

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.957 OF 2014

Dr. Ashok Trivikram Wagle]
Vithal Bhavan, 25 Turner Road,]
Bandra (West), Mumbai-400 050].. Petitioner

Versus

1. Estate Manager-5,]
Mumbai H. & A. Board,]
Griha Nirman Bhavan, Bandra (East),]
Mumbai-400 051.]

2. M/s. U. S. Roofs Ltd.]
15/116, J. K. Chambers,]
Vashi, Sector-17,]
Navi Mumbai-400 705.]

3. M/s. Maple Tie-up Pvt. Ltd.]
Uttar Bhartiya Seva Sangh]
Behind Teacher's Colony,]
Bandra (East), Mumbai-400 051.]
Shubham Centre]
B-Wing, 5th Floor, 506,]
Cardinal Gracias Road,]
Chakala, Andheri (East),]
Mumbai-400 099].. Respondents

WITH
CIVIL APPLICATION NO.3260 OF 2015
IN
WRIT PETITION NO.957 OF 2014

M/s. Maple Tie-up Pvt. Ltd.]
Uttar Bhartiya Seva Sangh]
Behind Teacher's Colony,]
Bandra (East), Mumbai-400 051.].. Applicant

Versus

1. Dr. Ashok Trivikram Wagle]
2nd Floor, Vithal Bhavan, 25, Turner Road,]
Bandra (West), Mumbai-400 050.]

2. Estate Manager 5,]
Mumbai Housing & A.D. Board,]
1st Floor, Griha Nirman Bhavan.]

3. M/s. U. S. Roofs Ltd.]
208/209, Persipolis Sector 17,]
Vashi, Navi Mumbai-400 705.].. Respondents

Mr. Y. S. Jahagirdar, Senior Advocate a/w Mr. S. S. Kanetkar, for the
Petitioner.

Mr. P. G. Lad, for the Respondent No.1.

Mr. D. S. Mhaispurkar, for the Respondent No.2.

Mr. P. K. Samdani, Senior Advocate i/by Maniar Srivastava Associates,
for the Respondent No.3.

CORAM : R.M. SAVANT, J.
JUDGMENT RESERVED ON : 30th MARCH 2016
JUDGMENT PRONOUNCED ON : 7th APRIL 2016

ORAL JUDGMENT

1. Rule, with the consent of the Learned Counsel for the parties made returnable forthwith and heard.

2. The writ jurisdiction of this Court is invoked against the order dated 08.10.2013 passed by the Appellate Officer, Maharashtra Housing and Area Development Authority (For short "MHADA) in Appeal No.8 of 2013. By the said order, the order dated 04.06.2013 passed by the Competent Authority, MHADA evicting the Petitioner came to be confirmed.

3. The factual matrix involved in the above Petition can be stated thus :-

The subject matter of the above Petition and the proceedings before the Authorities below are premises being Office Building No.4 having ground floor structure admeasuring 991 sq.ft. at Gandhi Nagar, Bandra (East) (MHADA Colony) with appurtenant land admeasuring 365.85 sq.mtrs. in a settlement of MHADA. The said premises were rented

out to the Petitioner who at the relevant time was practicing as a doctor for the purpose of dispensary and residence in the year 1960. In terms of the policy then prevailing, the MHADA offered the said premises on ownership basis to the Petitioner. The said offer of MHADA was accepted and a Sale Deed was executed between the MHADA and the Petitioner in respect of the structure which Sale Deed is dated 30.09.1993. On the same day i.e. on 30.09.1993, a Lease Deed was also executed between the MHADA and the Petitioner in respect of the land beneath the structure, which was leased for a period of 90 years beginning from 01.04.1980. After the said Lease Deed was executed, a Rectification Deed came to be executed between the parties. The Rectification Deed was in respect of the date of commencement of Lease Deed which was changed from "01.04.1980" to "15.06.1992". The user was also changed from "Dispensary-cum-Residence" to "Legal Purpose" vide the change effected in clause (d) of the said Lease Deed. A reference to the relevant clauses of the Lease Deed would be made in the later part of this judgment. It seems that in the year 2001, more precisely on 06.04.2001 the MHADA communicated to the Petitioner the revised sale price as also the revised lease rent and demanded the same from the Petitioner with retrospective effect. It seems that the petitioner approached the District Consumer Forum against the said demand by filing proceedings before it. Before the

District Consumer Forum, the MHADA withdrew the letter dated 06.04.2001 resulting in the said complaint being turned infructuous. However the District Consumer Forum awarded costs of Rs.50,000/- to the Petitioner by order dated 12.10.2007. The said order dated 12.10.2007 passed by the District Consumer Forum was challenged both by the Petitioner and MHADA by approaching the State Commission by filing separate Appeals. The said Appeals were dismissed by the State Commission. The MHADA thereafter carried the matter to the National Consumer Disputes Redressal Commission. The National Consumer Disputes Redressal Commission by the judgment and order dated 08.05.2009 dismissed the Appeal filed by the MHADA. The MHADA thereafter filed SLP in the Apex Court. The said SLP being SLP(Civil) No.23781 of 2009 was dismissed by the Apex Court by order dated 08.10.2010. It seems that thereafter in the deluge that took place in Mumbai in July 2005 the structure in question of the Petitioner was severely damaged and it is the case of the Petitioner that it was very difficult to restore the same. The Petitioner therefore on 02.08.2005 applied to the MHADA for being granted a 'No Objection' for transfer of the premises. The Petitioner thereafter addressed a reminder dated 18.08.2005 seeking the said 'No Objection'. The Petitioner ultimately executed a Deed of Assignment dated 02.12.2005 in favour of the

Respondent No.2 and the consideration mentioned therein is Rs.1,20,00,000/-. The Respondent No.2 on 24.12.2010 executed a further Deed of Assignment in favour of the Respondent No.3 for the consideration mentioned therein which was Rs.3,35,00,000/- (Rupees Three Crores Thirty Five Lakhs only). The Respondent No.3 thereafter made an application to MHADA for regularization on 01.03.2011. This prompted the proceedings to be initiated against the Petitioner under Section 66 of the Maharashtra Housing and Area Development Act, 1976 (For short "the Mhada Act"). The said eviction proceedings were preceded by the notice dated 24.01.2012 being issued to the Petitioner for breach of clauses 2(j) and 2(m) of the Lease Deed executed between the Petitioner and MHADA. The said notice was followed by a Charge Sheet dated 24.01.2012 issued by the Competent Authority of the MHADA. The gravamen of the allegation against the Petitioner was that the Petitioner was under a contractual obligation not to sell, create third party rights and transfer his interest in the lease without the prior permission of the MHADA. However, the said condition has been breached by the Petitioner by transferring his leasehold rights to the Respondent No.2 who has further sold out its rights to the Respondent No.3. The conduct of the Petitioner in creating third party interest by transferring his interest in the land was in contravention of the terms and conditions under which he was

allowed to occupy the premises. The Petitioner therefore was called upon to show-cause in respect of the allegations levelled against him. The Petitioner by his reply dated 20.04.2012 to the Charge Sheet raised a preliminary issue as regards the maintainability of the eviction proceedings. The Competent Authority recorded the evidence of the parties. The Competent Authority by its order dated 04.06.2013 allowed the eviction proceedings and thereby confirmed the notice issued to the Petitioner alleging breach of clauses 2(j) and 2(m) of the Lease Deed executed by and between the Petitioner and the MHADA. The Competent Authority in the light of the fact that the Respondent No.3 was in possession, directed the Estate Manager to consider the application of the Respondent No.3 for regularization of the suit premises.

4. Against the order dated 04.06.2013 passed by the Competent Authority, MHADA, the Petitioner filed an Appeal before the Appellate Officer of the MHADA. The said Appeal was numbered as Appeal No.8 of 2013. The Appellate Officer has by the impugned order dated 08.10.2013 dismissed the Appeal. The Appellate Officer has thereby confirmed the finding recorded by the Competent Authority of the breach and contravention of clauses 2(j) and 2(m) of the Lease Deed, in the light of the fact that the Petitioner has transferred his leasehold interest in the land in question to the Respondent No.2 without prior permission of the

MHADA. As indicated above, it is the said order dated 08.10.2013 which is taken exception to by way of the above Petition.

5. SUBMISSIONS OF THE LEARNED SENIOR COUNSEL MR. Y. S. JAHAGIRDAR FOR THE PETITIONER :-

A) That the Petitioner had become owner of the structure in question by virtue of the Sale Deed executed in his favour and therefore he could not be ousted from the structure in question by relying upon clauses 2(j) and 2(m) of the Lease Deed which were in respect of the land.

B) That the provisions of Section 66 of the Mhada Act could not be invoked as the structure being of the ownership of the Petitioner was not “Authority Premises” within the meaning of the said Act.

C) That having regard to the definition of the Authority Premises as posited in Section 2(4) of the Mhada Act, the premises in question do not qualify to be the “Authority Premises” and therefore the proceedings initiated under Section 66 of the Mhada Act against the Petitioner are without jurisdiction. In support of the said contention reliance is placed by the Learned Senior Counsel on two judgments of a Learned Single Judge of this Court in the matter of Jiwan Nath Razdan Vs. The State of Maharashtra and others¹ and Nirmala Dhondiram Kadam Vs.

¹ 1990(3) Bom.C.R. 306

Shatrughana Padave and others².

D) That both the Competent Authority and the Appellate Authority had erred in coming to a conclusion that if the eviction order is not passed against the Petitioner, the same would prejudice the Respondent No.3.

6. SUBMISSIONS ON BEHALF OF THE RESPONDENT NO.3 BY THE LEARNED SENIOR COUNSEL MR. P. K. SAMDANI :-

A) That having regard to the definition of the “Authority Premises” in Section 2(4) and having regard to the definition of the “premises” as given in Section 2(27) that the premises in question i.e. land beneath structure is an “Authority Premises” and therefore the provisions of Section 66 of the Mhada Act apply.

B) That having regard to the directions issued in the order passed by the Competent Authority as also confirmed by the Appellate Authority and having regard to the fact that the Petitioner has divested his rights in favour of the Respondent No.2 who in turn has created rights in favour of the Respondent No.3, the Petitioner cannot be said to be a person aggrieved by the order passed by the Competent Authority as confirmed by the Appellate Authority so as to lay a challenge to the same by way of the above Petition.

² 1984 Mh.L.J. 244

C) That since the structure of which the Petitioner claims to be the owner is situated on the land which is undisputedly leased to the Petitioner vide Lease Deed dated 30.09.1993. The Petitioner was bound by the terms of the said Lease Deed and therefore the Petitioner cannot be heard to say that the Petitioner cannot be ousted on the allegation of the breach of the said terms and conditions of the said lease.

D) That assuming there is some merit in the legal contention urged on behalf of the Petitioner as regards whether the premises are “Authority Premises”, this Court in the facts of the present case would have to see whether any relief can be granted to the Petitioner in the above Writ Petition having regard to the fact that the Petitioner has divested himself of all his rights on account of the Deed of Assignment executed in favour of the Respondent No.2.

E) That the Petitioner is not entitled to any reliefs in the above Petition as the justice is not on his side which is a sine-qua-non for grant of any reliefs in the writ jurisdiction of this Court. Reliance is placed on the judgments of the Division Bench as well as the Apex Court in the matter of The State of Bombay Vs. Morarji Cooverji³, M. P. Mittal Vs. State of Haryana and others⁴ and State of Maharashtra and others Vs. Prabhu⁵.

³ Bom. LR. 1958 (Vol. LXI) 318

⁴ (1984) 4 SCC 371

⁵ (1994) 2 SCC 481

CONSIDERATION

7. Having heard the Learned Counsel for the parties, I have considered the rival contentions. The question that arises for consideration in the above Petition is whether the proceedings under Section 66 of the Mhada Act could have been initiated against the Petitioner. In the said context, the antecedent facts would have to be revisited. The premises in question in the instant case are both land and structure thereon. The structure in question was a ground floor structure admeasuring 991 sq.ft. with appurtenant land admeasuring 365.85 sq. mtrs. The said premises were allotted to the Petitioner by MHADA on rent basis. Then as per the policy of MHADA, an offer was made to the Petitioner by MHADA for sale of the structure in question on ownership basis, and the land in question was offered on lease basis. The said offer was accepted by the Petitioner and Sale Deed dated 30.09.1993 came to be executed in favour of the Petitioner in respect of the structure. On the same day i.e. on 30.09.1993 a Lease Deed was also executed in favour of the Petitioner granting lease of the land beneath the structure to the Petitioner for 90 years. By a Rectification Deed, the date of the commencement of the lease was changed from 01.04.1980 to 15.06.1992. In the context of the present controversy, clauses 2(j) and 2(m) of the Lease Deed are relevant and are reproduced hereinunder for the sake of ready reference :-

“2(j) Not to assign, sublet, underlet or other wise transfer in any other manner whatsoever including parting with the possession of the whole or any part of the said land or its interest there under or benefit of this lease to any person or persons or change the user of the said land or any part thereof without the previous written permission of the Authority;”

“2(m) not to make excavation upon any part of the said land without the previous consent of the Authority in writing first had and obtained for any additional construction or for utilising unused F.S.I. for which the Lessee shall have to pay additional premium plus additional lease rent as may be decided by the Authority except for the purpose of repairing or rebuilding the existing structure standing on the said land;”

8. It is required to be noted that the Petitioner had applied to the MHADA on 02.08.2005 for a “No Objection” to be granted for transfer of the premises. The Petitioner thereafter also addressed a reminder dated 18.08.2005 to the MHADA. However, it seems that the Petitioner did not receive any reply to the said communications. The Petitioner thereafter executed a Deed of Assignment dated 02.12.2005 in favour of the Respondent No.2 i.e. M/s. U. S. Roofs Ltd. Clauses (2) and (3) of the said Deed of Assignment are also relevant and are reproduced hereinunder for the sake of ready reference.

“2. The Assignor do hereby sell, transfer & assign in favour of the Assignees and the Assignees do hereby agree to accept from the Assignor the assignment in respect of land bearing Survey no.341(Pt) and City Survey no.630 situated at Gandhi Nagar Bandra (East) Mumbai 400 051 admeasuring 361.85 sq. meters (hereinafter referred to as

the said property) and more particularly described in the Schedule hereunder written with an absolute right, to consume the entire FSI that may be available in respect of the said property as well as the TDR/Layout FSI/ titbits, Recreation Ground (R.G.) etc that may be permitted by the Authority to be utilized on the said property.”

“3. In consideration of the Assignees agreeing to pay to the Assignor an agreed Monetary Consideration of Rs.1,20,00,000/- (Rupees One Crore Twenty lacks only) the Assignor herein hereby agree grant, assign, and assure unto in favour of the Assignees or their nominees and the Assignees has agreed to acquire from the Assignor, (i) assignment and transfer of all the rights, title, interest of the Assignor in respect of the said property more particularly described in the Schedule hereunder written and (ii) absolute and exclusive right to use, utilize, consume and exploit full right of benefit of T.D.R./Layout FSI/titbits, Recreation Ground (R.G.) whatever name called in all forms including of D.P Road set back, garden, slums, etc., for construction of building is to be constructed on the said property (all the said property and the right to use, utilize, consume and exploit the benefit of T.D.R. Are hereinafter referred to as for brevity's sake hereinafter referred to as the said property”) free from all encumbrances, claims and demands. The Term FSI and TDR Layout FSI/titbits, Recreation Ground (R.G.) shall mean & include all subsidized/Free areas such as Balcony & Staircase area etc. The Assignee has on or before the execution of this Agreement paid to the Assignor the entire consideration of Rs.1,20,00,000/- (Rupees One Crore Twenty lacs only) (the receipt whereof the Assignor doth hereby admit and acknowledge & release, acquit & discharge the Assignees from the payment & receipt thereof & every part thereof.)”

(emphasis supplied)

9. By the said Deed of Assignment, the Petitioner has thereby sold, transferred and assigned all his rights in respect of the said land in question which included the utilization of the FSI as well as loading of

TDR as may be permitted by the MHADA. The consideration mentioned in the Deed of Assignment is Rs.1,20,00,000/- (Rupees One Crore Twenty Lacs only) which has been admittedly received by the Petitioner for which he has issued a receipt. The said Deed of Assignment has been executed by the Petitioner without the permission of the MHADA as the Petitioner in the above Petition has averred that he proceeded on the basis that he has a deemed permission to effect the transfer.

It is an undisputed position that the Respondent No.2 M/s. U. S. Roofs Ltd. has thereafter transferred its rights to the Respondent No.3 herein M/s. Maple Tie-up Pvt. Ltd. It is the Respondent No.3 which is now in possession of the premises in question and who has demolished the structure and has put up the tin sheets around the land as a compound wall.

10. In view of the transfer effected by the Petitioner a Charge Sheet and notice came to be issued to the Petitioner which were both dated 24.01.2012. The said Charge Sheet was issued for breach of clauses 2(j) and 2(m) of the Lease Deed dated 30.09.1993. The Charge Sheet is founded on the fact that the Petitioner having transferred the premises in question to the Respondent No.2 without the permission of the MHADA and the Respondent No.2 having further transferred the premises in favour

of the Respondent No.3. The Charge Sheet also alleges excavation being carried out by the Respondent No.3 without the permission of MHADA. As indicated above, the Charge Sheet was the precursor to the proceedings initiated against the Petitioner under Section 66 of the Mhada Act which is culminated in the order dated 04.06.2013 passed by the Competent Authority and which order has been confirmed by the Appellate Authority by the impugned order dated 08.10.2013.

11. Since the invocation of Section 66 of the Mhada Act to evict the Petitioner is questioned, it would be necessary to address the said issue as the same goes to the root of the matter. A reading of Section 66 of the Mhada Act discloses that the same can be invoked only when the premises are "Authority Premises". It would therefore be relevant to reproduce Section 66, Section 2(4) and Section 2(27) of the Mhada Act which are the relevant provisions for the sake of ready reference :-

"Section 66: Power to evict certain persons from Authority Premises.

(1) If the Competent Authority is satisfied-

(a) that the person authorised to occupy any Authority premises has-

(i) not paid rent or compensation or amount lawfully due from him in respect of such premises for a period of more than two months, or

(ii) sub-let, without the previous permission of the Authority, the whole or any part of such premises, or

(iii) committed, or is committing any act which is destructive or permanently injurious to such premises, or

(iv) made, or is making, material addition to, or alteration in, such premises without the previous permission of the Authority, or

(v) otherwise acted in contravention of any of the terms, express or implied, under which he is authorised to occupy such premises, or

(vi) failed to vacate the premises required by the Authority for the purpose of implementing any plan or project for the sale of tenements and to accept the alternative accommodation offered by the Authority;

(b) that any person is an unauthorised occupation of any Authority Premises, the Competent Authority may, for reasons to be recorded in writing, by notice served (i) by post, or (ii) by affixing a copy of it on the outer door or some other conspicuous part of such premises, or (iii) in such other manner as may be prescribed, order that person, as well as any other person, who may be in occupation of the whole or any part of the premises, to vacate the premises in unauthorised occupation, within 24 hours of the date of service of notice, and in any other case within a period of seven days of the date of such service.

(2) Before an order under sub-section (1) is made against any person, the Competent Authority shall issue, in manner hereinafter provided, a notice in writing calling upon all persons concerned to show cause within ten days why an order of eviction should not be made.

The notice shall-

(a) specify the grounds on which the order of eviction is proposed to be made; and

(b) require all persons concerned, that is to say, all persons who are or may be in occupation of, or claim interest in, the Authority premises, to show cause against the proposed order, on or before such date as is specified in the notice.

If such persons makes an application to the Competent Authority for the extension of the period specified in the notice, such Authority may grant the same on deposit of one hundred rupees and on such terms as to payment and

recovery of the amount claimed in the notice, as such Authority thinks fit.

Any written-statement put in by any person and documents produced in pursuance of the notice, shall be filed with the record of the case, and such person shall be entitled to appear before the Competent Authority by advocate, attorney or other legal practitioner.

The notice to be served under this sub-section shall be served in the manner provided for the service of a notice under sub-section (1); and thereupon, the notice shall be deemed to have been duly given to all persons concerned.

(3) If any persons refuses or fails to comply with an order made under sub-section (1), the Competent Authority may evict that person and any other persons who obstructs him and takes possession of the premises, and may for that purpose use such force as may be necessary.

(4) The Competent Authority may, after giving ten clear days notice to the person from whom possession of the Authority premises has been taken under sub-section (3), and after publishing such notice in the prescribed manner, remove or cause to be removed or disposed of by public auction, any property remaining on such premises. Such notice shall be served in the manner provided for the service of a notice under sub-section (1).

(5) Where the property is sold under sub-section (4), the sale proceeds shall, after deducing the expenses of sale, be paid to such person or persons as may appear to the Competent Authority to be entitled to the same.

Provided that, the Competent Authority is unable to decide as to the person or persons to whom the balance of the amount is payable or as to the apportionment of the same, he shall refer such dispute to a civil court of competent jurisdiction, and the decision of the court thereon shall be final.

(6) If a person, where who has been ordered to vacate any premises under sub-clause (i) or (v) of clause (a) of sub-section (1), within seven days of the date of service of the notice, pays to the Authority the rents or compensation or amount in arrears or carries out or otherwise complies with the term contravened by him to the satisfaction of the

Competent Authority, such Authority shall, on such terms, if any (including the payment of any sum by way of damages or compensation for the contravention aforesaid), in lieu of evicting such person under sub-section (3) cancel his order made under sub-section (1) and thereupon, such person shall continue to hold the premises on the same terms on which he held them immediately before such notice was served on him:

Provided that, if a person authorised to occupy the Authority premises fails to pay the arrears of rent, compensation or amount for three times within a period of two consecutive years, he shall be liable to be evicted under the provisions of this section.

Explanation I. - For the purpose of this Chapter, the expression 'unauthorised occupation' in relation to any person authorised to occupy any Authority premises includes the continuance of occupation by him or by any person claiming through or under him of the premises after the authority under which he was allowed to occupy the premises has expired or has been duly determined.

Explanation II. - For the purpose of this Chapter, to the term rent, compensation or amount includes any payment to be made by a person in respect of any premises taken by him from the Authority under hire- purchase agreement and also any penalty [imposed such rate as may be prescribed] for the default in the payment of rent, compensation or amount. The amount of such penalty shall not exceed 10 per cent of such rent, compensation or amount.

(7) Notwithstanding anything contained in this Chapter including this Section, if any person fails to vacate the premises required by the Board for the purpose of demolition of building containing such premises which are unfit for human habitation then, the Board may require the occupants thereof to vacate the premises within 24 hours of the date of service of the notice; and at the same time allot them alternative accommodation in any building of the Authority at such place as it thinks fit. The accommodation may not be in the same locality or of the same floor area as the premises vacated by the occupiers. If any occupier fails to accept and occupy the alternative accommodation

allotted to him within the time specified by the Board the responsibility of the Board to provide him with any alternative accommodation shall cease. Such occupier shall, have a right to re-occupy his premise in the building if a building is re-erected on the land on which the demolished building stood.

(8) Where an occupier does not vacate his premises, the Board may take or cause to be taken such steps and use or cause to be used such force as may be reasonably necessary for the purpose of getting the premises vacated.

(9) The decision of the Board under sub-sections (7) and (8) shall be final and conclusive and shall not be called in question in any Court nor any injunction against the order of demolition or vacation of the premises shall be made by any court.”

“2. Definitions

(1).....

(2).....

(3).....

(4) “Authority premises” means any premises belonging to, or vesting in the Authority, or taken on lease by the Authority, or entrusted to, or placed at the disposal of, the Authority for management and use for the purposes of this Act;”

Explanation- In this clause “Authority premises” includes any premises taken by persons from the Authority under hire purchase agreement, during the period any payments are to be made by such person to the Authority under such agreement or until such agreement is duly terminated;

“2(27) “premises” means any land or building, or part of a building whether authorised or otherwise, and includes-

(a) gardens, grounds and out-houses, if any, appertaining to such building or part of a building;

(b) any fitting affixed to such building or part of a building for the more beneficial enjoyment thereof; and

(c) building or a part of building let or intended to be let or occupied separately;”

12. A reading of Section 2(4) of the Mhada Act would disclose that any premises belonging to or vesting in the authority comes within the definition of authority “Premises” have been separately defined in Section 2(27) which definition includes any land or building. The definition further stipulates who is included in the said definition. Hence a conjoint reading of Section 2(4) and 2(27) would indicate that the definition of “Authority Premises” is an inclusive definition and in so far as the instant case is concerned wherein admittedly the land is granted on lease on the terms and conditions mentioned therein, the same leaves no room for doubt that the premises in question are “Authority Premises” within the meaning of the Mhada Act.

13. It is not possible to accept the contention urged on behalf of the Learned Senior Counsel Mr. Y. S. Jahagirdar appearing on behalf of the Petitioner since the structure is of the ownership of the Petitioner, the structure would therefore not be covered by the definition of the “Authority Premises” as postulated in the Mhada Act and therefore the provisions of Section 66 of the Mhada Act could not have been invoked. In the instant case, though the structure can be said to be of the ownership of the Petitioner, the land on which the structure is situated is a land granted on lease to the Petitioner by the MHADA. The structure obviously

therefore cannot be divorced from the land on which it is situated. It is also required to be noted that the rights regarding FSI or loading of TDR flow from the land and not the structure. The Petitioner having admittedly transferred his rights in the land to the Respondent No.2 for consideration without the permission of MHADA, the breach of clauses 2(j) and 2(m) was complete and the MHADA was therefore entitled to invoke Section 66 of the Mhada Act to evict the Petitioner from the premises in question.

14. Now coming to the judgments (*supra*) cited on behalf of the Petitioner by the Learned Senior Counsel Mr. Y. S. Jahagirdar, in *Jiwan Nath Razdan's* case (*supra*), the premises in question being a flat was taken on hire purchase basis by the person who had put the Petitioner i.e. Jiwan Nath Razdan in possession. In view of the said occupation of the flat by the Petitioner proceedings under Section 66 of the Mhada Act came to be initiated against the original allottee and the Petitioner, an order of eviction came to be passed by the Competent Authority both against the original allottee and the Petitioner in the said Writ Petition. The order passed by the Competent Authority was confirmed by the Appellate Authority. Before the Learned Single Judge of this Court, the invocation of Section 66 of the Mhada Act was sought to be questioned on behalf of the Petitioner on the ground that since the amount towards the Hire Purchase Agreement was paid up, the premises are no more “Authority Premises”

within the meaning of Section 2(4) of the Mhada Act and therefore the orders of eviction could not have been passed. The said contention was rejected by the Learned Single Judge by holding that the premises would not cease to be "Authority Premises" merely on making payments with regard to the Hire Purchase Agreement, but the same will have to be properly conveyed to the society comprising of the flat purchasers. The judgment in *Jiwan Nath Razdan's* case (*supra*) is sought to be relied upon to contend that since the Petitioner is the owner of the structure in question, the provisions of Section 66 of the Mhada Act could not have been invoked.

In so far as the judgment in *Nirmala Dhondiram Kadam's* case (*supra*) is concerned, the said judgment concerns the bar as contained in Section 71 of the Mhada Act. It has been held in the said judgment that the bar would apply to entertaining any suit or proceedings for eviction of any person by any Court if the Competent Authority under the said Act is entitled to evict the person under the provisions of the said Act. It has further been held that the Competent Authority cannot adjudicate the dispute between two private persons who lay a claim to the property.

15. In my view, the aforesaid judgments (*supra*) do not further the case of the Petitioner in any manner. As indicated above, the action

against the Petitioner under Section 66 of the Mhada Act has been initiated for breach of clauses 2(j) and 2(m) of the Lease Deed on account of the Deed of Assignment executed by the Petitioner in favour of the Respondent No.2. As observed hereinabove, the structure cannot be divorced from the land on which it vests and therefore the premises in question are "Authority Premises" within the meaning of Section 2(4) of the Mhada Act and therefore the invocation of Section 66 of the Mhada Act cannot be found fault with. In so far as the present case is concerned, the issue is as regards the eviction of the Petitioner on account of the breach of the covenants of the Lease Deed from the premises in question. There is no dispute between two private parties who have competing claims and therefore the judgment in *Nirmala Dhondiram Kadam's* case (*supra*) has no application.

16. It is required to be noted that though the Petitioner has by the Deed of Assignment executed in favour of the Respondent No.2 has divested himself of all his rights in respect of the premises in question as long back as in December 2005. Notwithstanding the same, the Petitioner has chosen to challenge the order of eviction passed against him. The entire attempt of the Petitioner therefore appears to be to keep the issue alive though he has now no semblance of any right in the property. The bonafides of the Petitioner therefore are in question. Such a conduct on

the part of a Writ Petitioner would obviously have to weigh with a Writ Court whilst exercising the discretionary jurisdiction.

17. In the light of the submission made by the Learned Senior Counsel Mr. P. K. Samdani on behalf of the Respondent No.3, it would have to be seen whether the Petitioner can be said to be an “aggrieved person” in so far as the impugned orders are concerned. In the said context, it is required to be noted that the Petitioner has executed a Deed of Assignment in favour of the Respondent No.2. According to the Petitioner the said Deed of Assignment was executed by him on the assumption that he had a deemed No Objection from MHADA for the proposed transfer to the Respondent No.2, as he had not received any reply to his letter dated 02.08.2005 by which he had sought the “No Objection” from the MHADA. The Petitioner has therefore consciously executed the Deed of Assignment in favour of the Respondent No.2 for the consideration of Rs.1,20,00,000/-. A perusal of the said Deed of Assignment and especially clauses (2) and (3) thereof make it absolutely clear that the Petitioner has divested himself of all his rights in respect of the premises in question. As indicated above, all the rights flowing from the land, like utilization of the FSI and loading of TDR have been transferred by the Petitioner to the Respondent No.2. The Petitioner in view of the said execution of the Deed of Assignment cannot be said to

have any semblance of right left in the premises in question. The Competent Authority in its order has also held that it is the Respondent No.3 who is in possession. In fact, it is on account of the alleged excavation by the Respondent No.3 and putting up a compound of tin sheets that the Charge Sheet came to be issued to the Petitioner. In the light of the fact that the Petitioner has divested himself of all his rights in respect of the premises in question, the Petitioner cannot be said to be “aggrieved person” who can be said to be aggrieved by the orders passed by the Competent Authority as confirmed by the Appellate Authority.

18. Now coming to the judgments cited (*supra*) by the Learned Senior Counsel Mr. P. K. Samdani appearing for the Respondent No.3. In so far as the Division Bench judgment of this Court in the case of *The State of Bombay* (*supra*) is concerned, the Division Bench held that in a Writ Petition the Petitioner has not merely to show good faith, but he has not to suppress and has also to show that justice lies on his side.

In so far as the judgment of the Apex Court in *M. P. Mittal's* case (*supra*), the Apex Court has held that when the writ jurisdiction of the High Court is invoked under Article 226 of the Constitution of India, it is open to the High Court to consider whether in the exercise of its undoubted discretionary jurisdiction it should decline relief to such a

Petitioner if the grant of relief would defeat the interest of justice.

In so far as the last judgment in *State of Maharashtra and others Vs. Prabhu (supra)* is concerned, the Apex Court has once again in the context of the exercise of writ jurisdiction has held that one of the principles inherent in the exercise of writ jurisdiction is that the exercise of power should be for the sake of justice. The Apex Court went on to observe that if the quashing of the order results in greater harm to the society, then the Court may restrain exercising the power.

19. Hence, the test laid down by the Apex Court for exercise of writ jurisdiction is as to on whose side the justice is, and that power should be exercised for the sake of furtherance of justice, applying the said test laid down by the Apex Court in the judgments (*supra*) to the facts of the present case, it would have to be held that since the Petitioner has divested himself of all his rights in the premises in question for a handsome consideration, hence even assuming that there is any merit in the Petitioner's case, since justice is not on the side of the Petitioner the exercise of writ jurisdiction is not warranted.

20. For the reasons aforestated, the challenge to the orders passed by the Competent Authority dated 04.06.2013 as confirmed by the

impugned order dated 08.10.2013 passed by the Appellate Authority of the MHADA, must fail. The above Writ Petition is accordingly dismissed. Rule discharged with parties to bear their respective costs.

21. In view of the dismissal of the above Petition, the above Civil Application does not survive and to accordingly stand disposed of as such.

[R. M. SAVANT, J]

After Pronouncement of the Judgment

At this stage, the Learned Senior Counsel for the Petitioner applies for continuation of the order of status-quo. In the facts and circumstances of the case, the said prayer is rejected.

07.04.2016

[R. M. SAVANT, J]