

Shephali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO. 20423 OF 2023**

Sushila Gordhandas Parikh ...Petitioner
Versus
The State of Maharashtra ...Respondent

**WITH
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 8627 OF 2023**

Valjibhai Bharmal Shah ...Petitioner
Versus
State of Maharashtra through its Housing ...Respondents
Secretary & Ors

**WITH
WRIT PETITION NO. 2196 OF 2021**

Pravin Hargan Shah & Anr ...Petitioners
Versus
State of Maharashtra through its Housing ...Respondents
Secretary Housing Department & Ors

**WITH
WRIT PETITION NO. 3826 OF 2021
WITH
INTERIM APPLICATION NO. 14269 OF 2023**

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IN

WRIT PETITION NO. 3826 OF 2021

Mansukh Valjibhai Shah	...Petitioners
<i>Versus</i>	
State of Maharashtra & Ors	...Respondents

WITH

WRIT PETITION NO. 27 OF 2022

Najaribai Ganeshlal Jain & Anr	...Petitioners
<i>Versus</i>	
State of Maharashtra through its Housing Secretary Housing Department & Ors	...Respondents

WITH

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) NO. 27916 OF 2022

Abhijeet Dhruvkumar Desai	...Petitioner
<i>Versus</i>	
Parekh Constructions & Ors	...Respondents

Mr Mayur Khandeparkar, *with Rishika Harish, i/b Prashant S Goyal, for the Petitioners in WPL/20423/2023.*

Mr Aniruddha A Sapre, *for the Petitioner in WPL/27916/2022.*

Mr Mangesh Sawant, *i/b Arun Panickar, for the Applicant in IA/14269/2023.*

Mr Manish Gala, *with Nilesh Gala & Ankit Shah, i/b Law Square, for the Petitioners in all matters.*

Mr Akshay Shinde, *for Respondent No. 2 in WP/27/2022.*

Mr Ashish Kamat, *Senior Advocate, with Aseem Naphade, Chirag*

Sarawagi & Riya Thakkar, i/b Tushar Goradia, for Respondent No. 6 in WPL/20423/2023.

Mr Santosh Pathak, *with Purva Naik, i/b Law Origin, for Respondent No. 7 in WPL/20423/2023.*

Mr Nilesh Modi, *with Kshitij Kadam, i/b Rustamji & Ginwala, for Respondent No. 8 in all matters.*

Mr Karl Tamboly, *with Akshay Doctor, i/b Deepesh Yadav, for Respondent No. 4 in WP/8627/2023.*

Ms Sairuchita Chowdhary, *h/f Manisha Jagtap, for the Respondent-MHADA in WPL/20423/2023.*

Mr SB Gore, AGP, *for the Respondent-State in WPL/20423/2023.*

Mr Shyam Kapadia, *with Prachi Joshi, Shushank Chavan, Priya Pakhare & M Chopra in WPL/20423/2023.*

**CORAM G.S. Patel &
 Neela Gokhale, JJ.**

DATED: 11th August 2023

PC:-

WRIT PETITION (L) NO. 20423 OF 2023:

1. In our order dated 7th August 2023, we required Nishcon Realty Private Limited (“**Nishcon Realty**”), the 6th Respondent, along with its cohorts, Parekh Consultancy and an eponymous LLP, to bring into Court 50% of the amount of arrears that according to Nishcon was due as transit rent. We rejected the application at that time for Rs 1 crore by today and the rest later.

2. Not a thing has been brought to Court.

3. In view of the order that we had passed, we had said that the proceedings initiated by MHADA under Section 91 (A) were not to

proceed. That was a temporary order till today only to test the bonafides of Nishcon Realty.

4. Now that there is no deposit whatsoever, and we decline to hear any submissions at all on behalf of these persistently defaulting developers who are in debt to the tenants in vast amounts, we will proceed to pass an order as contemplated. In paragraphs 12 and 22 of our order of 7th August 2023 we said:

“12. To put it even more bluntly. Every developer will now realise that if there is a default in meeting its obligations to residents, societies and tenants, we will not even direct MHADA to cancel the No Objection Certificate (“NOC”). We will terminate that NOC ourselves. Far too many of our citizens are being subjected to this day in and day out. It is time that this Court said enough is enough.

22. If the amount of Rs 3.50 crores is not brought to Court by Friday, 11th August 2023, we will direct MHADA to immediately cancel the NOC of the only Developer it has on record namely Parekh Constructions.”

5. The developers have failed to abide by their commitments under the NOC. That failure is demonstrated before us.

6. For our purposes, the NOC to Parekh Constructions or the LLP as the case may be stands cancelled. MHADA will issue a formal letter of cancellation. There is no question of MHADA giving these entities a hearing.

7. Respondents Nos. 4, 5, 6 and 7 namely Parekh Constructions, Parekh Constructions LLP and Nishcon Realty must by 14th August

2023 remove themselves entirely from the site and this includes all personnel, security guards, equipment, machinery etc. MHADA is to ensure that these Respondents are completely off site before Independence Day.

8. It is then open for MHADA to proceed in accordance with law for the appointment of another developer.

9. As to the accumulated arrears of transit rent that is due for the period up to today, we do not accept as entirely correct and without certification the claim made by the Petitioners. For instance, prayer clause (e)(i) at page 37 makes a demand for an amount of Rs 10,38,40,766/- and then has orders that one would normally find in execution proceedings for a disclosure of assets, for injunctions and so on.

10. We will require the amount that is recoverable by all the Petitioners to be certified by MHADA whether in proceedings that are ongoing before MHADA or in any fresh proceedings that may be required to be instituted as may be found appropriate.

11. We, however, make it clear that since we had extended this indulgence to Respondents Nos. 4, 5, 6 and 7 to bring into Court at least part of the amount that they themselves said was due, and since they have failed to avail of the opportunity, the amount as finally certified and found due by MHADA will be executable as an order of this Court if necessary, as an order passed in this Writ Petition. MHADA will specify the amount that is to be paid. That

amount shall be payable within 30 days of MHADA's order. Thereafter the amount will carry further interest at 6% per annum until payment or realisation.

12. We are constrained to make these orders for the reasons that we have set out in our order of 7th August 2023. We simply fail to see how residents of this city, many of them senior citizens, can be treated like this and then be expected to spend all their time, energy and money pursuing litigations to recover what is legitimately theirs and what was promised to them. For too long now they have been put to untold suffering, prejudice and hardship. We do not accept that developers have a right to default. Equally, we do not accept that developers can simply be allowed to escape the consequences of their defaults and to abandon projects like this with no obligations or liabilities. It is about time that a message went out to every developer that if a developer takes on a development project in the city, the developer assumes a significant responsibility and the financial element or aspect of it is not one that will be overlooked or ignored. It is one that this Court will ensure is entirely fulfilled. That is why we have made the order that we have made above.

13. We note that old buildings were brought down in 2016 and 2017. There is nothing at all on the old Parvati building site. This project, and by that we mean the residents entitled to benefit have been abandoned for the last seven years.

14. Mr Modi for Respondent No. 8, Darshana Nitin Kapadia confirms that the consent that she had given for the limited liability partnership has been withdrawn on 25th April 2023.

15. Mr Kapadia is for the 9th Respondent-Trust which owns the abutting property. He quite correctly points out that the NOC was for a composite development. The structure on the 9th Respondent's plot, unlike Parvati building on the 8th Respondent's plot, still stands. But it is in a dilapidated condition. Mr Kapadia has instructions to state that as the owner of the abutting plot and as one of the two owners involved in the NOC that covered both plots, he has no objection to the cancellation of the NOC.

16. Mr Modi for the 8th Respondent similarly confirms that she has no objection. The 8th Respondent is personally present in Court.

17. The Petition is disposed of in these terms. No order as to costs.

18. The other Writ Petitions are similar. They are also disposed of in these terms with no order as to costs. Pending applications, if any, are also disposed of.

(Neela Gokhale, J)

(G. S. Patel, J)