

Sumedh

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 746 OF 2023**

Manish Digambar Sawant & Ors ...Petitioners
Versus
The Chief Officer MBR and R Board MHADA &
Ors ...Respondents

**WITH
WRIT PETITION NO. 1088 OF 2023**

Ketan Amratlal Joshi & Ors ...Petitioners
Versus
The Chief Officer & Ors ...Respondents

**Mr Piyush Shah, with Dishang Shah, for the Petitioner in
WP/746/2023.**
**Mr Mayur Khandeparkar, with Omar Shaikh, for the Petitioner in
WP/10882/2023.**
Mr Amit Shastri, AGP, for the Respondent – State.
**Mr Venkatesh Shinde, i/b Manisha Jagtap, for the Respondent –
MHADA.**
**Mr Tejas Vora, with Varun Shivhane i/b T Mooman, for Respondent
No. 3.**

**CORAM G.S. Patel &
 Kamal Khata, JJ.**
DATED: 2nd November 2023

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1. Our order of 25th October 2023 reads as follows:

“1. Mr Vora states that an amount of Rs. 1,70,57,200/- was deposited in Court on Saturday 21st October 2023 pursuant to our order of 6th October 2023. To that order, we annexed two charts given by Mr Vora showing the amounts that according to the developer were admittedly payable as arrears of transit rent. The first chart has seven names. The second chart has 18 names. For two of the 18 names, the amount shown as due is zero in terms of arrears till 30th September 2023.

2. In both cases, the developer has agreed to deposit the advance transit rent for October to December 2023 by 30th November 2023.

3. Yet, according to Mr Shah and Mr Khandeparkar for the Petitioners in the two matters, these amounts are not correct. Larger amounts are yet due as arrears of transit rent and the present Petitioners do not constitute the entire body of persons to whom transit rent is due. Mr Vora may well say that with others there has been a settlement. Details of that settlement are presently unavailable.

4. Today we only permit the 23 persons (7 + 16 out of 18) to withdraw the amounts as per the two charts annexed to our order dated 6th October 2023. The Advocates on record will furnish copies of the previous order and the charts to the registry along with the respective bank account details of each of these persons and the registry will, within one week from today ensure that the remittances are made to those bank accounts.

5. After this is done, we will then hear Mr Shah and Mr Khandeparkar on their claim of the additional amount allegedly due as also Mr Vora as to how the amount computed represents the totality of the arrears of transit rent. Much will depend on that decision, including whether

we will then permit Maharashtra Housing Area and Development Authority (“MHADA”) to proceed to process any applications for further development permissions from the developer. But that will be done only after the present deposits are withdrawn. The reason we structure it like this is that these occupants and tenants, among others, have gone for a very long time without any form of relief. It is our intention that at least some relief must be given to them as quickly as possible.

6. Until the next date MHADA is not to accept any application from the developer. No permissions are to be granted to the developer until further orders of the Court.

7. Mr Khandeparkar and Mr Shah give to Mr Vora a copy of their computation of the amounts that are as yet due. This takes into account the annual increase in transit rent as provided in the Permanent Alternate Accommodation Agreements (“PAAA”) filed with MHADA. The submission is that these annual increases were paid up to a time and then altogether stopped. Mr Vora will need to take instructions. We will address this issue on the next date.

8. List the matter on 2nd November 2023.”

2. Today, in regard to the 19 Petitioners in Writ Petition No 1088 of 2023, Mr Vora tenders an additional list. This list is taken on record and marked ‘V3’ for identification with today’s date. This list shows the total rent that is said to have been paid, the rent that was deposited in this Court pursuant to the order of 6th October 2023, the aggregate paid/deposit and a computation of the amount that according to Mr Vora is unpaid. This is stated to be Rs 77,93,338/-.

3. Some of these items need clarification. Against Serial Nos 2, 8, part of 9, 17 and 19, the developers claim to have paid in excess. Mr Khandeparkar for the Petitioners contests the correctness of the computation of the figures of Rs 77,93,338/-. He states that the actual amount is significantly higher. We are not in a position to reconcile these conflicting claims in our writ jurisdiction but we will make alternative arrangements and issue directions so that this can be more efficiently and effectively done by the public authority concerned, namely, Maharashtra Housing and Development Authority (“MHADA”). For the present, we clarify that we are neither accepting nor rejecting the correctness of Mr Vora’s client’s claim of an excess paid. This will also be the subject matter of a determination by MHADA pursuant to the directions that we will include a little later in this order.

4. The persons at Items Nos 1 (Ketan Amratlal Joshi), 6 (Tukaram Chavan), 9 (Jayantilal Solanki), 10 (Urmila Solanki) are said to have passed away. If, therefore, we are going to make a direction for the deposit by the developer of Rs 77,93,338/- or a direction to the developer to make payment, then we will need to clarify to which of the heirs or nominees of these deceased persons that remittance is required to be made.

5. So far as Petitioner No 1, Ketan Amratlal Joshi (deceased) is concerned, his widow is Jayna. She is the nominee in the document. The disbursement is to be made in her name.

6. So far as to Tukaram Chavan is concerned, his widow, Kamal, Petitioner No 6. In the chart, Tukaram's name is shown because he is the recorded tenant.

7. So far as Jayantilal and Urmila are concerned, the nominee is Nikunj Solanki and the amount is to be paid out to him.

8. Mr. Vora states that this amount of Rs. 77,99,338/- will be paid out to the persons in this chart (subject to the clarifications regarding the nominees that we have mentioned earlier) by 30th November 2023. We accept that statement. All transfers are to be online. Mr Khandeparkar's attorneys will provide the necessary bank details to Mr Vora's attorneys by Monday 6th November 2023.

9. There are some persons against whose names the amount shown is zero or there is a blank. These are subject to further determination by MHADA.

10. These disbursements may be accepted by the Petitioners on a no equities and without prejudice basis because, as we have noted, Mr Khandeparkar has instructions to state that the amount that is due is significantly higher.

11. The Chief Executive Officer of MHADA will designate an officer of sufficient seniority to assess the rival claims in regard to and only in regard to accumulated arrears of transit rent. This direction will apply to both Writ Petitions.

12. To avoid any controversy, we specify the sequence in which this is to proceed. We also set out timelines so that there is no delay. We make it clear that we are concerned only with the Petitioners who are before us. We have to clarify this because at some point we were told that there were several dozens of others who had claims. But if those persons have not cared to come to Court, we are unable to make any orders in their favour as this not a Writ Petition in a representative capacity or a PIL.

13. The Petitioners in both matters must, by 2nd December 2023, through their Advocates, file with the officer of MHADA a statement of claims for accumulated arrears of transit rent after giving due credit (though on a without prejudice basis) for the amounts that have been received or withdrawn so far. These claims may include any claims for periodic increases in transit rent as well. A copy is to be furnished to Mr Vora's Advocates by 2nd December 2023.

14. By 16th December 2023, the developer will file before the officer in MHADA with copies to the Advocates for the Petitioners, a response to the claim as also a statement showing the excess amounts paid, if any.

15. We require the officer to hear both sides briefly. We are not contemplating a prolonged hearing but some exercise in reconciliation of the statements for these Petitioners alone will need to be undertaken by the officer. That is not an exercise this Court

can reasonably be expected to do and most certainly not in its writ jurisdiction.

16. This exercise is to be completed and the officer must render a final determination no later than by 12th January 2023. To clarify: the officer may hold that a certain additional amount is payable by the developer or that nothing further is payable by the developer or that for some person the amount is recoverable by the developers and may be adjusted against future transit rent as well.

17. If there is an amount that is found due by the developer, then the officer must prescribe a period not less than three weeks after the date of this order for that amount to be deposited with MHADA.

18. Any of the parties aggrieved are at liberty to pursue their remedies in regard to that determination including by approaching this Court by way of a fresh Writ Petition if required.

19. In the event that the developer does not make the deposit as required by MHADA and which may be done again on a without prejudice and no equity basis, then necessary consequences must follow, including, by virtue of this order itself, an immediate stoppage of all work on site. This does not mean that MHADA is then required to issue a fresh stop work notice. If there is non-compliance by non-deposit in the circumstances we have set out above there will instantly be an injunction against the developer

from doing any further work of any kind on site and from receiving any further permissions whatsoever until that deposit is made.

20. This is of course necessarily subject to any proceedings that may be adopted by the parties concerned in regard to the determination order by the officer of MHADA.

21. As regards ongoing transit rent, we require this to be paid quarterly irrespective of any statement in any No Objection Certificate or any agreement. The first quarter to be paid in this fashion is October to December 2023. The amount is to be paid by 15th December 2023 irrespective of any calculations in regard to a claim for excess rent paid. In other words, there will be no adjustments at this stage until there is a final determination by the officer concerned. Thereafter, quarterly payments of transit rent will be made by the middle of the quarter until possession is delivered with an Occupation Certificate (“OC”).

22. To ensure that there is a minimal disruption so that parties need not come back to Court each time, we will exercise our discretion and grant the developer a grace or cure period of four banking days if there is a default in payment of any quarterly payment. All payments are to be made online.

23. If there is a default beyond the cure period for any quarterly payment of transit rent, then the same consequences of stoppage of work will immediately apply and MHADA will then issue a

cancellation of its NOC on account of a default in payment of that transit rent.

24. This is of course subject to any orders that may be passed in regard to any adjustment that is claimed by the Petitioner in a challenge against the MHADA officers' final determination of the amounts that are found due or found to have been paid in excess.

25. So far as the persons at 12, 13, 14 and 15 are concerned, MHADA has certified the names of the heirs of the original tenants. The names of the heirs are shown in the chart that is marked today. MHADA is said to have certified the names of the persons who are entitled to the benefits in place of the original deceased tenant.

26. Mr Vora is correct that the developer must be fully indemnified against claims by any other heirs in regard to the original tenant, Sharda Pilankar, Petitioners 12 and 13 and Arvind Arvind Chindarkar, Petitioners 14 and 15 as also the nominees noted above. Mr Khandeparkar has instructions to state that rather than delay the matter by requiring formal indemnity this order may itself serve as a sufficient damnification of the developers against all claims that may be made for any of the deceased original tenants against the developer.

27. If there is one thing on which all are agreed, it is that construction itself now needs to progress.

28. Mr Vora submits that apart from the issue of transit rent, which he maintains has at least partially if not substantially been addressed by deposits and assurances or payment, permissions now need to be issued by MHADA or the MCGM. These have been withheld because of the question of the arrears and mounting arrears of transit rent. Now that we have addressed that aspect and provided at least some relief to the tenants, we direct MHADA and the MCGM to expeditiously process all applications including applications for fresh permissions, revalidations, reassurances, or amendments of all permissions for the entire project including the free sale component.

29. It is clarified that a default by the developer in performance of its obligations or in adherence to the terms that we have set out in this order will necessarily result in a suspension or even a cancellation of any of these permissions.

30. Mr Vora has instructions to state that other things remaining equal, the project should be completed by December 2024. We understand this to mean that at some point in December 2024, construction will have sufficiently progressed to enable the developer to at least apply for an OC. We do not expect the developer to commit a date when the OC will be obtained. That is not in the hands of the developer but certainly we can note the submission that the application for an OC will be made within that time. This means that subject to resolving the question of accumulated arrears of transit rent and payment of ongoing transit

rent of five quarters, the project should be satisfactorily completed by December 2024.

31. In view of this, Mr Khandeparkar does not press Writ Petition No 1088 of 2023 at this stage. Mr Shah also does not press Writ Petition No 746 of 2023. Both Petitions are disposed of in these terms, read with the previous orders. No costs.

(Kamal Khata, J)

(G. S. Patel, J)