Santosh

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10545 OF 2025

Bhavana Bharat Jain ...Petitioner

Versus

1. Damanjit Kaur Singh Since deceased Through LRs Priya Prabhakar Rane
2. The Estate Manager (West) Division, Maharashtra Housing and Area Development Authority, Griha Nirman Bhavan, Bandra (East) Mumbai ...Respondents

WITH

WRIT PETITION NO. 10546 OF 2025

Bhavana Bharat Jain ...Petitioner

Versus

1. Damanjit Kaur Singh Since deceased Through LRs Priya Prabhakar Rane
2. The Estate Msanager (West) Division, Maharashtra Housing and Area Development Authority, Griha Nirman Bhavan, Bandra (East) Mumbai ...Respondents

Mr. Vishal Kanade, a/w Kartik Tiwari and Aditya Kanchan, i/b Lakshyavedhi Legal, for the Petitioner in both Petitions.

Mr. Ranjeet Thorat, Senior Advocate, a/w J. Damani, for Respondent No.1 in both Petitions.

Mr. Aniesh S. Jadhav, a/w Shyam K. Singh and Rushikesh Kekane, for Respondent No.2 in both Petitions.

CORAM: N. J. JAMADAR, J.
RESERVED ON: 12th AUGUST, 2025
PRONOUNCED ON: 26th AUGUST, 2025

JUDGMENT:-

1. Rule. Rule made returnable forthwith and, with the consent of the learned Counsel for the parties, heard finally.

2. These petitions under Articles 226 and 227 of the Constitution of India call in question the legality, propriety and correctness of a common judgment and order dated 1st July, 2025 passed by the Appellate Officer in Appeal Nos.4 of 2017 and 1 of 2018, preferred by respondent No.1 and the Estate Manager of Maharashtra Housing and Area Development Authority (MHADA) (R2), respectively, under Section 70 of the Maharashtra Housing and Area Development Act, 1976 ("the MHAD Act").

3. By the said common judgment and order, the Appellate Officer was persuaded to allow the appeals and set aside an order dated 17th January, 2017 passed by the Competent Authority thereby dropping the eviction proceeding initiated by the Estate Manager, MHADA under 66(1)(b) of the MHAD Act on the premise that the petitioner was the unauthorized occupant in respect of Plot Nos.356–376 RSC 37 admeasuring 100.02 sq. mtrs. situated at Gorai, Borivali (West), Mumbai ("the subject premises"), and direct the petitioner to hand over the vacant possession of the subject premises.

4. The background facts necessary for the determination of these petitions can be summarized as under:

4.1 Late Damanjit Kaur Singh had submitted an application for allotment of a plot in the scheme floated by MHADA. Vide communication dated 11th October, 1994, MHADA declared late Damanjit eligible for allotment of the developed plot. Late Damanjit deposited the lease premium of Rs.3,63,000/- and advance lease rent of Rs.3,680/-. After the submission of the acceptance letter, an Indenture of Lease dated 13th March, 1996 came to be executed by MHADA in favour of late Damanjit. The possession of the subject premises was delivered to late Damanjit on 15th April, 1996. The allottee was to construct a building on the subject premises within three years from the date of execution of the Lease Deed.

4.2 The petitioner claimed, late Damanjit was not in a position to develop the plot and construct a building thereon. Thus, late Damanjit had executed an Irrevocable Power of Attorney in favour of Smt. Leeladevi Lohar on 22nd January, 1996. On the strength of the said Irrevocable Power of Attorney Leeladevi Lohar entered into a transaction to assign the leasehold rights in the subject premises in favour of the petitioner. MHADA gave approval for the assignment of the leasehold rights. Thereupon, a registered Deed of Assignment came to be executed on 6th August, 2002 by and between late Damanjit, through her Power of Attorney, the petitioner, and MHADA, as the confirming party. The petitioner thereafter obtained the consent of MHADA to develop the plot and also raise finance for carrying out the development. Eventually, with the approval of the Planning Authority the petitioner constructed a bungalow on the subject premises.

4.3 Around the year 2012, respondent No.1 who claimed to be the Constituted Attorney of late Damanjit, lodged complaints with the Authorities in regard to the assignment of leasehold rights in the subject premises and the construction of the building thereon by the petitioner. It was, *inter alia,* alleged that, on the strength of the false and fabricated documents the subject premises came to be assigned in favour of the petitioner. Allegations were made against Smt. Leeladevi Lohar, the Constituted Attorney of Damanjit.

4.4 MHADA initiated an enquiry. On 5th December, 2012, the Deputy Chief Executive Officer passed an order thereby cancelling the assignment of the leasehold rights in the subject premises in favour of the petitioner recording that the petitioner had obtained the transfer of the leasehold rights by submitting false and forged document. Transfer fee of Rs.50,000/- deposited by the petitioner was forfeited.

4.5 On the strength of the aforesaid order, the Estate Manager (R2) instituted proceeding before the Competent Authority, MHADA, under Section 66 of the MHAD Act, being Case No.26 of 2013. The Competent Authority after appraisal of the material on record and the evidence adduced by the parties dropped the eviction proceeding observing that the transaction between the allottee and petitioner appeared to be genuine and, thus, the order dated 5th December, 2012 passed by the Deputy Chief Officer cancelling the transfer of the leasehold rights in favour of the petitioner was not sustainable. The fact that the Deed of Assignment was a registered instrument and, thus, it could not have been modified, varied or cancelled except by way another registered instrument or by the order of the Competent Court, weighed with the Competent Authority.

4.6 Being aggrieved, respondent Nos.1 and 2 preferred the appeals before the Appellate Officer. By a common judgment and order dated 3rd December, 2024, the Appellate Officer allowed the appeals and set aside the judgment and order passed by the Competent Authority.

4.7 The petitioner had challenged the said judgment and order passed by the Appellate Officer in Writ Petition Nos.612 of 2025 and 618 of 2025. By an order dated 1st April, 2025 this Court allowed the aforesaid petitions and set aside the orders passed by the Appellate Officer. It was, *inter alia,* observed that it was incumbent upon the Appellate Officer to thoroughly examine the legal effect of the cancellation order dated 5th December, 2012, evaluate its binding nature and then decide the appeals by recording appropriate findings on the question whether such cancellation has the effect of invalidating the petitioner's possession. The Appellate Officer was thus directed to decide the appeals afresh on their own merits. The Appellate Officer was also directed to pass appropriate orders regarding the disbursement of the sum of Rs.50,00,000/- deposited by the petitioner, pursuant to the interim order passed by this Court on 15th January, 2025, in accordance with the final outcome of the appeals.

4.8 The Appellate Officer, again heard the parties and passed the impugned common judgment and order thereby allowing the appeals and directing the petitioner to hand over the vacant possession of the subject premises. As regards the disbursement of Rs.50,00,000/- deposited by the petitioner, it was ruled that the appropriate order would be passed after receipt of the report from the Estate Manager in regard to the amount that would be liable to be paid by the petitioner on account of her unauthorized occupation of the subject premises.

5. Being aggrieved, the petitioner has again invoked the writ jurisdiction.

6. I have heard Mr. Vishal Kanade, the learned Counsel for the petitioner, Mr. Ranjeet Thorat, the learned Senior Advocate for respondent No.1, and Mr. Aniesh Jadhav, the learned Counsel for respondent No.2, at some length. The learned Counsel for the parties took the Court through the material on record and the orders passed by the Competent Authority and the Appellate Officer.

7. Mr. Kanade, the learned Counsel for the petitioner, submitted that the impugned order suffers from the same infirmities which had persuaded this Court to remit the matter back to the Appellate Officer, with specific directions. In the impugned order, the Appellate Officer has again committed the very same mistakes and delved into the legality and validity of the instruments executed by and between the parties, which was clearly beyond the remit of the jurisdiction of the Appellate Officer.

8. Amplifying the aforesaid submission, Mr. Kanade would urge that the registered Deed of Assignment still holds the field.

It has not been declared null and void by any Competent Court. Nor any proceeding has been instituted before the Civil Court seeking declaration regarding the legality and validity of the said Deed of Assignment. In this backdrop, according to Mr. Kanade, the Appellate Officer committed a grave jurisdictional error in pronouncing upon the legality and validity of the Deed of Assignment and the other documents executed by and between the parties.

9. Secondly, Mr. Kanade would urge, the Appellate Officer lost sight of the fact that for over 10 years no grievance was made regarding the legality and validity of the transfer of the leasehold rights in favour of the petitioner. In the intervening period, the petitioner had carried out development over the subject premises and constructed a bungalow by obtaining necessary permission from the Planning Authority and raising finance from the Bank, with the approval of MHADA. The absolute ownership of the petitioner over the superstructure, constructed on the subject premises, is indisputable.

10. Mr. Kanade further submitted that the transfer in favour of the petitioner could not have been lawfully cancelled by the Deputy Chief Executive Officer by the order dated 5th December, 2012, especially after a registered Deed of Assignment came to be executed by MHADA as a confirming party. Therefore it was not necessary for the petitioner to challenge the said order dated 5th December, 2012. At any rate, the Competent Authority had examined the legality and validity of the said termination order dated 5th December, 2012 and declared that the said termination order was not legal and valid. In that view of the matter, it was not open for the Appellate Officer to overturn the findings of the Competent Authority by delving into the legality and validity of the Deed of Assignment and the other documents executed by and between the parties. Thus, the impugned order warrants interference, submitted Mr. Kanade.

11. Mr. Thorat, the learned Senior Advocate for respondent No.1, submitted that the petitioner does not deserve any relief in exercise of discretionary writ jurisdiction. The material on record would indicate that the petitioner had practiced an egregious fraud on the original allottee and MHADA, and obtained the transfer of the leasehold rights by placing reliance on false and fabricated documents. Inviting the attention of the Court to the sequence of the events and the nature of the documents executed between the parties, Mr. Thorat would urge that, the fraud is writ large. Thus, the Deputy Chief Executive Officer, MHADA, was within his rights in terminating the transfer of the leasehold rights in favour of the petitioner as the documents were *ex facie* false and fabricated. Mr. Thorat further submitted that mere registration of the Deed of Assignment does not clothe it with legality and validity, when the approval of the MHADA was obtained by pressing into service false and fabricated documents. In these circumstances, the Appellate Officer committed no error which would warrant correction in exercise of extraordinary writ jurisdiction, submitted Mr. Thorat.

12. Mr. Jadhav, the learned Counsel for respondent No.2, supplemented the submissions of Mr. Thorat. Attention of the Court was invited to the execution of the NOC affidavit and Indemnity Bond in favour of the petitioner on 25th January, 1996, when the petitioner was not at all in the frame. This factor coupled with the execution of the alleged irrevocable Power of Attorney by late Damanjit in favour of Smt. Leeladevi Lohar on 24th January, 1996, much before the execution of the Lease Deed by MHADA in favour of late Damanjit, underscores the fraudulent nature of the transaction, submitted Mr. Jadhav. Mr. Jadhav also urged that the discretionary writ jurisdiction need not be exercised in favour of a party whose conduct is dishonest and fraudulent. To this end, reliance was placed by Mr. Jadhav on the judgments of the Supreme Court in the cases of ***M. P. Mittal vs. State of Haryana and others***[1] and ***Garment Graft vs. Prakash Chand Goel*** [2].

13. I have given anxious consideration to the rival submissions canvassed across the bar.

14. To start with with, it may be apposite to note few uncontroverted facts. Firstly, the process of allotment of the subject premises to late Damanjit in the year 1994, culminating in the execution of the Indenture of Lease in favour of late Damanjit on 13th March, 1996, is not in contest. The fact that pursuant to the Lease Deed late Damanjit was put in possession of the subject premises is also incontestible. Secondly, the petitioner claimed to have acquired the leasehold rights under registered Deed of Assignment dated 6th August, 2002, purportedly executed by Smt. Leeladevi Lohar, as the Constituted Attorney of late Damanjit, the assigner, and the MHADA, as the confirming party. Thirdly, the cancellation of the allotment by the Deputy Chief Executive Officer, MHADA by order dated 5th December, 2012 is also not much in dispute. The controversy between the parties revolves around the question whether the said order dated 5th December, 2012 entailed

1 (1984) 4 Supreme Court Cases 371.
2 (2022) 4 Supreme Court Cases 181.

the consequence of rendering the occupation of the subject premises by the petitioner unauthorized?

15. Respondent No.1 approached the Authorities with a case that the Deed of Assignment came to be executed fraudulently. Smt. Leeladevi Lohar had no authority to execute the said Deed of Assignment as she was not the Constituted Attorney of late Damanjit. The Deed of Assignment came to be executed on the strength of false and forged documents and in connivance with the officers and officials of MHADA.

16. Per contra, the petitioner laid emphasis on the registered Deed of Assignment and the subsequent development of the subject premises by constructing a bungalow thereon by obtaining the permission of the concerned Authorities including the MHADA. At any rate, according to the petitioner, the authorities under the MHAD Act had no jurisdiction to decide the legality and validity of the registered Deed of Assignment and the documents executed by late Damanjit in favour of Smt. Leeladevi Lohar.

17. In the backdrop of the aforesaid controversy, it becomes evident that the order of cancellation of the assignment in favour of the petitioner passed by the Deputy Chief Executive Officer, MHADA, dated 5th December, 2012 was not challenged by the petitioner. Mr. Kanade made a valiant attempt to draw home the point that notwithstanding the failure on the part of the petitioner to challenge the said order dated 5th December, 2012, the petitioner was entitled to contest the action of MHADA of declaring the petitioner as an unauthorized occupant for two reasons. First, MHADA could not have cancelled the assignment in favour of the petitioner once a registered Deed of Assignment was executed. Second, the said order dated 5th December, 2012 was a subject matter of challenge in the eviction proceeding initiated at the instance of MHADA i.e. Case No.26 of 2013, before the Competent Authority. Since the Competent Authority had declared that the said action of the Deputy Chief Executive Officer, MHADA, was not justified, the petitioner was not required to assail the said order.

18. In order to appreciate the aforesaid submissions, it may be apposite to note the provisions contained in Section 66(1)(b) of the MHAD Act, which reads as under:

> "**Section 66**. **Power to evict certain persons from Authority premises.**
>
> **(1)** If the Competent Authority is satisfied-
>
> (a) ....
>
> **(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, other 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."
>
> *Explanation 1.-* For the purpose of this Chapter, the expression unauthorised occupation' in relation to any person authorised to occupy any Authority premises includes the continuance ofoccupation by him or by any personclaiming through or underhim ofthe premises aftertheauthority under which he was allowed to occupy the premises has expired or has been duly determined."

19. From the text of sub-section (1)(b) of the Section 66, it becomes abundantly clear that the remit of the jurisdiction of the Competent Authority is to decide whether a person is in an unauthorized occupation of any Authority premises. And, if so, order him to vacate the premises. The Explanation 1 to Section 66 further clarifies that the expression "unauthorized occupation" includes in its fold continuance of occupation of premises, after the authority under which the concerned person was allowed to occupy the premises has expired or has been duly terminated. Consequently, the termination of the allotment, or for that matter cancellation of the transfer or assignment, would bring the case within the ambit of the latter part of Explanation 1 to Section 66.

20. The Competent Authority was thus required to examine whether the authority under which the alleged unauthorized occupant was allowed to occupy the Authority premises has expired or has been duly determined. However, the Competent Authority, could not have gone into the larger question as to whether the order of cancellation of the assignment dated 5th December, 2012 passed by the Deputy Chief Executive Officer was legal and valid. The proper course for the petitioner was to assail the legality and validity of the said order in an appropriate proceeding.

21. It is also necessary to note that the proceedings under Section 66 of the MHAD Act were initiated at the instance of MHADA, after the Deputy Chief Executive Officer cancelled the assignment of the leasehold rights in favour of the petitioner. It was not the case of the petitioner that the petitioner had assailed the legality and validity of the said order dated 5th December, 2012 in any proceeding. Keeping this context in view, the challenge in the instant petition is required to be appreciated.

22. Upon the careful consideration and analysis of the material on record, it becomes abundantly clear that the circumstances which preceded and attended the execution of the Deed of Assignment in favour of the petitioner are hard and gross. Firstly, the purported Power of Attorney on the strength of which Smt. Leeladevi Lohar had executed the Deed of

Assignment, was allegedly executed on 22nd January, 1996, much before the Indenture of Lease came to be executed by MHADA in favour of the late Damanjit. The blank spaces left in the said Power of Attorney with regard to the particulars of the allotment and execution of the lease in favour of late Damanjit, underscore the said fact.

23. Secondly, the Indenture of Lease came to be executed by late Damanjit on 13th March, 1996. It is not the case that the Indenture of Lease was executed by Smt. Leeladevi Lohar in her capacity as the Constituted Attorney of late Damanjit. Nor any of the contemporaneous documents evidencing the acceptance of the allotment and deposit of lease premium and advance lease rent indicate that the said Smt. Leeladevi Lohar had executed the documents as a Constituted Attorney of late Damanjit.

24. Thirdly, it is imperative to note that on the very next day of the execution of the Lease Deed, late Damanjit purportedly applied for duplicate copies of the letters issued in respect of the subject premises on the ground that those documents were lost while traveling. To further confound the confusion, those documents were allegedly provided to late Damanjit, a day prior to the application i.e. 13th March, 1996 itself.

25. Fourthly, it was the positive case of the petitioner in her affidavit-in-reply before the Competent Authority that Smt. Leeladevi Lohar had approached the petitioner in the year 2002 and offered to transfer the subject premises. This stand plainly implies that the petitioner came in the frame in the year 2002 and, thereafter, negotiations were held and the transaction was executed between the petitioner and late Damanjit. However, the reliance on two of the documents by the petitioner, alongwith the letter dated 15th July, 2002, betrays the fraudulent nature of the transaction, beyond the pale of controversy.

26. The petitioner had placed reliance on the NOC affidavit and Indemnity Bond executed by late Damanjit affirming the fact that the subject premises was transferred in favour of the petitioner. It defies comprehension that late Damanjit could have sworn such an affidavit in the year 1996 to transfer the subject premises in favour of the petitioner in the year 2002. Indemnity Bond relied upon by the petitioner was also executed on 25th January, 1996 professing to indemnify MHADA from the consequences of the transfer of the subject premises in favour of the petitioner. The existence of, and reliance upon, these documents if considered in conjunction with the circumstances in which the Power of Attorney in favour Smt. Leeladevi Lohar was executed, much prior to the execution of the Indenture of Lease in favour of the petitioner, significantly erodes the genuineness of the transaction.

27. Lastly, it is material to note that under the Deed of Assignment no consideration flowed to late Damanjit. The contentions in the affidavit-in-reply of the petitioner before the Competent Authority that the petitioner had paid an amount of Rs.7,00,000/- by cheque and in cash to Smt. Leeladevi Lohar does not merit consideration in the face of the intrinsic evidence of the registered Deed of Assignment, which incorporates the terms of disposition.

28. The situation which thus emerges is that an endeavour was made to deprive the original allottee of the subject premises by pressing into services the Deed of Assignment, under which the original allottee did not receive any consideration, executed by a purported Constituted Attorney; on the strength of a document, which predates the Indenture of Lease, and the purported affidavit and Indemnity Bond, executed by the original allottee in favour of the petitioner, who was not at all in picture in the year 1996. The Competent Authority overlooked these glaring facts and documents and proceeded on an erroneous premise that a registered Deed of Assignment cannot be varied, modified or cancelled but by a registered instrument.

29. The submission of Mr. Kanade which proceeds on the same premise that the execution of the registered Deed of Assignment lends credence to the transaction does not carry any substance. There is no magic or charm in a registered instrument. Registration does not cure the defect in title or insulate the parties from the consequences of fraudulent transactions. The Appellate Officer was, therefore, fully justified in reversing the order passed by the Competent Authority.

30. In the light of the aforesaid factual position, which stares in the face, the question of justifiability of exercise of writ jurisdiction arises for consideration. Whether the petitioner deserves the discretionary relief in the face of the aforesaid material, which unmistakably indicates the fraudulent nature of the transaction, is the moot question. It is trite, fraud vitiates every act. A party who seems to have obtained an unfair advantage by making false statement or relying upon patently false documents, does not deserve any relief.

31. The reliance by Mr. Jadhav on the judgment of the Supreme Court in the case of ***M. P. Mittal*** (supra) appears to be well founded. In the said case, the Supreme Court observed as under:

> "5. …… The appeal arises out of a writ petition, and it is well settled that when a petitioner invokes the jurisdiction of the High Court under Article 226 of the Constitution, it is open to the High Court to consider whether, in the exercise of its undoubted discretionary jurisdiction, it should decline relief to such petitioner if the grant of relief would defeat the interests of justice. The Court always has power to refuse relief where the petitioner seeks to invoke its writ jurisdiction in order to secure a dishonest advantage or perpetuate an unjust gain. This is a case where the High Court was fully justified in refusing relief. On that ground alone, the appeal must fail."
>
> (emphasis supplied)

32. Another principle which assumes critical salience in the cases of the present nature, is the dictate of justice. The exercise of writ jurisdiction ought to be to advance the cause of justice. If the Court finds that by exercising the writ jurisdiction the ultimate cause of justice would be defeated, though the law might appear to be on the side of the party seeking the relief, the Court would be justified in declining to grant the relief. A useful reference can be made to a decision of this Court, in the case of ***The State of Bombay vs. Morarji Cooverji***[3]***,*** wherein the aforesaid principle was enunciated as under:

> "This is not a case where a tenant in occupation has been thrown out. This is, on the contrary, a case where the premises requisitioned for a public purpose are occupied by a Government servant and are sought to be taken possession of by the landlord by asking the Court to throw the Government servant out and restore possession to the

3 1958 BLR Vol. LXI 318.

> landlord when that landlord has never shown his need of those premises by occupying them himself. Therefore, this is clearly a case where justice is not on the side of the petitioner, it is on the side of the State, and we see no reason why we should grant any relief to the petitioner."
>
> (emphasis supplied)

33. In the case of ***State of Maharashtra and others vs. Prabhu***[4]**,** the Supreme Court emphasised this principle in the following words:

> "4. Even assuming that construction placed by the High Court and vehemently defended by the learned counsel for respondent is correct should the High Court have interfered with the order of Government in exercise of its equity jurisdiction. The distinction between writs issued as a matter of right such as habeas corpus and those issued in exercise of discretion such as certiorari and mandamus are well known and explained in countless decisions given by this Court and English Courts. It is not necessary to recount them. The High Courts exercise control over Government functioning and ensure obedience of rules and law by enforcing proper, fair and just performance of duty. Where the Government or any authority passes an order which is contrary to rules or law it becomes amenable to correction by the courts in exercise of writ jurisdiction. But one of the principles inherent in it is that the exercise of power should be for the sake of justice. One of the yardstick for it is if the quashing of the order results in greater harm to the society then the court may restrain from exercising the power."
>
> (emphasis supplied)

34. In view of the aforesaid exposition of law, I am not inclined to interfere with the impugned order. The construction of the bungalow on the subject premises, by the petitioner, and, thus, the order of eviction would cause hardship to the petitioner need not be the factors which should weigh with the Court, as the actions of the petitioner were at her own peril.

---

4 (1994) 2 Supreme Court Cases 481.

35. Hence, the following order:

: O R D E R :

(i) The petitions stand dismissed.

(ii) Rule discharged.

(iii) No costs.

[N. J. JAMADAR, J.]

At this stage, Mr. Kanade, the learned Counsel for the petitioner, seeks stay to the execution and implementation of this order.

To provide a reasonable time to the petitioner to deliver vacant possession of the subject premises, the execution and operation of this order stands stayed for a period of six weeks.

[N. J. JAMADAR, J.]