

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

WRIT PETITION (L) NO. 700 OF 2015

- |    |                               |                |
|----|-------------------------------|----------------|
| 1. | Smt.Anajanbai Mahadeo Thorave |                |
| 2. | Shri Pramod Mahadeo Thorave   | ...Petitioners |

v/s.

- |    |                                                                      |                |
|----|----------------------------------------------------------------------|----------------|
| 1. | Subhadra Pralhad Thorave                                             |                |
| 2. | Chief Executive Officer<br>MBR & R.Board, Mumbai                     |                |
| 3. | Vice President and Chief Executive Officer,<br>MBR & R Board, Mumbai |                |
| 4. | M/s.Sidhhivinayak Construction Pvt.Ltd.                              |                |
| 5. | State of Maharashtra                                                 | ...Respondents |

...

Mr.P.M.Khankar for the Petitioners.  
 Mr.S.A.Inamdar for Respondent No.1.  
 Mr.S.P.Thorat for Respondents Nos. 2 & 3.  
 Mr.Amit Shastri, AGP for Respondent No.5.

...

**CORAM : A.A. SAYED, J.**

**DATED : 5 AUGUST 2015**

**ORDER:**

1            This Petition filed under Article 226 of the Constitution, impugns the order dated 26 March 2014 passed by the Respondent No.3- Vice President & Chief Executive Officer, Maharashtra Housing and Area Development Authority (MHADA) whereby the Respondent No.1 was certified as the occupant of Shop No.5, Building No.215-22A, Kalachawky

Road, D.L. Marg, Chinchpokli, Mumbai - 400 012 (hereinafter referred to as 'Shop No.5') and it was directed that Respondent No.1 be given possession of Shop No.5 after redevelopment. Consequently, the name of the Petitioners as occupants of Shop No.5 was deleted from the list of occupants.

2. One Mahadeo Shankar Thorave (hereinafter referred to as 'Mahadeo') was the tenant of Shop No.5. He died on or about 26 February 1990. The tenancy in respect of Shop No.5 was transferred to the name of the Petitioners Nos.1 & 2, being the wife and son respectively of Mahadeo. Respondent No.1 is wife of the other son of Mahadeo. In or about 2001-02, the tenants of the building wherein Shop No.5 was situate formed a Co-operative Housing Society in the name of Shreemontaka Co-operative Housing Society Ltd., as they desired to redevelop the said building. Respondent No.4 was appointed as a Developer for reconstruction of the building. Respondent No.4 Developer thereafter demolished the building in the year 2005 for the purpose of redevelopment under Regulation 33(7) of Development Control Regulations, 1991. According to the Petitioners, they were paying the rent to the landlord upto the year 2005. Respondent No.4 Developer had executed an Agreement with the eligible tenants/occupants of the building. It is the case of the Petitioners that they were found eligible

and the Respondent No.4 Developer accordingly executed the Agreement with them. According to the Petitioners, they were carrying on business in Shop No.5 and were also residing in the rear portion and after demolition of the same, since they were not provided temporary alternate accommodation, they made their own arrangement and started residing at the address mentioned in the cause title of this Petition.

3 On 2 July 2007 the Respondent No.1 made an Application seeking deletion of the names of the Petitioners from the list of occupants. After hearing the Petitioners and Respondent No.1, the Chief Officer, Mumbai Building Repairs & Reconstruction Board, (MBR&R Board) passed an order on 6 May 2010 deleting the names of the Petitioners as occupants and held that only Respondent No.1 be shown as the occupant of Shop No.5. Being aggrieved by that order the Petitioners filed an Appeal before the Respondent No.3 - Vice President & Chief Executive Officer, MHADA, who passed an order dated 21 November 2011, setting aside the order dated 6 May 2010 and remanding the matter for fresh consideration. Respondent No.1 preferred a Writ Petition being Writ Petition No.1949 of 2012 in this Court challenging the order dated 21 November 2011. This Court by an order dated 30 November 2012 set aside the order dated 21 November 2011 and remanded the matter to the Vice President & Chief Executive

Officer, MHADA to decide the issue afresh after giving an opportunity of hearing to both the parties. Accordingly, on 20 February 2014, the Vice President & Chief Executive Officer, MHADA passed an order holding that the Respondent No.1 is the occupant and she should be given possession after redevelopment. Being aggrieved by that order the Petitioners filed Writ Petition No.1874 of 2013 before this Court. By an order dated 4 October 2013 this Court again remanded the matter and directed the Vice President and Chief Executive Officer, MHADA to hear the parties and pass orders afresh. The Vice President and Chief Executive Officer, MHADA after hearing the parties passed the impugned order dated 26 March 2014 as indicated in para 1 hereinabove.

4. I have heard the learned Counsel for the Petitioners, learned Counsel for the Respondent No.1 and the learned Counsel for Respondents Nos.2 and 3. I have also perused the following judgments cited by the Counsel viz. (i) **Jaysinh Morarji Popat and another vs. Gulabben Hansraj Dedhia and others, 2003(4) Mh.L.J.**, (ii) **Smt. Sharmila R. Kotian vs. State of Maharashtra and others, AIR 1992 BOMBAY 53** and (iii) **Dahyabhai Papers & Boards Pvt. Ltd. and another vs. Maharashtra Housing and Area Development Authority and others, (Writ Petition No.235 of 2011).**

5. The following facts are not in dispute:

- (i) Shop No.5 was in a building which was part of the redevelopment scheme under Regulation 33(7) of the Development Control Regulations 1991 (hereinafter referred to as 'DCR');
- (ii) Pursuant to the redevelopment, the Respondent No.1 is now in possession of the shop in the redeveloped building (hereinafter referred to as new Shop No.5);
- (iii) The tenancy of the old Shop No.5 earlier stood in the name of Mahadeo and after the demise of Mahadeo the same was transferred in the name of the Petitioners;
- (iv) The Development Agreement was executed between the Petitioners and the Respondent No.4-Developer for permanent alternate accommodation;
- (vi) The name of the Petitioners was initially shown in the list of occupants as certified by MBR&R Board;
- (vii) On the Application of the Respondent No.1, the names of the Petitioners were deleted and the name of the Respondent No.1 was shown as occupant pursuant to the orders passed by the Authorities under the MHAD Act, 1976.

6. Under section 2(25) of the MHAD Act, the term “occupier” is defined as follows:

“occupier” includes-

- (a) any person who for the time being is paying or is liable to pay to the owner the rent or any portion of the rent of the land or building in respect of which such rent is paid or is payable.
- (b) ....
- (c) ....
- (d) a licensee in occupation of any land or building;
- (e) ....

7. It is an admitted position that the Petitioners were the tenants of the old Shop No.5. In these circumstances, the Petitioners would clearly fall within the definition of the term 'occupier' as envisaged in the aforesaid section 2(25). As discussed hereinafter, the Respondent No.1 was found to be in use and occupation of the old Shop No.5 before demolition of the building in the year 2005 and therefore would also fall within the definition of the term 'occupier'.

8 The dispute essentially pertains to the rights of the parties in respect of Shop No.5. According to the Petitioners since they were the tenants of the Shop No.5 and they were paying rent in respect thereof, they are entitled to new Shop No.5. Though, in the Petition it is averred that it is the Petitioners alone who have rights in respect of new Shop No.5, learned Counsel for the Petitioners stated before the Court that the Petitioners

would be satisfied at this stage if they are granted joint occupation with the Respondent No.1 of the new shop No.5. According to Respondent No.1, however, at no point of time the Petitioners were occupying Shop No.5 and the Petitioners themselves had written a letter to the Respondent No.4 Developer stating that possession of Shop No.5 be taken from her. This is disputed by the Petitioners though. It appears that the dispute between the parties arose after the Respondent No.1 filed an Application for deletion of the name of the Petitioners as occupants on the list of tenants/occupants certified by MBR&R Board and to show her name alone as occupant of the old Shop No.5. As indicated earlier, it was on the said Application of Respondent No.1 that by order dated 6 May 2010 passed by the Chief Officer, MBR&R Board, it was directed that the name of the Petitioners be deleted as occupants of Shop No.5 and only the name of Respondent No.1 be shown as the occupant. After two rounds of litigation upto this Court the impugned order dated 26 March 2014 has been passed by the Respondent No.3 - Vice President & Chief Executive Officer, MHADA.

9. To appreciate the controversy it would be necessary to have a look at the scheme of Regulation 33(7) of DCR which provisions deal with grant of additional FSI in case of certain category. Regulation 33(7), inter alia, provides that for reconstruction/redevelopment to be undertaken by Co-

operative Housing Societies of existing tenants or by Co-operative Housing Societies of landlords and/or occupiers of cessed buildings of 'A' category in Island City which attracts the provisions of MHADA Act, 1976. An incentive FSI of 2.5 as specified in Appendix-III on the gross plot area or FSI required for rehabilitation of existing tenants plus incentive FSI as specified in Appendix-III, whichever is more, is granted in case of redevelopment. Under Appendix-III, a new building is permitted to be constructed in pursuance of an irrevocable written consent by not less than 70% of the occupiers of the old building and all the occupants of the old building have to be re-accommodated in the redeveloped building. Each occupant is given a carpet area occupied by him for residential purpose in old building subject to a minimum carpet area of 300 sq.ft. and a maximum of 753 sq.ft. In case of non residential occupier, he is given an area in the reconstructed building equivalent to the area occupied in the old building. No new tenancy created after the June 1996 is considered under the scheme. The list of occupants and area occupied by each of occupant in the old building is required to be certified by the MBR&R Board and the irrevocable written consents are also to be certified by them. The tenements in the reconstructed building is to be allotted by the landlord/occupants co-operative housing society to the occupiers as per the list certified by the MBR&R Board.

10           The object and purpose of Regulation 33(7) of DCR is essentially to ensure smooth redevelopment of the old and dilapidated buildings and the rehabilitation of the existing tenants/occupants. The scheme under Regulation 33(7) seeks to sub-serve public purpose. The occupants are to be rehabilitated in the newly developed building by providing permanent alternate accommodation. It is the responsibility of the MBR&R Board to ensure that the premises in the newly reconstructed building is allotted to the occupier as per the list certified by them if the occupier is found to be otherwise eligible under the scheme.

11.           In my view, considering the scheme of Regulation 33(7), mere certification by the MBR&R Board of the list of occupants does not confer any right on the person who has been enlisted as occupier. The substantive rights of the parties are not and cannot be said to be adjudicated by MBR&R Board. It is the obligation of MBR&R Board, after considering the eligibility, to ensure that the person who was last occupying the premises which is demolished, is accommodated in the newly constructed premises as per the certified list and it can in no manner be said that the list certified by MBR&R Board conclusively determines the rights of the parties. Unlike Regulation 33(10) of DCR, where the occupant of the slum structure, who is found to be in occupation prior to 1 January

1995 and whose name is reflected in Appendix-II has been conferred a right in the premises allotted in the newly developed building, no such right on the occupant is/can be conferred under the scheme of Regulation 33(7). The certification of list of tenants/occupants is purely a fact finding exercise by MBR&R Board so as to facilitate redevelopment. The State Government Guidelines dated 16 August 2010, produced by learned Counsel for MHADA would have also be read in that light. Pertinently, under clause 18 of Appendix III which was inserted on 21 September 2011 it has been specifically provided that restriction on transfer of tenements shall be governed by provisions of Rent Control Act till the Co-operative Society is formed and thereafter shall be governed by the provisions of Maharashtra Co-operative Societies Act.

12. In the present case, the Authorities on the basis of documents including 'video recording' have come to the conclusion that the Respondent No.1 prior to demolition of the buildings was the occupant of Shop No.5. In the circumstances, I am not inclined to interfere with this finding of fact arrived at by the Authorities. Besides, the certification by MBR&R Board of the list of occupants has by now in great measure lost its significance since Respondent No.5 has already been re-accommodated in the newly developed building. Really speaking, if the tenant and occupant

are different persons, the list certified by MBR&R Board should reflect that position in clear terms. Be that as it may, I deem it necessary to observe that the Respondent No.1 has been re-accommodated in the new Shop No.5 merely because she was occupying the old Shop No.5 and this would not create an automatic right in her favour in the new Shop No.5. The impugned order cannot be said to have determined any rights of the Respondent No.1 or of the Petitioners for that matter in respect of the new Shop No.5. I am unable to accede to the request made by the learned Counsel for the Petitioners that the Petitioners be put in joint occupation with Respondent No.1 of Shop No.5. There is no such prayer even in the Writ Petition.

13. In light of the above discussion, the exercise of writ jurisdiction under Article 226 of the Constitution to interfere with the impugned order is not warranted. It is made clear that the substantive rights of the Petitioners or that of the Respondent No.1 are not affected by the impugned order and/or by certification of list of occupants by MBR&R Board and it would be open for the parties to approach the appropriate Court to assert their rights and seek appropriate reliefs.

14. Subject to the above clarification, the Petition is disposed of. No costs.

15. The Court is informed that the Share Certificate in respect of the new Shop No.5 has been issued by the Society in favour of Respondent No.1 alone. On instructions of Respondent No.1, who is present in Court, learned Counsel for Respondent No.1 makes a statement that for a period of eight weeks from today Respondent No.1 will not create any third party rights in respect of Shop No.5 or induct any third party therein. The statement is accepted.

**(A.A. SAYED, J.)**

**C E R T I F I C A T E**

**“I certify that this Order uploaded is a true and correct copy of original signed Order.”**

**Uploaded by : S.R. Katkam, P.A.**

**Uploaded on : 01.09.2015.**