

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1541 OF 2024

Mangal Bhagwan Harke ...Petitioner
Vs
The State of Maharashtra & Ors. ...Respondents

Mr. Yashodeep Deshmukh a/w Mr. Gurubala Birajdar for the Petitioner.
Ms. Uma Palsuledesai, AGP for Respondent Nos.1 and 4.
Mr. Akshay Shide for the Respondent-MHADA.
Ms. Babita Kesharwani for Respondent Nos.7 & 8.

CORAM: G. S. KULKARNI &
ARIF S. DOCTOR, JJ.
DATE: 24 JUNE 2025.

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1. The Petitioner is a widow and a senior citizen. Her husband Mr. Bhagwan Harke was a mill worker. He was working with the Bombay Dyeing Company (Spring Mills).

2. Under the policy of the State Government for allotment of a permanent alternate accommodation as recognised under the Development Control Regulations, 1991, the Petitioner was held to be eligible for allotment of a permanent alternate accommodation. She was granted allotment by the MHADA vide allotment letter dated 2nd July 2021 (Exhibit 'F'), which was subject to certain conditions. The majority of the conditions, viz., a Legal Heirship Certificate, the documentation of the Petitioner's husband working with the Mill for the required period were all satisfied. The Petitioner is allotted tenement, being Gala No.4, D.10-1010 in the Bombay Dyeing Company (Spring Mill) Accommodation No.28, situated at Bombay Dyeing Company (Spring Mill) Compound, Dadar-Naigaon, Dadar (East), Mumbai 400014. Such allotment was made after following the usual procedure as is clearly seen from the allotment letter in which the Petitioner was stated to be successful allottee.

3. The grievance of the Petitioner is to the effect that the MHADA is not handing over the possession of the said tenement to the Petitioner, although such long period has expired from the time of allotment. She states that the reason is not attributable to any major compliances in regard to the allotment, but on account of the Petitioner's own elder son Rajendra/Respondent No.5 and the married daughter Reshma/Respondent No.6, not granting a consent in view of a condition as set out in the allotment letter, namely, Condition 8 (b). The official translation of relevant Condition 8 reads thus:-

Official Translation

“8. The Documents to be produced by a heir of a Mill Worker, as mentioned at Reference No.3.

- (a) As mentioned in the Circular under reference at Sr. No.4, the heirs of the Mill Workers shall obtain a “Heirship Certificate” from the Office of the Tahasildar concerned and shall produce the same.
- (b) If a Mill Worker is dead and documents are to be produced in the name of his widow then, it shall be necessary for all other heirs to produce “Registered Deed of Relinquishment of Right” and “ No Objection Certificate” regarding allotting the house in the name of said widow.
- (c) If documents are to be produced in the name of only one of the heirs other than the widow of the deceased Mill Worker, then it shall be mandatory to produce an ‘Affidavit-cum-Declaration’ executed before a Competent Authority and a ‘Deed of Relinquishment’ registered with the office of the Sub-Registrar.
- (d) It shall be mandatory for the widow or the heirs of the deceased Mill Worker to produce prior to an allotment an ‘Undertaking’ about vacating the tenement to be allotted and handing over the possession thereof again to the Board if any future dispute in respect of the right of allotment of a house arises between them.
- (e) It shall be mandatory for the widow or heirs of the deceased Mill Worker to execute and produce in advance an ‘Indemnity Bond’ in case there is an occasion of filing a suit or a claim for compensation before the MHADA or Government regarding allotment of the house to the widow / legal heirs of the deceased Mill Worker.
- (f) If more than one heirs of the deceased Mill Worker make a claim on the house to be allotted and if they have requested to allot the house in name of one legal heir from out all those legal heirs pursuant to the ‘consensus arrives at between the legal heirs’, then, the allotment of the said house shall be made in the name of the said one legal heir subject to the eligibility prescribed in rule 2 (a) mentioned in paragraph 2 at Reference No. 3.
- (g) If more than one persons claim to be the legal heir of the deceased Mill Worker

or if two women claim to be the legal wives of the Mill Worker/raise dispute, the house cannot be allotted unless an order proving their rights, their status and heirship is obtained from a Competent Court.”

(emphasis supplied)

4. Mr. Deshmukh, Learned Counsel for the Petitioner submits that such condition could not have been enforced, as it is a condition which infact deprives the Petitioner of a roof over head and her legitimate entitlement which has been recognised by MHADA in the allotment letter.

5. *Prima facie*, we find that once in such condition it cannot be that merely because the elder son and married daughter not granting consent, the Petitioner ought to be deprived of the benefit of the shelter over her head and that too at this age. The Petitioner has also contended that the other two sons, namely, Respondent No.7 Ganesh and Respondent No.8 Naresh have no objection. Infact, it is the Petitioner’s contention that Respondent No.5 is staying in his own private accommodation, as also Respondent No.6 is already married and both of them certainly are not in the requirement of any accommodation, whereas the Petitioner has no accommodation of her own and she is legitimately entitled to the allotment as granted to her by MHADA under the allotment letter dated 2nd July 2021.

6. Having heard Learned Counsel for the parties, we *prima facie* find that the Petitioner is correct in her contentions. It is settled position in law that insofar as the inheritance rights are concerned, if at all are sought to be agitated by the elder son who is 44 years of his age and the married daughter who is 40 years of age (Respondent Nos.5 and 6), such rights can not be espoused during the lifetime of the Petitioner and more particularly when the allotment of the tenement as is granted by the MHADA exclusively in favour of the Petitioner. Respondent Nos.5 and 6 have not challenged the allotment in any manner whatsoever, however they appear to be taken shelter under Clause 8 as noted by us hereinabove. However, in our opinion, Clause 8 and its subclauses cannot be construed by MHADA in a manner which would deprive the original allottee of

the benefit of the legitimate and legal allotment. In the event, any legal heirs and/or any members of the family have any legal rights *qua* the said tenement and if they want to inherit their further rights, the law is well settled. It is not for the MHADA to undertake adjudication of such private rights as it is open to the legal heirs to claim any rights in any of the properties of the deceased in appropriate legal proceedings. However such legal heirs under the garb of asserting legal rights cannot deprive the Petitioner of her entitlement of the tenement.

7. In this view of the matter, we are of the clear opinion that the possession of the tenement is required to be handed over to the Petitioner by MHADA. Let this be undertaken by 25th June 2025 at 03.00 p.m. The Petitioner shall accordingly remain present at the site at 02.30 p.m. tomorrow. The Competent Authority from MHADA would also remain present at the site. Needful formalities of handing over possession of the tenement shall be undertaken by about 03.00 p.m. Learned Advocate for MHADA shall communicate to the Advocate for the Petitioner name of the concerned MHADA official along with his contact details.

8. In the event there are any further compliances, the Petitioner shall undertake to comply with all such requirements.

9. Stand over to 26th June 2025.

10. The parties to act on the authenticated copy of this order.

(ARIF S. DOCTOR, J.)

(G. S. KULKARNI, J.)