

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

WRIT PETITION (LODGING) NO. 1907 OF 2017

Jayant Enterprise & Anr.

...Petitioners

Versus

Maharashtra Housing and Area
Development Authority & Ors.

...Respondents

WITH

WRIT PETITION (LODGING) NO.2574 OF 2017

Vilesh T. Gala

...Petitioner

Versus

Executive Engineer, D-2 Division,
Mumbai Buildings Repairs and
Reconstruction Board & Ors.

...Respondents

.....

Mr. Rajiv Chavan, Senior Advocate with Ms Perna
Lalchandani, Priyanka Chavan i/b. Mr. Sushmit Phatale for
the Petitioner in WP/1907/2017.

Mr. P.G. Lad with Ms Sayli Apte and Mr. Devendra Tiwari for
the Respondent Nos.1 to 4.

Mr. Sagar Patil for MCGM.

Mr. Atul G. Damle, Senior Advocate with Mr. Nikhil Patil, Mr.
Abhishek Adke, Mr. Vikrant Zunjarrao i/b. M/s. Zunjarrao
and Co. for Respondent No.6 in WPL/1907/2017 and for
Petitioner in WPL/2574/2017.

CORAM : SHANTANU KEMKAR &

SMT. ANUJA PRABHUDESSAI, JJ.

DATED : 18th SEPTEMBER, 2017.

P.C.:-

The Petitioners are seeking direction against the

Respondent No.1 to initiate action under provisions of Section 95-A of the MHADA Act and evict Respondent No.6 forcibly from his existing premises viz. Shop No.2, ground floor and thereafter to hand over the peaceful possession to the Petitioners.

2. In the Writ Petition (Lodging) No.2574 of 2017 the Petitioner is seeking quashment and setting aside office notes dated 3rd June, 2017 and 6th June, 2017 issued by Respondent Nos.1 and 2 respectively and also seeking directions to Respondent No.1 to measure the area claimed by the Petitioner adjoining Shop 2 of the Ground Floor of the Nawab Building. It is also the prayer of the Petitioner to include the measured area claimed by the Petitioner adjoining Shop No.2 of the ground floor of the Nawab Building in the certified list of tenants with respect to the redevelopment of the Nawab Building.

3. The learned counsel for the Petitioner in Writ Petition (Lodging) No.2574 of 2017 has filed an undertaking dated 13th September, 2017 of Petitioner No.2, partner of Petitioner No.1. Relevant paragraph of the said undertaking reads thus:-

“3. I hereby agree and undertake to this Hon'ble Court that in the event the Respondent Nos.1 to 4 within 6 weeks certify and affirm that the Respondent No.6 is entitled to additional area over and above 27.31 sq.

mtrs, as already certified in the Certified list of tenants, then I shall provide such additional commercial area over and above 27.31 sq. mtrs to the Respondent No.6 in the building to be constructed on the said property being C.S. No.6, 1/6 and 2/6 of Tardeo Division, situate at Nauchi Barucha Marg, Tardeo, Mumbai- 400 007.”

4. In regard to the prayers made in Writ Petition (Lodging) No.2574 of 2017 we find that the Vice President and Chief Executive Officer, MHADA vide order dated 10th June, 2017 had passed following order:-

“Relying upon the documents i.e. Inspection Extract of 1995-96 and Affidavit, the area adjoining to the godown term as Garage in the Inspection Extract of 1995-96 is hereby accepted. The Executive Engineer “D-2” Divn/MBRRB directed to measure the area of garage in presence of applicant considering the area assess by the MCGM and include the said carpet area with the area of Shop on Ground floor of cessed structure D-3688(2AA), hence appeal is disposed off.”

5. The learned counsel for the Petitioner in Writ Petition (Lodging) No.2574 of 2017 submits that against the said order though review was filed by the Executive Engineer but vide order dated 24th July, 2017 said review has been rejected. Grievance is that even after rejection of the prayer for review, order passed on 10th June, 2017 by the Vice President and Chief Executive Officer, MHADA has not been implemented and measurement and verification has not been done by

the Executive Engineer till date.

6. In view of the fact that order dated 10th June, 2017 passed by the Vice President and Chief Executive Officer, MHADA had attained finality we are of the view that both the Petitions can be disposed of by passing following order:-

(a) We direct the Executive Engineer, D-2 Division, Mumbai Buildings Repairs and Reconstruction Board to verify and measure the area claimed by Petitioner in presence of the Petitioner as also the Petitioner in Writ Petition (Lodging) No.2574 of 2017 and supply copy of the same to all concerned.

(b) The measurement and verification shall take effect within a period of two weeks. Needless to state that whatsoever may be the decision in regard to the verification and measurement, the Petitioner- Vilesh T. Gala shall handover peaceful possession of the premises which is occupied by him to the Petitioners in Writ Petition (Lodging) No.1907 of 2017 within two weeks after the verification and the

measurement being done.

- (c) Entitlement of the Petitioner- Vilesh T. Gala for the additional area will be determined by MHADA in accordance with the said report and in accordance with law.

7. With the aforesaid directions both the Petitions stand disposed of.

(ANUJA PRABHUDESSAI, J.)

(SHANTANU KEMKAR, J.)