

Sonali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 1547 OF 2022
WITH
INTERIM APPLICATION NO. 2069 OF 2021**

Trombay Taluka Social Cultural Educational & Charitable Trust (E-12333) through its Managing Trustee, Waseem Javed Khan ...Petitioner

Versus

State of Maharashtra & Ors ...Respondents

Mr Prateek Seksaria, *with Nishant Chothani & Yash Chheda, i/b Ashok T Gade, Riya John & Navin Rathod, for the Petitioner.*

Mrs Uma Palsuledesai, AGP, *for Respondent No.1-State.*

Mr SP Thorat, *for Respondents Nos. 2 to 4.*

Mr Anil R Mishra, *for Respondent No.8.*

Mr Sagar Patil, *with Amol Ghadge, Sub-Engineer, (Maintenance) M/E Ward & Vikas Dhond, Junior Engineer (Maintenance) M/E Ward, for Respondent-MCGM.*

**CORAM G.S. Patel &
 Madhav J. Jamdar, JJ.**

DATED: 29th March 2022

PC:-

1. Rule. Affidavits in Reply have been filed both in the Writ Petition and in the Interim Application. We make Rule returnable forthwith and we take up the Petition for hearing and final disposal. This order will also dispose of the Interim Application.

2. The Writ Petition presents an utterly extraordinary state of affairs. Three public authorities, the Municipal Corporation of Greater Bombay (“**MCGM**”), the Maharashtra Housing and Area Development Authority (“**MHADA**”) and the State Government through the Collector all seem to have acted, to varying degrees, not only in conflict with each other but also in conflict with law.

3. The Petitioner is the Trombay Taluka Social Cultural Educational & Charitable Trust. It says that it was illegally and unlawfully ejected by MHADA from a Social Welfare Centre at Plot No.30/37, Road No.12, BMC Ward M/East, Baiganwadi, Govandi, Mumbai 400043. The plot is about 144 sq mtrs. The record indicates that on 1st April 1994, the MCGM entered into an agreement with the Petitioner Trust. A copy of this agreement is at Exhibit “B”. It is a photocopy. A typed copy is at page 60. Importantly, in the photocopy we see the name of the Petitioner handwritten. The premises are also described exactly, as is the area of 144.00 sq mtr (which is added in hand at internal page 2). The Petitioner was granted a licence to conduct a Welfare Centre from these premises for a period of one year until 31st March 1994. The document is signed and stamped on behalf of the then Deputy Municipal Commissioner. Importantly, nobody has ever impeached this document or filed any proceeding for that purpose. Mr Seksaria for the Petitioner says that the agreement was renewed periodically though without a formal extension or another agreement. The Petitioner has receipts to show payments. Then, in 2015, the Petitioner paid renewal charges for a period of 21 years and there a receipt No.2374956 dated 23rd June 2015 issued by the MCGM in the name of the Trust which shows that it was for fifteen years. Mr

Seksaria explains that this was part of the caretaker policy of the MCGM.

4. The impugned action is taken not by MCGM terminating its relationship with the Petitioner but by MHADA. This is Exhibit “X” at page 128. An English translation is provided. The finding is by the Deputy Engineer of MHADA demanding a return of this Welfare Centre. The letter says that the Petitioner took possession ‘unauthorisedly’ of these premises. He returns a *finding* that the Petitioner Trust is a ‘trespasser’. He says that *MHADA* has not given the Petitioner any allotment or agreement. Possession is demanded in 24 hours failing which there will be forcible eviction. There is a reference hereto some letter of 18th March 2020 by the Assistant Commissioner of M/East Ward.

5. How MHADA acquired the right to make this assertion is unclear even today. The Affidavit by MHADA does not establish that MHADA is the owner of either the land or the building constructed on it.

6. This is where the matter gets exceedingly intriguing. Mr Thorat for MHADA states on instructions that MHADA “constructed the building”. But for whom is unclear. MCGM unequivocally claims that it is the owner of the land. Mr Sagar Patil points out that there are historical documents on MCGM’s record showing that it is MCGM and MCGM alone that is the owner of the land. At this stage, Mrs Uma Palsuledesai weighs in and says that is the Collector, i.e. the State Government through the Collector that

owns the building. How the Collector came to own this building is equally unclear and is not categorically stated even in the Affidavit filed by the Collector. It is only said that the Collector owns the building. But if this be so, and in either case, MHADA is certainly not the owner of either the land or the building. Consequently, there was no question of MHADA making any allotment to anyone or of MHADA claiming ownership rights or of demanding return of possession — because possession could never have been with MHADA to begin with. Apart from anything else, it is not for MHADA or any other authority to return a finding of “trespass”.

7. There are factual disputes here they are best left alone. Mr Seksaria, for instance, says that when an attempt was made to deliver the MCGM document this was refused presumably on the ground that the Petitioner was unable to show an allotment by MHADA and MHADA was not interested in any document that emanated from MCGM.

8. If this is not bad enough, there is the Affidavit in Reply that reveals truly shocking state of affairs. MHADA now claims in its reply and based on the annexure at page 159 Exhibit “C” that it only acted accordingly to the directions of the MCGM’s Assistant Commissioner, M/East Ward. The MCGM Assistant Commissioner seems to have taken the view that though the premises required repairs some person had been carrying on unauthorised repairs within the premises. That unauthorised construction was removed. Then there is a reference to the Petitioner and an observation that the Petitioner has not produced

any document of possession with either MHADA or the MCGM. This is astonishing given that the 1st April 1994 document was signed and stamped by very senior officers of the MCGM itself.

9. Then follows the most interesting part of this communication because there are now unequivocal references to local Corporators , Municipal Councillors and other politically connected persons by name. This communication from the MCGM is addressed to MHADA and also returns a finding on 1st February 2019 that the Petitioner is a “trespasser”. Mr Thorat for MHADA says that MHADA only acted on the directions of the Assistant Municipal Commissioner.

10. All this is singularly unfortunate because, apart from this Petitioner, the real victim in this entire affair has been the rule of law. It matters not in the least to us what a corporator or an MLA says, thinks, or does when it comes to civil rights that are the exclusive preserve of a civil court. The directions or suggestions of these political heavyweights cannot subvert the legal process. We will not allow that to happen. Under no circumstances will public authorities arrogate to themselves the functions of a Civil Court.

11. We had one simple question to Mr Thorat which is to show us how and in what manner the Petitioner’s possession and rights over the cultural sector were determined in accordance with law. He could only point to the Assistant Commissioner’s communication of 1st February 2019. That is not a procedure according to law. The entire decision-making process by MHADA is vitiated. It is

vulnerable on multiple grounds. No procedure known to law has been followed. It is not even clear that MHADA has any authority to demand possession.

12. It is at this stage that the Affidavit of Shri Vasant Natha Auti, the Assistant District Planning Officer, Mumbai Suburban District is very interesting. The State Government claims that the property, i.e. the building, belongs to the State Government. How it came to fall into State Government's ownership is not clear from this Affidavit in Reply to the IA from page 60 onwards. The Affidavit then says in paragraphs 3 to 9:

“3. Brief facts of the case are as follows:

(a) The State Government through its Planning Department issued Government Resolution dated 19.03.2018 with respect to the procedure/guidelines for handing over of the property belonging to the State Government to the Trusts or NGOs for repair and maintenance under the MLA Local Development Programme. Hereto annexed and marked as **Exhibit-‘1’** is the copy of the Government Resolution dated 19.03.2018.

(b) The said Government Resolution states that if the Local Authority expresses its inability to maintain the properties belonging to the State Government under the MLA Local Development Programme, the said properties cannot be used for the Social Welfare Programme. Though it is mandatory on the local authority to maintain the properties constructed under the MLA Local Development Programme, sometimes the concerned local authorities do not maintain such properties and

therefore the said property cannot be used for the Social Welfare purposes.

(c) The State Government has taken decision to maintain and repair such properties by retaining the ownership with the State Government, by allotting such properties to the Trusts or NGOs on license basis which is renewed from time to time.

(d) There is a procedure prescribed under the said Government Resolution for allotment of Welfare Centres subject to some terms and conditions.

4. I say that one of the conditions is to publish advertisement on the portal of the Office of the Collector inviting applications from the public and within the period of 15 days, allot the same to the successful Applicant by passing necessary Order. There is a separate register maintained for the purpose of properties which fall under the MLA Local Development Programme and if there is any misuse of such properties, the District Collector through its representative, visits and inspects such properties. It is the responsibility of the Collector to take action as per the guidelines issued in the said Government Resolution. The Collector is empowered to relax any terms and conditions, if needed.

5. I say that as per the guidelines issued in the said Government Resolution dated 19.03.2018, the Office of Collector published advertisement for allotment of the property which is subject matter of the Writ Petition, by inviting applications from the registered Trusts or NGOs for maintenance and upkeep of the said property. Hereto annexed and marked as Exhibit-2 is the copy of the advertisement dated 31.12.2018.

6. I say that the final date for submission of the application was 04.02.2019. I say that during this period, and pursuant to the said advertisement, one NAM

Education and Welfare Trust i.e. Respondent No.8 applied for the allotment of the said Social Welfare Centre. Hereto annexed and marked as **Exhibit-‘3’** is the copy of the said application dated 01.02.2019.

7. I say that after the advertisement, only one application received by this office and accordingly this office passed Order dated 27.02.2019 by allotting the said Social Welfare Centre situated at, Plot No.30, Road No.12, Social Welfare Centre, to Niyaz Ahmed Minority and Educational Welfare Trust for the period of 3 years for the annual rent of Rupees 65,124/- w.e.f 28.02.2019 to 28.02.2022. Hereto annexed and marked as **Exhibit-‘4’** is the copy of the Order of Collector, Mumbai Suburban District dated 27.02.2019.

8. I say that it is pertinent to note that the Petitioner/Applicant has not applied pursuant to the said advertisement issued by this office and also as per the records of the MHADA, Petitioner/Applicant has not applied for renewal after a period of 3 years. Therefore, this office issued a fresh advertisement for the allotment of the Social Welfare Centre from other agencies.

9. I say that though the Collector, has passed the Order of allotment of the said Social Welfare Centre to the Respondent No.8, however, the Implementing Authority is the MHADA, which has to act in accordance with law.”

13. We find that the reasoning in this Affidavit to be entirely circular. The question is not how Respondent No.8 (represented by Mr Mishra) was put into possession pursuant to a State Government advertisement. The question is how the Petitioner, in possession from 1994 to 2020 was removed, by whom and with what authority. Unless the Petitioner was removed in a manner known to law, there is no question of Respondent No.8 being lawfully put in possession.

This is an illegality twice confounded and Respondent No.8 is equally a victim along with the Petitioner of these wrongful acts of these authorities.

14. We are prepared to believe that in this, the MCGM and possibly the State Government are not at fault. The MCGM must bear responsibility perhaps for the directives of its Assistant Commissioner. But even if MHADA had received such a communication, the correct response from MHADA should have been to write back to the MCGM saying that it could not take the law into its own hands and that an appropriate order of a Court should be obtained directing MHADA to resume possession. The State Government enters the picture only much later after the possession is wrongfully taken.

15. There are known methods by which possession can be resumed. It may be surrendered. If not, it must be resumed according to law that is to say by an order of a Court. Whether it is the determination of a license, ejectment of tenant or lessee or the declaration of a person as a trespasser, this needs an adjudication by a Court of law.¹ There are certain special statutes such as the Slum Rehabilitation Act and the MHADA Act that contain provisions for summary resumption of possession in certain circumstances. This ejectment by MHADA is not under any of those special provisions. Mr Seksaria in fairness points out that the only other procedure was

¹ SEE: *Mahendra Builders v Brihan Mumbai Municipal Corporation of Greater Mumbai and Ors*, 2019 SCC OnLine Bom 256; (2019) 2 AIR Bom R 597; (2019) 3 Bom CR 339; *State of UP & Ors vs Maharaja Dharmander Prasad Singh & Ors and Lucknow Development Authority & Ors v Maharani Rajlaxmi Kumari Devi & Ors*, (1989) 2 Supreme Court Cases 505.

under Section 66 of the MHADA Act and that required the Petitioner to be given notice of hearing and so on. The response from Mr Thorat, to our very considerable alarm, is that Section 66 ‘has no application since it only applies where the property is that of MHADA’. This now makes it clear that the structure is *not* MHADA’s structure. If it is not, then the entire action by MHADA in resuming possession to itself must necessary fail.

16. Consequently the Petition must necessarily succeed. It does. Rule is made absolute in terms of prayer clauses (b) and (d). MHADA is to put the Petitioner back in possession within one week from today.

17. At this point we note that the Respondent No.8 represented by Mr Mishra was allotted these very premises possibly following the procedure set out by Mr Auti in his Affidavit. That licence comes to an end on 31st March 2022. While it is renewable, we had at the beginning made it clear that no renewal was to be effected without leave of this Court and further on 24th February 2022. We said we did not want an irreversible situation to be created. Our order of 24th February 2022 reads thus:

“1. Respondent No 8 has a license in respect of dispute premises. Mr Mishra insists that this license must be renewed periodically. We disagree. The entire question is whether MHADA could in fact have terminated the Petitioner’s license or rights, resumed possession and given the premises to Respondent No 8.

2. We do not want to create irreversible situation that presents the Court with *fait accompli*. Certainly, we do not expect to MHADA to attempt to overreach this Court.

Today there is application for adjournment because there is bereavement in the family of Mr Thorat for Respondent Nos 2 to 4. We are granting that adjournment but this does not mean that Respondent No 8 takes advantage of this situation and effectively limits the order that a Court can pass later by telling us on the next date that its license has been renewed. We will not accept this.

3. The license of Respondent No 8 is not to be renewed after its expiry on 28th February 2022. We are making it clear that we do not demand that MHADA should evict Respondent No 8 from the premises. We are only directing that the license is not to be renewed. The present status quo of Respondent No 8 being in actual possession of the premises will continue until the next date. No other party is to be given a license in respect of the premises nor put in possession. This is the only way to preserve party in status quo.

4. All contentions are kept open. The fact that Respondent No 8 is allowed to continue in possession will not allow it to claim any equities on that score.

5. All concerned will act on production of a digitally signed copy of this order.”

18. It is apparent to us that Respondent No.8, blameless though it is, could not have been put in possession unless possession was lawfully taken from the Petitioner to began with. Consequently there can be no renewal in favour of Respondent No.8.

19. Having said all this, we leave it open to whichever authority owns the structure to take appropriate proceedings in accordance with law against the Petitioner. Those proceedings will be decided on merits uninfluenced by the present order. We are limiting this

order to the present challenge, i.e. the removal or the illegal eviction of the Petitioner from the subject premises.

20. We also leave it open to the Petitioner as also to Respondent No.8 to adopt such proceedings in the Court of competent jurisdiction as they may be advised. We note Mr Seksaria's submission that possession was handed over to Respondent No.8 despite there being previous orders of this Court. We do not think it is necessary to go into this question in light of the view that we have taken on the main Petition itself.

21. Mr Mishra applies for a stay of the order. The stay is refused because while the fault is not that of Respondent No.8, it cannot be the beneficiary of an illegality committed by the MHADA or other public authorities, and Respondent No. 8 has no vested or legally enforceable right to a renewal.

22. In view of the disposal of the Writ Petition, the Interim Application does not survive and it is disposed of as infructuous.

(Madhav J. Jamdar, J)

(G. S. Patel, J)