

Arun

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1476 OF 2021

WITH

INTERIM APPLICATION NO. 229 OF 2021

IN

WRIT PETITION NO. 1476 OF 2021

WITH

INTERIM APPLICATION NO. 1182 OF 2022

IN

WRIT PETITION NO. 1476 OF 2021

WITH

INTERIM APPLICATION NO. 300 OF 2021

IN

WRIT PETITION NO. 1476 OF 2021

WITH

INTERIM APPLICATION NO. 400 OF 2022

IN

WRIT PETITION NO. 1476 OF 2021

WITH

INTERIM APPLICATION NO. 1269 OF 2021

IN

WRIT PETITION NO. 1476 OF 2021

WITH

INTERIM APPLICATION (L) NO. 11401 OF 2021

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RAMCHANDRA
SANKPAL

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IN
WRIT PETITION NO. 1476 OF 2021
WITH
CONTEMPT PETITION (L) NO. 26110 OF 2023
IN
WRIT PETITION NO. 1476 OF 2021
WITH
CONTEMPT PETITION (L) NO. 41180 OF 2022
IN
WRIT PETITION NO. 1476 OF 2021
WITH
INTERIM APPLICATION (L) NO. 30739 OF 2021
IN
WRIT PETITION NO. 1476 OF 2021
WITH
INTERIM APPLICATION (L) N. 28072 OF 2021
IN
WRIT PETITION NO. 1476 OF 2021
WITH
INTERIM APPLICATION (L) NO. 26700 OF 2022
IN
WRIT PETITION NO. 1476 OF 2021
WITH
INTERIM APPLICATION (L) NO. 5664 OF 2022
IN

WRIT PETITION NO. 1476 OF 2021
WITH
INTERIM APPLICATION (L) NO. 8827 OF 2020
IN
WRIT PETITION NO. 1476 OF 2021

Vaidyawadi Rehab Welfare Association ...Petitioner
(Thakurdwar)

Versus

Maharashtra Housing And Area Development ...Respondents
Authority (MHADA) & Ors

Mr Sharan Jagtiani, Senior Advocate, with Mutahhar Khan & Vishal Mehta, i/b MV Law Partners, for the Petitioner in WP/1476/2021 & Applicant in IA/1182/2022, IA/300/2021, IA/1269/2021, IAL/11401/2021, IAL/30739/2021 & for the Petitioner in CONPWL/41180/2022.

Mr NR Bubna, with Kunal Waghmare, for the Respondent-MCGM.

Mr PG Lad, with Sayli Apte & Shreya Shah, for the Respondent No.1-MHADA.

Mr Karl Tamboly, with Aadil Parshurampur, i/b ANP Partners, for Respondent No.4 in WP/1476/2021 & for Applicant in IAL/8827/2020.

Mr SK Halwasia, for Respondents Nos. 5, 6 & 7 & for Applicant in IAL/28072/2021 & IAL/26700/2022 & for Petitioner in CONPWL/26110/2023.

Mr Anil Anturkar, Senior Advocate, i/b Shubham Misar, for Respondent No.8.

Mr Dipesh Palwankar, i/b Mahesh Menon & Co, for the Applicant in IA/400/2022 & IA/229/2021.

**CORAM G.S. Patel &
 Kamal Khata, JJ.**
DATED: 31st January 2024

PC:-

WRIT PETITION NO.1476 OF 2021:

1. There are several prayers. Many of them are decidedly ambitious. Mr Jagtiani in fairness agrees that he is pressing none of them except prayer clauses (a) and (b) read with (h) and (i). We cannot grant prayer clause (h); it is a prayer for a money decree with interest. Prayer clause (i) is similarly worded. The other prayers are in the nature of reliefs for specific performance. These prayers say:

“(a) This Hon’ble Court be pleased to pass an Order and issue a writ of mandamus or any other appropriate writ or order and direct the Respondent Nos. 1 and 2 to do such acts and take such steps as may be appropriate and necessary to ensure compliance by the Respondent No.4 of the terms of the NOC dated 23rd July 2009 and 14th October 2010, granted to the Respondent No.4 (being Exhibits - “C” and “D” hereto respectively);

(b) This Hon’ble Court may be pleased to pass an Order and issue a writ of mandamus or any other appropriate writ or order and direct the Respondent Nos. 1 and 2 to ensure that Respondent No. 4 does all such acts and takes all requisite steps as may be necessary for grant of OC in respect of the rehab building standing on the subject property subject to conditions as it may deem fit and proper;

(h) This Hon’ble Court may be pleased to pass an Order and issue a writ of mandamus or any other appropriate writ or order and direct the Respondent Nos. 1 and 2 to do such acts and take such steps as may be necessary to ensure that the Respondent No.4 makes payment of Rs.2,59,16,958/-, together with interest @ 18% per annum thereto, being the rent in lieu of temporary alternate accommodation to the

Petitioner as per the statement annexed at Exhibit – “K”;

(i) This Hon’ble Court may be pleased to pass an Order and issue a writ of mandamus or any other appropriate writ or order and direct the Respondent Nos. 1 and 2 to do such acts and take such steps as may be necessary to ensure that the Respondent No.4 makes payment of rent in lieu of temporary alternate accommodation to the Petitioner for the period from 2nd November 2019 till the Respondent No. 4 handovers possession of the respective units/flats to the members of the Petitioner.”

2. The fact of the matter is that all but two of the members of the Petitioner society have been re-accommodated in a redeveloped or rehab building with a partial Occupation Certificate (“OC”). What remains is that their money claim for the alleged unpaid transit rent and some other disputes.

3. We have time and again said that these are private contractual matters and just because Maharashtra Housing And Area Development Authority (“MHADA”) is the public authority supervising the project does not mean that a Writ Court can be asked to issue a mandamus against a private Respondent for payments of amounts like this. It is a different situation if it is shown that MHADA itself is remiss. Certainly, if the tenants were out of their original residences and transit rent was not being paid and the project was not being progressed, and yet MHADA was taking no action though it could and ought to, a Writ Court would undoubtedly have something to say because that would be a matter of a direction to a public authority to exercise its statutory powers.

4. In regard to the claim for arrears of transit rent, it is for MHADA to decide whether there is or is not default. If there is a default, MHADA will undoubtedly be able to ascertain the amount of the default and will be able to impose the necessary conditions and issue the necessary directions to the developers. It is if the MHADA fails to do this within a reasonable time that we can possibly intercede. This issue does not arise because we direct MHADA to take up the matter within a period of six weeks from today and take steps in accordance with law.

5. Mr Jagtiani points out that there is a previous order of 7th January 2021 that prohibits the developers from using the free sale component or apportion of free sale component evidently meant as security for this claim. MHADA will take this into account while arriving at its decision and is at liberty to issue further directions for enforcement of the security as well depending on what it decides is due and whether any amount is actually secured. The ad-interim order is therefore continued for a period of eight weeks from today.

6. Individual disputes between members and the developer in regard to the areas of the flat that are given to them are purely contractual. These are the subject matter of various IAs. We decline to grant substantive relief in such IAs. Those Applicants are at liberty to take the necessary steps in accordance with law to enforce their rights whether under a Permanent Alternate Accommodation Agreement (“PAAA”), Development Agreement (“DA”) or under the No Objection Certificate (“NOC”) that was granted by MHADA.

7. If there is question of whether a person is or is not a certified tenant, that is not a matter that a Writ Court will address. For instance, Mr Jagtiani makes a grievance that a particular individual is not given possession. Mr Tamboly disputes that the individual in question is certified by MHADA as a tenant entitled to benefits. It is for that person to make the necessary application to MHADA. There is no doubt that the developer is bound by the certification list that is prepared by MHADA. There can be no question of going to any other Court to have that certification question because the entire responsibility of the developer and the free sale benefits of the developer are linked to the certification by MHADA.

8. We refuse to get into a question of which of the heirs of an original tenant is entitled to the benefits of rehabilitation or redevelopment. MHADA has its protocols in that regard and these will necessarily have to be followed.

9. We are making it clear that MHADA is not required to enter into any controversy that is beyond its statutory remit.

10. The Writ Petition, Contempt Petitions and Interim Applications are disposed of in these terms with no order as to costs.

(Kamal Khata, J)

(G. S. Patel, J)