

PETITIONER:  
ANGARKI CO-OPERATIVE HOUSING SOCIETY LTD.

Vs.

RESPONDENT:  
STATE OF MAHARASHTRA & ORS.

DATE OF JUDGMENT: 31/12/1996

BENCH:  
KULDIP SINGH, S. SAGHIR AHMAD

ACT:

HEADNOTE:

JUDGMENT:

### J U D G M E N T

Kuldip Singh, j.

Special leave granted.

This appeal is directed against the judgment of the Bombay High Court dated July 9, 1992 quashing the letter of intent date August 31, 1988, the order of Collector, Bombay dated September 3, 1988 and the consequent order of allotment of land bearing city survey No. 211 of Malabar Hill division to the Angarki Cooperative Housing Society Limited (the Society)- the appellant before us.

The society was allotted land admeasuring 3725 sq. mtrs. (Two Plots) out of survey No. 211 of Malabar Hills, Bombay. The land was applied for in June/July, 1986 and the letter of intent for allotment was issued to the society in August, 1988. In June 1989, Bal-Kalyani, a trust running a pre-primary school in the plot of land adjoining the plots allotted to the society, filed writ petition in Bombay High Court (No. 1754/89), seeking cancellation of the allotment alleging violation of rules and also mala fide in the process of allotment. Another writ petition (No. 2085/89) was filed by Save Bombay Committee on July 21, 1989 challenging the allotment in favour of the society on several grounds. Both the writ petitions were admitted for hearing in November, 1988 and the construction on the plot concerned by the society, against the stay order granted by a learned Single Judge, were dismissed in February, 1990. The special leave petitions against the interim orders were dismissed by this Court in May, 1990. A Division Bench of the High Court finally quashed the allotment of land to the society by the judgment dated July 9, 1992. These appeal by the Society are against the judgment of the Division Bench of the High Court.

In order to appreciate various points dealt with by the High Court, we may notice some more facts. V. Ranganathan, Secretary (Relief and Rehabilitation, Revenue and Forest Department), Govt. of Maharashtra, in his capacity as Chief Promoter of the proposed co-operative housing society of Government servants addressed and application dated. July 25, 1986 to the secretary, Revenue and forest Department, Government. of Maharashtra. He simultaneously addressed an

application to the Collector city of Bombay. In the application it was stated as under:-

"Whereas Members of the proposed co-operative Housing Society would like plot of land already applied for, in case there is any problem in giving a favourable decision in respect of this land it would like to suggest that in the alternative plot of land admeasuring approx. 3000 sq. mtrs. and forming part of City survey No. 211 of Malabar Hill Division may be considered for allotment. This plot of land belongs to Government of Maharashtra and is a part of City Survey number housing Rocky Hill flats of the Government of Maharashtra. We are asking for a small part of the land in one corner of this city Survey Number 211. A rough location map of the land is enclosed."

The area of land demanded in the application was much more than permissible - keeping in view the proposed number of members of the society. The Collector addressed a letter dated. August 5, 1986 to Ranganathan asking him "to forward the names of additional members accordingly to enable this office to take further action in the matter." The Collector, Bombay addressed letter dated. August 19, 1986 to the Secretary, Revenue and Forest department, Maharashtra wherein it was stated as under:-

"On referring to this office records, it is observed that the property C.S.No. 211 of Malabar Hill Division admeasures 19261.02 sq. mtrs. and is Government land. The procession of this land, along with the bungalows existing on it, is with the Executive Engineers PWD Presidency Division since 17.7.1909. It is situated at Banganga Road and known as Rocky Hill Estate. The buildings existing thereon are known as Rocky Hill Flats."

"Since and the land in question is in the possession of the Executive Engineer, PWD, Presidency Division, feasibility of making it available for the said society is not known to this office,. This office is also not aware of the present position regarding F.S.I. in balance. Hence, before considering the request of the society, it is necessary to refer the matter to the concerned departments for their remarks. On receipt of Government orders, the matter will be further dealt with."

The Collector addressed a letter dated. August 21, 1986 to Ranganathan seeking the following information:-

"You are requested to send two more copies of the site plan of the

above land showing thereon the exact portion demanded by your society in red boundary lines to enable this office to inform the Government the area demanded by your society."

Joint Secretary in the Ministry of Revenue & Forest Department (where Ranganathan was Secretary) Addressed a letter dated. December 3, 1986 to Collector of Bombay asking him to supply the following information:-

"Secretary (Revenue) desires to have a complete list of the areas of Government and in Malabar Hill area showing the land which is under buildings and vacant land. The said list should be accompanied by a plan showing the location of each plot and the areas etc. I shall be grateful if you would please forward the list and the plan as desired by secretary Revenue immediately.

It is obvious from the correspondence quoted above that by the letter dated. July 25, 1986 Ranganathan sought allotment of 3000/- sq. mtrs. from C.S.No. 211 Malabar Hill division. the area asked for was larger than permissible and as such the collector advised Ranganathan to increase the number of member to entitled to the allotment of area admeasuring 3000/- sq. mtrs. Ordinarily, and application of this type may not have even been entertained but since the applicant was Secretary, Department of Revenue, Govt. of Maharashtra, it was keenly processed. The correspondence further shows that there was no plot in existence in the said area, even the land was not available because the same was in possession of the Public Works department (PWD) which under the rules of Business vested in the Government for the purposes of The state.

Under Secretary, Urban Development Department by the letter dated October 10, 1986 suggested that PWD be asked as to how much area from C.S.No. 211 could be spared. A note dated October 20, 1986 on the file by the Under Secretary, shows that the total area comprising C.S.. 211 Malabar Hill was proposed to be used for the construction of residential quarter or Class I Officers and Ministers and further that the said area could not be conveniently sub-divided. The note thus clearly indicated that the area was not available. The matter should have ordinarily come to an end but Ranganathan persisted and by the letter dated December 3, 1986 a complete list of Government land in Malabar Hill area was asked for. Deputy Secretary, Revenue by the note dt. July 3, 1987 suggested that pwd be asked to furnish plan for use of the said land in the next few years keeping in view the availability of funds with the government for construction. The record further shows that on October 27, 1987 the Secretary, PWD finally agreed to release part of the area to facilitate the allotment of the said area to the proposed society of Ranganathan. It was done on the ground that the funds were not, immediately, available to construct the Government accommodation. The matter remained in limbo for some time and finally on July 18, 1988 the file was submitted to the Chief Minister Through minister of State (Revenue) and minister, Revenue. The Minister of State approved the allotment on July 30, 1988. The approval was given by the Minister concerned and by the Chief minister on August 31, 1988. Letter of intent was issued on the same

day. The Finance Department gave its concurrence on September 28, 1988. The Government Resolution allotting land to the society was passed on September 30, 1988. The plot was demarcated and possession handed over to the society on October 3, 1988. Later on, the application of the society for change of user to make part commercial user was granted on October 16, 1989.

The facts clearly show that there was no lay-out of the area. There is nothing on the record to show that a plot for allotment was available. In fact a plot was created out of government land as a special case and allotted to the society. There can be no doubt that but for the status and the position Ranganathan was holding, it could not have happened. Ranganathan was personally interested in the allotment of plot for the society of which he was promoter. Ranganathan himself was a secretary in the Department of Revenue. The Collector and all other officers were his colleagues/subordinates. We have no hesitation in holding that there was patent clash in the interest and duties of Ranganathan.

It was in the above background that the allotment of plot to the society was challenged before the Division Bench of the High Court on the following grounds: (1) the plot was not an isolated plot available for disposal/allotment in terms of Clause 11 of the Govt. Resolution dt. May 12, 1983: (2) the prior consultation with the Finance Department as required under Rule 11 (1) of the Rules of Business was not obtained:

- (3) the allotment was vitiated by mala fides; and
- (4) the allotment was bad for non-application of mind.

The first contention is primarily based on Clause 11 of the Govt. Resolution dated May 12, 1983. The said resolution is supplemental to Rule 27 of the Land Disposal Rules. The said rule, inter-alia, permits grant of building plots to a co-operative housing society. Clause 11 the resolution is as under:-

"The members of public who come to know about the availability of Government land for disposal apply for the same and only such applications are considered and processed and in the result, limited number of persons who come to know about availability of land from Societies and approach Government get the benefit. While many deserving cases are left out of want of knowledge on their part Government is, therefore, pleased to direct that, except where one or two plots are available for disposal in isolation, in all other cases, particularly, where as layout prepared in accordance with the local development control rules and more plots become available for disposal, the Collectors should issue press note in the local newspapers informing the members of public regarding the availability of such plots and invite applications for their disposal within period to be stipulated in such press notes so that persons interested can form Societies and

apply for grant of land within such stipulated period. The application received accordingly should be scrutinised and proposal should be submitted for approval of the Competent Authority."

The High Court, on examination of the record including official files, came to the following conclusion:

"We are clear in our mind that as regards the plot in question, no case of an isolated plot could be made out by any stretch of imagination. We may also stress that it is not enough that there is an isolated plot; there must be an isolated plot available for disposal."

The High Court finally rejected the first contention on the following reasoning:-

"We have been searching for a finding or a nothing about the plot being an isolated plot. No official, high or low, has suggested or stated that the plot is an isolated plot, NO minister has applied the mind to the question whether the plot is an isolated one or whether there was an isolated plot available for disposal and as a consequence thereof the mandatory requirement of publicity under the Government Resolution, could be dispensed with.

All indications in the notings and the files would counter a view that it is an isolated plot. The views expressed by the PWD Secretary, would clearly rule out that the area in question is an isolated plot.

A necessity for an extensive demolition of an existing school and residential quarters for six employees, would blast the case of an isolated plot, as assumed in the files. It would be the height of perversity to carve out an area, partly by demolition operation of existing building for facilitating the road and then to term it as an isolated plot. The fact that the demolition is in respect of a school for young children and the residential quarters of six employees, would not in any way alter the factual or legal position, it would indicate how the weaker sections are displaced and a noble purpose (education of children) is thwarted to benefit the top bureaucrats. The materials in our mind, would not justify a finding about the area being an isolated plot. If that is so, then

the exercise for an allotment without publication would be totally without jurisdiction. The resultant order would be grossly illegal and invalid. A Constitutional court is then obliged to declare its character of illegality and invalidity. We have no hesitation in making the above declaration and quashing the impugned Government Resolution on this ground itself."

We have heard learned counsel for the parties at length. Mr. Kapil Sibal, learned counsel for the petitioner has vehemently contended that Clause 11 of the Resolution (Quoted above) does not talk of "one or two plots .. in isolation" but the Clause can only be read to mean "disposal in isolation .... of one or two Plots". 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. We are of the view that even if the contention of Mr. Sibal is accepted the reasoning of the High Court would still be fully applicable in the facts of the present case. No authority from Collector to the Chief Minister ever applied his mind to the requirement of Clause 11 of the resolution. It was nobody's case that the plot was isolated or isolated procedure was to be followed. All the concerned Authorities/officers were acting under the influence of Ranganathan and nobody was even conscious of Clause 11 of the Resolution of any other statutory provision. After giving out thoughtful consideration to the contentions raised by learned counsel for the parties, we are of the view that the High Court was justified in reaching the finding that there has been a patent violation of the provisions 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 any isolated procedure was followed. What was done was wholly arbitrary and as such cannot be sustained. We see no ground to interfere with the finding of the High Court, quoted above, on the first point. We agree with the reasoning and conclusion reached therein.

So far the second contention is concerned the High Court rejected the same on the following reasoning:-

"Under rule 11 (2), a proposal which requires the previous consultation with the finance department in sub-rule (i) but where the Finance Department has not concurred, cannot be proceeded with unless a decision to that effect has been taken by the Council for ministers. In the present case, no such decision to proceed with the proposal has been taken by the Council. We must emphasize that what is prohibited is the every 'proceeding with the proposal.' The exercise undertaken in the Department of PWD and revenue Department, are proceeding

which do not have the prior concurrence of the Finance Department nor the permission of the Counsel of Ministers. The proceedings were started illegally, continued illegally and ultimately culminated in an illegal order."

We agree with the, above quoted, reasoning and conclusions reached by the High Court and uphold the same.

We also agree with the High Court that the action of the State Government in allotting the plot to the society, in the facts and circumstances of this case, was arbitrary.

An arbitrary action may not always be Male fide. We are of the view that in the facts and circumstances of this case, it would not be appropriate to return a finding of male fide on the part of any individual. We, therefore, do not wish to go into the question of male fide.

We dismiss the appeals with costs. We quantify the costs as Rs. 25,000/- to be paid by the State Government to the School.