

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

WRIT PETITION NO. 4830 OF 2024
WITH
INTERIM APPLICATION NO. 3224 OF 2024
IN
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Hemant R. Bhojane

Petitioner

Versus

Maharashtra State Government & Ors.

Respondents

Mr. Hemant Bhojane, Petitioner in person.

Mr. Akshay Shinde for Respondent Nos. 1 to 6.

Mr. Vishal Thadani, Addl.G.P. with Atul Vanarse, AGP for the State.

Mr. Amrut Joshi a/w Yazad Udawadia, Shemiyanti i/b. Arhat Legal for Respondent No.7.

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

DATE: 22nd September 2025

P.C.

1. On 11th September 2025, we had heard the learned Counsel for the parties when the following order was passed:-

“1. We have heard the petitioner in person, Mr. Shinde, learned counsel for MHADA and its officers Respondent Nos,3, 4 & 5 and Mr. Joshi, learned counsel for respondent No.7.

2. We are informed by Mr. Joshi that the construction of the building is almost complete and an application would be made for grant of Occupation Certificate. Petitioner is claiming to be entitled for a Permanent Alternate Accommodation. Mr. Joshi submits that the developer would not have any difficulty to enter into a PAA agreement as also make allotment in favour of the petitioner, considering the case of the petitioner and his entitlement.

3. Be that as it may, we are quite surprised that although the development has commenced from 2014 and the members of the society/tenants are out of their premises for a substantial time, no PAA agreement has been entered. We are informed by the petitioner that the position that the building is complete is also not correct.

4. We, accordingly, direct respondent No.4 – Chief Executive Officer, Mumbai Board, MHADA to personally undertake a visit of the project and prepare a report of his visit in regard to the status of the building and whether respondent No.7 can make an application of grant of an Occupation Certificate. At this stage, we are informed that an application for part OC has been made by respondent No.7. Let this also be verified and a position in that regard be also made on the adjourned date of hearing.

5. Respondent No.4 is directed to file an affidavit placing on record its report and the correct position insofar as the present project is concerned.

6. Prima facie, we are of the opinion that the project appears to have been delayed. Also it appears that there are disputes inter se in the society i.e. between its managing committee and members, and already an administrator has been appointed on the complaint of the petitioner.

7. Let the Administrator of the Society also be impleaded as a party. Amendment be carried out on or before Monday (i.e. 15 September 2025). Reverification is dispensed with.

8. We may also observe that there is a dispute in regard to the transit rent which is entitled to the petitioner. Let a proper calculation of the amount which are paid and the amount which have remained outstanding, be also placed on record by respondent No.7 and the same be furnished to the petitioner on

or before the next date of hearing, so that we can hear the parties on such contentions and pass further appropriate orders.

9. Respondent No.7 would also place on record a schedule, which respondent No.7 would now intend to follow to enter into PAA agreement with the members of the society and indicate the allotments of the respective flats to the members of the society. A list of all such members along with the numbers of the flats be indicated and a list thereof be placed on record.

10. Reply affidavit to the interim application is taken on record.

11. List the matter on 22 September 2025 (HOB)."

2. In pursuance to the said order Mr. Shinde, learned Counsel for the MHADA has placed on record compliance affidavit filed by Mr. Milind N. Borikar, Chief Officer, Mumbai Board, MHADA wherein in pursuance of the Court's direction the Chief Officer has visited the site of construction in question and stated that the construction work of rehabilitation will take another nine months (approximately) to be completed, in order to meet required norms for issuance for Part O.C. subject to compliance of required documents of the concerned Society-Respondent 7 Developer. The relevant contents of the said affidavit are required to be noted which read thus:

"2) I say that as directed in para 4 of the said order dated 11/09/2025, I personally visited the site of the project in issue on 18.09.2025 alongwith the concerned officers. Based on inspection, I have prepared a fact finding report in regards to the status of the Building alongwith Photographs. Hereto annexed and marked as Exhibit-AR1 is copy of the said report alongwith photographs.

3) Insofar as the fact that the Respondent No. 7 has applied for issuance of part OC is concerned, after perusing the records it is found that such application is filed by Respondent No. 7 to MHADA on dtd. 15.01.2025. Subsequently, the said application was forwarded necessary action to the concerned

divisional office i.e. Executive Engineer / Kurla Division / Mumbai Board. As per required norms for issuance for Part O.C., the said building is not in habitable condition; hence, the said application is pending.

4) I say that it is observed that the construction work of the rehab portion will take approximately next 9 months to complete in order to meet required norms for issuance of Part O.C., subject to compliance of required documents from the concerned society/ Respondent No. 7 Developer.”

3. We have also perused the site visit report dated 11th September 2025 annexed at Exhibit-AR1 which makes the following remarks:-

	Wing A	Wing B	
RCC	Completed	Completed	
Brickwork	Completed	Completed	
Plaster (External)	Completed	Completed	
Plaster (internal)	80%Completed	80%Completed	
Flooring	70% Completed	70% Completed	
Plumbing Work	65%Completed	65%Completed	
Electric work fittings	Pending	Pending	Only concealed pipe work done
Lift installation	1 lift work just started	1 lift work just started	1 lift work just started out of 2 lifts in each wings (i.e. total 4 lifts)
Fire fighting System	85-90% Internally completed	85-90% Internally completed	
Doors & window	60-65% completed	60-65% completed	In some floor door fixing not yet done
Terrace waterproofing	Pending	Pending	
Parking (lift stack)	Pending	Pending	
Painting & finishing	Only ext painting 90% completed	Only ext painting 90% completed	Finishing
Building surroundings (RG/compound wall/Main gate/entrance lobby/carriageway etc)	Pending	Pending	Pending

4. The affidavit also annexes the photographs. On a perusal of the photographs, it appears that what has been set out in the affidavit needs to be prima facie accepted.

5. Mr. Joshi learned Counsel for Respondent No.7, however would intend to disputes that a period of about 9 months would be required for completion of the construction work by the Developer and pursue the part occupation certificate application.

6. Another disturbing feature which has been brought to our notice is that the ground floor premises which are stated to be integral to the aforesaid premises forming part of the free sale component, were allotted to one Mr. Bharat K. Cheda. Also possession of such premises were handed over to him only for fitment. Such person however has entered into a lease agreement with “Jammu and Kashmir Bank” and since last 6 months such premises have been commercially utilized and without the construction being granted an occupation certificate. In our clear opinion such person who has purchased the rehab portion, could not have entered into such leave and license agreement in respect of the said premises, for which neither part or full occupation certificate has been granted.

7. It is also informed to us by Mr. Shinde that in regard to the said premises, Mr. Bharat K. Cheda was issued a notice by the Executive Engineer dated 7th January 2025, however, Mr. Bharat K. Cheda approached this Court in the proceedings in Writ Petition (L) No. 595 of 2025. On such proceedings, learned Single Judge of this Court by issuing notice and making it returnable on 21st

January, 2025 granted ad-interim protection. The copy of the said order is also annexed to the affidavit filed on behalf of the MHADA.

8. Mr. Shinde as also Mr. Joshi would be correct in their contention that without an occupation certificate, Mr. Bharat K. Cheda could not have entered into a leave and license agreement and induct a third party and permit occupation of the ground floor premises.

9. We may observe that such position being taken by Mr. Bharat K. Cheda and rightly interfered by the Executive Engineer by issuing notice on 7th January 2025 would certainly constitute to be an illegality considering the orders passed by this Court dated 15th July 2025 in the case of **Sunil B. Jhaveri H.U.F. The Municipal Commissioner, Brihan Mumbai Municipal Corporation & Ors. in Writ Petition No. 3078 of 2024** wherein in regard to the occupation of the premises of the flats without an occupation certificate, the Court had made the following observations:-

“21. To prevent such lawful course of action of the Municipal Corporation, the society and its members, who are taking law in their hands, are setting up a very bad example, to protect construction which is without Occupancy Certificate. They are asserting that they be permitted to occupy such construction with impunity, that too by raising pleas contrary to law, to the effect that the Court nonetheless permits occupation of such construction. There cannot be a plea more audacious than this. This would bring about a regime of total lawlessness, and such lawlessness in respect of the premises with which we are dealing can never be permitted.

23. Moreover, we would be justified to say that in the present facts, the flat purchasers who have taken law into their own hands in occupying construction which has no OC, are a selfish lot, who not only with open eyes are acting contrary to the

building regulations but also have means, to defeat legal actions being taken by the Municipal Corporation, by indulging in several statutory violations, which can never be permitted. In the present context, we may also refer to an order passed by the Bench of one of us (G. S. Kulkarni, J.) in the case Bhairavi Co-op. Hsg. Soc. Ltd. Vs. Heena Lifestyles wherein in somewhat similar facts, the Court observed that unless an occupation certificate is granted by the municipal corporation, the members of the society cannot be permitted to occupy the tenements. The following observations are required to be noted which read thus:

".....It needs to be noted that in law no member of the petitioner society is permitted to occupy unless an occupation certificate is granted by the municipal corporation. The society cannot be a mute spectator to such illegality of its members. Such conduct/illegality of the society and its members is sufficient to decline any reliefs."

28. We order that the occupants of floors 17 to 34 shall vacate their respective tenements within two weeks from the day a copy of this order is available, failing which the Municipal Corporation shall proceed to take an appropriate action in accordance with law and in respect of which long time back notices are issued. We clarify that such members would be entitled to occupy the tenements, only after OC is granted."

9.1 The aforesaid order was confirmed by the Supreme Court in the proceedings of SLP No. 20175 of 2025 which was dismissed by an order dated 1st August 2025.

10. We are however surprised by the conduct of both the Developer as also the Officials of MHADA who appeared to have been mute spectators. We are not informed on affidavit that the Chief Officer has taken any steps to get the *ex-parte* order (supra) vacated. The Developer has also not taken any steps whatsoever to initiate independent proceedings and take action for prohibiting such illegal user of

the partly constructed building and more particularly which lies without occupation certificate which is being permitted to be exploited commercially.

11. We accept Mr. Shinde's submission that immediate appropriate steps would be taken to make an application before the learned Single Judge in the proceedings of Writ Petition (L) No. 595 of 2025. The Developer has also agreed to make an application in the proceedings and point out the correct position that as on date the premises have no occupation certificate. The inductee cannot have any legal rights to occupy the premises and/or commercially utilize the premises in the absence of an occupation certificate. Moreover, such inductee cannot have higher rights than the owner of the premises. In any event, such illegality cannot be perpetuated by Mr. Bharat K. Cheda or even by his inductee in the said premises. We keep open all such contentions of the parties to be urged in the said Petition pending before the learned Single Judge as also to take appropriate actions as the Court may direct in the said proceedings.

13. In so far as the Petitioner is concerned, there appears to be some issue in regard to whether the petitioner or his wife is a member of the Co-operative Society, however, the Petitioner, who appeared in person has drawn our attention to the share certificate which is annexed to the Petition wherein his name has been indicated as the lawful member in respect of the flat in question.

14. Mr. Joshi submits that his client as recorded in the earlier order is not averse to entering into the PAAA with the Petitioner. Let the same be entered within a period of 15 days with appropriate clauses, as also identification of the flat

which is now being allotted to the Petitioner, in the redeveloped premises. The Court be informed of the position in that regard on the adjourned date of hearing.

15. In so far as the further work on the construction in question is concerned, Mr. Joshi submits that an endeavor shall be made by his clients to expeditiously complete the construction, so that an application for part occupation certificate can be pursued in a manner as permissible in law. Let all such steps be taken and the compliance of the same be informed to the Chief Officer of the Mumbai Board/MHADA after the building is complete in all respects so that an inspection can be undertaken for grant of part O.C. on the application which is already submitted.

16. In so far as the other members of the Society are concerned, we permit the Developer to have an amicable discussion in regard to the PAAA to be entered with him and for such purposes a meeting be called for within two weeks from today, so that all the other members can also be informed on their respective position and the relevant records can be considered by the Administrator in this regard. All contentions of the parties in that regard are expressly kept open.

17. In so far as the transit rent is concerned, in the affidavit filed today on behalf of Respondent No.7, the following statements have been made:

“10. I say that in respect of Unit No. 171 standing in the name of wife of the Petitioner i.e. Ketaki Bhojane, who was alive on the date of filing of the present Petition, a sum of Rs.14,17,000/- is already disbursed towards transit rent and a sum of Rs.8,25,000/- is lying to the credit of said Unit in the accounts of the Society which were deposited by the Developer. The Petitioner can approach

appropriate authority and carry out necessary compliance and realize the said money. A copy of statement showing the dates and amounts released in favor of the concerned Unit upon which the Petitioner stakes claim is annexed here to and marked as Exhibit- "D."

18. Thus, Administrator would be required to be heard, if any amounts are lying with him, as payable to the Petitioner. We permit the Petitioner to incorporate the name of the Administrator in the cause title, as although an amendment was permitted earlier to implead the Society as the party, the Society has been impleaded as a party, however not the Administrator, who currently holds the charge. Accordingly let the Administrator be impleaded as a party Respondent. The amendment be carried out during the course of the day. Issue notice to the Administrator. The Administrator be served through the Officer in charge of the local police station.

19. Permission to file further affidavits.

20. Stand over to 13th October 2025.

(AARTI SATHE, J.)

(G. S. KULKARNI, J.)