

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

WRIT PETITION (L) NO. 119 OF 2020

1. Upendra lallubhai Shah	}	
Age: 79 years, Occupation: Retired,	}	
Residing at Building No.B-11, Tenement	}	
No.182, Rajawadi CHS Ltd.,	}	
Chittaranjan Nagar, Rajawadi,	}	
Ghatkopar (East), Mumbai-400 077	}	
	}	
2. Kamlesh Jayant Acharya	}	
Aged about 52 years, Occupation:	}	
Business,Residing at Building No.B-11,	}	
Tenement No.183, Rajawadi CHS Ltd.,	}	
Chittaranjan Nagar, Rajawadi,	}	
Ghatkopar (East), Mumbai-400 077	}	
through his Constituted Attorney	}	
Mrs.Urvashi Sanjay Gor R/at: 2 nd floor,	}	
Flat No.9, Kailas Kutir, Rajawadi,	}	
Ghatkopar (East), Mumbai-400 077	}	
	}	
3. Shri. Pramod Jamnadas Gokani	}	
Aged about 76 years, Occupation:	}	
Retired, Residing at Building No.B-11,	}	
Tenement No.184, Rajawadi CHS Ltd.,	}	
Chittaranjan Nagar, Rajawadi,	}	
Ghatkopar (East), Mumbai-400 077	}	
	}	
4. Smt.Priti Pramod Gokani	}	
Aged about 74 years, Occupation:	}	
Rretired, Residing at Building No.B-11,	}	
Tenement No.182, Rajawadi CHS Ltd.,	}	
Chittaranjan Nagar, Rajawadi,	}	
Ghatkopar (East), Mumbai-400 077	}	Petitioners

versus

1. The Maharashtra Housing and Area	}
Development Authority (MHADA),	}
having office at Gruha Nirman Bhavan,	}
Kala Nagar, Bandra (East),	}
Mumbai 400 051	}

2. The Chief Officer, Mumbai Housing and Area Development Board (Mumbai Board), Respondent nos. 1 and 2 having office at Griha Nirman Bhavan, Bandra (East), Mumbai 400 051	}	
3. Executive Engineer, Hsg. Kurla Division, Mumbai Board, having office at Cabin No.341, Griha Nirman Bhavan, Bandra (East), Mumbai 400 051	}	
4. Pramod Co-op. Housing Society having its office at Chittaranjan Nagar, Rajawadi, Ghatkopar (East), Mumbai 400 077	}	
5. M/s.Global Oricon Developers, having its office at 1404/05, Maithilis Signet, Plot No.39/04, Sector 30A, Vashi, New Mumbai 400 703	}	Respondents

Mr.G.S.Godbole with Mr.Jai Kanade I/b. Ms.Sanjukta Dey for the petitioners.

Mr.Milind Sathe-Senior Advocate with Mr.Kamlesh Ghumre for respondent nos. 1 to 3.

Mr.V.R.Dhond-Senior Advocate with Ms.Aarti Dandekar for respondent no.4.

Ms.Aarti Dandekar for respondent no.5.

**CORAM :- S. C. DHARMADHIKARI &
R. I. CHAGLA, JJ.**

DATED :- FEBRUARY 11, 2020

P.C. :-

1. By this writ petition under Article 226 of the Constitution of India, the petitioners before us are challenging the order passed by the second respondent to this petition.

2. By the impugned order, the second respondent has directed that the petitioners would have to forgo the tit bit plots. The petitioners before us claim that the first respondent is the Maharashtra Housing and Area Development Authority (MHADA) as defined in the Maharashtra Housing and Area Development Act, 1976 (hereinafter referred to as “the MHADA Act”). The second respondent is allowed to issue and implement directions, in its capacity as one of the authorities charged with carrying out the provisions of the MHADA Act. Therein, sub-section (1)(c) of section 16 says that the Boards can also be charged with carrying out the provisions of this Act. The word “Board” is also defined to mean a Board established under section 18 of the MHADA Act. The term “existing Board” is defined in section 2(14) to mean, *inter alia*, Bombay Building Repairs and Reconstruction Board constituted under the Bombay Building Repairs and Reconstruction Board Act, 1969. Section 18 of the Act clarifies that the five Boards which have been established before the commencement of the Maharashtra Housing and Area Development (Second Amendment) Act, 1992 and shown in Column 1 of the table below sub-section (1) shall have the area of jurisdiction shown against each such Board in Column 2 of that table. The second respondent before us is such a Board and for short known as “Mumbai Board”. Its area of jurisdiction is City of

Mumbai and Mumbai Suburban District. The impugned order is passed by the Chief Executive Officer of the Mumbai Board.

3. The third respondent is the Executive Engineer of the second respondent Board, whereas, respondent no. 5 is private entity styled as Builders and Developers carrying out development activities within the City of Mumbai Suburban District. Respondent no. 4 is a Co-operative Housing Society which engaged respondent no.5 as the Builder and Developer for redevelopment of its buildings.

4. The petitioners state that they were allotted these tit bit plots by the first respondent by issuing allotment letters. They claim that premium/ lease rent was paid in full. The possession was handed over to them on the respective dates set out in para 4B of this petition. It is then stated that they repeatedly offered the annual lease rent, but the Estate Officer of the Mumbai Board refused to accept it. Thereafter, there is a grievance projected with regard to tit bit plot adjacent to Tenement No.181. This is a plot adjacent to the petitioners' plot. This was allotted to one Mr.Bhagtani. He was similarly situated as the petitioners. The fourth respondent tried to interfere with the rights of this Bhagtani. The fourth respondent filed a suit against the said Bhagtani claiming right, title and interest over entire City Survey

No.1004. It was alleging that Mr.Bhagtani encroached on the plot allotted to them. The suit of the fourth respondent was dismissed and thereafter, the third respondent called upon the heirs and legal representatives of Bhagtani to execute a deed. The deed was styled as a lease deed. It is said that the authority addressed a letter through its Executive Engineer to Mr.Bhagtani. He was called upon to pay arrears of lease rent. However, the petitioners claimed that neither any notice on par with Mr.Bhagtani was issued, but when the said Bhagtani's successors in title were issued notices and called upon to take steps, these successors discovered that on one pretext or the other, the lease deed was not executed. Hence, a writ petition is filed in this court being Writ Petition No.1710 of 2016. That is pending. An order of status quo is passed therein. The petitioners are complaining about similar attempts made by respondent no.4 to add the petitioners' plot to the property of the fourth respondent. The petitioners are then relying upon the averments in paragraphs 4E to 4G of this petition. Further, the petitioners claim that they filed a civil suit in the Bombay City Civil Court. They moved an application for interim relief by way of a notice of motion. The petitioners state that this litigation also resulted in the Estate Manager producing copies of the letters addressed to the petitioners and then stating that the office has no record of lease premium amount being paid.

However, the petitioners say that they have been protected by the interim order of the City Civil Court dated 2nd March, 2012.

5. Now, the petitioners say that the said litigation apart, and which the petitioners refer extensively in the paragraphs of the petition, the allegation is that the authority refused to accept the lease rentals. Later, a show cause notice had been issued by the third respondent calling upon the petitioners to attend the office of the competent authority and make submissions, failing which, an order would be made in terms of the applicable legal provisions.

6. We have perused a copy of this notice, which is at Exhibit 'N' to the petition at page 195. However, that notice was challenged and it came to be set aside. A fresh show cause notice was issued and the copy of the same has been also perused by us. The said notice is dated 27th February, 2019. The subject of the notice is allotment of tit bit plots adjoining Building No.B-11/182 to 185 at Chittaranjan Nagar at MHADA Layout at Rajawadi, Ghatkopar (East), Mumbai 400 077. This notice says that the petitioners shall remain present on the date and at the time mentioned therein to show cause why the allotment of tit bit plots should not be cancelled for the reasons indicated therein.

7. It is on this notice, to which a detailed reply has been filed by the petitioners, that the impugned order has been passed. The impugned order says that firstly the Chief Executive Officer of the second respondent is competent authority to exercise the powers under the MHADA Act. He has jurisdiction to take cognizance of the notice and pass the impugned order. He also held that the petitioners do not require these tit bit plots. He also holds that there is material to cancel the allotment in favour of the petitioners.

8. Holding against the petitioners on these points, the second respondent directs that the allotment of the plots in favour of the petitioners is cancelled. The possession receipts in favour of the petitioners also stand cancelled. The plots are now handed over to the fourth respondent society and the fourth respondent society can be allowed to deal with the plots and separate orders in that behalf would be issued. The petitioners are directed to handover vacant and peaceful possession of the premises to respondent no.3. If they fail to do so, then, steps would be taken in accordance with law to dispossess them. It is this order which is challenged in this petition on various grounds.

9. Firstly, on the preliminary objection on maintainability of this petition, it is contended by Mr.Sathe learned senior counsel appearing for respondent nos. 1 to 3 as also the learned counsel appearing for respondent no. 4 that the order impugned in this petition has been passed invoking the powers conferred by the MHADA Act. The argument of the respondents is that the definition of the term “authority” is different than that of the word “Board”. The word “authority” is defined in section 2(3) to mean the Maharashtra Housing and Area Development Authority established under section 3, whereas, the word “Board” is defined to mean a Board established under section 18. However, the “competent authority” is an expression defined in section 2(11) to mean an officer appointed to be the competent authority under section 65. The respondents submit that the power to pass the order impugned in the petition is derived from sections 65 and 66 of the MHADA Act. Once this is the power invoked and to which the order impugned in the petition is traceable, then, it is capable of being challenged by filing an appeal under section 70 of the Act. Therefore, this court should not entertain and try the petition, particularly when it involves disputed factual issues.

10. We brought to the notice of Mr.Godbole learned counsel appearing for the petitioner the provisions, namely, sections 65,

66 and 70 of the MHADA Act. He would submit that the essential argument on jurisdiction is based on section 65 and the wording of that provision. That confers the status of a competent authority only on an officer of the rank mentioned therein. The second respondent could not have exercised the power as competent authority. Therefore, on the point of jurisdiction itself, the petition must succeed. There are no elaborate arguments required to understand this primary contention. Therefore, Mr.Godbole submits that if the petition can succeed on this ground alone, then, it is not necessary to relegate the petitioner to an alternate remedy. The appellate authority cannot take note of the arguments on jurisdiction, which are essentially based on the interpretation of legal provisions. Therefore, the remedy of appeal is not efficacious.

11. We are unable to agree with Mr.Godbole for more than one reasons. After some arguments, ultimately, Mr.Godbole concedes that the petitioners can avail of the remedy of appeal, but his contention is that the petitioners' readiness to file an appeal should not be construed as accepting the argument of the respondents on the point of availability of alternate remedy.

12. We have noted from the impugned order that it is passed on three issues. One of the issues is of jurisdiction of the second

respondent. That has been answered, but by relying upon some litigation and factual aspects thereof. Similarly, on other points, the findings are rendered in the backdrop of the facts.

13. It is well settled that an appeal can be filed so as to assail an order both, on facts and law. One of the grounds in the appeal could be on alleged lack of jurisdiction to entertain and try the lis and pass binding orders thereon. We have no doubt in our mind that if such an argument is raised in the backdrop of section 65, then, the appellate authority will render independent findings irrespective of what has been held in the impugned order. The appellate authority can take cognizance of all grounds of appeal, including lack of jurisdiction. Merely because the second respondent is an officer drawn from Indian Administrative Services (IAS) and the appeal against his order, under section 70, would lie to the Deputy Secretary does not mean that the said appellate authority will not render independent findings, including on the point of jurisdiction. As far as the factual aspect is concerned, the appellate authority is bound to note the arguments of both sides and after perusing the record, pass an order consistent with the facts and law.

14. In the light of the fact that in the present case, the second respondent's Chief Officer is drawn from the Indian Administrative

Services and is a secretarial level officer, interest of justice would be served if in the facts and circumstances peculiar to this case, we direct that the appeal under section 70 of the Act shall be heard and disposed of by the Secretary in the Department of Housing and Special Assistance, Government of Maharashtra. He shall pass an order without being influenced by any observations, findings and conclusions in the impugned order. Merely because the second respondent is an IAS Officer, the appellate authority (Secretary) shall not be inhibited by such a fact and must decide the appeal on merits and in accordance with law. The appeal shall be decided uninfluenced by any observations in the impugned order.

15. We have noted that after this petition was filed on 16th January, 2020, it was mentioned before us. This court ensured that the copies of the petition are served on all parties and their replies are taken on record. They were taken on record. Merely because they have been taken on record does not mean that we have expressed any opinion either on the point of jurisdiction or merits. The appeal shall be decided uninfluenced by the filing of this petition and the orders made by us. The parties are aware that during the pendency of this petition and prior thereto, there was an order of status quo and which directed the respondents,

particularly respondent no.4 not to carry out any works or to take possession of the plots of the petitioners. In other words, the plots in possession of the petitioners were not to be taken over. The order of status quo means what was prevailing at the time when it was passed and that shall continue to operate during the pendency of the appeal. However, we direct the petitioners to file appeal within a period of 15 days from today. If that is not filed, the benefit of our order will not be available to the petitioners herein.

16. We direct that the appellate authority (Secretary in the Department of Housing and Special Assistance, Government of Maharashtra) shall endeavour and dispose of the appeal as expeditiously as possible and in any event, within a period of two months from the date of first appearance of the parties.

17. With the aforesaid directions, the writ petition is disposed of.

(R.I.CHAGLA, J.)

(S.C.DHARMADHIKARI, J.)