

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR**

LETTERS PATENT APPEAL NO.45 OF 2011

IN

WRIT PETITION NO. 4510 OF 2004

Shaikh Ramzan S/o Shaikh Hussain,
Aged 55 years, r/o Tenement No.44/2,
Somwaripeth Quarters, Nagpur.

[Dead]

... **APPELLANT**

**LEGAL HEIRS OF THE APPELLANT -
SK. RAMZAN SK. HUSSAIN**

1A. Smt. Faimida wd/o Sk. Ramzan,
Aged about 53 years.

1B. Sk. Irfan S/o Sk. Ramzan,
Aged about 25 Years.

1C. Sk. Afzal S/o Sk. Ramzan,
Aged about 24 Years.

Nos. 1A to 1C are residents of
Tenement No.44/2, Somwari
Peth Quarters, Nagpur.

1D. Smt. Tabassum w/o Shakir Shaikh,
Aged about 23 years, resident of
Near National School, Ashirwad
Nagar Road, Tajbagh, Nagpur.

[Amendment carried out
out as per Court's order
dtd. 5/12/2013 and
brought LRS of the
Appellant on record.]

V E R S U S

1. The Estate Manager,
Nagpur Housing & Area Development
Board, Near M.L.A. Hostel,
Civil Lines, Nagpur.
2. State of Maharashtra,
through its Secretary,
Department of Housing,
Mantralaya, Mumbai - 32.

3. Pandurang Ramaji Pardhi,
Since deceased through his LRs
and representatives :

(a) Smt. Rukhmabai Wd/o Pandurang
Pardhi, aged about 69 years.

[R-3(a) & ((b) are
abated as per Court's
order dtd. 17/01/12]

(b) Rambhau S/o Pandurang Pardhi,
aged about 54 years;

(c) Gopal S/o Pandurang Pardhi,
aged about 47 years;

(d) Subhash S/o Pandurang Pardhi,
aged about 42 years;

(e) Sham S/o Pandurang Pardhi,
aged about 38 years;

(f) Chandrashekhar S/o Pandurang
Pardhi, aged about 34 years.

All Respondents (a) to (f)
residents of Plot No.128,
Parwati Nagar, Nagpur.

... **RESPONDENTS**

Shri Saurabh Bhende, Advocate h/f Shri S. P. Bhandarkar,
Advocate for legal heir of appellant.

Shri P. P. Kothari, Advocate for respondent No.1.

Ms.S. S. Jachak, AGP for respondent No.2.

CORAM: A.S. CHANDURKAR AND
G. A. SANAP, JJ.

DATED : 06/08/2021

JUDGMENT : (PER : G. A. SANAP, J.)

1. In this Letters Patent Appeal, challenge is to the
order dated 12/07/2005 passed in Writ Petition No.4510/2004

and order dated 08/09/2005 in MCA No.554/2005, whereby the learned Single Judge dismissed the writ petition as well as the review application and confirmed the order passed by the Appellate Authority for eviction of the appellant from the subject premises dated 02/08/2004.

The facts leading to the filing of this Letters Patent Appeal are as follows :-

2. During the pendency of this appeal, the original appellant died. His legal representatives have been brought on record. The original respondent No.3 had died during the pendency of the writ petition. His legal heirs are brought on record. During the pendency of the appeal, the respondent Nos.3(a) and 3(b) died. Vide order dated 17/01/2012, the appeal stood abated against them.

3. The tenement bearing No.44/2 in 980 Somwari Peth, Nagpur was allotted to the original respondent No.3 on 01/04/1980 on hire purchase basis under the Maharashtra Housing and Area Development Act, 1979 (hereinafter referred to

as "the MHADA Act"). One of the conditions of the allotment stipulated that the original respondent No.3 would not sublet the tenement to any other person. On 01/04/1998, the Rent Controller at the time of inspection found the original appellant residing in the tenement. On the basis of the report of the Rent Controller, the Competent Authority under the MHADA Act issued notice to the deceased - appellant and the deceased - original respondent No.3. The Competent Authority conducted full-fledged enquiry and came to the conclusion that the deceased - appellant was the trespasser in the tenement, which was allotted to the deceased - original respondent No.3 and issued a notice to vacate the tenement within 7 days. The deceased - appellant filed a statutory appeal against the order of the Competent Authority before the Appellate Authority established under the MHADA Act. The Appellate Authority vide order dated 02/08/2004 dismissed the appeal and confirmed the order of eviction passed by the Competent Authority.

4. The deceased - appellant being aggrieved by the aforesaid order of the Appellate Authority filed writ petition and challenged the same. The learned Single Judge vide order dated

12/07/2005 dismissed the writ petition and confirmed the concurrent finding of fact recorded by both the authorities below. The deceased - appellant filed review application bearing MCA No.554/2005. The learned Single Judge vide order dated 08/09/2005 dismissed the review application.

5. Being aggrieved by the order dated 12/07/2005 passed in writ petition and the order dated 08/09/2005 passed in review application, the deceased - appellant came before this Court in appeal. The grounds of challenge to the impugned orders have been set out in the Memo of Appeal. The main ground is that the learned Single Judge has not properly appreciated the evidence placed on record and more particularly, the Government Resolution dated 05/04/1979, whereby the unauthorized occupants of the MHADA premises have been granted protection.

6. We have heard learned advocate for the appellant, learned advocate for respondent No.1 and learned Assistant Government Pleader for respondent No.2. We have gone through the record and proceedings of the appeal.

7. The learned advocate for the appellant submitted that the view taken by the learned Single Judge, while deciding the writ petition as well as review application, is not correct view. In the backdrop of the available evidence, learned advocate for the appellant submitted that the Government Resolution dated 05/04/1979 affords protection to the unauthorized occupants of the residential premises. Relying upon this Government Resolution, the learned advocate submitted that the appellant would be entitled to get the outright sale on hire purchase basis the tenement in question. Learned advocate made submissions touching the merits of the matter vis-a-vis the entry of the deceased - appellant in the premises and his right. Learned advocate further submitted that the respondent Nos.3(c) to 3(f) have been residing elsewhere and as such, they do not need the premises in question.

8. Learned advocate appearing for the respondent No.1 submitted that the concurrent finding of fact has been recorded vis-a-vis the unauthorized occupation of the tenement by the deceased - original appellant. Learned advocate submitted that in the facts and circumstances, the reliance placed on the

Government Resolution dated 05/04/1979 is totally misplaced. Learned advocate submitted that since the deceased - respondent No.3 has been in occupation of the tenement being the allottee of the same by the respondent No.1, the claim of the appellants based on the Government Resolution dated 05/04/1979 cannot be accepted.

9. In order to appreciate the rival submissions, we have minutely perused the orders passed by the authorities under the MHADA Act as well as the orders passed by the learned Single Judge in the writ petition and in the review application. We have minutely perused the Government Resolution dated 05/04/1979. Perusal of the record would show that the learned Single Judge has considered this Government Resolution, while deciding the review application. Learned Single Judge has found that in the fact situation, the Government Resolution dated 05/04/1979 would not be applicable in this case. Minute perusal of the Government Resolution would show that it permits the Housing Board to sell the tenement to the authorized occupant and also to the unauthorized occupant. In the case on hand, the tenement was already sold to the deceased - respondent No.3. Perusal of the

record would show that the necessary sale deed was executed in favour of the deceased - respondent No.3 i.e. the original allottee. It is, therefore, crystal clear that the tenement in question was already allotted. The submission on the basis of the Government Resolution would be sustainable, if the tenement has not been allotted to any authorized occupant but lying vacant and occupied by unauthorized occupant. The action taken by the Competent Authority is strictly according to the provisions of MHADA Act for the breach found to have been committed as provided under Section 66 of the MHADA Act. In the facts and circumstances, in our view, reliance placed on the Government Resolution to buttress the claim in the appeal and ultimately, the submissions advanced by the learned advocate for the appellant, cannot be accepted.

10. It is pertinent to mention that there was privity of contract between the deceased - original respondent No.3 and the respondent No.1. The deceased - original appellant had no privity of contract with the respondent No.1. According to him, the deceased - original respondent No.3 sublet the tenement to him. It is, therefore, crystal clear that the deceased - original appellant

claimed the right in the tenement through the deceased - original respondent No.3. The deceased - original respondent No.3 namely; the original allottee was not entitled to transfer the tenement in any manner. The transfer of the tenement had no sanction of the MHADA authority. The two authorities under the MHADA Act concurrently found that the deceased - appellant was in unauthorized occupation of the tenement. The learned Single Judge agreed with the concurrent finding of the fact recorded by both the authorities. On re-appreciation of the evidence on record and more particularly, the Government Resolution dated 05/04/1979, we are of the view that there is no substance in the appeal. The view taken by the learned Single Judge is the only possible view in the matter. No interference is warranted in the orders passed by the learned Single Judge. There is no substance and merit in the appeal. It deserves to be dismissed. Hence, the following order :

ORDER

- I] The Letters Patent Appeal stands dismissed.
- II] In the peculiar facts and circumstances of the case, the parties shall bear their own costs.

(G. A. SANAP, J.)

(A.S. CHANDURKAR, J.)