

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
PUBLIC INTEREST LITIGATION NO. 9 OF 2016

Yuwaraj Sandipan Sawant .. Petitioner
V/s
Mahalaxmi Co-op. Housing Society Ltd. & Ors. .. Respondents

Ms. Gayatri Singh with Mr. Yogesh Sankpal for the petitioner.
Mr. G.W. Mattos, AGP for the respondent – State.
Mr. P.G. Lad for the respondent – MHADA.
Ms. Shobha Ajithkumar for the respondent – Corporation.
Mr. Shanay Shah i/b Mr. B.G. Tangsali for respondent nos.1 and 8.
Ms. Prabha Badadare for respondent nos.9 to 11.

**CORAM: DR. MANJULA CHELLUR, CJ. &
G.S. KULKARNI, J.**

DATE : 3rd FEBRUARY 2017

P.C.:

It is not in dispute that the respondent society came up with the proposal of putting up construction of the premises in question for its members and at the time of allotment way back in 2001, i.e. on 5th September 2001, there was a condition that 10% of the flats each to MHADA and Government to be put up in the building by the 1st respondent society, has to be at the disposal of the Government and MHADA. Only after this conditional order, agreement came to be signed between the parties. By virtue of this agreement, there cannot be any violation so far as this condition is concerned.

2. Apparently, six commercial units and 50 residential units (tenements) are put up. It is also not in dispute that till date neither MHADA nor the Government were given possession of this 10% each to be allotted to them for the purpose of allotment to the Government officers/employees so also MHADA. On the other hand, the builder and the officials of the society seems to have created third party rights in the premises which is totally against the conditions upon which the allotment was made.

3. As a matter of fact, MHADA, who is before us, has filed affidavit in reply stating that the proceedings, both civil and criminal, are already initiated for non-compliance of terms and conditions. Except action by issuing show cause notice and decision for filing FIR, no further action of any nature is taken. We do not know what is the progress of that FIR so also the action taken by MHADA. We fail to understand the anxiety to be shown by MHADA in this matter. The alleged show cause notice is stated to be issued in 2013 and even after 3 years, they are still at the stage of taking further course of action. Except one tenement, who is respondent no.8 before us, they are not able to get eviction of any other tenements who have been put in possession but were not entitled for allotment. If this is the speed with which MHADA intends to act, for example 10 flats which have to come to the share of Government and MHADA, it will take another 30 years to complete the process.

4. Therefore, we are of the opinion that an independent Commission has to be made by a single man committee to inquire into the matter and do the needful.

5. List the matter on 9th February 2017.

(G.S. KULKARNI, J.)

CHIEF JUSTICE