



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1816 OF 2024

M/s. M. I. Builders

...Petitioner

Versus

Maharashtra Housing And
Area Development Authority & Ors.

...Respondents

WITH
INTERIM APPLICATION (L) NO. 21289 OF 2024
IN
WRIT PETITION NO. 1816 OF 2024

Mr. A. Y. Sakhare, Sr. Adv. i/b Mr. Rohan M Irpury for Petitioner.

Mr. Piyush Raheja i/b Sumit Kothari for Applicant.

Mr. P. G. Lad a/w Ms. Aparna Kalathi and Ms. Sayali Apte for Respondent No. 1 & 2 MHADA.

Ms. Smita Tondwalkar i/b Ms. Komal Punjabi for Respondent No. 3 BMC.

Mr. Milind More, Addl. G.P. a/w Ms. Usha Rahi, AGP for State Respondent No. 4.

Mr. Girish Godbole, Sr. Adv. a/w Mr. Chirag Kamdar, Mr. Tushar Kadam & Ms. Shivani Varade i/b MDP Associates for Respondent No. 5.

CORAM: G. S. KULKARNI &
ARIF S. DOCTOR, JJ.

DATE: 09 JUNE 2025

P.C.

1. This petition under Article 226 of the Constitution is filed praying for the following substantive reliefs:

"(a) This Hon'ble Court be pleased to issue a Writ in the nature of Mandamus or any other appropriate writ, order or direction, thereby directing the Respondent No. 1 and 2 to withdraw the Impugned Letter dated 06/02/2024 issued by the Respondent No. 2 bearing no. EE/GN/RR/DE-IV/RD/422 of 2024;

(b) That this Hon'ble Court be pleased to issue a Writ in the nature of Mandamus or any other appropriate writ, order or direction, thereby restraining the Respondent No. 1 and 2 from considering, processing or in any manner acting upon any proposal for redevelopment from the Respondent No. 5 or any other Developer other than the Petitioner in

respect of the said larger layout, i.e. the properties bearing C.S. No. 981, 982, 983, 984-987, 988, 989, 997, 1003, 1004, 1005 and 1006 of Mahi, Division, in "G-North" ward bearing Street No. 8,6,4,44A-44C, 44B, 2, 46, 12, 10, 25C, 44E Bazar Gully, Mahim Bazar Road no. 2, Kapad Bazar Gully, Mahim Cross Road, Mumbai 400 016, buildings known as "Margimulla Trust Chawl, Azad Manzil, Ikbaal Manzil, Dhanaji Chawl, Dilshad Hotel, Kamakshi Kunj, Ilahi Bux Mansion, Narielwala Chawl, Mahium Education Social Organization, Pathan Building;

(c) By a Writ in the nature of Mandamus or any other appropriate writ, order or direction, this Hon'ble Court may be pleased to direct the Respondent No. 1 and 2 to consider the representation of the Petitioner dated 17/08/2023 for amalgamation of the redevelopment of the said project i.e. land admeasuring about 786.71 sq. mts. bearing CTS No. 979, 980, 985, 4/997, & 997(part) Mehar building, Kapad Bazar, Mahim Cross Road, Mahim, Mumbai 400 016 alongwith the structures standing thereon namely, "Mehar Building" with the said larger layout i.e. the properties bearing C.S. No. 981, 982, 983, 984-987, 988, 989, 997, 1003, 1004, 1005 and 1006 of Mahi, Division, in "G-North" ward bearing Street No. 8,6,4,44A-44C, 44B, 2, 46, 12, 10, 25C, 44E Bazar Gully, Mahim Bazar Road no. 2, Kapad Bazar Gully, Mahim Cross Road, Mumbai 400 016, buildings known as "Margimulla Trust Chawl, Azad Manzil, Ikbaal Manzil, Dhanaji Chawl, Dilshad Hotel, Kamakshi Kunj, Ilahi Bux Mansion, Narielwala Chawl, Mahium Education Social Organization, Pathan Building;

2. The petitioner had submitted a proposal for redevelopment of the property / building which was acquired by MHADA under the acquisition notification under dated 18 November 1989 (Exhibit – A) issued under Section 41(1) of Maharashtra Housing and Area Development Act, 1976. A Joint development agreement dated 24 January 2023 was entered between the MHADA and the petitioner for redevelopment of the property as described in paragraph (B) of this agreement as also described in the scheduled annexed to the said agreement which reads thus:

"B. Prior to 1989 the immovable property being ALL THAT land admeasuring about 786.71 sqmt bearing CS No. 979, 980, 985, 4/997 & 997 (Part), Mehar Building, Kapad Bazar, Mahim Cross Road, Mahim, Mumbai 400 016; alongwith structures standing thereon namely 'Mehar Building' and situate at Kapad Bazar, Mahim Cross Road, Mahim, Mumbai 400 016 was Owned by "Goswami Tikayot, Shri 106, Shri. Govindji Maharaj, The Tikayot Maharaj of the idol of Shri. Nathaji at

Nathdwara and Lessee Pillaji Govind Meher and Padminibai Pillaji Meher".

SCHEDULE OF THE PROPERTY ABOVE REFERRED TO:

All THAT land measuring 786.71 sq. mtrs. Bearing C.S. No. 979, 980, 985, 4/997 & 997 (Part) of Mahim Division alongwith Building standing thereon namely Mehar Building and situate at- Kapad Bazar, Mahim Cross Road, Mahim, Mumbai - 400 016; and bounded as follows that is to say:-

On or towards West by:- Shamshuddin Pathan Manzil

On or towards South by:- Nariyalwala Chawl

On or towards North by:- Kapad Bazar Road

On or towards East by:- Dhanji Building"

3. We find that apart from the aforesaid description of the property subject matter of development under the said agreement, there is a specific clause (clause 6.12) in the said agreement which permits the petitioner to be entitled to amalgamate the property of the aforesaid description, with any of the adjoining property. Clause 6.12 reads thus:

"6.12 The Developer shall be entitled to amalgamate the said property with any of the adjoining property/properties or as per the prevailing policy if at all it desires. The parties agree that in the event of amalgamation of the said property with any other property, the surplus area to be handed over to MHADA shall be calculated as per amalgamated project."

4. Mr. Sakhare, learned senior advocate for the petitioner has drawn our attention to the Letter of Intent (LOI) dated 21 July 2023 which in the subject column describes not only the agreement properties but also the adjoining acquired properties bearing C.S. No. 981, 982, 983, 984, 987, 988, 989, 1003, 1004, 1005 and 1006 of Mahim Division, building No.44E to be developed by the petitioner through the Joint Venture between MHADA and petitioner. Our attention is also drawn to a letter dated 24 August 2023 of the Chief Officer of the MHADA

addressed to the Deputy Chief Engineer (Building Proposal) of the MCGM, confirming the redevelopment in a Joint Venture between the MHADA and the petitioner in respect of the properties as described in the said communication similar to the LOI.

5. It is the petitioner's case that on 28 August 2023 IOD (Intimation of Disapproval) was issued by the MCGM in favour of the petitioner for a larger layout. It is on such backdrop, the grievance of the petitioner is that by the impugned letter dated 6 February 2024, MHADA has initiated a process whereby the Deputy Engineer will visit the tenements of the adjoining premises. According to the petitioner, these premises (subject matter of the impugned letter) stand amalgamated to the development, to be undertaken by the petitioner. The impugned communication records that the Deputy Engineer should verify and confirm the irrevocable consent of the occupants / tenants to appoint respondent No. 5 who is intending to redevelop the property as described in the impugned communication under the provisions of Development Control Regulation 33(7).

6. Mr. Sakhare, learned senior counsel for the petitioner submits that a perusal of this communication would indicate that this is clear breach / encroachment of the petitioner's rights as conferred under the joint developed agreement, as also the Letter of Intent, and the IOD dated 28 August 2023 already issued in favour of the petitioner. It is the petitioner's case that respondent No.5 would not have any legal right much less any entitlement to undertake redevelopment under DCR 33(7) of the adjoining premises and subject matter of the impugned communication, as it

would be in breach and / or patently contrary to the Joint Development Agreement, entered between the MHADA and the petitioner.

7. The petition is opposed on behalf of the MHADA as also on behalf of respondent No.5 to contend that it is too premature for the petitioner to seek the reliefs as prayed for and the pleas as noted hereinabove. It is contended that the occupants / tenants of the adjoining buildings have reposed confidence in respondent No.5 for redevelopment of the buildings, and it is such verification which is now being undertaken. It is submitted that only after such verification by the Deputy Engineer of MHADA is complete, a final decision shall be taken by MHADA as to whether in respect of such buildings / premises, respondent No.5 could at all be appointed as the developer to undertake Joint Development along with MHADA. It is also contended on behalf of respondent No.5 that the LOI issued in favour of the petitioner was valid for a period of one year and the same has lapsed, hence, the petitioner cannot claim any right whatsoever either under the LOI or under the Joint Development Agreement.

8. Reply affidavit on behalf of the MHADA is also placed on record of Ms. Rekha Borade, it may be appropriate to refer to the following relevant paragraphs of the reply affidavit which inter alia states that the tenants / occupants of the said properties subject matter of the impugned communication are stated to be “not with the petitioner”:-

"10. I say that the tenants / occupants of the properties mentioned in Exhibit N to Petition are not with the Petitioner and they themselves have issued Letter dated 3rd October, 2023 stating that they have approached to the Respondent No.5 for the redevelopment with requisite consent and to verify the consents given by them at the earliest. Hereto annexed and

marked Exhibit - "A" is the copy of the Letter dated 3rd October, 2023 of the tenants / occupants.

11. I say that the Letter of Intent dated 21st July, 2023 was issued to the Petitioner for enabling the Petitioner to approach the Municipal Corporation of Greater Mumbai and to obtain the consent of the tenants/occupants and to obtain the approved plans for proposed redevelopment which is at Exhibit J to the Petition.

15. I say that the main purpose of redevelopment is rehabilitation of tenants / occupants with their consent by simple majority i.e. 51% even in case of privately owned cessed properties. While issuing LOI to Petitioner, it was specifically mentioned that 1) It is issued in order to obtain consents from tenants / occupants and 2) It cannot be construed as NOC for redevelopment. LOI was given to Petitioner to obtain consent from tenants/occupants situate on these disputed plots and even after more than 11 months, the Petitioner has failed to submit the proposal along with requisite consent till date. Though the clause about including other adjacent plots in approved scheme is mentioned / included in J.V. Agreement, the same cannot materialized unless and until supported by requisite consents of tenants / occupants."

9. We have heard learned counsel for the parties.

10. At the outset, we are of the opinion that as on date what is contemplated by the impugned communication dated 6 February 2024 is merely a verification of the consent of the tenants as claimed in the proposal submitted by respondent No.5 to the MHADA in respect of the adjoining premises. For convenience, we note the impugned communication which reads thus:

"No. EE/GN/RR/DE-IV/RD/422/2024
Date: 06/02/2024

To,
All tenants/Occupants,
"Murgimulla Trust Chawl, Azad Manzil.
Ikbaal Manzil, Dhanaji Chawl, Dilshad
Hotel, Kamakshi Kunj, Mahi Buz Mansion,
Narielwala Chawl, Mahim Education
Secial Organisation, Pathan Building C.S.
No. 981, 982,983,984-987, 988, 989, 997,
1003, 1004 1005 & 1006, Street No. 8,6,4
44A-44C, 44B. 2, 46, 12, 10, 25C, 44E,
Bazar Gully, Mahim Bazar Cross Road

no.2, Kapad Bazar Gully, Mahim Cross
Road, Mumbai-400016

Sub: Proposed Composite Redevelopment of Property bearing C.S. No. 981, 982, 983, 984-987, 988, 989, 997, 1003, 1004 1005 & 1006 of Mahim Division, in 'G-North Ward, Bearing Street No. 8,6,4 44A-44C, 44B, 2, 46, 12, 10, 25C, 44E, Bazar Gully, Mahim Bazar X Road no.2, Kapad Bazar Gully, Mahim Cross Road, Mumbai-400 016. Building Known as "Murgimulla Trust Chawl, Azad Manzil, Ikbaal Manzil, Dhanaji Chawl, Dilshad Hotel, Kamakshi Kunj, Ilahi Bux Mansion, Narielwala Chawl, Mahim Education Social Organisation, Pathan Building".

Ref: 1) Resident Executive Engineer, MBRR Board's letter no. R/NOC/C.S. No. 981, 982, 983, 984-987, 988, 989, 997, 1003, 1004, 1005 & 1006 of Mahim Divn./8063/MBRRB-2023, dated 11.09.2023.

2) Proposal Submitted to Hon. CO/RR by M/S Wright Realty their vide letter dated 04.09.2023.

3) This Office letter No EE/GN/RR/DE4/RD/3796/2023 Date 26/09/2023.

4) This Office letter No EE/GN/RR/DE4/RD/ON 110/2023 Date 03/10/2023.

5) Approval by CO MBRRB vide office note no.435 Date 02/02/2024.
Sir/Madam,

This office is in receipt of proposal of redevelopment of captioned property under DCR33 (7) from M/S Wright Realty their vide letter dated 04.09.2023 through resident executive engineer letter no. R/NOC/C.S.No. 981, 982, 983, 984-987, 988, 989, 997, 1003, 1004, 1005 & 1006 of Mahim Divn./ 8063/ MBRRB-2023, dated 11.09.2023.

In this regard, the undersigned along with Deputy Engineer will visit your tenements on 12/02/2024 at 11:00 A.M. and onwards for inspection of documentary evidence of occupancy / tenancy and to confirm the irrevocable consent, if given by you.

You are requested to remain present at your premises along with one set of following original documents for verification as regards to proof of your occupancy in above cess building and the irrevocable consent. One set of self attested Xerox copies of the same documents should also be kept ready and furnished to this office.

1. Rent receipt (Prior to 13/06/1996 and the latest one)
2. Aadhar Card
3. Latest Ration Card and copy of previous Ration card
4. Electricity Bill (Prior to 13/06/1996 and the latest one)

5. BEST's letter regarding First Date of Installation of electricity meter and load certificate showing first date of installation of electricity meter of previous tenant as well as present tenant, if there is any change.
6. Election Identity Card issued by Election Commission prior to 13/6/1996 and also latest if available.
7. Telephone Bill (Prior to 13/06/1996 and the latest one)
8. Any other proof of occupancy like Driving License, Passport, Gurmasta License etc.
9. Death certificates and NOC of persons concerned with the tenancy /occupancy rights of the tenement if any.
10. Affidavit-cum-Declaration, Indemnity Bond on stamp papers in respect of documentary proofs submitted if required.

Yours Faithfully,

Executive Engineer, GN Divn.,
M.B.R. & R. Board, Mumbai"

(emphasis supplied)

11. It is clear from perusal of the impugned communication that as on date there is no final decision taken by MHADA that respondent No.5 needs to be appointed as a developer for the premises as described in the impugned letter, so as to undertake any joint development along with MHADA for which a Letter of Intent needs to be issued, which is so far has not been issued in favour of respondent No.5.

12. At this stage, there is no certainty as to what would be the outcome of this verification which commenced on 6 February 2024, albeit stayed by a coordinate Bench of this Court by an ad-interim order dated 8 May 2024.

13. In the aforesaid circumstance, we are of the opinion that it would be in the interest of justice that the exercise of verification as set into motion by the impugned communication needs to be taken forward. If as result of the verification, MHADA is inclined to take a decision, adverse to the petitioner by

issuing a Letter of Intent in favour of respondent No.5 which, according to the petitioner, breaches the rights of the petitioner, under the Joint Development Agreement dated 24 January 2023 and the subsequent correspondence as entered between MHADA and the petitioner, in such event MHADA needs to hear the petitioner and respondent No.5 and the representatives of the tenants / occupants on their respective contentions.

14. In this view of the matter, we are inclined to dispose of this petition in terms of the following order:

ORDER

(i) The verification exercise as contemplated under the impugned communication dated 6 February 2024 shall be taken forward and be completed as expeditiously as possible and in any event within a period of two months from today.

(ii) In the event as a result of the verification being undertaken under the impugned communication dated 6 February 2024, any decision adverse to the petitioner is being taken, the MHADA shall issue a notice to the petitioner on such proposed decision, permitting the petitioner to make a written representation in that regard and after an opportunity of being heard is granted to the petitioner, respondent no. 5 as also the representatives of the tenants being appointed by majority of the tenants, an appropriate decision be taken by MHADA strictly in accordance with law. All contentions of the parties in that regard are expressly kept open.

(iii) If the final decision is adverse to the petitioner, the same shall not be given effect to for a period of four weeks from the date of its communication.

15. Writ Petition stands disposed of in the aforesaid terms. No costs.

16. Interim Application would not survive, it accordingly stands disposed of.

(ARIF S. DOCTOR, J.)

(G. S. KULKARNI, J.)