent. Pooja had no locus standi to challenge the decision of MHADA or to invoke Writ Jurisdiction of the High Court under Article 226 of the Constitution. Taking in view all the matters, submitted the learned counsel, the order of the High Court is illegal and the appeal deserves to be allowed.

MHADA has also filed an appeal being aggrieved by the order passed by the High Court and raised almost similar grounds as have been raised by the appellant-society. It was stated that MHADA has right to dispose of tenements/flats under 'Bulk Purchasing Scheme and a decision was taken to dispose of flats by resorting to such method which was in the nature of a policy decision and could not have been interfered with by the High Court. It was also submitted that it was not the case of the petitioner before the High Court that such decision was contrary to law and could not have been taken by MHADA. The precise ground of Pooja- petitioner was that since decision was taken by MHADA in October 2004, non-consideration of offer of Pooja vitiated the decision making process by MHADA. Since the High Court proceeded on a wrong basis, it allowed the petition by quashing the order of MHADA which is liable to be set aside.

The learned counsel for the first respondent-petitioner before the High Court, supported the order impugned herein. It was submitted that MHADA is a public authority performing statutory functions under the Act. It was, therefore, expected of MHADA to act legally, fairly and strictly in accordance with law. The High Court was satisfied that at the time of taking decision, two offers were before MHADA and it was supposed to consider both the offers objectively. By holding so, no error of law or of jurisdiction can be said to have been committed by the Court and no grievance can be made against it. It was also submitted that the Court had taken into account interest of all the parties. It did not direct to sell flats to the petitioner, but passed an order to re-advertise sale of flats and allowed MHADA to take appropriate decision on all offers.

It was, therefore, submitted that the decision of the High Court needs no interference in exercise of discretionary jurisdiction under Article 136 of the Constitution and the appeals deserve to be dismissed.

Having given anxious consideration to the facts and circumstances of the case and having gone through the relevant provisions of law and the decision taken by MHADA, in our opinion, grievance voiced by the appellants before this Court is well-founded and the submissions deserve to be accepted by setting aside the order passed by the High Court. MHADA is a statutory authority. It is required to exercise its powers, perform its functions and discharge its duties in consonance with law. Under the Act, it is required to provide housing accommodation throughout the State and to dispose of its property in accordance with law. In exercise of power under the Act, the State Government has framed rules. Rules 11 to 17 deal with disposal of tenements. They also lay down manner of disposal of residential tenements in buildings constructed by MHADA. Rule 12 declares that all disposal should be by 'public notice'.

Rule 16B, however, makes special provision for disposal of tenements in certain cases. It reads thus;
16B. Special provisions for disposal of tenements in certain circumstances.

If after following the procedure prescribed in the foregoing rules or the Regulations made thereunder, it is found that there is no adequate response and demand for tenements in any particular scheme, such of the tenements as cannot be so disposed of may be disposed of in any other manner deemed fit by the Authority.

MHADA had also framed regulations for the purpose of management, sale, transfer and exchange of tenements. The regulations also provide for allotment of residential tenements by laying down procedure for such allotment. Though normally tenements are to be disposed of by issuing notices, inviting offers and drawing lots by determining eligibility, they also deal with situation where there is no adequate response from public at large. Regulation 14A provides for such situation and is material which reads as under;
14A. Special provision for disposal of tenements in certain circumstances.

If even after renotification of vacancies as provided in Regulation 14 there is no adequate response and demand for tenements in any particular scheme such of the tenements as can not be so disposed of must be disposed of on the 'first served' basis or in any other manner determined by the Authority from time to time. (emphasis supplied)

Our attention has been invited by the learned counsel for the appellants-society and MHADA that several attempts were made by MHADA to dispose of flats at Powai by issuing public advertisements. 10 advertisements (8+2) had been issued in various newspapers in different languages like English, Marathi, Hindi, Gujarati, etc. But there was no proper response from public. Records show that initially no public members came forward and even after several advertisements, few flats could be disposed of. Thus, on the one hand, construction of flats was complete and the residential accommodation was available but not opted by general public and on the other hand, there was block up of huge amount of MHADA, depriving it from undertaking other functions which were required to be undertaken by it under the Act. It, therefore, considered the question and in an Office Note dated October 12, 2004, opined that disposal of flats could be made under the 'Bulk Purchase Scheme'. In the said Note, it was mentioned that there were 214 flats. Deducting the flats for which response was received (10 flats), flats allotted to Amey CHS (53 flats) and applications received from public (37 flats), 114 flats were still vacant which could be allowed to a proposed co-operative society in exercise of power by MHADA. Terms and conditions were also laid down and the proposal was submitted for orders. Accepting the said proposal, Letter of Intent was issued by MHADA on October 25, 2004 to the first-respondent-society which was the only eligible society under the 'Bulk Purchase Scheme'. Provisional Offer Letter was, therefore, sent to the appellant herein by MHADA on

November 17, 2004. The learned counsel for the appellants, in our opinion, are right in submitting that it was not a case of inviting tenders/offers from general public and the High Court was in error in proceeding on the basis as if offers were invited from public at large. If it is so, it goes without saying that the High Court was in error in setting aside the decision of MHADA on the ground that though Letter of Intent was issued in October, 2004 and Provisional Offer was made in November, 2004, since the offer of the first respondent-petitioner, dated September 9, 2004 was not considered, the action of MHADA was illegal. In our opinion, prima facie, MHADA acted within four corners of law and in exercise of power under the regulations, particularly, Regulation 16B, it considered the offer of the first respondent. The basis on which the High Court proceeded was not well-conceived or well-founded and on that ground alone, the decision deserves to be set aside.

We have also gone through the affidavits filed by the contesting respondents before the High Court (appellants herein) in which the above aspect has been highlighted. Even after the decision by the High Court in the Writ Petition, in Review Petition also, the said contention was raised, but the Review Petition had been rejected summarily. It is also the case of the appellants that first respondent-original petitioner (Pooja) was no longer authorised agent of MHADA after 2003 and had no right to claim any benefit as an agent of MHADA. We express no opinion on that aspect inasmuch as the High Court had not decided the matter on that ground.

It is no doubt contended by the first respondent (original petitioner) that even otherwise the action impugned by the first respondent in the High Court was illegal, unreasonable and otherwise objectionable. To repeat, the High Court has not considered other questions and on a short ground (non-consideration of offer of Pooja) allowed the petition. It is, therefore, appropriate if we set aside the order of the High Court and remit the matter for fresh disposal in accordance with law.

For the foregoing reasons, the appeals deserve to be allowed and are accordingly allowed. The order passed by the High Court in Writ Petition as also in Review Petition is set aside and the matter is remanded to the Court for fresh decision in accordance with law.

Before parting with the matter, we may clarify that we have not entered into correctness or otherwise of the decision taken by MHADA and we may not be understood to have expressed any opinion thereon. We are also not deciding one way or the other the contention of the appellants as to locus standi of Pooja that since its agency came to an end in 2003, it could not have filed a writ petition to challenge the decision of MHADA. The parties are at liberty to take up all pleas before the High Court and the Court will decide them in accordance with law without being influenced by observations made by us in this judgment. The High Court is requested to decide the matter expeditiously preferably within three months from the receipt of the order from this Court.

The appeals are disposed of accordingly with no order as to costs.