

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

WRIT PETITION (L) NO.1726 OF 2017

1. Shabbir bhai Morbiwala
Adult, Indian Inhabitant,
Age:-64 years; Occupation:-Proprietor
2. Shahzada Abbas Bhaisaheb Fakhruddin
Adult, Indian Inhabitant,
Age:-77 years; Occupation:- Business
3. Shahzada Qaidjoher Bhaisaheb Ezzuddin
Adult, Indian Inhabitant,
Age:-73 years; Occupation:- Business
4. Shahzada Taha Bhaisaheb
Adult, Indian Inhabitant,
Age:-40 years; Occupation:- Business
5. Dr. Moiz Bhaisaheb H. Nooruddin
Adult, Indian Inhabitant,
Age:-68 years; Occupation:- Professional
6. Aliasger Bhaisaheb Bin Shahzada
Ezzuddin
Adult, Indian Inhabitant,
Age:-41 years; Occupation:- Business
7. Abdulqader Bhaisaheb bin Dr. Moiz
Bhaisaheb
Adult, Indian Inhabitant,
Age:-44 years; Occupation:- Business
8. Shaikh Abdeali bhai Bhanpurawala
Adult, Indian Inhabitant,
Age:-54 years; Occupation:- Service
9. Shaikh Ebrahim Faizullahbhoi
Adult, Indian Inhabitant,

Age:-82 years; Occupation:- Partner

10. Shaikh Abdullah bhai Electricwala
Adult, Indian Inhabitant,
Age:-68 years; Occupation:-Managing
Director

11. Shaikh Zoeb bhai Ahmedali Bootwala
Adult, Indian Inhabitant,
Age:-62 years; Occupation:- Proprietor and
Chief Architect

12. Shaikh Asger Bhai Arsiwala
Adult, Indian Inhabitant,
Age:-74 years; Occupation:- Proprietor and
Chief Accountant

13. Abbas bhai Jasdanwala
Adult, Indian Inhabitant,
Age:-80 years; Occupation:- Chairman and
Managing Director

14. Shaikh Mansoor Adil Zainulbhai
Adult, Indian Inhabitant,
Age:-62 years; Occupation:- Senior
Advisor

15. Shaikh Shabbir Bhai Bharmal
Adult, Indian Inhabitant,
Age:-61 years; Occupation:- Business

16. Khuzaima Bhai Anajwalla
Adult, Indian Inhabitant,
Age:-50 years; Occupation:- Partner

Petitioner Nos.1 to 16 above, all being in
their capacity as the trustee of Saifee
Burhani Upliftment Trust, a public
charitable trust, registered under the
Public Trusts Act, 1950 having its
registered office at 47/49 Raudat Tahera

...Petitioners

Street, Ground Floor, Bhendi Bazaar,
Mumbai 400 003.

Versus

1. Maharashtra Housing and Area
Development Authority having its address
at Grihanirman Bhavan Kalanagar, Bandra
East, Mumbai, Maharashtra 400 051.

2. Maharashtra Building Repair and
Reconstruction Board, having its address
at Grihanirman Bhavan Kalanagar, Bandra
East, Mumbai, Maharashtra 400 051

3. Sugra Begum, residing at ground floor,
Sharafally Moomji Chawl, bearing CS
No.3573, located at Gujar Stree, Bhendi
Bazaar 400 003.

...Respondents

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Mr. Virag Tuljapurkar with Mr. Nikhil Sakhardande, Mr.
Dhawal Mehta, Ms Nanki Grewal, Ms Yogini Borade and Mr.
Khan Javed Akhtar i/b. M/s. Wadia Ghandy and Co. for the
Petitioners.

Mr. P.G. Lad with Ms Sayli for the Respondent Nos.1 and 2.
Mr. Bhavesh Parmar i/b. Mr. Devmani Shukla for the
Respondent No.3.

**CORAM : ANOOP V. MOHTA AND
SMT. ANUJA PRABHUDESSAI, JJ.**

DATED : 17th JULY, 2017.

ORAL JUDGMENT (Per ANOOP V. MOHTA, J.):

Heard. Rule. Rule is made returnable forthwith and the
Petition is heard finally.

2. We are inclined to dispose of the petition in view of the urgency so expressed by the Petitioners and so also by the Respondent Nos.1 and 2-Maharashtra Housing and Area Development Authority ('MHADA'), being authority concerned, as it relates a Cluster Development Project under Regulation 33 (9) of the Development Control Regulations ('DCR').

3. Respondent No.3 as a tenant out of 54 tenants of the building in question, not vacating the resident premises under her occupation. The portion of ground floor of the property bearing CS No.3573 Gujar Stree, Behndi Bazar- 400 003 being occupied by the Darga. There is no issue that all other 53 tenants of the dilapidated building have vacated and except the portion of the building under occupation of Respondent No.3, is demolished. Respondent No.3 therefore admittedly occupying the premises which according to the Petitioner and Respondent Nos.1 and 2 is a dangerous building for further residence occupation. There is no issue that the building/ premises was in dilapidated condition therefore, most of the portion was demolished. Everybody else vacated in view of the settlement / the conditions of providing with alternate suitable accommodations to such occupant. The Petitioners have been providing such alternate

transit accommodation to all the tenants. Therefore, their rights as a tenant is secured in view of the development project terms and conditions itself.

4. Respondent No.3 has refused to vacate the premises in spite of receipt of communications since long. MHADA, on 29th March, 2017, even issued notice to her to vacate the area in occupation and shift to the transit accommodation which is stated to be allotted by the Petitioners to avoid any mishap, untoward incident or accident in view of the dilapidated condition of the remaining portion of the building.

5. The work of redevelopment of cluster project is in progress. The statement is made that they are not touching and /or will develop the project, keeping in mind the religious area (The Darga). The necessary demolition and excavation works have been in progress since long. Such occupation therefore is not in the interest of the Project, Respondent Nos.1 and 2, and not even Respondent No.3. The Petitioners have already provided and expressly communicated to shift to the transit accommodation, as such occupation of Respondent No.3 is quite unsafe. Respondent No.3, however opposing all such actions of Petitioners and MHADA by referring the pending litigations in Small

Causes Court, and raising the other issue that property belongs to Wakf Board, at this stage in the present Writ Petition, cannot be adjudicated. The remedy is elsewhere. We are concerned definitely the aspect of continuing occupation of Respondent No.3 in such premises.

6. Section 95 A of the Maharashtra Housing and Area Development Act ('MHADA Act') is a provision available for taking summary eviction proceedings by MHADA. Situation is different here and even otherwise those proceedings will take its own time. In the present situation where all other occupants (tenants) have already vacated on same terms and conditions, the Petitioners have been providing the accommodation and all other benefits to Respondent No.3. The progress of the project can be permitted to be obstructed, by such occupants specially in view of the above facts and the circumstances.

7. Therefore the submission even referring to Section 95 A of the MHADA Act was made by the learned counsel appearing for Respondent No.3 in our view is unsustainable.

8. Section 77 of MHADA Act provides and gives power to MHADA /the concerned Authority, to take all immediate action, as is necessary for the development of the project.

9. Though notice was given on 29th March, 2017 but Respondent Nos. 1 and 2 failed to evict Respondent No.3 till this date. Petitioners' prayer therefore, to pass an appropriate order by invoking writ jurisdiction as there is no other efficacious and effective remedy is available, which cannot be overlooked. Therefore, we are inclined to direct MHADA, the Authority concerned and to take immediate steps to evict Respondent No.3 from the remaining portion of the building by giving a reasonable notice of two weeks. Respondent No.3 if vacates the premises voluntarily, the Petitioners are under obligation to provide all the necessary facilities and /or transit accommodation which they have been providing to other similarly placed tenants. The statement made by the learned counsel appearing for the Petitioners that they are willing and bound to provide transit accommodation immediately if Respondent No.3 vacates it.

10. The apprehension is that Respondent No.3 inspite of this and in view of the stated pendency of litigation and the issue so

agitated, would not vacate the premises. Therefore, in the interest of justice and people at large and to avoid further complications and to avoid any mishap and /or any accident, we are inclined to order even forceful eviction. This Court has already passed such orders in many similar matters in a situation where tenants/occupants of dilapidated building failed to evict the premises inspite of notice and warning. We have permitted the Respondent concerned /or the local authorities to take the police protection and /or assistance to follow the smooth process of eviction only in case of resistance /obstruction by such occupants after due notice. This Court has granted such police protection in such situation as recorded in *Municipal Corporation of Greater Mumbai Vs. State of Maharashtra & Ors. 2014 (6) Bom.C.R. 860*.

11. Therefore, in the present case also as case is made out and to avoid further complications we are inclined to permit Respondent Nos.1 and 2 -MHADA to take all necessary steps for eviction of Respondent No.3, by taking police assistance /protection, if required and do the needful preferably within two weeks.

12. It is made clear that we have not observed anything on

merits of the matter as we have concerned at this stage Respondent No.3's actions of non vacation of the premises inspite of repeated notices and as all 53 tenants have already vacated as the building is in dilapidated condition. The vacated portion of the building has already been demolished therefore, this order.

ORDER

- a) Respondent No.3 to vacate the portion in question within two weeks.
- b) Respondent Nos.1 and 2 and its officer/agents are permitted to take all essential steps for evicting Respondent No.3 from the remaining building portion in question and if Respondent No.3 refused/ or failed to vacate the same portion within two weeks, by taking all police assistance/help, and of other Authority if required.

13. The Petition is accordingly allowed and disposed of.

14. Parties to act on an authenticated copy of this order.

15. The learned counsel appearing for Respondent No.3 seeks

stay of this order which we have pronounced in the open Court. In view of the observations made, no case is made out, so the oral prayer for stay of this order is rejected .

(ANUJA PRABHUDESSAI, J.)

(ANOOP V. MOHTA, J.)