

POWAI PANCHSHEEL CO-OP HSG. SOCIETY & ANR. A

v.

MAHARASHTRA HOUSING AREA DEVELOPMENT
AUTHORITY (MHADA) & ORS.

(Civil Appeal No. 7608 of 2009) B

OCTOBER 12, 2018

[ABHAY MANOHAR SAPRE AND S. ABDUL NAZEER, JJ.]

Public allotment: State largesse – Disposal of, amongst the citizens – On facts, State Housing Board, by a resolution accepted the offers of the three societies for purchase of flats of the Project, however excluded appellant No.1's offer – Justification of – Held: Government, is not and should not be as free as an individual in selecting the recipients for its largesse – Government would be subject to restraints, in its position in a democratic society – In view thereof, the Board was not justified in considering only the offers made by the three societies without considering appellant No.1's offer on its merit – Board was under a legal obligation to consider all the four offers (appellant No.1 and three societies) with a view to decide as to which one out of these was the best one for its acceptance – Exclusion of appellant No.1's offer and keeping appellant no.1 out from the zone of consideration by the Board in its meetings and only confining the consideration of the offers made by the three societies vitiates the entire decision of the Board – Reason given by the Board for non-consideration of appellant No.1's offer that appellant No.1's letter was not an offer, thus, was not considered, had no basis – Resolution of the Board as regards its decision for sale/disposal of flats of the Project in favour of three societies is quashed. C
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Allowing the appeal, the Court

HELD: 1.1 The Government, is not and should not be as free as an individual in selecting the recipients for its largesse. Whatever its activity, the Government is still the Government and will be subject to restraints, in its position in a democratic society. A democratic Government cannot lay down arbitrary and capricious standards for the choice of persons with whom alone it will deal. The Board was not justified in considering only the G
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A offers made by the three societies without considering appellant
No.1's offer on its merit. The Board was under a legal obligation
to consider also appellant No.1's offer which appellant No.1 had
made to the Board through M/s. K Constructions for purchase
of the flats of the Project along with the other offers made by the
three societies in their meetings. [Para 24][1009-G]

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*R. D. Shetty v. International Airport Authority (1979) 3
SCC 497 – relied on.*

1.2 M/s. K Constructions was the authorized agent
appointed by the Board itself for sale and disposal of the flats of
the Project. M/s. K Constructions on receipt of appellant No.1's
offer rightly forwarded it to the Board on the same date for its
consideration. The appellant's offer was, therefore, very much
available to the Board for its consideration prior to the meetings
held on 14.05.2003. In other words, the date on which the Board
was considering the offers of the three societies in its meeting
the offer of appellant No.1 was with the Board for its consideration.
The very fact that M/s K Constructions entertained appellant
No.1's offer and forwarded it to the Board was indicative of the
fact that offer to purchase the flats of the Project could be made
by any party either to the Board or to M/s. K Constructions and
had to be considered as being a valid offer made to the Board
only. Reading of appellant No.1's letter to M/s. K Constructions
would clearly indicate that it was essentially an offer made by
appellant No.1 to the Board for purchase of 110 flats for Rs.17
crores. In other words, it could not be treated as letter for
soliciting some information from the Board as contended by the
Board for its consideration. Keeping in view these factors, the
Board was under a legal obligation to consider all the four offers
(appellant No.1 and the three societies) in their meetings held
on 10/14.05.2003 with a view to decide as to which one out of the
four offers was the best one for its acceptance. Exclusion of
appellant No.1's offer dated 03.03.2003 and keeping appellant
no.1 out from the zone of consideration by the Board in its
meetings held on 10/14.05.2003 and only confining the
consideration of the offers made by the three societies
vitiates the entire decision of the Board taken on 10/14.05.2003.
[Para 25- 29][1009-G-H; 1010-A-F]

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1.3 Appellant No.1 had a legitimate right and so the expectation that it would get equal treatment from the Board like the other three societies because all four were similarly situated while considering the issue of sale of flats of Powai Project. Indeed, there was no valid reason for the Board to exclude appellant No.1's case/offer from the zone of consideration. The reason given by the Board for non-consideration of appellant No.1's case/offer namely that appellant No.1's letter dated 03.03.2003 was not an offer and, therefore, it was not considered, had no basis for three reasons. [Para 31][1011-A]

1.4 The so-called reason ought to have been deliberated and reduced in writing by the Board in its Minutes of Meetings held on 10/14.05.2003. It was, however, not done. The Board had no right to disclose the reason for the first time in the High Court. It was not legally permissible. The reason given for its non-consideration also had no basis because the appellant No.1's letter dated 03.03.2003 was in fact an offer to purchase the flats quoting therein the price for purchase and, therefore, it was capable of being considered on its merits treating it as an offer to purchase the flats along with the offers of the three societies in the meetings held by the Board on 10/14.05.2003. In view thereof, the decision to sale/dispose of the flats of the Project taken by the Board in its meetings held on 10/14.05.2003 is vitiated as being unreasonable, arbitrary and violative of principles enshrined in Article 14 of the Constitution of India. It is not legally sustainable and has to be, therefore, set aside. The writ petition filed by the appellants is allowed. The impugned Resolution of the respondent-Board insofar as it relates to the decision taken by the Board for sale/disposal of flats of the Project in favour of the three societies is concerned, the same is hereby quashed by issuance of writ of certiorari. [Paras 32-36][1011-B-G]

V. Punnan Thomas v. State of Kerala AIR 1969 Ker 81 – referred to.

Case Law Reference

AIR 1969 Ker 81	referred to	Para 21	
(1979) 3 SCC 497	relied on	Para 23	H

A CIVIL APPELLATE JURISDICTION: Civil Appeal No. 7608
of 2009

From the Judgment and Order dated 26.03.2008 of the High Court of Judicature at Bombay in Writ Petition No. 2017 of 2003.

B Shekhar Naphade, Sr. Adv., Chinmoy Khaladkar, Abhikalp Pratap Singh, Siddharth Dharmadhikari, Vishnu Shankar Jain, K. V. Sreekumar, Advs. for the appellants.

C Nitin S. Tambwekar, B. S. Sai, K. Rajeev, Umesh Mishra, Sanjay Jain, Kuldeep S. Parihar, H. S. Parihar, Chirag M. Shroff, Ms. Priya Hingorani, Kripa Shankar Prasad, Chandra Bhushan Prasad, Advs. for the respondents.

The Judgment of the Court was delivered by

D **ABHAY MANOHAR SAPRE, J.** 1. This appeal is directed against the final judgment and order dated 26.03.2008 passed by the High Court of Bombay in Writ Petition No.2017 of 2003 whereby the High Court dismissed the Writ Petition filed by the appellants.

2. In order to appreciate the issues involved in this appeal, it is necessary to set out the facts in detail hereinbelow.

E 3. The appellants herein were the writ petitioners whereas the respondents herein were the respondents in the writ petition out of which this appeal arises.

F 4. Respondent no.1 is a statutory authority created under the Maharashtra Housing & Area Development Authority Act, 1976 (for short called "MHADA Act"). It is known as Maharashtra Housing and Area Development Board (for short "Board"). One of the objects of the Board is to make housing schemes for the benefit of different sections of the people and provide them the houses at reasonable costs. The Board is, therefore, a State within the meaning of Article 12 of the Constitution of India.

G 5. On 26.6.1995, the Board issued an advertisement for sale of 1924 flats (1673 non-deluxe and 251 deluxe) at the rate of Rs.2,995/- per square feet at Powai (Mumbai)-called (Powai Project). To execute and supervise this project, the Board appointed M/s. Kamath Constructions & Estate Consultants (as their sole selling/commission agent) [for short hereinafter called "M/s Kamath Constructions"]].

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6. For some reasons, only 123 flats could be sold, out of 1924, by the Board. The Board, therefore, from 1995 to 1999 issued seven advertisements for sale of remaining flats, pursuant to which 1597 flats (which included sale of 123 flats) could be sold leaving still 327 flats unsold. The Board, therefore, decided to reduce the price from Rs.2995/- per sq. feet to Rs.2200/- per sq. feet for sale of remaining 327 flats so as to enable it to sell the said unsold flats.

7. It is, with these background facts, the Board issued 8th advertisement in local newspapers for sale of remaining unsold flats (which included 251 deluxe flats with a area of 893 sq. feet in Powai Project) and also some other flats situated in other location in Mumbai at the rate of Rs.2200/- per sq. feet on the terms and conditions set out in the advertisement/booklet. The Board, however, again claimed that they did not receive good response.

8. On 10.02.2003, 11.02.2003 and 12.02.2003, three Co-operative Societies namely (1) Shree Amey Co-operative Housing Society (2) Shri Guru Krupa Co-operative Housing Society and (3) Shree Sai Shraddha Co-operative Housing Society (respondent nos.4, 5 and 6 in Writ Petition No. 2017 of 2003 respectively before the High Court) (hereinafter referred to as “**three societies**”) made their offers in writing for allotment of 500 flats in Powai Project on the terms offered by each of them in their respective offers.

9. So far as appellant No.1 herein is concerned, it is also a co-operative housing society and they also applied on 03.03.2003 (Annexure P-6) to M/s Kamath Constructions and offered to purchase 110 flats of Powai Project for Rs.17 crores. Appellant No.1 also simultaneously applied to the Board on 03.03.2003 requesting them to supply all necessary details regarding the Powai Project to enable them to book the said flats.

10. On the same day, M/s. Kamath Construction, on their part, forwarded the offer of appellant No.1 to the Board along with three other offers, which they received from Andhra Bank, Canara Bank and Bank of Baroda.

11. The Board on 10.05.2003/14.5.2003 held meetings to consider several matters. Amongst them, one matter was regarding sale of flats of Powai Project with which we are concerned here in this appeal and the offers made by the three societies and the appellant No.1 for purchase of the flats of Powai Project.

A 12. The Resolution No.192 which dealt with this matter reveals that the Board considered only the offers made by the three societies and eventually accepted their offers with some modifications. The Board, however, did not consider the offer of appellant No.1 at all. The Resolution No.192 accepting the offers of the three societies reads as under:-

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Annexure P-7

O. No.Dir.

Mktg./M.B./105/2003

Dated: 10/5/03 14.05.03

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Office Note:-

Subject: In the matter of sale in nature of lumpsum of unallotted Delux and non-Delux tenements at Powai.

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In the Meeting of the Authority held on 10.05.2003, discussion was held on the Item Note No. 192/20 of the above subject and the Authority did not give approval in the form as it is to the Resolution no. 16/2402 dated 25.02.2003 passed by the Board. Approval was not granted as proposed by the Administration in the above Item Note. By carrying out necessary changes therein, the Authority has granted approval.

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While according approval to the Resolution, a discussion to this effect has been taken that if the amount is not paid within the time-limit, interest at the rate of 14.5 be charged on the arrears of the amount. A decision was also taken that if the Chief Promoters of the societies have not paid the sale price of the tenements within the period, allotment should be cancelled and amount of 10% of the sale price be forfeited. It shows inconsistency therein it does not become clear as to how and when allotment shall be cancelled if the interest has to be charged on the amount of arrears and as to when 10% of the sale price shall be forfeited. Hence it is necessary that there should be clarity in this respect.

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As per the notes taken by me in the meeting of the Authority, a draft is submitted herewith. However, after confirming the minutes in connection with the business of

the meeting, an authorized Resolution be kindly made available so that it would be convenient for taking further action thereon. A

As the implementation of this Resolution has to be implemented without waiting for its confirmation, the Resolution of the Authority be kindly made available with necessary amendments in the enclosed draft resolution. Hence this request. B

**Sd/-
Director, Marketing/M.B.**

**Sd/-
Joint Chief Officer/M.B.** C

**Sd/-
Chief Officer/M.B.**

As there is inconsistency with each other shown in "A" the Resolution is submitted for correcting the same. D

**Secretary
C.O./M.B.**

DRAFT RESOLUTION NO. 192 Dt. 10.5.2003 E

1) Chief Promoters of all these three Societies should pay the deposit amount at the rate of Rs. 25,000/- per tenement to the Board within 90 days from the date of receipt of the allotment letter. So also a list of Members of the Society should be submitted to the Board within 90 days. F

2) Amount of 25 per cent of the sale price of the tenements should be paid within 190 days from the receipt of the allotment letter. However, 5% amount of 25% be paid within 120 days, 10 per cent amount be deposited within 150 days and the remaining 10 per cent amount be paid within 180 days. G

3) The payment of the remaining amount of the sale-price be made by the Chief promoters of the Society within 270 days from the receipt of the allotment letter. H

- A 4) If the payment is not made within the above period, interest at the rate of 13.5 per cent on the amount of arrears be paid.
- B 5) Within a period of 270 days, the Chief promoters of the Society can effect change in the list of their Members by paying charges at the rate of Rs.500/- per member. However, thereafter in case of change in membership, amount to the extent of 1 per cent of the sale price of the tenement shall be deducted from the deposit amount of the original member and besides that, transfer fee shall be charged to a new member to the extent of Rs.5,000/- per tenement.
- C 6) At least allotment of 100 tenements be allotted to each one of these three societies so that it would be possible to give them 15 per cent concession on the sale-price. However, out of the above societies, 10 per cent concession instead of 15 per cent of the sale price shall be payable to the society which will purchase less than 100 tenements.
- D 7) As all the unallotted tenements at Powai are allotted to the above Societies and these are stray tenements located in the buildings where it will be binding on the members of the above Societies to become members of the existing co-operative housing societies registered or being registered in future in respect of those respective buildings. Hence unless they submit affidavits to that effect, they shall not be eligible for tenements to be allotted to them.
- E 8) If the Chief promoters of the Society do not pay installments of Sale-price of tenements as per the above time-table, 10 per cent of the sale price for the tenements should be forfeited.
- F 9) Repair work of the unallotted tenements should be taken in hand immediately.
- G 10) Whatever allotment letters have been given to the applicants and 51 deluxe tenements in B.No.4 to the Bank Baroda, allotment of tenements be made to them. Thereafter, sale of tenements be stopped.
- H

Implementation of this Resolution be implemented without waiting for its confirmation. A

**(True translation in English)
Item No. 192/20**

Subject: In the matter of sale in the nature of lump-sum of unallotted deluxe and non-delux tenements at Powai. B

Reference: 1 Letter dated 12.02.2003 from the Chief Promoter, Shri. Saisraddha Co-op. Hsg. Socy (Proposed) addressed in writing to the Chairman/Mumbai Board.

2. Letter dated 11.02.2003 from the Chief Promoter, Shri. Gurukripa Co-op. Hsg. Socy (Proposed), addressed in writing to the Chairman/Mumbai Board. C

3. Letter dated 10.02.2003 from the Chief Promoter Shri. Ameya Co-op. Hsg. Socy(Proposed), addressed in writing to the Chairman/Mumbai Board. D

4. Letter dated nil written by Pooja Estate Consultant & Construction dated nil to the Vice-president/Au. to the Chairman/Mumbai Board.

5. Authority Resolution No. 178/5715 dated 21.07.2001.” E

13. Appellant No.1, therefore, felt aggrieved and filed writ petition before the High Court of Bombay out of which this appeal arises and challenged therein the Board's decision in accepting the offers of three societies and not considering along with them the offer of appellant No.1 in the meetings held by the Board on 10.05.2003/14.05.2003. The challenge was founded *inter alia* on the ground of *mala fides* attributed to the officials for extending undue favour to the three societies in accepting their offers, including the manner in which their offers were accepted. The challenge was also founded on legal grounds. F

14. The Board and the three Societies contested the writ petition. In substance, the Board while defending its resolution dated 10/14.05.2003 *inter alia* contended that appellant No.1 never submitted its offer but what it had actually submitted was one letter dated 03.03.2003 addressed to the Board and M/s. Kamath Constructions, wherein appellant No.1 made an inquiry to get more details from the Board about the sale of H

A flats of Powai Project. It was contended that the Board received appellant No.1's letter on 03.03.2003 late as compared to the offers of the three societies on 10.02.2003/11.02.2003/12.02.2003. It was, therefore, contended that due to these reasons, the Board did not entertain appellant No.1's offer and considered only the offers made by the three societies.

B So far as the allegations of *mala fides* were concerned, they were denied by the Board.

15. So far as the three societies are concerned, they justified the stand taken by the Board and supported their offers made to the Board for purchase of the flats as being just, reasonable and proper, calling no interference in the decision of the Board in their favour on 10/14.05.2003.

C 16. By impugned order, the High Court dismissed the writ petition finding no fault in the Board's decision taken in the meetings on 10/14.05.2003, which gave rise to filing of this appeal by way of special leave to appeal in this Court by unsuccessful writ petitioners.

D 17. So the short question, which arises for consideration in this appeal, is whether the decision of the Board in accepting the offers of the three societies for purchase of flats (Building No.8) of Powai Project and exclusion of appellant No.1's offer in their meetings held on 10/14.05.2003, is justified.

E 18. In other words, the question arises for consideration in this appeal is whether the High Court was justified in upholding the decision of the Board contained in their Resolution No.192 in relation to sale of flats of Powai Project (Building No.8) to the three societies without considering appellant No.1's offer.

F 19. Having heard the learned counsel for the parties and on perusal of the record of the case, we are inclined to allow the appeal, set aside the impugned order, allow the appellants' writ petition, out of which this appeal arises, and issue writ of certiorari to quash the decision of meetings dated 10/14.5.2003 and further issue a writ of mandamus against the respondents-Board and the three societies to ensure its compliance as

G directed hereinbelow in detail.

20. The law on the question as to how and in what manner the State should deal with its largesse at the time of its disposal amongst the citizens is now a well settled principle laid down by this Court in series of decisions beginning from the case of *R.D. Shetty vs. International Airport Authority* (1979) 3SCC 497.

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21. A three Judge Bench speaking through Justice Bhagwati (as His Lordship then was and later became CJI) in **R.D. Shetty 's** case (supra) approved the observation of Justice Mathew (as His Lordship then was the Judge of Kerala High Court and later became a Judge of this Court) which the learned Judge made in **V. Punnann Thomas vs. State of Kerala** (AIR 1969 Ker 81). In Para 12 at page 505 of **R.D. Shetty's** case (supra) Justice Bhagwati said in the following words:-

“We agree with the observations of Mathew, J, in V. Punnann Thomas vs State of Kerala that:

The Government, is not and should not be as free as an individual in selecting the recipients for its largesse. Whatever its activity, the Government is still the Government and will be subject to restraints, inherent in its position in a democratic society. A democratic Government cannot lay down arbitrary and capricious standards for the choice of persons with whom alone it will deal.”

22. Since then the Courts have been consistently following the aforesaid dictum of law, which is later explained by this Court in several cases whenever the question relating to disposal of State largesse amongst the citizens arose for consideration for deciding the rights of the parties qua each other and the State. It is, however, not necessary to mention these cases which have reiterated this principle as it will only burden our order.

23. Keeping in view the aforementioned principle of law, when we examine the facts of this case, we are of the considered opinion that the Board was not justified in considering only the offers made by the three societies without considering appellant No.1's offer dated 03.03.2003 on its merit.

24. In our view, the Board was under a legal obligation to consider also appellant No.1's offer which appellant No.1 had made to the Board through M/s. Kamath Constructions vide its letter dated 03.03.2003 for purchase of the flats of Powai Project along with the other offers made by the three societies in their meetings held on 10/14.05.2003.

25. This we say for the reasons that firstly, M/s. Kamath Constructions was the authorized agent appointed by the Board itself

A for sale and disposal of the flats of Powai Project: Secondly, M/s. Kamath
B Constructions on receipt of appellant No.1's offer on 03.03.2003 rightly
forwarded it to the Board on 03.03.2003 for its consideration; Thirdly,
the appellant's offer dated 3.3.2003 was, therefore, very much available
to the Board for its consideration prior to the meetings held on 10/
14.05.2003. In other words, the date on which the Board was considering
the offers of the three societies in its meeting on 10/14.05.2003, the
offer of appellant No.1 dated 03.03.2003 was with the Board for its
consideration.

C 26. Fourthly, the very fact that M/s Kamath Constructions
entertained appellant No.1's offer on 03.03.2003 and forwarded it to the
Board was indicative of the fact that offer to purchase the flats of Powai
Project could be made by any party either to the Board or to M/s. Kamath
Constructions and had to be considered as being a valid offer made to
the Board only.

D 27. Fifthly, reading of appellant No.1's letter dated 03.03.2003 to
M/s. Kamath Constructions would clearly indicate that it was essentially
an offer made by appellant No.1 to the Board for purchase of 110 flats
for Rs.17 crores. In other words, it could not be treated as letter for
soliciting some information from the Board as contended by the Board
for its consideration.

E 28. In our view, keeping in view these five factors which were
admittedly present in the case, the Board was under a legal obligation to
consider all the four offers (appellant No.1 and the three societies) in
their meetings held on 10/14.05.2003 with a view to decide as to which
one out of the four offers was the best one for its acceptance.

F 29. Indeed, exclusion of appellant No.1's offer dated 03.03.2003
and keeping appellant no.1 out from the zone of consideration by the
Board in its meetings held on 10/14.05.2003 and only confining the
consideration of the offers made by the three societies vitiates the entire
decision of the Board taken on 10/14.05.2003.

G 30. In our view, appellant No.1 had a legitimate right and so the
expectation that it would get equal treatment from the Board like the
other three societies because all four were similarly situated while
considering the issue of sale of flats of Powai Project. Indeed, there
was no valid reason for the Board to exclude appellant No.1's case/
H offer from the zone of consideration.

31. The reason given by the Board for non-consideration of appellant No.1's case/offer namely that appellant No.1's letter dated 03.03.2003 was not an offer and, therefore, it was not considered, had no basis for three reasons. A

32. First, the so-called reason ought to have been deliberated and reduced in writing by the Board in its Minutes of Meetings held on 10/14.05.2003. It was, however, not done; Second, the Board had no right to disclose the reason for the first time in the High Court. It was not legally permissible; Third, the reason given for its non-consideration also had no basis because as held above, the appellant No.1's letter dated 03.03.2003 was in fact an offer to purchase the flats quoting therein the price for purchase and, therefore, it was capable of being considered on its merits treating it as an offer to purchase the flats along with the offers of the three societies in the meetings held by the Board on 10/14.05.2003. B C

33. In the light of the foregoing discussion, we are of the considered view that the decision to sale/dispose of the flats of Powai Project taken by the Board in its meetings held on 10/14.05.2003 (Resolution No.192) is vitiated as being unreasonable, arbitrary and violative of principles enshrined in Article 14 of the Constitution of India. It is not legally sustainable and has to be, therefore, set aside. D

34. Since we have set aside the impugned Resolution on legal grounds, we need not go into the challenge made by the appellants against the officials on the ground of *mala fides*. It is not necessary. E

35. The appeal thus succeeds and is allowed. Impugned order is set aside. The writ petition filed by the appellants out of which this appeal arises is allowed. F

36. The impugned Resolution No.192 dated 10/14.05.2003 (Annexure P-7 of SLP at page 52) of the respondent-Board insofar as it relates to the decision taken by the Board for sale/disposal of flats of Powai Project in favour of the three societies is concerned, the same is hereby quashed by issuance of writ of certiorari. The Board is at liberty to proceed in the matter in accordance with law. G