

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2611 OF 2025

Borivali Himkanya CHS Ltd.

...Petitioner

Vs

Maharashtra Housing and Area Development Act & Ors.

...Respondents

Ms. J. A. Sarkhot with K. R. Jadhav & Ms. Sneha Mishra i/b. Devashree Raut, for the Petitioner.

Mr. Akshay P. Shinde, for Respondent Nos.1 & 2.

**CORAM: G. S. KULKARNI &
MANJUSHA DESHPANDE, JJ.**

DATE: 2 SEPTEMBER 2025.

P.C.

1. The petitioner is desirous of undertaking redevelopment. Admittedly, the petitioner is not a part of the federation of the societies /respondent No.3 – Gorai Road MHB Colony CHS Association Ltd. Our attention is also drawn to an order dated 24 February 2023 passed by the learned Single Judge of this Court permitting redevelopment in respect of a society in similar position who was not a member of the federation, being Writ Petition No.5448 of 2018 (*Borivali Shree Krupa Cooperative Housing Society vs. Deputy Registrar, C.S. R-South Ward, Mumbai & Ors.*).

2. Mr. Shinde, learned Counsel for MHADA would be required to take instructions insofar as the proposal to issue NOC, as submitted by the petitioner to MHADA is concerned, a copy of which is handed over to Mr. Shinde by the learned Counsel for the petitioner.

3. There is an Intervention Application by Mr. Rahul Sanwarmal Agarwal

who is asserting rights in respect of Flat No.1942 which was originally held by his father Mr. Sanwarmal Agarwal, who was the member of the petitioner society, who passed away during COVID 19 pandemic. Mr. Rahul Sanwarmal Agarwal appears in person who contends that his mother (widow) alongwith him being the legal heirs of the deceased Sanwarmal Agarwal, are in possession of Flat No.1942. He submits that a transfer application has already been made for incorporation of their names as successors in interest of deceased in the share certificate qua the deceased. It is his case that however as there is dispute in regard to the outstanding maintenance, the petitioner-society is not taking steps to transfer or enter the membership in his mother's or his name. This is purely a private dispute between the petitioner and the intervenors. However, in our opinion, considering the facts of the case, the petitioner-society needs to take appropriate view of the matter. The intervenors also needs to pay the principal amount of maintenance and insofar as the interest calculation is concerned, the same can be settled or can be considered to be waived of by the society, so that the dispute in this regard can be put to an end. The intervenors, in any case if so entitled in law by virtue of succession, need to be recognized as the members of the society being the legal heirs of the original member Late Shri. Sanwarmal Agarwal. Let such issue be resolved amicably on or before the adjourned date of hearing and as fairly agreed by learned Counsel for the petitioner.

4. In our opinion, in peculiar facts of the case and the decision of the learned Single Judge of this Court as referred hereinabove, in respect of grant of NOC, and more particularly, considering that the building is in ruinous condition and

already categorized as 'C-1' category, the MHADA cannot delay the grant of NOC. Needless to observe that all rights and contentions in regard to the intervenors' flat/tenements namely Flat No.1942 and their entitlement for permanent alternate premises, are expressly kept open, there ought not to be any impediment for MHADA for grant of NOC on such count.

5. Mr. Rahul Agarwal, Intervenor has also fairly stated that he has no objection whatsoever for redevelopment being undertaken, however, their rights to succeed the interest of his father needs to be preserved and protected. Certainly granting of NOC would not in any manner disturb the right of the intervenor or his mother to succeed and legally be entitled to Flat No.1942 and qua such flat the redeveloped premises, and in accordance with law.

6. Awaiting the appropriate decision being taken by MHADA, stand over to **9 September 2025 (HOB).**

7. Parties to act on the authenticated copy of this order.

(MANJUSHA DESHPANDE, J.)

(G. S. KULKARNI, J.)