

**NON-REPORTABLE**

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

**CIVIL APPEAL NO. 4571 OF 2009**

JYPD Scheme Welfare Trust

.. Appellant

Versus

The Chief Officer, M.H.A.D. & Ors.

.. Respondents

**J U D G M E N T**

**M. R. Shah, J.**

Feeling aggrieved and dissatisfied with the impugned judgment and order dated 16.12.2004 passed by the High Court of Bombay in Writ Petition (lodging) No. 2881 of 2004 dismissing the said Writ Petition preferred by the appellant herein (the original writ petitioner), the original writ petitioner - JVPD Scheme Welfare

Trust (hereinafter referred to as the 'Trust') has preferred the present appeal.

2. The facts leading to the present appeal and the case of the appellant herein (the original writ petitioner) in nutshell are as under:

2.1 That the appellant (herein original writ petitioner) claiming to be a Public Charitable Trust registered under the Bombay Public Trust Act applied for the plot in question bearing No. C.T.S No. 27 (part) and admeasuring 5415 square meters situated at Juhu Vile Parle Development Area in Mumbai and reserved for playground. It was the case on behalf of the appellant- Trust that the objects of the Trust include development of cultural, social and sports activities and in order to carry on its welfare activities, the Trust applied to the State Government for allotment of the plot in question for a playground. In exercise of powers under Regulation 16 of the Maharashtra Housing and Area Development (Disposal of Land) Regulations, 1982 (hereinafter referred to as the '1982 Regulations'), the High-Powered Cabinet Sub-Committee of the

State of Maharashtra allotted the plot in question to the appellant-Trust vide order dated 05.10.1999. It appears that in the month of February, 2000 all the allotments of the plots made under Regulation 16 of 1982 Regulations were stayed.

2.2 The appellant herein approached the High Court of Bombay by way of Writ Petition No. 6777 of 2002. Vide order dated 28.11.2002, the High Court directed the respondents to decide on the application of the appellant for allotment of plot within 10 weeks. In the meantime, before any decision was taken on the application of the appellant for allotment of plot, as directed by the High Court, vide order dated 20.03.2003, Maharashtra Housing and Area Development Authority (hereinafter referred to as MHADA) granted licence to one Anchor Foundation Trust (Respondent No. 4 herein) for three years for beautification and development of the plot in issue. However, thereafter, the High-Powered Cabinet Sub-committee on Allotments, vide order dated 12.06.2003 decided in Principle to allot the plot in issue to the appellant- Trust subject to certain conditions. That the said decision was taken by the State Government pursuant to the order

passed by the High Court dated 28.11.2002 in W.P No. 6777 of 2002. That, vide letter on behalf of the State Government, MHADA was intimated about the said decision of the Cabinet Subcommittee to allot the plot in issue to the appellant- Trust subject to certain terms and conditions. That, vide letter dated 16.02.2004, Respondent No. 1-Board (MHADA) informed the appellant Trust that the plot in issue is allotted to the appellant under special powers conferred upon the State Government under Regulation No. 16 of the said 1982 regulations. It was also stated that the allotment is subject to compliance of the terms and conditions set out therein and submitting the documents as mentioned in the letter dated 18.10.2003 of the State Government. That vide letter/communication dated 17.03.2004 the appellant-Trust was required to submit the necessary documents as demanded by letter dated 16.02.2004 within seven days. It was further stated that otherwise it would recommend cancellation of the allotment. It is the case on behalf of the appellant that immediately thereafter and well within the given time, by letter dated 22.03.2004 the Appellant- Trust submitted all the required

documents and obtained acknowledgment thereof from the office of the respondent No. 1-Board. However, formal offer of the allotment was not issued to the appellant- Trust. That vide communication/order dated 24.08.2004 respondent No. 1-Board cancelled the allotment of the plot in issue on the premise that even after lapse of six months the appellant- Trust had failed to submit the required documents to prove its eligibility and, therefore, the appellant had committed breach of the terms and conditions of allotment. It is the case of appellant that thereafter the representatives of the appellant- Trust visited the office of respondent No. 1-Board along with acknowledgment receipt dated 23.03.2004 and requested for recall of the said letter dated 24.08.2004 as the required documents were already submitted. That respondent No. 1-Board executed the licence in favour of Respondent No. 4 - Anchor Foundation Trust on 9/10.09.2004 for a period of three years for beautification and development of the plot in issue. According to the appellant- original writ petitioner, the appellant- Trust continued to request Respondent No. 1-Board to recall/cancel the cancellation order dated 24.08.2004.

However, as there was no response from Respondent No. 1-Board, the appellant herein (original writ petitioner) preferred present Writ Petition No. 2881 of 2004 in the High Court of Bombay. That in the said writ petition a counter affidavit was filed on behalf of Respondent No. 1-Board on 10.12.2004. According to the appellant, in the counter affidavit, Respondent No. 1 Board admitted that the reasons given in the letter dated 24.08.2004 for cancelling the allotment, inter alia, on account of non-submission of the documents was erroneous/inadvertent. However, in the counter affidavit, original respondent No. 1-Board justified the cancellation on other grounds, other than mentioned in the letter of cancellation dated 24.08.2004. It was stated that none of the trustees of the appellant- Trust were residents of Juhu Vile Parle Development Area and the financial capacity of the Trust was not clear and that, therefore, a decision was taken by the Board to carry out the development of playground itself through Anchor Foundation Trust to which the licence was given vide resolution No. 5879 dated 20.02.2003. That, considering the grounds set out in the counter affidavit on behalf of the Respondent No. 1-Board,

by the impugned judgment and order, the High Court has dismissed the writ petition upholding the validity of the order dated 24.08.2004 cancelling the allotment to the petitioner- Trust.

2.3 Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court dismissing the writ petition, the Appellant- Trust filed the present appeal by way of Special Leave Petition on 28.03.2005. While issuing notice in the SLP on 10.05.2005 this Court granted liberty to the Appellant-Trust to file an application to implead Anchor Foundation Trust as a party and upon filing the same, the said application came to be allowed and the Anchor Foundation, in whose favour the licence was granted, was impleaded as Respondent No. 4 on 29.08.2005. That vide order dated 10.05.2005 this Court also passed an order that the arrangement, if any, entered into with Anchor Foundation will be subject to the result of this petition.

3. It appears that thereafter certain developments have taken place which are required to be referred to, which are as under:

That on 10.09.2004, MHADA issued a letter whereby the plot in issue was allotted/granted to Respondent No. 4 - Anchor Foundation for use as a playground and to carry out the development and beautification of the same for the period of three years upon the terms and conditions more particularly stated therein. That Respondent No. 4 herein - Anchor Foundation complied with all the terms and conditions of the said allotment plot by depositing an amount of Rs. 5,41,503/- and also by executing an undertaking. It appears that thereafter by letter dated 05.01.2005 the MHADA granted to Respondent No. 4, the plot in issue on lease for a period of 15 years on payment of the premium and on the terms and conditions more particularly stated therein. That, pursuant to the terms of the letter dated 10.01.2005, Respondent No. 4 deposited a premium of Rs. 1,38,61,046/- with MHADA on 10.01.2005. That one Upnagar Shikshan Mandal challenged the allotment of the plot in issue to Respondent No. 4, before the Bombay High Court by way of W.P. No. 964 of 2005. That during the pendency of W.P. No. 964 of 2005, the MHADA vide its letter dated 16.03.2005 cancelled the



allotment granted in favour of Respondent No. 4. That Respondent No. 4 challenged the said cancellation of the plot in issue before the Bombay High Court by way of W.P. No. 1489 of 2005. That, by order dated 24.06.2005 in W.P No. 1489 of 2005, the High Court directed MHADA to give hearing to Respondent No. 4 and pass a reasoned order. That pursuant to the directions of the High Court, MHADA granted an opportunity to Respondent No. 4 of being heard. After hearing Respondent No. 4, MHADA set aside the order of cancellation dated 16.03.2005, by its order dated 08.09.2005 and the said order was placed before the High Court. It appears that, during the pendency of hearing of the writ petitions, one Gulmohar Area Societies Welfare Group, a group formed by the residents of JVPD Scheme sought to intervene by way of Chamber Summons and challenged the allotment of the plot in issue. By its order dated 21.12.2006, the High Court permitted the Gulmohar Area Society Welfare Group to be impleaded as a party/respondent to the said writ petitions. It appears that thereafter Gulmohar Area Society Welfare Group, on 11.09.2007, filed an independent writ petition bearing writ petition

No. 1978 of 2007. That during the arguments in the aforesaid writ petitions, the High Court directed MHADA to give hearing to all the three parties to the writ petitions and to arrive at an amicable solution. It appears that, pursuant to the High Court's order dated 29.10.2007, MHADA held various meetings with all the three parties to the writ petitions. That in the said meetings, an amicable solution was arrived at between the parties to the writ petitions. The settlement was recorded and signed by the respective parties to the above referred writ petitions, MHADA and their respective advocates in the form of consent terms. That the settlement dated 11.02.2008 was taken on record by the High Court and accordingly the aforesaid three writ petitions being W.P. No. 1489 of 2005, W.P. No. 964 of 2005 and W.P. No. 1978 of 2007 came to be disposed of in terms of the consent terms. That Respondent No. 4 agreed to act as per the settlement dated 11.02.2008 and the consent terms. That in view of the order passed by the High Court on 11.02.2008 in the aforesaid writ petitions, MHADA allotted the plot in issue to Respondent No. 4 on lease for a period of 15 years, which will be renewable for a further

period of 15 years and subject to the terms and conditions as stated in the policy of the MHADA and in addition thereto the terms and conditions as agreed between the parties in consent terms. It appears that, thereafter, the lease has been further extended for a period of further 15 years. That, in between, there is a further development which has taken place that the policy of the allotment of the land/plots under Regulation 16 of 1982 Regulations was the subject matter of Writ Petition No. 75 of 2004 before the High Court of Bombay. Pursuant to the order passed by the High Court in the said writ petition, the MHADA came out with fresh directives and guidelines which would govern exercise of power under Regulation 16 and the High Court has accepted the fresh directives and guidelines, which would govern exercise of power under Regulations 16. Therefore, pursuant to the order passed by the High Court in Writ Petition No. 75 of 2004, the powers under Regulation 16 are required to be exercised subject to following the fresh directives and guidelines approved by the High Court.

4. Shri Raju Ramachandran, learned Senior Advocate, has appeared on behalf of the appellant (the original writ petitioner); Shri Nishant R. Katneshwarkar, Ld. Advocate, appeared on behalf of the State of Maharashtra and Shri Shyam Divan, learned Senior Advocate, has appeared on behalf of Respondent No. 4 herein.

4.1 Shri Raju Ramachandran, learned Counsel appearing on behalf of the appellant has vehemently submitted that the impugned judgment and order passed by the High Court is absolutely contrary to the law laid down by this Court in the case of Mohinder Singh Gill Vs. Chief Election Commissioner 1978 (1) SCC 405.

4.2 It is vehemently submitted by Shri Ramachandran, learned counsel for the appellant (the original writ petitioner) that the order dated 24.08.2004 passed by MHADA cancelling the allotment of the plot in issue to the appellant- Trust was solely on the basis that there was a failure on the part of the appellant to produce the relevant documents proving the eligibility of the Society. It is submitted that, however, the MHADA explicitly admitted before the High Court that the letter dated 24.08.2004

was inadvertently issued and in fact the appellant did produce the relevant documents proving its eligibility. It is submitted that, in view of the matter, the High Court ought to have quashed and set aside the order/letter dated 24.08.2004. It is submitted that however, erroneously and though not permissible, the High Court confirmed the order dated 24.08.2004 on altogether other grounds stated by the MHADA in the counter affidavit filed before the High Court, which were not the grounds stated in the order/letter dated 24.08.2004. It is submitted and, therefore, the High Court has committed a grave error in dismissing the writ petition and confirming the order/letter dated 24.08.2004 considering altogether new grounds/new story put up by MHADA in the counter affidavit to justify the cancellation of allotment.

4.3 It is further submitted by the learned Counsel appearing on behalf of the appellant (original writ petitioner) that in the case of Mohinder Singh Gill (Supra) it was not open to the authority which passed the order of cancellation erroneously/inadvertently and then to justify the order on the other grounds stated in the counter affidavit which were not the basis/grounds to pass the original

order. It is submitted that this Court in the aforesaid decision of *Mohinder Singh Gill* (supra) observed that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. It is submitted by the learned counsel appearing for the appellant that, in the present case, the High Court has materially erred in confirming the order/letter dated 24.08.2004 cancelling the allotment of the plot in issue to the appellant considering altogether a new story/grounds stated in the counter affidavit and those were not the basis of the original order.

4.4 It is further submitted by Shri Ramachandran, learned Counsel, appearing on behalf of the appellant (the original writ petitioner) that even no opportunity was afforded to the appellant to rebut the new story/grounds put forward for the first time in the counter affidavit filed in reply to the appellant's writ petition in the High Court. It is submitted yet the High Court has confirmed the impugned cancellation of allotment order/letter dated 24.08.2004.

4.5 It is further submitted by learned Counsel appearing for appellant that even the subsequent lease in favour of Respondent No. 4 is absolutely illegal and by suppression of material facts before the High Court. It is submitted that, before the High Court, in writ petition Nos. 9164 of 2005, 1978 of 2007 and 1489 of 2005, neither MHADA nor Respondent No. 4- Anchor Foundation disclosed that SLP filed by the appellant with respect to very plot is pending before the Supreme Court. It is submitted that the subsequent lease in favour of Respondent No. 4 was on the basis of some settlement between the writ petitioners in the aforesaid three writ petitions, which is absolutely illegal and obtained by suppressing the material fact. It is submitted that even the appellant (herein the original writ petitioner) was also not a party to aforesaid three writ petitions and the consent terms arrived at between the parties to the aforesaid three writ petitions on the basis of which the subsequent lease has been granted in favour of Respondent No. 4. It is submitted that therefore subsequent lease in in favour of Respondent No. 4 is not binding to the appellant herein. It is submitted that, even otherwise as per the order

passed by this Court dated 10.05.2005, the arrangement, if any, entered into with Anchor Foundation shall be the subject to the results of the present petition.

4.6 It is further submitted by Shri Ramachandran, learned Counsel appearing on behalf of the appellant (original writ petitioner) that, as such, the appellant had complied with all the terms and conditions of the allotment and is fulfilling all the eligibility criteria and, in fact, the allotment order was passed in favour of the appellant and the same came to be cancelled on the premise that the appellant did not submit the required documents to prove its eligibility which, as such, were already submitted by the appellant with the appropriate authority within the stipulated time, it is prayed to allow to present appeal and quash and set aside the impugned judgment and order passed by the High Court.

5. The appeal is vehemently opposed by Shri Shyam Divan, learned Senior Advocate, appearing on behalf of Respondent No. 4; Shri Nishant R. Katneshwrkar, learned advocate appearing on behalf of the State of Maharashtra and learned counsel appearing on behalf of the MHADA.



5.1 Shri Shyam Divan, learned Counsel appearing on behalf of the Respondent No. 4, has submitted that admittedly the appellant claimed the allotment under Regulation 16 of 1982 Regulation. It is submitted that thereafter Regulation 16 was challenged before the High Court by way of writ petition No. 75 of 2004. It is submitted that in the meantime and during the pendency of the Writ Petition No. 75 of 2004, MHADA and the Government came out with the fresh directives and guidelines which would govern exercise of powers under Regulation 16. It is submitted that therefore powers under Regulations 16 under which the appellant claimed the allotment are required to be considered as per the fresh directives and guidelines which would govern the exercise of powers of Regulation 16. It is submitted that, therefore, the appellant (original writ petitioner) cannot claim any right of allotment under the original Regulation 16. It is submitted that, therefore, there are changed circumstances in view of the subsequent decision of the High Court in Writ Petition No. 75 of 2004.

5.2 It is further submitted by Shri Shyam Divan, learned Counsel appearing on behalf of the Respondent No. 4 that in fact thereafter there is a lease in favour of Respondent No. 4 initially for a period of 15 years and thereafter the same has been extended for a further period of 15 years. It is submitted that under the lease in favour of Respondent No. 4, Respondent No. 4 has deposited Rs. Rs. 1,38,61,046/-. It is submitted that not only that thereafter Respondent No. 4 has fully made improvements in the land and the plot in question and the same is being used by the school children of the locality and even by the other people of the locality. It is submitted that Respondent No. 4 has strictly complied with the consent terms submitted before the High Court in the aforesaid three writ petitions and has strictly complied with the terms and conditions of the lease and nobody has raised any grievance. It is submitted, in the present case, the lease in favour of Respondent No. 4 is not under challenge. It is submitted that the appellant (the original writ petitioner) was very much aware of the earlier allotment in favour of Respondent No. 4 and the subsequent lease in Respondent No. 4 from the very beginning,

still the lease in favour of Respondent No. 4 has not been challenged. Therefore, it is prayed to dismiss the present appeal.

6. Heard learned Counsel appearing on behalf of the respective parties at length. At the very outset, it is required to be noted that the appellant herein applied for allotment of plot in issue under Regulation 16 of 1982 Regulation. It is required to be noted that at the time when the appellant (the original writ petitioner) applied and in fact was allotted the plot in issue in the month of February, 2004 there were different guidelines and the directives in force. However, Regulation 16 itself was under challenge before the High Court in Writ Petition No. 75 of 2004 on the ground that Regulation 16 confers uncontrolled, arbitrary as well as sweeping powers on the Government to allot the plots which are part of housing schemes implemented by MHADA, to outsiders and third parties. That, in between, the State as well as MHADA came out with the fresh directives and guidelines which would govern exercise of powers under Regulation 16. Therefore, the High Court by judgment and order dated 15.09.2004 did not set aside Regulation 16, however, the High Court approved the guidelines.

Therefore, thereafter the powers under Regulation 16 are to be exercised as per the fresh directives and guidelines which came to be approved by the High Court. Therefore, the guidelines under which the powers were exercised under Regulation 16, at the time when the appellant applied and claimed the right of allotment is not in existence. A fresh directives and guidelines would govern the exercise of powers under Regulation 16, which came to be approved by the High Court, are to be applied.

7. It is true that when the order of cancellation dated 24.08.2004 was passed, the same was solely on the ground that the appellant- Trust did not submit the relevant documents to prove its eligibility and on no other ground. The High Court considered the grounds stated in the counter affidavit and did not interfere with the order of cancellation dated 24.08.2004. The appellant would be justified in making the grievance that the High Court was not justified in considering the grounds stated in the counter affidavit which were not the basis for passing the original order of cancellation. However, at the same time, subsequent development and grant of the lease in favour of Respondent No. 4

initially for a period of 15 years and thereafter for a further period of 15 years and the lease in favour of Respondent No. 4 is not challenged, we do not propose to interfere with the impugned judgment and order passed by the High Court. It is required to be noted that there is a lease in favour of Respondent No. 4 since 2004-2005. That Respondent No. 4 had deposited/paid Rs. 1,38,61,046/-. It is also required to be noted that the consent terms recorded by the High Court in Writ Petition Nos. 9164 of 2005, 1978 of 2007 and 1489 of 2005, on the basis of which the High Court disposed of the aforesaid three writ petitions in terms of the consent terms and on the basis of which the lease of plot in issue in favour of Respondent No.4, the lease in favour of Respondent No. 4 has not been challenged. The lease granted to Respondent No. 4 was pursuant to the order passed by the High Court in the aforesaid three writ petitions. It is true that the appellant- Trust was not a party to the said writ petitions. However, still, either the order passed by the High Court in the aforesaid three writ petitions and even the lease granted in favour

of Respondent No. 4 was/is required to be challenged before the competent Court of Law.

8. The submission on behalf of the appellant that as per the order passed by this Court dated 10.05.2005, the arrangement, if any, with Respondent No. 4 would be subject to the result of present writ petition and, therefore, the appellant is not required to challenge the lease in favour of Respondent No. 4, cannot be accepted. In the present appeal, there is no specific challenge to the lease in favour of Respondent No. 4. Under the circumstances of the case, we decline to interfere with the impugned judgment and order passed by the High Court and we decline to grant any relief to the appellant. At the same time, we observe that we have not expressed anything on the merits, on the legality and validity of the lease in favour of Respondent No. 4.

9. In view of the above and for the reasons stated above, the present appeal deserves to be dismissed and accordingly, the same is dismissed with the above observations. However, in the facts and circumstances of the case, there shall be no order as to costs.

.....J.  
(L. NAGESWARA RAO)

.....J.  
(M. R SHAH)

New Delhi;  
April 9, 2019