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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2063 OF 2022

Arun Parshuram Mane] .. Petitioner
vs.
State of Maharashtra & Ors.] .. Respondents

ALONGWITH

WRIT PETITION NO. 2064 OF 2022

Gajanan Sahadev Gavde] .. Petitioner
vs.
State of Maharashtra & Ors.] .. Respondents

ALONGWITH

WRIT PETITION NO. 2065 OF 2022

Sunanda Chandrakant Ghadge] .. Petitioner
vs.
State of Maharashtra & Ors.] .. Respondents

ALONGWITH

WRIT PETITION NO. 2103 OF 2022

ALONGWITH

WRIT PETITION NO. 2117 OF 2022

Shashidhar Shetty] .. Petitioner
vs.
State of Maharashtra & Ors.] .. Respondents

ALONGWITH

WRIT PETITION NO. 2096 OF 2022

Vilas Kisan Wadkar] .. Petitioner
vs.
State of Maharashtra & Ors.] .. Respondents

ALONGWITH

WRIT PETITION NO. 1268 OF 2022

Pramod Ramchandra Gaikwad] .. Petitioner
vs.
State of Maharashtra & Ors.] .. Respondents

ALONGWITH

WRIT PETITION NO. 1262 OF 2022

Renold S.Soans] .. Petitioner
vs.
State of Maharashtra & Ors.] .. Respondents

Mr.Suhas Shivaji Deokar a/w Mr.Gurudas Takke for the Petitioners in all writ petitions.

Mr.Himanshu Takke,A.G.P. for the Respondent State in WP/2063/2022.

Mr.Manish Upadhye,A.G.P. for the Respondent State in WP/2064/2022.

Ms.Uma Palsuledesai, A.G.P. for the Respondent State in WP/2065/2022.

Mr.Amit Shastri, A.G.P. for Respondent No.1 State in WP/2103/2022 and WP/1268/2022.

Mr.S.B.Gore, A.G.P. for the Respondent State in WP/2117/2022.

Mr.Sukanta Karmakar, A.G.P. for the Respondent State in WP/2096/2022.

Mr.L.T. Satelkar, A.G.P. for Respondent No.1 State in WP/1262/2022.

Ms.Sharmila Deshmukh for Respondent nos. 2 and 3 – MHADA in all writ petitions.

**CORAM : R.D. DHANUKA &
M.G.SEWLIKAR, JJ**

DATE : 14TH JULY, 2022.

P.C.

1] By these Petitions under Article 226 of the Constitution of India, the Petitioners are praying for directions to quash and set aside the impugned notice dated 8th October, 2021 issued by Respondent No.2- Chief Executive Officer pasted on the writ premises claimed to be possessed by the Petitioners.

2] This matter was argued by the learned counsel for the Petitioners at length. It was submitted that action, if any, could have been initiated by the MHADA only under the provisions of Section 66 of the MHADA Act, 1976 and not under the provisions of MRTP Act.

3] Today the learned counsel for the Petitioners advanced additional submission that the land was given on lease by MHADA in favour of the

Society vide Agreement annexed at Page 24 to the Petition and had constructed building thereon. He submits that on the same plot of land in the open area, the Petitioners have carried out construction of the offending structure. He submits that since the land was owned by MHADA and in the open area of the same plot Petitioners had carried out construction, MHADA was still required to invoke the provisions of Section 66 of MHADA Act.

4] The learned counsel for the Petitioners submitted that the Estate Officer is not authorized or delegate powers by MHADA to pass such orders and thus the impugned notice is vitiated on this ground. In support of this submission, the learned counsel for the Petitioners placed reliance on Section 53(8) of the MRTP Act and would submit that the Planning Authority has to issue a notification in the Official Gazette while designating officer of the Planning Authority to be the designated officer for the purpose of exercising powers of the Planning Authority under Section 53 to 56 of the MRTP Act. He submitted that since no such notification has been issued by the Planning Authority, the Estate Officer cannot exercise powers of Planning Authority for removing the Petitioners.

5] The learned counsel for MHADA on the other hand submitted that even if the land is given on lease for carrying out construction and on which structure is already constructed, it is the case of Petitioners themselves that the offending structure has been constructed on the open portion of the land and thus Section 66 of the MHADA Act cannot be invoked against the persons carrying unauthorized construction.

6] Insofar as the issue of Letter of Authority raised by the learned

counsel for the Petitioners against Respondent No.2 is concerned, it is submitted by the learned counsel for MHADA that the order is passed by the Estate Manager and not by the Estate Officer. She tenders a copy of the Resolution dated 25th February, 2019 issued by MHADA designating the Estate Manager to exercise powers of Planning Authority for certain purposes mentioned therein.

7] The learned counsel for MHADA placed reliance on Section 181 of the MHADA Act in support of her submission that MHADA has powers to delegate by general or special order any power exercised or any function to be discharged or any duty to be performed by or under the said Act, to any of its Officers on such terms or conditions as specified in the said order. She submitted that the said Resolution dated 25th February, 2019 is passed by exercising powers under Section 181(1) of MHADA Act and thus Estate Manager has rightly exercised powers delegated to him by MHADA under the said provision.

8] So far as first issue raised by the learned counsel for the Petitioners that MHADA could not have initiated action in the manner in which action is initiated under MRTP Act is concerned, perusal of the said provision clearly indicates that power to evict persons from offending structure can be exercised only if such person is in unlawful occupation or carries out various activities in the premises belonging to MHADA. In this case, the Petitioners have admittedly carried out construction on the open portion of the land. Section 24 provides that if authorities notices construction on the land taken on lease or entrusted to, steps at the disposal of the Authority for management and for the purpose of the said Act.

9] It is not the case of MHADA that the said offending structure constructed by the Petitioners belongs to MHADA or vests in MHADA.

10] At this stage, the learned counsel for the Petitioners interrupted and heavily placed reliance on the definition of premises under Section 2(27) of the MHADA Act and urged that definition of premises means any land or building or any part of the building whether authorized or otherwise and including various other structures mentioned in the said definition.

11] In our view, the arguments advanced by the learned counsel for the Petitioners are totally baseless and contrary to Section 66 of the MHADA Act, which clearly empowers MHADA to evict certain persons from authority premises. For the purpose of ascertaining whether such powers ought to have been exercised by MHADA or not in the facts of this case definition of Authority Premises under Section 2(4) would be relevant and not definition of premises under Section 2(27) of the MHADA Act.

12] In our view, the Petitions are thoroughly misconceived and are accordingly dismissed. No costs.

13] The Petitioners shall vacate the premises in their occupation within one week from today and hand over possession thereof to MHADA.

14] The learned counsel for the Petitioners undertakes that his clients with other occupants, would hand over vacant possession of

the premises on 1st October, 2022 without fail. The Petitioners would file undertaking in writing with the Office and serve a copy thereof upon the learned counsel for MHADA.

[M.G.SEWLIKAR, J]

[R.D.DHANUKA,J]