

Wadhwa

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO. 24589 OF 2023**

Jaishree Kamal Shah & Anr ...Petitioners
Versus
MBR & R Board & Ors ...Respondents

**WITH
WRIT PETITION (L) NO. 26083 OF 2023
(Not on Board)**

Narendra Narpatchand Bhandari ...Petitioner
Versus
Mumbai Building Repairs & Reconstruction
Board (MBR & R Board) & Ors ...Respondents

Mr Bhavesh Parmar, with *Vivekanand Akshali, Ms Reshma Nair, Rajesh Sahani, for the Petitioner.*
Mr PG Lad, with *Ms Shreya Shah, for the Respondent-MHADA*
Mr Aseem Naphade, with *Sanjeev Kadam, Sanjeel Kadam, i/b Kadam & Co, for Respondent No. 3.*
Mr Saket Mone, with *Ms Anchita Nair, i/b Vidhi Partners, for Respondent No. 4.*
Mr Akshay Pai, with *Atharva Sane, Shanmukh Puranik, i/b Bina R Pai, for Respondent Nos. 5, 6 & 7.*

**CORAM G.S. Patel &
 Kamal Khata, JJ.
DATED: 10th October 2023**

PC:-

1. Writ Petition (L) No. 26083 of 2023 is mentioned. It is not on board. It is taken on board.
2. **Rule in both Petitions.** Rule returnable forthwith.
3. The Petitioner in Writ Petition (L) No. 26083 of 2023, Narendra Narpatchand Bhandari, is Respondent No. 4 in Writ Petition (L) No. 24589 of 2023.
4. This Writ Petition is filed by one Jaishree Kamal Shah and one Mamta Kamal Shah, mother and daughter. They are part of the Bhandari family, some members of which are Respondent Nos. 4 to 12 of their Petition. The challenge in this is to an order dated 22nd August 2023 passed by the CO of the Repair Board. A copy of that order is at Exhibit 'I' on page 54. While the order is dated 22nd August 2023, it indicates that hearings took place on 3rd July 2023 and 7th July 2023.
5. What Mr Parmar points out on behalf of the Petitioners (Jaishree and Mamta) is that the order itself indicates at internal page 4 (paper book page 57) that Vasant Bhandari, Respondent No. 7, claiming to be an occupant of Room No. 15, sent in a letter dated 25th July 2023 with an Affidavit on Rs. 100/- stamp paper. In this Affidavit, he made several statements and assertions of fact against other relatives including one Prem Bhandari, Narendra Bhandari, Bhupendra Bhandari, Chandani Bhandari and tabulated his contentions. This tabulation is reflected in the impugned order.

6. In addition, Hemant Bhandari, Narendra Bhandari and Prem Bhandari also submitted additional documents. These were also not given to the two Petitioners, Jaishree and Mamta. Whether they have been given to Narendra Bhandari, the Petitioner in Writ Petition (L) No. 26083 of 2023 is unknown.

7. On the face of it, this order is unsustainable. It suffers from a fatal procedural illegality. There was no possibility of the adjudicatory authority, namely the CO of the Repair Board, taking on file any document *of 25th July 2023* — after the last date of hearing — and then proceeding to fashion an order based on it without giving the persons named in those documents an opportunity of dealing with them. A judicial order or an arbitral award that attempted any such thing would be instantly vulnerable. The procedural infirmity goes to the root of the matter. These orders may or may not be quasi judicial, that is to say they may be entirely executive, but when they are shown *ex facie* to suffer from such a fatal and fundamental procedural infirmity, judicial review of such decision making is inevitable and must necessarily be done.

8. For this reason, and without examining the rival contentions the impugned order of 22nd August 2023 is quashed and set aside.

9. Copies of the further filings of Vasant Bhandari, Hemant Bhandari, Narendra Bhandari and Prem Bhandari (Letter, Affidavit and documents) are to be given to all parties by 13th October 2023. All parties will be entitled to put in short supplementary submissions in writing by 23rd October 2023. There are to be no

further filings before the CO of the Repair Board after that date. The CO of the Repair Board will then schedule a hearing or, if necessary, more than one hearing at his earliest convenience. These hearings must conclude by 10th November 2023. After this and based on the hearings and on the material submitted, the CO will pass a fresh order without any reference or regard to the previous order. He will do so at his earliest convenience and preferably before 8th December 2023.

10. We have not examined the rival contentions. We also make it clear that while the order is in relation to two buildings namely Devdha Manzil and Sudarshan Building, we are setting it aside only in regard to Sudarshan Building. The reason is that the additional filings were only in regard to premises in Sudarshan Building.

11. Before the CO of the Repair Board all contentions of all sides are expressly kept open.

12. Both Petitions are disposed of in these terms and Rule is made absolute accordingly. In the facts and circumstances of the case there will be no orders as to costs.

(Kamal Khata, J)

(G. S. Patel, J)

Note : This order is modified as per order dated 16th October 2023. The corrections are shown in bold, italics and underline.