

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

WRIT PETITION NO.512 OF 2025

Bhavana Bharat Jain

... **Petitioner**

Versus

Damanjit Kaur Singh

Since Deceased Thr.Lrs

Priya Prabhakar Rane & Anr.

... **Respondents**

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

Bhavana Bharat Jain

... **Petitioner**

Versus

Damanjit Kaur Singh

Since Deceased Thr.Lrs

Priya Prabhakar Rane & Anr.

... **Respondents**

Mr. Vishal Kanade a/w Mr. Nikhil Karnawat and Mr. Kartik Tiwari i/b M/s. Lakshyavedhi Legal for the Petitioner.

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

Mr. Jitendra G. Damani i/by Ms. Ruchi Singh, for Respondent Nos.4 & 5.

CORAM : SANDEEP V. MARNE, J.

DATE : 15 JANUARY 2025.

P.C. :

1) The Petitions challenge the order dated 3 December 2024 passed by the Appellate Officer under the Maharashtra Housing and Area Development Act, 1976 (**the MHADA Act**) allowing the

appeals filed by Respondent No.1-Priya Prabhakar Rane and by Estate Manager (West Division), **MHADA** setting aside the order of the Competent Authority dated 17 January 2017 in Case No. 26 of 2013. The Appellate Officer has proceeded to cancel assignment of lease hold rights in favour of the Petitioner *inter alia* on the ground that the original Lessee did not receive any consideration at the time of the alleged assignment and that the assignment was executed on invalid Power of Attorney. The jurisdiction of the Competent Authority was invoked under provisions of Section 66 of MHADA Act and which provides thus:

“66. Power to evict certain persons from Authority premises.

(1) If the Competent Authority is satisfied-

(a) that the person authorised to occupy any Authority premises has-

(i) not paid rent or compensation or amount lawfully due from him in respect of such premises for a period of more than two months, or

(ii) sub-let, without the previous permission of the Authority, the whole or any part of such premises, or

(iii) committed, or is committing any act which is destructive or permanently injurious to such premises, or

(iv) made, or is making, material addition to, or alteration in, such premises without the previous permission of the Authority, or

(v) otherwise acted in contravention of any of the terms, express or implied, under which he is authorised to occupy such premises, or

(vi) failed to vacate the premises required by the Authority for the purpose of implementing any plan or project for the sale of tenements and to accept the alternative accommodation offered by the Authority.

(b) that any person is an unauthorised occupation of any Authority premises, the Competent Authority may, for reasons to be recorded in writing, by notice served (i) by post, or (ii) affixing a copy of it on the outer door or some other conspicuous part of such premises, or (iii) in such other manner as may be prescribed, order that person, as well as any other person, who may be in occupation of the whole or any part of the premises, to vacate the premises in unauthorised occupation, within 24 hours of the date of service of notice, and in any other case within a period of seven days of the date of such service.

(2) Before an order under sub-section (1) is made against any person, the Competent Authority shall issue, in the manner hereinafter provided a notice in writing calling upon all persons concerned to show cause within ten days why an order of eviction should not be made. The notice shall -

(a) specify the grounds on which the order of eviction is proposed to be made; and

(b) require all persons concerned, that is to say, all persons who are or may be in occupation of, or claim interest in, the Authority premises, to show cause against the proposed order, on or before such date as is specified in the notice.

If such persons makes an application to the Competent Authority for the extension of the period specified in the notice, such Authority may grant the same on deposit of one hundred rupees and on such terms as to payment and recovery of the amount claimed in the notice, as such Authority thinks fit.

Any written statement put in by any person and documents produced in pursuance of the notice, shall be filed with the record of the case, and such person shall be entitled to appear before the Competent Authority by advocate, attorney or other legal practitioner.

The notice to be served under this sub-section shall be served in the manner provided for the service of a notice under sub-section (1); and thereupon, the notice shall be deemed to have been duly given to all persons concerned.

(3) If any person refuses or fails to comply with an order made under subsection (1), the Competent Authority may evict that person and any other persons who obstructs him and takes possession of the premises, and may for that purpose use such force as may be necessary.

(4) The Competent Authority may, after giving ten clear days notice to the person from whom possession of the Authority premises has been taken under subsection (3), and after publishing such notice in the prescribed manner, remove or cause to be removed or disposed of by public auction, any property remaining on such premises. Such notice shall be served in the manner provided for the service of a notice under sub-section (1).

(5) Where the property is sold under sub-section (4), the sale proceeds shall, after deducting the expenses of sale, be paid to such person or persons as may appear to the Competent Authority to be entitled to the same :

Provided that, where the Competent Authority is unable to decide as to the person or persons to whom the balance of the amount is payable or as to the apportionment of the same, he shall refer such dispute to a civil court of competent jurisdiction and the decision of the court thereon shall be final. (6) If a person, who has been ordered to vacate any premises under sub-clause (i) or (v) of

clause (a) of sub-section (1), within seven days of the date of service of the notice, pays to the Authority the rents or compensation or amount in arrears or carries out or otherwise complies with the term contravened by him to the satisfaction of the Competent Authority, such Authority shall, on such terms, if any (including the payment of any sum by way of damages or compensation for the contravention aforesaid), in lieu of evicting such person under sub-section (3) cancel his order made under sub-section (1) and thereupon, such person shall continue to hold the premises on the same terms on which he held them immediately before such notice was served on him:

Provided that, if a person authorised to occupy the Authority premises fails to pay the arrears of rent, compensation or amount for three times within a period of two consecutive years, he shall be liable to be evicted under the provisions of this section.

Explanation I - For the purpose of this Chapter, the expression 'unauthorised occupation' in relation to any person authorised to occupy any Authority premises includes the continuance of occupation by him or by any person claiming through or under him of the premises after the authority under which he was allowed to occupy the premises has expired or has been duly determined.

Explanation II.- For the purpose of this Chapter, the term rent, compensation or amount includes any payment to be made by a person in respect of any premises taken by him from the Authority under hire-purchase agreement and also any penalty [imposed such rate as may be prescribed] [These words were substituted for the words 'which the Competent Authority may levy according to rules' by Maharashtra 12 of 1989, Section 5.] for the default in the payment of rent, compensation or amount. The amount of such penalty shall not exceed 10 per cent, of such rent, compensation or amount.

(7) Notwithstanding anything contained in this Chapter including this section, if any person fails to vacate the premises required by the Board for the purpose of demolition of building containing such premises which are unfit for human habitation then, the Board may required the occupants thereof to vacate the premises within 24 hours of the date of service of the notice; and at the same time allot them alternative accommodation in any building of the Authority at such place as it thinks fit. The accommodation may not be in the same locality or of the same floor area as the premises vacated by the occupiers. If any occupier fails to accept and occupy the alternative accommodation allotted to him within the time specified by the Board the responsibility of the Board to provide him with any alternative accommodation shall cease. Such occupier shall, however, have a right to re-occupy his premises in the building if a building is re-erected on the land on which the demolished building stood.

(8) Where an occupier does not vacate his premises, the Board may take or cause to be taken such steps and use or cause to

be used such, force as may be reasonably necessary for the purpose of getting the premises vacated.

(9) The decision of the Board under sub-sections (7) and (8) shall be final and conclusive and shall not be called in question in any court nor any injunction against the order of demolition or vacation of the premises shall be made by any court.”

2) *Prima facie* it appears that the Appellate Officer while considering the validity of the order passed by the Competent Authority has acted as if he is a Civil Court and has adjudicated the issues with regard to validity of Power of Attorney and validity of Deed of Assignment. It is common ground that the Deed of Assignment dated 6 August 2002 has been executed in favour of the Petitioner with MHADA as a confirming party. It is, therefore, difficult to accept at this stage that Petitioner would be an unauthorized occupant of the land in question. MHADA seems to have authorized the entry of the Petitioner on the plot of land. The Appellate Authority instead of restricting the decision to the nature of possession of the plot of land by Petitioner has clearly excluded its jurisdiction by exercising power of a Civil Court by adjudicating the issue of validity of Power of Attorney and of Deed of Assignment. *Prima facie*, therefore, the impugned order dated 3 December 2024 passed by the Appellate Officer appears to be erroneous.

3) At the same time, it is seen that the original Lessee Smt. Damanjit Kaur Singh has secured lease of the plot of land admeasuring approximately 100 square meters on 13 March 1996 on payment of lease premium of Rs. 3,63,073/- to MHADA. It is the contention of the Petitioner that the lease has been assigned in her favour upon payment of consideration of Rs. 7 lakhs to the constituted Attorney of Smt. Damanjit Kaur Singh in addition to payment of transfer charges to MHADA.

4) The Appellate Officer has held that no consideration has flown to the original Lessee Smt. Damanjit Kaur Singh. In that view of the matter, it would be appropriate to direct the Petitioner to make him deposit an amount of Rs. 50 lakhs as a pre-condition for grant of interim stay to the order dated 3 December 2024.

5) Accordingly, order dated 3 December 2024 passed by the Appellate Officer shall remain stayed during pendency of the present Petition subject to the Petitioner depositing in this Court amount of Rs. 50 lakhs within a period of 6 months. The deposited amount to be invested by the Registry in the Nationalized Bank to accrue the interest on the deposit.

6) List the Petition for further consideration on **24 March 2025**.

[SANDEEP V. MARNE, J.]