

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

**WRIT PETITION (L) NO. 2582 OF 2022
WITH
INTERIM APPLICATION NO. 1362 OF 2026
IN
WRIT PETITION (L) NO. 2582 OF 2022**

The Chief Officer

The Maharashtra Housing and
Area Development Board, a Board
established u/s 18 of the
Maharashtra Housing and Area
Development Authority Act, 1976,
having their office at Grih Nirman
Bhavan, Kalanagar, Bandra,
Mumbai- 400 051

.. Petitioner/Applicant

Versus

1. Sujeet H. Shukla
of Mumbai Indian Inhabitant,
Residing at 721/C, Adarsh Nagar,
New Link Road, Jogeshwari (West),
Mumbai – 400092.

2. Maharashtra State Human
Rights Commission, having their
office at 9, Hajarimal Somani Marg,
Opp. Chhatrapati Shivaji Maharaj
Terminus, Mumbai- 400001,
through Government Pleader,
Bombay.

.. Respondents

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Mr. P. G. Lad a/w Ms Sayali Apte, for the Petitioner/Applicant.

Mr. Ravish Mishra i/by K. Juris, for Respondent No. 1.

Mr. Himanshu Takke, AGP, for Respondent No. 2.

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**CORAM: BHARATI DANGRE &
MANJUSHA DESHPANDE, JJ.**

DATED: 24th MARCH, 2026

Order : [Per Manjusha Deshpande, J.]:

1. The Petitioner-Board, i.e. the Maharashtra Housing and Area Development Authority a statutory Authority established under the Maharashtra Housing and Area Development Act, 1976 (for short “the MHADA Act, 1976”) is challenging the order dated 06.04.2021, passed by the Maharashtra State Human Rights Commission (for short “the Commission”) in exercise of its power under Section 18(e) of the Protection of Human Rights Act, 1993, (for short “the Act of 1993”), thereby recommending that, the Petitioner shall pay compensation of Rs.1,00,000/- to Respondent No. 1 for violation of human rights, and further recommending to initiate disciplinary action against the responsible officers for demolishing the structure of Respondent No. 1, with directions to the State Government to undertake a programme of sensitization for its officers on the law of right to shelter and Rules and Regulations to be followed while demolishing structures.

2. The brief facts leading to passing of the order by the Commission are as under:

The Petitioner is the owner of land bearing CTS No.29(Part), 30(part), 31(part), 32, 33, 34(Part) and 35(Part) of Village- Oshiwara, Tal- Andheri, District- Bombay Suburban, Mumbai. The Petitioner has given NOC to the Slum Rehabilitation Authority (“SRA”) for implementation of SRA Scheme submitted by *Shiv Sphurti SRA Co-operative Housing Society Ltd.* A Scheme is implemented for Economic Weaker Section (“EWS”) for allotting tenements admeasuring 25 sq.mtrs. each, known as Adarsh Nagar Colony,

Jogeshwari(West). According to the Petitioner, one Dattatray Tamhankar was original allottee of a tenement No. 721. Mrs. Aarti Dattatray Tamhankar encroached upon the side spaces and constructed two unauthorized tenements, which are numbered as tenement Nos. 721A and 721B. An unauthorized tenement on the D.P. Road was also constructed by said Mrs. Aarti Tamhankar, which is called as tenement No.721C, which is the subject matter of the present Writ Petition.

Tenement No.721C is sold by Aarti Tamhankar to one Shaikh Jakir Mohd. Hussain by way of unregistered Agreement dated 29.10.2007. Shaikh Jakir Mohd. Hussain has further transferred the suit premises to Mohd. Nafis s/o Azizullah Siddique again by way of unregistered Agreement for sale dated 29.11.2010, who in turn has sold the suit premises to Respondent No. 1- Ms Minashree Sujeet Shukla, by Sale Deed dated 15.02.2011. All these transactions have taken place by way of unregistered Sale Deed and irrevocable Power of Attorney executed by the seller.

According to the Petitioner, the suit premises is an unauthorized construction on the Petitioner's land, i.e. the D.P. Road. This encroachment has been made by the original allottee of tenement Mrs. Aarti Tamhankar.

On receiving a complaint, the officer of the Petitioner visited the site and found that a room of 10 ft. x 25 ft. adjacent to the original gala, admeasuring 7 ft. x 8 ft. and in front of the original gala, on the D.P. Road is constructed. A report is prepared to that effect on 27.11.2019. The Petitioner issued notice under Section 52 of the Maharashtra Regional Town Planning Act, 1966 (for short "the MRTP Act, 1966") dated

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20.12.2019, in the name of original allottee of tenement No. 721, which was received by Mrs. Aarti Tamhankar. Similar notices were also issued to allottees of tenement Nos. 722 and 723 for illegal construction. Since the unauthorized encroachments were not removed, by the encroachers on their own upon receiving notices, the Petitioner demolished the said structures on 13.01.2020. A Panchanama to that effect is also prepared.

3. Being aggrieved by the demolition of the encroachment, i.e. tenement No. 721C, Respondent No. 1 approached Respondent No. 2- Maharashtra State Human Rights Commission by way of a complaint on 21.01.2020, making a grievance that, the structure which was occupied by Respondent No. 1, has been demolished without any prior notice, hence seeking initiation of appropriate action against responsible officer. Upon issuance of summons, the Petitioner has appeared before Respondent No. 2 and filed a reply on 21.07.2020. Respondent No. 2- Commission has passed an order dated 06.04.2021, thereby recommending that the Petitioner shall pay compensation of Rs.1,00,000/- to Respondent No. 1 for alleged violation of human rights; initiate action against the responsible officer and to undertake a programme for sensitization of the officers in respect of law of right to shelter and the Rules and Regulations to be followed while demolishing illegal structures. Being aggrieved by the aforesaid order, the Petitioners have approached this Court.

4. Heard Mr. P. G. Lad, learned counsel representing the Petitioner, Mr. Ravish Mishra, representing Respondent No. 1 and Mr. Himanshu Takke, AGP, for Respondent No. 2.

5. According to the Petitioner, being the owner of land, it is empowered to initiate action under Section 52 of the MRTP Act 1966. Since a complaint was received by the Petitioner regarding unauthorized encroachments on the D.P. Road, the officers of the Petitioner conducted an inspection by visiting the site and found that the original allottee, Mrs. Aarti Tamhankar, had made encroachments on the open lands adjoining her original allotment. One was in front of the original allotment and the other was adjacent to the said allotment. Though notices were issued for removal of the encroachment, calling upon the occupant to remove the encroachment on their own, but the encroachers have not removed the encroachment, therefore, on 13.01.2020, the Petitioner was constrained to remove the said encroachment by demolishing the structure, and the Panchanama to that effect has been drawn.

6. It is submitted that, the Petitioner has initiated action as provided under Section 52 of the MRTP Act, 1966. Sufficient opportunity was given to the unauthorized occupants by issuing notice, which was duly served upon them. Since there was no response to the notice issued by the Petitioner, it was constrained to remove the encroachment by demolishing the structure. On receiving the notice issued by the Commission, the Petitioner has caused its appearance and filed their response to the complaint. However, without considering the fact that Respondent No. 1 is undoubtedly an encroacher to whom notice was issued and the action is initiated as per Sections 53 and 57 of the MRTP Act, 1966, the learned Acting Chairperson/Member of the Commission has passed the order

impugned.

7. The learned Acting Chairperson/Member has failed to appreciate that Respondent No. 1 is occupant of an unauthorized structure, and it is the duty of the Petitioner to remove the unauthorized structure made on the road. There was inconvenience caused to the public at large due to the unauthorized structure obstructing the road. The learned Acting Chairperson/Member has failed to appreciate that protection is given to the officer of the Petitioner under Section 38 of the Act of 1993. Though there is a right to shelter provided under Article 25 of the Universal Declaration of Human Right, 1948, but the fact remains that the impugned structure was an encroachment and not an authorized construction by Respondent No.1.

8. The impugned order is supported by the learned AGP as well as the learned counsel for Respondent No.1. According to them, the demolition drive undertaken by the Petitioner is without notice and without affording an opportunity of being heard, hence, the impugned order does not deserve any interference.

9. After hearing the parties and upon perusal of the order, we find that the notices for removal of encroachment under Section 52 of the MRTP Act, 1966 had been issued on 20.12.2019 to the allottees of tenement Nos. 721, 722 and 723, calling upon them to remove the encroachment caused by them, by removing unauthorized constructions within a period of 7 days from the receipt of notice, failing which, the unauthorized structures will be demolished by the Petitioner. One more notice dated 31.12.2019 is issued to Dattatraya

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Tamhankar, referring to the inspection report dated 27.11.2019, calling upon him to remove the unauthorized structures within 24 hours. There is no doubt that the Petitioner is the Competent Authority under the MRTTP Act, 1966, therefore, it is within its power to remove the unauthorized development and encroachments made on the land belonging to it. However fact remains that, while doing so, it is required to follow the due process of law, which does not seem to have been followed by the Petitioner in respect of the encroachment made by Respondent-1, which is classified as tenement No. 721C. None of the notices issued to the allottee of tenement No. 721 shows that a notice is issued to the occupant of tenement No. 721C.

A report dated 21.07.2020 prepared by the Petitioner and submitted in the Maharashtra State Human Rights Commission discloses that, after issuance of notice to the encroachers, when the Authorities reached the site for removal of encroachment on 13.01.2020, it was found that insofar as the allottee of tenement No. 721 is concerned, apart from the two encroachments i.e. tenement Nos. 721A and 721B for which notice had already been issued, there was one additional encroachment made on the road by constructing a gala occupied by 'Deepti Design Studio,' which deals in men's and women's Apparels. The original allottee of tenement No. 721 informed that, she is not concerned with the encroacher of tenement No. 721C. When enquiry was made with the two persons who were engaged in the work, in the said room, they informed that, they have rented the room from one Mr. Sujeet Shukla. After which they were informed that the construction

is unauthorized and they should produce the documents supporting their legal occupation. At that moment, one Ms. Minashree S. Shukla, appeared and produced certain papers, which revealed that, the original encroachment was made by Mr. Dattatraya Tamhankar and his wife, which was sold by them to Shaikh Jakir Mohd. Hussain, who in turn has sold to Mohd. Nafis Siddique, from whom Respondent No. 1- Mr. Sujeet Shukla, has unauthorizedly purchased the said tenement. None of them possessed legal documents of the said tenement.

10. The record of the Petitioner discloses that, no allotment of a tenement No. 721C is made, by it to anybody. The report further states that since Mr. Dattatraya tamhanker, is the original allottee of tenement No.721, hence a notice is issued to him, however, since Mr. Sujeet Shukla, was not in authorized possession, he was not issued any notice. The occupants were called upon to remove their belongings and possession from the encroached room by granting them sufficient time. The demolition was conducted, after the encroached tenement was vacated in presence of the police officers.

Thus, the report submitted by the officer of the Petitioner to Respondent No.2 itself shows that, no notice to the occupant of tenement No. 721C was issued. Only notices to the occupants of original tenement Nos. 721, 722 and 723 have been issued. It is only when the Authorities approached on the spot for removal of encroachment, they became aware about one more encroachment i.e. tenement No. 721C, being made on the D.P. Road, which is removed without giving any notice to the occupant.

Thus, in view of the report submitted by Respondent-2,
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the Acting Chairperson/Member of the Commission, has rightly observed that, there is an admission on the part of the Respondent-Authority that, no notice to the owner of the occupant of tenement No. 721C is issued, yet they have promptly swung into action of demolition, which is without following due process of law and against the principles of natural justice. We do not find any unreasonableness or arbitrariness in the findings recorded by the learned Acting Chairperson/Member of the Commission. In fact, based on the report submitted before it by the Petitioner, above findings are recorded. It is also observed that, it is settled law that even a trespasser or an encroacher, can be evicted only after following due process of law. This finding cannot be faulted with.

11. The learned Acting Chairperson/Member of the Commission has rightly relied upon the decision of the Hon'ble Supreme Court in case of ***Kanniappan and Ors. Vs. A Perumal and Ors.***¹, wherein the Supreme Court has observed that, even in case of alleged encroachers, they are required to be put to notice, and only upon summary hearing, a decision to remove them can be taken by the Competent Authority.

In a recent decision in case of ***Zulfiqar Haider and Anr. Vs. State of Uttar Pradesh and Ors.***², the Hon'ble Supreme Court has reiterated that, right to shelter is also an integral part of Article 21 of the Constitution, which can be taken away only by following due process of law. The residential structures of citizens cannot be demolished in such a

1 2002 (10) SCC 98

2 2025 SCC OnLine SC 766

summary manner without following the principles of natural justice, and importance of issuance of show cause notice has been stressed in the said judgment. It is held that, unless a show cause notice is issued and served upon the person against whom the action of demolition is proposed, coercive action cannot be taken. The action of demolition taken without following the due process is held to be completely illegal and violative of right to shelter guaranteed under Article 21 of the Constitution of India.

In the present case, it is evident from the report of the Authority of the Petitioner itself which states that, since the Respondent No.1 was in unauthorized possession, there was no question of issuing any notice. Thus, the action taken against Respondent No.1 is contrary to the settled principles of law, which in no circumstances can be justified.

In the wake of aforementioned facts and circumstances as well as the documents placed on record, we do not find that any case for interference in the impugned order is made out by the Petitioner. As such, the Writ Petition being devoid of merits, stands dismissed.

12. In view of the dismissal of the Writ Petition, the Interim Application does not survive and is accordingly disposed of.

(MANJUSHA DESHPANDE, J.)

(BHARATI DANGRE, J.)

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signed by
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