

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

WRIT PETITION NO.2611 OF 2025

Borivali Himkanya CHS Limited

Petitioner

versus

MHADA and others

Respondents

WITH

INTERIM APPLICATION NO.3280 OF 2025

Rahul Sanwarmal Agarwal

Applicant

In the matter between :

Borivali Himkanya CHS Limited

Petitioner

versus

MHADA and others

Respondents

Adv.Jahan Ara Sarkhot i/by Adv.Devshree D.Raut for Petitioner.

Mr.Akshay P.Shinde, Advocate for Respondent nos.1 and 2 MHADA.

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

DATE: 30th September 2025

P.C.

1. Although this petition had remained pending for quite some time and was listed before different Benches from time to time, no reply affidavit so far has been filed.

2. The case of the Petitioner is that the building of the Petitioner society is in dilapidated more particularly considering the structural report. There are 80 members residing in the different tenements of the building in question. The Petitioner has already taken steps to appoint a developer and to proceed with the

redevelopment of the building. However, disputes had risen between the Petitioner and the said developer. Such disputes are subject matter of a pending civil suit, however, there are no prohibitive orders in the said suit, which would restrain the Petitioner in any manner or the MHADA from permitting the Petitioner to proceed with the redevelopment and by appointing a new developer. Learned counsel for the Petitioner has submitted that such private dispute will not in any manner come in the way of MHADA in either processing the proposal of the Petitioner or from granting a No Objection Certificate ('NOC'). On this premise on 2nd September 2025 a co-ordinate Bench to which one of us (G.S.Kulkarni, J.) was a member, passed the following order :

“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) along with 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.

3. On the aforesaid backdrop the proceedings are before the Court today. Insofar as the Applicant-Intervenor is concerned, who is the legal representative of one of the members, in our opinion, the only issue of dispute is payment of arrears of maintenance qua this tenement. It is stated at the bar that same can be resolved amicably. The Petitioner society claims that Rs.2,23,742/- is due and payable. On the other hand, the intervenor says that amount of Rs.63,000/- is due and payable. In our opinion, a reasonable approach needs to be taken and the Petitioner as also the Intervenor needs to finalize the ad-hoc amount and settle the matter. Ms.Sarkhot is agreeable for such course of action to be recognized. The Intervenor

ought not take an adversarial stand as once the right of the Intervenor being a legal representative along with his mother are being recognized for allotment of permanent alternate accommodation, the dispute on the maintenance amount needs to be amicably resolved. Accordingly let an amicable settlement be brought about failing which the Court will have no alternative but to direct the Intervenor to deposit amounts subject to his rights and contentions to be agitated before the competent officer.

4. Be that as it may, the urgency as urged is to the effect that the building is in dilapidated condition. It is hence urged that the MHADA needs to process issuance of the NOC. Accordingly, let such NOC be granted within a period of two weeks from the day a copy of this order is made available and in accordance with law. The Competent Authority of MHADA shall consider all the details and/or all the formalities and/or documents which are required to be supplied in addition to what is already placed in the proposal be submitted by the Petitioner society, if so called upon by the competent authority. Admittedly all the members of the Petitioner are unanimous not only on the condition of the building but also that the process of expeditious redevelopment needs to be commenced.

5. We may also observe that the members cannot continue to occupy the building which is in dilapidated condition, also we cannot also accept the position that MHADA withholds the NOC when the members of the Petitioner society are residing in a dilapidated building. It is the legal obligation of the MHADA to grant NOC in such circumstances, more particularly there being no legal hurdle whatsoever. We clarify that it ought not to be a situation that in the event of any

untoward incident the Petitioner blames MHADA officials responsible for not acting in accordance with law in expeditiously not granting an NOC as the proposal is pending for quite some time. In the aforesaid circumstances, we are inclined to pass following order :

ORDER

- (i) The proposal of the Petitioner society for grant of NOC be processed by MHADA as per rules as expeditiously as possible and in any event within a period of two weeks from the day a copy of this order is made available;
- (ii) The Petitioner society shall furnish any additional clarification as may be required by the competent officer ;
- (iii) None of the members of Petitioner society shall obstruct redevelopment by vacating their tenements. They shall immediately take steps to occupy alternate premises as may be thought proper and in the facts and circumstances. All contentions of the parties in that regard are kept open;
- (iv) In the event the issue of arrears of maintenance between the Petitioner and the Intervenor is settled, the Petitioner society and the concerned developer shall enter into an agreement with the Intervenor in respect of a permanent alternate accommodation;
- (v) Present order has no reflection on the contentions raised by the parties in the civil suit. All contentions in the pending suit are expressly kept open;
- (vi) Writ Petition stands disposed of in the above terms. No costs;
- (vii) List on **15th October 2025** for reporting compliance.

(AARTI SATHE, J.)

(G. S. KULKARNI, J.)