

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

WRIT PETITION NO.2008 OF 2018

Lilavanti Jadavji Chheda

... Petitioner

versus

The Chief Officer, Mumbai Repair
and Reconstruction Board of
MHADA and Ors.

... Respondents

Mr. Ghulam R. Khan, for Petitioner.

Mr. Nikhil Patil I/by Mr. V.P.Sawant, for Respondent No.1.

Mr. Reanan Nagporwala with Mr. Rushil Mathur I/by Kochhar and Co., for
Respondent No.2.

**CORAM: AKIL KURESHI &
S.J. KATHAWALLA, JJ.**

DATE: 27th JUNE, 2019

P.C.:

1. The above Writ Petition is filed by the Petitioner seeking the following
reliefs :

“(a) That this Hon’ble Court may be pleased to issue Rule Nisi;

(b) That this Hon’ble Court may be pleased to issue Writ of
Mandamus or any other appropriate order or direction in the nature
of Mandamus ordering and directing the Respondent Nos.1 and 2 to
allot alternate new shop in the newly constructed building to the
Petitioner only on ownership basis in lieu of her suit shop as Project
affected person with all other consequential benefits being Shop
No.1, 218-220, New Chandra Mahal, Thakurdwar Road, Mumbai –
400 002;”

2. According to the Petitioner, her husband Jadavji Shamji Chheda along with his father Shamji Shivaji Chheda were earlier doing business from Shop Nos.1 and 2 situated at 218-220, New Chandra Mahal, Thakurdwar Road, Mumbai – 400 002. Shop Nos.1 and 2 admeasured approximately 618 sq.ft. The said shops had no internal division/partition and was used as one unit. After the demise of her father in law, her husband continued the business. Her husband passed away on 14th June, 1993 and she was constrained to entrust the said business to her brother in law Dhirajlal S. Chheda. The said Dhirajlal constructed a partition wall between Shop Nos.1 and 2. Shop No.1 admeasured 258 sq.ft. & Shop No.2 admeasured 360 sq.ft. In the year 1994, the Petitioner took charge of Shop No.2 admeasuring approximately 360 sq.ft., from Dhirajlal and the possession of the said shop continues with her till date. Since the said Dhirajlal had illegally inducted a stranger in Shop No.1, the Petitioner called upon a stranger to vacate the portion of the Shop No.1, who refused to do so and handed over possession of the same to Respondent No.3 – Manoram Samnaji Mewada. The landlord transferred both Shop Nos.1 and 2 to her name in July 2003 and thereby acknowledged her tenancy. The Petitioner has filed a Suit in the Small Causes Court, Mumbai being RAD No.1999 of 2004 seeking eviction of Respondent No.3 from the said Shop No.1. Respondent No.3 also filed RAD Suit No.1810 of 2004 for being declared as tenant of the Shop. Both the suits are at the advanced stage of hearing.

3. According to the Petitioner, in the year 2016, the building in which her

shops are situated was decided to be acquired for Metro Rail – III. The building was surveyed by the officers of the Respondents and all the tenants/occupants were asked to furnish documents pertaining to their residence/shop prior to 1996 to determine the compensation payable until the construction of the new building and handing over the residence/shop in lieu of original residence/shop as project affected persons. According to the Petitioner, the authorities are paying monthly compensation to Respondent No.3 in respect of the said Shop No.1, though it is she, who is legally entitled to the same. The Petitioner now apprehends that upon completion of the new building, the authorities will handover the newly constructed shop to Respondent No.3, which he is not entitled to in law. The learned Advocate for the Petitioner therefore, submits that the Respondent No.1 be restrained from handing over possession of the new premises in lieu of Shop No.1 to the Respondent No.3 until the suits pending before the Small Causes Court, Mumbai are decided.

4. The learned Advocate appearing for Respondent No.1 – MHADA states that the MHADA has prepared a list of existing tenants/occupants of the building in which Shop Nos.1 and 2 of the Petitioner existed. In the said list, they have shown Shamji Chheda (father in law of the Petitioner) as the original tenant of the said Shop No.1 and the occupier is shown as Respondent No.3 – Monaram Samnaji Mewada. It is also pointed out that in the column captioned “Tenancy Accepted/Rejected” they have provided that the tenement is eligible but the occupancy is kept in abeyance.

5. In view of the above facts of the case, it would be in the interest of justice, that MHADA retains the premises in the newly constructed building which is to be handed over in lieu of the said Shop No.1 until the final decision passed by the Small Causes Court, Mumbai in RAD Suit Nos.1999 of 2004 and 1810 of 2004 filed by the Petitioner and Respondent No.3 respectively. In view thereof, we pass the following order :

- (i) The Respondent No.1 – MHADA shall not handover the permanent alternate premises (Shop) in lieu of original Shop No.1 to either of the parties i.e. the Petitioner or the Respondent No.3 and keep the decision qua the tenancy as well as the occupation in abeyance until the Small Causes Court, Mumbai decides the same in the proceedings pending before it.
- (ii) The Respondent No.1 – MHADA shall handover the possession of the new premises to the party who ultimately succeeds in the proceedings filed before the Small Causes Court, Mumbai.
- (iii) The Writ Petition is accordingly disposed of.

(S.J.KATHAWALLA, J.)

(AKIL KURESHI, J.)