

LSP

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

Writ Petition No. 4109 of 2024
With
Interim Application (L) No.22472 of 2024

Bharat Ekta Co-operative
Housing Society Ltd.
At Building No.18, Natwar Parekh Compound,
Govandi, Mumbai
Through its authorised representative
i.e. Secretary Mr. Abdul Razzak Bane Miya
Maniyar ... Petitioner

V/s.

1. The State of Maharashtra
2. The Municipal Corporation of Greater Mumbai
3. Mumbai Metropolitan Region Development Authority
4. Mrs. Benjamin Jopsisa (deceased)
through her legal heirs Paida Benjamin Disa
5. Mrs. Shabana Amin Khan
6. Mrs. Rizwana Amin Khan
7. Mr. Maksood Ali Nasir Ali
8. Mr. Fakre Alam Hakim Khan
9. Mrs. Romana Amin Khan
10. The Principal/Head Master

LSP

Pearl's English School ... Respondents.

Mr. Dheeraj Patil, Advocate for the Petitioner.

Ms. Kavita Solunke, Advocate for MMRDA.

Ms. Vaishali Ugale, Advocate for MCGM.

Ms. Fatima Lakdawala, AGP for the State.

Mr. Abhijeet Kulkarni a/w. Ms. Sweta Shah for Respondent No.11 – SRA.

**CORAM : M.S. KARNIK &
S.M. MODAK, JJ.**

DATED : 7th April 2026

ORDER (PER S.M. MODAK, J) :

The dispute involved in this petition is related to Room Nos. 1 to 6, Ground floor situated in Building No.18, Bharat Ekta Co-op. Housing Society Ltd. of the Petitioner Society at Govandi, Mumbai. The building is developed by Respondent No.3 – Mumbai Metropolitan Region Development Authority (for short 'MMRDA') under Slum Rehabilitation Scheme approved under DCR 33(10). The rooms in the said building were allotted by MMRDA to respondent Nos.4 to 9 being affected hutment dwellers. The Petitioner-Society is formulated by occupants of the tenements in such building.

2. The Petitioner's grievance is that these rooms are not used by

LSP

the allottees – Respondent Nos.4 to 9. But in fact they have allowed Respondent No.10-School to use these tenements in breach of the provisions of the Maharashtra Slum Area (Improvement, Clearance and Redevelopment) Act, 1971. Respondent No.10 is running a nursing school there which contains hundreds of students. The Respondent No.2 is Municipal Corporation of Greater Mumbai and Respondent No.3 is MMRDA. This writ petition is filed for issuing writ of mandamus to Respondent Nos.1 to 10 to handover and take back the possession of those tenements.

3. The Petitioner contend that they have complained to various authorities against this unauthorised action of respondent Nos.4 to 9 including Respondent No.2 – MCGM and Respondent No.3 – MMRDA. It is their case that MMRDA has confirmed about unauthorised use of those tenements by Respondent No.10 but they have not taken appropriate action and that is why this writ petition is filed.

4. The Respondent Nos.4 to 9 were served but they have chosen not to appear in the Court. The Respondent No.2-MCGM and Respondent No.3-MMRDA have filed their affidavit-in-reply. They have supported the allegations made in the petition against Respondent Nos.4 to 9 and Respondent No.10. The MCGM have confirmed about running of nursery school by Respondent No.10 in those tenements and the Pearl English School was being run without

LSP

obtaining permission of their authorities. Even they have confirmed about the powers to impose fine/penalty on such schools and it is delegated to Education officers and in fact such notices are also issued. Even they have averred about issuance of notices to Respondent No.10 for closing the school immediately and shift the students in the nearby Corporation school.

5. The Respondent No.3 – MMRDA in their affidavit-in-reply has also averred about spot inspection done by their Social Development Cell and the staff has confirmed about allotment of 6 tenements to the Respondent Nos.4 to 9. Those allottees are the project affected persons under the project of Mithi River Development and Protection Authority and that is why these tenements were allotted to them which are flats that is to be used for residential purpose. They have confirmed about restrictions contained in the Maharashtra Slum Area (Improvement, Clearance and Redevelopment) Act, 1971 for transfer of tenements in any manner within 10 years from date of allotment. Even affidavit mentions about correspondence made by their Social Development Cell with Respondent Nos.4 to 10 asking them to produce permission, if any, obtained for transfer of those tenements.

6. However, the Respondent No.3 has expressed difficulty in taking further action in view of the order dated 10th August 2021 passed in PIL No.1/2021. The copy of the order is annexed at Page-

LSP

133. In view of the Covid pandemic situation, suo moto PIL was registered. The Maharashtra Metro Rail Corporation Ltd. (for short 'MMRCL') filed an Intervention Application No.1550/2021 seeking permission to follow due process of law while evicting and demolishing hutments situated at Kamgar Putla Vasahat and at other places in Pune for the purpose of carrying out work of Pune Metro Line No.1,2 and 3. The grievance was raised by MMRC Ltd. that there are orders passed in that PIL asking the concerned Court and authorities not to execute process of Civil Court and process of Criminal Court for certain situation in view of the Covid pandemic. However, it was clarified on 10th August 2021 that the MMRCL can go ahead with demolition of hutments and structures which are obstructing their construction to be undertaken by following due process. The affidavit-in-reply was filed by MMRDA on 23rd August 2021.

7. The name of Slum Rehabilitation Authority is included as Respondent No.11 by way of an amendment. They have also filed affidavit-in-reply. According to them the building was not constructed by way of Slum Rehabilitation Scheme approved by them and that it is the MMRDA who has granted occupation certificate to that building. No doubt MMRDA can exercise the powers as per the Slums Area (Improvement, Clearance and Redevelopment) Act, 1971 (for short 'Slums Act').

LSP

8. In the petition, the Petitioner has sought for various reliefs including issuing mandamus to take immediate action against erring Respondents. Even there is a prayer to initiate appropriate action against the erring officials. There is a prayer for directing Respondent Nos.1 to 3 and their subordinate officers to restore the wall of Room Nos.1 to 6. It was the case pleaded by the Petitioner that Respondent Nos.1 to 6 have demolished the internal wall of those rooms and fitted sliding door/shutters. There was a further prayer to restore nature and occupation of those tenements from commercial to residential.

9. It is undisputed fact that MMRDA has constructed the building. It is undisputed fact that MMRDA can exercise the provisions of the Slums Act. It is very well true that Respondent Nos. 4 to 9 have been allotted those rooms as project affected person. It is true that as per Section 3(E) of the Slums Act, there are restrictions on transfer of tenements. The allottee shall not transfer the premises in any manner including sale, gift, exchange, lease or otherwise atleast for a period of 10 years commencing from the date of allotment. After 10 years transfer can be effected by taking permission of the authorities.

10. From the record it can very well be said that the Respondent Nos.4 to 9 have to put the Respondent No.10 into possession of those premises. All of them have not appeared before the authorities.

LSP

As per the MMRDA Act, their explanation was called. Though there is no material to point out what is the nature of transaction in between Respondent Nos.4 to 9 on one hand and Respondent No.10 on the other hand, the fact remains that Respondent Nos.4 to 9 are not in possession whereas Respondent No.10 is in possession.

11. An attempt has been made by Respondent No.8 - Fakre Alam Hakim Khan to inform Social Cell Officer that his son Aasif has started computer classes in the tenement allotted to him. It was expected from Social Cell Officer of MHADA to pass an order when none of them except Respondent Nos.8 has appeared before him and offered explanation. One can understand that they are prevented from taking further action in view of the order passed in a PIL as mentioned above. But now there is no obstacle for MMRDA to pass an order.

12. We feel that it would be appropriate for Respondent No.3 to pass appropriate order against Respondent Nos.4 to 10 in respect those 6 tenements. We feel proper to direct MMRDA to pass that order instead of order to be passed by this Court. Reason is if the provisions of Section 3(E) of the Slums Act are breached, necessary consequence is bound to follow including about handing over possession of those tenements and its disposal. We feel MMRDA can do it in a more effective way. Even the other prayers made by way of amendment can also be effectively dealt with by MMRDA.

LSP

Hence, the order:

ORDER

- (i) The Writ Petition is partly allowed.
- (ii) The Respondent No.3–MMRDA is directed to take appropriate action against respondent Nos.4 to 10 in respect of those 6 tenements situated in Building No.18, Bharat Ekta Co- op. Housing Society Ltd., Govandi, Mumbai within a period of 12 weeks from the date of communication of this order.
- (iii) If the order is not passed within aforesaid period, the CEO of MMRDA is directed to explain why it is not implemented by filing an affidavit. The Petitioner is at liberty to move the Court by filing an interim application.
- (iv) Once possession is taken as aforesaid, MMRDA is at liberty to take further decision.
- (v) The Petitioner is at liberty to point out to MMRDA about the alterations made by Respondent Nos.4 to 10 in those tenements and MMRDA to pass appropriate order.
- (vi) Even Respondent No.2 – MCGM is at liberty to take appropriate action as per law and by following the

LSP

procedure about starting of a school – Respondent No.10 in those tenements without obtaining their permission. The Corporation to ensure that the students are admitted in nearby Corporation schools.

(vii) The Petitioner to communicate this order to Respondent Nos.2 and 3.

13. Writ Petition is disposed of. Pending interim application is also disposed of.

(S.M. MODAK, J.)

(M.S.KARNIK, J.)