

R.M. AMBERKAR
(Private Secretary)

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.**

WRIT PETITION NO. 1616 OF 2018

S.N. Shivprakash

.. Petitioner

Versus

Chief Officer, Mumbai Repair &

Reconstruction Board, MHADA & Ors. .. Respondents

Mr. Atul Damle, Senior Advocate a/w Mr. Rupesh Lanjekar for the
Petitioner

Mr. Arshad Shaikh i/by A.B. Ansari for Respondent No. 4

Mr. Amit Shastri, AGP for the State

**CORAM : NITIN JAMDAR &
MILIND N. JADHAV, JJ.**

**DATE : 27 OCTOBER 2020.
(Through Video Conferencing)**

P.C.:

- 1.** Heard the learned counsel for the parties.
- 2.** The learned Senior Counsel for the Petitioner states that Respondent No. 4 be deleted from the array of the parties. Accordingly, Respondent No. 4 is deleted from the array of the parties. Amendment to be carried out within a period of one week.
- 3.** It is the case of the Petitioner that the Petitioner had vacated the premises which were to be put for reconstruction and moved to the transit camp. However, in spite of many years that have passed, he is still residing in the transit camp accommodation and the

Respondents Authorities have not provided any permanent accommodation to him.

4. Reply affidavit is filed on behalf of the Deputy Engineer of MHADA on 26 June 2019. In the reply, it is stated in paragraphs 6, 7, 8, 9 and 12 as under:-

- "6. *I say that on 06/08/1982, at 4:30 pm, the old cessed building mentioned above collapsed. At that time there were 15 residents and 2 non residents occupying the premises as tenants. These Respondents had issued 12 notices to vacate the said tenements. The name of the Petitioner was recorded in the register as tenant occupying room no. 6A. Hereto annexed and marked as Annexure R-1 is a copy of the report dated 07/08/1982 issued by the Respondent no. 2 along with a list of the tenants.*
7. *I say that the NOC for the redevelopment of property at C.S. No. 22, 23, 25, 49, 50 of Byculla Division, Building No. 62, 68, 70, 99 and 101-101A at Kamathipura 1st Lane and 2nd Street was issued to the Respondent No. 4 by these Respondent No. 1 on 23/04/2009. At present the redevelopment work is completed and tenants are residing in the said structure. It is pertinent to mention that while granting NOC to the Respondent No. 4, these Respondents had approved the tenant list. However the room no. 6A shows the name of one Ejaz Ahmed Sadiqali Shaikh as tenant. It is seen that these respondents accepted the tenancy only and not the occupancy of the said Ejaz Ahmed Sadiqali Shaikh. It is thus submitted that these respondents have not accepted the occupancy of the said room no. 6A, as the said tenant / occupant has not submitted the documents of old cess building for the provency of his occupancy.*
8. *I say that the Respondent No. 4 had allotted the*

tenements to the occupants without taking occupancy certificate from these Respondents. I say that these respondents had issued notice dated 14/03/2016 to the Respondent No. 4 to explain the occupancy of room no. 6A when the original tenant list showed the name of the Petitioner as the tenant of room no. 6A. A copy of the said notice is annexed to the Petition.

9. *I say that inspite of receiving the said notice, the Respondent No. 4 has not appeared before these respondents and has not offered any explanations regarding allotting the tenement to one Ejaz Ahmed Sadiquali Shaikh issued instead of the Petitioner.*

10.

11.

12. *I say that the Petitioners claim is required to be verified according to the records of these respondents and an explanation is required to be sought from the Respondent No. 4 regarding the occupancy of Ejaz Ahmed Sadiquali Shaikh instead of the Petitioner."*

5. In view of this reply, we had passed an order on 29 September 2020 which is as under:-

"1. At the request of learned counsel for Respondent No. 4, stand over to 13 October 2020. In the meanwhile, the Advocate for Respondent Nos. 1 to 3 will take instructions as to within how much time frame, the officer will decide the issue of entitlement to the premises in question amongst the rival contenders."

6. The petition is pending since the year 2018. Today none appears for the Respondent MHADA. The petition cannot be kept pending because as per the affidavit-in-reply, only a decision is to be taken by the Respondent MHADA.

7. We direct the Respondent MAHDA to issue fresh notice to the Petitioner and Respondent No. 5 (renumbered) Ejaz Ahmed Sadiqali Shaikh and decide the issue referred to in the above mentioned paragraphs. We make it clear that we have not commented on the merits of the rival claims which will be decided by the Authority. After the notice received and the parties appears before the Officers of the Respondent MAHDA, the decision be taken within a period of 12 weeks thereafter.

8. Writ Petition is accordingly disposed of.

9. This order will be digitally signed by the Private Secretary of this Court. All concerned to act on production by fax or email of a digitally signed copy of this order.

[MILIND N. JADHAV, J.]

[NITIN JAMDAR, J.]

Ravindra
M.
Amberkar

Digitally signed
by Ravindra M.
Amberkar
Date:
2020.10.28
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