

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

**WRIT PETITION (L) NO.3417 OF 2014**

**Mr. Ramesh Kumar Jain & Ors.**

**..... Petitioners**

**V/s**

**Executive Engineer & Ors.**

**..... Respondents**

Mr. Shoaib I Memon with Mr.Asif Vora for Petitioners.  
Mr. P.G. Lad, for Respondent Nos.1, 2 and 3 MHADA.  
Ms. Yasmin E Tavaría for Respondent No.4.  
Ms. Uma S. Upadhyay, AGP for Respondent Nos.5 and 6 – State.

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

**DATED : 4 MARCH 2015**

**P.C.**

1 This Petition challenges Notices under section 95A of the Maharashtra Housing and Area Development Act, 1976, whereby the Petitioners have been called upon to vacate their respective commercial premises pursuant to a redevelopment scheme being implemented under section 33(7) of the Development Control Regulations.

2 While passing the order dated 29 December 2014, this Court had recorded that the Petitioners are willing to vacate their premises for the purposes of redevelopment. It was further recorded that the Petitioners would be satisfied if they are furnished copies of IOD, sanctioned plans, etc. It was observed by this Court that the stand of both the parties is

quite fair. Pursuant to the said order, copies of the documents including the sanctioned plans were furnished to the Petitioners. However upon seeing the plans, the Petitioners are apparently not satisfied with the alternate permanent accommodation which is being provided to them.

3 So far as permanent alternate accommodation is concerned, it is contended on behalf of the Petitioners that under the Agreements which were entered into between them and Respondent No.4 Developer, it was agreed that the Petitioners were to be provided permanent alternate accommodation on the ground floor only, however, it is revealed from the sanction plans that the Petitioners are being offered premises partly on the ground floor and partly on the first floor (with internal access), which would adversely affect their businesses. It is further contended that the frontage of the shops has also been reduced as shown in the sanctioned plan.

4 On behalf of the Respondent No.4 it is submitted that the premises presently in occupation of the Petitioners is in a dilapidated state and the condition of the premises in occupation can be seen from the photographs annexed to the Affidavit dated 30 January 2015 filed on behalf of the Respondent No.4. It is pointed out that the Petitioners are

being provided newly constructed premises in the free sale building of an area ad-measuring 290 square feet as against the 250 square feet presently occupied by them (authorizedly). It is submitted that in view of the constraints in planning of development and considering the setback area which is to be surrendered to the Corporation, the Petitioners are being accommodated in the best possible way and that too in the free sale building instead of the rehab building.

5     Insofar as temporary transit accommodation (during the implementation of redevelopment scheme) is concerned, it is contended on behalf of the Petitioners that they are not provided with any temporary transit accommodation and therefore it is not possible for them to vacate the premises presently occupied by them. It is submitted that it is the duty of MHADA to ensure that the Petitioners are provided with suitable transit accommodation by the Respondent No.4 so that they can continue to earn their livelihood.

6     I have heard the learned Counsel for the parties.

7     It is not in dispute that except for the present 8 Petitioners who are occupying their respective commercial premises, all other 43 tenants/occupants occupying residential premises have vacated their respective tenements. The commercial premises as well as the

residential premises form part of the same lay-out. It is also an admitted position that the Petitioners too had given their irrevocable consents to the scheme of redevelopment under section 33(7) of Development Control Regulations (DCR) and except for Petitioner No.1, the other Petitioners have signed the Agreements with the Respondent No.4 in respect of the implementation of the redevelopment scheme. It is required to be noted that the present Petition only impugns the show cause notices under section 95A of the MHADA Act whereby the Petitioners have been called upon by MHADA to vacate their shops to facilitate redevelopment and the construction which is in progress. There is no challenge by the Petitioners in this Petition to the grant of IOD etc. to the Respondent No.4. It is well settled that the scope of inquiry in respect of the notices under section 95A of the MHADA Act is quite narrow. The fact that construction is in progress has not been disputed by the Petitioners. It is contended on behalf of the Respondent No.4 that unless the Petitioners' structures are demolished, the redevelopment activity would come to a standstill.

8 As indicated earlier, it is not in dispute that 43 tenants/ occupants of the residential premises have already vacated their respective premises. The said occupants/tenants have been accommodated by the Respondent No.4 by offering them temporary transit accommodation/

payment of rent in lieu of temporary transit accommodation. At the instance of the Petitioners, who are a handful, the project of redevelopment cannot be stalled and it would be unfair to the 43 tenants/occupants who have vacated their residential premises and are now temporarily occupying other premises in anticipation that the redevelopment scheme progresses and is completed at the earliest so that they can be put back in possession of their permanent alternate accommodation.

9 An Affidavit dated 3 March 2015 had been tendered on behalf of the Respondent No.4. In paragraphs 2, 3 and 4 of the Affidavit, it is stated as follows:

*“2 I say that I am filing this affidavit to record the undertaking of the Respondent No. 4 to provide the Petitioners with temporary alternate accommodation of approximately the same area as currently occupied by them in the surrounding locality, within 2 weeks from today. The Respondent No. 4 further undertakes that the Petitioners shall not be displaced unless and until the MHADA authorities certify that the transit accommodation being provided by Respondent No. 4 is fit for occupation as transit accommodation as per the provisions of the MHADA Act.*

*3. I say that once this Hon'ble Court is satisfied that the criteria enumerated in section 95A of the MHADA Act are*

*complied with viz. 70% irrevocable consent, valid N.O.C. for the project and the alternate transit accommodation being provided to the occupants/ tenants, the ambit and scope of section 95A being very limited, and once these facts are established, the Hon'ble Court must ensure the speedy and seamless implementation of the redevelopment scheme whereby the occupants who have already vacated and handed over possession of their premises to the developer are not kept out of their permanent alternate accommodation due to the arm twisting and delaying tactics of a few occupants for their personal gains.*

*4. I say that the construction of the rehab building has already commenced on the plot and the Respondent No. 4 is incurring heavy loss due to the stubborn attitude of these Petitioners who are bent on delaying the project by putting forth unreasonable demands which cannot be considered in a proceeding under section 95A. The trucks carrying building material are not able to enter the plot as the entrance is occupied by the tenements of the Petitioners. The Respondent No. 4 is also not being given the Commencement Certificate by the authorities unless it surrenders the setback area to the M.C.G.M. on which the tenements of the Petitioners are situated. This is causing heavy loss to the Respondent No. 4 who has shifted out the other 43 tenants/occupants to alternate accommodation and also loss due to the stalling of the work and non utilization of the capital invested by the Respondent No. 4 in procuring the plot, investing in the*

*manpower and materials for the project and also shifting out and accommodating the other 43 tenants to alternate accommodation.”*

10 Considering the facts and circumstances of the case, so far as the issue of temporary alternate accommodation is concerned, I am not inclined to grant any relief, to the Petitioners, which would have the effect of stalling the entire redevelopment. However, while accepting the undertaking of the Respondent No.4 recorded in para 2 of his Affidavit dated 3 March 2015, MHADA is directed to inspect the temporary transit accommodation offered by the Respondent No.4 and verify whether the same are fit for occupation by the Petitioners and make a report accordingly. The Petitioners shall vacate their respective premises within a period of 10 days from the date of communication of such report to the Petitioner, if the temporary transit accommodations are found to be fit for occupation.

11 It may be recorded that though in the Affidavit-in-Reply dated 5 January 2015, Respondent No.4 has stated that he is ready and willing to pay a sum of Rs.20,000/- per month to the Petitioners as monthly rent in lieu of temporary transit accommodation, the Respondent No.4 has fairly agreed before the Court that he is ready and willing to pay a sum of Rs.40,000/- per month to the Petitioners. In the event the Petitioners are

agreeable to this offer, the same shall be intimated in writing to the Respondent No.4 on or before 25 March 2015. In the event, such intimation is not received by the Respondent No.4 from the Petitioners, the Petitioners would be accommodated in the temporary alternate accommodation as provided by the Respondent No.4 and as verified by MHADA. The Respondent No.4 shall ensure that payments to the Petitioners shall be in the same manner as payments made to the tenants/occupants of the residential premises (except insofar as quantum is concerned). The parties shall execute necessary Agreement, if any, in accordance with law. The statement of Mr.Lad, learned Counsel for MHADA is also recorded and MHADA will ensure that the temporary alternate accommodation is fit for occupation by the Petitioners and report thereon will be made accordingly after 25 March 2015.

12 Insofar as the issue of permanent accommodation is concerned, in my view, interest of justice would be served if liberty is granted to the Petitioners to make appropriate representation to the Chief Officer, MHADA who shall consider the grievances of the Petitioners and examine if there is a possibility that the Petitioners be accommodated on the ground floor only. It would be for the Petitioners to satisfy the Chief Officer that the same is possible. If such representation is made within 6 weeks from today, the same shall be considered by the Chief Officer and

an appropriate decision be taken thereon after hearing all concerned within a period of three months from the date of the representation. The entitlement of the Petitioners is not in dispute and therefore the judgment of this Court in the case of **Seema Santosh Jadhav vs. MHADA (A.O. (Stamp) No.24265 of 2013)** relied upon by the learned Counsel for the Petitioners would not be of any assistance to the Petitioners.

13 Subject to the above, the Petition is disposed of. It is clarified that in the event the Petitioners do not vacate the structures within a period stipulated above, it would be open for MHADA to enforce the impugned notices. Liberty to apply.

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

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