

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

WRIT PETITION NO.769 OF 2013

Abdul Sattar Abdul Rehman (since deceased)
Through Mrs. Shamim Abdul Sattar Shaikh & Anr. Petitioners
V/s.

Chief Officer,
Mumbai Building Repairs and Reconstruction
Board (a unit of MHADA), Bandra, Mumbai & Anr. Respondents

Mr. Saikumar Ramamurthy for the Petitioners.

Mr. Kamlesh Ghumre a/w. Ms. Sonali Jadhav and
Ms. Supriya Kadam, for the Respondents.

Mr. Rahul Shilinkar, Estate Manager, a/w.
Mr. Ghode, Deputy Chief Officer of MHADA, are
present.

CORAM : S.C. DHARMADHIKARI &
DR. SHALINI PHANSALKAR-JOSHI, J.J.

DATE : 20TH APRIL, 2016.

P.C. :

1. Heard learned counsel for the respective parties.
2. Learned counsel for the Petitioners relies upon a document at Page No.76 of the paper-book and, particularly, the endorsement therein at page No.79, which certifies that Abdul Sattar, the predecessor-in-title of the present Petitioners, was allowed one room in the reconstructed building and he pointed out to the Authorities that he was the occupier at the time of issuance of the vacation notice and Mr. Shaikh Mohmad Kallu was an occupier earlier to him.

3. It is based on these documents that the Petitioners claim to be entitled to a permanent alternate accommodation, whereas, the Chief Officer's note should be read as a whole is the submission of Mr. Ghumre, learned counsel for the Respondents.

4. Mr. Ghumre would submit that, at no point of time, there is a record of the Petitioners' predecessor being the original occupant and through out, the name of Shaikh Mohmad Kallu appears in the MHADA record.

5. We have carefully perused the Petition and all annexures thereto. What we find is that the Petitioners' predecessor had come to this Court by way of Writ Petition No.831 of 2001. On that Petition, an order was passed on 24th April 2001, which reads as under :-

"1. Heard parties.

2. The petitioner was initially allotted a tenement admeasuring 180 sq.ft. in Rangari building. As the tenement could not be given in possession of the petitioner due to the pending repairs, the petitioner was given tenement No.2213 at Maniar building, Tardeo, Mumbai. The tenement in Maniar building is admeasuring 252 sq.ft. According to MHADA, the original area in occupation of the petitioner was only 134.64 sq.ft. However, since the minimum tenement has to be of 180 sq.ft. at the relevant time, he was charged for the difference between 180 and 252 sq.ft. and on a representation being made the said amount was also reduced by charging only for 35 sq.ft. and the petitioner had made payment for the said additional area of 35 sq.ft.

3. In the present petition, the petitioner is claiming that the original area in possession of the petitioner was 329 sq.ft. and, therefore, he is entitled for equivalent area under the amended provisions of MHADA Act. In support of his submission, the petitioner seeks to rely

on a xerox copy of the vacation notice dated 5th December, 1975. It is pointed out by MHADA that at the relevant time there was no practice of mentioning the area of tenement in the vacation notice. According to MHADA, the xerox copy produced by the petitioner is not a genuine document. Original vacation notice is not produced before the Court. On the other hand, the letter written by the Tenants Association shows that the petitioner was in possession of only 134 sq.ft. We have perused the original file produced by the learned counsel appearing for MHADA and in our opinion, the petitioner has failed to make out case for allotment of additional area.

4. *Petition is dismissed."*

6. This order clearly makes out a case of Abdul Sattar's failure to produce proof of allotment of additional area. Thus, he could not establish and prove his entitlement anything over and above 329 sq.ft. The note prepared by the MHADA Officials, therefore, certifies an area of 329.80 sq.ft.. The question then arose, '*as to how the Petitioners' predecessor could be said to be the original allottee and claiming through MHADA?*' It has been brought on record that one Shaikh Mohmad Kallu was the occupier earlier to the Petitioners' predecessor and on that basis MHADA records that it is not the Petitioners who were the original occupiers, but Shaikh Mohmad Kallu.

7. That we do not think is justified for the simple reason that the Chief Officer refers to the name of Shaikh Mohmad Kallu, which was indicated by the Petitioners' predecessor himself. However, the Chief Officer notes that Abdul Sattar, the Petitioners' predecessor-in-title, was brought on MHADA record in the year 2000 and, accordingly, revised order was issued. Thus, MHADA dealt with Abdul Sattar on several occasions. There was an old tenement admeasuring 329.80 sq.ft. and how that came to be

forming part of the allotment order dated 31st May 1994 is then set out. The note thus indicates that, if Shaikh Mohmad Kallu was having an area of 329 sq.ft., then, Abdul Sattar's claim for an additional area may not be upheld and justified. Though the Chief Officer proceeds to favourably consider the allotment of additional area, meaning area over and above 329.80 sq.ft., Mr. Ramamurthy, the learned counsel appearing for the Petitioners, on instructions, states that the Petitioners give up that claim. The Petitioners would be happy if an area of 329.80 sq.ft. is allotted as permanent alternate accommodation by MHADA.

8. After perusing the entire Petition, the annexures thereto and the affidavits placed on record, so also on hearing the parties, we are inclined to uphold the claim of the Petitioners and direct the Respondents to allot to the Petitioners permanent alternate accommodation in lieu of their old tenement, but admeasuring 329.80 sq.ft.. The Petitioners' entitlement is confined and restricted to this area.

9. However, in the light of the MHADA's apprehension, placed on affidavit before us, so also the Petitioners referring to the occupation of Shaikh Mohmad Kallu, we direct the heirs and legal representatives of the deceased Petitioner, in that case, to execute an Indemnity Bond indemnifying MHADA against all claims in relation to subject permanent alternate accommodation, as raised by Shaikh Mohmad Kallu or his successors-in-title. If such a claim is raised and MHADA is faced with the same, then it is the Petitioners before us, who shall be held responsible for all the legal consequences flowing therefrom. However, this does not mean that the Petitioners are precluded, together with MHADA, from resisting such claims.

10. Upon such Indemnity Bond being executed, the Petitioners shall be put in possession of the permanent alternate accommodation as expeditiously as possible and within a period of three months from the date of execution of such Indemnity Bond, preferably in the same Ward or in the vicinity of the old premises.

11. Petition is disposed of in the above terms.

[DR. SHALINI PHANSALKAR-JOSHI, J.] [S.C. DHARMADHIKARI, J.]