



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO.1940 OF 1999

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|----|------------------------------------------|---|-----------------|
| 1. | Abhishek Mahesh Garodia, |] | |
| | Age 46 years, Indian inhabitant, |] | |
| | residing at Garodia House, |] | |
| | M.G. Road, Ghatkopar (East), |] | |
| | Mumbai: 400 077. |] | |
| 2. | Rohit A. Goyal |] | |
| | Age 43 years, Indian inhabitant, |] | |
| | residing at 5, Zenith Park, Deonar |] | |
| | Farm Road, Deonar Chembur, |] | |
| | Mumbai 400 088. |] | |
| 3. | Sarita M. Garodia |] | |
| | Age 73 years, Indian inhabitant, |] | |
| | residing at Garodia House, |] | |
| | M.G. Road, Ghatkopar (East), |] | |
| | Mumbai 400 077. |] | |
| 4. | Neha H. Dharmani |] | |
| | Age 46 years, Indian inhabitant, |] | |
| | residing at 6/A-4, Basant Park, |] | |
| | R.C. Marg, Opp. Chembur Police Station, |] | |
| | Chembur, Mumbai 400 071. |] | |
| | All the Petitioners are the present and |] | |
| | only Trustees of G.S. Garodia Charitable |] | |
| | Trust having its office at 149/159-71, |] | |
| | Garodia Shopping Centre, Garodia Nagar, |] | |
| | Ghatkoper (E), Mumbai 400 072. |] | ...Petitioners. |

V/s

- | | | |
|----|--------------------------------|---|
| 1. | Maharashtra Housing Area & |] |
| | Development Authority, Griha |] |
| | Nirman Bhavan, Bandra (E), |] |
| | Mumbai 400 051. |] |
| 2. | State of Maharashtra |] |
| | through the Secretary, Housing |] |
| | Mantralaya, Mumbai. |] |

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3. Vile Parle Kelwani Mandal]
 (Narsi Monji Institute of]
 Management Studies)] ...Respondents.

Mr. Aspi Chinoy, Senior Advocate, a/w Mr. Karl Tamboly, Mr. Aseem Naphade, Ms. Kausar Banatwala and Ms. Neuty N. Thakkar, i/by Mr. Tushar Goradia for the Petitioners.

Mr. Virendra Tulzapurkar, Senior Advocate a/w. Mr. P.G. Lad, a/w Ms. Aparna Kalathil and Ms. Shreya Shah for Respondent No.1-MHADA.

Ms. Prachi Tatake, Addl. GP for Respondent No.2-State.

Mr. Girish Godbole, Senior Advocate, a/w Mr. Gaurav Srivastav, Mr. Rahul Soma, Mr. Shongadgil, Ms. Manorama Mohanty, Ms. Malika Mondal, Mr. Hitanshu Jain and Mr. S.K. Srivastav, i/by S.K. Srivastav & Co. for Respondent No.3.

**CORAM : A. S. GADKARI AND
 KAMAL KHATA, JJ.**

RESERVED ON : 30th January, 2025.

PRONOUNCED ON : 23rd April, 2025.

JUDGMENT (Per Kamal Khata, J.):

1) By this Petition under Article 226 of the Constitution of India, the Petitioners seek cancellation of the Order contended in the letter dated 1st July, 1999 whereby Maharashtra Housing and Area Development Authority ("MHADA")-Respondent No.1 cancelled the allotment of the plot in favour of the Petitioner-Trust. Additionally, it also seeks cancellation of Order dated 26th April, 1999 whereby the said plot was allotted to Respondent No.3.

BRIEF FACTS:

2) The Petitioners are present trustees of a public trust namely

G.S. Garodia Charitable Trust ("Trust"). The Trust's object is to impart education and run educational institutions in addition to other charitable acts for the purpose of benefits to public at large.

2.1) The Trust was allotted plot No.51 reserved for school measuring 6100 sq. mtrs. at Juhu Vile Parle Development Scheme under the provisions of Regulation No.16 of The Maharashtra Housing and Area Development (Disposal of Land) Regulations, 1982, pursuant to their Application dated 28th April, 1992 to the then Hon'ble Minister for Housing, Maharashtra. The Trust submitted various documents from time to time as being called upon to furnish by MHADA. By its letter dated 11th February, 1993 MHADA called upon the Trust to pay Rs.53,91,425/- towards the premium amount, annual lease rent and other legal charges as more particularly set out therein. Additionally, the Trust would have to pay cost of construction of the compound wall and the guarding charges (that would be communicated). Upon receipt of the premium amount and the additional costs, MHADA would hand over the possession of the school plot immediately.

2.2) MHADA acknowledged the receipt of the 25% premium amount namely, Rs.13,50,000/- from the Trust and thereupon granted their No Objection to the Trust to prepare and approach the BMC for approval of the detailed building plans for the construction of the school building. On

21st March, 1993 MHADA called upon the Trust to pay the balance amount in respect of the allotment of the school plot. Normally, six months are granted to make the entire payment which would have ended on 20th September 1993. However, on 18th June, 1993 MHADA informed the Trust that, the State Government had granted stay against the allotments of the plot made under Regulation 16 by its letter dated 12th April, 1993 and therefore, they should not take any further action in respect of the allotment of the said plot.

2.3) Upon receiving such a letter, the Trust by its letter dated 28th June, 1993 made a representation to then Minister for Housing requesting him to vacate the stay Order in respect of the school plot as the Trust had completed all formalities including measurement of land by the City Survey Office and submissions of all documents to the concerned Authorities for undertaking construction work of a primary school. That apparently did not fructify.

2.4) The Petition then states that, in December, 1996, the Trust paid MHADA the remaining balance amount of Rs.40,41,425/-. MHADA received the entire amount of Rs.53,91,425/- without any protest or complaint regarding late payment charges or claims for interest due to late payment. The Trust contends that upon receiving the entire payment, MHADA was obligated to handover the possession of the school plot.

2.5) Only on 27th February, 1997, MHADA for the first time called upon the Trust to pay interest in the sum of Rs.13,19,949/- on the amount of Rs.53,91,425/-. The Trust was also informed that, the cost of construction of the compound wall, fencing and guarding charges if any incurred by the Executive Engineer, Housing Poisar Division, would be communicated to them. In response to this communication, the Trust requested MHADA to waive the interest since it was the charitable institution and the plot was allotted for setting up an educational institution. By letters dated 10th March 1997, 24th July 1998, 21st August 1998 and 18th September 1998 repeated requests to waive interest were made by the Trust.

2.6) MHADA did not pay heed to the Trust's request, called upon them to pay Rs.16,17,160/- outstanding as on 20th August, 1998. Moreover, by the letters dated 21st August, 1998 and 18th September, 1998, MHADA informed the Trust that the allotment may be cancelled if the payment was not made within eight days .

2.7) On 12th July, 1999 the Trust received a letter dated 1st July, 1999 from MHADA informing them that, the allotment of plot No.51 stood cancelled on account of non-payment of interest. The letter further stated that, the Cabinet's sub-committee in its meeting held on 26th April 1999, had decided to cancel the plot's allotment to the Trust. Immediately the

following day, the Trust sent a cheque of Rs.16,17,160/- towards interest along with its response and requested information from MHADA about the additional costs. Since there was no response, and in the backdrop of the facts the Trust filed the present Petition.

3) When the Trust applied for urgent circulation before this Court it discovered that, the MHADA had already allotted the said plot to Respondent No.3.

4) Mr. Aspi Chinoy, learned Senior Counsel for the Petitioners contended that, the action of cancelling the Trust's allotment and granting the allotment to Respondent No.3 are illegal, arbitrary, unreasonable, contrary to law, malafide and invalid. According to him, the Trust had not breached any condition and had complied with all the requisitions including payment of entire consideration of Rs.53,91,425/- to MHADA.

4.1) He submitted that, in these circumstances, MHADA was not entitled to cancel the said allotment on any ground whatsoever. In fact, MHADA was obliged to handover possession upon receipt of the consideration. There was no provision to levy any interest for late payment nor a provision for cancellation of the allotment in the event of any default. According to him even Regulation No.16 of MHAD Disposal of Lands Regulation, 1982 (under which the plot was allotted to the Trust) did not provide or authorize MHADA to levy interest for overdue payment or cancel

the allotment on any ground. Therefore, when the Trust sent the cheque for interest, on receipt of termination letter for non-payment of interest, MHADA was obligated to accept the same and revoke the cancellation; that would have been fair and reasonable action for a public body. MHADA ought to have kept in mind the Trust's objective as a charitable organization to start a school.

4.2) He submitted that, the Trust had incurred considerable expenses for measuring the plot and engaging architects to prepare and submit plans for construction of the school to BMC. The cancellation of allotment would therefore cause irreparable loss to the Trust.

4.3) According to him, MHADA's action were pre-planned and premeditated, indicating malafide intent. The decision to allot the plot to Respondent No.3 was made even before the Trust's allotment was cancelled, as evidenced by the sequence of events. The 3rd Respondent's application on 16th January, 1999, preceded the cancellation of Trust's allotment on 12 July, 1999.

4.4) In support of the above contention, he cited a similar case, where the High Court had reversed MHADA's allotment in favour of M/s Anchor Foundation by setting aside the cancellation of allotment in favour of M/s Maulana Azad Memorial Trust for its Urdu School.

4.5) He further submitted that, the Cabinet sub-committee held a

meeting on 26th April, 1999. With a premeditated intention to cancel the Trust's allotment, the sub-committee was informed that Respondent No.3 had sought allotment of the said plot and were misinformed about the Trust's failure to pay the entire amount including a large part of the principal amount. For this reason, the sub-committee could have derived a wrong conclusion.

4.6) He strenuously argued that, MHADA had miscalculated the interest, by including even that period of around nine months, from 19th June 1993 to 21st March 1994, during which the State Government had stayed MHADA's allotment process. Despite being informed about the miscalculation on account of stay, MHADA completely ignored this aspect.

4.7) Further, each letter claimed a different rate of interest though the Letter of Allotment did not provide for payment of interest. Then, though the letters informed that 12.5% would be charged, the Trust was charged interest at 16%, that too from July 1993 - MHADA ought to have excluded the stay period of around nine months. Moreover, though MHADA demanded interest at the rate of 12% for the first time on 21st November 1996, by which time the entire payment of Rs 50,00,000/- was made, they charged interest at 16% on Rs. 40,41,425/- from 11th July, 1993. That too was wrong as the Trust was required to pay Rs. 40,41,425/- by 21st April, 1994 as per MHADA's letter dated 21st March 1994. According to him,

MHADA could have charged interest only from 21st April, 1994 when the stay was lifted by the Government. Thus, the retrospective charge of interest from 11th July 1993 was entirely baseless.

4.8) Lastly, Mr. Chinoy submits that, MHADA's Order of cancellation of allotment deserved setting aside even for want of Notice and grant of hearing to the Trust. Accordingly, the Petition ought to be allowed.

5) Dr. Tulzapurkar learned senior Counsel for MHADA submitted that, the cancellation of allotment was justified, as was the subsequent allotment to Respondent No. 3. He highlighted that, the Trust had failed to pay the balance amount within the stipulated period and had delayed payments. Despite being granted multiple opportunities, the Trust did not comply with the payment requirements. He emphasized that MHADA had shown sufficient leniency and had followed due process before cancelling the allotment. Additionally, he argued that the Trust had suppressed various letters and documents that indicated their awareness of the interest liability, and the payment demands.

5.1) He asserted that, the letter dated 28th February, 1993 clearly stated that the Trust was required to pay 25% on the issuance of the Letter of Allotment and the balance within a period of six months i.e. by August 1993. This letter was suppressed by the Trust in the Petition. Admittedly, though the balance amount was payable within six months, only in August

1996 the Trust paid a total amount of Rs.50,00,000/- and undisputedly there was a balance of Rs.3,91,425/- payable. He submitted that, the letter dated 21st November, 1996 clearly indicates that, the Trust would have to pay interest at the rate of 12.5% as per the prevailing policy for the delayed payment, to which no objection had been raised. Even thereafter multiple opportunities were granted to the Trust who still failed to make payments. After receiving the payment of Rs.3,91,425/- on 12th December, 1996, MHADA called upon the Trust to pay interest of Rs.13,19,949/-, on 27th February 1997, as per the prevailing policy. Despite having shown sufficient leniency for the payment, the Trust by its letter dated 10th March, 1997 made a grievance for levy of interest. Having failed to pay the interest amount for 15 months, MHADA by its letter dated 21st August, 1998 still granted a further opportunity and called upon the Trust to pay the sum of Rs.16,17,160/- within a period of 15 days; failing which the allotment would be cancelled. The 15 days period expired on 5th September, 1998 and accordingly MHADA was entitled to cancel the allotment. Despite this intimation, 13 days after the expiry period, on 18th September, 1998 MHADA granted the Trust an additional 8 days to pay a sum of Rs.16,17,160/- in the Office of the Executive Engineer and reiterated that on failure to act, MHADA will take a decision to cancel the allotment. He submits that, although an allegation is raised that the document is fabricated as it does not contain the date of 18th September 1988, the Trust

has not challenged this letter.

5.2) Dr. Tulzapurkar submits that, the fact that the Respondent No.3 made an Application for allotment of the land does not, by itself, indicate any malafide or ill intent. The Respondent No.3 sought the allotment because they required additional land adjacent to their other educational institutions. Since this land had been lying vacant for a long duration, a report regarding the allotment of this land to the Trust and the non-payment of interest was submitted to the Government for a decision on 18th February, 1999. In the Cabinet meeting held on 26th April 1999 a decision was made to allot the land to Respondent No.3. After the decision was communicated to MHADA, MHADA informed Respondent No. 3 about the Government's decision by its letter dated 17th June, 1999. On 1 July 1999, pursuant to the Government's decision MHADA informed the Trust that their allotment was cancelled due to non-payment of interest amount of Rs.16,17,160/- within the 15 day period specified in the letter dated 21st August, 1998. MHADA also informed the Trust about the decision of the Cabinet's sub-committee to cancel the allotment to the Trust and asked the Trust to contact the Executive Engineer to receive the amount paid by the Trust.

5.3) Dr. Tulzapurkar relied on the affidavit of Mr. Hanmant M. Dhanure, Executive Engineer of Bandra Division, Mumbai Board dated 18th

August 2023 to submit that, the CEO MHADA had an absolute discretion to grant extension of time for payment of the balance premium upto a period of 6 months from the date of acceptance of payment and charge interest for the extended period at the rate of 12% per annum or at such other rate as may be determined by the Authority from time to time. He submitted that, sufficient leniency was shown to the Trust in making payments and despite having been granted several opportunities and demanding payments from time to time, the Trust had failed to make the payments. He contended that, the Trust had failed to even seek extension of time from MHADA and had also failed to comply with the Regulation 9 of MHADA Regulations 1982. He referred to the statement which showed that the payments were made by the Trust only in installments. He relied upon the Resolution No.3094 dated 16th November 1992 which entitled MHADA to charge interest at the rate of 16% per annum. He accordingly submitted that, the cancellation was absolutely just and could not be faulted in any manner whatsoever. He drew our attention to Clause 6 of Resolution No.3094 annexed as Exhibit- 'D' to the Affidavit of Mr. Dhanure dated 18th August, 2023. He concluded by stating that, the Petition deserves to be dismissed.

6) Mr. Godbole, learned senior counsel appearing for Respondent No.3 adopted the arguments of Dr. Tulzapurkar and also argued and submitted that, the Petitioners have suppressed material facts and

documents from the Court. He referred to the judgment in the case of *S.P. Chengalvaraya Naidu (Dead) by Lrs. vs. Jagannath (Dead) By Lrs. & Ors.* reported in (1994) 1 SCC 1 to submit that, one who comes to Court must come with clean hands and that a person whose case is based on falsehood has no right to approach the Court and deserves to be summarily thrown out at any stage of the litigation.

6.1) He submitted that, the fact that the Resolution No.3094 was dated 16th November, 1992 the Trust would obviously have been aware of the same and cannot at this belated stage claim ignorance of the prevailing policy. He submitted that, by its letter dated 19th November, 1992 MHADA had informed the Petitioners that, the plot was supposed to be allotted under Regulation 16 of 1982 Regulations and was subject to the usual terms and conditions. The Trust had categorically stated that they did not have any educational institution but their sister Trust P. G. Garodia Charitable Trust was running a High School at Ghatkopar. He asserted that, the Trust has suppressed the undertaking given to MHADA whereby the Trust had undertaken to pay the entire balance amount within a period of 6 months by its undertaking dated 2nd March, 1993.

6.2) He submitted that, the Trust contended that they were not informed about the vacating of the stay Order before 25th August, 1993 and therefore they had not made the payment of the balance amount. However,

the Trust had admittedly made payments on 19th July, 1994 and 16th August, 1994 which belies their contention as it was not possible for them to make payments if they were not informed. He said that, the Petitioners have also suppressed the demand letter dated 21st March, 1994 issued by MHADA the Trust was called upon to pay the balance Rs.40,41,425/- within a period of 1 month from the receipt of the letter.

6.3) As a matter of fact, the Trust made a payment of Rs. 7 lakhs towards the premium to MHADA and requested and had stated that, the balance amount would be paid shortly as recorded in their letter dated 19th July, 1994. Mr. Godbole submits that, the letter dated 13th November, 1996 which called upon the Trust to pay the remaining amount without any further loss of time and that they were put to notice that if the payment of the remaining amount was not made then the matter would be reported to the higher Officers is also suppressed. The other letter dated 21st November, 1996 where MHADA called upon the Trust to pay the amount of Rs.10,41,425/- and interest on account of the delay as per the prevailing policy of MHADA is also suppressed. In addition to that, they have also suppressed the letter dated 2nd December, 1996 where the Trust informs MHADA that they had paid Rs.50,00,000/- and the balance of Rs.3,91,425/- would be paid shortly and had requested MHADA to bear with them for some more time. The other letter suppressed, is the letter

dated 3rd December, 1996 where referring to the letter dated 21st November, 1996 they had demanded the payment immediately from the Trust. Even after this letter, the Trust had made payments in 3 installments, the first of which was paid on 7th December, 1996 in the sum of Rs 2,50,000/- and second was on 12th December, 1996 whereby Rs.87,500/- was paid and the third was also on 12th December, 1996 for Rs.53,925/- that was towards the premium. He contends that, the Petitioners have not challenged the demand of interest by MHADA in the Writ Petition and had instead merely requested for the waiver. Therefore, they cannot now contend that, they were not aware that interest would have been leviable for delay in payment. He submitted that, the Petitioners have further suppressed the interest demand letters dated 21st August, 1998 and 18th September, 1998 issued by MHADA.

6.4) Mr. Godbole submitted that, merely because an allotment Order is issued, MHADA is not powerless to cancel the same and it cannot be that the action of cancellation is barred by the principles of estoppel, especially when the party has committed breach of conditions imposed under the Regulations. MHADA was therefore within its rights and obliged to cancel the allotment on account of default by the Trust. He submitted that, it is evident from the responses that the Trust was required to pay interest on the demanded amount and have requested to waive the interest

from MHADA in view of the charitable objects. According to him therefore the denial of the liability to pay interest is merely an afterthought. He submitted that, the Trust has merely challenged the Order of cancellation of allotment dated 1st July 1999 but have not challenged the Regulation 9 under which the interest levy is contemplated. They have also not challenged the decision of the sub-committee of the Cabinet appointed by the Government under Regulation 16 dated 26th April, 1999 whereby it decided to cancel the allotment in favour of the Petitioners. He submitted that, in the absence of challenge to the substantive provision under which interest has been levied, the Trust cannot maintain a Petition for challenging the final decision of cancellation of allotment. It is not a case where the terms of allotment have been changed subsequently. The demand for interest was made on 27th February, 1997 but the Regulations provided for levy of interest in the case of delay of making payment and that it was only after following the process that MHADA has cancelled the allotment in favour of the Trust on account of the defaults committed by the Trust. He submitted that, party cannot take advantage of their own wrong. He submitted that, the Trust cannot contend that they were not made aware of any interest liability because the Trust has made payment of the premium amounts after the demand for interest on 21st November, 1996, on 7th December, 1996 and on 12th December, 1996 without any objection or protest regarding the levy of interest. In fact, they have requested for

waiver of interest. It is submitted that, they have therefore acquiesced to the levy of interest and now are precluded from objecting to the same.

6.5) He argued that, the Trust did not provide any details or particulars to support the accusation of mala fides intention in the Petition. Therefore that accusation should not be considered valid. He submitted that, the Respondent No.3 have paid the entire amount which was demanded within the stipulated time and have also secured the allotment in accordance with law. They have also invested crores of rupees in furtherance of the allotment and have protected the property from encroachment for more than a decade. In the aforesaid circumstances, the Petition should be dismissed, as allowing it would cause grave loss, prejudice and legal injury to the Respondent No.3, for no fault on their part.

6.6) We have heard Mr. Chinoy, learned Senior Counsel for the Petitioner, Dr. Tulzapurkar, learned Senior Counsel for MHADA and Mr. Godbole, learned Senior Counsel for Respondent No.3 and have also perused the entire record before us.

REASONS AND CONCLUSIONS:

7) This Petition is regarding the allotment of land by MHADA under Regulation 16 of MHAD (Disposal of Land) Regulations, 1982 that empowers MHADA allot plots without the process of tender, advertisement, public auction etc. For ready reference, Regulation 16 of MHAD (Disposal of

Land) is reproduced hereinbelow:

“16. Disposal of certain plots under directive from Government. -

Notwithstanding anything contained in these Regulations, the plots reserved for amenities or for purely commercial purposes in any layout prepared by the Authority in a land situate in any of the nine Urban Agglomerations, namely, Greater Bombay, Thane, Ulhasnagar, Pune, Kolhapur, Sangli-Miraj, Solapur, Nashik and Nagpur shall be disposed of in accordance with the directions of the State Government. Similarly, the disposal of not more than two per cent, of the plots reserved for residential use, and to be allotted to individuals, [or to the co-operative housing societies, whether proposed or registered] located in such layouts as aforesaid shall also be done in accordance with the directions of the State Government.

[Provided that, from out of the plots (other than the 2 per cent, plots as aforesaid) reserved for residential use and have not been disposed of, the Authority shall allot or dispose of any of the plots in accordance with the directions of the State Government.”

8) Although at the first blush, having heard Mr. Chinoy it appeared that MHADA's action to cancel the Trust's allotment deserved to be set aside, having heard the Respondent's counsel and on perusal of the entire record we find that the Trust has in fact abused its position. The entire object of MHADA to allot plot for construction of school way back in 1993 has been clearly frustrated. Almost 32 years have passed since the date of the actual allotment. Even though the entire delay cannot be foisted on the Trust for thwarting the object of MHADA, atleast the period of five years delay prior to filing of the Petition are only because of the Trust. They neither paid the consideration nor constructed the school, for which the land was allotted.

9) We agree with Dr. Tulzapurkar that the Trust has not come to the Court with clean hands. It has suppressed both material facts and documents from this Court. No explanation has been given for not paying the balance amount of construction within the stipulated time or even after having being granted multiple opportunities to pay. We find that Trust has suppressed letters that would evince their obligation to pay MHADA as demanded by MHADA from time to time as clearly stated in those letters. Two such letters that have been suppressed are, the letter dated 21st March, 1994 that required the Trust to pay the balance amount of Rs.40,41,425/- within a period of one month, i.e., by 21st April, 1994 and the letter dated

21st November, 1996 whereby MHADA called upon the Trust to pay the amount of Rs.10,41,425/- together with interest at the rate of 12.5% for the delayed period as per the prevailing policy.

10) The Trust has also suppressed the undertaking given by it on 2nd March, 1993 whereby it undertook to pay the entire balance amount within the period of six months. According to us, these three documents itself would evince that the Trust had breached the conditions that were imposed by MHADA. Therefore, Mr. Chinoy's assertion that there was no breach of condition by the Trust has to be rejected.

11) Mr. Chinoy's next contention regarding not being liable to pay interest also cannot be sustained. The Trust has contended that MHADA was not entitled to claim interest at all. That contention is belied by the Resolution dated 16th November, 1992 and the letter dated 21st November, 1996 which relied on this Resolution whilst demanding interest from the Trust.

12) According to us, the Trust was well aware of the Resolution dated 16th November, 1992 because prior to this Resolution, 50% of the premium/consideration amount was required to be paid within the first 15 days. Therefore it was well aware or was deemed to have been aware of the Resolution dated 16th November, 1992 as it had submitted the undertaking dated 2nd March, 1993 to pay the entire balance amount within a period of

six months. It would be pertinent to reproduce Regulation 9 of The Maharashtra Housing and Area Development (Disposal of Land) Regulations, 1982 which reads as under:

“9. Payment of premium. -

(a) A person, whose tender or offer for grant of a lease on payment of premium is accepted, shall pay half of such premium within fifteen days of the acceptance of his offer and the balance within one month thereafter. The Chief Executive Officer, may, in his absolute discretion, grant extension of time for payment of the balance premium upto a maximum of six months of the date of acceptance on payment of interest for the extended period at the rate of 12 per cent. per annum or at such other higher rate as may be determined by the authority from time to time.

(b) Whenever a lease shall be granted in consideration of premium, the ground rent shall be payable annually in advance without any deductions whatsoever, on or before the 10th day of January in each and every year, at the rates to be determined by the Authority from time to time.”

13) It is evident from Clause 6 of the Resolution dated 16th November, 1992 that interest would be chargeable at the rate of 16% after

completion of the six month period. Moreover the Trust has referred to and relied upon Resolution dated 16th November, 1992 in its Affidavit dated 4th February, 2015. Thus, having taking the benefit of the provision in the Resolution dated 16th November 1992, the Trust cannot feign ignorance about the said Resolution. Admittedly, Trust has not challenged the Regulations more particularly Regulation 9 under which MHADA is entitled to levy interest.

14) According to us, the Trust has not challenged the levy of interest, as when it was demanded for the first time on 21st November, 1996, the Trust had deposited the entire interest amount with MHADA after it received the termination letter. Furthermore, the Trust has contended in this Petition that MHADA ought to have accepted the amount and set aside the cancellation of allotment. Thus we are unable to accept the contention of Mr. Chinoy that interest was not payable at all.

15) Regarding, the next contention of Mr. Chinoy that MHADA had no power to cancel the allotment issued in favour of the Trust, we are unable to accept this proposition. We find that MHADA had granted, not only sufficient but multiple opportunities to the Trust to make the balance payment within the stipulated period through various communications. It was therefore justified in submitting a proposal to the Government for cancellation of the allotment on account of the Trust's defaults.

16) We do not find any malafide intent in submitting proposal to the Government for cancelling the allotment of Trust. The sequence of events starting with the application of Respondent No.3 for allotment to the subject land, followed by proposal submitted to the Government to take a decision and the communication of the decision of the cabinet sub-committee first to the Respondent No.3 and subsequently to the Trust cannot itself be a ground to set aside the cancellation of allotment to the Trust. Admittedly, on the date of cancellation there was an outstanding amount payable by the Trust. More than five years had lapsed by then, since MHADA had called upon the Trust to pay the balance amount. Even if we take into consideration that on 7th December, 1996, the Trust had paid Rs.50 lakhs, even then admittedly there was an outstanding amount of Rs.3,90,425/- payable, apart from interest claimed on 1st July, 1999, i.e date of termination of allotment.

17) The allegations of mala fide raised by the Trust are bereft of any details or particulars. It is merely a presumption. In the facts and circumstances narrated herein above, we do not find any reason to give any credence to the same.

18) We do not find the necessity to venture into the assertions and contentions of Mr. Godbole and the fact that Respondent No.3 has invested substantial amounts pursuant to the allotment.

19) In our view, the ratio laid down by the Supreme Court in the case of *S.P. Chengalvaraya Naidu* (supra) holding that the Courts of law are meant for imparting justice between the parties and that one who comes to Court must come with clean hands. Consequently, the person who's case is based on falsehood, has no right to approach the Court and can be summarily thrown out at any stage of the litigation is squarely applicable to the facts of this case. In our view, the Trust has suppressed material facts and documents as more particularly stated by Mr. Godbole above. Therefore, such a party deserves to be thrown out summarily.

20) According to us, the Trust on account of its knowledge of the Resolution dated 16th November 1992, its conduct has waived its rights to deny interest payable. According to us the ratio laid down by the Supreme Court in the case of *Galada Power and Telecommunication Limited V/s. United India Insurance Company Limited and Anr.* reported in (2016) 14 SCC 161 is clearly applicable to the facts of this case. The Judgment holds that, when a party is bound to be fully cognizant of its rights and it neglected to enforce, it would clearly lead to an inference of its waiver and its intention abandone its rights. The conduct of the Trust in this case clearly evinced that although the Trust did not expressly waive its right, it was implied on account of Trust having asked for waiver of interest through its communication and consequently having paid it after the allotment was

terminated. In fact the Petition is based on the ground that the amount paid by the Trust after the letter of termination ought to have been accepted by MHADA and the cancellation of allotment ought to have been revoked by it.

21) The mere allegation of the Trust that MHADA has exercised its powers mala fide is insufficient. The Supreme Court in *First Land Acquisition Collector and Ors. V/s. Nirodhi Prakash Gangoli and Anr.* reported in (2002) 4 SCC 160 has held that, a mere allegation that power was exercised mala fide would not be enough and in support of such allegation specific materials should be placed before the Court. The burden of establishing mala fides lies heavily on the person who alleges it. Apart from the bald allegations made in the Petition there is no specific material placed by the Trust to support such allegations of mala fide.

22) Further, the Supreme Court in the case of *Union of India and Ors. V/s. Ashok Kumar and Ors.* reported in (2005) 8 SCC page 760 has upheld the proposition that to invalidate or nullify any act or Order one must establish the charge of bad faith, an abuse or a misuse by the authority of its powers, while the indirect motive or purpose, or bad faith or personal ill will is not to be held established, except on clear proof thereof.

23) The decision making process by the authority was correct or not is to be tested by the Wednesbury principle. As held by the Supreme Court in the case of *Union of India and Anr. V/s. G. Ganayutham* reported

in (1997) 7 SCC 463, the Court would have to consider whether the relevant matters had not been taken into account or whether irrelevant matters had been taken into account or whether the action was not bona fide. It also held that the Court will also consider whether the decision was absurd or perverse. It held that the Court would not however go into the correctness of the choice made by the administrator amongst the various alternatives open to him. The Court was also not entitled to substitute its decision to that of the administrator as per the Wednesbury's test. Thus, even on this ground, the Trust's contention that the cancellation of the Trust's allotment was arbitrary deserves to be rejected.

24) MHADA had rightly submitted the proposal in the above circumstances to the Cabinet's Sub-committee pointing out the relevant facts and the undisputed delay for payment of consideration by the Trust. We do not find the actions of MHADA or the sub-committee perverse or absurd for having cancelled the allotment in the stated circumstances.

25) According to us the contention that, there was no notice or hearing given to the Trust before cancellation of the allotment also deserves to be rejected. According to us the principles of natural justice would be attracted only when termination is on account of a punitive measure or stigma attached. In the case of *State of Uttar Pradesh V/s. Sudhir Kumar Singh and Ors.* reported in (2021) 19 SCC page 706, it was held that

natural justice is a flexible tool in the hands of judiciary to reach out in fit cases to remedy injustice. The breach of the *audi alteram partem* rule cannot by itself, lead to the conclusion that prejudice is thereby caused. According to us admittedly there was delay in consideration in payment, there were multiple opportunities granted to the Trust to make payment which were admittedly not adhered to resulting in breach. In our view therefore, this is a clear case where no prejudice as such is caused to the Trust who has failed to make payment of consideration demanded by MHADA and therefore the further notice and hearing was not warranted.

26) In view of the above discussion we find that, there are no merits in the Petition and is accordingly dismissed with no order as to costs.

(KAMAL KHATA, J.)

(A.S. GADKARI, J.)

27) At this stage, learned counsel for the Petitioners submitted that, the interim relief of 'status quo' which is in favour of the Petitioners since 18th November, 1999 be continued for a period of two weeks from today, to enable the Petitioners to challenge the Order before the Hon'ble Supreme Court. Learned Advocates for the Respondents opposed the said prayer.

28) However, we deem it appropriate to continue the said interim relief of 'status quo' for a period of two weeks from today to enable the Petitioners to impugn the Order before the Hon'ble Supreme Court.

(KAMAL KHATA, J.)

(A.S. GADKARI, J.)