

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO. 571 OF 2015**

Hemlata Venkatesh Prabhu & Ors. Petitioners.

V/s

The State of Maharashtra & Ors. Respondents.

Mr. A.A. Siddiquie i/b A.A. Siddique & Associates for the
Petitioners.

Mr. M.A. Sayed, AGP for Respondent No.1.

Mr. V.M. Parashurami for Respondent Nos. 2 and 3.

Mr. S.Y. Amare for Respondent No.4.

**CORAM: V. M. KANADE &
B. P. COLABAWALLA, JJ.**

DATE: 10th July, 2015

P.C.:-

1. By this Petition which is filed under Article 226 of the Constitution of India, Petitioners are seeking the following reliefs:-

“(a) That this Hon'ble Court be pleased to issue appropriate writ Order & Directions calling for the action taken report upon the representation filed by the petitioners through their advocate letter dated 09/12/2014 for cancellation of NOC dated

28/01/2011 vide R/NOC/F-1875/446/MBRRV-II issued by Mumbai Building Repairs & Reconstruction board in favour of M/s Neha Developers in consonance with order dated 18/12/2014 passed by the Hon'ble Supreme Court of India in SLP Civil No. 34554 of 2014 r/w. The Maharashtra Govt. Servants Regulation of Transfers and prevention of Delay in Discharge of Official Duty Act, 2005."

"(b) That this Hon'ble Court be pleased to issue appropriate Writ Order & Direction calling for the record and proceedings of representation dated 09/12/2014 and its non consideration for a period of more than two (2) months and after examining legalities and proprieties issue order & direction to the respondent authority to hold a departmental enquiry and other consequential action against the concerned officers under the provision of The Maharashtra Govt. Servants Regulation of Transfers and prevention of Delay in Discharge of Official Duty Act, 2005."

2. This is practically a third or fourth round of litigation initiated by the Petitioners. Petitioners appear to have bent upon not handing over possession of the premises, though it is not occupied by them and though an order under section 95A of the MHADA Act has been passed by Respondent No.2.

3. Brief facts are as under:-

4. Petitioners claim to be tenants of Room Nos.3, 4, 5, 16 & 17 admeasuring area of about 90.08 sq. mtrs. (Carpet) in a building known as Haji Ismail Gani Building situated at

Prabhadevi, Mumbai - 400 028. The owner of the building decided to develop the building under Rule 33(7) of Development Control Rules and, accordingly, entered into agreement with Respondent No.4 M/s. Neha Developers. Deputy Chief Engineer prepared a list of tenants and the Petitioners were shown as tenants of Room Nos. 3, 4, 5, 16 and 17 on the ground floor of the said building. Respondent No.2 - MHADA granted NOC for redevelopment of the said property and Respondent No.4 clubbed all the Rooms of the Petitioners together and accepted it as a single non-residential room. Respondent No.5 issued IOD under section 346 of the Mumbai Municipal Corporation Act, 1888 and in the said IOD, it was mentioned that holder has to execute agreement with all tenants. According to the Petitioners, the area which was in their possession was 90.08 sq. mtrs. whereas, according to the developers, the area was 15 sq. mtrs. less i.e. 75 sq. mtrs. Petitioners therefore filed a suit in the Bombay City Civil Court vide S.C. Suit No. 815 of 2011 which was partly decreed and Respondent No.4 - M/s Neha Developers were restrained from disturbing the possession of the Petitioners in respect of the premises which was equivalent to 90.08 sq. mtrs.

5. Thereafter, about 13 tenants filed a Petition before the learned Single Judge of this Court vide Writ Petition (Stamp) No.19521 of 2014 challenging the order passed under section

95A of the MHADA Act. The learned Single Judge (Coram R.M. Savant, J.) vide order dated 05/08/2014 noticed that out of 63 tenants, 54 tenants had vacated the premises. The developers made a statement that the tenants would be entitled to get the premises/tenement admeasuring 300 square feet + 75 square feet fungible area and they would enter into agreement with occupants. In view of this statement, the learned Single Judge had refused to interfere with the order passed by MHADA under section 95A of the said Act and dismissed the Petition. Thereafter, again, an application was made for speaking to the minutes of the order dated 05/08/2014. The learned Single Judge recorded that no further extension would be granted since only three occupants had not vacated the premises.

6. Petitioners herein filed another Writ Petition being Writ Petition (Lodging) No.3113 of 2014 challenging the notice under section 95A of the MHADA Act. Preliminary objection was raised regarding maintainability of the Petition since the Petitioners in that Writ Petition were also the Petitioners in Writ Petition No.10542/2014 and Writ Petition No.10542/2014 seeking the same relief was already dismissed. In para 4 of the said order dated 02/12/2014 passed in Writ Petition (Lodging) No.3113 of 2014, the Division Bench (Coram: Naresh H. Patil & A.P. Bhangale, JJ.) has observed as under:-

“4. In respect of subject building, we find that several proceedings were initiated by the petitioners. The petitioners had approached the civil court and preferred W.P. No.2616/13 which was disposed of by the Division Bench of this Court vide order dated 4th July 2014. Another petition bearing No.7978/14 was dismissed by learned single Judge. We have perused the orders passed by this Court from time to time. It is informed that except the petitioners other occupants have vacated their premises. Learned counsel for Respondent No.4 submits that since long they are ready to execute the agreement but the petitioners are not coming forward to get the agreement executed. It is submitted that the developer has also earmarked the space to be allotted to the petitioners after development of the site.”

No stay was granted by the Division Bench and the Writ Petition was dismissed.

7. One more Writ Petition was filed by the Petitioners viz Writ Petition No.2616 of 2013 which was heard and disposed of by the Division Bench consisting of S.J. Vazifdar & A.K. Menon, JJ. In that Petition also, the action initiated by MHADA under section 95A was challenged and the Division Bench passed the following order:-

“4. In the circumstances the writ petition is disposed off by the following order :-

The statement made on behalf of the developer that if the petitioner is finally held to be entitled to 90 sq. mtrs. she will be handed over the said area in accordance with law. The petitioner's area at present will comprise not less than 75 sq. mtrs. However, the provision shall also be made to ensure that if the petitioner is finally held to be entitled to an additional 15 sq. mtrs. The said area shall also be made available to the petitioner contiguous to and adjoining the 75 sq. mtrs. The B.M.C. Shall also sanction the plans accordingly providing for the aforesaid contingency, namely, the petitioner establishing that she is entitled to an additional 15 sq. mtrs.

The contention between the petitioner and MHADA in regard to extent of area and location thereof are kept open. A copy of the plan is handed over to the petitioner in the court today.

Time to vacate the premises is extended by four weeks.

It is made clear that this order does not prevent the authorities from taking any steps to safeguard the structure and life of the occupants or of any other person in accordance with law. In fact they are bound to do so. The parties are at liberty to inform the authorities of any such necessity. This clarification is issued in view of the statement made on behalf of some of the parties that the structure is in a very poor condition and a mishap is likely to

occur. There shall be no order as to costs.”

8. In spite of various orders which were passed from time to time, Petitioners have continued to file Petitions after Petitions. Hopefully, this is the last Petition filed by the Petitioners. Petitioners are again reiterating the same contentions and have now relied upon the judgment of the Apex Court. Petitioners, after the Writ Petition (Lodging) No.3113 of 2014 was dismissed, approached the Apex Court. Apex Court while dismissing the SLP, passed the following order.

“Heard learned counsel for the petitioners.
The special leave petition is dismissed.
However, the commitment made by the
developer to the petitioners shall be honoured
from all perspective.”

By relying on the said observations, Petitioners are now contending that developers are not honouring commitment made by them. After this order was passed, Petitioners had filed one more Petition i.e. Writ Petition (Lodging) No.3237 of 2014 which was dismissed by Division Bench (Coram: Naresh H. Patil & A.P. Bhangale, JJ.) in limine vide order dated 23/12/2014.

9. We find that though the Petitioners are protected, for no rhyme and reason they are filing Petitions after Petitions and

are refusing to remove their articles from the premises though they have vacated the premises. We are satisfied that Petitioners have filed this Petition with malafide intention to delay the project of development of the building at the cost of other tenants who have vacated the premises.

10. Writ Petition is therefore dismissed with the costs which are quantified at Rs 25000/-.

(B.P. COLABAWALLA, J.)

(V.M. KANADE, J.)