

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

WRIT PETITION (L) NO. 2769 OF 2015

Shabbir Bhai Morbiwala and Ors. } Petitioners
versus
Maharashtra Housing and Area }
Development Authority and Ors. } Respondents

Mr. Chirag Kamdar with Ms. Rati Patni,
Ms. Nanki Grewal and Ms. Yogini Borade
i/b. M/s. Wadia Ghandy and Co. for the
Petitioners.

Mr. P. G. Lad for Respondent Nos. 1 and 2.

Mr. Pravin Patel for Respondent No. 3.

CORAM :- S. C. DHARMADHIKARI &
B. P. COLABAWALLA, JJ.

DATED :- NOVEMBER 30, 2015

P.C. :-

The Petitioners are seeking following Relief in this

Petition:-

“a. this Hon'ble Court be pleased to issue a writ of mandamus and/or any other writ, order or direction in the nature thereof directing Respondent Nos. 1 and 2 herein to forthwith implement, execute and enforce the MHADA Notice dated 4th June, 2011 (being Exhibit “G” hereto) issued by the Respondent No. 1, the said MCGM Notice dated 9th July 2014 (being Exhibit “N” hereto) issued by Respondent No. 2, the said 354 Notice dated 13th May 2015 (being Exhibit “R” hereto) issued by Respondent No. 2 and the said MHADA Vacation Notice dated 20th May 2015 (being Exhibit “S” hereto) issued by Respondent No. 1, if necessary with the help of the police.”

- 2) The principal contention before us is that it is only Respondent No. 3 who is refusing to vacate the premises, whereas, all others have complied with the vacation notice.
- 3) The building is in seriously dilapidated condition. The Petitioners have pointed out as to how others have complied with the vacation notices and our attention is invited to list of tenants numbering 51. Respondent No. 3 is the only tenant who is refusing to vacate the premises.
- 4) After having heard both sides, the Petition can be disposed of by consent with the following order:-
- (i) The name of Respondent No. 3 appears at Sr. No. 26 and the area certified by MHADA in the case of Respondent No. 3 is 254.67 square feet. She has not vacated Room No.40.
 - (ii) She would now vacate and handover peaceful possession of the said room to the Municipal Corporation/the Petitioners before us on or before 15th February, 2016.
 - (iii) On the vacating of the said room and handing over peaceful possession thereof, the Petitioners will pay to Respondent No. 3 a sum of Rs.30,000/- per month as monthly compensation in lieu of transit accommodation. This amount shall be paid by the Petitioners to Respondent No. 3 month to month and on 10th day of each month until the permanent alternate accommodation, in terms of the policy and proposal of MHADA, is handed over to the said Respondent No. 3.
- 5) This order and direction shall be without prejudice to the rights and contentions of both sides, particularly of

Respondent No. 3 to seek any modification in the amount above and also to defend/prosecute any legal proceedings pending against or may be instituted against her in the Court of Small Causes, Mumbai. In the event the Petitioners do not obtain the vacant and peaceful possession of Room No. 40 from Respondent No. 3 on 15th February, 2016, the subject vacation notice can be enforced and executed by the statutory authority and thereafter Respondent No. 3 shall be evicted from this room and if necessary, with police assistance.

6) It is also clarified that since the building is in seriously and highly dilapidated condition, the occupation and use of Room No. 40 shall be at the entire risk of Respondent No. 3. In the event of any incident or accident, the Petitioners shall not be held responsible by Respondent No. 3 or anybody claiming through her.

7) The Petition is disposed of. There would be no order as to costs.

(B.P.COLABAWALLA, J.)

(S.C.DHARMADHIKARI, J.)