

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

WRIT PETITION NO.2258 OF 2011

Pratibha Madhukar Lad		
And Others	...	Petitioners
Versus		
Maharashtra Housing And		
Area Development Authority		
And Another	...	Respondent

**ALONG WITH
WRIT PETITION NO.1440 OF 2012**

Sadashiv Keshav		
Versus	...	Petitioner
Maharashtra Housing And		
Area Development Authority		
And Others	...	Respondents

.....

Mr. Simil Purohit a/w Ms. Shachi Udeshi I/b Wadia Ghandy & Co. for the Petitioners in Writ Petition No.2258 of 2011 and for Respondent No.2(a) to 2(d) in Writ Petition No.1440 of 2012.

Mr. P.G. Lad a/w Ms. Sayli Apte for Respondent No.1.

Mr. J.S. Saluja I/b Mr. Vilas N. Mali for Respondent No.2 in Writ Petition NO.2258 of 2011 and for Petitioner in Writ Petition No.1440 of 2012.

.....

CORAM : S.C. GUPTE, J.

DATE : 14 MARCH 2019

(Oral Judgment)

WRIT PETITION NO.2258 OF 2011

. This writ petition challenges original and appellate orders of Respondent No.1 MHADA under Section 66 of the Maharashtra Housing

And Area Development Act, 1976 ("Act").

2 The short facts of the case may be stated as follows :

The Petitioners are legal heirs of one Madhukar Keshav Lad ("Madhukar"), who was the original appellant in Appeal No.8 of 2006, in which the appellate order of the authority challenged herein was passed. The Petitioners along with Madhukar claimed to be in use and occupation of tenement No.431, Building No.43 situated at MHB Colony, Ekta Nagar, Dahanukar Wadi, Dattamandir Cross Road, Kandivli (West), Mumbai-400 067 ("tenement"). The tenement is the subject matter of the petition. The Respondent authority's case under Section 66 of the Act is that Respondent No.2, brother of Madhukar, was the original allottee of the tenement. Respondent No.2 had applied for the tenement under a scheme of the Respondent authority vide application dated 17 November 1983. In response to this application, an intimation of allotment was issued to him by the authority on 15 December 1986. By this allotment letter, Respondent No.2 was called upon to file an affidavit on stamp paper furnishing *inter alia* passport size photographs of his family members, whose names were to be included in the Schedule to the application and who would be occupying the tenement along with him. The affidavit dated 5 January 1987 which is submitted in response to this requisition is on record. The application itself, which is on record, shows names of all family members including Madhukar, brother of Respondent No.2, and his family members including the Petitioners herein, as part of the application. A passport size photograph of Madhukar appears on this affidavit, as also a photograph of his family members including Respondent No.2 and the

Petitioners herein. The allottee (Respondent No.2) has even made a separate affidavit as far back as on 22 April 1988 testifying that he along with his two younger brothers was staying with Madhukar (the eldest brother) as members of one family in the tenement. These documents, which form part of the Petition, are not contested by the Respondent authority.

3 These documents unmistakably establish that names of Madhukar and his family members did form part of the original application of Respondent No.2 to MHADA for allotment. These documents establish that MHADA's allotment letter was in pursuance of Regulation No.17.1 of Maharashtra Housing & Area Development (Estate Management, Sale, Transfer, Etc.) Regulations, 1981, which *inter alia* required an affidavit furnishing photograph of family members, whose names were included in the Schedule to the application; that the affidavit furnished in response contained photographs and names of Madhukar and his family members including the Petitioners herein. This clearly makes out the Petitioners' case that Madhukar and his family members were part of the original application for allotment, which included them as family members of the allottee, i.e. Respondent No.2. If that is so, merely on the basis that they are found to be in possession of the tenement, even if such occupation, as of the date of the impugned order, be not along with the original allottee, i.e. Respondent No.2, they cannot be termed as unauthorised occupants. There is nothing to suggest that there is sub-letting as between the original allottee, i.e. Respondent No.2, and Madhukar or his family members, i.e. the Petitioners herein.

4 The authority *inter alia* proceeds on the footing that the names of Madhukar and the Petitioners herein were not entered in Form 'C'. Form 'C' itself is not on record and Respondent No.1 authority is unable to produce the same. In the circumstances, based on the documents produced by the Petitioners in the present petition, and which documents are not contested by Respondent No.1 authority, the Petitioners' case of being part of the original allotment as family members of the allottee, is adequately made out.

5 The Supreme Court in the case of **Dattaram S. Vichare Vs. Thukaram S. Vichare**¹ considered a similar case, where the occupants were sought to be evicted from a MHADA tenement on the ground of sub-letting. Even in that case, the names of the occupants, who were sought to be evicted, formed part of the original application for allotment. The court held that the Board having accepted the application and allotted the premises after permitting the allottee's brother to reside in the premises as a member of his family, it was not open to the Board to terminate the tenancy of the allottee on the ground that he had sub-let the premises to his brother. The judgment of the Supreme Court clearly supports the case of the Petitioners herein.

6 The impugned orders of the authorities entirely proceed on the footing that Form 'C', which is part of the application for allotment, contained only the names of the parents of the original allottee as members of his family. The so called Form 'C', as noted above, is not on record and is not produced even by Respondent No.1 authority. What the documents

1 (1999) 6 Supreme Court Cases 764

on record indicate that in the Schedule to the application in Form I, which is prescribed under Maharashtra Housing And Area Development Authority (Estate Management, Sale, Transfer, Etc.) Regulations, 1981, the names of Madhukar and his family members (the Petitioners herein) were disclosed as members of the allottee's family. The regulations indicate that the form itself, in its body, does not have to state the names of family members, though in the particular form in the present case these names are to be found in a schedule to the form. What the regulations require is an affidavit from the allottee after the allotment is made, disclosing the names of his family members along with their photographs. As noticed above, the affidavit filed in the present case for allotment of tenement did show the names and photographs of all family members including the Petitioners herein. There is, accordingly, no substance in the conclusion of the authorities below that the occupation of Madhukar or his family members (i.e. the Petitioners herein) was in pursuance of an act of sub-letting.

7 The writ petition is allowed by making Rule absolute. The impugned orders of the authorities below dated 18 September 2006 and 18 October 2011 are quashed and set aside. No order as to costs.

WRIT PETITION NO.1440 OF 2012

8 In view of the order passed in Writ Petition No.2258 of 2011, this companion petition, namely, Writ Petition No.1440 of 2012, filed by the allottee (Respondent No.2 referred to above), does not survive. The same is accordingly disposed of in terms of the above order.

9 If there is any dispute as between the original allottee, i.e. Respondent No.2, and the Petitioners, it is for them to sort it through appropriate process of law. It is not the concern of Respondent No.1 authority to cause eviction on the basis of such *inter se* dispute between occupants.

(S.C. GUPTE, J.)