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**Devayani Hari Shanbaug Vs. Estate Manager (Sales), Bombay Housing and Area Development Board**

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**Court :** Mumbai

**Decided On :** Dec-15-1982

**Reported in :** 1983(1)BomCR405

**Judge :** M.L. Pendse, J.

**Acts :** Maharashtra Housing and Area Development Board (Allotment, Management and Sale of Tenements) Regulations, 1970 - Regulation 2

**Appeal No. :** Writ Petition No. 631 of 1980

**Appellant :** Devayani Hari Shanbaug

**Respondent :** Estate Manager (Sales), Bombay Housing and Area Development Board

**Advocate for Def. :** S.S. Parkar, Adv.

**Advocate for Pet/Ap. :** K.H. Chopda, Adv.

**Disposition :** Petition succeeds

**Judgement :**

**M.L. Pendse, J.**

1. The facts of this case would unfurl the plight of the petitioner in securing the premises from the Bombay Housing and Area Development Board.
2. The petitioner is unmarried and is residing with her parents at Matunga in one-room tenement. The petitioner has got two brothers and one sister who are also living in the premises at Matunga. In the year 1978, the respondents published a housing scheme for the middle income group people in Bombay. The advertisement appeared in the local newspaper on July 4, 1978 providing that the people whose total family income was within the range of Rs. 600/- and Rs. 1500/- would be entitled to apply for accommodation in the houses to be constructed by the respondents at various places in Bombay. In accordance with the advertisement, the petitioner filed an application on August 2, 1978 claiming that the total family income was more than Rs. 600/- per month and less than Rs. 1500/- per month. The petitioner pointed out in the application that she was drawing a salary of Rs. 350/- per month while her two brothers and sister were together drawing Rs. 600/- per month in casual employment. The petitioner sought accommodation in the premises to be constructed at Nehru Nagar, Kurla.
3. The respondents held a draw in respect of the eligible applicants who had applied for allotment of the tenement under the Middle Income group Scheme on September 26, 1978 and the petitioner was one of the successful applicants. On November 6, 1978, the petitioner received allotment letter from the Assistant Estate Manager (Sales) of the respondent Board informing her that the application has been accepted and she should comply with the requirement to enable her to get the tenement at Nehru Nagar, Kurla. The requirement was to give an undertaking to furnish an affidavit and to produce a passport size photograph. The petitioner satisfied the requirements by a forwarding letter dated November 10, 1978. Curiously, for a long time thereafter the petitioner did not hear anything from the respondent Board but on September 3, 1979 a letter addressed by the Estate Manager (Sales) of the Board was received stating, inter alia, that it has been decided to reject her application for allotment of tenement as she did not fulfil the condition of income limit fixed under the scheme. Certain correspondence ensued between the parties but as the petitioner was unable to secure any relief from the Board, the petitioner was driven to file the petition under Article 226 of the

Constitution of India in this Court on May 27, 1980. The petitioner claims that a writ of mandamus be issued directing the respondents to set aside the order rejecting her allotment and to further direct the respondents to hand over the tenement at Nehru Nagar, Kurla. On behalf of the respondents, Shankarrao Parsuram Jadhav, Deputy Chief Officer (Estate Management) Maharashtra Housing and Area Development Board has filed the return sworn on April 14, 1981. The affidavit sets out the procedure for allotment of the tenements. The defence raised on behalf of the respondents is that the petitioner did not satisfy the requirement of the income test.

4. The short question which falls for determination is whether the petitioner has complied with the income test. The respondent Board has framed the regulations known as Maharashtra Housing Board (Allotment, Management and Sale of Tenements) Regulations of 1970. The Regulation No. 2 defines the expression 'income' as 'in relation to an applicant or allottee means the total annual income regularly derived by a person from his occupation, trade, business or employment or any calling or source, constituting normal means of livelihood.' The regulations do not define the expression 'family', Shri Parkar, learned Counsel appearing on behalf of the respondents, relied upon a brochure issued by the Maharashtra Housing and Area Development Authority and relied upon the note dealing with 'income Groups'. Under this heading, it is stated that the family income includes, the income of the applicant and his/her spouse.

5. The contention urged on behalf of the respondents is that the petitioner is an unmarried young lady and her family would not include her two brothers and the sister. The submission is that the income of the petitioner is less than Rs. 600/- per month and it is not permissible to take into consideration the income of her two brothers and the sister because they are not members of the family. The claim of the petitioner is resisted only on this short ground. In my judgment, the contention urged on behalf of the respondents is entirely misconceived. It is futile for the respondents to claim that the ambit of expression 'family' only includes applicant and his/her spouse. One can well imagine that in large number of cases where the family member would not be necessarily the spouse of the applicant but can be either the brothers or sisters. Take instance of a joint family. If the two brothers are

the members of the joint family and one of the brothers applies for allotment, it is impossible to claim that the income of the other brother cannot be taken into consideration because he does not fall within the ambit of expression 'family'. In my judgment, the reliance by the respondents on the note included in the brochure is not sufficient to deprive the petitioner of a valuable right. It hardly requires to be stated that large number of brothers and sisters live together in this town and the advantage of the scheme which is claimed to have been floated for the benefit of the Middle Income Group people cannot be deprived by putting such artificial expression on the word 'family'. In my judgment, there is no reason whatsoever to cancel the allotment in favour of the petitioner.

6. There is one more circumstance which cannot be overlooked. In spite of the letter of allotment issued to the petitioner in the year 1978, the respondents took almost a year to inform her about the cancellation of the allotment. Such delay on the part of the respondents creates doubt about the bona fides of the respondents. In my judgment, the letter dated September 3, 1979 written by the respondent-Board cancelling the allotment in favour of the petitioner is totally erroneous and the action cannot be sustained.

7. Accordingly, the petition succeeds and the rule is made absolute and the order and the direction given by the respondent in letter dated September 3, 1979 and December 19, 1979 is cancelled and the respondents are directed to hand over the tenement under M.I.G. Housing Scheme, Nehru Nagar, Kurla within a period of one month from the date of the compliance with the required conditions. One tenement in Nehru Nagar, Kurla has been reserved for the benefit of the petitioner by the interim order passed by this Court. The tenement reserved for the benefit of the petitioner will be available provided she satisfies the required conditions within a period of two months from today. The respondents shall pay the costs of the petition.