

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO.2548 OF 2015**

Shaila Sadanand Walawalkar	... Petitioner
v/s	
Maharashtra Housing and Area Development Authority	... Respondent

Mr Lancelot Lewis for Petitioner.
Mr G.D. Utangale i/b Ms Utangale and Co. for Respondent.

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

DATE : 15TH OCTOBER 2015

P.C. :-

1. By this Petition under Article 226 of the Constitution of India, the Petitioner prays for issuance of an appropriate writ, order or direction to set aside the eviction notices dated 24th July 2014 and 3rd June 2015.
2. This is on the footing that the action proposed under these notices is barred by limitation.
3. It is submitted that by the first eviction notice, copy of

which is at Annexure 'M' dated 24th July 2014, the Estate Manager of the Mumbai Griha Nirman and Kshetra Vikas Mandal, which is a part of the Respondent before us, is seeking to enforce the order of eviction passed by the Competent Authority on 31st January 1989 / 6th February 1989. This Mandal is a unit of the Respondent – MHADA. It is urged that the Respondent cannot seek to enforce and execute an order of 1989 in the year 2014 by the eviction notices. More so, when the Petitioner is in occupation of the premises for past 33 years, she resides therein alongwith her family. There is no question of illegal or unauthorised occupation. The premises are office block consisting of four rooms, each admeasuring 120 sq.ft. and numbered as 1 to 4. The premises are duly depicted on the sketch map at Annexure 'A' to the Petition. We are concerned with Tenement No.4 in Office Building No.4. It was allotted to late Hirachand Fakirchand Kambli by the Bombay Housing and Area Development Board on rental basis at Rs.164.25 p.m. with effect from 1st August 1975. The said Hirachand Fakirchand Kambli was an employee of the Bombay Housing Board. The original occupant Hirachand during his life time transferred by virtue of an agreement

dated 15th January 1982 his exclusive right, title and interest in favour of the Petitioner for a consideration of Rs.15,000/-. The premises were vacated by Hirachand and his family. The Petitioner is trying from that date to obtain regularization of her occupancy and pursuant to the right purportedly created in her favour. The Respondent had never accepted this position and issued show cause notices. These show cause notices called upon the Petitioner to show cause why an order of eviction shall not be made under section 65 of the MHADA Act 1976 evicting the Petitioner from the said premises. It is on such eviction notices that the original order of eviction was passed on 31st January 1989. The Petitioner filed an appeal being Appeal No.416 of 1991. The appeal was finally disposed off on 30th November 1998. The appeal came to be thus dismissed. Being aggrieved by this order, the Petitioner preferred a writ petition being Writ Petition No.424 of 1998 and that Writ Petition also came to be dismissed by the learned Single Judge of this Court way back on 3rd March 1999. The Petitioner did not challenge this order but continued to occupy the premises. On 19th October 2010, the Petitioner was served with another eviction

notice and apprehending that she would be evicted, a writ petition was filed in this Court and that writ petition being Writ Petition No.2678 of 2010 came to be withdrawn unconditionally by the Petitioner.

4. The Petitioner, on the point of maintainability of the present Petition, would urge that the earlier Petition was withdrawn with liberty to file an appeal / representation to the Respondent. That was to claim regularization of the occupancy and relying upon several policies of MHADA, one of which was also applied to other occupants viz. Room No.1 and Room Nos.2 and 3, they were purchased or acquired identically by some third parties but the Respondent – MHADA before us did not seek to evict them.

5. Now, by the impugned further notice dated 3rd June 2015, MHADA is seeking to forcibly evict the Petitioner. This, according to the learned counsel for the Petitioner, is a fresh cause of action and therefore this Petition is maintainable and be decided on merits. It is submitted that the policy of MHADA is to regularize such occupancy but the Petitioner is singled out for eviction, hence this Court should entertain the Petition and quash the eviction

notice. After 30 years of occupancy, the Petitioner is sought to be evicted. The eviction order dated 31st January 1989 is sought to be executed after 30 years. These are grounds enough to entertain the Petition and allow it.

6. An affidavit in reply has been filed by the MHADA in which apart from the issue of maintainability, it has been stated that the encroachment and illegal occupancy by the Petitioner is a gross case. A person who was an employee of the Board was allotted the subject tenement as staff quarter / service quarter. He has illegally inducted the Petitioner. This transaction has never been regularized by the MHADA. It is not as if the Respondent has condoned the lapses or illegal act in any manner. By continued occupation, the Petitioner cannot acquire any right in the premises and occupation which is unauthorised and illegal from its inception cannot become valid by sheer passage of time or inaction of the Respondent in evicting the Petitioner.

7. In the rejoinder affidavit, reliance is placed upon certain eviction notices and which were issued in the past. Once again, reliance is placed on the regularization of occupancy of some others

and in relation to identical premises.

8. On first occasion when this Petition was circulated before us, bearing in mind that there is eviction threat, we protected the Petitioner by an ad-interim order.

9. Now that we have complete material before us, We are not in agreement with the Petitioner's Counsel. We have not been shown any provision of law or any section of MHADA Act 1976 by which inaction on the part of the Board or Authority would confer or create any right in the occupier to occupy the encroached premises. The eviction order being in force and not executed for a considerable length of time by itself and without anything more will not regularize the occupancy of the Petitioner which is illegal and unauthorized from inception. That it is illegal because it is contrary to or prohibited by law. This is not a case of mere irregular occupancy. Therefore, such an occupancy cannot be regularized. That it is unauthorized is a admitted fact because there is no dispute that the original allottee was an employee of the Board. He could not have inducted any third party in service quarters. That he inducted the Petitioner during his life time and from that stage, the

Petitioner is trying to obtain a regularization of the occupancy will not carry the case of the Petitioner any further. Mere inaction on the part of the public body to evict unauthorized and illegal occupant will not mean that a right is created to occupy the premises. By mere inaction, such rights can never be said to be created. In the circumstances, we do not find that the Petitioner's continued occupation can be termed as legal and authorized. We also do not find any basis for entertaining the third Petition. The first Petition of the Petitioner challenging the eviction order was dismissed on merits. The second Petition was only to challenge similar notice and even that has been withdrawn without any liberty to approach this Court and on the same cause of action. Admittedly, this Petition is filed on the same cause of action and in the absence of any liberty, we cannot entertain it. Therefore, on both the counts, we do not find any reason to entertain this Petition. The Writ Petition is accordingly dismissed. No costs. Ad-interim order passed on 2nd September 2015 is vacated.

(B.P. COLABAWALLA, J.)

(S.C.DHARMADHIKARI J.)