

Talwalkar

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 2627 OF 2019
WITH
INTERIM APPLICATION NO.309 OF 2019
IN
WRIT PETITION NO. 2627 OF 2019**

Ahmed Hamid Poonawalla ...Petitioner
Versus
The Municipal Corporation of Greater Mumbai
& Ors ...Respondents

**WITH
INTERIM APPLICATION (L) NO. 37191 OF 2022
IN
WRIT PETITION NO. 2627 OF 2019**

Anwar I Shaikh ...Applicant
In the matter between
Ahmed Hamid Poonawalla ...Petitioner
Versus
The Municipal Corporation of Greater Mumbai
& Ors ...Respondents

**WITH
INTERIM APPLICATION (L) NO. 15167 OF 2022
IN**

WRIT PETITION NO. 2627 OF 2019

Ahmed Hamid Poonawalla ...Applicant

ARUNA
SANDEEP
TALWALKAR

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In the matter between
 Ahmed Hamid Poonawalla ...Petitioner
Versus
 The Municipal Corporation of Greater Mumbai
 & Ors _____ ...Respondents

Mr Rohit V Pawaskar, *Sana Yusuf Baugwala, i/b Yusuf S Baugwala, for the Petitioner in Writ Petition No. 2627/2019.*

Mr Naushad Engineer, *with Aurup Dasgupta, Sonam Ghiya & Drshika Hemnani, i/b Jhangiani, Narula & Associates, for Respondent No. 3 in WP/2627/2019.*

Mr Milind More, Addl GP, *with Abhay L Patki, Addl GP, for the Respondent-State.*

Mr Ajit Kenjale, *with Kunal Waghmare, i/b Sunil K Sonawane, for the Respondent-MCGM in WP/2627/2019.*

Mr Javed Shaikh, *for Wakf Board (Online).*

CORAM G.S. Patel &
Kamal Khata, JJ.
DATED: 14th December 2023

PC:-

1. Yesterday we passed a detailed order in Writ Petition No 1174 of 2023. That was filed by Ahmed Hamid Poonawalla. He is also the Petitioner in Writ Petition No 2627 of 2019.

2. In Writ Petition No 1174 of 2023, on which we passed an order yesterday, Poonawalla sought the execution of a Permanent Alternative Accommodation Agreement (“**PAAA**”) by the 2nd Respondent to that Petition, namely Classic Corporation. We *inter alia* noted that such a Writ Petition would ordinarily have met with a rejection because it was directed against a private party and not a

public authority. But since Mr Khan on behalf of the 2nd Respondent had instructions to say that the 2nd Respondent would sign the PAAA and, further, that Poonawalla and the other heirs of the original tenant could withdraw the amount of Rs 32,18,100/- that was deposited in this court, by consent we proceeded to make Rule absolute in terms of prayer clause (b) (despite the fact that it was worded as an interim prayer). The effect of this order was that we directed Classic Corporation to execute a PAAA. The question was with whom this PAAA ought to be executed since Poonawalla is, admittedly, not the only heir of the original tenant. On behalf of Poonawalla, the learned Advocate who then appeared had submitted, and we believe correctly, that the heirs had between themselves agreed as to in whose name the PAAA should be executed. This was noted by Maharashtra Housing and Area Development Authority (“MHADA”) as long ago as 14th December 2015. He reiterated that submission.

3. The delay between 2015 and 2023 (and Poonawalla’s Petition was itself of 2023) was a cause for some concern on our side. The record did not indicate whether there had been any change of circumstances, a change of mind, or even whether any of the heirs with whom Poonawalla had an understanding or an agreement in 2015 had in the meantime passed away. To ensure that there was a quietus to this litigation and no further controversy we directed that Poonawalla would submit to MHADA a reconfirmation of the original 2015 agreement or understanding. MHADA was not to reassess or re-evaluate but was only to recertify what was received from Poonawalla. There would be two agreements in question. The first would be in regard to in whose names the PAAA should be

executed and the second who should be permitted to share the withdrawal of the amount deposited in court (with interest).

4. That Petition was thus disposed of on that basis.

5. Writ Petition No 2627 of 2019 has, peculiarly, a contrary relief. There is only one final relief and that is prayer clause (b). It is a direction against the MCGM to completely demolish the redeveloped building, i.e., the structure at Kambekar Street, CS Nos 1172, 1173 and 1/1173 of the Mandvi Division. This structure was redeveloped by the 3rd Respondent Classic Corporation, the same entity that was the 2nd Respondent in Writ Petition No 1174 of 2023.

6. But it is in respect of premises in this very building that in Writ Petition No 1174 of 2023 Poonawalla himself sought the execution of a PAAA and which we allowed.

7. The two prayers in the two Petitions are inconsistent. They cannot both possibly co-exist. They are not just mutually inconsistent or mutually contradictory, they are mutually destructive. The reason is simple. A PAAA is never in the abstract. It identifies:

- (a) The area in square feet or square meters that is to be given to the occupant/tenant/claimant;
- (b) A specifically identified building in which that area is to be given; and

- (c) Sometimes but not invariably, a tenement number or at least a floor.

8. There is no ambiguity or controversy about the area in square meters or square feet that would be the subject matter of the PAAA that Poonawalla himself sought. There is also no controversy that the redeveloped premises were to be in the very same building that is the subject matter of prayer clause (b) in Writ Petition No 2627 of 2019.

9. Whatever may have been Poonawalla's prayer in 2019, this is surely overtaken by subsequent events including most importantly the filing of Poonawalla's own Writ Petition No 1174 of 2023, a good four years later.

10. It is beyond contemplation that Poonawalla could simultaneously seek a PAAA for redeveloped premises in the building and also seek demolition of that very building. If that were to be so, there would be no question of a PAAA being executed in respect of premises in that building and certainly not by Classic Corporation.

11. In this context, there are some assertions made by Poonawalla in the disposed of Writ Petition No 1174 of 2023 that would be relevant. In paragraph 6, Poonawalla accepts that Classic Corporation took up redevelopment of this very site and constructed a 21 story building on it. This is reiterated in paragraph 11. There is a reference to events of 2015 and a Writ Petition No

1594 of 2015 that Poonawalla filed in regard to a notice under Section 95A of the MHADA Act. But the assertion in paragraphs 11 and 13 is that Poonawalla (and we will take this to include his cooperating heirs) are entitled to a PAAA in the reconstructed or redeveloped building. Paragraph 13 identifies the area in square feet as 631 sq ft. The submission is specifically that the Petitioner is entitled to alternative accommodation of the same area at a minimum and perhaps additional area. The grounds in the Petition make it clear that the challenge is to the non-execution of the PAAA.

12. Having regard to these circumstances, we do not see how in the present Petition filed four years earlier in 2019, and especially after the same Petitioner invited an order for execution of the PAAA in Writ Petition No 1174 of 2023, the Petitioner can now urge that the very same building be brought down, i.e., the very same building in premises in respect of which the very same Petitioner wanted and has obtained an order for execution of a PAAA.

13. This fortifies our view that the two prayers in these two Petitions are mutually destructive and cannot co-exist.

14. The present Writ Petition is therefore rejected. There will be no order as to costs.

15. All Interim Applications are disposed of accordingly.

(Kamal Khata, J)

(G. S. Patel, J)