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

WRIT PETITION NO. 1811 OF 2019

Sugrabai Gulam Abas Tambawala,
Aged: 80 yrs, Occ: Housewife,
Residing at: Potia Building,
Room No.1 and 1K, Second Floor,
11 – Dhaboo Street, Bhendi Bazar,
Mumbai – 400 003.

... Petitioner

V/s.

- 1) The Chief Officer, M.B.R and R Board,
Grihanirman Bhavan, 3rd Floor,
Bandra (E), Mumbai – 400 051.
- 2) The Executive Engineer,
Off: “C-2” Division, M.B.R & R. Board,
10-12 Ropa Lane, Chandanwadi,
Marine Lines (E), Mumbai – 400 002.
- 3) Saiffee Burhani Upliftment Trust,
Off: Ezzi Hall, Ground Floor,
47/49 Raudat Tahera Street,
Bhendi Bazar, Mumbai – 400 003.
- 4) The Charity Commissioner,
Off: Charity Commissioner's Office,
3rd Floor, Dr. A.B. Road, Worli,
Mumbai – 400 016.
- 5) The Assistant Engineer,
City Proposal-III,
Off: Municipal Office,
Dosti Acres, Wadala,
Mumbai.

6) The Municipal Commissioner (Mumbai Region)
Through Legal Department,
Off: Municipal Corporation Head Office,
Opposite C.S.T. Railway Station,
Mumbai – 400 001.

... Respondents

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Mr. Sanjeev M. Gorwadkar, Senior Counsel a/w Mr. Yusuf S. Baugwala i/by Mrs. Sana Yusuf Baugwala, Advocate for the Petitioner.

Mr. Virag Tulzapurkar, Senior Counsel a/w Ms. Nanki Grewal, Mr. Shlok Bolar, Ms. Paridhi Saraf i/by M/s. Wadia Ghandy & Co., Advocates for the Respondent No.3.

Mr. Rajiv Mane, Asst. Government Pleader, State, Advocate for the Respondent No.4.

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CORAM : R.D. DHANUKA, J.

RESERVED ON : 16th JULY, 2019

PRONOUNCED ON : 30th JULY, 2019

-: J U D G M E N T :-

. By this petition filed under Article 226 of the Constitution of India, the petitioner has impugned the notice/order of Summary eviction dated 20th May 2019 issued by the Executive Engineer, Mumbai Building Repairs and Re-construction Board, the respondent no.2 herein, notice/order dated 8th March 2019 issued by the respondent no.2, order dated 1st March 2019 passed by the respondent no.2 thereby directing the petitioner to vacate the

premises bearing Room Nos.1 and 1K, 2nd Floor, 11-Dhaboo Street, Bhendi Bazar, Mumbai 400003. Some of the relevant facts for the purpose of deciding this petition are as under:-

2. The petitioner claims to be one of the tenant of Potia building in respect of the Room Nos.1 and 1K situated at 11-Dhaboo Street, Bhendi Bazar, Mumbai 400 003, bearing Cadastral Survey No. 4266 of Bhuleshwar Division. It is the case of the petitioner that both these rooms are located on the 2nd Floor in the said building and are two separate rooms and not interconnected by any means.

3. By a Deed of Conveyance dated 19th May 2010 in respect of the property known as Potia Building admeasuring 138.80 sq. mtrs. or thereabouts, registered by Collector of land revenue under the new survey no.1/4463, the said property came to be sold by previous landlord in favour of respondent no.3 trust. On 10th August 2011, the High Power Committee constituted by the State Government issued a Letter of Intent (LOI) in favour of the respondent no.3 whereby the respondent no.3 became entitled to develop the large number of properties in the area of Bhendi Bazar, Mumbai covering about 16.5 acres under Regulation 33(9) of the Development Control Regulations, 1991. The respondent no.3 applied for approval of

respondent nos. 1 and 2 for re-development of the said Potia Building. The respondent no.2 issued a NOC for the re-development of the said property in favour of respondent no.3.

4. It is the case of the petitioner that no such permission was obtained by the respondent no.3 from the office of the Charity Commissioner for the purpose of re-development under Regulation 33(9) of the Development Control Regulations, 1991, though the same was mandatory according to the petitioner. On 28th December 2017, the respondent no.2 issued a notice under Section 77(b) of the Maharashtra Housing Area Development Act, 1976 (for short 'MHAD Act, 1976') stating that the said Potia Building was found to be dangerous/unfit by human habitation and calling upon the petitioner to vacate the said tenements in her occupation within seven days.

5. It is the case of the petitioner that the petitioner pointed out to the respondent no.1 that the said Potia Building was in good condition and not dilapidated as sought to be alleged in the said notice of eviction. On 31st May 2018, the respondent no.2 issued a notice under Section 95A of the MHAD Act, 1976 against the petitioner for an eviction of the petitioner. The respondent no.2 proposed to hold a meeting on 31st May 2018. It is the case of the

petitioner that the respondent no.3 assured the petitioner that the matter would be settled amicably and convinced the petitioner not to remain present before the respondent no.2 on the schedule date of hearing.

6. By letter dated 17th November 2018, the petitioner informed the respondent no.2 that the petitioner would be unable to remain present on 31st May 2018 when the respondent no.2 had proposed to hold a meeting. It is the case of the petitioner that by letter dated 20th November 2018, addressed by the petitioner to the respondent nos. 1 and 2, the petitioner protested against the clubbing of the two tenements as one by the respondent nos. 1 and 2 and called upon the respondent nos. 1 and 2 for re-measurement the Room No.1 and 1K, which were the tenanted premises of the petitioner. By letter dated 28th February 2019, addressed to the respondent nos.1 and 2, the petitioner made various allegations against the respondent no.3 and requested to pass a speaking order on the said complaint filed by the petitioner.

7. On 1st March 2019, the respondent no.2 passed an order directing the petitioner to handover the vacant possession of Room No.1 and 1K in the said building Potia, 11-Dhaboo Street, Bhendi

Bazar, Mumbai 400 003 within seven days from the date of receipt of the said order and threatened to evict the petitioner summarily in the event of the petitioner not handing-over the possession under Section 95A(2) of the MHAD Act, 1976.

8. On 5th March 2019, the petitioner addressed a letter to the respondent nos.1 and 2 alleging that the respondent no.1 and 2 had not passed any order till date and requested to consider the case of the petitioner and to give a chance for hearing. On 6th March 2019, the petitioner lodged a complaint with Senior Inspector of Police, Sir J.J. Marg Police Station, Mumbai 400008. In the said complaint it was contended that IOD is mandatory for demolition of any building or structure. The developer is bound to execute the agreement for permanent alternate accommodation in favour of the petitioner duly registered and stamped.

9. On 8th March 2019, the respondent no.2 issued a notice under Section 95A(2) of the MHAD Act, 1976 against the petitioner directing her to shift to the temporary transit accommodation within 48 hours i.e. at 2B/205, 2nd Floor, SBI-3, Chunabhatti and made it clear that in the event of the petitioner, failing to shift of the temporary transit accommodation, Summary Eviction under Section

95A(2) of the MHAD Act, 1976 would be initiated against the petitioner.

10. On 11th March 2019, the petitioner addressed a letter to the respondent nos. 1 and 2 making various allegations against the respondent nos. 1 and 2 about violation of principles of natural justice and alleged biased against respondent nos. 1 and 2. The petitioner requested the respondent nos. 1 and 2 to pass a speaking order after complying with the principles of natural justice. On 30th April 2019, the respondent no.2 addressed a letter to the petitioner in respect of his application dated 20th November 2018 requesting for re-measurement of Room No.1 and 1K and requesting the petitioner to remain present alongwith the original documents in connection with the measurement of Room No.1 and 1K for the purpose of re-measurement.

11. On 15th May 2019, petitioner addressed a letter to the respondent nos. 1 and 2 making various allegations against the respondent no.3 and requesting the respondent nos. 1 and 2 to take cognizance of the said complaint.

12. On 20th May 2019, the Mumbai Building Repairs and Reconstruction Board passed an order of Summary Eviction against the

petitioner under Section 95A(1) of the MHAD Act, 1976 within 24 hours on receipt of the said notice. On 22nd May 2019, the petitioner addressed a letter to the respondent nos. 1 and 2 requesting to initiate an action against the respondent no.3. On 25th June 2019, the petitioner addressed another letter to the respondent nos. 1 and 2 requesting them to take cognizance of the complaint made by her and to initiate an enquiry against Mr. Kale and other concerned officials of the MHADA and also against the concerned person of the respondent no.3. On 28th June 2019, the petitioner addressed a letter to Chief Minister of Maharashtra and various other authorities alleging that the petitioner had signed an agreement and letter of undertaking alongwith video recorded statement under duress in favour of the respondent no.3. The petitioner requested the authorities to take an action in this regard.

13. The petitioner through her advocate issued notice dated 1st July 2019 to the respondent nos. 1, 2 and the Senior Police Inspector, making various allegations against the respondent nos. 1 and 2 and also the respondent no. 3-trust requesting them not to dispossess the petitioner from the said two room i.e. Room No.1 and 1K in Potia Building, 11-Dhaboo Street, Bhendi Bazar, Mumbai 400

003. The petitioner accordingly filed this petition inter-alia praying for various reliefs.

14. Mr.Gorwadkar, learned senior counsel appearing for the petitioner invited my attention to some of the annexures to the writ petition. It is submitted by the learned senior counsel that the said Potia Building in which the suit structures were situated is not certified under the category 'C-1' for the year 2018-2019 and 2019-2020 and is not a dilapidated structure. Learned senior counsel placed reliance on some of the photographs of the said building annexed at Ex.'S' to the writ petition. It is submitted that even till today, a post office is operated from the ground floor of the said Potia Building and has not shifted from the said Building to the knowledge of the respondent no.3 and the authority. He submits that no opinion of the structural engineer has been obtained by the respondent no.3. The authority in collusion with respondent no.3 has passed impugned the order of eviction against the petitioner in violation of principles of natural justice.

15. It is submitted by the learned senior counsel that there is no IOD or commencement certificate issued by the authority in favour of the respondent no.3 trust till date for construction of any

buildings. Learned senior counsel placed reliance on regulation 33(9) of the Development Control Regulations, 1991 and would submit that none of the conditions set out therein are complied with by the respondent no.3. He submit that the respondent nos. 1 and 2 could not have issued any notice of eviction under section 95A of the Maharashtra Housing Area Development Act since the respondent no.3 had not executed any agreement for permanent alternate accommodation and has also not submitted any plan indicating the permanent alternate accommodation that would be offered to the petitioner.

16. It is submitted by the learned senior counsel that the respondent no.3 has admittedly not taken any permission from the charity commissioner under section 36 of the Maharashtra Public Trust Act. The said Potia Building will be hit by the provisions of section 36 of the Maharashtra Public Trust Act, 1950. The trust property cannot be alienated without following the mandatory procedure prescribed therein. The respondent no.2 could not have issued any Letter of Intent in favour of the respondent no.3 without such mandatory permission under section 36 of the Maharashtra Public Trust Act, 1950 obtained by the respondent no.3

17. Learned senior counsel placed reliance on the no objection certificate issued by MHADA dated 25th February, 2014 in favour of the Project Director, Prince Aly Khan Hospital, Aga Hall, Nesbit Road, Mazgaon, Mumbai – 400 010 and more particularly condition no.27 thereof requiring the said Prince Aly Khan Hospital Trust to obtain the permission of the Charity Commissioner before starting the actual work of redevelopment. He submits that the respondent no.3 thus, cannot be allowed to commence any work of redevelopment without obtaining such mandatory permission under section 36 of the Maharashtra Public Trust Act. He submits that the order passed by the respondent nos. 1 and 2 under section 95A of MHADA is totally without application of mind and is arbitrary.

18. Learned senior counsel for the petitioner strongly placed reliance on section 33, section 16(1)(i) and 16(6) of the Maharashtra Rent Control Act, 1999 and would submit that since the petitioner is admittedly a tenant of the respondent no.3, for seeking recovery of possession of the suit premises from the petitioner, the respondent no.3 ought to have filed an appropriate proceeding only before the Court of Small Causes, Mumbai under section 33 of the Maharashtra Rent Control Act, 1999 for recovery of possession on

the ground that the suit premises are bonafide required by the respondent no.3 for the immediate purpose of demolishing for the purpose of erecting new building on the premises sought to be demolished. He submits that in that event, the Small Causes Court would have directed the respondent no.3 to provide various safeguards prescribed under section 16(6) of the Maharashtra Rent Control Act, 1999. It is submitted that the provisions of section 95A of the Maharashtra Housing and Area Development Act, 1976 and the regulation 33(9) of the Development Control Regulations are not in conflict with section 16 of the Maharashtra Rent Control Act, 1999.

19. It is submitted by the learned senior counsel that during this period of monsoon, the petitioner has been thrown away from the suit premises without following the principles of natural justice and arbitrarily. The petitioner has filed a complaint to the Senior Inspector of Police pointing out such high handedness acts on the part of the respondents. He submits that the respondent no.3 also obtained signatures of the petitioner on various documents forcibly which documents are thus not binding upon the petitioner. Any signature on those documents obtained by the respondent no.3 from the petitioner cannot be construed as informed consent.

20. It is submitted that till the permanent alternate accommodation being offered to the petitioner is finalized and permanent alternate accommodation agreement is entered into by the respondent no.3 in favour of the petitioner, no notice under section 95A of Maharashtra Housing Area Development Act could be even issued. Entire action on the part of the respondents is thus without jurisdiction, harsh and untenable.

21. It is submitted by the learned counsel that though the petitioner is a tenant in respect of two separate and independent rooms bearing nos.1 and 1K in the said Potia Building, 2nd Floor, 11-Dhaboo Street, Bhendi Bazar, Mumbai 400003, the respondent nos. 1 and 2 have illegally clubbed the two rooms into one room which would deprive the petitioner to claim separate permanent alternate accommodation in respect of both the rooms.

22. Mr.Tulzapurkar, learned senior counsel for the respondent no.3 on the other hand submits that the petitioner had given irrevocable consent in favour of the Chief Officer, Mumbai Building Repairs and Reconstruction Board as far back as on 21st March,2011 thereby agreeing to construction of the redevelopment scheme by the landlord/constituted attorney holder to landlord/promoter of the co-

operative housing society/developers of Saifee Burhani Upliftment Trust, i.e. respondent no.3 herein and giving undertaking to shift to the temporary transit accommodation made available to the petitioner by the respondent no.3, to vacate and handover peaceful possession of the temporary transit accommodation after handing over possession of the tenements in the form of the permanent alternate accommodation in the newly constructed building by the landlord/developer.

23. Learned senior counsel strongly placed reliance on the agreement for temporary alternate accommodation dated 26th June, 2019 executed between the petitioner and the respondent no.3 and would submit that though the respondent nos. 1 and 2 had clubbed the room nos. 1 and 1K as one room and the petitioner was thus eligible for only one tenement as and by way of permanent alternate accommodation, the respondent no.3 has agreed to provide two permanent alternate accommodation to the petitioner separately in lieu of the room nos. 1 and 1K in the new building proposed to be constructed. The respondent no.3 has also allotted temporary alternate accommodation by providing two separate rooms in its transit camp situated at SBP2, New Hind Mill Compound, Rambhau

Bhogale Marg, Kherbunder, Mazgaon, Mumbai 400 003. Under the said agreement, the petitioner has agreed to vacate the existing rooms which were in possession of the petitioner. He tendered a copy of the said agreement dated 26th June, 2019 between the petitioner and the respondent no.3.

24. Insofar as submission of Mr.Gorwadkar, learned senior counsel appearing for the petitioner that no NOC has been issued by the respondent nos. 1 and 2 in this matter is concerned, it is submitted by the learned senior counsel that the State of Maharashtra had approved cluster redevelopment project of Bhendi Bazar and issued a Letter of Intent through the Municipal Corporation, Greater Mumbai on 10th August, 2011. He submits that the respondent no.2 had issued a notice under section 77(b) of the Maharashtra Housing Area Development Act, 1976 dated 26th December,2017 calling upon the petitioner to vacate the room nos. 1 and 1K.

25. Learned senior counsel submits that under the said Letter of Intent in favour of the respondent no.3, the respondent no.3 has to carry out redevelopment of the lands admeasuring about 16 and ½ acres. The respondent no.2 has sanctioned the cluster redevelopment scheme under Regulation 33(9) of the Development

Control Regulation after following the requisite procedure in favour of the respondent no.3. He submits that under the said cluster redevelopment scheme, the occupants of about 280 buildings will have to be accommodated in large number of buildings to be constructed on the said land admeasuring about 16 and ½ acres.

26. Insofar as submission of Mr.Gorwadkar, learned senior counsel appearing for the petitioner that no IOD or NOC was issued by the authority in favour of the respondent no.3 is concerned, it is submitted by the learned senior counsel that the Letter of Intent issued by the respondent no.2 itself would constitute as 'no objection certificate' in respect of MHADA buildings and thus there is no necessity for the respondent no.3 to obtain any separate IOD or NOC for carrying out redevelopment under the said cluster redevelopment scheme.

27. It is submitted by the learned senior counsel that the petitioner has been offered three rooms by way of temporary alternate accommodation. The respondent no.3 has also handed over keys of those three rooms given by way of temporary alternate accommodation to the petitioner. The officers of the MHADA have already prepared a Panchanama. The petitioner however did not

vacate those two rooms initially. MHADA accordingly issued a fresh order under section 95A of the Maharashtra Housing Area Development Act for eviction. He submits that the tenancy rights of the petitioner are already preserved. The respondent no.3 has offered two permanent alternate accommodation admeasuring 350 sq.ft. carpet area though the petitioner was entitled only for one of such permanent alternate accommodation. It is submitted by the learned senior counsel that his client has to construct large number of buildings in phases. As and when the plans are sanctioned by the authorities for carrying out the construction, the permanent alternate accommodation that is offered to the petitioner can be ear-marked only at that stage.

28. Insofar as the submission of the learned senior counsel for the petitioner that the said Potia Building is not declared as dilapidated is concerned, it is submitted that the said building has been declared as dilapidated by the authority by notice dated 28th December, 2017 and only after such declaration, the petitioner was asked to vacate the said two rooms. It is submitted by the learned senior counsel that insofar as the Post Office situated on the ground floor of the said Potia Building is concerned, similar order of eviction has been also

passed against the said Post Office. The said Post Office however has not been shifted from the ground floor premises of the said building to the temporary alternate accommodation offered by the respondent no.3 so far.

29. It is submitted by the learned senior counsel that the petitioner was already issued various notices from time to time for hearing by MHADA under section 95A of the Maharashtra Housing Area Development Act. The petitioner however by letter dated 17th November, 2018 asked for fresh notice. The petitioner remained absent before the concerned officer of MHADA in response to various notices issued by MHADA to the petitioner. He submits that the said Potia Building comprises of ground and four upper floors. Except the petitioner and the said Post Office, all the other occupants including the petitioner now have already vacated their respective tenements in possession and have handed over possession thereof to the respondent no.3.

30. Insofar as submission of Mr. Gorwadkar, learned senior counsel appearing for the petitioner that no notice of eviction could be at all issued under section 95A of the Maharashtra Housing Area Development Act or that in any event, no conditions prescribed

under section 95A was satisfied and thus the petitioner could not have been evicted from the two rooms is concerned, Mr.Tulzapurkar, learned senior counsel for the respondent no.3 submits that under section 95A of the Maharashtra Housing Area Development Act only three conditions were required to be complied with i.e. (i) written consent of not less than 70 per cent of the total occupiers of that building (ii) no objection certificate for reconstruction of the building is issued by the Board to the owner or to the proposed co-operative housing society of the occupiers as the case may be, (iii) providing alternate temporary accommodation to the occupants of the building being demolished.

31. It is submitted that in this case, the petitioner herself had given consent for redevelopment of the building in question. More than 70% of the occupants had already given consent for reconstruction of the building. The respondent no.2 has already issued a Letter of Intent for such reconstruction of the building in favour of the respondent no.3. The respondent no.3 has already offered temporary alternate accommodation to the petitioner. He submits that the respondent no.3 thus having satisfied all the three conditions prescribed under section 95A of the Maharashtra Housing

Area Development Act, it was binding on all the occupiers including the petitioner to vacate the premises.

32. Learned senior counsel for the respondent no.3 placed reliance on judgment of this court in case of ***Rashida Shabbir Tinwala and another vs. Bombay Building Repairs and Reconstruction Board and Another***, delivered on 2nd July, 2015 in Writ Petition (L) No. 1662 of 2015 with connected writ petitions and in particular paragraphs 8, 9, 11 and 12 and would submit that in the said writ petition, the respondent no.3 herein was a party respondent. Two of the occupants had filed the said writ petition in respect of the same cluster redevelopment scheme of Bhendi Bazar area. This court in the said judgment held that since the High Power Committee had already issued a Letter of Intent in favour of the respondent no.3, no separate or independent 'No objection certificate' was required as contemplated under section 95A.

33. Learned senior counsel appearing for respondent no.3 placed reliance on the judgment of Division Bench of this court in case of ***Radhika George and others vs. Maharashtra Housing And Area Development Authority and others***, 2012(5) Mh.L.J.229 and in particular paragraphs 16, 20, 22 to 27 and would submit that section

95A does not result in determining the rights of the parties *per se*. The provision is not intended to provide the forum to adjudicate the dispute *inter se* between the society members and the developer. Those disputes will have to be adjudicated in competent court of law. It is submitted that once the jurisdictionary fact before all the authorities are satisfied and there is no restraint order, the authority under section 95A had no other option, rather was under an obligation to instruct the occupants to move to the transit accommodation to facilitate the redevelopment.

34. It is submitted that since all the conditions set out in section 95A of MHAD Act are satisfied, the petitioner was required to move to the transit accommodation offered by the respondent no.3. The alleged entitlement of the petitioner of a larger area could not be determined even otherwise by the authority under section 95A of the Maharashtra Housing Area Development Act.

35. Learned senior counsel for the respondent no.3 placed reliance on the judgment of this court in case of ***Rashida Hussain Kathawalla and another vs. The Executive Engineer & Ors. in Writ Petition (L) NO.1554 of 2019*** and would submit that the respondent no.3 herein was a party respondent to the said writ

petition which was filed by the two occupants of the another building under the same cluster redevelopment scheme. He submits that this court after adverting to the judgment of Division Bench of this court in case of *Radhika George and others* (supra) and several other judgments held that powers of the authority under section 95A of the MHAD Act are independent powers given to the authority to evict the occupiers in the event of conditions under section 95A having been satisfied and any such occupants refusing to vacate the premises in their occupation.

36. Insofar as the submission of the learned senior counsel for the petitioner that the respondent no.3 was required to file a suit for recovery of possession for the purpose of carrying out the reconstruction under section 16(1)(i) read section 16(6) and section 33 of the Maharashtra Rent Control Act, 1999 is concerned, it is submitted by the learned senior counsel that the tenancy of the petitioner is already preserved. The power under section 95A of the Maharashtra Housing Area Development Act are independent and thus the respondent no.3 was not required to file any separate suit under the provisions of Maharashtra Rent Control Act, 1999. The three conditions provided under section 95A of the Maharashtra

Housing Area Development Act having been satisfied in this case, the respondent no.3 was not required to file any suit for decree of eviction against the petitioner under the provisions of Maharashtra Rent Control Act, 1999.

37. It is submitted that the respondent no.3 was already issued Letter of Intent for reconstruction of large number of buildings under the said cluster redevelopment scheme which include the said Potia Building in which the suit structures are situated. The respondent no.3 was thus not required to file a separate suit for recovery of possession under the said Maharashtra Rent Control Act, 1999. In view of the fact that the building in question was in dilapidated condition and the same was required to be demolished immediately, respondent no.3 was even on that ground was not required to file a suit for eviction. All safeguards preserving tenancy of the petitioner, temporary alternate accommodation and permanent alternate accommodation in future are already provided to the petitioner. The MHADA has already furnished list of tenants as far back as on 27th June, 2012 for raising objections by the occupants. The petitioner has not impugned the said approved list of eligible tenants thereby clubbing the said two room nos. 1 and 1K as one room. He submits

that in any event, the MHADA has already recovered the possession of those two tenements from the petitioner and even on that ground, nothing survives in this writ petition.

38. Insofar as submission of the learned senior counsel for the petitioner that since no agreement for permanent alternate accommodation in respect of the particular tenements which are to be allotted to the petitioner is entered into and those proposed tenements by way of permanent alternate accommodation are not identified by the respondent no.3 so far, the petitioner could not have been evicted on the said tenement is concerned, learned senior counsel placed reliance on the judgment of this court in case of *Noorjahan Jahangir Ghadiali vs. State of Maharashtra and others, in Writ Petition (L) No.380 of 2016* dated 12th February, 2016. He submits that the respondent no.3 herein was respondent to the said writ petition filed by an occupant. He submits that this court in the said judgment rejected the similar contention raised by the occupant in the said writ petition that there was no identification of the permanent alternate accommodation.

39. It is submitted that the permanent alternate accommodation proposed to be offered to the petitioner would be identified only

after completion of the project. There would be allotment by lottery system and only at that stage, all units/tenements would be included in the lottery which form part of the newly constructed building. Only at that stage, the tenements offered to the petitioner by way of permanent alternate accommodation would be identified. The respondent no.3 is required to carry out the construction of several buildings and thus it is not possible to identify the permanent alternate accommodation at this stage.

40. Learned senior counsel for the respondent no.3 placed reliance on the judgment of this court delivered on 14th June, 2016 in case of *M/s.Karim Esmail vs. State of Maharashtra in Writ Petition (L) No.1350 of 2016* and in particular paragraphs 7, 8 and 10 and would submit that this court in the said judgment had held that the respondent no.3 herein could not be compelled to make any offer to the petitioner of accommodation on the ground floor or at any particular location. He submits that about 3500 to 4000 families have to be accommodated in various buildings proposed to be constructed under the said cluster redevelopment scheme. Some of the buildings are already constructed by the respondent no.3.

41. Learned senior counsel for the respondent no.3 placed reliance on the judgment of this court delivered on 19th August, 2016 in case of ***Rashid Ahmed s/o. Gulam Rasul vs. Executive Engineer and others in Writ Petition (L) No.2208 of 2016*** with connected matters and in particular paragraphs 6 and 8 in support of his submission that section 95A does not take into account any particular timeline for such eviction or relate it to the actual construction programme. If three conditions provided under section 95A are satisfied, the authority is required to direct the occupants to vacate the premises summarily so as to enable the redevelopment contemplated under the development control regulations. This court rejected the contention of the petitioner in the said writ petition that they were entitled to suitable alternate accommodation on ground floor and with road frontage.

42. Learned senior counsel for the respondent no.3 placed reliance on the order passed by this court on 15th April, 2019 in case of ***Noorjahan Shahbuddin Shaikh and another vs. State of Maharashtra and others*** in Writ Petition (L) No.1149 of 2019 and submits that the respondent no.3 herein was a party to the said writ petition and had rendered an undertaking in the said writ petition

that within two months of issuance of IOD for the subject cluster which would house a redevelopment building in place of Abid Sana Manzil suitable permanent alternate accommodation agreement would be entered into with the petitioner, in accordance with the scheme sanctioned by the State Government under regulation 33(9) of the development control regulation. He submits that the respondent no.3 undertakes to enter into a suitable permanent alternate accommodation agreement with the petitioner on the similar basis.

43. Insofar as submission of the learned senior counsel for the petitioner that the said Potia Building has not been declared as dilapidated is concerned, learned senior counsel for the respondent no.3 invited my attention to the notice dated 26th December, 2017 issued by the Mumbai Building Repairs and Reconstruction Board under section 77(b) of the MHAD Act to the petitioner informing that the said premises were found to be dangerous/unfit for human habitation and asking the petitioner to vacate the said premises within a period of 7 days from the date of such notice. The petitioner herself has annexed a copy of the said notice at Ex.A to the writ petition. He submits that in any event for applicability of

section 95A of the MHAD Act, there is no condition prescribed therein that such notice could be issued only if the condition of the building was dilapidated or building was certified as 'C-1' category building. It is submitted by the learned senior counsel that in any event, the petitioner also has not produced any certificate showing the condition of the said Potia Building in sound condition and not in dilapidated condition.

44. Insofar as submission of Mr.Gorwadkar, learned senior counsel appearing for the petitioner that no consent of the charity commissioner is obtained by the respondent no.3 under section 36 of the Maharashtra Public Trust Act is concerned, it is submitted by the learned senior counsel for the respondent no.3 that there is no sell of any part of the building of the trust. He submits that in any event, no such condition is contemplated under section 95A of the MHAD Act. As and when any conveyance would be executed in favour of the apex body as and when formed after completion of the project, if any permission would be required under section 36 of the Maharashtra Public Trust Act, the same would be obtained before executing the deed of conveyance in favour of such apex body. He submits that condition prescribed by the authority while granting

NOC in favour of the Prince Aly Khan Hospital are not applicable to respondent no.3. Similar condition is not imposed by the authority in the Letter of Intent in favour of the respondent no.3.

45. Mr.Gorwadkar, learned senior counsel appearing for the petitioner in rejoinder reiterated his submission insofar as filing of separate suit for eviction by the respondent no.3 against the petitioner under section 16(1)(i) read with section 33 of the Maharashtra Rent Control Act is concerned.

46. Mr.Tulzapurkar, learned senior counsel for the respondent no.3 submits that the said provisions of Rent Act are not at all applicable in the facts of this case in view of the Letter of Intent having been issued by the respondent no.2 for carrying out redevelopment under cluster redevelopment scheme and the MAHDA having issued notice under section 95A of the MHAD Act in view of the respondent no.3 having satisfied three conditions mentioned therein.

REASONS AND CONCLUSION:-

47. It is not in dispute that the said Potia building in which the suit premises are situated has been purchased by the respondent no.3 from the erstwhile owners under a Deed of Conveyance dated

19th May, 2010. On 10th August, 2011. The Government of Maharashtra approved the Cluster Redevelopment Project of Bhendi Bazar and issued a Letter of Intent through the Municipal Corporation, Greater Mumbai on 10th August, 2011 in favour of the respondent no.3 under the said Urban Renewal Scheme under Regulation 33(9) of the Development Control Regulation. The Mumbai Repair Building Reconstruction Board had issued a notice under section 77(b) of the Maharashtra Housing Area Development Act to the petitioner informing the petitioner that the said Potia building was found to be dangerous / unfit for human utilization and shall be vacated within seven days from the date of receipt of the said notice.

48. In the said notice, it was made clear that the Government of Maharashtra had approved the Letter of Intent in favour of the respondent no.3. The respondent no.3 was giving a transit accommodation to the eligible tenants / occupants of the existing buildings and to protect the buildings from any collapse, mishap, untoward incident, accident etc. It was however made clear that if the petitioner required alternate accommodation / rent compensation, she could approach the respondent no.3. There is

thus no merit in the submission of Mr.Gorwadkar, learned senior for the petitioner that the Potia building was not in dangerous condition and thus the petitioner was not required to vacate the said two rooms in her occupation. A copy of the said notice dated 26th December, 2017 is annexed by the petitioner herself to the writ petition.

49. By a notice dated 21st May, 2018, the said Repair Board invoked section 95A(1) of MHAD Act and informed the petitioner and also the other tenants of the said building that the said building was very old and had almost outlived its life. The petitioner was also informed that one of the old and dilapidated structures of Bhendi Bazar had collapsed causing loss of life and property. It was further mentioned that the respondent no.3 as per the terms and conditions of the Letter of Intent had allotted the transit alternate accommodation / rent compensation to the occupant / tenant for vacating from the premises and shifting to transit accommodation. The respondent no.3 called upon the petitioner to execute the agreement with the respondent no.3 and to vacate the premises by shifting to the temporary transit accommodation within seven days from the date of receipt of the said notice. The petitioner however,

did not vacate the said two rooms in compliance with the said notice and kept on addressing various letters to the respondent no.3.

50. The respondent no.2 issued another notice under section 95A(1) on 1st March, 2019 to all the tenants / occupants, including the petitioner asking them to hand over possession of the said premises to the respondent no.3 for implementation of the entire Cluster Redevelopment Scheme. It was brought on record that the other tenants had already vacated their respective tenements. In spite of this notice, the petitioner did not vacate the said two rooms in her occupation. On 8th March, 2019, the Repair Board issued another notice under section 95A(2) of MHAD Act and gave 48 hours notice to the petitioner to shift to the temporary transit accommodation and make it clear that in the event of the petitioner failing to comply with the said notice, forcible summary eviction as laid down under section 91(A)(2) of MHAD Act would be initiated against the petitioner. The petitioner did not vacate the said two rooms in spite of the said notice.

51. The said Repair Board issued another notice under section 95A(1) of MHAD Act on 20th May, 2019 for summary eviction on the petitioner by giving 48 hours notice to the petitioner to vacate the

said two rooms. The petitioner did not vacate the said two rooms despite of the said notice. It is the case of the petitioner that now the respondents have taken forcible possession of the said two rooms from the petitioner.

52. A perusal of section 95A of MHAD Act does not indicate that for issuance of notice to vacate under section 95A of the said Act, the building is required to be in dilapidated condition. A plain reading of the said provision clearly indicates that a proposal to the Board for reconstruction of the building can be made by the owner by a building or members of the proposed housing property of the occupants of the said building for reconstruction of the building however after obtaining the written consent of not less than 70% of the total occupiers of the building. If the Board issues no objection certificate for such reconstruction of the building to the owner or to the proposed co-operative housing society of the occupiers as the case may be, it shall be binding on all the occupiers to vacate the premises subject to the condition that the holder of such 'no objection certificate' has to make available to all the occupants of such building alternate temporary accommodation.

53. If the occupants refuses to vacate the premises on being approached by the holder of such 'no objection certificate' for eviction of such occupiers, the Board is empowered to effect summary eviction of such occupiers notwithstanding anything contained in Schedule IV and VII of the Maharashtra Housing Area Development Act, 1976. Any person occupying any premises, land building or structure of the Board unauthorizedly however, without the permission of the Board shall be liable to be summarily evicted notwithstanding contained in Schedule VI and VII of the MHAD Act. There is a punishment provided in section 95A(4) of the MHAD Act against such person who refuses to vacate such premises or obstructs such eviction and on conviction, can be punished with imprisonment for a term which may extend to one year or with fine which may extend to five thousand rupees, or with both.

54. It is not in dispute that in this case the respondent no.3 was issued Letter of Intent under the said Cluster Redevelopment Scheme sanctioned by the State of Maharashtra under Regulation 33(9) of the Development Control Regulation. Though several notices were issued by the Repair Board to the petitioner to vacate, the petitioner did not vacate the said premises for quite some time. The petitioner

did not challenge the said Letter of Intent issued by the High Power Committee through the Municipal Corporation in favour of the respondent no.3 till date. There is no restraint order passed by any Court of law against the said Letter of Intent issued in favour of the respondent no.3. Except the Post Office which is situated on the ground floor of the said Potia building, all the occupants, including the petitioner now has vacated. The authority has issued a separate order of eviction against the said Post Office.

55. The respondent no.3 has already entered into an agreement for providing alternate accommodation with the petitioner on 26th June, 2019. Though the petitioner has vaguely alleged in the writ petition that her signature was taken by the respondent no.3 on the said agreement by committing fraud, the petitioner has not taken any steps to apply for cancellation of the said document. Be that as it may, the petitioner has now already vacated the said two rooms, I am not inclined to accept the submission of Mr.Gorwadkar, learned senior counsel for the petitioner that the respondents acted high handedly or arbitrarily to evict the petitioner from possession of those two rooms. Though the writ petition itself has become infructuous on this ground now, since learned senior counsel for the

petitioner urged various submissions on the issue of validity of the notices / orders for eviction of the petitioner, this Court heard the learned senior counsel for both the parties on various issues at length.

56. Insofar as the submission of the learned senior counsel for the petitioner that the second notice under section 95A of the said MHAD Act could not have been issued at all in view of the respondent no.3 not having entered into any agreement for permanent alternate accommodation or on various other grounds referred in the petition are concerned, a perusal of section 95A of the MHAD Act clearly indicates that for invocation of powers under section 95A of the MHAD Act, three conditions were required to be satisfied i.e. (i) proposal to the Board for reconstruction of the building to be made by the owner of a building or the members of the proposed co-operative housing society of the occupiers of the said building after obtaining the written consent of not less than 70% of the total occupiers of the building, (ii) no objection certificate for such reconstruction of the building is issued by the Board to the owner or to the proposed co-operative housing society of the occupiers and (iii) all the occupants of such building are made

available alternate temporary accommodation by the holder of such no objection certificate.

57. In the facts of this case, the High Power Committee has already issued Letter of Intent in favour of the respondent no.3 for reconstruction under Cluster Redevelopment Scheme under Regulation 33(9) of the Development Control Regulation. The respondent no.3 has already entered into an agreement for providing alternate temporary accommodation with the petitioner. None of the other occupants have impugned the notice under section 95A of the MHAD Act. In my view, all the conditions thus prescribed under section 95A of the MHAD Act having been satisfied by the respondent no.3, the petitioner could not have refused to vacate the said two rooms inspite of several notices issued by the respondent no.2 under section 95A of the said MHAD Act. The respondent no.2 was thus empowered to evict the petitioner summarily. No objection certificate for reconstruction granted by the High Power Committee is binding on all the occupants to vacate the premises. In my view, there is thus no merit in the submission of the learned senior counsel for the petitioner that the respondent had acted high handedly in removing the petitioner from the said two rooms or that the said

action on the part of the respondent no.2 is in violation of any of the provisions of law.

58. This Court in case of **Radhika George & Ors.** (supra) has held that the authority issuing the notice under section 95A of the MHAD Act needs to examine whether it is collective decision i.e. whether 70% of the members have consented, whether the permissions like the no objection certificate are in order and whether the developer has provided adequate transit accommodation or not. Once the authority under section 95A finds that these requirements are fulfilled, all that it does is to direct the members to shift to the transit accommodation awaiting reconstruction. It is further held that the proceedings under section 95A of the Act cannot be converted into a full fledged judicial proceedings as if the authority is trying a civil suit. The provision is not intended to provide a forum to adjudicate the dispute *inter-se* between the society, members and the developers.

59. Once the jurisdictional facts before the Executive Engineer were satisfied and that there was no restraint order, the authority under section 95A had no other option, rather was under obligation to direct the appellants to move to transit accommodation to

facilitate the redevelopment. The Court may decline to exercise writ jurisdiction if it finds that the substantial justice has been done by the order impugned before it. It is not necessary for each and every fraction of law that a writ must be issued. Action under section 95A does not result in determining the rights of the parties *inter-se*. The principles laid down by the Division Bench of this Court in the said judgment in case of ***Radhika George & Ors.*** (supra) squarely apply to the facts of this case. I am respectfully bound by the said judgment.

60. This Court in case of ***Rashida Hussain Kathawalla & Anr. vs. The Executive Engineer & Ors.*** after adverting to the judgment of this case of ***Radhika George & Ors.*** (supra) in the said judgment held that the powers under section 95A of the said MHAD Act given to the authority to evict the occupiers in the event of the conditions under such provision having been satisfied and if any such occupants refusing to vacate the premises in their occupation is independent to any other provision. In my view, in this case also, all the conditions prescribed under section 95A of the said MHAD Act having been satisfied, the respondent no.2 was thus justified in issuing the notices of eviction under section 95A of the said Act to the petitioner and in

her eviction. The judgment of this Court in case of ***Rashida Hussain Kathawalla & Anr.*** (supra) applies to the facts of this case. I am respectfully bound by the said judgment.

61. This Court in case of ***Rashida Shabbir Tinwala & Anr. vs. Bombay Building Repairs & Reconstruction Board & Anr.*** (supra) has recorded the undertaking of the respondent no.3 - Trust that within two months of issuance of IOD under the said Cluster Redevelopment Scheme which would be in respect of the building in question in that writ petition, a suitable permanent alternate accommodation agreement would be entered into with the petitioners. Similar undertaking rendered by Mr. Tulzapurkar, learned senior counsel for the respondent no.3 in this case also is accepted.

62. This Court in case of ***Rashid Ahmed Gulam*** (supra) has after adverting to the judgment of the Division Bench of this Court in case of ***Radhika George & Ors.*** (supra) has held that a dispute as to the suitability or otherwise of permanent alternate accommodation cannot be a subject matter of action under section 95A. The proceedings under section 95A of the said MHAD Act are not full fledged judicial proceedings as if in case of a civil suit. The occupants

in that matter had refused to shift to the temporary alternate accommodation on the ground that they were not suitable. This Court rejected the said contention raised by the occupants. The judgment of this Court in case of *Rashid Ahmed Gulam Rasul* (supra) applies to the fact of this case.

63. The Division Bench of this Court in case of *M/s.Karim Esmail* (supra) has rejected the contention of the petitioner that considering the nature of business, the petitioners would not like to be located on the second floor in the redevelopment premises and the shop on the ground floor be allotted to it. The Division Bench of this Court has held that the same cannot be the reason enough not to vacate the premises. This Court held that the respondent no.3 Trust who was a party to that petition cannot be compelled to make any offer to the petitioner of accommodation on the ground floor. In my view, the petitioner thus could not have refused to vacate the premises on this ground also for specific premises. The principles of law laid down by this Court in case of *M/s.Karim Esmail* (supra) applies to the facts of this Court. I am respectfully bound by the said judgment.

64. The Division Bench of this Court in case of *Noorjahan Jahangir Ghadiali* (supra) has held that the grievance of the

petitioner in that matter that there was no identification of permanent alternate accommodation cannot be redressed at this stage. Once the redevelopment project envisages, construction of several buildings, then the location and identify of the tenement which would be offered to the petitioner cannot be pre-decided. The respondent no.3 herein was a party respondent to the said writ petition also. This Court refused to interfere in that writ petition at the instance of the sole petitioner, who filed the said writ petition on the ground that he was inconvenienced because of the order passed by the authority under section 95A of the said MHAD Act. The Division Bench of this Court also made it clear that the petitioner therein was found eligible for permanent alternate accommodation and for transit benefits and after completion of the project there would be an allotment by lottery system and at that stage all units / tenements would be included in the lottery which are part of the newly constructed buildings. The judgment of this Court in case of **Noorjahan Jahangir Ghadiali** (supra) squarely applies to the facts of this case.

65. In my view, there is thus no merit in the submission made by the learned senior counsel for the petitioner that till such time the

respondent no.3 would have executed an agreement for permanent alternate accommodation or would have identified the new tenement first, no order of eviction would be passed by the authority under section 95A of the said MHAD Act. As and when the entire construction under the said Cluster Redevelopment Scheme under Regulation 33(9) of the Development Control Regulation is completed, the petitioner would be allotted permanent alternate accommodation by lottery system. In my view, the petitioner thus could not have refused to vacate the said rooms in question on this ground. The judgment of the Division Bench of this case in case of *Noorjahan Jahangir Ghadiali* (supra) squarely applies to the facts of this case. I am respectfully bound by the said judgment.

66. The Division Bench of this Court in case of *Rashida Shabbir Tinwala & Anr.* (supra) considered the challenge to the notices under section 95A under the said scheme and after hearing the petitioner including the respondent no.3 herein, this Court rejected the submissions of the petitioner therein that the NOC of the Repair Board under section 95A(1) of the said MHAD Act was necessary though the High Power Committee had already issued a Letter of Intent for the Cluster Redevelopment Scheme in favour of the

respondent no.3. This Court held that the no objection certificate contemplated under section 95A(1) is deemed to have been granted in view of the fact that the Chief Officer of the Repair Board is a member of very same High Power Committee that has granted a Letter of Intent. The judgment of the Division Bench of this Court in case of ***Rashida Shabbir Tinwala & Anr.*** (supra) squarely applies to the facts of this case. There is thus no substance in the submission of Mr.Gorwadkar, learned senior counsel for the petitioner that in this case no NOC as contemplated under section 95A(1) of the said MHAD Act having been obtained by the respondent no.3, no notice of eviction could be issued under section 95A against the petitioner.

67. Though learned senior counsel for the petitioner urged that the agreement for temporary alternate accommodation entered into between the petitioner and the respondent no.3 was not binding upon the petitioner or an undertaking signed by the petitioner in the year 2011 for giving consent was not 'informed consent' and thus cannot be enforced against the petitioner is concerned, it is not in dispute that the petitioner has not applied for cancellation of those documents. The respondent no.3 has already taken several steps for implementing the Cluster Redevelopment Scheme. The

respondent no.3 has already constructed four buildings. The other occupants except the Post Office have already vacated their respective tenements. An order of eviction is already passed also against the Post Office under section 95A of the Maharashtra Housing Area Development Act. The statement of Mr.Tulzapurkar, learned senior counsel for the respondent no.3 that the keys of the temporary alternate accommodation offered to the petitioner have been already handed over to the petitioner is accepted.

68. Insofar as the submission of Mr.Gorwadkar, learned senior counsel for the petitioner that the respondent no.3 could not have invoked the provisions of section 95A of the MHAD Act and was required to file a suit under section 16(1)(i) read with section 16(b) and 33 of the Maharashtra Rent Control Act, 1999 for eviction of the petitioner for the purpose of demolition of the building for reconstruction is concerned, in my view, there is no merit in this submission of the learned senior counsel for the petitioner. Under Regulation 33(9) of the Development Control Regulation, the State of Maharashtra has already approved the Cluster Redevelopment Scheme in favour of the respondent no.3 for larger land and the structures thereon including the said Potia building.

69. The respondent no.3 will have to provide permanent alternate accommodation to the large number of occupants in the new buildings proposed to be constructed, including the occupants of Potia building. In my view the conditions of section 95A of the MHAD Act having been satisfied, the occupants refusing to vacate their respective tenements, the authority under the said provision is empowered to evict such occupants summarily who have refused to vacate. The powers under section 95A are independent powers. It is not the case of eviction of a single occupant for the purpose of demolishing the suit structure for the purpose of reconstruction of the building. The eligibility of all such occupants / tenants for permanent alternate accommodation and other benefits have been separately decided under the provisions of the Development Control Regulation for Greater Mumbai and by imposing several conditions by the High Power Committee in the Letter of Intent. All the protections required to the occupants under those provisions are being provided.

70. In my view, for the purpose of implementing the Cluster Redevelopment Scheme involving large number of occupants /

tenants under the said scheme, separate mechanism is provided under the provisions of Development Control Regulation for greater Mumbai read with the provisions of the Maharashtra Housing Area Development Act, 1976. These powers are not to be mixed with up the powers of a landlord to seek eviction from the premises in occupation of a tenant for the purpose of demolition of a building and for reconstruction. Both these powers operate in different field and cannot be mixed up. A special machinery is provided under section 95A of the MHAD Act with the powers of summary eviction in case of compliance of those conditions. The 'no objection certificate' holder or the holder of Letter of Intent under a Cluster Redevelopment Scheme cannot be asked to file a separate suit against each of the tenant for eviction for the purpose of demolition or reconstruction of a building under the provisions of the Rent Act. There is thus no merit in this submission of the learned senior counsel for the petitioner.

71. The respondent no.3 has provided all the requisite protections as prescribed in the Letter of Intent. The petitioner has as a matter of fact already vacated the said two rooms. No case is thus made out by the petitioner for interference with the impugned

notices / orders passed by the respondent nos.1 and 2 in this writ petition filed under Article 226 of the Constitution of India. The petition is devoid of merit.

72. I therefore, pass the following order :-

- i) Writ Petition No.1811 of 2019 is dismissed.
- ii) There shall be no order as to costs.

(R.D. DHANUKA, J.)