

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

**INTERIM APPLICATION (L) NO.29097 OF 2022
IN
WRIT PETITION NO.3388 OF 2022**

Usman Shera Khan and Anr.

.. Applicants/Petitioners

v/s.

Municipal Commissioner, Municipal
Corporation of Greater Mumbai
and Ors.

.. Respondents

Mr. Ram Upadhyay, Mr. Santosh Kumar Dube i/by Law Competere
Consultus, for the petitioners.

Ms. Sheetal Metakari i/by Mr. Sunil Sonawane, for the respondent No.1
MCGM.

Ms. Manisha Jagtap a/w. Ms. Padmaja Malgaonkar, for respondent
No.2- MHADA.

Mr. Chetan Kapadia a/w. Mr. Amogh Singh, Mr. Pratik Shah, for
respondent No.3

**CORAM : R.D. DHANUKA &
KAMAL KHATA, JJ.**

DATED : 30TH SEPTEMBER, 2022.

P.C. :

1. By this writ petition filed under Article 226 of the Constitution of India. The petitioners who claims to be occupants of Room No.74-A, Room No.90 and Room No. 73 respectively situated at Prabhat Sadan, City Survey No. 1902, Mumbai 400011 prays for an injunction restraining the respondents from evicting/dispossessing the petitioners till the conditions contained in IOD dated 18th August 2021 and NOC dated 9th August, 2021 containing the name of the respondent No.5 as the owner is entered into property card. The petitioners also seeks various other reliefs in terms of prayer clause (b) to (e).
2. Interim application is filed by the applicant (original petitioner) *inter alia* praying for an order of injunction against respondent No.3 to refrain from damaging the subject building and to repair the building so as to avoid its collapse and injury or death of its occupants and for other reliefs.
3. The principle contention raised by the petitioners in this writ petition and also in the interim application is that respondent No.3 is not the owner of the building and which the tenements are occupied by the petitioner No.2. The property card is not entered in the name of the respondent No.3
4. Conditions in IOD as well as in NOC are not complied with by the

respondent No.3.

5. Learned counsel for the petitioners submits that the respondent No.3 developer cannot be allowed to evict the petitioner unless he satisfies this Court that they are owners of the land on which they propose to carry out redevelopment, their names are entered into the property cards and to further satisfy they would be able to carry out redevelopment of the building. It is submitted that the Municipal Corporation is the owner of the land whose NOC is not obtained by respondent No.3. The petitioners are not against the redevelopment of the property. The respondent No.3 has not offered the rent for the entire period to the petitioners. The authority thus cannot grant any further permission in favour of the respondent No.3.
6. Learned counsel for the petitioners placed reliance on the judgment of this court delivered on 11th October 2021 in writ petition (L) No.8794 of 2021 in the case of ***Jugraj Tejraj and Sons & Anr. V/s. Executive Engineer, E-1 Division, MBR & R Board and Ors.*** in support of the submissions that unless terms and conditions of NOC and IOD are satisfied, the petitioners cannot be asked to vacate their respective tenements.
7. Mr. Kapadia, learned counsel for respondent No.3 on the other

hand submitted that the petitioners have not disputed that they are the tenants of the respondent No.3. The tenancy agreements are entered into with respondent No.3. It is submitted that the revised Letter of Intent and IOD are issued in the name of respondent No.3 by the authority. Out of 158 tenants, 152 tenants have already vacated. The respondent No.3 has already entered into agreement with those 152 tenants.

8. It is submitted that the name of the developer or owner is not required to be entered into the property card for the purpose of getting NOC. The condition imposed by the authority is to get the name of the respondent No.3 in the property card before obtaining occupation certificate. He tenders a copy of the application dated 22nd September 2021 addressed by owner to the authority for inserting the name of respondent No.3 in the property card.
9. Learned counsel tenders a copy of the order passed by MHADA on 30th September 2022 clearly recording that 5 tenants/occupants including the petitioners are not co-operating for redevelopment. Notice in the prescribed format is served upon these non co-operating tenants for initiating the summary action.
10. It is submitted by the learned counsel that the entitlement if

any of the petitioners for getting permanent alternate accommodation in the building proposed to be constructed by his clients, would be according to the statutory schemes framed by the State Government and MHADA.

11. It is submitted that the petitioners would get the permanent alternate accommodation according to their entitlement, if any, under the statutory schemes.
12. It is submitted by learned counsel that IOD has been issued as on date in the name of the owner who has already applied for transfer of the property card in the name of the respondent No.3.
13. Learned counsel for the petitioner in rejoinder submitted that the Municipal Corporation has granted permission showing the name of Smt. Sohinder Kaurm Bedi and as the owner not in favour of the respondent No.3. The award is also in the name of the owner and not the respondent No.3. He relied upon a sample copy of the permanent alternate accommodation agreement annexed at page 103 of the petition in support of his submission that the said agreement entered into by respondent No.3 disclosed the name of Municipal Corporation as the owner of the plot in question.
14. Insofar as the the submissions of learned counsel for the

petitioners that, the respondent No.3 is not the landlord of the petitioners insofar as, the owners of the plot's proposed for redevelopment by respondent No.3 is concerned, a perusal of the documents produced by respondent No.3 on record, clearly indicates that the petitioners claim to be the tenants in respect of the tenements in their occupation of respondent No.3. The contention of the learned counsel for the petitioners that respondent No.3 is not the owner is without any basis. The record produced by Mr. Kapadia, learned counsel for the respondent No.3 clearly shows that the owner has already applied for transfer the property in the name of the respondent No.3 in the property card. The conditions of the IOD issued by the MHADA clearly indicate that the name of the applicant for IOD will have to be inserted in the property card prior to the date of issuance of occupation certificate. There is thus no substance in the submission of the learned counsel for the petitioners that respondent No.3 cannot be allowed to redevelop the property. Be as it may, the petitioners have no objection if redevelopment of the land is carried out.

15. Insofar as entitlement of the petitioner is concerned, Mr. Kapadia, has made a statement that entitlement of the petitioners

would be in accordance with statutory schemes framed by the authority.

16. Learned counsel for the petitioners could not dispute that out of 158 tenants, 152 tenants have already vacated. The petitioners being few in numbers being non co-operating tenants cannot stop the entire project of redevelopment . The MHADA has already passed an order today under Section 95A of the MHADA Act declaring the petitioners and few others as non co-operating tenants.

17. In our view, there is no substance in any of the submissions made by the petitioners. Insofar as the judgment of this court in the case of **Jugraj Tejraj and Sons & Anr (supra)** is concerned, the said judgment is distinguishable on facts of this case. The respondent No.3 has already taken steps along with predecessor to get name of the respondent No.3 entered in the property card. The said judgment of this Court thus would not advance the case of the petitioners. In our view merely because of non co-operative approach of the petitioners, the other 152 tenants who have already shifted cannot be made to suffer.

18. The petition is totally devoid of merit and is accordingly dismissed with cost quantified at Rs.50,000/- which shall be paid

the petitioners to Maharashtra Legal Services Authority within one week from today.

19. Petitioners are directed to vacate their respective tenements within one week from today and shall hand over possession thereof to respondent No.3.

20. It is made clear that this Court has not expressed any views on the entitlement of the petitioner to get permanent alternate accommodation in respect of tenements occupied by them. If the petitioners do not hand over the possession within one week from today, respondent No.3 would be entitled to take forcible possession and if necessary, with assistance of police.

21. In view of the dismissal of the writ petition, interim application does not survive and is accordingly disposed off.

(KAMAL KHATA, J.)

(R.D.DHANUKA, J.)