

Amk

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO. 512 OF 2025
WITH
WRIT PETITION NO. 519 OF 2025**

Bhavana Bharat Jain ... Petitioner
V/s.
Damanjit Kaur Singh Since Deceased
Through LRs & Anr. ... Respondents

Mr. Vishal Kanade a/w. Mr. Nikhil Karnawat, Mr. Kartik Tiwari, Mr. Aditya Kanchan i/b Lakshyavedhi Legal for the Petitioner.

Mr. Aniesh S. Jadhav for Respondent No.2.

Mr. Jitendra Damani for Respondent Nos.4 & 5.

CORAM : AMIT BORKAR, J.

DATED : APRIL 1, 2025

P.C.:

1. Both these writ petitions are directed against a common order passed by the learned Appellate Officer under the Maharashtra Housing and Area Development Act, 1976 (for short, "the MHADA Act"), whereby the appellate authority entertained and allowed the appeals arising from proceedings initiated under Section 66 of the MHADA Act. The petitioners herein, being aggrieved by the said common order, have invoked the writ jurisdiction of this Court under Article 226 of the Constitution of India, praying for quashing and setting aside the said appellate order.

2. On a careful perusal of the order passed by the Appellate Officer, it is evident that the authority has proceeded to record findings on the genuineness of the registered documents placed before it, and based thereupon, proceeded to allow the appeals filed by the contesting respondents, directing the eviction of the petitioners. However, learned counsel appearing for the contesting respondents has drawn my attention to an order dated 05.12.2012, which, it is submitted, had been passed by the Competent Authority while exercising powers under Section 66 of the MHADA Act, thereby cancelling the transfer of the subject plot. It is the contention of the respondents that in light of the said cancellation order, the petitioners' occupation has become unauthorised and liable for eviction.

3. In the event the contention raised by the respondents is correct, then it would necessarily follow that the petitioners' right to remain in possession stands extinguished by operation of the said order dated 05.12.2012. However, such conclusion cannot be mechanically drawn. It was incumbent upon the Appellate Officer to consciously evaluate and consider the legal effect and implications of the said order dated 05.12.2012. Without a clear finding on the said issue, the decision to evict the petitioners lacks foundational reasoning.

4. A perusal of the impugned appellate order reveals that the Appellate Officer has not confined himself to the scope of inquiry permissible under Section 66 of the MHADA Act. The appellate authority has ventured into recording findings regarding the authenticity and validity of the transaction, and further concluded

that since criminal proceedings have been initiated in respect of the subject property, the assignment of leasehold rights ought to be cancelled. In my considered view, such an approach is legally unsustainable. The power vested in the Competent Authority under Section 66 is circumscribed and limited in nature. The scope of inquiry under the said provision is restricted to examining whether the allottee or the occupant has breached the terms and conditions of allotment or whether the occupation has become unauthorised in terms of the governing statutory provisions. A broader inquiry into criminality or civil disputes regarding title is outside the pale of jurisdiction of the authority acting under Section 66.

5. If, as contended by the respondents, the petitioners' possession has become unauthorised by virtue of the cancellation order dated 05.12.2012, then it was incumbent upon the Appellate Officer to thoroughly examine the legal effect of the said cancellation order, evaluate its binding nature, and decide the appeal with appropriate findings on whether such cancellation has the effect of invalidating the petitioner's possession. The impugned order dated 03.12.2024, in the absence of such examination, is vitiated by non-application of mind and cannot be sustained in law. Accordingly, the said order is quashed and set aside. The matter is remitted back to the Appellate Officer under the MHADA Act for a fresh adjudication of Appeal Nos. 4/2017 and 1/2017. The said authority shall decide the appeals on their own merits and in accordance with law, uninfluenced by the earlier findings, and shall complete the adjudication within a period of three

months from the date of appearance of the parties.

6. The parties shall appear before the learned Appellate Officer on 07.04.2025 at 10:30 a.m., without awaiting further notice. All contentions of both sides, on facts and law, are expressly kept open for consideration by the appellate authority.

7. In view of the above directions, both the writ petitions stand disposed of.

8. As regards the amount of Rs. 50 Lakhs deposited with this Court during the pendency of the writ petitions, the same shall be transmitted to the appellate authority. The parties may take appropriate steps before the Registry of this Court to facilitate the transmission of the said amount. The Appellate Officer shall take further steps regarding disbursement of the amount in accordance with the final outcome of the appeals and after hearing the parties.

(AMIT BORKAR, J.)