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

WRIT PETITION NO.5481 OF 2024

1. Munawwar Sultana Mirza Naeem Baig]
Age: 56 Yrs, Occ : Housewife,]
R/o: Room No.1, First Floor, Building]
No.102 – 104-106, Sukhlaji Street,]
Mumbai 400 008.]
2. Hamida Bano Manju Khan,]
Age: 64 Yrs, Occ: Housewife,]
R/o. Room No. 1B, Building No. 102-104-106,]
Sukhlaji Street, Mumbai 400 008.]
3. Nasreen Bano w/o Abdul Rehman,]
Age: 48 Yrs, Occ: Housewife,]
R/o. Room No. 1 C, Building No. 102-104-106,]
Sukhlaji Street, Mumbai 400 008.]
4. Anis Mohd Siddik Qureshi,]
Age: 56 Yrs, Occ: Business,]
R/o. Shop No. 1, Building No. 108-110-112,]
Sukhlaji Street, Mumbai 400 008.]
5. Shaheen Anis Qureshi,]
Age: 54 Yrs, Occ: Housewife,]
R/o. Room No. 1, Building No. 103AB-1B,]
Sukhlaji Street, Mumbai 400 008.]
6. Salahuddin Nasruddin Khan,]
Age: 59 Yrs, Occ: Business,]
R/o. Room No. 4-1-6, Building No. 103A-1A,]
Sukhlaji Street, Mumbai 400 008.]
7. Abdul Kadir Khan Zariwala, since deceased]
Through his legal heir Rashid Kadir Khan]
Age: 52 Yrs, Occ: Business,]
R/o. Room No. 1, Building No. 102-104-106,]
Sukhlaji Street, Mumbai 400 008.]

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| 8. | Shamim Kadir Khan, |] | |
| | Age: 50 Yrs, Occu: Business, |] | |
| | R/o. Stall No.1, Building No.102-104-106, |] | |
| | Sukhlaji Street, Mumbai 400 008. |] | |
| 9. | Hasin Kadir Khan, |] | |
| | Age: 58 Yrs, Occu: Business, |] | |
| | R/o. Shop No.1, Building No.102-104-106, |] | |
| | Sukhlaji Street, Mumbai 400 008. |] | |
| 10. | Muslim Khan Dilshab Khan, |] | |
| | Age: 51 Yrs, Occu: Business, |] | |
| | R/o. Room No.1-A2, Building No.102-104-106, |] | |
| | Sukhlaji Street, Mumbai 400 008. |] | |
| 11. | Faim Khan Nawab Khan, |] | |
| | Age: 48 Yrs, Occu: Business, |] | |
| | R/o. Room No.1A, Building No.102-104-106, |] | |
| | Sukhlaji Street, Mumbai 400 008. |] | |
| 12. | Abdul Rehman Shaikh, |] | |
| | Age: 54 Yrs, Occu: Business, |] | |
| | R/o. Room No.1C, Building No.102-104-106, |] | |
| | Sukhlaji Street, Mumbai 400 008. |] | ...Petitioners. |

V/s.

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| 1. | Mumbai Building Repair & Reconstruction |] |
| | Board (MHADA Unit), (M.B.R.& R. Board), |] |
| | Through Chief Officer, |] |
| | Grihnirman Bhavan, Bandra (east), |] |
| | Mumbai – 400 051. |] |
| 2. | The Deputy Chief Engineer, Zone-II, |] |
| | Mumbai Building Repair & Reconstruction |] |
| | Board/ MHADA Unit, First Floor, |] |
| | Rajni Mahal, Tardeo, Mumbai- 400 034. |] |
| 3. | The Executive Engineer, D-2 Ward, |] |
| | Mumbai Building Repair & Reconstruction |] |
| | Board/ MHADA Unit, First Floor, |] |
| | Rajni Mahal, Tardeo, Mumbai- 400 034. |] |
| 4. | Gyasuddin Kifayatulla Zariwala, |] |
| | Adult, of Mumbai, Indian Inhabitants, |] |
| | residing at A/301, Ashiaana Apartment, |] |

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| | Gafoor Khan Estates, Opp- State Bank of |] | |
| | India, Kurla Depot, Kurla (west), |] | |
| | Mumbai- 400 070. |] | |
| 5. | M/s. Sirsiwala Realty |] | |
| | Through its proprietor Gufran Suleman |] | |
| | Qureshi, |] | |
| | Age: 39 Yrs, Occ: Business, |] | |
| | Having its office at Bldg. No.97A, Grd. Floor, |] | |
| | Sukhlaji Street, Mumbai Central (west), |] | |
| | Mumbai 400 008. |] | |
| 6. | Bai Noorbanoo dr/o Gulamally Fazalbhoy & |] | |
| | Mohomedally Gulamally Fazalbhoy |] | |
| | Muslim, Estate Broker, |] | |
| | Andheri Mumbai. |] | ...Respondents. |

Mr. Aseem Naphade, a/w Adv. Wasim Samlewale for the Petitioners.

Mr. P.G. Lad, a/w Ms. Aparna Kalathil for Respondent Nos.1 to 3-MHADA.

Ms. Manisha Gawade for Respondent No.4.

Mr. Sanjiv Kadam, Senior Advocate, a/w Mr. Akhil Kupade and Ms. Varsha Thorat for Respondent No.5.

**CORAM : A. S. GADKARI AND
KAMAL KHATA, JJ.**

RESERVED ON : 11th March, 2025.

PRONOUNCED ON : 25th March, 2025.

JUDGMENT (Per Kamal Khata, J) :

1) By this Petition under Article 226 of the Constitution of India the Petitioners seek a writ of mandamus directing the Respondent No.3 to issue a Notice under the amended Sections 79-A (1)(b) of Maharashtra Housing and Area Development Act, 1976, (MHADA) thereby permit the Petitioners to redevelop the dilapidated property.

2) The Petitioners are tenants of the property building Nos.102, 104, 106 and 108 situate on the property bearing C.S.No.210, Tardeo Division, Shuklaji Street, Mumbai Central (East), Mumbai 400 008 ('subject property').

2.1) The Petitioners-tenants have come to this Court in a second round of litigation. In the earlier round of litigation, this Hon'ble Court Writ Petition (L) No.13870 of 2024 in the case of *Gyasuddin Kifayatullah Zarivala vs. Mumbai Building Repair And Reconstruction & Ors.*, had permitted the Petitioners to apply to MHADA for fresh permission to undertake repairs and MHADA was directed to consider the Application in accordance with law expeditiously.

3) The Petitioners contends that, there is a dispute between Respondent No.4 and Respondent No.5 with regard to the ownership rights of the property. They discovered that the Respondent No.5 has purchased 50% of the undivided share of the subject property from the heirs of the erstwhile owners through a registered conveyance deed dated 11th December 2012. However, pending this dispute between Respondent Nos.4 and 5, the Petitioners state that the subject property is now in a dilapidated condition. The Petitioners state that, a notice dated 18th August 2023 under section 79-A of the MHADA Act was issued to the Respondent No.4. That notice was set aside by the Order of this Court on 2nd January 2024 in Writ Petition

No.3743 of 2023. It is the contention of the Petitioners that, despite several meetings and hearings no action has been taken by MHADA. In the meantime, MHADA-Respondent No.3 by its letter dated 30th August, 2024 has classified the building under C-1 category i.e., beyond repairable condition. It is the case of the Petitioners that, the MHADA has failed to perform its duties with regard to repairs of the building although it has been declared C-1 category. It is in the circumstances that the present Petition is filed on 21st November 2024.

4) Mr. Naphade, learned counsel for the Petitioners submits that, MHADA has failed to take necessary actions as envisaged under Section 76, 88, 89 and 90 of the MHADA Act, for a considerable period. He submits that, the building is in a dilapidated condition and the MHADA is unable to take necessary action in view of the disputes between Respondent No. 4 and Respondent No.5. It is under these circumstances that it seeks a direction against MHADA to take action against the Respondents Nos.4 and 5 and since the Respondent Nos.4 and 5 have not taken any action, this Court should direct them to issue a Notice as contemplated under section 79-A(1) (b) thereby permitting the tenants to redevelop the property.

5) Mr. Lad, learned counsel for the Respondents Nos.1 to 3 representing MHADA submits that, the Petition is not maintainable. He submits that the Petition is filed by tenant/occupants of two

buildings. He submits that as a matter of fact, there is no building No.108 on C.S. No.210 of Tardeo Division and there are only three buildings which are (i) Building No.102-104-106, (ii) Building No.103A & 1A and (iii) Building No.265A and 267 situate at Shuklaji Street, Tardeo Division therefore, the Petition has stated incorrect facts. He submits that by virtue of the Order dated 2nd January, 2024 the Notice under Section 79-A dated 18th August 2023 issued by MHADA to all owners was quashed and set aside. Therefore, the question of issuing a Notice under Section 79-A(1)(b) would not immediately arise. He submits that, pursuant to the Order, a hearing was conducted by the Deputy Chief Engineer and an Order dated 2nd January, 2025 was passed after perusing the structural Engineer's report holding that all the three buildings were in a dilapidated condition and not fit for human habitation. The Deputy Chief Engineer as by its Order dated 2nd January 2025 called upon MHADA to take all necessary and appropriate measures and steps to issue warnings to the tenants as well as the owners to evacuate the building. He submits that the Petition is premature.

6) Ms. Gawade, learned counsel for Respondent No.4 contends that, in her replies she has set out the facts and thus opposes the Petition. She submits that, she as the owner will take all necessary steps in the matter i.e. to repair the entire building.

7) We have heard all counsel and with their assistance perused the papers and proceedings.

8) Upon hearing Mr. Lad's contentions and having perused the Order dated 2nd January 2025, we find that the Petition which is initiated by the tenants is premature. The procedure as contemplated has been initiated by MHADA and thus presently there is no question of calling upon MHADA to issue notice under Section 79-A(1)(b) thereby granting an opportunity to the tenants to redevelop the property.

9) Section 79-A(1) of MHADA requires the BMC or competent authority to declare the cessed building "dangerous" and issue notice under Section 354 of the BMC Act to the Landlord. A three month period is granted to the landlord or owner to redevelop the property. If the landlord or owner does not redevelop it then the Board has to issue a notice to the owner or landlord to submit a proposal for redevelopment within six months along with consent of 51% of occupants or tenants. If the landlord or owner fails to submit a proposal within the prescribed period then under Section 79-A(1) (b) the proposed co-operative society of the occupants or tenants may submit a proposal.

10) In the present case since the decision that, the building was C-1 category is taken by the Deputy Chief Engineer on 2nd January 2025, the three month period for the landlord or owner to

develop the property would expire on 2nd April 2025 and then the Board will have to issue notice under Section 79-A(1)(a) and grant the landlord or owner six months period which would expire on 2nd September 2025. Hence, according to us the Petition is premature.

11) The Petition is accordingly disposed off.

(KAMAL KHATA, J)

(A. S. GADKARI, J.)