

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 3902 OF 1998

M/s. All India Medical Corporation,
Mulji Jetha Building, 1st Floor,
185, Princess Street,
Mumbai-400 003.

... Petitioner

V/s.

1. Smt Shanta M. Shah
2. Smt. Pravina M. Shah
both residing at Dhiraj Apartment,
'A' Block No.16, 17 & 18,
4th Floor, Peddar Road,
Mumbai-400 026.

... Respondents

- Mr. G.H. Keluskar for the Petitioner.
- None for the Respondents.

CORAM : G.S. KULKARNI, J.

DATED : 20th July, 2017.

JUDGEMENT:

1. Heard Mr. G.H. Keluskar, learned counsel for the petitioner. The petitioner is a tenant of a building known as Madhiwala Building situated on the ground floor, No.3-5-5A, Dr. Bhalerao Marg (Kelewadi), Girgaum, Mumbai. It is not a dispute that the building collapsed in the month of July 1984. The case of the petitioner-tenant was that there was proceeding initiated by MHADA to acquire the building and ultimately, it

was acquired under the provisions of section 93 of the Maharashtra Housing and Area Development Act. In pursuance of this acquisition as stated by the petitioner, Miscellaneous Notice No.4021 of 1997 came to be filed on behalf of the petitioner in R.A.E. Suit No. 1339/4570 of 1974 as filed on behalf of the respondents-landlords, inter alia praying that in view of the acquisition of the building by MHADA, the respondents have ceased to be the landlords of the suit property and therefore, they were not permitted to proceed with the suit. It was prayed that the respondents be called upon to disclose proper facts regarding acquisition of the said property and the suit be stayed for the said reasons. This application was contested on behalf of the respondents by an order dated 05/01/1998, the learned Judge of the Small Causes Court dismissed the said application after hearing the rival contentions. It was observed that the respondents-plaintiffs have not handed over the possession of the property to MHADA and therefore the contention of the petitioner that the respondents ceased to have any right in the suit premises cannot be accepted. The respondents thereafter, approached the appellate bench of the Small Causes Court Mumbai in Revision Application No. 41 of 1998, being aggrieved by the said order passed by the learned trial Judge. The appellate Court confirmed the findings as recorded by the trial Judge and dismissed the revision application against which the petitioner is before this Court with the present proceeding.

2. Mr. Keluskar, learned counsel for the petitioner would state that, the Courts below are in an error to accept the contention of the petitioner that the respondents-landlords ceased to have any right in respect of the suit premises in view of the acquisition of the suit premises at the hands the MHADA under Section 93 of the Maharashtra Housing and Area Development Act. He submits that, admittedly the respondents would cease to be the landlords as there would be an automatic severance of the relation between the petitioner and the respondents as that of a landlord and a tenant. He accordingly, submits that this petition deserves to be allowed by setting aside the order passed by the Court below.

3. A perusal of the findings which are recorded by the Courts below to my mind are quite clear, there is a finding of fact which is recorded that, the respondents-plaintiffs have not handed over the physical possession of the suit property to the MHADA. As also the entire procedure as required to be followed under the provisions of MHADA Act, so as to completely vest the premises in MHADA appears to be not completed when the application came to be moved. If that be the situation, then certainly these findings which are based on evidence cannot be said to perverse. I am also not pointed out any other finding which would reflect the perversity of any observations to enable this Court to exercise its jurisdiction under Article 227 of the Constitution of India. The Writ Petition is accordingly dismissed. No costs. The petitioner however, is not

precluded from urging any other issues as permissible for him to be asserted at the trial of the suit.

(G.S. KULKARNI, J.)