

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

WRIT PETITION NO. 934 OF 2025
WITH
INTERIM APPLICATION (L) NO. 36483 OF 2025
IN
WRIT PETITION NO. 934 OF 2025

Bharat Kishormal Shah
Versus
State of Maharashtra & Ors.

...Petitioner/Applicant

...Respondents

Mrs. Yasmin Bhansali and Prabjyot Kaur Kler i/b. Yasmin Bhansali & Co. for
Petitioner/Applicant.

Ms. Vrushali Kabre, AGP for the State.

Mr. P. G. Lad a/w Aparna Kalathil & Sayali Apte for MHADA.

Ms. Anjali Ghuge for Respondent No.6.

Mr. Santosh More, Dy. Engineer, R.E.E./RR, MHADA.

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

DATE: 2nd FEBRUARY 2026

P.C.

1. This Petition under Article 226 of the Constitution of India is filed
praying for the following substantive reliefs:-

“(a) that this Hon'ble Court be pleased to issue a Writ of Certiorari or a Writ in the nature of certiorari or any other appropriate Writ, Order or Direction under Article 226 of the Constitution of India, calling for the records and proceedings pertaining to passing of the Impugned Order dated 13th January 2025 passed by the Respondent No.4 and the Notices dated 13th July 2023 and 27th December 2023 issued under Section 79-A of the amended MHADA Act bearing No.EE/GS/DE/4878/2023 (being Exhibits B, C and D hereto) and after examining the legality, validity and propriety thereof, the same be quashed and set aside;

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(a-1) that this Hon'ble Court be pleased to issue a Writ of Certiorari or a writ in the nature of certiorari or any other appropriate Writ, Order or Direction under Article 226 of the Constitution of India, calling for the records and proceedings pertaining to letter dated 23rd April 2025 (Exhibit 'T' hereto) addressed by the Respondent No.2 to the Respondent No.1 and after examining the legality, validity and propriety thereof, the same be quashed and set aside.

(b) that this Hon'ble Court be pleased to issue a Writ of Mandamus or a Writ in the nature of mandamus directing Respondent Nos.2 to 5 to forthwith cancel and/or withdraw the Impugned Order dated 13th January 2025 passed by the Respondent No.3 and the Notices dated 13th July 2023 and 27th December 2023 issued under Section 79-A of the amended MHADA Act bearing No.EE/GS/DE/4878/2023 (being Exhibits B, C, and D hereto);

(c) That this Hon'ble Court be pleased to declare provisions of Section 79-A of the Maharashtra Housing & Area Development Act, 1976 as introduced by Maharashtra Act XLVIII of 2022 as unconstitutional and violative of Articles 14, 19(1)(g) and 300-A of the Constitution of India;

(d) That pending the hearing and final disposal of the present Petition, this Hon'ble Court be pleased to stay the impugned order dated 13th January 2025 and the impugned notices dated 13th July 2023 and 27th December 2023 (Exhibits B, C and D hereto);

(d-1) that pending the hearing and final disposal of the petition this Hon'ble Court be pleased to stay and restrain the operation, implementation, execution and or further consideration and or processing of the communication/proposal dated 23rd April 2025 (Exhibit 'T' hereto) issued by Respondent No. 2 and addressed to Respondent No. 1, insofar as it pertains to and/or proposes the redevelopment of "Botawala Chawl No. 1", on the Petitioner's property bearing Final Plot No. 1059, Town Planning Scheme IV, Lower Parel Division, Dadar-West, Mumbai, under any cluster redevelopment scheme under Regulation 33(9) of the DCPR 2034.

(e) that pending the hearing and final disposal of the present Petition, this Hon'ble Court be pleased to restrain Respondent Nos.2 to 5 from taking any steps or any action or sanctioning any proposal in respect of the Petitioner's property on the basis of the impugned order dated 13th January 2025 and the impugned notices dated 13th July 2023 and 27th December 2023 (Exhibits B, C and D hereto) and from initiating any pre-emptive action against the said Building owned by the Petitioner;

(f) That pending the hearing and final disposal of the Petition, the Respondent Nos. 1 and 2 be directed to issue the Letter of Intent to the Petitioner;”

2. On 8th April 2025, a co-ordinate Bench of this Court, in the context of the impugned notice issued by the MHADA under Section 79-A of the Maharashtra Housing and Area Development Act, 1976 (MHAD Act), passed the following order:-

“P.C.:-

1) Mr. Lad fairly submitted that point involved in the present Petition is covered by a Judgment dated 3rd April, 2025 passed in Writ Petition No.477 of 2025 in the case of Vimalnath Shelters Pvt. Ltd. V/s State of Maharashtra & Ors, 2025 : BHC-OS : 5810-DB.

1.1) That, the MHADA is in process of challenging the said Judgment before the Hon’ble Supreme Court and therefore the present Petition may be adjourned for a period of four weeks.

2) At his request, stand over to 30th June, 2025.

3) Till the returnable date, ad-interim relief in terms of prayer clause (d).”

3. Thereafter, on 30th June 2025, a Co-ordinate Bench of this Court, of which, one of us (G. S. Kulkarni, J.) was a Member, passed the following order:-

“P.C:

1. Not on board. Taken on board on a praecipe being moved on behalf of the Petitioner.

2. Let reply affidavits be filed within one week from today.

3. Till the adjourned date, ad-interim order, if any granted earlier, shall continue to operate.

4. Although, notice under Section 354 of the Mumbai Municipal Corporation Act, 1888 was not issued in so far as the Petitioner’s structure is concerned, however, as the MHADA has formed an

opinion that the building is in dilapidated condition, till we hear the rival contentions on such aspect of matter, we observe that the Petitioner and the occupants of the building shall continue to occupy the building at their own risk and consequences and in the event of any untoward incident of a collapse, the Petitioner and the occupants shall not hold any of the Respondents or any other Authorities responsible of any criminal or civil liability, as also the occupants shall also be responsible and liable to any third parties.

5. This order shall be brought to the notice of the occupants by the Petitioner as also by the Authorities.”

3.1 Ad-interim protection was continued.

4. We find from the record that on 28th July 2025, a co-ordinate Bench of this Court, of which, one of us (G. S. Kulkarni, J.) was a Member, rendered a judgment in the case of Javed Abdul Rahim Attar & Ors. Vs. The Maharashtra Housing & Area Development Authority & Ors. (Writ Petition (L) No. 34771 of 2024), whereby interpreting the provisions of Section 79-A of the MHAD Act and more importantly in the context, in which, such powers were exercised by the Executive Engineer of the MHADA in the absence of notice issued by the Municipal Corporation under Section 354 of the Mumbai Municipal Corporation Act, 1888 (MMC Act), the Court held that it would not be permissible for the MHADA/Executive Engineers in the absence of such notice issued by the Municipal Corporation in respect of any premises to issue notices under Section 79-A of the MHAD Act and take actions under the said provisions. Also a Committee was appointed to conduct an inquiry into the alleged highhandedness and abuse of powers by the concerned officials.

5. Insofar as the present proceedings are concerned, it has transpired that, in the meantime, MHADA has treated the Petitioner's building as being included in a cluster redevelopment scheme by applying the provisions of Development Control and Promotion Regulations for Greater Mumbai 2034 (DCPR-2034). The contention urged on behalf of the Petitioner is that, as there exists consent between the tenants and the landlords, the matter would be governed by Regulation 33(7) of DCPR-2034.

6. In such context, this Court permitted the Petitioner to amend the Petition and to place on record the subsequent development by order dated 26th November 2025 which came to be passed on Interim Application (L) No. 36483 of 2025. The said order is required to be noted which reads thus:-

“P.C.

1. The Interim Application prays for amendment of the Petition in view of the subsequent developments and more particularly, the communication dated 23/04/2025 addressed by the Vice Chairman and Chief Executive Officer, Maharashtra Housing and Area Development Authority to the Additional Chief Secretary, Department of Housing [page 34 of the Interim Application paper- book]. Our attention is drawn by Mr. Khandeparkar, learned counsel for the Applicant/Petitioner to an order dated 08/04/2025 passed by the Co-ordinate Bench of this Court granting ad-interim relief in favour of the Petitioner in terms of prayer clause (d). His submission is that such communication which is the development during the pendency of the proceedings so as to include the Petitioner's property in question in the cluster development may not be an appropriate position taken by the MHADA. He submits that by such communication not only the interim orders which passed by this Court will stand breached, however, any action taken thereunder would cause a serious prejudice to the Applicant. This more particularly as the Applicant/Petitioner has not consented for such inclusion. He submits that the question would be of the jurisdiction of the authority to issue such communication in the light of the contention raised in the present Petition for inclusion of Petitioner's property under the said communication dated 23/04/2025.

2. In such circumstances, we are of the opinion that this would be an issue relevant insofar as the adjudication of the Petition. The Petition itself is at the stage of admission. We are hence inclined to permit the amendment by allowing this Interim Application in terms of prayer clause (a).

3. Let necessary amendments be carried out within a period of 2 weeks from today. Copy of the amended Petition be furnished to the Advocate for the Respondents. Reply affidavit to the amended Petition be placed on record within a period of 2 weeks thereafter.

4. Insofar as prayer clause (b) is concerned, we shall hear the parties on the Petition as we are informed that a similar prayer is intended to be incorporated by way of amendment.

5. Insofar as the communication dated 23/04/2025 to the extent it includes the Petitioner's property, the same shall not be acted upon by the State Government till further appropriate orders are passed on the proceedings after hearing the parties on such issues. All contentions of the parties in that regard are expressly kept open.

6. List the Petition for hearing as to interim relief on such issue on 06th January 2026 (HOB).

7. The limited protection as granted by us is no observation on the merits of the rival contentions. All contentions are expressly kept open."

7. The interim protection as granted by the earlier orders has continued to operate till date. It is on such backdrop that we have heard the learned Counsel for the parties. The grievance of the Petitioner as on date on both the issues, accordingly are required to be considered in the present proceedings.

8. Insofar as the issuance of the notice under Section 79-A of the MHAD Act is concerned, Mr. Lad, learned Counsel appearing for the MHADA has fairly stated that the position would stand covered in the decision rendered by this Court in the case of Javed Abdul Rahim Attar & Ors. Vs. The Maharashtra Housing & Area Development Authority & Ors. (supra). In this view of the matter, the impugned notice insofar as the Petitioner's premises are concerned, ought not to be

acted upon and infact the same would stand withdrawn, in view of the clear position taken by the MHADA and recorded by this Court in the case of Javed Abdul Rahim Attar & Ors. Vs. The Maharashtra Housing & Area Development Authority & Ors. (supra).

9. Insofar as the Petitioner's grievance in regard to the premises being included in the cluster redevelopment is concerned, Mr. Lad has taken instructions from Mr. Santosh More, Deputy Engineer, R.E.E./RR, MHADA and has placed on record hand written instructions that the Petitioner's property although was included in the cluster redevelopment project under the provisions of Regulation 33(9) of the DCPR-2034, now the proposal in regard to the property would be processed under Regulation 33(7) of the DCPR-2034 i.e. as per proposal submitted by the landlord, and considering these facts, the property will be omitted from the proposal under Regulation 33(9) of the DCPR-2034 for the cluster redevelopment under the letter dated 23 April, 2025 of the State Government. He states that an intimation of the same shall also be communicated to the Additional Chief Secretary, Housing Department. A copy of the said instruction is taken on record and marked 'X' for identification. We accept the said statement as made in the said letter as an undertaking given to the Court. Let an appropriate communication in that regard be issued to the Additional Chief Secretary within a period of ten days from today.

10. In this view of the matter, now the Petitioner's property/premises would be eligible for redevelopment under Regulation 33(7) of the DCPR-2034 and as

per the proposal submitted by the landlord. Let MHADA consider the proposal in accordance with law and as per the provisions of DCPR-2034, as expeditiously as possible and in any event, within a period of six weeks from the date a copy of this order is made available. All contentions of the parties are expressly kept open in regard to the issuance of NOC.

11. In this view of the matter, further adjudication of the Petition is not called for. The Petition stands disposed of in the aforesaid of in the aforesaid terms. No costs.

12. In view of disposal of the Petition, Interim Application does not survive. It is disposed of.

(AARTI SATHE, J.)

(G. S. KULKARNI, J.)