

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

WRIT PETITION [L] NO.12157 OF 2025

Javed Yunus Ansari]	Petitioner
Vs.		
State of Maharashtra and others]	Respondents

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Mr. Mayur Khandeparkar a/w Mr. Aadil Parsurampuriah a/w Mr. Yash Dhakad i/b Pratik K. Shah, for Petitioner.

Mr. Milind More, Addl. G.P, for Respondents No.1 and 11 – State.

Mr. Ashvin Sakhalkar a/w Ms. Meena Dhuri i/b Ms. Komal Punjabi for Respondents No.2, 9 and 10.

Mr. Iftekhar Sayed a/w Mr. Abdul Wahab Sayed a/w Mr. Nadim Malik, for Respondents No.12 to 59

Mr. P.G. Lad a/w Ms. Pooja Joshi Deshpande, for Respondent No.3 to 8 – MHADA.

Mr. Pravin Gajbhiye, Deputy Engineer B Ward present.

Mr. Swapnil Saraf, Sub Engineer B & F Department, B Ward, present.

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**CORAM : G.S. KULKARNI &
ARIF S. DOCTOR, J.J.**

DATE : 18th JUNE, 2025.

P.C:

1. On the backdrop of the earlier order, we have heard learned Counsel for the parties. From what has been pointed out to us on behalf of the petitioner, it appears that the petitioner has already applied to the Charity Commissioner,

State of Maharashtra for the building in question to be sold to M/s. Motiwala Realtors LLP on “as is where is” basis. The averments to that effect are found in paragraph 29 of the petition. The learned Charity Commissioner is seized with the proceedings. Hearing on such proceedings is already closed and the orders are now expected to be passed.

2. In the meantime, according to the petitioners, and more particularly in the context of the case as pleaded in the petition, the building in question which houses 40 tenants who are respondents in this petition is stated to have become dangerous and is categorized to be in the C-I category. We are also informed that a notice was issued by respondent No.3 – Maharashtra Housing and Area Development Authority (for short “MHADA”) under section 79A of the Maharashtra Housing and Area Development Act, 1976 (for short “MHADA Act”) on the basis that the Municipal Corporation has categorized the building as C-1 category and accordingly has issued notice under section 354 of the Mumbai Municipal Corporation Act, 1888. The further procedure as set down by section 79A of the MHADA Act would now be required to be followed and the building is required to be redeveloped.

3. On a perusal of Section 79A of the MHADA Act, it provides procedure for redevelopment in respect of dangerous buildings declared by Municipal Corporation or Competent Authority. Under the legislative scheme of such provision, within three months of the issuance of the notice under section 354

by the Mumbai Municipal Corporation or any such similar notice issued by the Competent Authority, the MHADA would call upon the owners/landlords to submit a proposal for re-development within six months from the date of issuance of such notice, alongwith the proposal, a consent from fifty one percent of the occupants or tenants of the said building is required to be submitted. On failure of the owners/landlords to submit such proposal, proposed Co-operative Housing Society of the occupants or tenants of such building are permitted to submit a proposal to undertake the re-development. It is also required to be with a consent of fifty one percent of the occupants or tenants and lastly if the redevelopment is not initiated within a period in the manner as provided by clauses (a) and (b) of Section 79A of the MHADA Act i.e at the hands of the landlords and tenants, in that case, the MHADA would be required to reconstruct the building by acquiring such building without insisting on consent of at least fifty-one percent of the occupants or tenants of the said building.

4. In the present case, as noted hereinabove, Rubberwala Charitable Trust which claims to be the owner of the building under a Deed of Conveyance dated 29th January, 2009 registered with the Office of the Sub Registrar of Assurances, Mumbai has already intended to sell the said property including the Trust Building to M/s. Motiwala Realtors LLP on “as is where is” basis which includes the rights of the respondents-tenants. In this view of the matter, although a notice dated 30th April, 2025 under Section 79A of the MHADA

Act has been issued to the petitioner/Trust, the Trust is not willing to undertake the redevelopment as it is awaiting the orders being passed by the Charity Commissioner.

5. Mr. Khandeparkar, learned Counsel for the petitioner – Trust has stated that in the event, Charity Commissioner is not accepting such application of the petitioner then the petitioner would take a decision to accept redevelopment.

6. Thus, today there is uncertainty in so far as the redevelopment which would be required to be undertaken in the manner as Section 79A of the MHADA Act would postulate. As also there is still some time available within which such steps would be required to be taken as the timelines for the owner to give its consent for development has not expired, for the Court to observe that the petitioner/owner is not inclined to undertake the redevelopment. Such plea is in fact a suspended animation in view of the pendency of the proceeding before the Charity Commissioner. Thus, the tenants also cannot assert at this stage that they be permitted to undertake the redevelopment.

7. Be that as it may, today it appears to be quite clear even from the structural audit report as submitted on behalf of the tenants, that building is not in a sound condition. We have perused such report as submitted on behalf of the tenants which is part of the written submissions filed on their behalf and placed on record. A holistic consideration of such report certainly does not inspire confidence that the building in question is in a sound or habitable

condition so that it can be safely occupied. This is more important considering the safety and security of the life and property of these tenants.

8. In the aforesaid circumstances, learned Counsel for the tenants has also taken a fair stand. He submits that the rights of the tenants remain protected even when the building is transferred in favour of the new purchaser M/s. Motiwala Realtor LLP or even in the event, the same is taken up for redevelopment either by the owners or otherwise. We find that the tenants would be correct in their contention in this regard namely that the rights of the tenants need to be recognized in both the eventualities of transfer of the building in the name of the new purchaser and/or in the eventuality of its redevelopment. Such rights of the tenants are also not disputed by the petitioner/landlord. Learned Counsel for the tenants has also stated that the tenants are ready and willing to shift to temporary alternate premises as may be offered by the MHADA.

9. Mr. Khandeparkar, learned Counsel for the petitioner has also provided a list of available tenements which his clients have obtained under the Right to Information Act which can be considered for allotment to the tenants. Mr. Lad has also fairly pointed out that whichever tenements are available in the vicinity would be offered to the tenants so that they can shift to such tenements till the redevelopment of the building is undertaken and is completed.

10. In this view of the matter and more particularly, considering the fair stand as taken on behalf of the parties and which we need to appreciate in the facts and circumstances of the case, in our considered opinion, at this stage of the proceeding, the following order would serve the interest of justice.

: ORDER :

(a) The MHADA shall within a period of ten days from today offer temporary alternate tenements to the tenants/respondents No.12 to 59. The tenants shall choose the respective tenements and after receiving allotment letters, within appropriate time as may be mutually decided between the tenants and the Competent Officer of MHADA, shift to the temporary alternate premises by vacating their existing tenements. Let such exercise be completed on or before **15th July, 2025**.

(b) In the meantime, till the tenants shift to their respective allotted temporary tenements, they shall continue to occupy their existing tenements as also the building at their own risk and consequences and in the event of any untoward incident of a collapse, they shall not hold the petitioner/landlord or the MHADA or the Municipal Corporation or any other Authorities responsible for any criminal or civil liability. They shall also compensate any third parties if they are prejudicially affected in the event of any unfortunate incident of collapse.

(c) We clarify that all rights of respondents No.12 to 59 in respect of their existing tenements would stand recognized by the MHADA as also the petitioner and the proposed owners of the premises and in respect of any redevelopment such alternate accommodation commensurate to the existing tenements of the tenants shall be provided.

(d) In this regard, the parties are also free to reach an appropriate settlement in the event any rights are to be permanently finalized between the parties.

11. In the peculiar facts and circumstances, the Charity Commissioner who is seized with the proceeding shall also make an endeavour in the peculiar facts of the case to take an early decision on the proceedings filed by the petitioner and appropriate orders in that regard, in our opinion, are requested to be passed on or before 10th July, 2025.

12. In so far as the redevelopment is concerned, either the petitioner or the new owners of the building in question or the MHADA shall keep the tenants apprised of all the necessary developments in that regard as also the plans in respect of the development and the proposed tenements to be constructed, which would be ultimately allotted to the tenants. All contentions of the parties in that regard are expressly kept open. In this view of the matter, we propose to consider the further course of action to be adopted by the parties and pass

appropriate orders on the adjourned date of hearing so that the petition itself can be disposed of.

13. Needless to observe that the MHADA alongwith each of the tenants and the representative of the owners shall undertake an exercise of verification of the actual carpet area of each of the tenements of the tenants/respondents No.12 to 59. A statement of the area be accordingly finalized by such consensual manner and be provided to all the tenants as also approved plans of copies in that regard be retained by the Authorities.

14. We clarify that our order dated 13th June, 2025 in so far as the safety precautions are concerned shall continue to operate.

15. List the petition on 17th July, 2025. High on Board.

[ARIF S. DOCTOR, J.]

[G.S. KULKARNI, J.]