

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

WRIT PETITION NO. 3180 OF 2025

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Kathawala Realtors LLP

...Petitioner

Versus

The Chief Officer, Mumbai Building

Repairs & Reconstruction Board (MHADA Unit)

...Respondent

WITH
WRIT PETITION NO. 1137 OF 2024
WITH
WRIT PETITION NO. 656 OF 2024
WITH
INTERIM APPLICATION (L) NO. 6246 OF 2025
IN
WRIT PETITION NO. 656 OF 2024
WITH
SHOW CAUSE NOTICE NO. 12 OF 2024
IN
WRIT PETITION NO. 656 OF 2024
WITH
WRIT PETITION NO. 2168 OF 2024
WITH
CONTEMPT PETITION (L) NO. 17723 OF 2024
IN
WRIT PETITION NO. 2168 OF 2024
WITH
WRIT PETITION NO. 2835 OF 2024
WITH
WRIT PETITION NO. 3684 OF 2024
WITH
WRIT PETITION (L) NO. 34500 OF 2023
WITH
WRIT PETITION NO. 5160 OF 2024
WITH
WRIT PETITION (L) NO. 36010 OF 2023
WITH
INTERIM APPLICATION (L) NO. 24474 OF 2023

Mr. Anand Pai a/w Mr. Sachin Mhatre, Mr. Sahil Sayyed, Ms. Ishita Kamath i/b
Mhatre Law Associates for Petitioner in WP/3180/2025.

Mr. Aseem Naphade a/w Ms. Esha Singh Bhadoria, Ms. Shreya Sharma for

Petitioner in WP/656/2024, 2168/2024, 3684/2024, 2835/2024 and 1137/2024 and for R. No. 11, 58, 59, 68, 107, 111, 112, 114, 116, 117, 131, 134, 152, 156, 158, 159, 160, 161, 163, 164, 167, 168, 169, 173, 176, 177, 180, 181, 182, 183, 184, 185, 186, 187, 188, 190, 192, 193, 194, 195, 199, 200, 202, 203, 205, 206, 209, 210, 214, 220, 221, 222., 223, 225, 226, 227, 241, 243, 244, 245.

Mr. P. G. Lad a/w Ms. Sayali Apte and Ms. Anjali Maskar for MHADA.

Mr. M. S. Kadu for R. No. 89, 283, 292 in WP/3180/2025.

Mr. Amol Joshi for R. No. 249, 253 To 256, 258, 260, 262, 263, 264, 267, 270, 272 To 281, 284, 285, 286, 288 To 291, 293 To 298 in WP/3180/2025.

Mr. Arshil Ajay Shah for Respondent in WP/3180/2025.

Ms. Jyoti Chavan, Addl. G. P. For State in WP/656/2024.

Ms. Lavina Kriplani, AGP for State in WP/2835/2024.

Mr. Mohit Jadhav, Addl. GP for State in WP/3684/2024.

Mr. Manish Upadhye, AGP for State in WP/5160/2024.

Mr. Prashant Kamble, AGP for State in WP/2168/2024.

Mr. Janish Jain a/w Yash K. Jagdale i/b Dr. Uday Warunjikar for MHADA in WP/2168/2024.

Ms. Meena Dhuri i/b Komal Punjabi for BMC in WP/3180/2025.

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

DATE: 30th September 2025

P.C.

1. We have heard the learned Counsel on this batch of Petitions.

2. At the outset, Mr. Naphade, the learned Counsel appearing for the Petitioners in WP No. 656/2024, WP No. 2168/2024, WP No.3684/2024, WP No.2835/2024 and WP No. 1137/2024, has fairly stated that the prayers in these Petitions would stand worked out in view of the MHADA already initiating an

action under Section 91A of the MHADA Act 1996 and the order dated 22nd April 2025 being passed by the Chief Officer of the Mumbai Building Reconstruction and Rehabilitation Board (for short the “Board”). Accordingly, the proceedings of these Petitions are not required to be taken further and the Writ Petitions can be disposed of. These Petitions are accordingly disposed of.

3. Insofar as the Petition filed by the owner-developer is concerned (i.e. Writ Petition No. 3180 of 2025), the challenge is raised to an order dated 22nd April 2025 passed by the Chief Officer of the Board under Section 91A of the MHADA Act. Such order is passed on an application which was made on behalf of the tenants.

4. Mr. Pai, the learned Counsel for the Petitioner has drawn our attention to the record as also the grounds on which defaults had occurred highlighting that there were bonafide reasons in defaulting payment during Covid-19 period (i.e. in the year 2021). He further points out issues in regard to the clearance as sought for from the Ministry of Environment and Forest, as the redevelopment involved construction of an area exceeding 20,000 sq.meters and that the said issue had taken time.

5. We find from the observations which are recorded by the learned Chief Officer in the impugned order that it does not record any reasons as to why such grounds were not justified even in exercising powers under Section 91A of the MHADA Act. In our opinion Section 91A of the MHADA Act cannot be said to be a provision which would not take within its ambit the considerations of any

bonafide and legitimate reasons for a delay in undertaking construction, and if such reasons have delayed the projects, as to why such reasons are not considered in accordance with law and findings recorded is the question. This is exactly what has not been undertaken by the chief officer in passing impugned order as there is not a line of reasoning on any of the issues which were urged and plead for consideration by the owner/developer before the chief officer. More particularly, it is an admitted position that insofar as the redevelopment project is concerned, it was conceived in the year 2011 and although the tenants have vacated their tenements, there was no default in payment of transit rent upto the year 2021 that is even after the commencement of the Covid period which took place in March 2020.

6. Mr. Pai has submitted that, on transit rent, approximately Rs. 110 crores have been paid to the tenants by the Petitioners. In our opinion, all these issues were germane and should have been taken into consideration before passing any orders under Section 91A of the MHADA Act. It cannot be that such large amounts were invested in such redevelopment for nothing and/or for no benefit to be drawn by the owner. For such reasons, these issues could not have been neglected, as the equities would remain totally imbalanced leading to total arbitrariness on such reasons being not adequately considered by the chief officer in exercising powers under Section 91A of the said Act. Such approach on the part of the chief officer, in our view, is certainly objectionable and cannot be sustained in law. It is a statutory obligation on the part of the chief officer exercising such drastic powers under Section 91A of the said Act to consider each and every plea/ground being raised and to pass a reasoned order dealing with all the grounds, put

up in defense against any action taken under Section 91A. Failure to do so would render the order arbitrary and illegal, liable to be set aside.

7. Be that as it may, we are concerned with the opposition of 65 tenants. We are informed by Mr. Pai that there are in all 300 tenants out of which 208 tenants have already accepted the transit rent which was paid by his clients even post the order dated 22nd April 2025 passed by the MHADA. This apart, even the Petitioners in the aforesaid Petitions for whom Mr. Naphade is representing, have now accepted the amounts of transit rent. Thus, having accepted the amounts, these tenants have agreed that the Petitioner owner developer can continue with the project irrespective of the orders passed under Section 91A of the said Act. Infact we are informed by the parties that such consensus was to be placed on record in terms of the minutes of the orders which were however not placed on record, a copy of which although is annexed at Exhibit J to this Petition.

8. In the aforesaid circumstances, in our opinion, the concern of both the owners/developers as also tenants, would be an expeditious construction /rehabilitation which would encompass further steps to be undertaken towards the redevelopment which is stated to be a cluster development. It is in nobody's interest to delay the project. Mr. Pai, in such context on instructions, makes a statement before the Court that, insofar as the commercial premises are concerned, the redevelopment would be completed within a period of 24 months from the date of the Commencement Certificate being granted. He states that insofar as the

residential redevelopment is concerned, it will be completed within 42 months from the date of Commencement Certificate being granted.

9. Accepting such statement as made by Mr. Pai, as an undertaking to the Court, we are of the opinion that the redevelopment needs to now proceed.

10. Insofar as the transit rent is concerned, we accept the statement being made by Mr. Pai, that the balance amount would be paid in two tranches in respect of which Post Dated Cheques (PDCs) are already issued to 208 tenants. Insofar as the other tenants are concerned, we direct that PDCs be issued to them within a period of 10 days from the day a copy of this order is made available. There shall not be any extension in that regard. We also direct that the PDCs shall be honored and there shall not be any default or dishonor of any of these post dated cheques. Considering the majority of the tenants who are 208 in number who are represented by Mr. Naphade, have accepted the transit rent after the impugned order dated 22nd April 2025 was passed, further adjudication of this Petition is not called for.

11. In the aforesaid circumstances, the impugned dated 22nd April 2025 cannot be acted upon and is quashed and set aside, however, we keep open all contentions of the tenants to move necessary proceedings as may be permissible in law, in the event substantial default and/or a situation again is brought up that the redevelopment, on any of the grounds is not proceeding in the manner as observed hereinabove and/or there is a reason and cause as available to the tenants in law to

initiate further proceedings against the owner/developer. All contentions of the parties in that regard are expressly kept open.

12. We find that the redevelopment is already delayed, in such circumstances, the authorities are required to act swiftly in issuing appropriate permissions. In the event the proposal of the Petitioner is pending, the same be considered by the appropriate authority which may be either MHADA or the Municipal Corporation in accordance with law and a Commencement Certificate be issued within a period of one month from the date of the application. All contentions in that regard are expressly kept open.

13. The above Petitions stands disposed of in the aforesaid terms.

14. Contempt Petitions also would not survive and would stand disposed of. No costs.

(AARTI SATHE, J.)

(G. S. KULKARNI, J.)