

Sumedh

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 656 OF 2024

Mohamed Riyaz Shaikh & Ors ...Petitioners
Versus
The Chief Officer, Mumbai Building Repairs And
Reconstruction Board & Ors ...Respondents

Ms Aneesa Cheema, with Z Jarimala, Shabbir Jarimala i/b Jarimala
Associates, for the Petitioner.
Mrs Jyoti Chavan, Addl GP, for the Respondent-State.
Mr PG Lad, with Shreya Shah, for Respondents Nos. 1, 2, 3, 6-
MHADA.

CORAM G.S. Patel &
Kamal Khata, JJ.
DATED: 19th March 2024

PC:-

1. Ms Cheema points out that this Petition is being frustrated by Respondents Nos. 4 and 5, the owners/developers, simply not appearing in Court despite the fact that the Petitioners' Attorneys has given notice repeatedly. They have even given notice of each day's listing. There is an affidavit of service of 19th March 2024 which shows that service was effected on 19th January 2024 by email under a cover letter of that date and by hand delivery on 20th January 2024. Paragraph 4 of the affidavit says that Respondents Nos. 4 and 5 refused to accept service in hard copy. Then soft

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copies were served again. The refusal to receive hard copy is a statement made on affidavit.

2. As far as we are concerned, this is sufficient service. By way of an abundant caution we direct the Petitioners' Attorneys and the Registry to serve a copy of the Petition on Respondents Nos. 4 and 5 once again. The Registry will effect hand delivery. The Petitioners will send it by courier.

3. We do not propose to delay an order in this matter much longer. The reason is straightforward from the dates that Ms Cheema gives us. The building was called Shahzadi Mansion at Duncan Road, Mumbai. Some of the Petitioners are contractual tenants. Others are statutory tenants. There are some residential and some commercial tenancies. Respondents Nos. 4 and 5 are the developers and owners. They made a representation to the tenants and ultimately Permanent Alternate Accommodation Agreements ("PAAA") were executed in identical terms on 21st June 2019. The building was demolished. The Petitioners were paid transit rent from 2019 to 2021. After that nothing has been paid. Construction did begin but it stalled at about the plinth level or just above.

4. This is relevant because Section 91-A of the Maharashtra Housing and Area Development Act, 1976 ("**MHADA Act**"), brought into effect on 2nd December 2022 by an amendment, contemplates precisely such a situation where redevelopment work is left incomplete, delayed or has not commenced within three years from the date of issue of MHADA's No Objection Certificate

(“NOC”) or the redevelopment work of cessed building is stalled for more than two years from the date of issue of Commencement Certificate by the Mumbai Municipal Corporation or the NOC holder is in breach of the terms and conditions of the NOC or has not paid rent for temporary alternate accommodation to the tenants or occupants of a building. If that be so, the Board may, after prior approval from the State Government, initiate a process for acquisition of the building under the provisions of the Act and can then complete the redevelopment work. This is precisely the frame of the prayers in the Petition as we can see from prayer clauses (a) and (b) which read as follows:

“(a) this Hon’ble Court be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ or order directing the Respondent No. 6 to give an approval to Respondent Nos. 1, 2 & 3 to initiate action for acquisition of the building which is being redeveloped by Respondent No. 4 under the provisions of MHADA Act, 1976 and to get the redevelopment work completed either by Respondent Nos. 1, 2 & 3, the Board or any other developer and hand over possession of the reconstructed shops to the Petitioners as per the MOU and the PAAA.

(b) this Hon’ble Court be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ or order directing the Respondent Nos. 4 & 5 to pay to the Petitioners the arrears of transit rent from the period of 01.06.2021 till 31.01.2024 together with interest as per the particulars of transit rent as set out in Exhibit J hereto.”

5. This will have to be read with the amendment to Section 77 which gives the Repair Board the power to undertake redevelopment projects as provided in amended Section 91-A.
6. We do not propose to allow these developers (and we have every confidence that they are somewhere in Court waiting to see what will happen or whether the Court will simply adjourn the matter) any further latitude. We will pass the necessary orders on the next date.
7. We are making it clear that a failure to accept courier service will be treated as good service. The failure to accept service from Court will be dealt with as contempt.
8. Additional affidavit is to be filed in Registry.
9. List the matter on 22nd March 2024.

(Kamal Khata, J)

(G. S. Patel, J)