



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

WRIT PETITION NO. 5241 OF 2024

Banu Abdul Rehman Qureshi ... Petitioner
Versus
Maharashtra Housing and Area Development
Authority (MHADA) & Ors. ... Respondents

WITH
INTERIM APPLICATION (L) NO. 7374 OF 2025
IN
WRIT PETITION NO. 5241 OF 2024

Hajrabi Abdul Mohammad Yusuf ... Applicant
In the matter between
Banu Abdul Rehman Qureshi ... Petitioner
Versus
Maharashtra Housing and Area Development
Authority (MHADA) & Ors. ... Respondents

Ms. Gayatri Sharma a/w. R.M. Kumar, Ms. Andrea Lobo for the petitioner.
Ms. Nikita Jacob a/w. Ms. Kinjal Khandelwal i/b. K.P. Law Associates LLP for
respondent nos. 1 to 3.
Ms. Vaishali Chaudhary, Addl. G.P. for the State.
Ms. Eventa A. Gonsalves a/w. Mr. Reyden L. Gonsalves for respondent no. 4.
Mr. Prashant A. Nakati for the Intervenor.

CORAM: G. S. KULKARNI &
AARTI SATHE, JJ.
DATE: 6 November, 2025

P.C.

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

- “a) That this Hon’ble Court may be pleased to issue a Writ in the nature of
Mandamus or any other appropriate Writ, order or direction thereby directing
the respondent no. 4 to pay to the petitioner amount due towards the rent
compensation in lieu of temporary alternate accommodation to the petitioner
as per the chart annexed at Exhibit-G hereinabove.
b) That this Hon’ble Court be pleased to issue a Writ in the nature of

Mandamus, or any other suitable Writ, order or direction, thereby directing respondent nos. 1 to 3 to exercise the power under Chapter VIII of the Maharashtra Housing and Area Development Act, 1976 to take such steps as may be permissible in law to ensure the early rehabilitation of the petitioner.”

2. It is not in dispute that the premises, namely, Bori Chawl(Zoeb Chawl), Adam Mistry Lane, Dr. B.R. Ambedkar Road, Parle, Mumbai is subject matter of redevelopment. The case of the petitioner is that room no. 65 was in occupation of the petitioner, being the legal heir of the original tenant – Ms. Khatoon Abdul Shakoor, who died on 27 October, 2016, who was in occupation and possession of the said tenement. It is also his contention that she had handed over the tenement to respondent no. 4 for redevelopment and hence she is entitled for the transit rent, which is subject matter of prayers in this petition. It is also not in dispute that respondent no. 4 has entered into Permanent Alternate Accommodation Agreement with the petitioner, which would entitle the petitioner to be rehoused in the redeveloped premises. However, what has transpired is that the intervenor in Interim Application (L) No. 7374 of 2025, namely, Hajrabi Abdul Mohammad Yusuf, who also claims to be the sister of deceased tenant is now asserting rights in respect of the tenement. As to who would be entitled to the tenancy is a question of fact and law, which would be required to be decided in appropriate proceedings and more particularly, considering the provisions of the Maharashtra Rent Control Act on the basis of the factual situation which existed on the date the deceased tenant (Ms. Khatoon Abdul Shakoor) passed away so as to determine who would be the person who succeeds the tenancy. All these are matters of evidence.

3. In the event, the intervenor is asserting legal rights in respect of the tenement, it is for the intervenor to establish such legal rights of occupancy or

share in the said tenement, for which independent appropriate proceedings would be required to be instituted by the intervenor as permissible in law. However, the fact remains that the person who was occupying the tenement and who is being dishoused for the purpose of redevelopment would become entitled to transit rent as also to be put in possession of the tenement on the redevelopment, as so to maintain the status-quo ante, i.e., the tenement being vacated and handed over for such purpose by person who was in possession. This is recognizing the principles of hardship caused to such person, being mitigated. In the event any person other than the person in occupation claims a legal right in the tenement, then such person would be required to establish his legal right on such property in appropriate proceedings. The law in this regard is well settled considering the decisions in **Namo Realty Ventures LLP vs. Bhanujyoti CHSL & Ors.**¹; **Sai Krupa Cooperative Housing Society Ltd. vs. M/s. Osho Developers & Ors.**²; **Maniar Associates LLP vs. Vijay Niwas Co-op. Housing Society Ltd. & Ors.**³ and **Heritage Lifestyle and Developers Pvt. Ltd. vs. Amar-Villa Cooperative Housing Society Ltd. vs. Ors.**⁴

4. In **Namo Realty Ventures LLP vs. Bhanujyoti CHSL & Ors.** (supra), in similar circumstances, the Court has made the following observations:

“16. Insofar as respondent no. 6 is concerned, respondent no. 6 has dispute with respondent nos. 4 and 5. It is open to respondent no. 6 to agitate his concern in appropriate proceedings which would be proceedings inter se between respondent nos. 4 and 5. Respondent nos. 4 and 5 have already shown willingness to vacate the premises. As observed by this Court in the orders passed in the case of **Sai Krupa Cooperative Housing Society Ltd vs. Osho Developers & Ors.** respondent no. 6 needs to agitate its rights against respondent nos. 4 and 5 in appropriate proceedings. Respondent no. 6 also

1 Order dated 21 March, 2022 in Arbitration Petition No. 30 of 2022.

2 Order dated 18 January 2022 in Commercial Arbitration Petition (L) No. 1097 of 2022

3 Order dated 16 March 2022 in Commercial Arbitration Petition (L) No. 4301 of 2022

4 2011(3) Mh.L.J. 965

cannot take a position that he would cause any obstruction in respondent nos. 4 and 5 vacating the premises. Thus, respondent nos. 4 and 5 shall vacate their premises which shall be subject to the adjudication of any inter se disputes with respondent no. 6, and orders passed by the competent Court in such proceedings.

17. Needless to observe that in the event, redevelopment is completed prior to inter se disputes between respondent nos. 4, 5 and 6 being resolved in appropriate adjudication, it would be the obligation of the petitioner and respondent no. 1 to put respondent nos. 4 and 5 in possession of redeveloped premises. Also if respondent nos. 4 and 5 are vacating the premises, they are the one's who are being dishoused and who shall be suffering a hardship, hence it is respondent nos. 4 and 5 who shall be entitled to transit rent. In the event, respondent no. 6 is of the opinion that respondent no. 6 also has share in the transit rent, on account of any of his rights, it is open for respondent no. 6 to agitate such contention and such rights in appropriate proceedings he may bring against respondent nos. 4 and 5. All contentions of the parties in that regard are required to be kept open."

5. In **Sai Krupa Cooperative Housing Society Ltd. vs. M/s. Osho Developers & Ors.**, this Court has taken the following view:

"3. Today the question before the Court is limited to the handing over of the tenement and/or vacating the same for the purpose of redevelopment. It is stated that respondent no. 4-Pragati Sudhir Bhide is in occupation and she would be required to vacate the tenement for the purpose of redevelopment. As she would be dishoused, as she being called upon to vacate the tenement, she would also be entitled to the rent being offered by respondent no. 1-developer for availing of the alternate premises till the redevelopment is complete and till she is put in possession of the permanent alternate premises, which would be offered by the petitioner-society and respondent no. 1-developer."

(emphasis supplied)

6. In **Maniar Associates LLP vs. Vijay Niwas Co-op. Housing Society Ltd. & Ors.**, the Court has made the following observations:

"9. The fact remains that as respondent no.3 is in possession of the tenement in question and would now be handing over possession of such tenement to the petitioner/society. Hence considering the consistent view taken by this Court in Heritage Lifestyles and Developers Pvt. Ltd. vs. Amar-Villa Co-Operative Housing Society and others¹ and in Saikripa Co-operative Housing Society Ltd V/s. Osho Developers & Ors. the party who is dispossessed, would be entitled to the transit rent as it is such party who is put to hardship."

(emphasis supplied)

7. The aforesaid decisions are also taken into consideration in a decision of Division Bench of this Court in **Vipul Fatechand Shah vs. Nav Samir**

Cooperative Housing Society & Ors.⁵ wherein the Court made the following observations:

“3. Mr. Engineer, learned Counsel appearing on behalf of the Appellant submits that the Appellant does not have any difficulty in handing over possession of the said flat to the Developer for the purpose of proposed redevelopment. He assails the order on the ground that the same does not make any provision (i) for payment of transit rent to the Appellant and (ii) for the Appellant to be put back into possession on the completion of the redevelopment. He invites our attention to the impugned order and points out that the findings of the learned Judge to support the direction of deposit of transit rent with the Prothonotary and Senior Master are contrary to the settled law, as has been laid down by this Court in the following judgments:-

- (i) Namo Realty Ventures LLP Vs. Bhanujyoti CHSL & Ors. (Order dated 21st March 2022 in Arbitration Petition No.30 of 2022).
- (ii) Sai Krupa Cooperative Housing Society Ltd. Vs. M/s. Osho Developer & Ors. (Order dated 18th January 2022 in Commercial Arbitration Petition (L) No.1097 of 2022).
- (iii) Maniar Associates LLP Vs. Vijay Niwas Co-op. Hsg. Soc. Ltd. & Ors. (Order dated 16th March 2022 in Commercial Arbitration Petition (L) No.4301 of 2022).
- (iv) Heritage Lifestyles And Developers Pvt. Ltd. Vs. Amar-Villa Co-operative Housing Society Ltd. & Ors. (2011 (3) Mh. L. J. 865)

4. From the abovesaid judgements, learned Counsel points out that it is well settled that (i) the transit rent is to be paid to the person from whom possession of the premises in question is taken and (ii) on completion of redevelopment, the person/entity from whom possession was taken is to be put back in possession. He submits that for this purpose any inter se legal disputes qua title and/or entitlement to the said flat in question would be wholly irrelevant and would remain unaffected. He submits that the effect of the impugned order is to not only deprive the Appellant of the possession of the said flat but also the transit rent with no certainty of the Appellant being put back into possession thereof. Basis this, he submits that the impugned order be modified to the extent that the Appellant be entitled to receive inter alia the transit rent during the redevelopment and on completion of the redevelopment to be put back in possession of the flat in the redeveloped building.

5. Per contra, Ms. Dhruvi Kapadia, learned Counsel appearing on behalf of Respondent No.3 submits that Respondent No.3 is also entitled to a 50% share in the said flat. She first submits that therefore the entire rent ought to be deposited with the Prothonotary and Senior Master of this Court until the rights of the parties are decided in the pending legal proceedings between inter alia Respondent No.3 and the Appellant. Alternatively, she submits that 50% of the transit rent be paid over to Respondent No.3. She does not however dispute that the Appellant is residing in the suit flat and possession is to be taken from the Appellant.

5 Commercial Appeal (L) No. 25162 of 2023 in Commercial Arbitration Petition (L) No. 20814 of 2023 in its order dated 6 October, 2023

6. We have heard learned Counsel and find that in so far as the issue of transit rent is concerned, the law is now well settled. It is not in dispute that the transit rent is to be paid to the person, who is being dishoused from the premises in question. It is also clear that the person dishoused for the purpose of redevelopment shall be put back into possession on completion of the redevelopment. It is clear that inter se disputes qua title and/or entitlement to the flat, which is subject to redevelopment, are not factors which are relevant or to be considered for purposes of payment of transit rent as also possession being handed back to the person dishoused on completion of the redevelopment. To that extent, the Appeal must succeed. Hence, we dispose of the present Appeal with the following modification to the impugned order :-

(i) We direct that from the date of handing over possession of the said Flat No.4, the Developer shall make payment of inter alia transit rent to the Appellant in terms of Clause 12(c) of the impugned order.

(ii) We make it clear that on completion of redevelopment, the Appellant shall be put back into possession of the flat which has been built in lieu of Flat No.4 in the redeveloped building.

(iii) We make it clear that this order or the fact that the Appellant has received the transit rent and has to be put back into possession on completion of the redevelopment, shall not in any manner prejudice the rights and/or claims and/or pending legal cases of Respondent No.3 qua Flat No.4 or the flat which shall be handed over to the Appellant on completion of the redevelopment, i.e., the flat which is handed over to the Appellant in lieu of Flat No.4.”

8. In this view of the matter, we are of the clear opinion that till appropriate rights are established by the intervenor- Hajrabi Abdul Mohammad Yusuf in the tenement, there ought not to be any impediment whatsoever for respondent no. 4 to pay the transit rent to the petitioner in whose favour the Permanent Alternate Accommodation Agreement (PAAA) has been entered. Recognizing the principles that the person who is actually occupying and who is ousted, would become entitled to the transit rent, as the mitigation of the hardship can only be of the occupant and not to a person who was not occupying the premises and who is merely asserting rights in respect of the property.

9. Thus, respondent no. 4 would be required to make payment of the transit rent to the petitioner. However, all rights and contentions of the intervenor-

Hajrabi Abdul Mohammad Yusuf to assert rights in respect of the tenement/share in the tenement are expressly kept open. All contentions in that regard are also expressly kept open.

10. We are informed by learned counsel for respondent no. 4 that the total amount of transit rent which has become payable to the petitioner is about Rs.10,74,000/- as on August, 2024 and certainly the amount would be much more, as we are now in November, 2025. We, accordingly, direct respondent no. 4 to make payment of the entire amount of transit rent to the petitioner within a period of four weeks in two tranches.

11. Needless to observe that the percentage increase would be required to be in accordance with the terms and conditions if any contained in the Permanent Alternate Accommodation Agreement and/or in the percentage of increase being paid to other tenants. Let the exact calculation in that regard be furnished by respondent no. 4 to the petitioner along with first tranche of Rs.12,00,000/- which shall be paid to the petitioner within two weeks from today and second tranche within two weeks thereafter.

12. All contentions of the intervenor to pursue her independent proceeding as observed hereinabove, are expressly kept open.

13. Disposed of in the aforesaid terms. No terms.

14. Interim Application is also accordingly disposed of.

(AARTI SATHE, J.)

(G. S. KULKARNI, J.)