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

WRIT PETITION NO. 2343 OF 2016

Vipul Bhogilal Trivedi .. Petitioner
Vs.
State of Maharashtra & Ors. .. Respondents

**WITH
WRIT PETITION NO. 2349 OF 2016**

Subhash Patil .. Petitioner
Vs.
State of Maharashtra & Ors. .. Respondents

**WITH
WRIT PETITION NO. 2974 OF 2016**

Sangita Dattatray Vengurlekar .. Petitioner
Vs.
State of Maharashtra & Ors. .. Respondents

**WITH
WRIT PETITION NO. 2975 OF 2016**

Laxman Gangaram Naik .. Petitioner
Vs.
State of Maharashtra & Ors. .. Respondents

**WITH
WRIT PETITION NO. 3074 OF 2016**

Vivek Prabhakar Jadhav .. Petitioner
Vs.
State of Maharashtra & Ors. .. Respondents

Mr. G. S. Hegde i/b C. M. Lokeshappa for the Petitioner in WP 2355/16.
Mr. P. C. Kansara for the Petitioner in WP 2394/16, 2334/16, 2343/16,
2974/16, 2975/16 & 3074/16.
Ms. Sharmila Deshmukh a/w. Ms. Jaya Bagve for Respondent Nos.2, 3 &
4 in WP 2334/16, 2349/16, 2394/16.
Mr. V. P. Kakade i/b V. P. Sawant for the Respondent Nos.2 & 3 in WP
2355/16.

Mr. Vaibhav M. Parashurami for the Respondent Nos.2, 7 & 3 in WP 2975/16 & 3074/16.

Mr. Himanshu Takke, Addl. Government Pleader in WP 2343/16.

Mr. K. R. Trivedi, Addl. Government Pleader in WP 2349/16.

Mr. Sukanta Karmakar, Addl. Government Pleader in WP 2975/16.

Mr. Kedar Dighe, Addl. Government Pleader in WP 3074/16.

Mr. Milind Sathe, Sr. Counsel a/w. Mr. Ravishankar Malandkar, Mr. Mohan Rao, Mr. G. V. Murti, Mr. Pradeep Dubey i/b MSR & Associates for the Respondent No.4 in WP 2394/16.

Mr. Aspi Chinoy, Sr. Counsel i/b B. R. Zaveri for the Respondent No.6 in WP 3074/16.

Mr. B. R. Zaveri for the Respondent No.6 in WP 2394/16, 2334/16, 2343/16, 2349/16, 2355/16, 2372/16, 2974/16 & 2975/16.

CORAM : SMT. VASANTI. A. NAIK AND
MR. RIYAZ I. CHAGLA, JJ.

DATE : 4th DECEMBER, 2017.

P. C. :

Since the issue involved in these writ petitions is identical and similar orders under Section 95A of the Maharashtra Housing and Area Development Act, 1976 (hereinafter referred to as 'MHADA' for the sake of brevity) are challenged therein, they are heard together and are decided by this common order.

By these writ petitions, the petitioners have challenged the orders of the Executive Engineer, D-3 Division under Section 95A of the MHADA asking the petitioners to vacate the premises occupied by them.

The petitioners are the tenants of the premises that was sought to be redeveloped in pursuance of the permissions granted by the MHADA and the respondent-corporation under regulation 33(7) of the Mumbai Municipal Corporation Development Control Regulations, 1991 (hereinafter referred to as the 'DCR'). The IOD was issued in the year 2004 and the NOC was granted to the respondent No.5-developer on 13.07.2006. In pursuance of the grant of building permission the rehabilitation building is constructed by the respondent No.5 and occupation certificate is also issued in respect of the same. Since the

petitioners were not ready to vacate the premises, a notice under Section 95A of the MHADA was served on them. The petitioners were heard by the Executive Engineer from time to time and by the impugned orders, the petitioners were directed to vacate the premises occupied by them. The petitioners have challenged the orders of the Executive Engineer in these writ petitions.

Shri Kansara, the learned counsel for the petitioners submitted that the Executive Engineer failed to consider that the entire FSI was utilized in the construction of the Matru Mandir in the year 1964 and the FSI of 13445 could not be utilized for redevelopment. It is submitted that the theory of the respondent No.5 and the other concerned respondents that plot No. 654 was subdivided and 3453.10 sq. mtrs. was earmarked for housing purposes and 7030 sq. mtrs. was earmarked for the recreation ground is incorrect. It is submitted that the grant of the occupation certificate in respect of the rehabilitation building is bad in law. It is submitted that MHADA could not have issued the NOC for redevelopment on 13.07.2006 as more than the permissible FSI was sought to be utilized for the redevelopment. It is submitted that during the pendency of the proceedings under Section 95A of the MHADA before the Executive Engineer, the respondent No.5 had agreed to grant more carpet area in the redeveloped premises to some of the tenants while denying similar benefit to the petitioners. It is submitted that the said action on the part of the respondent No.5 would be illegal and the impugned orders are liable to be set aside. The learned counsel relied on the judgment reported in **2012(5) Mh.L.J. 229** to substantiate his submission.

The learned senior counsel on behalf of the respondents submitted that the impugned orders cannot be interfered with in exercise of the writ jurisdiction on the submissions made on behalf of the petitioners. It is stated that the judgment reported in **2012(5) Mh.L.J. 229** and relied on by the learned counsel for the petitioners would be helpful to the respondents

for supporting the impugned orders. It is submitted that the submissions like the one that are advanced in this case by the counsel for the petitioners were advanced in the case in the reported judgment and on a consideration of the scope of the provisions of Section 95A of MHADA, it was held that in the circumstances of the case, the order passed by the Executive Engineer in that case was not liable to be interfered with. It is submitted that the scope of the jurisdiction under Section 95A of MHADA is limited and it would be necessary for the Executive Engineer to only consider whether a no objection certificate for the redevelopment of the building is issued by the Board to the owner or to the proposed co-operative housing society and whether 70% of the total occupiers of the building have given their consent in writing for the redevelopment of the building. It is submitted that in the instant case, the NOC was issued by MHADA in favour of the concerned respondents on 13.07.2006 and more than 80% of the members and occupiers of the building had agreed for the redevelopment. It is submitted that out of 127 occupiers, 110 occupiers have already vacated the premises and have shifted to the premises allotted to them in the rehabilitation building. It is submitted that as per the regulations of the DCR, specially regulation no. 33(7) and Appendix III appended thereto, it is clear that each of the petitioners is offered the carpet area to which he/she is entitled. It is submitted that to each of the petitioners, the concerned respondents have offered to provide the same carpet area that was occupied by them or more than that. It is stated by placing reliance on Clauses 1 to 4 of Appendix III under regulation no. 33(7) that the petitioners are offered the carpet area in the rehabilitation building as per the said provisions. It is submitted that it would not be for the petitioners to claim more carpet area than the one to which they are entitled in accordance with the regulations merely because the respondents have provided a little more carpet area to some other occupiers after negotiations. It is stated that the petitioners would not

have a right to claim the carpet area that is provided to a few others, when there is no breach of the conditions in the DCR while providing the accommodation in the redeveloped property as per Appendix III appended to regulation 33(7) of the DCR. It is stated that if the developer grants a carpet area exceeding 70 sq. mtrs. (753 sq. ft.) i.e. the maximum that could be provided, the same could be considered for rehabilitation FSI but would not be considered for incentive FSI. The learned senior counsel sought for the dismissal of the writ petitions.

In the circumstances of the case, the petitioners are not entitled to the relief claimed. We do not find any reason for interference with the impugned orders in exercise of the writ jurisdiction. As rightly submitted on behalf of the respondents, the judgment relied on by the learned counsel for the petitioners would be helpful to the respondents for defending the impugned orders. The submission made on behalf of the petitioners that the NOC and the OC were not rightly issued, that more than permissible FSI was sought to be utilized for the rehabilitation building, that more carpet area is sought to be allotted to some occupiers could not have been dealt with by the Executive Engineer in the proceedings under Section 95A of the MHADA. On a reading of Section 95A of MHADA, it appears that the scope of the summary eviction proceedings is very limited. It would be necessary for the Executive Engineer to only consider whether a valid no objection certificate is issued for the redevelopment of the building and whether more than 70% of the total occupiers have given their consent in writing for the redevelopment. On a reading of the impugned orders, it appears that the Executive Engineer has recorded a finding that a no objection certificate was issued in favour of the concerned respondent on 13.07.2006. It also appears from the impugned order that more than 80% of the occupiers had entered into an agreement with the concerned respondents and they had shifted to the rehabilitation building by vacating the premises occupied by them. The Executive Engineer had found that

more than 70% of the occupiers had agreed for the redevelopment. Except two petitioners, the petitioners had also agreed for the redevelopment but had wriggled out at the subsequent point of time for the reasons best known to them. The Executive Engineer could not have considered the objections that excess FSI was utilised, that plot survey No. 654 was not subdivided, etc. while conducting the enquiry in the summary eviction proceedings under Section 95A of the MHADA. It is held by this Court in the judgment reported in **2012(5) Mh.L.J. 229** that action under Section 95A of MHADA cannot be converted into a full-fledged judicial proceedings as if the authority is trying a civil suit. It is observed by this Court in the said judgment that once the NOC, IOD and all the other requisite documents are in place and have not been set aside by any court of law, the Executive Engineer cannot assume jurisdiction under Section 95A of the MHADA to examine the legality of the permission. In the instant case, some of the petitioners had made an effort to challenge the NOC and IOD by filing Writ Petition No. 2015 of 2015 but the said writ petition was dismissed by the order dated 06.11.2017. In the instant case, the concerned respondents are ready to grant the carpet area as certified by the MHADA to the petitioners and the petitioners cannot seek a larger carpet area when they do not have a right to claim so. On a reading of Appendix-III to regulation no. 33(7) of the DCR, it appears that the minimum carpet area liable to be provided to the occupiers is 300 sq. ft. and the maximum is 753 sq. ft. and by considering the carpet area occupied by the petitioners in the old building, all the petitioners are offered either the same carpet area that was held by them or a larger carpet area. Merely because a little more carpet area was granted to some of the similarly situated occupiers after negotiations, the petitioners would not have a right to claim the carpet area, as is granted to them, when the petitioners would not have a right to claim so. We find that the FSI granted by a developer in excess of 753 sq. ft., though is

considered as the rehabilitation FSI, the same is not considered as incentive FSI and hence the developer would not be benefitted by granting a little more carpet area to the occupiers. In the circumstances, it would not be within the domain of this Court to direct the concerned respondents to grant more carpet area than the one to which the petitioners are legally entitled under the DCR. We find that the enquiry conducted by the Executive Engineer is just and proper and is in consonance with the provisions of Section 95A of the MHADA and there is no scope for interference with the impugned orders in exercise of writ jurisdiction.

Hence, we dismiss the writ petition with no order as to costs.

At this stage, Shri Kansara, the learned counsel for the petitioners states that it would not be possible for the petitioners to vacate the premises occupied by them within 48 hours as per the notice served on them and four weeks time may be granted to the petitioners to vacate the premises. It is submitted that each of the petitioners would furnish a separate undertaking within three days that he/she would positively vacate the premises within four weeks.

The request made on behalf of the petitioners is just and reasonable. Hence, we grant four weeks time to the petitioners to vacate the premises only on the condition that the petitioners furnish the undertaking in this Court within three days that they would vacate the premises within four weeks. Order accordingly.

[RIYAZ I. CHAGLA, J.]

[SMT. VASANTI A. NAIK J.]