

Amol

**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
WITH
INTERIM APPLICATION (L) NO. 37191 OF 2022
IN
WRIT PETITION NO. 2627 OF 2019
WITH
INTERIM APPLICATION (L) NO. 15167 OF 2022
IN
WRIT PETITION NO. 2627 OF 2019**

Ahmed Hamid Poonawalla ...Petitioner

Versus

The Municipal Corporation of Greater Mumbai ...Respondents
& Ors

WITH

WRIT PETITION NO. 1340 OF 2023

Classic Corporation ...Petitioner

Versus

The State of Maharashtra & Ors ...Respondents

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WITH
WRIT PETITION NO. 1174 OF 2023

Ahmed Hamid Poonawala ...Petitioner
Versus
Maharashtra Housing and Area Development ...Respondents
Authority & Anr

WITH
WRIT PETITION NO. 7998 OF 2019
WITH
CIVIL APPLICATION NO. 1686 OF 2019
IN
WRIT PETITION NO. 7998 OF 2019

Classic Corporation ...Petitioner
Versus
Farida Juzer Nagree & Ors ...Respondents

WITH
APPEAL FROM ORDER NO. 25 OF 2021
WITH
INTERIM APPLICATION NO. 198 OF 2021
IN
APPEAL FROM ORDER NO. 25 OF 2021

Classic Corporation ...Petitioner
Versus
Farida Juzer Nagree & Ors ...Respondents

Mr Maruti Sarkar, *i/b PM Havnur, for the Petitioner, in WP/1174/2023.*

Mr Naushad Engineer, *with Aurup Dasgupta & Drshika Hemnani, i/b Jhangiani, Narula & Associates, for the Petitioner in WP/7998/2019.*

Mr Rushabh Vidyarthi, *with Akhil K, for Respondent Nos. 1, 2, 4, 5 & 6, in WP/7998/2019 & AO/25/2021.*

Mr Mutahhar Khan, *with Kavisha Shah, i/b Kavisha Shah, for Respondent No.2 in WP/1174/2023.*

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

Mr Abhay L Patki, *Addl GP with Ms Uma Palsuledesai, AGP, for the Respondent- State.*

Mr Ajit Kenjale, *with Kunal Waghmare, i/b Sunil Sonawane, for MCGM, in WP/2627/2019, WP/1340/2023, WP/1174/2023*

Mr Ajit Kenjale, *with Kunal Waghmare, i/b Sunil Sonawane, for MCGM, WP/7998/2019 & AO/25/2021.*

Ms Sayali Apte, *i/b Manisha Jagtap, for MHADA in all matters.*

Mr Rohit V Pawaskar, *i/b Yusuf S Baugwala, for Respondent No. 6 in WP/1340/2023.*

**CORAM G.S. Patel &
 Kamal Khata, JJ.**

DATED: 13th December 2023

PC:-

WRIT PETITION NO. 1174 OF 2023:

1. The individual in question here, Poonawala, seeks a writ against the 2nd Respondent. This is a private developer. The 1st Respondent is Maharashtra Housing And Area Development

Authority (“**MHADA**”). The Petition is actually thinly disguised as a Writ Petition against the public authority. It involves no question of public law.

2. Prayer clauses (a), (b), (c) and (d) of the Petition at page 17 to 20, read thus:

“(a) that this Hon’ble Court be pleased to issue a writ of mandamus or a writ in the nature of mandamus or writ of certiorari or any other appropriate writ or order directing the Respondents to place before this Hon’ble Court all relevant papers, documents with respect to the redevelopment of three cess buildings, Building No. 210-214 [*wherein the petition premises, Room No. 12-B is situated*], Building No.202-208 and Building No.198-200 on C.S. No.1173 of Mandvi Division, Kambekar Street, Mumbai-400 003 and upon perusal of the same, be pleased to direct the Respondent No.2 to comply with the order dated 14.12.2015 passed by the Respondent No.1 forthwith in the interest of justice;

(b) that pending the hearing and final disposal of the Petition, this Hon’ble Court be pleased to direct the Respondents to execute Agreement for Permanent Alternative Accommodation with Car Parking Area and also other formalities as required under the Redevelopment Scheme with the Petitioner;

(c) that pending the hearing and final disposal of the Petition, this Hon’ble Court be pleased to direct the Respondents not to carry out any further redevelopment work on the petition site viz. Building No.210-214 [*wherein the petition premises, Room No. 12-B is situated*], Building No.202-208 and Building No.198-200 on C.S. No.1173 of Mandvi Division, Kambekar Street, Mumbai-400 003, until order dated 14.12.2015 passed by the Respondent No.1 is

complied with in its true letter and spirit by Respondent No.2;

(d) that pending the hearing and final disposal of the Petition, this Hon'ble Court be pleased to direct the Respondents to pay rent / compensation of Rs.94.650 (Rupees Ninety Four Thousand Six Hundred Fifty Only) per month with 10% increase annually, since the date of eviction [*i.e.* 24.03.2015] until August, 2022 amounting to Rs. 1,16,97,759.00 (Rupees One Crore Sixteen Lakhs Ninety Seven Thousand Seven Hundred Fifty Nine Only) for 89 months & also to pay the future rent from September, 2022 onwards until allotment of permanent alternative accommodation in the name of the Petitioner.”

3. We will ordinarily have had no hesitation in rejecting the Petition as not maintainable and directing the Petitioner to file a substantive civil suit since it is apparent that even prayer clause (a) seeks a mandamus against a private Respondent.

4. Prayer clause (b) would certainly have merited dismissal of the Petition, but for the fact that Mr Khan appearing for the 2nd Respondent on instructions states that the 2nd Respondent has no objection to executing the Permanent Alternative Accommodation Agreement (“**PAAA**”) with the car parking area and completing other formalities as required under the redevelopment scheme with the Petitioner.

5. Mr Khan points out that the Petitioner is not the original tenant nor is he the only heir. Obviously, the Petitioner will need to establish to MHADA not only the identity of being the heirs of the

original tenant, but how the heirs have between themselves arranged to take up the rights of the deceased tenant. It is entirely possible, for instance, for the other heirs to relinquish all interest in favour of Poonawala solely, or for the heirs to agree that some or all of them will take those rights equally. If this has already been done, then the PAAA obviously will be by the 2nd Respondent with those persons subject to this being certified by MHADA.

6. Mr Sarkar for Poonawala tells us that this issue was already done in 2015 by the order of 14th December 2015 of MHADA, compliance with which is sought in this Petition. That may be so, but given the passage of all this time, there should be no dispute on account of altered circumstances, etc. We will therefore require a confirmation that the arrangement between the heirs of the original tenant (i.e., Poonawala and his fellow heirs) stands. MHADA will confirm or recertify the names with whom the Agreement with the 2nd Respondent is to be executed. This is to be done within one week from today.

7. Our order today is not to be read as a direction to MHADA to certify any particular person afresh, but to reconfirm the original arrangement. We accept Poonawala's statement that there is no change, but MHADA will need confirmation of this from the other heirs. We believe we are justified in this because although the MHADA order may be of 14th December 2015, this Petition was filed only in 2023. Poonawala will, therefore, have to submit to MHADA the necessary acknowledgements or confirmations from his fellow heirs (or, if any have passed away, their respective heirs),

that the original understanding between the heirs inter se remains unchanged.

8. The PAAA, Mr Khan says, and we accept this, will be executed by Classic Corporation in the names of such people as MHADA indicates. It is not for Classic Corporation to dispute these names and Mr Khan says Classic Corporation will raise no dispute in that regard.

9. There is also a question of Poonawala and his agreed co-heirs withdrawing the amount of transit rent that has been deposited in this court. Mr Khan states that the amount that can be withdrawn by the Petitioner and his co-heirs is Rs 32,18,100/- with accumulated interest.

10. We clarify that the withdrawal with accumulated interest may be made by the Advocate for the Petitioner or by the Petitioner in his own name, but this amount is to be distributed amongst the persons with whom the PAAA is to be executed. In other words, the Petitioner may not be solely entitled to the entire amount that is withdrawn unless that is agreed by the fellow heirs. Obviously, this withdrawal will have to await the re-certification or confirmation by MHADA, and that in turn will need the submission of confirmations by Poonawala.

11. Rule is accordingly made absolute in terms of prayer clause (b) although it is worded as an interim prayer. The Petitioner can

have no objection to this. Since the 2nd Respondent also has no objection, nothing survives in the Petition.

12. This Petition is disposed of in these terms.

13. List the remaining two Petitions first on board tomorrow, 14th December 2023.

14. The Prothonotary and Senior Master will act on production of an authenticated copy of this order for the purposes of the withdrawal.

(Kamal Khata, J)

(G. S. Patel, J)