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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 4862 OF 2022**

Shashikala Kishan Yewale

...Petitioner

Versus

The State of Maharashtra & Anr

...Respondents

Mr Harshal N Mirashi, for the Petitioner.

Mr LT Satelkar, AGP, for the State.

Mr Akshay Shinde, for Respondent No.2.

**CORAM G.S. Patel &
 S.G. Dige, JJ.**

DATED: 18th January 2023

PC:-

1. Rule. Rule is made returnable forthwith in the peculiar facts and circumstances of the case. The Petitioner is a widow. She seeks protection from imminent eviction by MHADA from her Room No. 171, 4th floor, Sita Sadan, Dattatray Lad Marg, Kalachowki, Mumbai 400 033. This is a tenement of about 160 sq ft for residential purposes. She has made representations, the last of which is on 10th December 2019, but which have met with no response.

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2. She has today, speaking in Marathi, personally confirmed to this Bench her awareness of the Petition, the reliefs that it seeks and her familiarity with the facts. Very briefly stated they run like this.

3. These premises were originally in the occupation of and tenanted by one Raghunath Chavan. They were granted to him for several years prior to 1960. Raghunath transferred the tenement to his cousin Babasaheb Ganpati Yewale. They executed an Affidavit dated 24th July 1980. A copy is annexed. There was also an indemnity bond. There is documentation annexed to show that MHADA accepted that the Yewale family has been in possession and was found to be in possession of the premises from as long ago as 1991, meaning that they were there even earlier.

4. Babasaheb in turn executed a document in the nature of an Affidavit and Indemnity in favour of his nephew, Kishan Dhondiram Yewale, transferring the tenement. A copy is annexed. Kishan sought the transfer formally to his name and an inspection report was prepared by MHADA which showed Kishan, Shashikala Sunil Dhondiram Yewale and Anil Kishan Yewale in possession. Kishan filed another application for recording the transfer on 14th June 1994 and in fact paid transfer fees of Rs. 15,000. It seems that on 29th September 1994 MHADA demanded compliance and asked for certain documents such as the rent receipts, ration cards etc. Prima facie these would indicate that there is no dispute about possession or specifically that Kishan and Shashikala were in fact in possession.

5. Exhibit “J” at page 46 is a curious document. It was drawn up by MHADA. It shows an acceptance of the transfer but it is undated and was never signed. Recently an application was once again made on 10th December 2019, this time with all necessary documents including the form, photographs, an affidavit, rent receipts of the earlier tenements, copies of the Agreements and so on.

6. MHADA refuses to act.

7. Shashikala says that she married Kishan in 1984. Even on the date of her marriage, 40 years ago, Kishan was already in possession.

8. The stand of MHADA is that if the Court so orders MHADA will “consider” the application made by Shashikala. This will only start the cycle again. We do not understand how MHADA could have been inactive for more than 40 or 50 years like this and can now say that it will only consider the application, meaning that it may decide even to reject it. If it does so it will *now* initiate eviction proceedings. To allow this would be surely inequitable and unjust. Shashikala and her husband are by no means trespassers on this premises. They have occupied them as a family and they have done so openly, to the knowledge of MHADA and its officials. There are at least two reports by MHADA itself showing their possession. Perhaps, what is missing is some form of official documentation. We are now asked to direct that Shashikala should swear some affidavit before a Notary. We do not see the need for that since she has made a statement personally to us today in open Court. We trust that

MHADA is not saying that an affidavit before a Notary enjoys a higher status than a statement made to judges of the High Court.

9. We have absolutely no reason to disbelieve what Shashikala says. It is clear that justice and equity are both on her side. It is not pointed out by MHADA how any of her actions can even remotely be said to be contrary to law, illegal or unlawful. All that we have heard MHADA saying is it will exercise some sort of discretion and may now evict and throw out on the street a lady who has lived in the premises for nearly half a century. We refuse to allow ourselves to be a party to any such executive or administrative action. Curiously, MHADA itself is under a policy where it gives or allots — *entirely free of cost* — permanent alternative accommodation even to *trespassers in MHADA transit premises*. So on the one hand, MHADA rewards clear illegalities like trespass, but on the other wants to pursue eviction against bona fide occupiers whose possession is noted even on MHADA records and against whom MHADA has taken no action for 50 years. On the contrary, it has accepted the transfer sought by Kishan and now Shashikala — it only requires some ‘documents’. Viewed from this perspective, MHADA’s refusal to act, and its proposal to reserve rights to proceed against Shashikala are clearly arbitrary and thoroughly unreasonable. We have to ask: where is the justice in such an approach? If we were to accept MHADA’s stand, we would be lending authority to a manifest injustice.

10. In the result the Petition succeeds and perhaps, in moulding relief, it succeeds beyond what it originally demanded.

11. MHADA is directed to forthwith update and amend its records to show Shashikala Kishan Yewale as the lawful tenant/occupant of Room No. 171, 4th floor, Sita Sadan, Dattatray Lad Marg, Kalachowki, Mumbai 400 033.
12. The necessary changes are to be made within 10 days from today.
13. All concerned will act on an authenticated copy of this order.
14. For this one last time, we refrain from imposing costs. But MHADA should not be so sanguine as to imagine that we will continue to show such restraint. Where, in future, we find MHADA — or any other authority — to have acted in so thoroughly an unreasonable manner against citizens and residents, we will express our disapproval by making an order of costs. And the amount of costs will indicate the extent of our disapproval.

(S. G. Dige, J)

(G. S. Patel, J)