

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

WRIT PETITION NO. 1630 OF 2021

Vijay Tapase & Ors. ...Petitioners
Versus
Maharashtra Housing & Area
Development Authority & Ors. ...Respondents

***WITH
INTERIM APPLICATION NO. 1732 OF 2021
IN
WRIT PETITION NO. 1630 OF 2021***

Jehangir Mansion Tenants Welfare
Society & Ors. ...Applicants

IN THE MATTER BETWEEN :

Vijay Tapase & Ors. ...Petitioners
Versus
Maharashtra Housing & Area
Development Authority & Ors. ...Respondents

Mr. Jayon Shah a/w Mr. Tanuj Lodha and Ms. Sonal Dayma i/b Lodha &
Lodha Advocates for the Petitioners/Applicants

Mr. Akshay Shinde for the Respondent Nos. 1 to 3—MHADA

Mr. Atul Damle, Sr. Advocate a/w Mr. Kevin Pereira i/b Mr. Nikhil Adkine
for the Respondent No. 4

**CORAM : REVATI MOHITE DERE &
MADHAV J. JAMDAR, JJ.
THURSDAY, 5th MAY 2022**

P.C. :

1 Heard learned counsel for the parties.

2 By this petition, the petitioners seek the following substantive relief :

 “a) *Direct the Respondent No.1 by a writ, order or direction in the nature of mandamus to direct Respondents 1 and 2 to urgently and expeditiously carry out repair work in the Buildings to make it fit and in tenantable condition.*”

3 The applicants/petitioners have sought the very same prayer as above in the Interim Application.

4 Learned counsel for the petitioners submits that the building in question is, ‘Jehangir Mansion’ situated on a plot bearing C.S. No. 1569 of Girgaum Division, at Nyaya Murti Sitaram Patkar Marg, Mumbai–7. He submits that the petitioners are the tenants/occupants of the blocks 71, 75, 77 and 79 respectively out of the five blocks of the said Building bearing separate cess numbers. Learned counsel for the petitioners submits that the building is in urgent need of repairs, prior to the onset of monsoon. Learned counsel relies on the photographs to show the condition in which

the building is. He submits that the respondent No.1-MHADA, acting through its Chief Executive Officer, is under a statutory duty to perform all functions and responsibilities cast upon it by its governing Act.

5 Learned counsel for the respondent No. 4 submits that the respondent No. 4-Owner and Developer is likely to receive the IOD within four weeks. He submits that the said respondent has already received an NOC from MHADA, which is at page 370 of the petition.

6 Mr. Shinde, learned counsel for the respondent Nos. 1 to 3-MHADA states that it is the responsibility of the NOC holder to carry out necessary repairs.

7 Vide order dated 21st April 2022 passed in the aforesaid interim application, we directed the respondent Nos. 1 to 3 i.e. MHADA, Mumbai Building Repairs and Reconstruction Board and Executive Engineer, D-3 Ward, Mumbai, to submit a report to this Court with respect to the condition of the said building, as to whether it requires repairs, so as to make the said building habitable, till such time the IOD is issued. Pursuant to the said

direction, a report of the said authorities dated 29th April 2022 was tendered on 4th May 2022.

8 The apprehension of the learned counsel for the petitioners is that having regard to the condition in which the building is and the onset of monsoon, it is necessary to direct the respondent No. 4 to expeditiously carry out the repair work in the said cess building i.e. Jehangir Mansion. The report tendered by the respondent Nos. 1 to 3 re-confirms that it is the responsibility of the NOC holder i.e. the respondent No.4 to repair the building. Para 3 of the said report reads thus :

“In view of above since monsoon is approaching fastly so NOC Holder should attend these leakage problems immediately & do adequate propping inside rooms where ceiling portion is in bad condition by following the required repairs to keep the building in habitable condition. Since as per terms & conditions no.14 of above said NOC it's the responsibility of the NOC Holder to carry out necessary repairs, so this office has already intimated by various letters to NOC Holder to carry out necessary repairs and to take all precautionary measures under the supervision of Structural Engineer to make the said building habitable. As mentioned above, NOC Holder should arrange keys of above said locked rooms so that inspection of these rooms is to be done & precautionary measures to be taken to avoid any mishap / accident.”

9 Infact, the NOC issued by the respondent Nos. 1 to 3, in

particular, Clause 14 of the said NOC issued to the respondent No. 4 reads as under :

“14) After issue of NOC & till demolition of old cessed building, it shall be sole responsibility of the NOC holder to carry out repairs to the old cess building at his/her risk and cost. Further, M.B.R. & R. Board reserve the right to direct the NOC holder to carry out necessary repairs as deemed fit by M.B.R. & R. Board.”

10 It is thus evident that it is the responsibility of the respondent No. 4 to make the building habitable, by carrying out repairs, till such time, the IOD is issued. Considering the fact, that the monsoon will commence in June, we direct the respondent No.4-NOC holder to carry out and complete the repairs as per Clause (14) of the NOC, within four weeks from today.

11 Petition as well as the Interim Application are disposed of on the aforesaid terms.

12 All concerned to act on the authenticated copy of this order.

MADHAV J. JAMDAR, J.

REVATI MOHITE DERE, J.