

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

**WRIT PETITION (L) NO.3464 OF 2019
WITH
INTERIM APPLICATION NO. 1 OF 2019**

Shah Mohammed Azar ... Petitioner
V/s.
The Chief Officer and ors. ... Respondents

**AND
WRIT PETITION (L) NO.3465 OF 2019
WITH
INTERIM APPLICATION NO. 1 OF 2019**

Fazal Mehmood ... Petitioner
V/s.
The Chief Officer, M.B.R.
& R. Board and ors. ... Respondents

**AND
WRIT PETITION (L) NO.3467 OF 2019
WITH
INTERIM APPLICATION NO. 1 OF 2019**

Suhail Mansoor Kazi ... Petitioner
V/s.
The Chief Officer, M.B.R.
& R. Board and ors. ... Respondents

**AND
WRIT PETITION (L) NO.3468 OF 2019
WITH
INTERIM APPLICATION NO. 1 OF 2019**

Mohammed Mazhar Usman ... Petitioner
V/s.
The Chief Officer, M.B.R.
& R. Board and ors. ... Respondents

**AND
WRIT PETITION (L) NO.3473 OF 2019
WITH
INTERIM APPLICATION NO. 1 OF 2019**

Mohd.Ibrahim s/o Mohd. Harron Khan ... Petitioner
V/s.
The Chief Officer, M.B.R.
& R. Board and ors. ... Respondents

**AND
WRIT PETITION (L) NO.3479 OF 2019
WITH
INTERIM APPLICATION NO. 1 OF 2019**

Maulana Siraj Ahmed ... Petitioner
V/s.
The Chief Officer, M.B.R.
& R. Board and ors. ... Respondents

**AND
WRIT PETITION (L) NO.3480 OF 2019
WITH
INTERIM APPLICATION NO. 1 OF 2019**

Ibrahim s/o Suleman Achawa ... Petitioner
V/s.
The Chief Officer, M.B.R.
& R. Board and ors. ... Respondents

Mr.S.M.Gorwadkar, Senior Advocate i/by Ms.Sana Y. Baugwala, for the Petitioner in all the writ petitions.
Mr.Pravin Samdani, Senior Advocate with Mr.Denzil Arambhan and Ms.Parihi Saraf i/by M/s Wadia Ghandy and Co., Advocate for Respondent No.9 in all the writ petitions.
Mr.R.M.Momin, Advocate for Respondent No.10 in all the writ petitions.
Ms.Manisha Jagtap, Advocate for Respondent Nos.1 and 2 in WPL Nos.3465 of 2019 and 3467 of 2019.

Mr.P.G.Lad with Ms.Sayli Apte and Ms.Priyanka Naik, Advocate for MHADA in WPL No.3473 of 2019.

Ms.Jaya Bagwe i/by Ms.Sharmila Deshmukh, Advocate for Respondent Nos.1 and 2 in WPL Nos.3479 of 2019 and 3480 of 2019.

CORAM : UJJAL BHUYAN, J.
DATE : DECEMBER 17, 2019.

P.C.:-

1. This order will dispose of all the above writ petitions and the connected interim applications.

2. Heard Mr.S.M.Gowardkar, learned senior counsel instructed by Ms.Sana Y. Baugwala, learned counsel for the petitioners in all the writ petitions; Mr.Pravin Samdani, learned senior counsel instructed by M/s Wadia Ghandy and Company for respondent No.9 in all the writ petitions; Mr.R.M.Momin, learned counsel for respondent No.10 in all the writ petitions; Ms.Manisha Jagtap, learned counsel for respondent Nos.1 and 2 in Writ Petition (L) Nos.3465 and 3467 of 2019; Ms.Jaya Bagwe, learned counsel for respondent Nos.1 and 2 in Writ Petition (L) Nos. 3479 and

3480 of 2019; Mr.P.G.Lad and Ms.Priyanka Naik, learned counsel for Maharashtra Housing and Area Development Authority in Writ Petition (L) No.3473 of 2019.

3. As argued by learned counsel for the parties, Writ Petition (L) No.3464 of 2019 (Shah Mohammed Azar Vs. Chief Officer and others) is taken up as the lead case.

4. In this petition filed under Article 226 of the Constitution of India, petitioner has assailed legality and correctness of the order dated 2nd March, 2019 passed by the Executive Engineer, C-1 Division, Mumbai Building Repair and Construction Board, Mumbai i.e. respondent No.2 under section 95A of the Maharashtra Housing and Area Development Act, 1976 directing the petitioner to hand over vacant possession of shop No.15, ground floor, Haji Ismail Musafirkhana within 7 days failing which it was mentioned that summary eviction would be carried out.

5. Similar orders have been passed by respondent No. 2 in respect of petitioners in the other writ petitions.

6. Immediate cause for urgently moving the writ petition was issuance of notice dated 4th December, 2019 by respondent No.2 directing the petitioner to shift to the allotted temporary transit accommodation at shop No.91, D-Block 2-A transit, Bhendi Bazar, Mumbai 4000003 within 24 hours, failing which it was mentioned that forcible summary eviction would be carried out in terms of Section 95A (2) of the Maharashtra Housing and Area Development Act, 1976.

7. Primary contention of Mr.Gorwadkar, learned senior counsel for the petitioner is that though show cause notice was issued to the petitioner fixing hearing on 4th July, 2018, petitioner could not attend the hearing on that day because of heavy rain in Mumbai leading to severe dislocation. In this connection, application was filed by the petitioner as to why petitioner could not remain present in the hearing and sought for another date of hearing, but without considering the above, respondent No.2 passed the impugned order dated 2nd

March, 2019, which is an ex-parte order. He therefore submits that the impugned order is in violation of principles of natural justice. In support of the submissions, reliance has been placed on the following decisions :-

(i) Radhika George Vs. Maharashtra Housing and Area Development Authority, 2012 (5) Mh.L.J.;

(ii) Seema Santosh Jadhav vs. Maharashtra Housing and Area Development Authority, 2013 (6) Bom. C.R.121;

(iii) M/s Deffodils Pharmaceuticals Limited Vs. State of U.P., Civil Appeal No.9417 of 2019, decided on 13th December, 2019.

8. On the other hand, Mr.Samdani, learned senior counsel representing respondent No.9 argued that the present set of writ petitions are nothing but an abuse of the process of the court. A series of writ petitions were

earlier filed before this court being Writ Petition (L) No.3026 of 2019 and other connected cases by persons similarly situated like the petitioners who are unwilling to vacate the premises. However, all the writ petitions were disposed of as not pressed in the light of the minutes recorded in the order dated 19th November, 2019. As per the minutes, all those petitioners had agreed to vacate their respective premises. After withdrawal of those writ petitions, petitioners have pressed the present set of writ petitions raising identical grievance, unwilling to vacate the premises. He submits that in so far the present rehabilitation scheme is concerned, the same was challenged at every stage and all the challenges were turned down by this court. He has placed before the court orders passed by this court in all the writ petitions filed from time to time. On the plea of violation of principles of natural justice, he submits that the notices issued by Maharashtra Housing and Area Development Authority under Section 95A(2) of the Maharashtra Housing and Area Development Act, 1976 dated 24th September, 2018 was put to challenge

by Salim Brothers as the petitioners in Writ Petition (L) No.2801 of 2019. This court by order dated 4th October, 2019 declined to interfere with the impugned notice and directed that if the petitioner did not hand over possession of the premises, then the authority would be at liberty to take forcible possession with assistance of the police. Again in **Writ Petition No. 1248 of 2019 (Noorjahan Shahuddin Shaikh and another Vs. State of Maharashtra)** this court not only declined interference, but clarified that if the petitioners did not vacate the premises by 5.00 p.m. on the next date, the authority would be at liberty to demolish the impugned structure without further notice. In such circumstances, non-hearing of the petitioners by respondent No.2 while passing impugned order did not make any material difference. Hearing as sought for by the petitioners would only be an empty formality since no other conclusion is possible. In this connection, he has placed reliance on the following decisions:-

(i) (1959) 61 Bom. L.R. 318, State of Maharashtra Vs. Morarji Vooverji;

(ii) 2011(5) Mh.L.J. 131, Sajit Abdul Sattar Vs. State of Maharashtra;
(iii) (2015)8 SCC 519, Dharmal Satyapal Limited Vs. Deputy Commissioner of Central Excise.

He finally submits that petitioners are simply blocking/ obstructing the redevelopment process and therefore, all the writ petitions should be dismissed with exemplary costs.

9. Mr.Momin, learned counsel for respondent No.10 submits from the affidavits-in-reply on behalf of the said respondent wherein primary contention is that the property in question is a waqf property though respondent No.9 has challenged the same before the Maharashtra State Waqf Tribunal at Aurangabad which is still pending. Therefore, the structures cannot be demolished till the question as to whether the property is waqf property or not is finally decided.

10. Submissions made by learned counsel for the parties have been considered. Also perused the documents furnished by learned counsel for the parties.

11. At the outset, impugned order dated 2nd March, 2019 passed by respondent No.2 under Section 95A of the Maharashtra Housing and Area Development Act, 1976 (briefly "the Act" hereinafter) may be adverted to, relevant portion of which is extracted hereunder:-

"Where AS Board has certified list of tenants/occupants of cluster Redevelopment Schemes undertaken by Saifee Burhani Upliftment Trust under D.C.R.33(9) at Bhendi Bazar, C-Ward, Mumbai including subject building.

AND WHERE AS M/s SBUT has informed and requested you to handover vacant possession of Shop No.15, so that subject building can be demolished for the implementation of cluster redevelopment scheme. M/s SBUT informed this office that you are not co-operating hence cluster redevelopment scheme is held up.

AND WHERE AS This office issue notice under section 95A of MHADA Act 1976 vide letter under reference no.4 wherein you were requested to cooperate with M/s. SBUT and to handover vacant possession of Shop No.15. The said notice was hand delivered to you by the subordinate officer of the undersigned.

AND WHERE AS Government of Maharashtra has accorded in principle

approval for cluster redevelopment scheme of M/s SBUT.

AND WHERE AS All the permissions for the implementation of Cluster Redevelopment Scheme have been obtained by M/s. SBUT and more than 70% occupants have consented for the Cluster Redevelopment Scheme.

You failed to remain present in the hearing held on 04th July, 2018 inspite of notice being served on you.

Advocate for M/s SBUT submitted that the entire redevelopment scheme of M/s. SBUT is obstructed on account on non-cooperative attitude of the occupants of the subject premise. Advocate for M/s SBUT submitted that all conditions for initiating action under Section 95A of MHADA Act, 1976 is satisfied and complied. Advocate for M/s. SBUT submits that the subject building is a threat not only to the tenants/occupants, but also to the passers-by and members of the public. Advocate for M/s SBUT contended that tenant/ occupants are not being differentially treated, they are being offered the very same terms as were offered to and accepted by other tenants including those in this very building, and who have not only accepted these terms but have vacated their respective tenements. Advocate for M/s SBUT submitted in many cases the tenants/ occupants show their unwillingness to shift to transit accommodation offered by M/s. SBUT stating that the transit tenement made available to them are at a far distance, hence do not want to shift there. Advocate on behalf of M/s SBUT submitted that it shall provide rent compensation at the rate of Rs.25,000/- (Rupees Twenty Five Thousand only) per month for tenement having area up to 100 sq.ft and area above

100 sq.ft. at the rate of Rs.200 sq.ft per month in advance for 2 years. Advocate for M/s. SBUT submitted that large number of tenants/occupants in the instant cluster redevelopment scheme has opted for rent in lieu of transit accommodation. Advocate for M/s SBUT also submitted that the subject building is in an extremely precarious condition. Advocate for M/s. SBUT submits that the subject building is a threat not only to the tenants/occupants, but also to the passers-by and members of the public.

After hearing Advocate for M/s. SBUT and on physical inspection of subject building, I am of the opinion that entire redevelopment scheme undertaken by M/s SBUT is being obstructed by the occupants of the subject premise. All conditions for initiating action under section 95A of the MHADA Act against the tenants/occupants are fulfilled by M/s. SBUT. It is imperative that summary action for eviction is initiated and vacant possession of subject premise is handed over to M/s. SBUT to facilitate cluster redevelopment scheme in larger interest of overwhelming tenants, who have consented and vacated their respective tenements for the implementation of the same. The subject building is in an extremely dilapidated condition. It is imperative that the subject building is demolished at the earliest. A collapse of this building is likely to be that catastrophic as it was in the recent case of Husaini Building in the nearby vicinity. To avoid any untoward incident, it is extremely necessary that possession of subject premise is to be handed over to M/s SBUT and subject building is to be demolished for the implementation of entire cluster redevelopment scheme. In the above facts

and circumstances , I hereby pass following order:-

ORDER

The Tenants/ Occupants, Shah Mohd. Azar, Rehana Shah Mohd. Azar hereby directed to handover vacant possession of Shop No.15, Ground Floor, "Haji Ismail Musafirkhana", C.S.No.4315 Pakmodia street, 16-30, 2nd Cooper Street, Bhendi Bazar, Mumbai 400 003 within 7 days failing which summary eviction as laid down under Section 95A(2) of MHADA Act 1976 will be initiated."

12. A perusal of the impugned order would go to show that Saifee Burhani Upliftment Trust i.e. Respondent No. 9, referred to hereinafter as "the Trust", has undertaken redevelopment scheme for redevelopment of the subject building i.e. Haji Ismail Musafirkhana. Petitioners are included in the certified list of tenants/occupants, whereafter they have been offered alternate transit accommodation. More than 70% of the occupants had consented to the redevelopment scheme. Government of Maharashtra has approved the redevelopment scheme of the Trust. Respondent No.9 had requested petitioner to co-operate with the redevelopment scheme by handing over vacant possession of the respective shops. But

petitioners have refused to vacate. In such circumstances, respondent No.2 has opined that the entire redevelopment scheme is being obstructed by the petitioner. All the conditions for initiating action under Section 95A of the Act have been complied with. Subject building is in an extremely dilapidated condition which may collapse any moment, which may have serious consequences. Therefore, respondent No.2 opined that it is imperative that the subject building should be demolished at the earliest. Accordingly, the petitioner was directed to hand over vacant possession of his shop within seven days, failing which he was warned that summary eviction would be carried out.

13. Since the impugned order has been passed under Section 95A of the Act, it would be apposite to deal with the same at the outset. Section 95A is extracted hereunder:-

“95-A. Summary eviction of occupiers in certain cases- (1) Where the owner of a building or the members of the proposed co-operative housing society of the occupiers of the said building, submits a proposal to the

Board of reconstruction of the building, after obtaining the written consent of not less than 70 percent of the total occupiers of that building and a 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 occupier, as the case may be, then it shall be binding on all the occupiers to vacate the premises:

Provided that, it shall be incumbent upon the holder of such No Objection Certificate to make available to all the occupants of such building alternate temporary accommodation.

(2) On refusal by any of the occupant to vacate the premises as provided in sub-section (1), on being approached by the holder of such No Objection Certificate for eviction of such occupiers, it would be competent for the Board, notwithstanding anything contained in Chapters VI and VII of this Act to effect summary eviction of such occupiers.

(3) Any person occupying any premises, land, building or structure of the Board unauthorizedly or without specific written permission of the Board in this behalf shall, notwithstanding anything contained in Chapters VI and VII of this Act, be liable for summary eviction.”

14. In **Radhika George (supra)** a Division Bench of this court examined the scope and ambit of Section 95A. It was held that the legislative intent is to give an opportunity to the occupants of old structure unable to develop it for lack of resources to move to better

accommodation and at the same time to create additional housing for general consumption. Section 95A was enacted to enable speedy implementation of such redevelopment scheme; the provision is intended to ensure seamless implementation of the project. The authority passing an order under Section 95A only needs to examine whether 70% of the members had consented to redevelopment; whether the permissions are in order; and whether the developer has provided adequate transit accommodation. Once the authority is satisfied that these requirements are fulfilled, all that is required to be done is to direct the members to shift to the transit accommodation till their rehabilitation in the reconstructed building. Proceeding further, the Division Bench explained that action under Section 95A does not result in determining the rights of the parties per-se. Proceedings under Section 95A cannot be converted into a full fledged judicial proceeding or a civil trial.

15. What can be called out from the above is that scope of enquiry under Section 95A of the Act is very

limited; that apart, there is no judicial adjudication of the rights of the parties under Section 95A. Coming to the present proceeding, petitioners have not questioned the permissions and approvals granted by different authorities for the redevelopment scheme. It is also not in dispute that petitioners have been found to be eligible for rehabilitation and accordingly their names are included in the certified list of tenants/occupants. Respondent No.9 has provided them alternate transit accommodation. In such circumstances, there is hardly any scope for interference by the court in the impugned order passed under section 95A of the Act.

16. At this stage, it may be seen from the compilation of documents placed before the court by Mr.Samdani that a Division Bench of this court in **Writ Petition No.13 of 2015 (Murtuja Shabbir Tinwala Vs. State of Maharashtra)** had rejected the challenge made to the Letter of Intent dated 10th August, 2011 for executing the redevelopment scheme and dismissed the writ petition vide order dated 2nd July, 2015. After

noticing certain silent features of the scheme it was held that 77.67% of the tenants/occupants had consented to the redevelopment scheme.

17. In **Writ Petition (L) No.1350 of 2016 (M/s Karim Ismail Vs. State of Maharashtra)** pertaining to the same redevelopment scheme, grievance was expressed that since the said petitioner was carrying on business in the ground floor, it would not like to be relocated to the second floor of the newly constructed redeveloped premises. This court vide the order dated 14th June, 2016 noted that all the eligible tenants/occupants have been provided permanent alternate accommodation. The Trust could not be compelled to make any offer to the petitioner for accommodation on the ground floor. Accordingly, the writ petition was dismissed. Similar orders had been passed when grievance relating to alternate accommodation and transit benefits were made.

18. Coming to the latest round of litigation i.e. **Writ Petition (L) No.3026 of 2019 (Ehasan A. Hakim Vs. State of Maharashtra) and other connected cases**, again pertaining to the redevelopment scheme in question, all the writ petitions were disposed of as not pressed as per following terms and conditions.

“1. The correct name of Petitioner is Naved Ehsan Hakim. The Petitioner shall vacate his premises being shop no.23 situated at Musafirkhana Building, Bhendi Bazar Area and handover vacant and peaceful possession thereof to the Executive Engineer, MBR&R Board on or before 15th December 2019. Thereafter the Respondent Nos.2 and 3 can demolish the same.

2. The Petitioner states that the Petitioner accepts the cluster development scheme of Respondent No.4 and hence the Petitioner shall be entitled to all transitory benefits and all other benefits at par with the other tenants. Respondent No.4 Trust undertakes that it will hand over a Demand Draft for the transit compensation in the name of the Petitioner, in the event the Petitioner opts for compensation, simultaneously with the Petitioner handing over the premises, or in the event the Petitioner opts for transit accommodation, Respondent No.4 shall hand over transit accommodation simultaneously with the Petitioner handing over the premises.

3. Respondent No.4 Trust agrees and undertakes, within 2 (two) months of the issuance of the commencement certificate for the sub-cluster in which the Petitioner will be rehabilitated, to enter into an Agreement for

Permanent Alternate Accommodation with the Petitioner identifying the location of the premises being provided to the Petitioner.

4. The undertakings by the Respondents are accepted as undertaking to this Court.

5. The Petition is disposed of accordingly.”

19. Thus from above, it is seen that all the statutory requirements pertaining to the redevelopment scheme have been complied with. Regarding absence of the petitioner in the hearing on 4th July, 2018, it is a settled proposition that application of the principles of natural justice would depend upon the facts and circumstances of each case. There can be no straight-jacket formula. In the instance case, all the three conditions as expressed in **Radhika George (supra)** have been fulfilled and in the absence of the petitioner not vacating the premises and availing the transit accommodation as provided, respondent No.2 had no other option, but to pass the impugned order under Section 95A of the Act.

20. In the circumstances, hearing of the petitioner would only be an empty formality and as held by the

Supreme Court in **Dharampal Satyapal Limited (supra)** such a situation would be covered by the *“Useless Formality Theory”*. In the instant case, considering the sequence of events as noticed, even if the petitioner was heard, it would have been a mere ritual without having any material impact on the decision taken.

21. Regarding the submissions made on behalf of respondent No.10, it is quite obvious that those cannot be considered in the present proceeding; respondent No.10 has not assailed the impugned order and has only supported the petitioner collaterally.

22. Consequently and upon thorough consideration of the matter, court finds no merit in the writ petition. Writ petition is dismissed.

23. Following the same, all the writ petitions are accordingly dismissed.

24. Resultantly, the connected interim applications would also stand dismissed.

25. No cost.

(UJJAL BHUYAN, J.)

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