

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO.361 OF 2015**

Mrs Sheela Prakash Desai and another	... Petitioners
v/s	
Maharashtra Housing and Area Development Authority and others	... Respondents

Mr Prakash S. Desai, Petitioner No.2 in person present.
Mr Vishwajit P. Sawant with Mr Prabhakar Jadhav for Respondent
Nos.1 to 3.
Mr Vaatsal Varma i/b M/s Indo Law Hub for Rspondent No.5.
Mr Sachin R. Pawar for Respondent No.8.

**CORAM: S.C. DHARMADHIKARI &
B.P. COLABAWALLA JJ.**

DATE : 9TH SEPTEMBER 2015

P.C.:-

1. By this Petition under Article 226 of the Constitution of India, the Petitioners who are appearing in person have claimed diverse reliefs. These reliefs are claimed in the hope that a Writ Petition under Article 226 of the Constitution of India being an

original proceeding and this Court's extraordinary jurisdiction would enable it to grant these reliefs.

2. If one reads the prayer clauses, by prayer clause (A), the Petitioners pray for issuance of writ of certiorari or any other appropriate writ, order or direction calling for the records pertaining to execution of conveyance of Building No.6 and Tenement Nos.162 and 184 of Building No.6 at Tagore Nagar, Vikhroli (East), Mumbai 400 083 from the Office of the Estate Manager – III. The next relief is that this Court should declare that the Deed of Sale and Indenture of Lease dated 4.11.2010 entered into and executed by Maharashtra Housing And Development Authority (for short, MHADA) in favour of Vikhroli Saikripa CHS Ltd., Building No.6, Tagore Nagar, Vikhroli (East), Mumbai 400 083 is null and void. Thereafter the Petitioners pray that the tenancy in respect of tenement No.164 of Building No.6 be restored in the name of Vinodchandra Keshavlal Shah, the original tenant and finally, a letter dated 15th December 2010 issued to Vikhroli Saikripa CHS Ltd. in respect of conveyance of Building No.6 be withdrawn.

3. Thereafter, the Petitioners are praying for initiation of eviction proceedings against one Rajanikant Hargovind Trivedi in respect of tenement No.162 of Building No.6. There are other reliefs and they are running upto prayer clause (H) but which are in furtherance of the primary reliefs referred above.

4. Our attention has been invited by the party appearing in person to the MHADA (Estate, Management, Sale, Transfer and Exchange of Tenements) Regulations 1981. Our attention is invited to Regulation 25 appearing in Part V and dealing with transfer of tenements, it reads as under :-

“25. Prohibition against transfer of tenement

(1) No allottee shall during the currency of tenancy under Regulation 20, transfer any tenement allotted to him except with the previous permission in writing of the Board and also of the housing society or the company, if such a society or company has already been formed and registered.

(It shall be open to the Board to refuse the permission or to grant the same subject to such conditions including a condition regarding the payment of a portion of the

unearned increase in the value of the tenement not exceeding fifty per cent of such increase as the Authority may, in its absolute discretion but subject to the other provisions of the Regulation, thinks fit).

(2) The housing society or the company may give permission to transfer any tenement, if -

(a)(i) a period of five years has elapsed from the date of allotment of tenement under Regulation 20 to the allottee;

(ii) in the case of tenements falling in the housing schemes formulated for persons belonging to the Economically Weaker Section or the Low Income Group or the Middle Income Group, the transferee falls within any of the aforementioned groups;

(iii) in the case of tenements falling in the housing schemes formulated for persons belonging to High Income Group, the transferee falls within the same income group;

(b) the transferee has paid all the dues to the Board on behalf of the Authority.

(3) If any allottee transfers any tenement in contravention of the provisions of clause (1) or clause (2) -

(a) the Board may declare such transfer to be invalid and to be of no effect, and the transfer made in favour of the transferee shall stand cancelled;

(b) the transferee shall be deemed to be in unauthorised occupation of the tenement and may be evicted therefrom under Chapter VI of the Act;

Provided that no such declaration shall be made unless the transferee has been given an opportunity to submit his explanation in writing to the Board; and

(c) the Authority shall refund the amount paid by the allottee without any interest after deducting an amount equal to rent for the period during which the tenement was occupied by the allottee.

Explanation – In this clause 'rent' means 'economic rent' as determined by the Board.

25A. Part not to apply to commercial tenements

The provisions of this part shall not apply to commercial tenements. “

5. The essential facts are that the two Petitioners, viz. Petitioner Nos.1 and 2 candidly state that an allotment letter in respect of tenement No.164 was issued by the Respondent No.1 in favour of one K.J. Patni. This letter is dated 28th August 1962. Though this tenement was allotted to K.J. Patni on rental basis, he inducted Vinodchandra K. Shah – Respondent No.7 to this Petition in the premises and purported to transfer the tenancy. It is this Mr Vinodchandra K. Shah who was paying the monthly dues directly to the Respondent No.1 in terms of Regulation No.7(4) of the above Regulations. Annexures 'A' and 'A1' are copies of the allotment

letters of 1962 and the receipt in the name of Respondent No.7.

6. The Respondent No.1 by letter dated 25th September 1980 converted the subject premises / tenement from rental to hire purchase basis in the name of Respondent No.7. Annexure 'B' to this Petition is copy of the conversion letter.

7. It is thereafter that this Respondent No.7 inducted the Petitioner No.1 in the premises and a sale deed dated 5th June 2002 is relied upon. The Petitioners plead a mutual understanding between them, particularly Petitioner No.1 and Respondent No.8 to this Petition who is the Petitioner No.1's sister's daughter (niece). Then reliance is also placed upon an affidavit cum declaration of the Respondent No.7 dated 9th July 2002 relinquishing his rights and interest in respect of this tenement in respect of Petitioner No.1 and Respondent No.8 jointly. That is how the Petitioner No.1 claims to be a bonafide occupant.

8. The Petitioners state that they came to be in possession

of the premises with effect from 5th June 2002. They also relied upon the fact that there were no arrears of any monthly dues. Respondent No.4 is a Co-operative Housing Society of such tenements / occupants / allottees. If there is no default nor the rent dues are in arrears, then, the monthly cheques towards the dues / maintenance charges ought to have been accepted. The Petitioners offered them, however, the packets were returned back with postal remarks 'refused', that is how reliance is placed upon the deposit made in the bank account of the Respondent No.4 – Society.

9. It is common ground before us that all this was not to the knowledge of the Competent Authority. Therefore, parties were aware that the Authority should be approached for having all these lapses and to get the transactions regularised. The competent authority is supposed to have entertained some sort of request under a single window scheme. A hearing took place before it and that record is relied upon. This record also indicates that the authority noted the above facts, however, at pages 124 and 125 of this paper-book and which is relied upon, the Authority found that it is not

possible to entertain the request. The request could not be entertained also because there was a dispute about maintenance charges being not paid or remitted between the Society and the occupant (Respondent No.8) stated to be jointly occupying the premises with the Petitioners.

10. It is in such background that we have carefully considered the rival contentions. Since the Petitioners are appearing in person, we have given them a patient and fairly lengthy hearing. The documents which are shown to us are perused with the assistance of the Petitioners. They have relied upon the fact that the request of the Petitioners and the Respondent No.8 for transfer of the premises in their names is pending. Pending consideration of such a request, there is a mischievous and malafide act on the part of the Co-operative Housing Society and some officials whereunder proceedings for eviction of the parties from the authority premises are initiated and they are being persued. It is also complained that pending such transfer proceedings, the Society has inducted a developer and builder on the scene. That the developer and builder

and the society have executed an agreement for development of the property. That to enable such redevelopment the Authority has permitted the Society to apply for and obtain a conveyance of the building in its favour and the list of tenants is approved. The documents in relation thereto are also brought to our notice. Further, it is also submitted that the records in relation to this conveyance, Tenant's list and the development agreement, erroneously reflect and show the name of Respondent No.7. That the Respondent No.7 has relinquished his right, title and interest in favour of Petitioners and Respondent No.8 is evidenced according to the Petitioners from the documents such as affidavit cum declaration etc.

11. For all these reasons, it is submitted that the Petitioners are innocent and should have been accepted as genuine and bonafide allottees and the Authority should not have allowed the conveyance to be executed in favour of the Society or the Society to redevelop the property.

12. An affidavit is filed on behalf of the Respondent Nos.1 to 3 by the Estate Officer and in paragraphs 1 to 5 of the same, it is

urged that this building is categorized in C-1 category. It is in a ruinous condition and likely to fall. It is dangerous for any person to occupy or continue to occupy the same. The Municipal Corporation of Greater Mumbai has issued a notice stating that the structure is in dilapidated condition and it is necessary to pull it down. It is also stated that the Petitioners are found in unauthorised occupation and eviction proceedings are initiated against them. It is also the case of the Respondent No.1 that its dues are not paid and they are in arrears. The property is undergoing redevelopment, nearly all tenants / occupants are relocated by the developer – Respondent No.5 by paying rent. In paragraphs 5 and 6 of the said affidavit, the Respondents state as under :-

“5. I say that given the urgency of the situation, without prejudice to the rights and contentions of the Respondent No.1, the Petitioners / Occupants of the said tenement may also take such premises as may be arranged by Respondent No.5 or receive the agreed rent, as the case may be. The Petitioners / present occupants may be put in possession of the redeveloped premises / tenement as may be allotted in lieu of the old tenement / premises, without prejudice to the rights and contentions of the Respondent No.1 and subject to the final outcome of the eviction proceedings pending against the Petitioners.

6. I say that in so far as regularization of the

occupation of the Petitioners is concerned, there is dispute between the Petitioners and Respondent No.8 i.e. the niece of Petitioner No.1 (sister's daughter). The concerned tenement No.6/164 was originally allotted to one Mr K.J. Patani in the year 1962 for residential purpose. The tenement was sublet by Mr Patani to Mr Vinodchandra K. Shah, without the permission of MHADA. Mr V.K. Shah further sublet the premises to Ku. Nainita Sharadchandra Davi without the consent of MHADA. The Petitioners claim to have purchased the said tenement from Mr V.K. Shah, jointly with the sister i.e. Respondent No.8. There is a dispute pending between the parties and it is not possible to regularize the occupation of the Petitioners and can be considered if there is a consent or no objection from all the parties concerned. Subsequently the Petitioners are not paying the dues to these Respondents in spite of letters / notices issued to them. They are in arrears of dues of the amount of Rs.63196/-. Neither they paid the dues and nor obtained NOC / Consent from original allottee for regularisation of occupancy of them.

In the view of this eviction proceeding is lodged against them and the same is pending before the Competent Authority-1 / MHADA.

The Respondents are therefore submitting that the Petitioners are not entitled to grant any reliefs in favour of them and as stated hereinabove the petition be dismissed costs.”

There is a rejoinder affidavit filed by the Petitioners and while dealing with paragraph 5, they have asserted that there is no

situation which is said to be grave and urgent requiring them to agree with any proposal. In fact, there is a violation of the terms and conditions of the Single Window Scheme by the Authority itself. The Petitioners are not the members of the Respondent No.4 but are dealing with the Authority and therefore, they will not be bound by the act of the Respondent No.4 – Society and the Respondent No.5 – Developer. The Petitioners are therefore not agreeable to any proposal, rather they claim that the eviction proceedings are pending. They are complaining that their request for transfer is also not rejected. In such circumstances, their right in the property is adversely affected.

13. Having considered all this material, we are of the view that the Petition raises disputed questions of fact. Regulation 25 which we have reproduced is prohibiting transfer of tenement. By Clause (1) of Regulation 25, no allottee shall during the currency of tenancy under Regulation 20, transfer any tenement allotted to him except with the previous permission in writing of the Board and also of the housing society or the company, if such a society or

company has already been formed and registered. However, it shall be open to the Board to refuse the permission or to grant the same subject to such conditions including a condition regarding the payment of a portion of the unearned increase in the value of the tenement not exceeding fifty per cent of such increase as the Authority may, in its absolute discretion but subject to the other provisions of this Regulation, thinks fit. The housing society is also permitted to transfer any tenement if the conditions in Regulation 25(2) are satisfied. By clause (3), if any allottee transfers any tenement in contravention of the provisions of clause (1) or clause (2) of Regulation 25, the Board may declare such transfer to be invalid and to be of no effect and the transfer made in favour of the transferee shall stand cancelled. Thereafter, the transferee shall be deemed to be unauthorised occupant of the tenement and may be evicted therefrom under Chapter VI of the Act.

14. By Regulation 27, there is a general liability of allottees and societies etc. to continue to pay as long as the building and tenements therein continue to remain as Authority premises.

15. We are of the view that the contentions as are sought to be raised now and noted hereinabove can be raised by the Petitioners while resisting the eviction proceedings. The eviction proceedings apart, the Petitioners can participate therein without prejudice to their rights and contentions, particularly that they are not unauthorised occupants of the subject tenement. They can urge that Vinodchandra Keshavlal Shah, the original allottee from whom the premises or tenement is claimed and jointly by the Petitioners and the Respondent No.8 was permitted by the Society to transfer the premises / tenement or that this is not a case where the arrangement as is referred to by the Authority is ex-facie illegal and not sustainable in law. If there is a power in the Authority to grant the permission and conditionally, then only that power is exercised, there is no question of the Petitioners being held unauthorised and unlawful occupants. Equally, the Petitioners can urge that they have bonafide deposited the dues and without prejudice to their rights and contentions in the account of the Respondent No.4 – Society but it is the Respondent No.4 – Society who initially refused to

accept the dues and did not encash the cheques in their favour. Therefore, the Society may have a power to approach the Authority under the Maharashtra Co-operative Societies Act 1960 but that does not mean that the Petitioners are unlawful or unauthorised occupants or have been inducted by Mr Vinodchandra Keshavlal Shah without the knowledge and approval of the Society. Ordinarily we would have expected parties like the Petitioner to cooperate with the Authority and shift from the premises reserving all the above contentions and protecting their legal rights. However, finding that the Petitioners are not agreeable to this course that we are not pursuing the case any further. However, we would direct that in the event the building is pulled down and developer undertakes to redevelop the property with permissions / approvals / sanctions from the Authority and execute the development agreement, then the Authority, the Society as also the developer shall not allot one tenement in the premises to anybody but keep it unallotted and not occupied till the disposal of the proceedings before the Competent Authority and equally pending the consideration of the application of the Petitioners for transfer of the original tenement No.6 in their

favour jointly with the Respondent No.8.

16. In the event the Petitioners are entitled to any compensation in lieu of the transit accommodation and to be paid monthly by the developer and the Society, then, such compensation be also offered to the Petitioners. The offer of such compensation and its acceptance shall be without prejudice to the rights and contentions of the respective parties.

17. We accept the statement of Mr Sawant made on instructions of the authorised Officer present in Court that the Respondent No.1 will conclude the proceedings under the provisions of the Maharashtra Housing and Area Development Act 1976 expeditiously.

18. Needless to clarify that if the Petitioners are not agreeable to any of the above and are reluctant to vacate the premises voluntarily and on their own, then the Authority is free to use such powers as are permissible in law so as to evict the

Petitioners, from tenement No.164, Building No.6 of the said property.

The Writ Petition is disposed off in the above terms leaving open all legal remedies to be availed of by the parties.

(B.P. COLABAWALLA, J.)

(S.C.DHARMADHIKARI J.)**

**** CERTIFICATE**

Certified to be a true and correct copy of the original signed Judgment/Order.