

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

WRIT PETITION NO. 1453 OF 2021

Ravindra Govind Jaiswal ... Petitioner.
V/s.
Municipal Corporation of Greater Mumbai
& 6 Others. ... Respondents.

Dr. Uday P. Warunjikar, Advocate a/with Mr. Maheshwar A. Parab & Mr. Nitesh Gupta, Advocates for the Petitioner.

Ms.Pooja Yadav, Advocate for the MCGM-Respondent Nos.1 & 2.

Mr. S.B. Gore, AGP for the State.

Mr. T.D. Deshmukh, Advocate a/with Mr. Sagar Kursija, Advocate for the MHADA.

Mr. Mayur Khandeparkar, Advocate a/with Mr. Sanjay Kadam & Sanjeel Kadam i/by Kadam & Company for Respondent No. 7.

CORAM : A.A.SAYED & S.G.DIGE,JJ.
DATE : SEPTEMBER 14, 2021.

P.C. :

1 The Petitioner has impugned the Notice dated 7th October, 2020, speaking Order dated 1st February, 2020 and the 48 hours' Notice dated 21st June, 2021, under section 95A (2) of MHAD Act, 1976 for summary eviction of the Petitioner from Room No. 48 to implement the redevelopment scheme.

2 The Petitioner is the tenant of Room No. 48 of an area admeasuring around 97.62 Sq.Ft. on the ground Floor of

Guru Niwas Chawl. The Respondent No. 7 is the owner and developer of the property bearing CS Nos. 1278 and 1279 of Girgaon Division known as Guru Niwas Building & Guru Niwas Chawl and Dadarkar Building situated at Bangad Wadi, Vittalbhai Patel Road, Girgaum, Mumbai 400 004 (hereinafter referred to as “the said property”)

3 At the outset, reference is required to be made to the Order passed by the Division Bench of this Court dated 27th November, 2019 in Writ Petition (L.) No. 3302 of 2019 filed by the Respondent No. 7-Developer (Exh. “T”, page 163 to the Petition). The said order reads as follows :

“P.C. :-

1. The complaint in this petition is that no action has been taken on the proposal of the petitioner.
2. The Cess buildings in Mumbai are awaiting redevelopment.
3. For the redevelopment of the entire property, the existing buildings will have to be pulled down after all occupants are evicted.
4. The complaint is that there are fourteen non-cooperating occupants against whom it is the Maharashtra Housing and Area Development Authority, which will have to take necessary steps. It is that authority which is vested with the power to evict these non-cooperating occupants.
5. On such a petition, which was mentioned today morning by Mr.Sureil Shah and impressing upon us that “Guru Niwas Building”, “Guru Niwas Chawl” and “Dadarkar Building” are the three buildings on the

property, which is sought to be redeveloped, papers were directed to be produced at 3.00 p.m.

6. The buildings are partially collapsed and they are more than 60 years old. In the circumstances, the fourteen non-cooperating occupants need to be evicted forthwith and for which the above proposal was forwarded.

7. We requested Mr. Lad to appear on behalf of respondent Nos.1 and 2 and at our request, he has accepted notice and waived service.

8. On instructions, Mr.Lad has told us that respondent Nos.1 and 2 will take the necessary steps and complete the action within a period of six weeks from the date of communication of this order.

9. In the above manner, after we have taken the petition itself for hearing, it is disposed of by this order.

10. This order is passed after hearing both sides, including learned AGP appearing for the State.”

(emphasis supplied)

Para 6 of the aforesaid order thus records that there was a partial collapse and the buildings are more than 60 years old. It is further observed in the said order that there were 14 non-cooperating occupants/tenants (the Petitioner is one of them) who need to be evicted forthwith. In paragraph no. 8, the statement of the learned Counsel for the MHAD was recorded that the necessary steps will be taken to complete the action within a period of six weeks.

4 Respondent No. 7-Developer/owner has undertaken redevelopment of the said property under Regulation No. 33(7) r/w Appendix-III of the Development Control Regulations for Greater Mumbai, 1991. More than 98% occupants have given consents for the said Redevelopment Scheme and the Mumbai Building Repairs & Reconstruction Board has granted NOC dated 10th May, 2018, as revalidated from time to time, in favour of the Respondent No. 7-Developer. The Board has certified the Petitioner as eligible occupant of Room No. 48 admeasuring approx. 97.62 Sq. Ft. on the ground floor of Guru Niwas Chawl in the said property. In view thereof, the Respondent No. 7 as the owner/developer/NOC holder has offered to provide to the Petitioner: (a) Flat No. 1003 admeasuring 405 Sq. Ft. (carpet) on the 10th Floor of the Rehab Wing/Rehab Bldg. as and by way of permanent alternate accommodation in lieu of the said Room No. 48 free of costs and on ownership basis; (b) Transit compensation @ Rs. 22,000/- per month, and if the same is not acceptable then a temporary alternate accommodation at Room No. 4, 6/8, Savitri Prasad Building, Ground Floor, Jagannath Shankar Sheth Road, St. Francis Xavier 2nd Cross Lane, Thakurdwar, Kalbadevi, Mumbai 400 002; and (c) Rs. 2,10,000/- as corpus fund payable in 02 installments, 50% on vacation of the said Room No. 48 and 50% on taking possession of his permanent alternate accommodation. The Petitioner has not accepted the above offer. The Petitioner is therefore a non-co-operating occupant.

5 As per Section 95-A of the MHAD Act, 1976 the Board is entitled to summarily evict the non-co-operating occupier from his premises in the old building which is subject matter of redevelopment under Regulation No. 33(7) if the following conditions are fulfilled viz.

- (a) There must be written consents of not less than 70% occupants of the building;
- (b) The Board should have issued NOC in favour of the owner/developer; and
- (c) The developer/NOC Holder should make available alternate temporary accommodation to the occupiers.

All the above conditions are fulfilled in the Petitioner's case. Pertinently, the Petitioner has also given his irrevocable written consent for the redevelopment.

6 It is required to be noted that save and except the Petitioner, all the tenants/occupants of the said property are now co-operating with the Respondent No.7-Developer in the redevelopment. They are ready to vacate their premises as and when called upon by the Respondent No. 7-Developer. The Petitioner is thus the sole occupant/tenant who is not co-operating and refusing to vacate the said Room No. 48.

7 The buildings on the said Property are in a dilapidated condition, which is noted by the Division Bench of this Court in the order dated 27th November, 2019, referred to in paragraph no. 4 above. In order to avoid any mishap and for the sake of safety of the occupants and passers-by, it is

necessary that the said buildings be vacated and demolished at the earliest. By refusing to vacate the said Room No. 48, the Petitioner is putting the safety and security of the other occupants at risk.

8 The proceedings under Section 95-A of the MHAD Act, 1976 are summary in nature. We find that the Respondent-MHADA has followed due procedure of law while issuing the impugned Notices and in passing the impugned Order. The judgment of the Division Bench of this court in the case of **Radhika George & Ors. vs. Maharashtra Housing and Area Development Authority & Ors., 2012 (5) Mh. L.J. pg.220**, relied upon by the learned Counsel for the Respondent No.7-Developer entirely supports the case of the Respondent No. 7-Developer.

9 In light of the above, no interference is called for in the impugned Notices and the impugned order of the Respondent-MHADA. The Petitioner is clearly abusing the process of law which is delaying the re-development.

10 The Writ Petition is accordingly dismissed with costs quantified at Rs. 5000/- to be paid by the Petitioner to the High Court Legal Services Committee, Mumbai, within one week from the day this order is uploaded.

11. List the Writ Petition for directions for reporting compliance.

(S. G. DIGE, J.)

(A. A. SAYED, J.)