

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

WRIT PETITION NO. 2509 OF 2025

Naresh J. Mahyavanshi & Ors.

...Petitioners

Versus

Maharashtra Housing and Area
Development Authority & Ors.

...Respondents

Mr. Sheroy M. Bodhanwalla a/w Sayali Puri, Akash Singh and Shreyas Thakur i/b.

M. S. Bodhanwalla & Co. Advocates and Solicitors for the Petitioner.

Mr. Jagdish Aradwad (Reddy) for Respondent Nos. 1 & 2.

Ms. Vrushali Kabre, AGP for Respondent-State.

Ms. Pushpa Yadav i/b. Komal Punjabi for BMC.

CORAM: G. S. KULKARNI &
AARTI SATHE, JJ.

DATE: 03rd NOVEMBER 2025

P.C.

1. This Petition filed under Article 226 of the Constitution of India prays for the following substantive reliefs:-

“a. this Hon’ble Court be pleased to issue a writ of mandamus or any other writ in the nature of mandamus directing Respondent Nos. 1 and 2 to follow the mandate laid down under the MHADA Act and Mumbai Municipal Corporations Act and be pleased to direct Respondents to grant all necessary permissions to the Petitioners through the Developer Hanware Realty, or through such other developers, to carry out redevelopment of the property being Kunj Niwas Building No. 1, Building No. 2 and Building No. 3, Sahakar Road, Jogeshwari (West), Mumbai-400 102;

b. In the alternate to prayer clause (a) above, this Hon’ble Court be pleased to direct Respondent nos. 1 to 8 and/or Respondent nos. 9 to 21 under the aegis of Respondent nos. 1 to 8 to carry out the work of development/redevelopment of the property known as work of development/redevelopment of the property

known as Kunj Niwas Building No. 1, Building No. 2 and Building No. 3, Sahakar Road, Jogeshwari (West), Mumbai 400 102 in a time bound manner as decided by this Hon'ble Court and to further execute all such necessary documents with the Petitioners including taking consents from the Petitioners and executing Permanent Alternate Accommodation Agreements as mandated under law;

c. In the alternate to prayer clauses (a) and (b) above, this Hon'ble Court be pleased to allow the Petitioners

d. Pending the hearing and final disposal of the present Petition, this Hon'ble Court be please to direct Respondent nos. 1 to 8 to grant all necessary permissions to the Petitioners and/or the developers proposed by the Petitioners for redevelopment of the property known as Kunj Niwas Building No. 1, Building No. 2 and Building No. 3, Sahakar Road, Jogeshwari (West), Mumbai - 400 102;"

2. Thus, the Petitioners are inter alia challenging the inaction on the part of Respondent nos. 1 to 8 in following the mandate laid down under Section 79-A of the Maharashtra Housing and Area Development Authority Act, 1976 (hereinafter referred to as "MHADA Act") against Respondent nos. 1 to 8 to permit the tenants and/or occupants of Kunj Niwas building Nos. 1, 2 and 3, Sahakar road, Jogeshwari West, Mumbai – 400 102 bearing C.T.S. No. 75A, 75/15 to 32 Survey No. 22 Hissa No. 1 (Part.) admeasuring about 3596.10 sq. mtrs. (hereinafter referred to as the "concerned buildings") to commence and complete the process of redevelopment of the concerned buildings. It is the Petitioner's contention that the notice under Section 354 of the Mumbai Municipal Corporation Act, 1888 (MMC Act) was issued in May 2015, however no action was taken by the landlord for redevelopment of the concerned buildings. By orders dated 3rd August 2022 and 7th September 2022 passed by this Court in Writ Petition No. 2004 of 2018 filed by the Petitioners, this Court directed the Petitioners to vacate the concerned building on or before 3rd September 2022. The Petitioners have accordingly vacated the premises and the building was accordingly demolished, however, neither the authorities nor the landlord/owner have taken any steps towards redevelopment on the said premises.

3. Brief facts relevant to the aforesaid grievance as made out by the Petitioners in the present Petition are as follows:-

i. The Petitioners are the tenants of the concerned buildings and have been living in the said building with their families for the last several years as lawful tenants. On 21st May 2015, the Petitioners received notice issued by Respondent No.6 under Section 354 of the MMC Act classifying the concerned buildings as C-1 category and asking the Petitioners to evict the concerned buildings, which according to Respondent No.6 were in ruinous condition, likely to fall and dangerous to any person occupying them. By way of the aforesaid notice to avoid any mishap, the Petitioners were asked to vacate the buildings and further to set up proper and sufficient board or fence for the protection of passersby and other persons. By way of the aforesaid notice, the Petitioners were also informed that if they do not comply with the request as mentioned in the said notice within a period of 30 days from the service or receipt of the said notice then they would make themselves liable for prosecution under Section 475-A of the MMC Act. It was further informed to the Petitioners that if the Petitioners fail to comply with the request in the aforesaid notice then action will be taken pursuant to the provisions of Section 491 of the Act.

ii. The Petitioners being aggrieved by the aforesaid notice issued by Respondent No.6 under Section 354 of the MMC Act filed Writ Petition No. 1772 of 2015 before this Court. On 5th October 2017, during the pendency of Writ Petition No. 1772 of 2015 the matter came to be referred to the Technical Advisory Committee (TAC) for its report. On 8th December 2017, this Court passed an order permitting the Petitioners to withdraw Writ Petition No. 1772 of 2015 and passed the following orders:-

*“P. C. :
Heard.*

During the pendency of the writ petition, the matter was referred to the Technical Advisory Committee of the Corporation for submission of the report after following the directions in the judgment in Writ Petition (L) No. 1135 of 2014. The petitioners have not challenged the report of the TAC. The learned counsel for the petitioners states that the petitioners would be filing a writ petition for challenging the TAC report. It is stated that the adinterim relief granted by this Court on 22.07.2015 may be

continued for a short time so that appropriate interim orders could be sought in the proposed petition. The learned counsel seeks permission to withdraw the writ petition.

The permission to withdraw the writ petition is granted. The writ petition stands disposed of as withdrawn. The points raised in the writ petition are kept open.

The ad interim relief granted on 22.07.2015 to continue for a period of six weeks.

It is needless to mention that the petitioners would occupy the premises at their risk and costs.

Order accordingly. No costs."

iii. The TAC submitted its report dated 5th October 2017. Being aggrieved by the report of the TAC, the Petitioners filed another Writ Petition No. 2004 of 2018 before this Court challenging the notice issued under Section 354 of the MMC Act as also the report of the TAC. During the pendency of the Writ Petition No. 2004 of 2018, Respondent No.3 issued another notice under Section 354 of the MMC Act once again declaring the concerned buildings of the Petitioner under C-1 category and called upon the Petitioners to forthwith vacate the said premises despite ad-interim orders granted in favour of the Petitioners. In Writ Petition No. 2004 of 2018, this Court vide order dated 3rd August 2022 disposed of the said Petition. The said order reads as under:-

"P.C.

This matter was heard extensively from time to time. Learned counsel for the Petitioners on instructions states that there are about 88 occupants occupying structure in the writ building. The writ petition is however filed by the 58 occupants and the Petitioners seek leave to amend the petition in order to bring on record remaining occupants, excluding 3 occupants who have filed a separate petition. Leave to amend is granted. Amendment shall be carried out within one week from today. Re-verification is dispensed with. Vakalatnama for the remaining added Petitioners shall be filed simultaneously. Amendment shall be carried out within 10 days from today. Amendment shall be carried out in the copy supplied to the Respondents' advocate simultaneously.

2. Learned counsel for the Petitioners, on instructions from the Petitioners present in the court, undertakes that the Petitioners shall handover vacant and peaceful possession of the respective tenements to the Municipal Corporation by 5.00 p.m. on or before 03/09/2022. Learned counsel for the Petitioners undertakes to add all the other occupiers (excluding three occupants, who have filed a separate petition) occupying their respective tenements to the petition and amend the petition accordingly. Learned counsel further undertakes that all these Petitioners would file their written undertaking within 10 days from today and would serve a copy of the same to the Respondents' advocate simultaneously. By the said undertaking, they also undertake that if any untoward incident occurs during their occupancy in their respective tenements, they would not hold the Respondents and/or the Municipal Corporation

responsible for any such untoward events/incidents. Undertaking given by learned counsel for the Petitioners is accepted.

3. Copy of the undertaking shall be served by the Respondent's advocate simultaneously. In view of the undertaking granted by the Petitioner, we direct the Municipal Corporation not to disconnect the electricity and water supply to the tenements occupied by the Petitioners. The Municipal Corporation is directed to take physical measurement of each of the tenement within one week from today and shall furnish a copy of the measurement to Petitioner and also to the landlords. The said list shall include names of the occupants of respective tenements. It is made clear that each of these Petitioners are surrendering their tenements in view of the action under Section 354 of Mumbai Municipal Corporation Act, 1888 in favour of the Municipal Corporation and not to the landlords unconditionally. Each of them are entitled to agitate their rights available in law in respect of the tenements in question by filing appropriate proceedings. It is made clear that this Court has not expressed any views on the individual claims made by the Petitioner in respect of the tenements in their occupation as on date and same shall be decided by the appropriate Court on its own merits.

4. In view of the undertaking rendered by the Petitioners the Municipal Corporation shall not evict any of these occupants till 3rd September 2022. The Petitioners shall not part with possession of their tenements in favour of third party.

5. Writ petition is disposed off in aforesaid terms. No order as to costs. Parties to act on authenticated copy of this order. Place the matter for compliance on 5th September 2022."

iv. Another order dated 7th September 2022 was passed in Writ Petition No. 2004 of 2018 by this Court which reads thus:-

"P.C.

1. Ms. Metakari, the learned counsel for the Corporation tenders notice dated 24th August, 2022. She tenders Area Certificate issued by the Municipal Corporation after taking measurements of each of the tenement in pursuance of the order dated 3rd August, 2022. Copy of the Area Certificate is handed over to the learned counsel for the petitioners and other contesting respondents. Copy of the Area Certificate is taken on record.

2. Learned counsel for the parties jointly state that the order dated 3rd August, 2022 passed by this Court is complied with by the parties. There appears to be some dispute regarding the area measured and recorded in the Area Certificate by the Municipal Corporation raised by some of the petitioners. We do not propose to go into this issue, at this stage.

3. The undertaking proposed to be issued by the petitioners and filed before this Court in pursuance of the said order dated 3rd August, 2022 includes the undertaking to be given by some other occupants who are not the parties to the petition. Mr. Bodhanwalla, learned counsel for the petitioners states that those occupants do not propose to be impleaded as petitioners in this petition. Statement is accepted.

4. Since the other occupants who are not parties have also signed the undertaking and complied with paragraph 2 of the said order dated 3rd August, 2022 but are unwilling to be joined as petitioners, we direct the petitioners to implead the

other occupants as respondents within 48 hours from today. Amendment shall also be carried out in the copy supplied to the respondents.

5. A copy of the undertaking shall be furnished to the Municipal Corporation as well as to the learned counsel for respondent nos.9, 16, 20 and 21.

6. The Municipal Corporation is directed to take possession of the writ tenements and handover the possession thereof to the landlords/owners within one week from the date of taking possession. Since the order passed by this Court is complied with, office is directed to remove this matter from the board.

7. Since the landlords of the building do not propose to carry out demolition, we permit the Municipal Corporation to carry out the demolition of the offending structures. If any costs of demolition is required to be paid by the owners/landlords to the Municipal Corporation, the same shall be paid within two weeks from the date of demand of such charges.

8. Mr. Singh, the learned counsel for respondent nos.9, 16, 20 and 21, on instructions, states that Room nos.6 & 7 on the ground floor of the building no.2, are vacated. Statement is accepted.

9. The Municipal Corporation is directed to dispossess the occupants of the said tenements if any found in possession at the time of taking possession of the said tenements and if necessary with the assistance of Police.”

v. In pursuance of the orders dated 3rd August 2022 and 7th September 2022, the Petitioners vacated the premises occupied by each of them and the concerned buildings came to be demolished by Respondent No.3. The Petitioners also handed over possession of the said premises of the concerned buildings to the officials of Respondent No.3.

vi. In spite of the concerned buildings being demolished way back in the year 2022, there was no proposal for redevelopment of the concerned buildings from the landlords of the Petitioners and therefore the Petitioners through their Advocate addressed a legal notice dated 5th December 2023 to the landlords i.e. (Respondent Nos. 9 to 21) in the present Petition requesting the landlords to start the process of redevelopment of the concerned building without further delay, in as much as the Petitioners have been dis-housed and also that they had handed over vacant possession of the concerned buildings to Respondent No.3 and to the landlords, in the hope that redevelopment could be taken up expeditiously.

vii. The Petitioners however did not receive any reply to the aforesaid notice and hence on 20th December 2023, the Petitioners through their Advocate addressed a letter to Respondent No.3 calling upon them to intervene on account of inaction on the part of the landlords to redevelop the concerned buildings. The Petitioners submitted that infact it was the landlords' duty to carry out redevelopment of the concerned building, however, the same has not been done by the landlords. The landlords by letter dated 20th December 2023 addressed to the Petitioners' Advocate submitted that they had initiated the process of redevelopment of the concerned buildings, however no details in respect thereof have been shared as on date with the Petitioners.

viii. The Petitioners therefore on account of inaction on the part of the landlords to carry out the redevelopment of the concerned buildings inspite of demolition being carried out in the year 2022 pursuant to the orders of this Court dated 3rd August 2022 and 7th September 2022, were constrained to issue a letter dated 8th February 2024 to Respondent No.1 requesting them to initiate the process of redevelopment of the concerned building under Section 79A of the MHADA Act as well as in pursuance of the provisions of Development Control and Promotion Regulation 2034. However, so far no steps have been taken in respect of the aforesaid letters either by the landlords or by Respondent Nos. 1 to 4.

4. We have heard learned Counsel for the parties.

5. Affidavit in reply has not been filed either by Respondent-landlords or by Respondent No.1-MHADA and Respondent No.3-MCGM.

6. However, it will be beneficial to reproduce the relevant findings of a decision of this Court relied by the learned counsel for MHADA Mr. Reddy in the case of MCGM Vs. State of Maharashtra WP No. 1135 of 2014 passed by the division bench (Coram: Anoop V. Mohota & A. A. Sayyed JJ.) wherein in light

of the problems faced by the corporation concerning large number of seriously dangerous and dilapidated buildings/structures which require to be urgently vacated/demolished, following guidelines were given:-

“9) Accordingly, for the present, in the absence of any policy in that behalf, the following guidelines are issued:

a) The present order will be applicable only in respect of those buildings which are highly dilapidated and dangerous and /or classified in Category C1 by the Corporation, whether owned by a private party or by the Corporation or any other authority and in respect of which building, either a notice under section 354 has been issued or the Corporation has issued a Letter of Evacuation to their tenants and /or occupiers of the buildings.

b) The Corporation will, before classifying a building under category C1, conduct their own independent inspection and assessment with the help of the Engineers of their Department and carry out a survey of such building(s). The report of Structural Audit shall be taken into account.

c) The Corporation shall consider the report of Structural Engineer appointed by the owners and /or occupants classifying the building as dilapidated and dangerous. If the owners and /or the occupants bring conflicting reports on the status of the building, the Corporation shall refer the matter to Technical Advisory Committee (TAC) under the Chairmanship of Director (ES&P) with at least 3 other members, viz. City Engineer, Chief Engineer (DP) and Chief Engineer (P&D).

d) The TAC shall:

i) Carry out a visual inspection of the state of the internal and external plaster, plumbing, drainage, whether the doors and windows close properly, whether steel in columns is exposed, whether there is settlement in the foundation, deflections/sagging, major cracks in columns/beams, seepages/leakages, staircase area and column condition, lift well walls, U.G. tank, O.H. tank column condition, parapet at terraces, chhajas, common areas, terrace water proofing.

ii) Carry out specific tests like ultrasonic pulse velocity test, rebound hammer test, half cell potential test, carbonation depth test, core test, chemical analysis, cement aggregate ratio as may be considered by TAC as necessary.

e) If it is found after due notice that the building(s) is in a highly dangerous or in dilapidated condition, then in that event, the Corporation shall also make a list of the names of the tenants and /or occupiers in the said building and the carpet area of the premises in their respective occupation and possession including the floor at which the same has been occupied.

f) A copy of such list will be furnished to the landlord and /or owner /builder of the said building. The Corporation thereafter, will issue a notice under section 354 of the said Act calling upon such tenants and /or occupiers to vacate the said premises and if such notice under section 354 of the said Act has already been issued, then in that event the Corporation will give 7

days' notice to such tenants/occupiers, copies whereof will be furnished to the landlord for vacating the said building(s). If such tenant and/or occupier is not available, the Corporation shall affix such notice or Letter of Evacuation on any part of such premises.

g) The Corporation shall then take steps to turn off the water, supply, electric power and gas to such building immediately before the removal of occupiers.

h) In the case of a municipal owned building(s), the Corporation will issue Letter of Evacuation to every person in occupation of the said building or part thereof to vacate the said building along with their belongings within the said period of 7 days from date of issuance of such notice of Letter of Evacuation in respect of municipal owned building(s). The notice issued to such occupiers shall contain the name of the occupier and the area in his occupation and also the floor at which the premises are located. In case, if such tenant and/or occupier is not available, the Corporation shall affix such notice or Letter of Evacuation on any part of such premises.

i) In the event, a person occupying such tenement whether of the privately owned building(s) or building(s) owned by Corporation or any other authority refuses to vacate the said premises, then the police shall remove such person from the said premises by using nominal force if required for the same.

j) The police may use such force as is reasonably necessary to remove such person and/or occupiers and/or allottee along with their belongings from the said premises, without causing damage to their movables.

k) The Corporation may then demolish such dangerous and dilapidated building.

l) The rights of the tenants and/or occupiers and/or owners in respect of the said premises/property will not be affected by virtue of evacuation or demolition carried out by the Corporation of such dilapidated and dangerous building in exercise of the power under section 354 of the said Act or by virtue of the fact that the Corporation is the owner of the premises. Such tenant and/or occupier and/or owner will be entitled to re-occupy the premises in respect of the same area after the reconstruction of the building, subject to the prevalent provisions of law pertaining to redevelopment of the property or subject to any arrangement or agreement arrived at by and between such tenants and/or occupiers with the owner of the building. Any action of evacuation/removal/demolition will not affect the inter se rights of owners if there be more than one owner or there is a dispute as to the title of the property.

m) If there are any pending suits/proceedings and there are any restraint orders passed, the Corporation shall be free to apply for vacating and/or modifying such orders, which applications shall be decided on its own merits and in accordance with law.

n) In respect of the Municipal buildings, it shall be the duty of the Corporation to provide alternate accommodation as early as possible in any of their premises to such tenant and/or occupier of the Corporation owned building till and until the said building is reconstructed by the Corporation or the tenancy of any of such occupier is determined in accordance with law.

o) In respect of the private owned buildings, if such building falls in cessed category as contemplated under the provisions of the Maharashtra Housing and Area Development Act, 1976, then in that event, it will be the duty of MHADA/ MBR&RB to provide temporary alternate arrangement in a transit camp for transit accommodation, in accordance with law, as early as possible.

p) In case privately owned buildings are demolished by the Corporation in exercise of power under Section 354 read with the present order, then the Corporation shall, while granting sanction of redevelopment, impose a condition in IOD (Intimation of Disapproval) that no Commencement Certificate will be issued under section 45 of the MRTP Act, 1966 unless and until an Agreement either providing a Permanent Alternate Accommodation in a newly constructed building or a settlement is arrived at by and between the tenants and/or occupiers and the landlord in respect of the said demolished premises, is filed with the Corporation at the earliest.

q) In case of buildings which have suddenly collapsed, to determine the reasons for such collapse, it is desirable that forthwith a Committee be constituted headed by a former Municipal Commissioner and consisting of Former Chief Engineer of MHADA alongwith a Professor of VJTI and a Professor of IIT, Powai having expertise in Structural Engineering as also an employee of the Corporation, holding a post not lower than that of the Director (E.S.&P.) and such Committee will determine the cause of such collapse and interalia identify whether any Architect and/or Consultant and/or Municipal officers or other person/s is/are responsible in any manner whatsoever for such a collapse. The reference to the Committee will not in any way be a hindrance in the criminal investigations/proceedings that may have commenced or may be commenced under the relevant criminal law. This no way would restrict the State of Maharashtra to pass appropriate order for any such inquiry or investigation."

7. Considering the facts of the present case and although there being no written opposition/reply of the Respondents and considering the nature of the orders which we propose to pass, no prejudice would be caused to the Respondents. The following order would serve the ends of justice:-

ORDER

i. Respondent Nos. 9 to 21 i.e. landlords shall commence the work of redevelopment of the concerned buildings as expeditiously as possible preferably within a period of six weeks from the date this order is made available to the said Respondents by the Petitioners. If the aforesaid Respondents do not start the work of redevelopment of the concerned buildings, it will be presumed that the said Respondents are not interested/keen in carrying out the redevelopment of the

concerned buildings and in that event the concerned Respondents i.e. MHADA and MCGM to take over the redevelopment of the concerned buildings to be undertaken including at the hands of the tenants as per law, however keeping open all the rights of the landlords in regard to the benefits of the development.

- ii. The tenants' rights in the concerned buildings will not stand extinguished as a result of the redevelopment of the concerned buildings.
- iii. All rights and contentions of the parties are expressly kept open.
- iv. The Petition is disposed of in the aforesaid terms. No costs.

(AARTI SATHE, J.)

(G. S. KULKARNI, J.)