

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION STAMP NO.19214 OF 2015

Murtuza Y Harianwalla and anr. : Petitioners.

Versus

**Maharashtra Housing and Area
Development Authority and ors. : Respondents**

**Mr.Dakshesh M Vyas a/w Mr. D S Sabnis i/by Lex Firmus for the
Petitioners.**

Mr. P G Lad for the Respondent No.1-MHADA

**Mr. V V Tulzapurkar, Senior Advocate a/w Ms. Rati Patni, Ms Divyanka
Kapoor and Ms Yogini Borade and Mr. Vivek Morya i/by Wadia Ghandy &
Co. for the Respondent No.3.**

CORAM : R. M. SAVANT, J.

DATE : 22nd July 2015

P.C.

1 At the outset the learned counsel appearing for the Petitioners seeks leave to amend so as to annex the impugned order dated 2/7/2015 passed by the Competent Authority i.e. the Executive Engineer, C-1 Division, M.B.R. & R. Board, Mumbai, under Section 95A of the Maharashtra Housing & Area Development Act, 1976. Leave granted. Amendment to be carried out forthwith.

2 The above Petition takes exception to two orders i.e. order dated 2/7/2015 and the order dated 16/7/2015. By the first order dated 2/7/2015 an order of eviction has been passed against the Petitioners under Section 95A

of the said Act By the second order, the Petitioners are called upon to vacate the premises and hand over the possession of the same.

3 The Petitioners are the occupants of Room Nos.28-29, 2nd Floor, of the building known as Sardharia Building, Pakmodia Street & Nabibulla Road, Bhendi Bazaar, Mumbai 400 00, which building is taken up for re-development under the Cluster Development Scheme being implemented at Bhendi Bazaar, Mumbai under Development Control Regulation No.33(9) of the Development Control Regulations 1991 as applicable to the city of Mumbai. In terms of the procedure applicable, the M.B.R. & R. Board, Mumbai carried out survey of the building in question and thereafter certified the areas in occupation of each of the tenants/occupants who are eligible for allotment of permanent alternate accommodation. In so far as the Petitioners are concerned, the first certification was done on 8/2/2012 and it was recorded that the Petitioners are in occupation of an area of 67.65 sq.meters. The Petitioners, it seems, were aggrieved by the said certification of the area in their occupation, and therefore, represented to the M.B.R. & R. Board, Mumbai by their letter dated 16/3/2012. The said letter of the Petitioners was replied to by the M.B.R. & R Board, Mumbai by its Chief Officer's letter dated 27/12/2013 wherein the Petitioners were informed that the carpet area of the said Rooms 28/29 was again remeasured on 10/4/2012 in the presence of the Petitioners and was found to be the same. After the said letter dated 27/12/2013, the Petitioners

once again represented to the Chief Officer, M.B.R. & R Board, Mumbai by a letter addressed some time at the end of March 2014 making a grievance as regards the area which was recorded against their names. Pursuant thereto the exercise of carrying out re-measurement of the area was once again carried out and, a note put up by the M.B.R. & R. Board, Mumbai dated 15/7/2015 discloses that as per the request of the Petitioners, the re-measurement was carried out and the area was found to be same as previously recorded i.e. 67.65 sq.meters.

4 The proceedings under Section 95A of the MHADA Act were required to be adopted against the Petitioners in view of the fact that they were not shifting to the temporary transit accommodation which was provided by the Respondent No.3 who is the developer. The said proceedings have culminated in the first order dated 2/7/2015, the second order dated 16/7/2015 is only consequential to the first order asking the Petitioners to vacate and hand over the possession of the rooms in question.

5 The learned counsel for the Petitioners sought to reiterate the grievance of the Petitioners that they were representing to the M.B.R. & R. Board, Mumbai that the area of the Petitioners has not been correctly recorded in the certified list. The learned counsel for the Petitioners would contend that the agreement in respect of the permanent alternate accommodation is also

vague.

6 In my view, it is not possible to accept the contentions of the learned counsel for the Petitioners in the light of the certified list and also in the light of the fact that re-measurement was carried out on more than one occasion.

7 In so far as the agreement is concerned, the learned Senior Counsel appearing on behalf of the Respondent No.3 developer submitted that the agreement identical to the agreements which have been entered into with the other occupants is being entered into with the Petitioners. Obviously the Petitioners cannot be treated differently than the other occupants. The learned Senior Counsel for the Respondent No.3 also pointed out that the Petitioners would be provided temporary alternate accommodation which is ready for occupation. If that be so, it was for the Petitioners to shift to the temporary alternate accommodation and in the guise of raising disputes as regards the certified area cannot latch on the old premises and thereby impede the re-development of the property.

8 For the reasons as afore-stated no case for exercise of the writ jurisdiction of this Court is made out. The above Writ Petition is accordingly dismissed. The Petitioners are granted time up to 31st July 2015 to vacate the

premises in question after which date the authorities would be free to proceed against the Petitioners in accordance with law.

[R.M.SAVANT, J]