

NON-REPORTABLE

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO. 5809 OF 2011

**THE STATE OF MAHARASHTRA
AND OTHERS**

...APPELLANT(S)

VERSUS

MR. ASPI CHINOY AND ANOTHER

...RESPONDENT(S)

WITH

**CIVIL APPEAL NOS. _____ OF 2022
(Arising out of SLP(C) Nos. 26906-26911 of 2011)**

J U D G M E N T

B.R. GAVAI, J.

- 1.** Delay condoned and leave granted in SLP(C) Nos. 26906-26911 of 2011.
- 2.** By way of the present appeals, the State has assailed the judgment and order dated 29th September 2009 passed by the Division Bench of the High Court of Judicature at Bombay in Writ Petition No. 713 of 2001, thereby allowing the writ petition filed by the respondents.

3. The respondents-original writ petitioners had filed the writ petition challenging the letter dated 27th June 2000 addressed by the Collector to the Sub-Registrar, Bombay City, Old Custom House. By the said letter, the Collector had directed the Sub-Registrar not to register any transaction in respect of transfer of flats in the buildings situated in B.B.R. Block Nos. 3 and 5, Nariman Point and Cuffe Parade, Bombay without obtaining a No Objection Certificate from the Collector.

4. In the year 1971, the State Government had invited offers for the lease of Plot Nos.93, 94, 99, 100 and 121 from Block V Back Bay Reclamation Estate. In response to the said notice, one M/s. Aesthetic Builders Pvt. Ltd. (hereinafter referred to as the "said builder") had made a bid for Plot No. 121 (Old) or 119 (New). The bid was on the basis that the said builder would construct and sell flats on ownership basis. The purchasers of the flats would thereafter form a Co-operative Society, in which Society the rights of the Company would be transferred. The bid of the said builder was accepted and the State Government granted a licence to the said builder to enter upon the plot and construct a

building in accordance with the plans and specifications sanctioned by the Municipal Corporation of Greater Bombay.

5. On the said plot, a twenty-two storey building namely Jolly Maker Apartments No.3 was constructed by the Company and the flats were sold to various parties on ownership basis. Occupation certificate in respect of the said building was issued on 12th December 1975. The subject matter of the present dispute is Plot No. 211, which was sold to one Mr. A. Madhavan by an agreement dated 22nd November 1972. After completion of the building in the year 1977, the purchasers of the flats formed a Co-operative Society called Varuna Premises Co-operative Society Ltd., which was duly registered under the Maharashtra Co-operative Societies Act, 1960. By an agreement dated 23rd May 1978, the said Mr. A. Madhavan sold his rights in the said flat to one Mrs. Reshmidevi Agarwal. On 16th December 2000, respondent No.1 entered into an agreement with Mrs. Reshmidevi Agarwal to purchase rights to occupy Flat No. 211 as also five shares in the Society. When respondent No.1 approached the Sub-Registrar Office for registration, he was declined the registration and directed to secure a No

Objection Certificate from the Collector. In the above backdrop, respondents approached the High Court by way of the writ petition.

6. The claim of the respondents was resisted by the State. It was the contention of the State that in view of Government Resolution dated 12th May 1983 (for short “1983 Resolution”) and Government Resolution dated 9th July 1999 (for short “1999 Resolution”), the State was entitled to claim premium as a condition for grant of permission for transfer of the flats. The State had pressed into service Clauses 15 and 16 of the Memo of Terms and Conditions for the Lease of Plot from Block V Back Bay Reclamation (hereinafter referred to as the “said terms and conditions”). The High Court did not find favour with the contentions raised by the State and allowed the writ petition. Being aggrieved thereby, the State has approached this Court by way of the present appeal.

7. We have heard Shri Shekhar Naphade, learned Senior Counsel appearing on behalf of the State and Shri C.U. Singh, learned Senior Counsel appearing on behalf of the respondents-writ petitioners.

8. Shri Naphade submitted that the impugned judgment and order of the High Court is not sustainable on several grounds. The learned Senior Counsel submitted that, the High Court has grossly erred in coming to a conclusion that the Society concerned would fall under Class 5 as earmarked in Rule 10 (1) of the Maharashtra Land Revenue (Disposal of Government Lands) Rules, 1971 (hereinafter referred to as the “said Rules”). He further submitted that the High Court has failed to notice Class 9 under which the Society in question would actually fall. He further contended that the High Court has also erred in going into the question as to whether the allotment of land was on a concessional rate or not. He submitted that the said fact is not at all relevant for determining the issue. He further submitted that the High Court has erred in relying on the 1983 Resolution. He submitted that the 1983 Resolution was superseded by the 1999 Resolution and is applied with full vigour. The learned Senior Counsel urged that, though the land was allotted in the year 1972, the same was subject to the execution of Agreement to Lease. He further urged that the said builder has subsequently agreed, vide communication

dated 5th July 1972, to abide by all the terms and conditions of the lease. He submitted that this fact has not been taken into consideration by the High Court.

9. Shri Naphade submitted that Section 40 of the Maharashtra Land Revenue Code, 1966 (hereinafter referred to as the “Code”) empowers the State Government to dispose of any land on such terms and conditions as it deems fit. He submitted that, since the 1999 Resolution specifically provides the terms and conditions on which the land could be disposed of, the judgment of the High Court which failed to take into consideration the said aspect, is not sustainable. He further contended that the High Court has erred in relying on the judgment of this Court in the case of **Anita Enterprises and Another v. Belfer Cooperative Housing Society Ltd. and Others**¹ which is not at all applicable to the present case. He further submitted that the High Court has erred in relying on the Bye-laws of the Society. He submitted that in a conflict between the Bye-Laws of the Society and the said Rules, the Rules will prevail.

¹ (2008) 1 SCC 285

10. Shri Singh submitted that the High Court has considered all the relevant aspects and as such, no interference is warranted with the well-reasoned judgment and order of the High Court.

11. The undisputed facts in the present case are as under:

The allotment of plot in question was made to the said builder in the year 1972. As per the said allotment, the plot was to be leased for a period of 99 years, renewable for another 99 years on the same terms, but on a revised ground rent. The said terms and conditions would reveal that, the licensee was required to construct a building on the said plot costing not less than Rs.10 lakhs. The use of the building was for private residence only. As per Clause 13 of the said terms and conditions, the licensee was to be put in possession of the plot on his executing the Agreement to Lease. Undisputedly, after the said allotment in the year 1972, the builder was put in possession of the plot and he constructed a building thereon. The flats were sold to various parties. An occupation certificate in respect of the said building was also issued on 12th December 1975. In the year

1977, the flat purchasers formed a Co-operative Society called Varuna Premises Co-operative Society Ltd.

12. It could thus be seen that after the land was allotted to the said builder on lease basis in the year 1972, the 1983 Resolution came into effect. The 1983 Resolution provided for grant of land to co-operative societies of different categories on concessional rates. After the 1983 Resolution, the Government noticing that, with the passage of time and the policy being nearly 15-16 years old, it was necessary to modify and revise the said policy. It will be relevant to refer to the Preamble of the 1999 Resolution:

“Government Lands are sanctioned in favour Co-operatives Housing Societies under the provisions of Section 40 of the Maharashtra Land Revenue Code 1966 and the Maharashtra Land Revenue (Allotment of Government's Land) Rules 1971. From time to time the Government has laid down policies supplementary to the said provisions by the Government orders mentioned above. Some of the terms and conditions of those orders have become out dated and it has become inevitable to make modifications/amendments therein. As the present policy is nearly 15-16 years old, a proposal to modify/revise the same was under consideration of the Government. In that behalf the Government has now decided that in suppression of the above mentioned orders, the revised policy as under should be adopted in respect of sanctioning lands to Co-

operative Housing Societies in Maharashtra State.”

13. It could thus be seen that the 1999 Resolution is in continuation of the 1983 Resolution, which is applicable to the co-operative societies to whom the government lands are sanctioned on concessional rates.

14. It is further to be noted that though Section 40 of the Code saves the power of the Government with respect to disposal of lands, Section 295 of the Code specifically deals with disposal of lands and foreshore. It is not in dispute that the land in question is a reclaimed land and therefore, is covered under Section 295 of the Code. It is also not in dispute that though in accordance with 1983 Resolution and 1999 Resolution, the State Government is empowered to allot land to the co-operative societies of different categories on concessional rates, the land in question has been allotted to the builder who had participated in the bid in response to a public notice. The land was allotted to the said builder after he was successful in the bidding process. As per the said terms and conditions, which specifically deal with lease of plots from Block V Back Bay Reclamation, the said builder

was required to construct the building on the said land costing not less than Rs.10 lakhs and to sell the same for the purpose of private residence. It is after the said builder sold the flats to the individual buyers, they formed a Co-operative Society in the year 1977 in which Society the ownership of the land came to be transferred by the said builder. It could thus be seen that, the present case is not a case where the land is allotted to a Co-operative Society by the Government. The land was leased out to the builder, who was the successful bidder and after the ownership of flats was transferred to the private individuals, a Society of the flat owners was formed.

15. In that view of the matter, in the peculiar facts and circumstances of the case, we do not find it necessary to consider the submissions advanced by Shri Naphade. As already discussed hereinabove, we find that in the facts of the present case, since the land was not allotted to a society but to a builder on lease, who has constructed flats for private individuals, who have subsequently formed a Co-operative Society, the 1983 Resolution and 1999 Resolution would not be applicable to the members of such a society.

We are therefore not inclined to interfere in the present appeals.

16. In the result, the appeals are dismissed. The interim stay of the direction for refund of the amount granted by this Court shall stand vacated.

17. Pending application(s), if any, shall stand disposed of in the above terms. No order as to costs.

.....**J.**
[B.R. GAVAI]

.....**J.**
[B.V. NAGARATHNA]

NEW DELHI;
SEPTEMBER 30, 2022.