

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2915 of 2025

CHANDU MATHUR WAGHELA ...Petitioner

Vs

CHIEF EXECUTIVE OFFICER SLUM
REHABILITATION AUTHORITY & ORS ...Respondents

Mr. Amogh Singh with Mr. Prateek Kharwar i/b. Mr. Ashwin Tripathi, for Petitioner.
Ms. Aarushi Yadav with Ms. Smriti Sajeev i/b. Ms. Ravleen Sabharwal i/b. R.S. Justicia
Law Chambers, for Respondent Nos.1 & 2 in LWP 2915/25.
Mr. Prayog Joshi, for Respondent No.4.
Ms. Aditi S. Naikare, for Respondent No.5.
Mr. Jagdish G. Aradwad (Reddy) for SRA in other matters.

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

DATE: 11 SEPTEMBER 2025.

P.C.

1. The grievance of the petitioner is that the mother of the petitioner was held to be an eligible slum dweller and her name was figured in Annexure II in the year 2006. She passed away in the year 2007.

2. However, what has happened is quite peculiar that the allotment letter was issued behind the back of the petitioner or her legal heirs in respect of Tenement No.A-1303 in the year 2010. Subsequent thereto in the year 2021, the said tenement was also transferred as if the petitioner's mother was surviving and such transfer was approved in favour of respondent No.7. It is at this stage on an information being gathered from the SRA, the petitioner became aware of the serious fraud, namely, of allotment letter being issued and also a transfer having taken place of the tenement which was legitimately entitled to the petitioner's

mother in the year 2021 and that respondent No.7 is now illegally occupying the said premises. Further, the building itself has no Occupation Certificate. Therefore, an issue is raised that although since 2010 occupancy is permitted, no occupation certificate has been granted by the SRA to the building and illegal transfers are being undertaken.

3. Learned Counsel for respondent No.5 has placed on record a compilation to submit that now the illegality has been addressed inasmuch as the SRA has passed an order dated 27 May 2025 wherein transfer in favour of respondent No.7 has been cancelled and the petitioner has now been allotted an alternate tenement being Tenement No.1304 in 'B' Wing in lieu of tenement No.102 in 'A' Wing. It is also stated by learned Counsel for the society that Tenement No.1304 in 'B' Wing is lying vacant and the possession of the said tenement can be taken over by the petitioner. In our opinion, formalities in that regard be completed in the presence of the representative of the SRA and the representative of the society within one week from today, and compliance of the same be reported to the Court on the returnable date.

4. However, what is more glaring is as to how the SRA can permit a building to be occupied without an occupation certificate and further also entertain transfer applications. Considering such lawlessness which are encountered in many of the SRA matters, we recall the observations of the co-ordinate Bench of this Court in **Moinuddin Pashamiya Shaikh Vs. Slum Rehabilitation Authority**¹, when the Court has made the following observations:

¹ Writ Petition (I) No.7714 of 2023, decision dt. 19th & 20th June 2023

“23. And we go further. We take it as firmly settled that the right to shelter is part of the right to life. But there is no fundamental right to trespass. There is no fundamental right to squat. There is no fundamental right under the Constitution to rehabilitation at the very site of trespass or squatting. Both decisions cited commend the need for the statute the Slum Act to revisit this, and point out that it has no basis at all under the Constitution. Rather, it is against fundamental Constitutional precepts. Equally importantly, while the State may have an obligation to provide shelter, it has no Constitutional obligation to provide a marketable asset to anyone, and most emphatically not to someone whose initial entry on the land is illegal and unlawful. And yet this is precisely what the existing slum rehabilitation policy contemplates and promises. We are forced to ask, what is this if not the distribution of state largesse? One that comes at a very real public cost? Public lands for common public good are rendered unavailable. Every slum dweller is now confident in the assurance that the State will give him not just shelter but a high value marketable peace of real estate entirely free of cost.

24. And there is an inherent injustice built into any such scheme: those who lawfully purchase housing must take loans, pay interest, and carry this burden for decades. But those who simply encroach get tenements at the site of encroachments - free. In this very High get tenements at the site of encroachments Court, what are we to tell our staff who may be in need of housing? That the optimal solution in Mumbai is for them to go ahead and encroach or commit trespass, confident in the assurance of being given, sooner or later, 'free in-situ housing'? The most telling response to this injustice, far more than the words in all our judgments and orders, is the expression on the faces of those who are refused housing loans.

25. We are putting this as plainly as possible. There is now concrete evidence before us that shows wholesale trafficking and illicit dealing in this free-of-cost asset because it is free. The question of whether rehabilitation should be in-situ is more complex. It involves a consideration of eviction, translocation, displacement, provision of underlying infrastructure and transport to places of work and more. It is not our purpose today to venture into those areas of policy beyond the findings returned in the decisions we have cited and our reaffirmation today of those findings.”

5. It appears that still the eyes of the SRA remain shut to such major illegalities although it is one of the major planning authorities in the city. More particularly, the Chief Executive Officer needs to have an appropriate control over such illegalities. It however appears that things are completely beyond its control to take stock of such issues qua several projects with which the SRA is

concerned. Mr. Reddy, learned Counsel for SRA has pointed out that SRA is under-staffed. If that be so, we do not know as to why this issue has not been pursued when the SRA which has large land and more than 50% of the land is under slums, and under the jurisdiction of the SRA things can go on in such casual manner. In such large jurisdiction, the SRA being under-staffed itself is a serious matter and the State Government needs to look into such issues and should immediately sanction appropriate staffing, so that every possible issue does not come before this Court. We cannot have a situation where the Chief Executive Officer with such enormous powers, is functioning ineffectively and no control whatsoever over as to what is happening within his jurisdiction, and more particularly in the cases like the present, where no occupation certificate has been granted for almost 15 years, would arise. Also issues of rampant illegal transfers and allotments are happening in the SRA property as in the present case, contrary to the rules and regulations. Our attention is drawn to the decision in **Ahmad Hussain, son of Majibullah Khan & Anr. Vs. Slum Rehabilitation Authority & Ors.**² which is concerned with the illegal constructions, wherein the Court has made the following observations:

“14. Further those who are rank illegal occupants can in no manner be entitled to occupy slum tenements. They would have no legal right to remain in occupation of the slum tenements. They need to be evicted as per law.

.....

16. We observe that further appropriate action in accordance with law would be required to be taken by the Chief Executive Officer in regard to all the illegalities in respect of unauthorized occupation of the slum tenements and which has deprived the slum dwellers who are legitimately entitled to be put in possession of their allotted tenements. The eligible slum dwellers who have so far not been granted the possession of their

tenements ought to be immediately granted possession of the tenements, as it is already delayed for more than 13 years. Appropriate steps in that regard be taken by evicting those who are in unauthorized occupation, so that these legitimately entitled slum dwellers whose names were already notified in Annexure II and allotment orders issued to them, are not kept deprived of the benefits of the allotments as made in their favour. All contentions of the parties in that regard are expressly kept open.

17. Needless to observe that our directions in the order passed today in Writ Petition No. 3646 of 2022 in the case of Shakir Ahmad Shah vs. Apex Grievance Redressal Committee & Ors. in regard to the enquiry being undertaken by the Principal Secretary Urban Development Department shall also apply in the present proceedings and for compliance, this petition also be listed along with companion petition writ petition after four weeks, i.e., on 8 September 2025. 18. Considering such ground realities in relation to the SRA projects, we also direct the Chief Executive Officer to undertake an immediate survey of all SRA projects in which there are complaints of illegal occupation of slum tenements irrespective of the fact whether such tenements need to come to the common pool of the SRA or to be categorized as surplus/Project Affected Persons or which are entitled to the legitimate allottees and who have not handed over the possession of such tenements. A project-wise lists of all the slum schemes/slum projects after such project be prepared and the action be taken in accordance with law against the illegal occupation.

6. In this view of the matter, we are inclined to direct the Chief Executive Officer to place on record an affidavit as to why an occupation certificate has been delayed, who are the officers responsible to delay the occupation certificate in regard to the building in question and the reasons therefor. Necessary steps are required to be taken, including to comply with the orders passed by the Court in **Ahmad Hussain, son of Majibullah Khan** (supra) so as to take action against illegal occupants in the said building. The Court has also observed that an individual's interest in a property and his right to enjoy the same, is subject to larger public good and purpose, and that such rights are required to be balanced with the requirements of the society and such rights can never be absolute to occupy building without occupation certificate, and for such reasons, the Planning Authority cannot, as a matter of rule, regularise unauthorised

constructions by allowing the wrong doer to achieve condonation of the illegality.

7. Accordingly, stand over for **25 September 2025. HOB**, so that compliance can be reported and an affidavit of the Chief Executive Officer in this regard can be placed on record.

8. Needless to observe that insofar as the facts of the present case are concerned, the petitioner shall comply with all necessary formalities to substitute the name of the petitioner with the name of the deceased mother. If such an application is made, the same be decided within one week from filing of the said application.

(AARTI A. SATHE, J.)

(G. S. KULKARNI, J.)