

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.477 OF 2025

- | | | | |
|----|--|---|-----------------|
| 1. | Vimalnath Shelters Private Limited |] | |
| | a company incorporated under therefore |] | |
| | provisions of Companies Act, 1956, having |] | |
| | its address at 203, Laxmi Apartment, |] | |
| | Dr. Annie Besant Road, Worli Naka, |] | |
| | Mumbai 400 018. |] | |
| 2. | Nehal Tilak Gada (Director) |] | |
| | age 46 years Indian inhabitant, having his |] | |
| | address at 203, Laxmi Apartments, |] | |
| | Dr. Annie Besant Road, Worli Naka, |] | |
| | Mumbai 400018. |] | |
| 3. | Nayan Tilak Gada |] | |
| | age 44 years Indian inhabitant, having |] | |
| | his address at 801, Evita Empress, |] | |
| | G.D. Ambekar Marg, Parel, |] | |
| | Mumbai 400012. |] | ... Petitioners |

V/s.

- | | | | |
|----|--|---|--|
| 1. | The State of Maharashtra, |] | |
| | through Ministry of Housing Mantralaya, |] | |
| | Mumbai (Summons to be served on the |] | |
| | Learned Government Pleader for the |] | |
| | State of Maharashtra under the |] | |
| | provisions of Order 27 Rule 4 of Code of |] | |
| | Civil Procedure, 1908) |] | |
| 2. | The Principal Secretary, |] | |
| | Urban Development Department, |] | |
| | State of Maharashtra (Summons) to |] | |
| | be served on Learned Government Pleader |] | |
| | appearing for the State of Maharashtra |] | |
| | under the provisions of Order 27 Rule 4 |] | |
| | of Code of Civil Procedure, 1908. |] | |

3. The Executive Engineer,]
 "G"-South Division Mumbai]
 Building Repair & Reconstruction Board]
 (M.B.R. & R. Board), Mumbai,]
 MHADA Unit, having his address]
 at 5th Floor, Vishwaraja Darshan]
 CHS Ltd., Near Mukhtangan School,]
 Dr. M.S. Road, Prabhadevi (West).]
4. The Chief Officer]
 Mumbai Building Repair and]
 Reconstruction Board (M.B.R. & R. Board]
 Mumbai, MHADA Unit, having his address]
 at Grihnirman Bhawan Kalanagar]
 Bandra (E), Mumbai 400051.]
5. Deputy Chief Engineer Zone-II, Mumbai]
 Building and Repairs and Reconstruction]
 Board, having his address at 89-95,]
 Rajani Mahal, Pandit Madanmohan]
 Malviya Road, Tardeo, Mumbai 400034.]
6. Maharashtra Housing and Area]
 Development Authority(MHADA)]
 through its Vice President]
 and CEO having its address at Grihnirman]
 Bhawan Kalanagar Bandra (E)]
 Mumbai 400 051.]
7. Rakesh Vastimalji]
 tenant of Shop No.2, Ground Floor, Shoorji]
 Vallabhdas Chawl, Ganpatrao Kadam]
 Marg, Worli Naka, Mumbai 400 018.]
8. Mansibai Nemichand tenant of Shop No.3,]
 Ground Floor, Shoorji Vallabhdas Chawl,]
 Ganpatrao Kadam Marg, Worli Naka,]
 Mumbai 400 018.]
9. Arvindkumar Danmalji]
 tenant of Shop No.5, Ground Floor,]
 Shoorji Vallabhdas Chawl, Ganpatrao]
 Kadam Marg, Worli Naka,]

- Mumbai 400 018.]
10. Sureshkumar Danmalji]
 tenant of Shop No.6, Ground Floor,]
 Shoorji Vallabhdas Chawal,]
 Ganpatrao Kadam Marg,]
 Worli Naka, Mumbai – 400 018.]
11. Paresh Venilal Chheda]
 heir of tenant Venilal K. Chheda (since]
 Deceased) of Shop No.7, Ground Floor,]
 Shoorji Vallabhdas Chawl, Ganpatrao]
 Kadam Marg, Worli Naka,]
 Mumbai 400 018.]
12. Zaverchand K. Chheda]
 tenant of Shop No.8, Ground Floor,]
 Shoorji Vallabhdas Chawl, Ganpatrao]
 Kadam Marg, Worli Naka,]
 Mumbai 400 018.]
13. Champalal J. Jain]
 tenant of Shop No.9, Ground Floor,]
 Shoorji Vallabhdas Chawl, Ganpatrao]
 Kadam Marg, Worli Naka,]
 Mumbai 400 018.]
14. Shantaben Nemichand]
 tenant of Shop No.10, Ground Floor,]
 Shoorji Vallabhdas Chawl, Ganpatrao]
 Kadam Marg, Worli Naka,]
 Mumbai 400 018.]
15. Bharat Champalal Jain]
 heir of tenant Champalal D. Jain]
 (since deceased) Occupant of Shop No.11,]
 Ground Floor, Shoorji Vallabhdas Chawl,]
 Ganpatrao Kadam Marg, Worli Naka,]
 Mumbai 400 018.]
16. Jayantilal Vastimalji]
 tenant of Shop No.12, Ground Floor,]
 Shoorji Vallabhdas Chawl, Ganpatrao]

- Kadam Marg, Worli Naka]
Mumbai 400 018.]
17. Pramod Ramakant Dalvi]
heir of tenant Ramakant Chitaman Dalvi]
(since deceased) Occupant of Room No.13,]
First Floor, Shoorji Vallabhdas Chawl,]
Ganpatrao Kadam Marg, Worli Naka,]
Mumbai 400 018.]
18. Satyavijay Shivram Rane]
tenant of Room No.14, First Floor, Shoorji]
Vallabhdas Chawl, Ganpatrao Kadam Marg,]
Worli Naka, Mumbai 400 018.]
19. Arun Ragoji Rane]
tenant of Room No. 15, First Floor,]
Shoorji Vallabhdas Chawl, Ganpatrao]
Kadam Marg, Worli Naka,]
Mumbai 400 018.]
20. Santosh Gurav]
heir of tenant Krishna Babaji Gurave]
(since deceased), Occupant of Room No.16,]
Second Floor, Shoorji Vallabhdas Chawl,]
Ganpatrao Kadam Marg, Worli Naka,]
Mumbai 400 018.]
21. Shobha Harishchandra Shinde]
tenant of Room No.18, First Floor, Shoorji]
Vallabhdas Chawl, Ganpatrao Kadam Marg,]
Worli Naka, Mumbai 400 018.]
22. Anil K. Potdar & Brothers]
tenant of Room No.20, First Floor,]
Shoorji Vallabhdas Chawl, Ganpatrao]
Kadam Marg, Worli Naka,]
Mumbai 400 018.]
23. Ashok Lingayat]
heir of tenant Krishnaling Ramling]
Lingayat (since deceased) Occupant of]
Room No.22, Second Floor,]

- Shoorji Vallabhdas Chawl,]
 Ganpatrao Kadam Marg, Worli Naka,]
 Mumbai 400 018.]
24. Devendra More]
 heir of tenant Snehlata More (since]
 deceased) Occupant of Room No.23,]
 First Floor, Shoorji Vallabhdas Chawl.]
 Ganpatrao Kadam Marg, Worli Naka,]
 Mumbai 400018.]
25. Anantkumar Dattatray Patil,]
 Tenant of Room No.25, First Floor,]
 Shoorji Vallabhdas Chawl,]
 Ganpatrao Kadam Marg,]
 Worli Naka, Mumbai 400018.]
26. Ramesh K. Chheda]
 Tenant of Room No.26, Second Floor,]
 Shoorji Vallabhdas Chawl,]
 Ganpatrao Kadam Marg, Worli Naka,]
 Mumbai 400018.]
27. Bhavesh Vira]
 Heir of tenant Jaywanti Vasanji Vira]
 (since deceased) Occupant of]
 Room No.27, Second Floor,]
 Shoorji Vallabhdas Chawl,]
 Ganpatrao Kadam Marg, Worli Naka,]
 Mumbai 400018.]
28. Bhanumati R. Soni]
 Heir of Lakhamshi Ramji Soni (since]
 deceased) Tenant of Room No.28,]
 Second Floor, Shoorji Vallabhdas Chawl,]
 Ganpatrao Kadam Marg, Worli Naka,]
 Mumbai 400018.]
29. Ashwin Vira]
 heir of tenant Vasanji Ramji Vira]
 (since deceased) Occupant of]
 Room No.29, Second Floor,]
 Shoorji Vallabhdas Chawl,]

- Ganpatrao Kadam Marg, Worli Naka,]
Mumbai 400018.]
30. Jayaben Kalyanji Veera]
tenant of Room No.30,]
Second Floor, Shoorji Vallabhdas Chawl,]
Ganpatrao Kadam Marg, Worli Naka,]
Mumbai 400018.]
31. Sandip Parmar]
heir of tenant Smt. Dhakibai Dhoopchand]
(since deceased)Occupant of]
Room No.31, Second Floor,]
Shoorji Vallabhdas Chawl,]
Ganpatrao Kadam Marg, Worli Naka,]
Mumbai 400018.]
32. Maniben Hirji Gangji]
tenant of Room No.32,]
Second Floor, Shoorji Vallabhdas Chawl,]
Ganpatrao Kadam Marg, Worli Naka,]
Mumbai 400018.]
33. Vandana Yogesh Singhania]
heir of tenant Yogesh G. Singhania]
(since deceased)Occupant of]
Room No.33, Second Floor,]
Shoorji Vallabhdas Chawl,]
Ganpatrao Kadam Marg, Worli Naka,]
Mumbai 400018.]
34. Reena Mulchand Devshi]
heir of statutory tenant Mulchand]
Devshi (since deceased)]
of Room No.34, Second Floor,]
Flat No.16, Sharda Sankul]
Co-operative Housing Society Limited,]
Patil Lane 4, College Road,]
Nashik 422 005 Maharashtra.]
35. Rajesh Poladia]
heir of tenant Lachbai Vijapur]
(since deceased) Occupant of]
Room No.36, Second Floor,]

- Shoorji Vallabhdas Chawl,]
 Ganpatrao Kadam Marg, Worli Naka,]
 Mumbai 400018.]
36. Kalpana Suresh Gala]
 tenant of Room No.37,]
 Second Floor, Shoorji Vallabhdas Chawl,]
 Ganpatrao Kadam Marg, Worli Naka,]
 Mumbai 400018.]
37. Rekha Suresh Gala]
 heir of tenant Suresh Shamji Gala]
 (since deceased) Tenant of Shop No.1,]
 Ground Floor,]
 Shoorji Vallabhdas Chawl,]
 Ganpatrao Kadam Marg, Worli Naka,]
 Mumbai 400018.]
38. Laxmibai S. Gala]
 tenant of Shop No.4,]
 Ground Floor, Shoorji Vallabhdas Chawl,]
 Ganpatrao Kadam Marg, Worli Naka,]
 Mumbai 400018.]
39. Saryu Umesh Mamania]
 heir of tenant Umesh Vasanji]
 (since deceased) of Room No.35,]
 Second Floor, Shoorji Vallabhdas Chawl,]
 Ganpatrao Kadam Marg, Worli Naka,]
 Mumbai 400018.]
40. Kirtikumar T. Dedhia]
 tenant of Room No.19,]
 First Floor, Shoorji Vallabhdas Chawl,]
 Ganpatrao Kadam Marg, Worli Naka,]
 Mumbai 400018.]
41. Mohan Shinde]
 heir of Shantabai Tukaram Gavali]
 (since deceased) Occupant of]
 Room No.21,]
 First Floor, Shoorji Vallabhdas Chawl,]
 Ganpatrao Kadam Marg, Worli Naka,]
 Mumbai 400018.]

42. Hemant R. Naik & Hemangi H. Naik]
 tenants of Room No.24, First Floor,]
 Shoorji Vallabhdas Chawl,]
 Ganpatrao Kadam Marg, Worli Naka,]
 Mumbai 400018.]
43. Bhavin Harakhchand Gada]
 tenant of Room No.38, Second Floor,]
 Shoorji Vallabhdas Chawl,]
 Ganpatrao Kadam Marg, Worli Naka,]
 Mumbai 400018.]

Mr. Chirag Modi a/w. Adv. Aditya Thakkar and Adv. Deepak Shukla i/by BNS Legal for the Petitioners.

Mr. Himanshu Takke, AGP for Respondent Nos.1 & 2-State.

Mr. Sandesh D. Patil a/w. Adv. Krishnakant Deshmukh, Adv. Prithviraj Gole, Adv. Divya Pawar and Adv. Chintan Shah i/by Adv. Anbusha Amin for Respondent Nos.7, 8, 10 to 15, 17 to 22, 25, 27 to 31, 33 and 35 to 29.

Mr. Yashodeep P. Deshmukh a/w. Adv. Vaidehi Pradeep i/by Adv. Bhagyashree D. Kirwe for Respondent Nos.40, 42, 43.

Mr. Shaurasingh Chowhan a/w. Adv. Shalaka Shinde i/by Adv. Aditya Patil for Respondent No.41.

Mr. P.G. Lad a/w. Adv. Sayli Apte and Adv. Shreya Shah for the Respondent-MHADA.

Mr. Sudhir Yewale, Ex. Engineer, present.

Mr. Bhavesh Vira, Respondent No.27 and Mr. Anil Potdar, Respondent No.22, present-in-person.

**CORAM : A. S. GADKARI AND
 KAMAL KHATA, JJ.**

RESERVED ON : 11th February, 2025.

PRONOUNCED ON : 3rd April, 2025.

JUDGMENT (Per Kamal Khata, J.):

1) Rule. Rule made returnable forthwith and by consent of parties heard finally at the admission stage.

2) By this Petition under Article 226 of the Constitution of India, the Petitioners are challenging Notice dated 19th May, 2023 issued by Respondent No. 3-MBR&RB and the Order dated 24th July, 2024 passed by Respondent No. 5-MHADA that was followed by the Notice dated 30th July, 2024 issued by Respondent No.3. Additionally, the Petitioners also challenge the constitutional validity of Section 79-A of Maharashtra Housing Area Development Act, 1976 (MHADA), as arbitrary and violative of their fundamental and constitutional rights and consequently seek its striking off.

Brief facts:

3) The Petitioner No. 1 is the owner of the property consisting of freehold land bearing Cadastral Survey No.1/291 and 2/291 (Lower Parel Division) admeasuring 2383 square yards and 135 square yards aggregating to 2518 square yards equivalent to 2105.35 square meters or thereabout situated at erstwhile Fergusson Road and now known as Ganpatrao Kadam Marg, Worli Naka, Mumbai and a chawl constructed thereon known as 'Shoorji Vallabhdas Chawl'. It is a cessed building having 12 commercial tenements on the ground floor and 26 residential tenements on 2 upper floors.

4) The Petition states that the Petitioners have been attempting to redevelop a chawl since 1993 under the Development Control Regulation (DCR), initially securing permissions and agreements for alternate accommodations of 225 sq. ft. In 1996, they received approval from the Brihanmumbai Municipal Corporation (BMC) and a Commencement Certificate (CC) for rehabilitation construction, including a community hall and Jain temple. In 2008, after a policy change increased the Floor Space Index (FSI) to 2.5, allowing tenants 300 sq. ft., the Petitioners sought redevelopment approval under Regulation 33(7) of DCR 1991. However, tenants obstructed inspections and later revoked their consents. Disputes continued, with a FIR lodged in 2011 due to conflicts over temple construction. Permissions were revalidated multiple times until 2017 and by 2018, the Development Control Promotion Regulation (DCPR) 2034 came into effect. That on account of tenants' obstruction and unreasonable demands they could not redevelop. In the meanwhile, the MBR&R Board has undertaken periodic repairs, including in 2011, 2017-18, and 2022-23.

4.1) Around November – December 2022, the tenants carried their grievances to the local MLA, Advocate Shri Aashish Shelar, who in turn placed the grievances of the tenants before the Respondent No.4 to 6-MHADA. This action resulted in Respondent No. 3-MBR&RB addressing letter dated 3rd January 2023 to the Petitioner. This letter referred to another letter dated 16th December 2022 allegedly sent to Petitioner No.1 at

some other address because of which the meeting called for by the authority could not be attended by them. Later, on 24th February 2023, Respondent No-3 MBR&RB called upon Petitioner to submit proposal for redevelopment. The Petitioner responded to this by his letter dated 2nd May 2023 clarifying the efforts made in the past by the Petitioner that was thwarted by the tenants.

4.2) Suddenly, on 19th May 2023 Respondent No.3-MBR&RB, issued Notice under Section 79-A. The Petitioners' contend that, a closer look at the notice reveals that it is based only on a visible inspection and without any supporting material. Despite that, the Petitioners reached out to the tenants by their letter dated 23rd June 2023 calling for meetings to show their readiness and willingness to redevelop the property and sought their co-operation and consent for the same. Surprisingly, the response was received from one Surji Vallabhdas Building Rahivashi Mandal, purportedly formed by the tenants, informing Petitioner about withdrawal of their past consents. There were *inter-se* correspondence between the Petitioners and the tenants particularly his letters dated 18th April 2024 and 10th May 2024 evidencing an *impasse* between parties. Petitioners responded to even illegal occupants (against whom eviction proceedings were pending) allegedly representing the tenants and raising objections on their behalf, to proceed with the redevelopment

whilst placing facts in the correct perspective. Despite efforts, Petitioner No.1 received notice dated 19th May 2023 followed by the Order dated 24th July 2024 and notice dated 30th July 2024. In the above circumstances this Petition is filed impugning the aforementioned Notice and Order.

Submissions:

5) Mr. Modi learned counsel for the Petitioners argued that, the Notice dated 19th May 2023, issued under Section 79-A of Maharashtra Housing and Area Development Authority Act, 1976 (MHADA Act), lacked necessary facts and failed to meet the legal pre-conditions mandated in Section 79-A. He contended that, for a building to be deemed “dangerous” as per section 79-A of the Act, it must be officially declared so by the Municipal Corporation or the competent Authority, which was not done in this case. The notice was issued solely based on the building’s age (60 years) without sufficient evidence or structural audit certification. He contended that MHADA had no authority to issue the notice in absence of building being declared “dangerous”. Moreover, there was neither an assertion nor material produced along with the notice. The notice did not even suggest that, Respondent No.3-MBR&RB is authorized to act on behalf of the Board and that a particular Officer was authorized to carry out the functions of the Board to issue such a notice. He argued that, the notice was

issued merely on the footing that, the building was 60 years old and therefore was in a dilapidated condition i.e. to say beyond repairs and required to be demolished and redeveloped. He asserts that the building is not at all dilapidated nor in such a condition that, it was likely to fall or dangerous to either any person or the other structures around it.

5.1) He further argued that the inspection conducted on 13th March 2023, lacked proper documentation, such as a panchnama or formal certification by a Structural Engineer. A structural audit report was obtained just a day before the order, suggesting the decision was premeditated. He argued that, when a Board decides to inspect and certify a building, as dilapidated or dangerous, it ought to necessarily secure owner's consent and presence at the time of inspection. He submitted that, a certificate that the building is dangerous and dilapidated, issued arbitrarily catering to the whims and fancies of either tenants or the MHADA Authorities, makes it invalid for lack of due and proper procedure. Moreover, the Respondent Nos.3 to 6 have ignored and failed to follow the procedure set out in the Circular dated 19th March 2024, that prescribes several conditions before issuing a notice under Section 79-A - invalidating the notice. He contended that, the Board itself had carried out repairs to the Chawls several times including as late as in the year 2022-2023 under the guidance and supervision of the Engineers of the Board. He therefore submitted that, classifying the building as C-1 category is premeditated and biased.

5.2) Mr.Modi submits that, therefore the impugned Order dated 24th July 2024, which relies on the Structural Stability Report dated 23rd July 2024 lacks a similar requirement as stated above for the notice. Significantly, the decisions taken in the meeting that purportedly took place, in the absence of the Petitioners, in April 2024, and the fact that structural audit report of the building is dated 23rd July 2024 itself evinces the premeditated and predetermined actions of the tenants and the Authorities. More significantly, the Structural Audit was not carried out in presence of the Petitioners who owned the building or even informing them. Even after the Report was obtained, no hearing was granted to the owner-Petitioner in gross violation of the principles of natural justice, moreso since it was the Petitioner's property that was being declared "dangerous". The Order passed by the competent Authority ignores the most important factor that, although it records that, the Petitioners are ready and willing to develop the property and states that, the Petitioners does not have the consents of the tenants, it does not reason-out as to how the consents are deliberately refused. The Authority ought to consider and give reasons as to why these consents have been refused even though the Petitioners-owners are offering the tenants all that they are entitled to, under the law.

5.3) Mr. Modi further contends that, having considered a couple of other Orders passed by Respondent No.5 in the case of one Beherami Mansion and one Poonawala Chawl being Orders dated 5th August 2024, it

reveals that the same mechanical approach of the Authority is adopted/followed whilst passing it. He submits that, the tenants apparently have found their own developer and are seeking to usurp the property and the rights of the Petitioner by offering them more than what they are entitled to, in law. Such offers can be only given at the expense of the owners as the developers have nothing to lose. However, in this process the rights of the Petitioners to gain the maximum benefits from their own property are completely usurped and violated. It is in this regard and context that, Mr. Modi submits that, Section 79-A wrongly seeks the consents of 51% of the tenants from the owner to develop his own property. He submits that, this is a classic case where the tenants have deliberately and willfully refused to accept what they are entitled to in law so that they could get additional benefits offered from a developer, a rank outsider, who in turn benefits from the dilution of rights of the owner. He therefore submits that, whilst the tenants, who have limited rights in the property and certainly not ownership rights, benefit from their own wrong by unreasonably withholding consents. He submits that, the Order i.e. passed by the Competent Authority must necessarily contain the reasons why the 51% consents were refused by the tenants. The concerned authority must render a finding on whether the refusal was with an oblique motive or not. Failure to record such reasons and deliberations and absence of a conscious decision in this regard would entirely frustrate the objective of the act that

mandates requirement of 51% consents of the tenants. In this backdrop, he contends that, the consequent Notice dated 30th July 2024 is unwarranted and ought to be set aside. He argues that implementing these Notices and Orders would weaken the owner's rights and set a bad precedent. He therefore submitted that in the aforesaid background the Petition be allowed, as prayed for.

6) Mr. Lad for MHADA submits that, the MHADA is the competent Authority as contemplated under the Act. He submits that, the hearings for redevelopment of the building did take place in the past, prior to the notices being issued . He states that, MHADA has taken due steps of inspecting the building and also has considered the Audit Report. He fairly admits that, the Structural Audit was not taken after having informed the Petitioner and with his consent. He submits that, MHADA has no intention to usurp the rights of the Petitioner-owners. He submits that, the steps taken by MHADA were only to assist the tenants and protect their interest. He further submits that, MHADA would have no objection, if the Court directs, to give another opportunity to the owners to develop the property.

7) Mr. Patil representing the tenants vehemently opposes the Petition. He submits that, the owners' predecessors were given sufficient opportunities to redevelop the building since many years as stated in the Petition. He argues that, the owners have reneged on the promises made to the tenants from time to time and have clearly failed to redevelop the

building as they do not have the wherewithal to reconstruct the building. He apprehends that, the tenants' rights are likely to be jeopardized if the owners delay or fail to redevelop the building. He submits that, the other developers and particularly one GVP Reality has offered them an area far more than what the owners have offered. Therefore all tenants are agreeable to GVP Reality developing the property. It is apparent that the Petitioner – owners are depriving the tenants of their rightful entitlements. It is for this reason he submits that, now that six months have expired having given the owners an opportunity to redevelop the property, the tenants as a matter of right as mandated by Section 79-A are entitled to be given an opportunity to develop the property through their selected developer. He therefore submits that, the Petition ought to be dismissed.

Reasons and Conclusion:

- 8) We have heard all counsel and perused the entire record.
- 9) We find merit in the arguments of Mr. Modi. The tenants cannot be permitted to withhold their consents willfully and deliberately and then frustrate the rights of the owners to develop the property. This case highlights the manner in which the tenants frustrated the rights of the owners to redevelop the property by simply withholding their consents. It is trite law that a party cannot benefit from its own wrong. The reasons are obvious – the developer i.e. GVP Reality is offering them better incentives than the owner, much more than the tenant is entitled for, in law.

10) Astonishingly, the notice was issued merely on visual inspection of the building. We do not agree and promote this idea of concerned Authorities issuing notices on visual inspections whilst casually passing-by the buildings. Although, it is necessary for the BMC or Competent Authority to be concerned and aware of the conditions of the buildings as such, a casual approach in issuing such notices cannot be permitted.

11) Mr. Lad could not point out the steps that were taken by the MHADA to arrive at the conclusion that the building was in a dilapidated condition. He has also not been able to throw light on the aspect of why no reasons were given in the Order about the consents not being received by the owners. We would thus be led to accept the argument of Mr. Modi that, there was no deliberation on the reasons for not being able to obtain consents. It is the human nature to seek more. This is a clear case where the tenants who are backed by another developer offering them more area and more compensation in lieu of granting him the development rights - frustrating the lawful rights of the owners of the building. In this case, it is apparent that, MHADA has acted at the instance of the tenants and developer of their choice. Even paragraph 26 of the tenant's reply to the Petition dated 16th December 2024, clearly states that - GVP Reality had also made proposal along with consent of all the tenants to the MHADA and MHADA had called for certain additional documents for the purpose of considering GVP's proposal. The impugned Notices and Orders have been

issued in undue haste. The owners' rights have not been considered and are sought to be sidetracked.

12) A bare reading of the Notice dated 19th May 2023, and the Order dated 24th July 2024 do not in any manner evince that, the Writ building was in a 'dangerous' condition. Merely because a building is old it cannot be termed 'dangerous'.

13) However, we deem it appropriate to deal with the mandatory requirements of a Notice and an Order under Section 79-A.

13.1) Let us consider Section 79-A of the MHADA Act in the above context. Section 79-A is reproduced herein below for ready reference.

“79-A. Procedure of redevelopment in case of dangerous buildings declared by Mumbai Municipal Corporation or competent authority

*(1) Notwithstanding anything contained in sub-section (3) of section 88 and section 92 of this Act and sections 354 and 499 of the Mumbai Municipal Corporation Act (III of 1888), in case of the building to which the provisions of sub-section (1) of section 82 applies (hereinafter in this Act referred to as “cessed building”), which is declared dangerous by the Mumbai Municipal Corporation under section 354 of the Mumbai Municipal Corporation Act (III of 1888) or by the competent authority, **if the redevelopment of such building is not taken up by the owner or landlord***

of the cessed building, within three months from the date of issue of notice under section 354 of the Mumbai Municipal Corporation Act by the Mumbai Municipal Corporation (III of 1888) or the competent authority, the Board may adopt the following procedure:-

(a) a notice shall be issued to the owner or landlord of the cessed building to submit the proposal for redevelopment within six months from the date of issue of notice. Alongwith the proposal, consent of fifty-one per cent of the occupants or tenants of the said building shall be accompanied;

(b) if the owner or landlord fails to submit the proposal within the period and the manner as provided in clause (a), the proposed co-operative housing society of the occupants or tenants of such building may submit the proposal to the Board, for redevelopment of such building under the relevant provisions of the Development Control and Promotion Regulations-2034 for Greater Mumbai within six months from the date of communication received from the Board. The proposal shall be accompanied with the consent of at least fifty-one per cent of the occupants or tenants.”

13.2) In our view, the wordings of the Section are quite explicit. Sub-

Section (1) of Section 79-A begins with a non-obstante clause, in context of sub-Section (3) of Section 88 and Section 92 of the MHADA Act. Section 88 (3) deals with the opinion of the board regarding the cost of structural repairs to a building exceeding the amount specified by the State Government by notification in the Official Gazette, in comparison to cost of erecting a new structure or the economic feasibility to erect a new building taking into account the size of the land and adjoining building, if any. Section 92 deals with submission of acquisition proposal. These two sections are not relevant presently for this case and thus not delved into. However, the other two sections are to be read with, are Sections 354 and 499 of the Brihanmumbai Municipal Act, 1888 (BMC Act).

13.3) A bare perusal of Section 79-A reveals that, the cessed building has to be first declared as 'dangerous' as mandated under Section 354 of the BMC Act by the competent Authority of BMC. Necessarily, the requirements of Section 354 are required to be met either by the BMC or the 'competent Authority'.

14) We are unable to accept the argument of Mr. Lad that MBR&RB is the competent Authority because, Section 2 (11) of MHADA Act defines "competent Authority" as a person appointed under Section 65 of the MHADA Act which requires the "competent Authority" to be appointed by Notification in the Official Gazette by the State Government being a person not below the rank of the 'Deputy Collector' or 'Civil Judge'. Thus, the

Respondent No.3-MBR&RB would not qualify to be a 'Competent Authority'. Moreover, the notice does not even assert that, the Respondent No. 3 is the competent Authority. Consequently, the finding that building is 'dangerous' fails to meet with the mandate of Section 354.

15) In this background, it would be pertinent to have a closer look at Section 354 of the BMC Act. For ready reference, the same is reproduced herein below.

“354. Removal of structures, etc., which are in ruins or likely to fall

(1) If it shall at any time appear to the Commissioner that any structure (including under this expression any building, wall or other structure and anything affixed to or projecting from, any building, wall or other structure) is in a ruinous condition, or likely to fall, or in any way dangerous to any person occupying, resorting to or passing by such structure or any other structure or place in the neighbourhood thereof, the Commissioner may, by written notice, require the owner or occupier of such structure to pull down, secure or repair such structure. [subject to the provisions of section 342] and to prevent all cause of danger therefrom.

(2) The Commissioner may also if he thinks fit, require the said owner or occupier, by

the said notice, either forthwith or before proceeding to pull down, secure or repair the said structure, to set up a proper and sufficient board or fence for the protection of passersby and other persons, with a convenient platform and handrail, if there be room enough for the same and the Commissioner shall think the same desirable, to serve as a footway for passengers outside of such board or fence.

(3) If it shall appear to the Commissioner that any building is dangerous and needs to be pulled down under sub-section (1), the Commissioner shall call upon the owner, before issuing notice thereunder, to furnish a statement in writing signed by the owner stating therein the names of the occupiers of the building known to him or from his record, the area in occupation and location of premises in occupation, possession of each of the respective occupiers or tenants, as the case may be.

(4) If he fails to furnish the statement as required by sub-section (3) within the stipulated period, then the Commissioner shall make a list of the occupants of the said building and carpet area of the premises in their respective occupation and possession along with the details of location.

(5) The action taken under this section shall not affect the inter se rights of the owners

or tenants or occupiers, including right of re-occupation in any manner.

Explanation. —For the purposes of this section, “the tenant” shall have the same meaning as assigned to it in clause (15) of section 7 of the Maharashtra Rent Control Act, 1999.”

15.1) Section 354 (1) envisages a building or a part thereof to be in a ‘ruinous’ condition likely to fall or in any manner ‘dangerous’. In these circumstances a notice to the owner to secure the structure and repair the same be issued in the first place. Sub-section (2) deals with the manner in which the building is to be secured and the steps taken thereafter. Sub-section (3) requires the Commissioner to call upon the owner, even before the issuance of the notice, to furnish a statement in writing, informing the Commissioner about the names of the occupiers of the building, the area in their occupation and the status of the occupiers or tenants, as the case may be. Sub-section (4) deals with a situation where the owner fails to furnish such a statement, the Commissioner is then required to make a list of occupants and the carpet area of the premises in occupation of the tenant/occupant before the issuance of such notice and Sub-section (5) deals with the effect of the subsequent action and rights of the tenant under the statute.

16) According to us, the competent Authority having similar powers,

as that of the Commissioner under Section 354, must necessarily also adopt the same terms, conditions and provisos of Section 354. In this case none of the steps have been adopted by the MHADA.

17) Having considered Section 354 of the BMC Act, we also need to consider Section 499. For ready reference, the Section is reproduced hereinbelow:

“499. In default of owner, the occupier of any premises may execute required work and recover expenses from the owner

(1) Whenever the owner of any building or land fails to execute any work which he is required to execute under this Act or under any regulation or bye-law made under this Act, the occupier, if any, of such building or land shall be entitled to execute such work in the manner set out in subsection (2).

(2) The occupier or occupiers interested in such work may seek the approval of the Commissioner for executing such work. The Commissioner shall grant the approval unless other measures are taken by him to execute the said work. While granting the approval the Commissioner shall specify the nature of the work. Upon such approval being granted, the occupiers shall be entitled to execute the said work and the expenses incurred for such work shall for all purposes be

binding on the owner. The occupiers shall also be entitled to deduct amount of expenses incurred for such work from the rent which from time to time becomes due by them to the owner or otherwise recover such amount from them.”

17.1) A plain reading of the Section 499 indicates that where an owner refuses or fails to execute such work that is required to maintain the building, the occupier is entitled to execute such work after seeking the approval of the Commissioner.

18) Section 79-A of the Maharashtra Housing and Area Development Act, 1976 (“MHADA Act”) deals with the procedure of redevelopment in case of dangerous buildings declared either by Brihanmumbai Municipal Corporation or competent authority. The provisions contained in sub-Section (3) of Section 88 and Section 92 of MHADA Act and Sections 354 and 499 of the Brihanmumbai Municipal Corporation Act, 1888. Notwithstanding anything contained therein and in case of the building to which provisions of sub-Section (1) of Section 82 applies to those cessed buildings which are declared ‘dangerous’ by the Brihanmumbai Municipal Corporation under Section 354 or by the competent authority in case where the redevelopment is not taken up by the owner or landlord in such circumstances Section 79-A (1) contemplates a period of three months’ time to be granted to the owner or landlord of the cessed building from the issuance of such notice under Section 354. It is pursuant to the failure of

the owner to adopt necessary measures under Section 354 notice, that a further notice to the owner is contemplated, granting him six months' time to submit a proposal along with 51% consent of the tenants or occupants of the building for redevelopment. It is on the failure of the owner or landlord to submit a proposal within the stipulated six-month period that, under Section 79-A (1) (b) the occupants or tenants would be entitled to submit a proposal to the Board for redevelopment of the building as per the Regulation 33(7) of the DCPR 2034 along with the consents of at least 51% of tenants and/or occupiers.

19) Therefore, on a plain reading of Section 79-A two notices to the owner are contemplated, first a three month notice for taking steps to repair the building and second, a six months' notice thereafter. Only failure of the owner to take steps for the redevelopment of the building with the consent of 51% of the tenants that the tenants are granted an opportunity under Section 79-A(1)(b).

20) In the present case, we do not find MHADA having taken any such lawful action complying with the conditions set out in Section 354 of the BMC Act. MHADA has not denied that the building was repaired by MHADA itself in the year 2022-2023. There is no report from MHADA indicating the building's condition after repairs were carried out, nor any evidence suggesting that further extensive repairs are necessary for continued occupation. There is also no explanation from MHADA, as to on what basis,

only within a year of the MHADA carrying out repairs on the building, the building was declared to be 'dangerous'. It leads us to believe that, the owners are right in arguing that the notice was also issued in undue haste and all following actions of MHADA were at the instance of the tenants and the new developer, only with a view to redevelop the building and frustrate the rights of the owners by withholding consents.

21) A bare perusal of the record would reveal that, the tenants have not even averred that the building required such extensive repairs that the owners failed to carry out and they as tenants were required to seek permission from the Commissioner or the competent Authority to carry out the repairs at their own expense. Merely because the building is old it cannot be termed as perilous. In fact, there is no denial to the assertions of the owners that, the building was repaired from time to time and as recent as in the year 2022-2023.

22) In this case, the requirements under Section 79-A are clearly not fulfilled by the MHADA. *Ex facie* the notice dated 19th May 2023 is not based on a finding that the building is 'dangerous' either from the Municipal Corporation or the Competent Authority as required under Section 354 of the BMC Act. Hence the notice under Section 79-A of MHADA Act dated 19th May 2023 is invalid in law. Consequently, the order dated 24th July 2024 and the Notice dated 30th July 2024 following the Order are vitiated.

23) Hence the impugned Notices dated 19th May 2023; 30th July 2024 and Order dated 24th July 2024 are set aside.

24) The Petition is accordingly allowed and Rule is made absolute in the above terms.

(KAMAL KHATA, J.)

(A.S. GADKARI, J.)

25) Upon pronouncement of the Judgment, interestingly both counsel, appearing for the tenants as well as MHADA sought stay of the effect and implementation of our Order to test the correctness of the present Judgment before the Hon'ble Supreme Court. We find the request of MHADA unusual because MHADA is the concerned Authority and bound to follow the law of the land and not misinterpret it, abuse it and act in a malafide manner as recorded by us in the Judgment.

26) At the request of both learned counsel as mentioned above, the effect and implementation of the present Judgment is stayed for a period of two weeks from today.

(KAMAL KHATA, J.)

(A.S. GADKARI, J.)