

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

CRIMINAL WRIT PETITION NO. 3499 OF 2019
WITH
INTERIM APPLICATION NO. 2813 OF 2021

Ms.Harita Sunil Parab. ... Petitioner.
V/s.
Smt.Shivani Vichare and others. ... Respondents.

WITH
WRIT PETITION NO. 18 OF 2022

Ms.Harita Sunil Parab and another. ... Petitioners.
V/s.
Smt.Shivani Vichare and others. ... Respondents.

Ms.Harita Sunil Parab, Petitioner in person.
Ms.Kavita N. Solunke, AGP for the Respondent- State.
Mr.Vilas S. Gawai with Om Suryawanshi for the Respondent-
Municipal Corporation.
Mr.P.G.Lad with Ms.Sayali Apte for the Respondent- MHADA.

SANJAY
KASHINATH
NANOSKAR

Digitally signed by
SANJAY KASHINATH
NANOSKAR
Date: 2022.10.19
15:34:26 +0530

CORAM: NITIN JAMDAR AND
SHARMILA U. DESHMUKH, JJ.

DATE : 10 October 2022.

P.C. :

These two petitions, one criminal writ petition and the other civil writ petition, are placed before us in view of the administrative order passed. Various orders have been passed in these petitions.

2. Criminal Writ Petition No.3499/2019 is filed for the following reliefs:

“a) To Direct the Commissioner of Police Mumbai to give Protections to Sanjeev Batra & Harita Parab.

b) Direct the Commissioner of Police Mumbai to take Strict Action Against D.C.P. Bandra Zone- IX, Sr. Police Inspector Versova Police Station & WPI Smt. Patil Also lodged F.I.R. Against Previous Sr. PI & Present Sr. PI Versova Police Station & WPI Smt. Patil for filing false Cases on Petitioner & Sanjeev Batra.

c) To Lodge F.I.R. Against Shivani Vichare & her Gundas & take Strict legal action against her as per the procedure of law.

d) To direct the BMC to Demolish illegal Structures / Floors Raised by Shivani Vichare in Bungalow No. 104, Aaram Nagar Behind Bungalow No. 103.

e) To direct MHADA to take action on illegal Constructions.

f) To lodge an F.I.R. Against the Officers of BMC & MHADA Who have Neglected in their duties & ignored illegal constructions & Activities.

g) To direct Tenant Welfare Association Aaram Nagar, Andheri to take immediate steps to install CCTV cameras & halogen lights.

h) To direct C.P., Jt. C.P. (Law & Order), D.C.P. & A.C.P. Mumbai to Meet Harita Parab Advocate High Court Bombay whenever she wants to meet them & take note of her grievances.

i) A compensation of Rs. 1,00,00,000/- (Rupees One Crore Only) be given to the petitioner advocate.

j) Interim / ad-interim relief in terms of prayer clause 'a' above may be granted.

k) Such further and other order be made as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case in favour of the Petitioner.

l) This matter may kindly be expedited in the Interests of Principles of Natural Justice also such further orders and directions in favor of Petitioner may kindly be granted."

In Writ Petition No.3499 of 2019, an order was passed on 23 November, 2021 in respect of the three prayers therein. It was observed that directions to the statutory authorities cannot be subject matter of the Criminal Writ Petition.

3. Thereafter, the Petitioner filed Civil Writ Petition No.18/2022 wherein the Petitioners have prayed for a direction to the Municipal Corporation to demolish the structure and floors in Bungalow No.104 and has prayed for the following reliefs:

"(1) To direct the BMC to demolish illegal structures/ floors raised by Shivani Vichare in Bungalow No. 104 and other occupiers of Bungalows No. 100, 101, 102, 103, 104, 105, 108, 109, 111, 113, 114, 116, 122, 131, 133, 134, 135, 141, 197, 210 and others, situated from Nagar Part (II), J.P. Road, Andheri (West), Versova, Mumbai- 400 061.

(2) A compensation of Rs. 3,00,000/- (Rupees Three Lac Only) be given to the Petitioner's from Respondents.

(3) That direction may be given to MHADA Respondent No.7 who is the owner of the Plot of land to make inventories of unauthorized construction and illegally Bungalow No. 103 and also Bungalows No. 100, 101, 102, 103, 104, 105, 108, 109, 111, 113, 114, 116, 122, 131, 133, 134, 135, 141, 197, 210, situated at Aaram Nagar Part (II), J. P. Road, and

demolish the same.

(4) A Report may be called from MHADA as to who is the in real possession of the Bungalow No. 103, and the illegal tenants of Subhash Pasi goons who are forcibly, illegally entered the Bungalow and are residing in the said Bungalow with the help of Senior P.I. Mr. Inamdar of Versova Police Station, with forgery documents and their immediate eviction will save the life of the Petitioner Nos. 1 and 2, who they are troubling and harassing and are intentions to kill them to grab the whole property.

(5) That the direction to be given to MHADA to make inventories and file Report as the entire Aaram Nagar Part (II) is meant for residential purpose and unauthorized occupiers are illegally carrying out commercial activities in their tented house/ plots.

(6) The directions also be given that, the outsiders persons may be refrained from the entering the colony of the Aaram Nagar, and outsider should not be allow to play on the ground of Aaram Nagar, where this outsider's strangers deliberately create nuisance theft and abusual language, specially restrained people coming from Joseph Patelwadi.

(7) Also the commercial activities may be stopped as a Aaram Nagar being a purely residential premises, but 65 premises are used for commercial activities by certain filmy residence, as they do illegal activities like prostitution, drugs, alcohol, blue film, smoking and harassed the family residence of Aaram Nagar.

(8) The illegal tenants kept by Renu Batra with Mr. Subhash Pasi who do not have clear title to either rent out or sell the Bungalow No. 103, they should maybe evicted immediately as the Bungalow is ancestral property in the name of Rajindar Amarnath Batra who is the grandmother of Sanjeev Batra, Petitioner No.2 in this Petition, Sanjeev Batra, the grandson of Rajindar Batra, who is in the possession of the house till date by birth and taking care of this property for the past 48 years.

ci) To Lodge FIR against Sr. PI. Inamdar and suspend him.

cii) To Lodge FIR against Subash Pasi and all his goons.

ciii) To Lodge FIR against Renu Batra and directions may be given to her that she cannot create any third party interest in that property without the permission of Sanjeev Batra who is the grandson of the owner of the property as Renu Batra is not having title and not in possession for 20 years and direct her to pay compensation of Rs. 15 lakhs to the Petitioner Harita Parab and her Sanjeev Batra.

civ) To Lodge FIR against MHADA Ceo and he may be directed to remove the illegal constructions with immediate effect in the entire Aaram Nagar Area.

cv) Arrest Subhash Pasi and his goons including gents ladies and kids, Sr.PI. Inamdar, Renu Batra, Manoj Batra, Rakesh Shreshta, Ramu, Shabnam Kapoor, Ravi, Babloo Batra.

CVI) To direct the C.P to register a case against outsider children who come to play in the Aaram Ground and they do drugs and illegal activities of robbing petrol by making duplicate keys.

d) To direct the BMC to Demolish illegal Structures/ Floors Raised by Shivani Vichare in Bungalow No. 104, Aaram Nagar Behind Bungalow No. 103.

e) To direct MHADA to take action on illegal Constructions 9 To lodge an F.I.R. Against the Officers of BMC & MHADA Who have Neglected in their duties & maheude ignored illegal constructions & Activities. g) To direct Tenant Welfare Association Aaram Nagar, Andheri to take immediate steps to install CCTV cameras & halogen lights.

f) To direct C.P., Jt. C.P. (Law & Order), D.C.P. & A.C.P. Mumbai to Meet Harita Parab Advocate High Court Bombay whenever she wants to meet them & take note of her

grievances.

g) A compensation of Rs. 1,00,00,000/- (Rupees One Crore Only) be given to the Petitioner advocate.

h) Interim/ ad-interim relief in terms of prayer clause 'a' above may be granted.

i) Such further and other order be made as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case in favour of the Petitioner.

j) This matter may kindly be expedited in the Interests of Principles of Natural Justice also such further orders and directions in favour of Petitioner may kindly be granted."

4. When Writ Petition No.18/2022 came up before the Division Bench (A.A.Sayed and Abhay Ahuja, JJ.), the Division Bench opined that it would be appropriate that Writ Petition No.18/2022 is placed before the same bench hearing Writ Petition No.3499/2019 and the matter was directed to be placed on administrative side. Accordingly, present petitions were clubbed together.

5. On 13 July 2022, the following order is passed:

" By Writ Petition No.3499/2019, the Petitioner in person has sought diverse reliefs, some of them do not pertain to our assignment. Therefore, we passed the order restricting this petition to reliefs prayed pertaining to our assignment. Thereafter the Petitioner has filed Writ Petition No.18/2022 in respect of reliefs sought for against Maharashtra Housing and Area Development Authority (MHADA) and Mumbai Municipal Corporation (MMC). By an administrative order, the petitions

are assigned to this Bench.

2. *Since the Petitioner had pressed the reliefs against MHADA and MMC as urgent, on 28 June 2022, we passed the following order:*

“ Heard the Petitioner in person.

2. In Writ Petition No.3499 of 2019, an order is already passed on 23 November, 2021 in respect of the three prayers therein. Thereafter, the Petitioner has filed the Civil Petition No.18 of 2022 wherein some of the prayers which are not a part of Writ Petition No.3499 of 2019 have been added.

3. The Petitioner is seeking a direction to the Municipal Corporation to demolish certain illegal structures of private parties specified in the prayer clause and also a direction to MHADA to make an inventory of unauthorized construction, details of which are given prayer. The Petitioner in person has handed over the communication received from MHADA Authorities wherein in respect of the representation of the Petitioner in respect of the unauthorized occupation of certain galas, the Petitioner has been advised to seek redressal to the appropriate machinery.

4. Before proceeding further to consider the prayers the notice to the Municipal Corporation and MHADA Authorities to understand their stand will have to be issued. Accordingly, issue notice to Respondent Nos.6 and 7.

5. As regards Respondent No.7 is concerned, an officer has been named. However, the notice would be to the Authorities.

6. The Petitioner in person states that by way of interim relief directions be given to demolish the structures. This cannot be the interim relief as it would be the final relief and it cannot be decided without hearing the affected parties. The notice is made returnable on 12 July 2022.

7. Stand over to 12 July 2022.

8. ”

3. *The Petitioner in person states that private notice was served on MHADA and MMC. Since none appeared yesterday i.e. 12 July 2022 on their behalf, the matter was kept today at 2.30 p.m. Today, the learned counsel for MHADA and MMC are present upon being called by the Court. They state that they do not have the copies of the petitions.*

4. *The Petitioner in person will give a copy of the petition to the learned counsel for the MHADA and the learned counsel for MMC so that they can take instructions. In the petition, a grievance is made regarding the properties situated in the area stated in the petition stating that unauthorised persons are occupying the premises and there are unauthorised constructions.*

5. *The concerned officers of the MHADA and MMC to look into these issues raised, examine the same, if they feel necessary, call the Petitioner for clarifications, and submit a report by way of affidavit within a period of three weeks from today.*

6. *Stand over to 3 August 2022.”*

On 3 August 2022, none had appeared for the Petitioners and the learned counsel appearing for the Municipal Corporation sought time to file reply.

6. On 21 September 2022, when the petitions came up on board, since the Respondent- Maharashtra Housing and Area Development Authority had not filed an affidavit and the Municipal Corporation had filed an affidavit stating that the Municipal Corporation does not have jurisdiction over the area the subject matter of the petition, the following order came to be passed:

“ By order dated 13 July 2022, the Petitioner in person was directed to give copies of the petitions to learned counsel for the Maharashtra Housing and Area Development Authority (MHADA) and the learned counsel for the Mumbai Municipal Corporation (MMC) so that they can take instructions. The learned counsel for the MMC has tendered reply affidavit wherein it is stated that the grievance made by the Petitioner in person regarding unauthorized construction in a particular area does not lie with the MMC and as per the notification dated 23 May 2018, the MHADA is the authority which has jurisdiction. As to the reply to be filed by the MHADA, the learned counsel for the MHADA states that copies of the petitions were not served, therefore, reply could not be filed. The Petitioner in person states that copies of the petitions were served to the office of MHADA. However, to obviate any difficulty, we had specifically directed the Petitioner in person to give the copies of the petitions to the counsel for MHADA. The Petitioner in person states that copies of the petitions would be given to the counsel for the MHADA on Friday i.e. 23 September 2022.

2. Place the petition on board on 7 October 2022. Reply of MHADA to be filed by 3 October 2022 with copy to the Petitioner in person.”

Today, when the matter is called out, the Petitioner-in-person has handed over a compilation and a reply affidavit is tendered on behalf of the Respondent-MHADA.

7. We have heard Ms.Harita Parab, Petitioner-in-person, Ms.Kavita Solunke, AGP for the Respondent- State, Mr.Vilas Gawai for the Respondent-Municipal Corporation and Mr.P.G.Lad for the Respondent- MHADA.

8. Perusal of the prayers reproduced above would show that some of them are devoid of any particulars and wide-ranging in nature. The Petitioner-in-person has addressed us with equally wide-ranging submissions, often without crystallizing the propositions. In this state of affairs, we have tried to cull out the relevant legal and factual position so that the petitions can be decided in an objective manner. The prayers with no cogent material and pleadings in support cannot be considered.

9. We take the prayers made in Writ Petition No.18/2022 first for consideration. The prayers primary are against the Respondent- Corporation and Respondent- MHADA that they should take action against the unauthorised construction, encroachment and misbehavior in the premises and area under the jurisdiction. The reply affidavit filed by the Municipal Corporation states that the unauthorised construction in Aram Nagar, Part-II, Andheri (West) comes under the jurisdiction of MHADA. It is stated that a notification has been issued on 23 May 2018 by the State of Maharashtra stating that MHADA has the authority under the Maharashtra Housing and Area Development Act, 1976 as Nodal Agency. It is stated that the subject plots are within the layout of MHADA. The notification dated 23 May 2018 is ananexed to the affidavit-in-reply and the layout under the jurisdiction of MHADA is not disputed.

10. We note that in the petition, the Petitioners have made a

grievance about tenement No.103 in the layout wherein one portion is given to one Renu Batra. It is the allegation of the Petitioner that Renu Batra has unauthorisedly sold the tenancy rights to one Subhash Pasi who has unauthorisedly carried out alterations. According to the Petitioners, Subhash Pasi, is an anti-social element. In the reply filed by Shri Pankaj Bobade, Estate Manager, Bandra (West) on behalf of Respondent No.7-MHADA, he has stated that Renu Batra has illegally and unauthorisedly sold the tenancy rights to Subhash Pasi. He also stated that Subhash Pasi has taken advantage of the pandemic and the general order passed by this Court granting protection against the demolitions to be carried out of the unauthorised additions and alterations. It is stated that the original measurement of Gala No.103 was 10.4 sq.meters x 7.8 sq.meters and it was divided in to two parts. It is stated that one part is in possession of Petitioner No.1 in original position. However, the part given to Renu Batra has been extended unauthorisedly horizontally and also by constructing first floor. It is further stated that Subhash Pasi has extended the structure by 103.91 sq.meters equivalent to 1,118 sq.ft. The deponent on behalf of Respondent No.7- MHADA has stated that notice was given on 20 March 2020 and thereafter on 24 December 2020. Further notice was given on 5 January 2021. It is stated that no action has been initiated against the unauthorised work by Renu Batra due to general stay granted. It is further stated that Petitioner No.2 himself has unauthorisedly divided Gala No.103 and sold it to the outsider.

11. Therefore, as regards the complaints made by the Petitioner regarding illegalities of Gala No.103 is concerned, the same has been accepted by Respondent No.7- MHADA. From the date the first notice was issued, nothing seems to have been done by the MHADA except issuing notices again. MHADA, therefore, which is also accepted by the learned counsel appearing for MHADA, will have to take these notices to their logical end within a time bound period.

12. As regards the grievance made by the Petitioners in respect of structures specified in the prayer clauses of Writ Petition No.18/2022 and other structures in Aram Nagar area, the reply on behalf of Respondent No.7- MHADA states that prior to 23 May 2018, the Municipal Corporation was in-charge of Aram Nagar and whenever unauthorised constructions have been noticed by MHADA they have been pointed it out to the Municipal Corporation. It is further stated that the Municipal Corporation has taken action against such occupants and there are 114 proceedings pending which have been initiated by the occupants against Respondent No.6 in the City Civil Court. It is further stated that MHADA has issued notice under sections 53 and 55 of the Maharashtra Regional and Town Planning Act, 1966. The Petitioner-in-person has drawn our attention to a communication issued by Respondent No.7- MHADA to its Executive Engineer referring the complaint made by the Petitioner in respect of Gala

Nos.102, 103, 104, 105, 108, 111, 122, 135, 197 and 210 of Aram Nagar, Part-II, Andheri (West).

13. Therefore, even in respect of the structures mentioned by the Petitioner other than Gala No.103, both Respondent-Municipal Corporation and the Respondent- MHADA are not opposing the petition. In these cases also, both the Municipal Corporation and the MHADA will have to take their actions to its logical end, in the cases where there is no interim order restraining them from proceeding. Therefore, we propose to dispose of Writ Petition No.18/2022 by directing the Respondent- Municipal Corporation and the Respondent- MHADA to take their notices in respect of Gala No.103 to their logical end after following due process of law and after giving an opportunity of hearing to the concerned, within a period of six weeks.

14. As regards the structures other than Gala No.103 referred to in Writ Petition No.18/2022, the Respondent- Municipal Corporation and the Respondent- MHADA will take necessary action and complete the same within a period of six weeks after following due procedure and after giving an opportunity to the concerned, in the cases where there is no interim order passed by any Civil Court restraining these authorities.

15. Turning now to Criminal Writ Petition No.3499/2019, in this petition, as regards the prayer of police protection is

concerned, the State of Maharashtra has issued Government Resolution on 4 January 2018 wherein guidelines have been laid down. The Government Resolution dated 4 January 2018 contemplates the establishment of a committee headed by the Commissioner which would examine the claims for police protection and decide whether the same should be extended to any private party. The police protection, if granted to a private person, can be upon payment. Therefore, it is not that the writ of mandamus can straightway be issued directing that the Petitioner should be given a police protection bypassing methodology laid down laid down in the GR dated 4 January 2018 as modified from time to time. It is always open to the Petitioner to make necessary application to the concerned authority as per the policy of the State and it is for the authority/ committee to consider the same and take necessary action.

16. As regards filing of FIR against the private persons is concerned, if it is the grievance of the Petitioner that the Police Authorities are not registering FIRs under section 154 of the Code of Criminal Procedure, 1973, it is settled that the Petitioner can avail the scheme under sections 154 and 156 of Cr.P.C. where the Petitioner can approach the concerned Magistrate of the area. The Hon'ble Supreme Court in the case *M. Subramaniam v. S. Janaki*¹, has laid down that without following the methodology, the complainant should not directly invoke writ jurisdiction. Therefore, as against this grievance that Police Authorities are not registering

1 (2020) 16 SCC 728

FIR against the private persons and their associates, the Petitioner has remedy under Cr.P.C. As regards the prayer for filing FIRs against the officers of the Municipal Corporation and MHADA is concerned, the prayer is far too general and casually made. There are no particulars as to which are the officers against whom the Petitioners want to lodge FIRs apart from the fact that merely because the Petitioner says so, the FIRs cannot be directed to be registered against the officers as it entails serious consequence against whom FIR is registered.

17. As regard the prayer that action be taken against the police authorities for filing false cases against the Petitioner is concerned, the prayer is too general. In Criminal Writ Petition No.3499/2019, reply affidavit is filed on behalf of the State wherein the list of cases registered by the Petitioner, 18 in number, are referred to. It is stated that 9 cases are registered against the Petitioner. The Court which would try the cases filed against the Petitioner, if it comes to the conclusion, can issue necessary directions. While such cases are pending, it is not necessary to issue such directions proceeding on the basis that cases which are filed against the Petitioner are mala fide.

18. As regards the grievance made by the Petitioner that illegal activities are going on in Aram Nagar area is concerned, the Petitioners have placed on record a communication dated 14 December 2017 issued by the Versova Police Station to the President

of Aram Nagar Welfare Association stating that there are illegal activities going on in the open area which may result in nuisance and is also a serious offence. It is stated that there is darkness in the open area where the Association should install sufficient lights and CCTV cameras. This communication is already issued on 14 December 2017 by the Senior Inspector of Police. According to the Petitioner, steps have not been taken pursuant to the aforesaid communication. The Senior Police Inspector, Versova Police Station, would pursue the matter with the tenants welfare association as per the communication dated 14 December 2017 and take the same to its logical end as per law.

19. In the circumstances, we dispose of Writ Petition No.18/2022 as under:

a) The Respondent- Municipal Corporation and the Respondent- MHADA are directed to take their notices in respect of Gala No.103 to their logical end after following due process of law and after giving an opportunity of hearing to the concerned, within a period of six weeks.

b) As regards the structures other than Gala No.103 referred to in the petition, the the Respondent- Municipal Corporation and the Respondent- MHADA will take necessary action and complete the same within a period of six weeks after following due procedure and after giving an opportunity to the concerned, in the cases where there is no interim order passed by any Civil Court restraining these authorities.

20. The Writ Petition No.3499/2019 is disposed of as under:

a) It is open to the Petitioner to approach the concerned Magistrate in respect of the Petitioner's grievance about non-registration of FIR against the private persons named in the petition and it is for the learned Magistrate to consider the same on its own merits.

b) It is open to the Petitioner to apply for police protection as per the policy of the State Government and, if such an application is made, the same will be considered as per the terms of the policy by the concerned authority as per law.

c) The Senior Police Inspector, Versova Police Station, would pursue the matter with the tenants welfare association as per the communication dated 14 December 2017 and take the same to its logical end as per law.

21. In view of the disposal of the writ petitions, the interim application does not survive and stands disposed of accordingly.

(SHARMILA U. DESHMUKH, J.)

(NITIN JAMDAR, J.)