

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.12693 OF 2024

Mangla Prasad Choubey

Petitioner

Versus

Maharashtra Housing Association Development
Authority and others

Respondents

Ms.Gauri Kishor Jadhav, Advocate for Petitioner.

Mr.Satyajeet P.Dighe for MHADA.

CORAM: G. S. KULKARNI &
AARTI SATHE, JJ.

DATE: 16th September 2025

P.C.

1. This petition under Article 226 of the Constitution of India is filed
praying for the following substantive reliefs :

“a) This Hon’ble Court be pleased to call the record and proceeding
pending before the MHADA Authority regarding the tenement
situated at premises bearing No.10/96 situated at MHB Colony,
Pragati Co-operative Housing Society, Mahavir Nagar, Kandivali
(West), Mumbai-400 067,

b) That this Hon’ble Court after going through the record and
proceedings be pleased to quash and set aside the Orders dated
15.2.1991 an 24.11.1992 passed by the Respondent no.1 and further
in view of the cancellation of the regularization of the tenement in
favour of the Respondent nos.2 and 3 and in view of the possession
warrant dated 19.1.2016 passed by the Competent Authority, direct
the Respondent no.1 to hand over the peaceful possession of the suit
premises to the Petitioner;

c) That this Hon’ble Court be pleased to direct the Respondent
nos.2 and 3 to vacate the suit premises immediately and hand over
the peaceful possession to the Petitioner.”

2. At the outset we may observe that there is an old dispute between the Petitioner in respect of premises in question which are allotted by MHADA in favour of Petitioner and Respondent nos.2 and 3. Also a civil suit is pending before the City Civil Court being Suit No.2073 of 2012. Further there are criminal proceedings which are also pending between these parties. Respondent no.3 had approached this Court in the proceedings of Writ Petition No.2585 of 2013 which came to be decided by the Division Bench of this Court vide order dated 18th February 2016 wherein the Court taking in to consideration the background of the inter se disputes between the Petitioner and Respondent no.3, allowed the said petition filed by Respondent no.3. The relevant observations in that regard are required to be reproduced, which read thus :

“11. After having heard both sides and perusing with their assistance the Petition and all Annexures thereto, what we find to be the undisputed position is that there was a certain allotment. That was initially in favour of the 2nd Respondent, but the inspection and survey of the premises revealed that the Petitioner is in physical possession thereof. Upon the physical possession of the Petitioner being termed as without permission or authority of law, the 1st Respondent proceeded to pass an eviction order, a copy of which is annexed to the Petition and the operative part of which appears at page 21. That order of eviction was final, but the Petitioner somehow approached the authority and sought a regularisation of the occupation. The communication at page 53 itself denotes that there was indeed an order of regularisation dated 3rd April 1995. It is in that view of the matter that the 2nd Respondent proceeded against the Petitioner in a Civil Court and also knocked at the doors of the Criminal Court. But the fact remains that both proceedings are even now pending. It is not yet established or proved that there is indeed a forgery and fabrication as alleged. Secondly, it is yet to be established that the 2nd Respondent was the original allottee and, therefore, through out entitled to the possession of the premises or that entry by the Petitioner is impermissible and must come to an end after the order of the eviction passed against her. All these are matters that cannot be prejudged by taking over the functions of the competent Court. In our view, the competent authority had no power to assist

the 2nd Respondent in this manner. Once the authority has not given effect to the order of eviction dated 15th February 1991, but has regularized the occupation of the Petitioner in respect of the premises, then on 2nd Respondent's version, proceedings could not have been initiated against the Petitioner. The authority should have refrained from entering the arena and should have relegated the 2nd Respondent and the Petitioner to the proceedings before the competent Court. More so when the 2nd Respondent made a complaint on 7th March 2009, and, on the date on which the subject communication was issued, the 2nd Respondent had already approached a Civil Court and filed a Civil Suit. He had also approached the local police station and at his instance a charge sheet has been filed in the competent Criminal Court. In such disputed claims and matters, the authority should have kept itself out and not assisted either parties.

12. In these circumstances, once the authority has exceeded its powers and conferred by law, then we cannot accept the request of Mr.Thorat and Ms.Kutti Krishnan that the impugned order be sustained. We, therefore, allow this petition. We quash and set aside the impugned communication and any consequential steps or order in furtherance thereof. However, we clarify that it is only for the purpose of a scrutiny and verification of the communication with regard to its validity and authority that we have made the above observations. Our order shall not prevent the 2nd Respondent from pressing his suit in the Mumbai City Civil Court or in the prosecution against the Petitioner and her husband in the competent Criminal Court. All these proceedings shall be completed on their own merits and in accordance with law uninfluenced by the present order.”

3. Admittedly as on date the civil suit is pending with clear observations of the Division Bench in the above order that the dispute is required to be resolved in a civil suit. In this view of the matter, we are not inclined to entertain this petition at this stage.

4. The petition is disposed of. No costs. All contentions of the parties are expressly kept open in the pending civil suit.

5. The Petitioner is permitted to move Civil Court for early hearing of the civil suit. If such an application is made, it be decided on merits and in accordance with law. All contentions in that regard are also expressly kept open.

(AARTI SATHE, J.)

(G. S. KULKARNI, J.)