

Sumedh

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 2737 OF 2018

Mohan Yeshwant Padwe & Ors ...Petitioners
Versus
The State of Maharashtra & Ors ...Respondents

Mr Ashok Saraogi, *with Anand Mishra, Sushil Upadhyay, for the
Petitioner.*

Mr Rajesh Datar, *i/b Deepak Devkar, for Respondents Nos. 5, 6, 7, 10,
13, 14, 18, 20, 27 & 39.*

Mr Ashish Kamat, Senior Advocate, *with Mohit Khanna, Dipti
Sawant, Priyanka Desai, i/b Aditya Lele, for the Respondent Nos.
41 to 43.*

Mr Abhay L Patki, *with Ms Vandana Mahadik, i/b Sunil K
Sonawane, for Respondent-BMC.*

Mr SK Dhekale, *Court Receiver, present.*

CORAM **G.S. Patel &
Kamal Khata, JJ.**
DATED: **30th August 2023**

PC:-

1. The order today will substantially dispose of the present Writ
Petition No. 2737 of 2018. It is kept at a later date only for
compliance.

SUMEDH
NAMDEO
SONAWANE

Digitally signed by
SUMEDH NAMDEO
SONAWANE
Date: 2023.09.04
10:18:40 +0530

2. Two things must be noted at the beginning. There are other persons who claim to be similarly situated as the present four Petitioners. Not all of them are parties before this Court. Some are represented by Mr Datar. We are told that they have filed a separate Writ Petition. To avoid all misunderstanding, we clarify that our directions are limited to this matter and any other Petition filed through Mr Datar's attorneys by any other person will have to proceed on merits unaffected by these directions. This clarification is necessary because, as the following directions will show, we have not found a way to confine ourselves to the present four Petitioners or the present individual Respondents. Rather, we have dealt with the class that they represent. But having said that, we obviously cannot determine the rights or contentions of a party who is not before us in a petition that is not within the roster of this Court. Hence this clarification.

3. The second aspect of the matter is equally necessary and that is to examine first the prayers that are sought in the Writ Petition. These are prayer clauses (a), (b) and (c) at pages 14 and 15 and they read as follows:

“a) that this Hon'ble Court be pleased to pass appropriate writ, order and direction directing quashing of the alleged notice allegedly issued under the provisions of Section 354 of M.M.C. Act dated 28.4.2018 on such terms as this Hon'ble Court may deem fit and proper.

b) that this Hon'ble Court be pleased to issue appropriate writ, order and direction directing the Respondents No.2 and 3 to forthwith restore the electricity and water supply to the premises of the Petitioners and more particularly, the transit camp accommodation situated

at Hastikar Wadi , Janki Bhavan, Patra Shed, Transit Camp, Hastikar Marg. Old Prabhadevi, Mumbai 400 025 on such terms as this Hon'ble Court may deem fit and proper.

c) that this Hon'ble Court be pleased to issue appropriate writ order and directing the Respondents No.2 and 3 not to take any action upon the Notice issued under the provisions of Section 354 of M.M.C. Act dated 28.4.2018 and also direct necessary enquiry against the Respondent No.4 and subject to such enquiry, necessary action be initiated against the Respondent No.4 on such terms as this Hon'ble Court may deem fit and proper.”

4. We had previously noted in our fairly detailed order dated 24th August 2023 that on 25th May 2018, a Vacation Bench of this Court granted an ad-interim relief that has continued till today of reconnection of water and electricity supply. The Petitioners (and presumably others like them) were permitted to continue in occupation at their own risk.

5. We turn next to a delineation of the parties before us in this Writ Petition. There are four Petitioners. Respondents Nos. 5 to 40 are also all individuals. We are told that their interests align with those of the Petitioners. The 1st Respondent is the State of Maharashtra. The 2nd Respondent is the Municipal Corporation of Greater Mumbai (“**MCGM**”). The 3rd Respondent is the Brihanmumbai Electricity Supply and Transport (“**BEST**”) Undertaking and was joined because of the ad- interim reliefs that were then sought and in view of the prayers that we have set out above. The 4th Respondent, Sanghavi Grih Nirman Private Limited has gone out of the picture. It used to be the developer. It has never

appeared. Respondents Nos. 41 to 43 are the owners of the plot in question and are represented by Mr Kamat.

6. On behalf of the Petitioners, Mr Saraogi has made it clear that while he represents these four Petitioners, their interests and those of other individuals are common even if some of the others may be represented by Mr Datar.

7. The property in question is City Survey No. 13, Final Plot No. 1274, Town Planning Scheme No. 4, Mahim, G/South Ward, Mumbai 400 016. It is a fairly substantial property by all accounts. In our order of 24th August 2023, we noted some of the background to the matter. Amongst other things, we noted that there was an earlier Interim Application (“IA”) filed by the MCGM to vacate the ad-interim order. That came to be dismissed on 29th September 2022 by a Bench of which one of us, GS Patel J, was a member. We noted while dismissing that IA that the Developer had made no such application to vacate the ad-interim order. At that time, the owners, i.e., the Nagwekars, Respondent Nos. 41 to 43, were not parties before us. They were subsequently joined.

8. Mr Kamat has made submissions on why the ad-interim order needs to be vacated and more importantly why the building that the Petitioners and others like them occupy must be vacated.

9. To put this into some additional context. On the one hand there are four Petitioners. There are 14 others said to be represented by Mr Datar, making a total of 18. Then there are, we were told

yesterday, nine additional people who claim certain entitlements. We were told yesterday that these nine additional persons were still in the building in question but today the update is that they are elsewhere, i.e., not on site. There is, therefore, no question of them being vacated or evicted. Their other rights will remain.

10. To lend an overall perspective, we must note that there were a total 103 tenants. This gives us some idea of the scale of the project and the problems involved.

11. It is common ground that Sanghavi Grih Nirman Pvt Ltd has all but abandoned the project. It has made no appearance before us. It has not contested this Petition at any time. We will not thereafter entertain any application regarding this project from Respondent No. 4.

12. Matters may have been considerably more complicated had the Nagwekars, Respondents Nos. 41 to 43, in their capacity as owners expressed helplessness, inability or even a refusal to do anything further. But that is not how matters have unfolded before us. Mr Kamat makes it clear that these owners now propose, with whatever external financial support they are able to get, to complete the redevelopment of their own property themselves.

13. Accepting this statement at face value is insufficient. There has been considerable discussion on this in Court and while our directions that follow will deal with each of these aspects more fully

and in detail, at the broadest length, any such redevelopment involves the following factors:

- i. Making provisions for temporary or transit accommodation or transit rent for tenants;
- ii. Execution and registration of permanent alternative accommodation agreements with these tenants.
- iii. Delivering possession of the permanent alternative accommodation tenements.

14. We clarify that it is not our concern whether these tenants are to be rehoused on a tenancy basis or on ownership basis. That is a matter of negotiation between the owners and the tenants and it is certainly outside the remit of a writ court. There is also the question of payment of additional amounts such as shifting charges or a hardship allowance, all to be contractually determined between the two rival groups. Lastly, there is the question of completion on a schedule of the rehab or reaccommodation buildings for the tenants and of giving them possession with occupation certificates of the rebuilt premises. On this aspect, we must clarify that it has been our view, and so expressed in judgments that possession must mean possession with an occupation certificate (“OC”), and an occupation certificate necessarily means a certification that the structure is fit for human occupation and possession. That in turn means there must be functioning facilities such as lifts, municipal water supply, power connections, complete finishing of the structure and all civil works and so forth.

15. As it happens, we are not required to address the merits of the matter to pronounce in favour of one or the other of these contestants. The reason is that over the last few days something resembling a consensus or partial consensus seems to have emerged that appears to us to be a viable solution in the interests of all concerned.

16. There is an updated note from Mr Kamat. We take this on record and mark it “X-2” for identification with today’s date but this is only a reference point. We are not making this an order of the Court in the form in which it stands. There are portions of it that we accept and there are other parts of it that we are required to modify. There is also a sketch plan of the site. This is taken on record and marked “X-3” for identification. Soft copies of the note and the plan are appended to this order.

17. To give an idea of the location on site, the plan tells us that the disputed occupancies, and we use that word in its widest sense, are in a transit camp located at the front of the site of the proposed rehab building and sale building complex. The expression ‘transit *camp*’ is perhaps somewhat misleading. This is actually a transit *building*, but being constructed as a transit building, it necessarily has a limited life of three to five years. It has long outlived that life. It is undoubtedly — and this is now not seriously disputed before us — in so bad a structural condition that it cannot be allowed to continue, apart from the fact that its continuance blocks the redevelopment that is proposed. To continue in that building would be hazardous and unsafe and in any case, there is no one any longer

before us who is claiming a vested right to continue permanently in the transit building because Mr Saraogi for the Petitioners clearly accepts that none of the Petitioners are opposed to redevelopment. All that they seek is an assurance and monitoring under a public authority that the redevelopment is done in a systematic manner with the rights of the tenants being protected. That is reasonable and since that demand seems to be fairly met by Mr Kamat's proposal, we proceed to the set of directions.

18. The note from Mr Kamat breaks up the occupants into four different categories by colour. This is a somewhat unusual approach but it is certainly convenient. We will therefore refer to these occupants or tenants as the white tenants, the blue tenants, the orange tenants and the green tenants. Those are the colours that Mr Kamat has used and they are the easiest point of reference.

19. Those shown in white are the nine occupiers or tenants who are undoubtedly entitled to transit rent or transit accommodation. This requires some explanation and some part of this was covered in our 24th August 2023 order but we will return to this momentarily. There are four persons shown in blue. We examined this list yesterday and found that these persons need to submit additional documents because there are claims by heirs of the original tenants or occupants. The concern is that neither the MCGM nor the owner who is undertaking development should later face claims from others without sufficient heirship documents and indemnities. As such, the rights of the original tenants in respect of these persons whose names are in blue highlights are not being contested. Those

in orange highlight are persons who have passed away. Their heirs are required to submit additional documents, again on the same principle.

20. The last category, in green colour, is of nine persons who have left the transit building. Yesterday, it was claimed that they are still in the building, but we will accept the factual position that they are not because Mr Kamat has made it clear that the fact that they have left the transit building does not mean that they have lost their entitlement to transit rent at the stipulated rate.

21. The Nagwekars agree that all persons whether they are in transit rent or being provided transit accommodation are uniformly entitled to a one-time payment of Rs 10,000/- as shifting charges. We accept this figure.

22. So far as the first category of persons is concerned, i.e., the nine tenants and occupiers as also the four persons who are required to submit original documents have an option from the Nagwekars. They may either accept transit rent at Rs 30,000/- per month or they may choose one of the 17 available transit accommodations that are shown in Annexure 'B' to the note. This was a concern and it is addressed by paragraph 9 of the note. We had asked Mr Kamat to take instructions as to how these 13 persons would be allowed to inspect the 17 available premises and what was to be done if more than one person chose the same accommodation. The answer seems to be, and we will have to accept this, that on 2nd September 2023 and 3rd September 2023 (the dates may be extended if this order is

delayed in being released), the Nagwekars will make travel arrangements to take these persons to the various locations from the transit camp to those destinations and back. We take it that the Nagwekars will make sufficient provision for reasonable food and drink while on the way since this is likely to take some time. If any of these 13 persons opts for a transit accommodation, they must indicate so no later than by 5th September 2023. Every one of them who chooses to opt for transit accommodation must indicate a first, second and third preference. Now this is precisely the problem that we foresaw about rival persons making claims to the same alternative accommodation. This is not a matter that we wish to leave to the tenants internally to resolve because that will never be resolved. Nor can we ask the owners, the Nagwekars, to intercede because that will be another area of friction. We note that there is no prayer for a Court Receiver, but it is only an order to give effect to what appears to be a consensual resolution of the problem that we take the liberty and exercise our discretion to direct that these choices will be forwarded by the Nagwekars to the Court Receiver, Bombay High Court immediately and no later than by 6th September 2023 (or as suitably extended). No later than by 9th September 2023 (also extendable if necessary), the Court Receiver must conduct a lottery in the Court Receiver's office. This lottery will be conducted after giving notice to the Advocates for the parties and whose Vakalatnamas are before us. That lottery system will be in respect of the 17 premises that are chosen and the first, second and third preference choices. We will require that the lottery proceeding to be videographed so that there is no controversy about this at any later stage. The Receiver will then draw up a final list of allotments. That will be forwarded to the Advocates for the parties.

At the time of the lottery, the Court Receiver will ensure that there is an attendance sheet and that the persons other than Advocates attending all show some photo identification.

23. We make it clear that we are not compelling any party to necessarily accept alternative accommodation. Every one of these parties has the option of choosing to take transit rent at Rs 30,000/- per month.

24. We also make it clear that even after the lottery it is open to any tenant/occupant to decline to take the allotted premises without assigning reason and to opt for the transit rent at Rs 30,000/- per month. That decision must be communicated to the Court Receiver and to the advocates for the Petitioners within 72 hours of the lottery result being declared.

25. If a person does take alternate accommodation, then the obligation of the Nagwekars is to ensure that the transit accommodation is made fully available to such allottee until permanent alternate accommodation is provided. It is then for the Nagwekars to pay the licence fee, lease rent or rent for this alternative accommodation and to continue to do so irrespective of what it costs (whether more than Rs 30,000/- per month or less) until delivery of final possession.

26. As to the terms of payment of transit rent, we note Mr Kamat's statement, and this we will take as an undertaking to the Court, that all tenants who are vacating or presently elsewhere on

self-chosen accommodation (i.e., not in transit accommodation provided by the Nagwekars) will be paid transit rent at Rs 30,000/- per month (in addition to the shifting charges) for 12 months in advance. This payment is to be made preferably by online transfer and it is the responsibility of the tenants or their Advocates to forward the bank details to the Advocates for the Nagwekars. This has to be done no later than by 11th September 2023 (also extendable). The reason we insist on online payment is to avoid any further controversy such as dishonoured cheques or delayed delivery of pay orders or demand drafts. We understand that there may be an occasion when the online transfer might be delayed. Sometimes there may be a technical issue with the online banking system. We make allowance for this and afford five bank working days' grace in case a payment is delayed for any reason whatsoever. If, however, there is no payment after that grace period, this will constitute an 'Event of Default' or EoD. There are subsequent directions in regard to the consequences of the EoD and on which we have heard submissions from both Mr Kamat for the Nagwekars and Mr Saraogi for the Petitioners.

27. To complete this portion of it, the persons whose names appear at Serial Nos. 7, 11, 14, 15 and 16 of the chart at Annexure 'A' are required to submit documents establishing their heirship and entitlement to premises. As an illustration, at Serial No. 7 is the entry of Respondent No. 11. The old name in the Petition was Ashabai Rajaram Kir. The new name in the Petition is Surekha Ravindra Kir. But the heir was one Lata Rajaram Kir. As we noted, therefore, there will need to be the necessary indemnities, documents of succession or heirship and, where applicable, a No

Objection Certificate (“**NOC**”) from other heirs. This will be of some consequence even to those whose names are shown in blue highlight at Serial Nos. 4, 6, 10 and 12 of the chart at Annexure ‘A’. For example, at Serial No. 4, and that is a reference to Petitioner No. 4, the name in the Petition is Raghunath Ganpat Kir. The claim is by Sunil Raghunath Kir but Sunil is only one of five heirs of Raghunath. Thus, Sunil will need to provide an indemnity, NOC of the other heirs or their consent and other necessary documents.

28. We clarify that we do not insist that the claim must be in the name of one particular person. It is entirely possible and permissible for multiple heirs to claim equal undivided rights between themselves in which case this will be communicated to the owner’s Advocates with the appropriate documentation and the same amount of Rs 30,000/- per month divided equally between the heirs will be made available to them. They may also agree to take a Permanent Alternate Accommodation Agreement (“**PAAA**”) jointly in their names and permanent alternative accommodation can be made available when ready to all heirs together.

29. Operationally, this raises one other problem because we do not think it is possible to fix a time frame within which heirship documents can be obtained from a court of law. These things take time, sometimes months. But it should not be that these tenants, after several months, find themselves without a remedy or a recourse and therefore we clarify that even for the persons from whom additional documents are required, those in blue and orange highlights, even pending the submission of those documents, the

developer will deposit the amount of transit rent at Rs 30,000/- per month plus shifting charges with the Prothonotary and Senior Master of this Court. When making that deposit, it must be clearly stated against which particular original tenant such a deposit is being made. Once the heirship documents, indemnities, consents or NOCs are obtained an application may be made directly to the Prothonotary and Senior Master without requiring an IA provided the praecipe has endorsed on it a no-objection of the Nagwekars' Advocates for the withdrawal of the amount deposited.

30. In Annexure 'A' of the list, those whose names are in green, Respondents Nos. 5, 6, 7, 27, 36 and 39 are admittedly eligible and are entitled to receive transit rent on parity. The same procedure will follow for these persons who have passed away as for those whose names are shown in orange, i.e., the requirement of a deposit with the Prothonotary and Senior Master of this Court.

31. As regards the persons in green and these are shown at Serial Nos. 19 to 27 of Annexure 'A', they are all off-site. They have not received transit rent although they are entitled to it. The owners may not be aware of the dates on which these nine persons actually vacated the transit building. There may well be a claim for a prior period. We, therefore, temporarily direct that these nine persons will be paid at this rate, i.e., shifting charges plus Rs 30,000/- per month for 12 months along with the others from the date when all have vacated the building. If there is any prior claim these nine persons are at liberty to approach the Nagwekars providing sufficient proof of the date on which they vacated and on the date on

which they took up residence elsewhere. If there is a dispute about that past amount, contentions are left open for appropriate proceedings. We do not see how we can make any further order in that regard in the present proceedings.

32. The 12 month period is only an initial period. Mr Kamat's projection and we clarify that this is not an undertaking to the Court, is that the rehab building should be completed and ready for occupation in roughly 18 months. As we said, it is not possible to hold anybody to this date rigidly. But it does mean that for the purposes of transit rent, an additional six months' transit rent will have to be paid to these persons who have either opted for it or who are entitled to it and this payment must be made 15 days before the 12 month period expires. This is liable to be renewed subject to further directions as to interest, etc. until possession is delivered of the nature described above to the tenants/occupants.

33. It is tentatively proposed that the Nagwekars will be able to apply for an OC within 18 months of issuance of a revised Commencement Certificate ("CC"). That date is uncertain, but we will accept it and that CC application is to be made if not already done by 11th September 2023. To this end and as a direction to the MCGM, we direct that the MCGM will not insist upon the NOC of the previous architect or the previous developer since that entity is before us but has been utterly non-responsive for the past four years. We clarify that Respondent Nos. 41 to 43, or any entity that they nominate, their architects and their project management consultants will be entitled to make applications to the MCGM and the MCGM

will permit these applications and will permit any rectifications to the online records and registers as required to facilitate the project going forward.

34. We began this order by pointing out that ultimately the public authority, i.e., the MCGM must supervise this. We have asked Mr Patil to give us the designation of an officer who will function as a nodal officer to see the project through. He tells us that on behalf of the Assistant Commissioner of the G/South Ward, the Assistant Engineer (B&F) will be the Nodal Officer. He is to be kept informed and copied on all applications the Nagwekars make to any Department of the MCGM. He is to oversee the systematic and orderly rehabilitation of the tenants/occupants. He must maintain a complete record from now on of the entire project including all details of the tenants/occupants where they presently are, their identities, identification and so on. The nodal officer will also function as an initial grievance redressal authority in matters pertaining to a non-receipt of transit rent or similar issues in the interregnum.

35. This takes us to what is probably the most difficult aspect of the matter namely directions for the consequences on the occurrence of an EoD. If transit rent is not paid within the cure period that is one EoD. But failure to deliver possession of the rehab units must necessarily constitute an EoD but this is an altogether more difficult aspect. There may be factors beyond the control of the Nagwekars that delay the final delivery of the rehab premises.

36. In this we are mindful of a rather peculiar situation in law. The Nagwekars are not third-party developers; they are owners of the land and as such, we see no vision by which a landowner can be deprived of ownership rights because there is a default. If developer holding an NOC under a Maharashtra Housing and Area Development Authority (“MHADA”) redevelopment or a Letter of Intent (“LOI”) under a Slum Rehabilitation Authority (“SRA”) re-development, matters might have been much easier. The NOC or the LOI could be cancelled or revoked at any time for default. But ownership rights in property cannot be dealt with in this fashion. Mr Kamat understands and appreciates the conflicting equities. On the one hand there is the concern of the Court to ensure that its order is not meaningless. There has to be some real bite to it. It must be enforceable. That means there must be some real specified consequences to a default. But these cannot go to the extremity of ejecting an owner from ownership property. He therefore suggests and we think this is reasonable in the circumstances of the case that if there is a payment in default, the developers will pay not only the defaulted amount but interest at the rate of 12% per annum on the enhanced amount. We accept this as an undertaking to the Court. The second submission is that if there is a delay in delivery of possession of the rehab units for reasons that are attributable to the Nagwekars, then a flat compensatory fee of Rs 50,000/- will be paid and be payable to each of the occupants or tenants. To clarify such a default may be a failure to pay in a timely manner any charges of the MCGM for providing a municipal water connection. It certainly extends to a failure to pay up all property taxes that may be due in respect of the property. But if there are additional compliances demanded or there are additional delays in

processing applications, these may not be within the control of the owners. Therefore, this provision for additional amounts whether one terms them liquidated damages or an additional compensation is only applicable where there is clearly a default on the part of the owner in the development process.

37. The Nagwekars have agreed that the tenants will get reaccommodation on an ownership basis of 315 sq ft. This is noted.

38. Mr Saraogi submits, we believe correctly, that this amount of Rs 30,000/- per month cannot be fixed for all time whether with or without interest. If this project is delayed beyond 24 months, then the base amount must be increased because it will be impossible for tenants who are outside to find alternate accommodation at the old rate of Rs 30,000/- per month. The submission is correctly placed. We will not fix a figure but we will include an increase of 10% after 24 months to the figure of Rs 30,000/- per month. That is to say that if the OC is not applied for within 18 to 24 months of the date of re-issuance of the CC, the amount of transit rent will go up by 10%.

39. We believe these provisions now completely protect the interests of the tenants or occupants in the transit building or buildings. They are now to be vacated. The transit building is clearly not fit for human habitation. We had told Mr Saraogi that we would not be unreasonable in the time that we afford them to vacate since they have been here under an ad-interim order for a considerable period. We had earlier indicated 26th September 2023 but we

extend that date to 30th September 2023. All possession must be delivered vacant to the Nagwekars or their representatives by 5.00 pm on that date. Only for compliance with this aspect of the matter we list the matter before us first on board on 3rd October 2023.

40. We request the Court Receiver to depute staff to remain present on site on 30th September 2023. The police authorities at Dadar Police Station will provide the necessary support. They will act upon production of an authenticated copy of this order. If any person refuses to willingly vacate, the Court Receiver is authorised by this order to forcibly remove that person and his or her belongings from the site by 30th September 2023. No application is to be made by any person in respect of this transit building before any Civil Court but must be made by means of an IA before this Court in this matter.

41. What remains is the execution of a PAAA. Now here we must bear in mind that Mr Datar's clients may have other grievances. That does not mean that we can permit them to continue in the building while those rights are being agitated at some distant point of time. The PAAAs with all tenants being exactly on parity are to be executed on or before 30th September 2023. Those who wish to do so may do so on a without prejudice basis and may agitate any other rights in any other proceeding that they may have already adopted. But the execution of a PAAA is otherwise undoubtedly necessary, most of all to protect the interests of the tenants/occupants themselves. We clarify that the execution of these PAAAs cannot be

used by the Nagwekars as an argument in equity against those who have executed them on a without prejudice basis.

42. It goes without saying that if any person refuses to execute the necessary PAAA, that person will be required to vacate the premises but all entitlements whether to shifting charges or transit rent will not be made payable but will be deposited in Court instead.

43. All amounts deposited will be invested in accordance with the usual practices of the registry, initially for a period of six months.

44. At this stage, we are presented with the scenario of an OC actually being received. If that does happen, then those who are out on transit accommodation or out on transit rent or in transit accommodation must immediately and without delay take possession of the permanent alternate accommodation and, in any case, within 72 hours of possession with the OC being offered. We make it clear that this is however subject to the rehab permanent alternative accommodation building being complete in all respects with running water, electricity supply, lifts where necessary and completion of all civil works.

45. If by the time the OC is received, any of the claimants have not been able to establish heirship, then possession of the rehab tenement is not to be given to any individual but will be given to the Court Receiver and will be subject to further orders in the Writ Petition or in any further proceeding once those heirship documents are made available.

46. Liberty to the parties to apply.

47. List the matter on 3rd October 2023, first on board, for directions.

(Kamal Khata, J)

(G. S. Patel, J)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

WRIT PETITION NO.2737 OF 2018

Mohan Yashwant Padawe & Ors. ... Petitioners

V/s.

State of Maharashtra & Ors. ... Respondents.

Note on behalf of Respondent Nos. 41 to 43

1. List tenants and/ or occupiers (Petitioners & Respondents in the present Petition) is annexed hereto at **Annexure-A**.
 - a. **White highlight**- These 9 tenants/ occupiers are entitled to transit rent and/ or transit accommodation.
 - b. **Blue highlight**- These 4 persons are required to submit additional documents enlisted enumerated in the comments column and would then be entitled to transit rent and/ or transit accommodation
 - c. **Orange highlight**- These 5 persons have expired and accordingly, their heirs/ are required to submit appropriate documents establishing their entitlement.
 - d. **Green highlight**- These 9 persons have vacated the transit camp and do not reside there.
2. All persons whether opting for transit rent or transit accommodation will be entitled to a one-time payment of Rs. 10,000/- for shifting charges.
3. The 5 persons appearing in orange highlight, are required to submit document/s establishing their heirship and entitlement to the premises within a period of one week. In the event the occupiers establish their heirship, Respondent Nos. 41 to 43 and/ or their associates shall issue a

demand draft (DD)/ pay order in the name of the tenants/ occupants. In the event the occupiers are unable to do so, the said heirs of 5 persons appearing in orange highlight are required to give an indemnity and undertaking to the satisfaction of Respondent Nos. 41 to 43 with a period of one week thereafter. On receipt of such indemnity and undertaking, Respondent Nos. 41 to 43 and/ or their associates will deposit transit rent for 12 months amounting to Rs. 3,60,000/- (i.e. Rs. 30,000 per month) with the Court Receiver, Bombay High Court for the benefit of such persons. The monies will be released by the Court Receiver to such persons once they establish their entitlement to the premises to the satisfaction of Respondent Nos. 41 to 43.

4. The 4 persons appearing in blue highlight are required to submit additional documents enumerated in the comments column of the attached Annexure-A within a period of 3 days i.e. by 1st September 2023. . In the event the occupiers submit the additional documents, Respondent Nos. 41 to 43 and/ or their associates shall issue a demand draft (DD)/ pay order in the name of the tenants/ occupants. Failure to submit the additional documents within the time frame provided, the transit rent for 12 months amounting to Rs. 3,60,000/- (i.e. Rs. 30,000 per month) subject to providing indemnity and undertaking to the satisfaction of Respondent Nos. 41 to 43 will be deposited with the Court Receiver, Bombay High Court for the benefit of such persons.
5. The 9 persons appearing in green highlight do not reside on the transit camp and have vacated the same. Since they are residing independently, they shall be provided transit rent at par with the other occupier/ tenants. Respondent Nos. 5, 6, 7, 27, 36 and 39 are eligible and entitled to receive advance transit rent of 1 year i.e. Rs. 3,60,000/- shall deposited within a period 3 weeks and in any event before 30th September 2023 by Respondent Nos. 41 to 43 and/ or their associates shall issue a demand draft (DD)/ pay order in the name of the tenants/ occupants. Respondent Nos. 28, 32 and 37 have since expired.

Accordingly, their heirs are required to submit appropriate documentation establishing their heirship by 1st September 2023. In the event the occupiers establish their heirship, Respondent Nos. 41 to 43 and/ or their associates shall deposit advance transit rent of 1 year i.e. Rs. 3,60,000/- by issuing a demand draft (DD)/ pay order in the name of the tenants/ occupants within a period 3 weeks and in any event before 30th September 2023. In the event of failure to submit the requisite documents, the persons claiming to be heirs are required to give an indemnity and undertaking to the satisfaction of Respondent Nos. 41 to 43 with a period of one week thereafter. On receipt of such indemnity and undertaking, Respondent Nos. 41 to 43 and/ or their associates will deposit transit rent for 12 months amounting to Rs. 3,60,000/- (i.e. Rs. 30,000 per month) with the Court Receiver, Bombay High Court for the benefit of such persons. The monies will be released by the Court Receiver to such persons once they establish their entitlement to the premises to the satisfaction of Respondent Nos. 41 to 43.

6. The 13 tenants/ occupiers (that includes 9 tenants/ occupiers appearing in white highlight and 4 tenants/ occupiers appearing in blue highlight after submitting documents listed in point 03 on this note), have an option to either accept transit rent fixed at Rs. 30,000/- per monthly or transit accommodation. Respondent Nos. 41 to 43 have identified the following premises that can be offered as transit accommodation at **Annexure- B** .
7. The 13 tenants/ occupiers (that includes 9 tenants/ occupiers appearing in white highlight and 4 tenants/ occupiers appearing in blue highlight after submitting documents listed in point 3 of this note) are required to intimate their choice *viz.* transit rent or transit accommodation that they wish to choose to Respondent Nos. 41 to 43 within 3 days.
8. Tenants/ occupiers that choose to opt for transit rent, advance transit rent of 1 year i.e. Rs. 3,60,000/- will be deposited within a period 3 weeks and in any

event before 30th September 2023 by Respondent Nos. 41 to 43 and/ or their associates shall issue a demand draft (DD)/ pay order in the name of the tenants/ occupants. After the expiry of one year, such tenants will be provided monthly transit rent, till the possession of the unit is handed over to them.

9. With respect to the tenants who choose to opt for transit accommodation, the owners have fixed 2nd & 3rd September 2023 for showing the transit accommodations to the said tenants. Respondent Nos. 41 to 43 and/or their associates will make appropriate travel arrangements to ferry the tenants from the transit camp at 12 noon together or in groups on the two days depending on the number of tenants. The tenant and/ or their authorised person along with one other person will be ferried by Respondent Nos. 41 to 43 and/ or their associates from the transit camp and back. The tenants who wish to opt for transit accommodation, will be required to submit their top three preferred choice of units to Respondent Nos. 41 to 43 latest by 5th September 2023. The said choice will be forwarded by Respondent Nos. 41 to 43 to the Court Receiver, Bombay High Court immediately and in any event by 6th September 2023. On 7th or 8th September 2023 or such date as this Hon'ble Court deems fit, the Court Receiver, Bombay High Court will conduct a lottery in the Court Receivers office and prepare the list of premises allotted to the tenants participating in such lottery on the day the lottery is concluded. The list prepared by the Court Receiver pursuant to the lottery shall be final and binding.

10. Prior to handing over peaceful and vacant possession of their unit/s in the transit camp on or before 30th September 2023, all the 18 tenants and/ or occupiers residing in the transit camp shall execute a consent deed and a Permanent Alternate Accommodation Agreements, without prejudice to their rights and contentions in Writ Petition (L) No. 18527 of 20233 pending before this Hon'ble Court. Thereafter, Respondent Nos. 41 to 43 and/ or their

associates shall provide transit accommodation to the eligible tenants as per the list prepared by the Court Receiver.

11. A direction is required to be issued by this Hon'ble Court to the MCGM and MHADA to carry out appropriate amendments in its records, on the application of Respondent Nos. 41 to 43 for further permissions as may be necessitated without insisting for a no-objection certificate of the previous developer and architect.
12. In case any tenant/s or occupier/s fails to vacate the transit camp by 30th September 2023, consequences entailed in paragraph 15 of the Order dated 24th August 2023 will be visited on such person/s.
13. MCGM to appoint a "nodal officer" having the designation of ____ **[to be added suitably]** to (i) exercise grievance redressal that the tenants/ occupiers and the owners may have; (ii) overlook the rehabilitation of tenants/ occupiers; and (iii) maintain records pertaining to rehabilitation of tenants/ occupiers and the redevelopment of the property.
14. Liberty to apply before the Hon'ble Court in case of any difficulties or further directions as may be required.

Annexure-A

Sr. No.	Petitioner/ Respondent	Old Name in Petition	New name in Petition	Heirship established (Yes/No)	Name of the heir	Rent Receipt Available (yes/No)	Comments
1	Petitioner No. 1	Mohan Yashwant Padawe		not required		yes	
2	Petitioner No. 2	Vaishali Kalidas Raut		not required		yes	
3	Petitioner No. 3	Anant Govind Mayekar		not required		yes	
4	Petitioner No. 4	Raghunath Ganpat Kir	Sunil Raghunath Kir	yes	1. Sunil Raghunath Kir 2. Anil Raghunath Kir 3. Sujit Raghunath Kir 4. Ajit Raghunath Kir 5. Ashok Raghunath Kir	yes	i. PoA of siblings to Sunil Kir ii. Information around who will receive the transit rent iii. NOC of other heirs in case attorne is receiving the transit rent
5	Respondent No. 8	Prakash Ramchanadra Borkar	Neela Ramchandra Borkar	yes	Neera Harishchandra Borkar	yes	Not required
6	Respondent No. 10	Lata Gajanan Shitalkar	Lata Gajanan Shivalkar	yes	Lata Gajanan Shivalkar	yes	Indemnity bond required
7	Respondent No. 11	Ashabai Rajaram Kir	Surekha Ravindra Kir	required but not available	Lata Tukaram Bandivedekar (nee Lata Rajaram Kir)	yes	Letter & copy of Affidavit cum Will was made available to the owner
8	Respondent No. 13	Vijay Gajanan Surve		not required		yes	
9	Respondent No. 14	Padmakar Ramchandra Gajne	Padmakar Ramchandra Gajne	not required		yes	
10	Respondent No. 17	Budhaji Vishnu Dalvi	Narayan Budhaji Dalvi	yes	1. Narayan Budhaji Dalvi 2. Tushar Budhaji Dalvi 3. Smt. Manjiri Deepak Salvi	yes	i. PoA of siblings to Narayan Budhaji Dalvi ii. Indemnity Bond iii. NOC of other heirs in case attorney is receiving the transit rent

Sr. No.	Petitioner/ Respondent	Old Name in Petition	New name in Petition	Heirship established (Yes/No)	Name of the heir	Rent Receipt Available (yes/No)	Comments
11	Respondent No. 18	Manohar Shantaram Nagwekar		required but not available		yes	Rent receipt in the name of Sitabai Shantaram Nagwekar
12	Respondent No. 19	Manjari Manohar Palav	Rupesh Manohar Palav	yes	Shilpa Manohar Palav	yes	Indemnity bond required
13	Respondent No. 20	Anant Lahu Borkar		not required		yes	
14	Respondent No. 23	Ramchandra Lahu Borkar		required but not available		yes	
15	Respondent No. 24	Sugdha Suresh Kir	Sugata Suresh Kir	required but not available		yes	
16	Respondent No. 29	Ashabai Rajaram Kir	Paresh Krishna Todankar	required but not available	Ravindra Rajaram Kir	yes	copy of Affidavit cum Will was made available to the owner
17	Respondent No. 30	Kamlakar Sitaram Nagwekar		not required		yes	
18	Respondent No. 38	Anandibai Yeshwant Padave		yes	Jayashree Janardan Padwe	yes	Not required
New names added on 30 August 2023							
19	Respondent No.5	Babar Shaikh Krida Mandal				yes	It's an association- transit rent will be provided at par with other tenants A community hall of 500 sq ft being provided in the rehab building for their benefit and use
20	Respondent No.6	Suresh Mahadev Nagvekar		not required		yes	
21	Respondent No.7	Raj Ramesh Kir	Rakhi Raj Kir	not required	Raj Ramesh Kir	yes	

Sr. No.	Petitioner/ Respondent	Old Name in Petition	New name in Petition	Heirship established (Yes/No)	Name of the heir	Rent Receipt Available (yes/No)	Comments
22	Respondent No.27	Deepak Patil		not required		yes	
23	Respondent No.28	Soni Ramakant Naik	Deepak Ramakant Nagvekar	since deceased - required but not available		yes	
24	Respondent No.32	Vrinda Subhash Nagvekar		since deceased - required but not available		yes	
25	Respondent No.36	Raman Mahdev Nagvekar		not required	Laxmi Ramesh Sapaliga	yes	
26	Respondent No.37	Prabhkar Yeshwant Parkar		since deceased- required but not available		yes	
27	Respondent No.39	Anagha Vasant Nagvekar		not required			

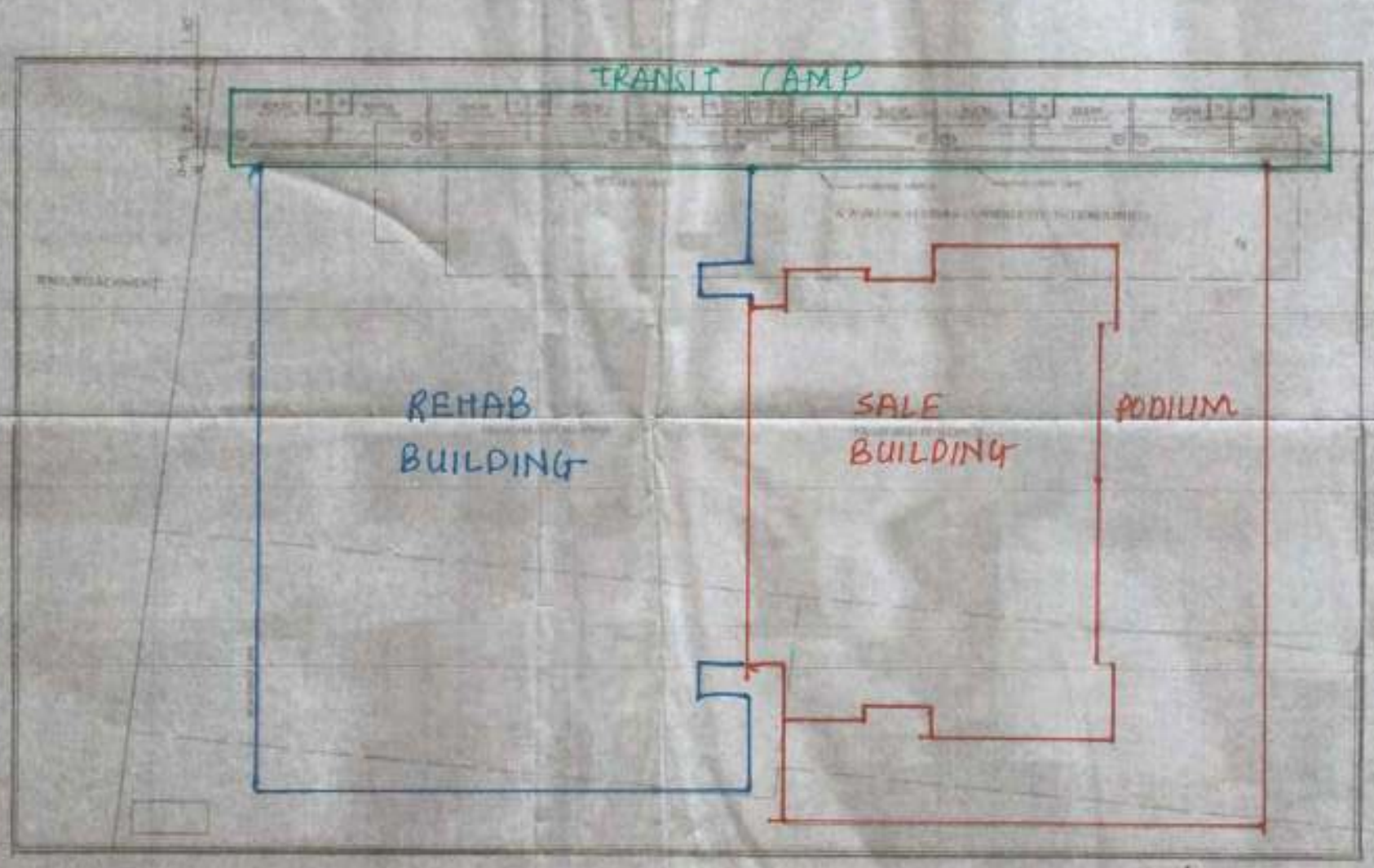
Transit Accomodation Available as on 28 August 2023

Building Name	Area of rooms(sqft)	Area	No. of Rooms
Bombay Dyeing Society	225	Bhoiwada, Parel	3
Century Mill MHADA	300	Worli	5
Shree Sai Omkar CHS	300	Worli	3
Pavan chhaya	260	Prabhadevi	1
Sai complex	260	Prabhadevi	1
Ahuja tower	250	Prabhadevi	1
Ambedkar Nagar SRA	250	Prabhadevi	1
Silver dunes	275	Hatiskar Marg Prabhadevi	1
Kataria Colony	300	Shivaji park, Dadar	1
Total			17

THICKNESS = 10.00 CM
TOTAL AREA = 11.50 SQM

SECTION - X - X'
SCALE 1:100

SECTION - X - X'
SCALE 1:100



LAYOUT PLAN
SCALE 1:200