

Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 1217 OF 2021

- 1. HARISH GANDHI,**
Proprietor M/s Mavji Estate Developer
Age Adult, Occupation: Business
Address: Gayatri Dadrshan CHS Ltd
Flat No.304, New Suruchi Hotel
Thakur Complex, Kandivali (East)
Mumbai 400 101
- 2. BHAVIN AMBALAL SHAH,**
Age 35 years, Occupation: Business
Address: 17/18, Navjivan Society
Dr DB Marg, Mumbai Central
Mumbai 400 008

... PETITIONERS

~ VERSUS ~

- 1. MAHARASHTRA HOUSING AND
AREA DEVELOPMENT
AUTHORITY,**
Western Express Highway
Bandra (East), Mumbai 400 051
- 2. VICE PRESIDENT/ CHIEF
EXECUTIVE OFFICER,**
Maharashtra Housing and Area
Development Authority
Address: Grihanirman Bhavan,
Western Express Highway
Bandra (East), Mumbai 400 051

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3. **SD CORPORATION,**
Address: SP Centre 41/44, Minoo
Desai Marg, Colaba Tel: 22878722
4. **SAMATA NAGAR CO-OPERATIVE
HOUSING SOCIETY LTD,**
Address 25/486, Vishwadarshan
Samata Nagar, Kandivali (East)
Mumbai 400 101

... RESPONDENTS

APPEARANCES

FOR THE PETITIONER	Ms Sumedha Rao.
FOR RESPONDENTS NOS.1 & 2-MHADA	Mr PG Lad, with Sayli Apte & Shreya Shah.
FOR RESPONDENT NO.3	Dr Milind Sathe, Senior Advocate, with Jasmin Kachalia & Aryan Shrivastava, i/b Wadia Ghandy & Co.
FOR RESPONDENT-4	Mr Pramod Patil, with Ajit Hon & Shamsunder Solanke, i/b PNP & Associates.

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

DATED : 9th & 10th March 2023

ORAL JUDGMENT (Per GS Patel J):-

1. Heard. Since there are Affidavits in Reply and Rejoinders,
Rule, by consent returnable forthwith.

2. The two Petitioners seek protection in respect of two premises. Specifically, the relief sought is directed against an order dated 5th February 2021 by the 1st and 2nd Respondent, respectively the Maharashtra Housing & Area Development Authority (“**MHADA**”) and its vice president or CEO. The 1st Petitioner (“**Gandhi**”) claims to be the owner of Shop No. C-05. The 2nd Petitioner claims to be the owner of Shop No. C-01. Gandhi’s claimed shop C-05 has already been demolished. Both shops are said to be in Building No. 20-C.

3. MHADA owns a large tract of land of over 2,22,000 sq mtr at Mouje Poisar, Taluka Borivali, known as Samata Nagar. This is referred to in some of the filings as ‘the larger property’. Between 1980 and 1985, MHADA constructed some 166 buildings on this larger property and periodically allotted residential premises in these buildings to various persons under different schemes. Over time, as many as 74 cooperative societies came to be formed. There were six other entities which were government or semi-government authorities. Of these 74 cooperative societies, 73 societies and one government entity came together to form the Samata Nagar Cooperative Society Union Limited as an apex society.

4. By 1995, most of these buildings had started showing structural distress. There were cracks on the terraces and outer walls. The members of the Samata Nagar Union passed general body resolutions in their respective general body meetings, agreeing to a redevelopment project, and conferring and confirming power on the Union to appoint a developer. The Samata Nagar Union

submitted a proposal for redevelopment of the entire plot to MHADA under the then applicable DC Regulation 33(5) of the Development Control Regulations 1991.

5. On 10th November 1996, an entity with an extraordinary and perhaps prescient name of Truly Creative Developers Private Limited (“**Truly Creative**”) was appointed to develop these 166 buildings.

6. On 12th December 1996, MHADA issued a letter of offer to the Samata Nagar Union for redevelopment of nine member societies.

7. There was an Agreement of 31st January 1998 between the Union and the Truly Creative. Sometime around 2005, Truly Creative joined hands and formed a joint venture with another entity, one with an equally endearing name: Labh Shubh Developers Private Limited (“**LSD**”). This joint venture contemplated that Truly Creative would construct the rehab buildings with financial assistance from LSD, while LSD was to undertake construction of the free sale component.

8. Many things remain unclear about what Truly Creative precisely did towards redevelopment, but there is no doubt that Truly Creative did not fulfil its obligations under the 1996 letter of offer, and that committed various defaults including defaulting in paying premium to MHADA. The result was that Truly Creative could not obtain a No Objection Certificate (“**NOC**”) from

MHADA. This was a pre-requisite for any further development/re-development permission. For want of this NOC, Truly Creative did not get the necessary permissions from the planning authority, the Municipal Corporation of Greater Mumbai (“**MCGM**”).

9. Despite not having an NOC from MHADA or the necessary approvals from the MCGM, Truly Creative continued illegally and unauthorisedly to construct proposed Buildings Nos. 19 (Wings ‘A’, ‘B’, ‘C’ and ‘D’), Building No. 20 (with components including 20C, in which the subject premises are located), Building No. 26, Building No. 2 and two other structures named T-1 and T-6 (1 to 4).

10. Truly Creative lived up to its name. It did not stop at this illegal construction. It continued to sell premises in these constructions in the open market to third party purchasers, leaving out entirely the allottees of MHADA. Two of these third-party purchasers from Truly Creative were the alleged predecessors-in-title of the present Petitioners.

11. Pausing briefly for a moment, the position in law is that a developer’s right to vend free sale units and to earn money from those is linked to the completion of rehab premises or redeveloped buildings meant to house/rehouse MHADA allottees. The free sale component is an incentive to the developer to take up the project. The scheme is not meant or intended as a bonanza for developers to place in their hands a large stock of open market premises that can be sold to third parties. The obligation in such projects is to complete the redeveloped homes for MHADA allottees. It is in

consideration of fulfilment of that obligation that a developer obtains rights to open market sales. Without a NOC from MHADA and without MCGM approvals, Truly Creative could not have either continued construction or purported to make sales in the open market to third party purchasers. The present Petitioners are of course in no position to show that Truly Creative had the necessary NOC or the MCGM permissions.

12. Since Truly Creative did not get an NOC from MHADA, and did not pay the premium, and since there was no MCGM permission, none of the buildings that Truly Creative purported to construct received any Occupancy Certificate (“OC”). The result at this stage was that Truly Creative had demolished some old buildings and continued unauthorised constructions.

13. In light of this, on 7th April 2006 and 1st July 2006 MHADA issued stop work notices to both the Samata Nagar Union and Truly Creative restraining further construction without first obtaining NOC from MHADA and other required statutory permissions. The MCGM also issued notices on 30th June 2006 to Truly Creative’s architect demanding a submission of a MHADA NOC. MCGM also issued on 1st August 2006 Stop Work Notices to the Samata Nagar Union and to Truly Creative since construction had continued without MCGM permission and without the required MHADA NOC. The MCGM clearly stated that unless there was compliance, the MCGM would demolish the unauthorised buildings. On 1st August 2006, MHADA issued a demolition order. A second similar order followed on 25th August 2006. MCGM too issued a

demolition order regarding the unauthorised buildings on 19th September 2006. On 29th September 2006, MCGM informed Samata Nagar Union that it had revoked the Intimation of Disapproval (“**IOD**”) and Commencement Certificate (“**CC**”) for these unauthorised buildings. It again demanded the submission of a MHADA NOC. All these notices were in respect of the unauthorised constructions which include Building No.20C in which the Petitioners claim to have premises.

14. We come now to the critical date of 7th January 2007. It was on this day that, following a Resolution by its members, the Samata Nagar Union terminated its Development Agreement (“**DA**”) with Truly Creative. We straightaway reject the submission by Ms Rao that this date of 7th January 2007 is a random date unanchored to any discernible fact or circumstance. That is demonstrably incorrect. It is the date of termination of Truly Creative’s Development Agreement by the Samata Nagar Union. Without the Development Agreement in place, Truly Creative had no rights at all. That Termination Notice did not come unexpectedly or without a factual context or background. This is why we have been at some pains to note the preceding facts that led to the 7th January 2007 termination.

15. The second key factor as on this date was that the Samata Nagar Union passed a General Body Resolution appointing the 3rd Respondent, SD Corporation (“**SDC**”) as the new developer for the development of the entire or larger property. On 19th February 2007, the Samata Nagar Union executed a DA with SDC granting it

development rights over the larger property. The Samata Nagar Union also executed a Power of Attorney and other regular routine documents in favour of SDC to further this redevelopment project. Since then, it is SDC that has been redeveloping the larger project. SDC was put in possession of the property sometime in 2007. It has obtained the necessary permissions. There is considerable progress in the development. Construction of the rehab buildings commenced in 2011. SDC had placed its notice board on several places or locations on the larger property. Mr Sathe, learned Senior Advocate for SDC, has submitted an additional compilation of documents in which some of the photographs of these sign boards are annexed. But apart from these activities on site, SDC also published advertisements in several newspapers showing clearly that it was the developer of the larger property and that it was the entity entitled to effect sales in the open market of the free sale units. SDC's presence on the site, its role as the nominated sole developer, the vesting in it of rights of the free sale units were thus not clandestine steps but were made known to all.

16. On 15th March 2008 Truly Creative filed Suit No. 1782 of 2008 in the City Civil Court at Dindoshi challenging the 7th January 2007 termination of its Development Agreement by the Samata Nagar Union. On 7th May 2010, Truly Creative's Suit was rejected under Order VII Rule 11 of the Code of Civil Procedure 1908 ("CPC"). Truly Creative challenged that order in Writ Petition No. 4912 of 2011 in this Court. On 2nd May 2016, this Court dismissed that Writ Petition.

17. In parallel, on 18th March 2009, Truly Creative filed Suit No. 1267 of 2009 before this Court on its Original Side also assailing the 7th January 2007 termination of its Development Agreement with the Samata Nagar Union. In that High Court suit, Truly Creative filed Notice of Motion No. 1948 of 2009 for Interim Relief including a stay on termination and a specific injunction against SDC from exercising development rights over the larger property. That motion came to be rejected by an order of 14th July 2009. This Court held that Truly Creative had failed to make out a prima facie case. It also held that even on equities, Truly Creative was not entitled to discretionary Relief. There was a specific observation of this Court that Truly Creative had not completed reconstruction of the rehab buildings for over 10 years. Those buildings were dilapidated. Construction was delayed and the continued delay was to the prejudice of the Samata Nagar Union. Truly Creative was unable to show that either the Union or its members were responsible for the delay. The Court observed that Truly Creative had not obtained the necessary permissions and NOC, nor had it paid the prescribed fee or the premium. In fact, the observation of this Court was that Truly Creative had “*utterly failed in performing its obligations*”. Albeit at a prima facie stage, the Court also held that the facts and circumstances of the case showed that Truly Creative was “*not capable of performing its obligations under the contract*”. The Court returned a finding that Truly Creative had financial difficulties and had been inducting one sub-developer after another and these were apparently only financiers. Consequently, the High Court held that it would not be fair to force the Samata Nagar Union to suffer a redevelopment at the hands of Truly Creative. Given the nature of the suit, the Court held that it could not supervise the performance

of the contract and that there was hardly any possibility of Truly Creative obtaining the decree for specific performance it sought in the suit.

18. Truly Creative went in appeal. A Division Bench of this Court rejected that appeal by an order of 10th August 2011. The observations of the Division Bench *inter alia* were that SDC had expended substantial amounts to the members of the Samata Nagar Union and equally substantial amounts had been deposited with the authorities. Eleven buildings scheduled for demolition, which had not been touched by Truly Creative, had been brought down. Transit accommodation buildings of 160 tenements had been completed. About 700 members had vacated the old buildings. They had been moved to transit accommodation or been given transit rent in lieu of transit accommodation. Truly Creative, on the other hand, was unable to justify with any reasons why it had not moved the Court earlier although all these developments were taking place on site. The Division Bench therefore held that it was impossible to entertain the appeal and that to do so would be unfair to the Union and its members.

19. Truly Creative filed a Special Leave Petition (C) No. 28994 of 2011 before the Supreme Court. On 2nd December 2011, the Supreme Court dismissed the Special Leave Petition.

20. It is, therefore, clear that Truly Creative's claim to entitlement and to have a right to continue development was rejected all the way to the Supreme Court. There was never any

injunction in Truly Creative's favour. There was no temporary stay against development by SDC.

21. In a Writ Petition No. 2879 of 2006 filed by the Samata Nagar Union in respect of the stop work notices, and to which Truly Creative was joined as a party, the Samata Nagar Union had also informed the Court that Truly Creative's appointment as the developer under the DA had been terminated and that SDC had been appointed. The High Court by its order of 12th March 2007 remanded the matter to the Chief Officer of MHADA to decide the question of appointment of SDC as the developer of the larger property. The Chief Officer of MHADA gave an opportunity of hearing to SDC and to Truly Creative. He passed a detailed order on 16th July 2007 holding that it was SDC that was eligible to be appointed as a developer for the redevelopment of the larger property.

22. SDC in its Affidavit in Reply in the present Petition sets out the various permissions and NOCs that it has obtained. It states that it has been undertaking redevelopment of the larger property as an integrated redevelopment. Its expenditure so far exceeds Rs.3600 crores. About 2923 MHADA allottees have received tenement allotments in various buildings. They are members of the societies of these buildings. About 2000 members have been vacated and have been given transit rent for temporary accommodation. Additional amounts such as deposits, corpus, etc have already been paid. SDC has constructed five wings of Rehab Building No.1 and delivered possession to around 1550 members of the Samata Nagar

Union in these rehab buildings. The construction of the remaining two wings of Rehab Building No.1 is complete. An OC application is said to be pending. This is of course the status as of the date of the Affidavit of 25th February 2021. Two years later, there being no complaint against SDC, it is reasonable to expect that matters have progressed further. Mr Lad for MHADA does not dispute this position.

23. As we have noted above, Truly Creative purported to create various third-party rights. These persons apparently now became aware that the unauthorised structures i.e., those unauthorisedly put up by Truly Creative, were not going to be completed and were under threat of demolition. It was obvious to all that Truly Creative was no longer the appointed developer. Many third-party purchasers filed proceedings in different Courts against Truly Creative seeking possession and other forms of redress. The Consumer Forum, for instance, declined relief of possession but granted damages to these purchasers. One such order is of 16th July 2012.

24. Some of these third-party purchasers sought to intervene in Truly Creative's specific performance Suit No. 1267 of 2009 filed in this Court. On 12th April 2013, this Court rejected the application.

25. Not unexpectedly, there were illegal occupants of some of these unauthorised buildings. They sought impleadment in Truly Creative's High Court specific performance Suit No. 1267 of 2009. That application also failed.

26. Some illegal occupants filed individual suits in the City Civil Court in Dindoshi. Those suits were disposed of by Consent Terms dated 27th April 2015 between these illegal occupants and Truly Creative. It seems that it is under these Consent Terms that Truly Creative purported to deliver possession of tenements in Buildings Nos. 19A and 19D, though these were illegal, and the occupancies were equally illegal. Truly Creative had no right, title, or interest in these properties. Prima facie those Consent Terms between Truly Creative and the illegal occupants could not be binding on either MHADA, MCGM or SDC. Once SDC learnt of these Consent Terms, it filed a separate suit seeking a cancellation of the Consent Terms. On 30th March 2017, the City Civil Court in Suit No. 1396 of 2015 restrained the shop owners of Building No. 19A from continuing any business in those premises. The City Civil Court had already held that the Truly Creative constructions were unauthorised. This is noted in an order of 30th March 2017.

27. Two facts are to be noted about the Truly Creative's unauthorised constructions including Building No. 20C. *First*, that they are all illegal and without permission. A primary permission, the MHADA NOC, was required. MCGM permissions were required. Premium had to be paid. Without this, Truly Creative simply could not have constructed those buildings. None of those buildings had an OC. Truly Creative could not lawfully have put anyone in possession. Second, Truly Creative did not even have any right to sell those properties nor any title to pass to any premises in these unauthorised constructions.

28. In fact, all these unauthorised constructions are liable to demolition. Since demolition orders were not being implemented, SDC filed a Writ Petition No. 2902 of 2014 in this Court *inter alia* against MCGM. That Writ Petition is pending.

29. It seems that in the meantime certain third-party purchasers forced their way into Building No. 19B and began conducting business from there. The 4th Respondent, the Samata Nagar CHSL, filed Suit No. 786 of 2014 against some of these illegal occupants in the City Civil Court at Dindoshi and filed a Notice of Motion No. 1023 of 2014 for a temporary restraint. By an order of 9th February 2017, the City Civil Court did grant an appropriate injunction. The contours of that application and the reasons given in the City Civil Court order would of necessity apply to these Petitioners also.

30. In the meantime, SDC made a representation to MHADA asking for permission to demolish the unauthorised constructions put up by Truly Creative. That representation was of 27th July 2016, and MHADA responded by directing that a survey be conducted of the unauthorised buildings after which a report would be placed. That survey was done. The report followed. MHADA conducted a hearing. On humanitarian grounds, it asked SDC whether it would accommodate persons found to be in occupation pursuant to registered agreements between Truly Creative and alleged purchasers. SDC considered this suggestion and agreed to provide free of cost tenements of an area equivalent to existing tenements only to such occupants who held valid possession receipts under registered agreements with Truly Creative as on a

specific date, i.e., the date when which SDC was appointed by the Samata Nagar Union: 7th January 2007. This is an answer to Ms Rao's second point which is that there is no reason why SDC's obligation vis-à-vis purchasers from Truly Creative should be constrained to what she describes as a 'thoroughly artificial' date of 7th January 2007. We believe her submission to be not well founded. There is nothing remotely 'artificial' about the date of 7th January 2007. Indeed, SDC was not required to accept MHADA's proposal. That was made on what is described as a humanitarian ground and is in the nature of a concession and nothing more. It would be unreasonable to expect that SDC would take on the burden of all the various illegalities committed by Truly Creative and provide free premises to every single person inducted by Truly Creative, no matter when, and despite those occupancies — and the very structures themselves — being illegal.

31. On 14th October 2016 MHADA passed an order stating that those occupiers who met these conditions would be given free permanent alternate accommodation by SDC. For all others, SDC was at liberty to adopt appropriate proceedings. That order also said that if the occupants did not cooperate, SDC would be entitled to initiate or invoke action under Section 95A of the Maharashtra Housing and Area Development Act, 1976 (**"the MHADA Act"**).

32. LSD challenged MHADA's order of 14th October 2016 in Writ Petition No. 351 of 2017. That Writ Petition was dismissed on 26th June 2018.

33. In the meantime, illegal occupants of some of the Truly Creative unauthorised structures, all claiming through Truly Creative, filed a Suit No. 1755 of 2018 and filed Notice of Motion No. 2079 of 2018 for injunctive relief before the City Civil Court. On 3rd August 2018, the City Civil Court dismissed that Motion.

34. On 22nd February 2019, a few shop holders in Building No. 19A filed Civil Writ Petition (St) No. 5466 of 2019 challenging MHADA's 14th October 2016 orders. That petition is pending without interim relief. It may well be infructuous particularly in the light of subsequent developments and orders.

35. Then there came up an organisation called the Samata Nagar Shop Owners Welfare Association. It claimed to represent shop owners, all in unauthorised buildings. Importantly for our purposes, these included claimants in respect of units in Building No. 20C for premises in which the Petitioners claim rights. That Welfare Association filed Suit No. 2550 of 2019 in the City Civil Court in Dindoshi against the MHADA order of 14th October 2016 and for specific performance of the various members' agreements with the Truly Creative. That Association has obtained no favourable orders.

36. Section 95A of the MHADA Act reads as follows:

“95A. Summary eviction of occupiers in certain cases. —

(1) Where the owner of a building or the members of the proposed co-operative housing society of the occupiers of the said building, submits a proposal to the Board for reconstruction of the building, after obtaining the written consent of not less than 51 per cent of the total occupiers of

the building and a No Objection Certificate for such reconstruction of the building is issued by the Board to the owner or to the proposed cooperative housing society of the occupier, as the case may be, then it shall be binding on all the occupiers to vacate the premises:

Provided that, it shall be incumbent upon the holder of such No Objection Certificate to make available to all the occupants of such building alternate temporary accommodation or to pay rent in lieu thereof.

(2) On refusal by any of the occupant to vacate the premises as provided in sub-section (1), on being approached by the holder of such No Objection Certificate for eviction of such occupiers, it would be competent for the Board, notwithstanding anything contained in chapters VI and VII of this Act, to effect summary eviction of such occupiers.

(3) Any person occupying any premises, land, building or structure of the Board unauthorisedly or without specific written permission of the Board in this behalf shall, notwithstanding anything contained in Chapters VI and VII of this Act, be liable for summary eviction or be shifted in Board Transit Camp wherever available.

(4) Any person who refuses to vacate such premises or obstructs such eviction shall, on conviction, be punishable with imprisonment for a term which may extend to one year or with fine which may extend to five thousand rupees, or with both.”

(Emphasis added)

The relevant portion for our purposes is sub-clause (3) emphasized above.

37. On 8th January 2020, MHADA passed an order under Section 95A(3) against 14 unauthorised occupants in Building No. 19A for their eviction in 14 days. These unauthorised occupants filed Writ Petition No. 601 of 2020 to assail the Section 95A order. Interim relief was declined. In a second Civil Writ Petition (St) No. 2417 of 2020 filed by one Digambar Rane, the challenge was to the MHADA Section 95A order read with the 14th October 2016 order. That Writ Petition was heard at some length and was dismissed on 27th February 2020. The Court observed that Building No. 19A was illegal and unauthorised and held that its occupants were not in legal or valid occupation of any premises. It found that there was no OC.

38. It is not shown to us in the present Writ Petition that Building No. 20C stands on any different footing from Building No. 19A. Indeed, the efforts seems to be to equate Building No. 19A and Building No. 20C as if to suggest that Building No. 19A has received protective orders. This is also true of other buildings, for some occupants of the equally illegal Building No. 26 ('B' and 'C' wings) had filed a Suit No. 139 of 2019 before the City Civil Court and took out a Notice of Motion for an injunction against the defendants including Truly Creative and SDC. On 28th January 2019, the City Civil Court declined to continue an initial status quo order. That City Civil Court order was challenged in this Court in an Appeal from Order (St) No. 3780 of 2019. This Court declined relief on 13th February 2019.

39. In December 2020, SDC began the process of demolishing Building No. 20C so that it could proceed with the redevelopment.

40. The Affidavit in Reply by SDC points out that the Petitioners had filed several Writ Petitions, and this is the fourth or fifth round of such litigation. In no litigation have the Petitioners been successful. In Writ Petition (L) No. 6022 of 2020 and Writ Petition (L) No. 6529 of 2020, these very Petitioners sought a direction against MHADA to give them permanent alternative shops in a new building. By an order of 19th November 2020, this Court noted that SDC would adopt proceedings under Section 95A of the MHADA Act seeking the eviction of these Petitioners. Those Petitions were taken up as a representation to MHADA. The Executive Engineer of MHADA held hearings. While that was pending, the Petitioners filed Writ Petition (L) No. 7613 of 2020 now challenging the 14th October 2016 MHADA order. On 10th December 2020, this Court refused to intervene considering some of the foregoing facts and directed MHADA to decide the Petitioners' representation within four weeks. Then the Petitioners filed Writ Petition (L) No. 1103 of 2021 for substantially similar reliefs including seeking permanent alternative accommodation, a relief previously sought and rejected. On 14th January 2021, by consent, that Petition was disposed with directions to the Petitioners to appear before the Chief Officer of MHADA on 21st January 2021 so that he could take a decision on their various representations. The Chief Officer fixed hearings on 21st and 25th January 2021. Ultimately, on 5th February 2021, the Chief Officer of MHADA passed an order rejecting the representations of the Petitioners. This is the order challenged in the present Petition.

41. As to Building No. 20C, there used to be 42 residential premises. Their occupants have been vacated. These were all

MHADA allottees and they have been rehabilitated. The 2nd Petitioner has not yet vacated. The 1st Petitioner does not even occupy any shop premises. Both are impeding the development of the project.

42. Pausing for a moment, we must now consider what are the rights that these two Petitioners claim to have. Even a cursory look at the Writ Petition tells us that the 1st Petitioner's agreement is of 8th July 2013. A copy is at Exhibit "B" at page 26. This agreement is with Truly Creative. The 2nd Petitioner has an agreement dated 26th February 2018. A copy is at Exhibit "C" at page 55.

43. Both agreements are broadly similar in their essentials. The recitals in the 1st Petitioner's agreement of 8th July 2013 are curious for what they do not state. There is no mention whatsoever of the 7th January 2007 Development Agreement termination by the Samata Nagar Union. This is true also of the second agreement. That agreement of the 2nd Petitioner is not with Truly Creative at all but is with an allottee or a third party with whom Truly Creative had entered into an agreement. The 2nd Petitioner is thus a transferee of an illegal allottee of Truly Creative. This Agreement also does not make any mention of the 7th January 2007 termination. As we have noted above that termination had definite legal consequences for Truly Creative and, consequently, for all those claiming under or through Truly Creative. It makes no difference whether the claim is directly from Truly Creative or from a transferee of an allottee of Truly Creative. As of 7th January 2007, Truly Creative had no title to pass to any free sale component. In

fact, it would be correct to say that at no point the Truly Creative had any title to pass to any person. It acquired that right only on performance of its obligations and these included obtaining an NOC, paying the premium and getting appropriate MCGM permissions. Without those in hand, Truly Creative could not claim any rights or equities. It had no title. It could pass no title. Everything that it did on the project site was illegal from the very inception — including the constructions it put up and in which it purported to create rights. The termination of the Development Agreement with Truly Creative and the entry of SDC were not unknown or clandestine. Both were widely proclaimed. None could claim to be unaware of these. The only agreements by Truly Creative that had any rights at all were those that SDC agreed to recognize, and which are the subject of MHADA's 14th October 2016 order. These agreement had to satisfy specific conditions, including inter alia that the agreements (with Truly Creative) had to be registered, and possession receipts had to be shown, all prior to 7th January 2007, that all-important date when Truly Creative's appointment was terminated and SDC stood appointed. Neither of these Petitioners falls within the frame of that scheme; and that is not even the case pleaded.

44. We are, therefore, unable to understand how and on what basis these Petitioners can claim any right. In fact, they seem to be claiming a right *superior* to that of Truly Creative, for the argument effectively amounts to saying that all illegalities by Truly Creative are inconsequential and must be ignored; all orders negating Truly Creative's (and other claimants') contentions must be ignored; the 7th January 2007 termination of Truly Creative must be ignored;

the 14th October 2016 MHADA order must be ignored; its later Section 95A orders must be ignored; but the Petitioners must receive alternative accommodation. What the Petition seeks is impossible, a literal wiping out of all past events, orders and decisions, including those of this Court. If Truly Creative itself had no rights and no title, it could pass none. Both Petitioners claim only through Truly Creative or through a transferee of Truly Creative. They cannot claim any rights or titles higher than what Truly Creative had.

45. Ms Rao's attempts to claim parity with purported similar party by drawing to our attention an order of the CEO in some other case where the finding rendered was that eligibility of persons has to be decided in a City Civil Court and cannot be adjudicated by the CEP. The submission is misconceived. There is even now a situation that may possibly apply to certain persons in regard to the 14th October 2016 MHADA order. As we have noted, on a concession sought by MHADA and agreed to by SDC, those in possession with valid registered Agreements from Truly Creative prior to 7th January 2007 would be recognized. It is that eligibility that would have to be determined by a civil court. It is in that context that the observations in the order relied on by Ms Rao would have to be read. The does not mean that every claim no matter how outlandish or bizarre, should be entertained.

46. We note that there is in this Petition no challenge at all to the 14th October 2016 order, as indeed there cannot be. The Petitioners are also unable to show that they fit within the scheme of 14th

October 2016 order, i.e., that they were in possession under valid registered agreements with Truly Creative as on 7th January 2007. It is impossible for them to show this because their agreements are not prior to 7th January 2007. One agreement is of the year 2013. The other agreement is a derivative one of the year 2018. The 2nd Petitioner's predecessor-in-title allegedly took the premises under an agreement of 2006. But the 2nd Petitioner's predecessor-in-title did not make any claim for protection under MHADA's 14th October 2016 order/scheme. That order/scheme, in clause 1 (page 209 of Mr Sathe's compilation) required distinct conditions to be met: actual possession; a possession receipt; a registered agreement with Truly Creative; and all these before 7th January 2007. The 2nd Petitioner's predecessor-in-title is not shown to have met these conditions. Instead, he simply executed a transfer with the 2nd Petitioner. The recitals in the agreement with the 2nd Petitioner (of 26th February 2018) do not mention the 14th October 2016 MHADA order at all. There is no mention in the body of the agreement of any possession receipt. Annexed at page 71 of the Petition is a letter by Truly Creative addressed to the 2nd Petitioner's predecessor-in-title purporting to put him in possession 'for making furniture'. Not only is this not 'possession' as contemplated by the 14th October 2016 MHADA order, but this so-called possession document is *not* prior to 7th January 2007: it is of 5th May 2015. The 14th October 2016 MHADA order cannot be extended willy-nilly like this.

47. In any case, the prayers in this Petition are not maintainable. Apart from the challenge to the 5th February 2021 order, interim relief in prayer clause (c) is for specific performance against SDC to

execute a permanent alternate accommodation agreement with the Petitioners. Such a prayer rejects itself. Then prayer clause (d) seeks a restraint against dispossession. But to obtain such a relief whether interim or final the Petitioners' possession must be shown to be lawful; the construction must be shown to be lawful; and the agreements must be shown to be recognized whether in law or under the 14th October 2016 MHADA order. Prayer clause (e) seeks rights in respect of the FSI allegedly attributable to the premises claimed by the Petitioners. The Petitioners have no right to the premises let alone to any FSI, quite apart from the fact it is difficult to hold that there is such a divisible right to FSI in the first place. Interim prayer clause (f) is for compensation payable to the 1st Petitioner for an alleged wrongful demolition of Shop No.1.

48. Having regard to these circumstances we are unable to discern any merit whatsoever in this Petition.

49. It is dismissed. Rule is discharged. Interim relief granted earlier stands vacated. No costs.

(Neela Gokhale, J)

(G. S. Patel, J)