

Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 2282 OF 2021

Kushalchand Jain & Ors ...Petitioners
Versus
State of Maharashtra through Principal Secretary ...Respondents
& Ors

Mr Anand Mishra, i/b Am Saraogi, for the Petitioners.
Mr Janak Dwarkadas, Senior Advocate, with Simil Purohit, Rubin
Vakil & Manish Doshi, i/b Vimadalal & Co., for Respondents
Nos. 4, 5, 6, 9, 14 & 17.
Dr Birendra Saraf, Senior Advocate, Dipen Furia, i/b M/s. Shah &
Furia Associates, for Respondent No. 19.
Mr Amit Shastri, AGP, for the Respondent-State.
Mr Sagar Patil, for the Respondent-MCGM.
Mr PG Lad, for the Respondent-MHADA.

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CORAM G.S. Patel &
Sharmila U. Deshmukh, JJ.
DATED: 21st November 2022

PC:-

1. There is an Affidavit in Reply of 7th October 2022 of MHADA. It is to be filed in the Registry. We have gone through a copy. There are further Affidavits on behalf of the Petitioners as well.

2. The MHADA reply follows our directions of 20th September 2022 including in particular the directions for calling for an assessment of the structural condition of the building or buildings and an assessment of whether they can or cannot be repaired. MAHDA engaged one Sandip Gandhi, an architect. He submitted separate reports for the three separate buildings in question. Briefly stated, MHADA's Affidavit in paragraph 6 says that building No. 130/132 is taken up for repairs. The fifth phase is complete. An amount of over Rs. 1.94 crores has been spent in that phase. The sixth phase is being processed. Mr Gandhi submitted an estimate of just under Rs. 10 lakhs for the sixth phase. There is a sufficient amount available to carry out the remaining repairs. Buildings 36 and 37 are almost repaired. Paragraph 7 says that the condition of the buildings is not as dire as portrayed in the Petition.

3. Mr Dwarkadas for the Respondents Nos. 4 to 17 who are the owners has a strong objection to the maintainability of the Petition and to the locus of the Petitioners. Some of them are unauthorised occupants, he claims, and others are simply lessees or tenants holding over. By this Petition, they indirectly seek some sort of judicial recognition of their rights while these are being otherwise contested in appropriate proceedings. Dr Saraf for the society, Respondent No. 19, supports Mr Dwarkadas and says that the Petition itself is now infructuous in view of prayer clause (a) and the Affidavit of the MHADA.

4. Mr Mishra has filed an Affidavit reiterating the assertion that the building is indeed dilapidated. From the few photographs that

are annexed, many of locked doors and such, it is not possible for us to arrive at any such conclusion. Mr Mishra's submission is that the buildings are exceedingly damaged and should be declared as dilapidated and dealt with accordingly in law.

5. What the Petitioners are really inviting is an adjudication by this Court in the Writ Petition on clearly disputed questions of fact, and technical facts at that. We are not in a position to form an opinion on matters of structural engineering. This is not a case where MHADA has proceeded without engaging services of a qualified architect and consultant. It has also made provision, as set out in its Affidavit, for the budget. MHADA is under a duty under the MHADA Act to carry out the repairs with the funds that are available to it. A few occupants have come forward as Petitioners and claim rights that are adverse to the property interest of the landlords, and to the views of the society.

6. We do not think that it is possible in these circumstances to exercise our discretion under Article 226 in favour of these Petitioners. Noting and accepting the statements made in the MHADA Affidavit, the Petition is dismissed. There will be no order as to costs.

7. The Affidavits referred to above are to be filed in the Registry.

(Sharmila U. Deshmukh, J)

(G. S. Patel, J)