

Prajakta Vartak

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

WRIT PETITION (L.) NO. 39233 OF 2025

Malan Baburao Badekar ...Petitioner
 Vs.
 The State of Maharashtra & Ors. ...Respondents

Mr. Ajay Saravde with Ms. Tejaswini Thorat, Mr. Shivaji Shinde and Ms. Lalita Sawant for Petitioner.

Mr. Manish Upadhye, AGP for State/Respondent Nos.1 to 4.

Mr. P. G. Lad with Ms. Sayali Apte for MHADA.

Ms. Janhavi Jathade, EE/NMJ BDD MHADA present.

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CORAM: G. S. KULKARNI &
AARTI SATHE, JJ.
DATE: 22 DECEMBER 2025.

P.C.

1. In pursuance of our order dated 17 December 2025, the Court Officer has placed on record a detailed report along with photographs. The report has been prepared in the presence of representatives of the P.W.D. as also MHADA. The report clearly indicates that the premises in question are being used by the petitioner as a full fledged residence, comprising one room, a kitchen, and an attached bathroom. The report clearly concludes that the premises are residential in nature and not merely a structure what can be described/labelled as a bathroom. The relevant extract of the report is required to be noted which reads thus:-

“...It was just like a one room kitchen structure. There was an internal partition dividing the room into one room and kitchen. Two wooden beds with storage, four plastic chairs, one cupboard, one unit containing some articles and on top TV etc. bedding, some clothes and some other articles were found lying in the exterior portion of the partition. There was one tube light and ceiling fan in working condition. I went inside behind the

partition where I found the kitchen and a bathroom. In the kitchen there was a countertop on which there was a gas stove and below that was one gas cylinder. There were number of kitchen utensils which were arranged in the kitchen rack and some were lying on the kitchen platform and some were lying on the floor. Opposite the countertop, there was a bathroom. In the bathroom two-three buckets, one big drum filled with water and other bathroom items were lying.

As per my directions, the photographer took multiple photographs of the premises. I also took some photographs from my mobile camera. Photographs of entire chawl and photographs of petitioner's premises are annexed hereto and marked collectively as Exhibit B.

I respectfully submit to the Hon. Court that upon inspecting the said premises, prima facie it is found to be used as residential premises.”

2. A copy of the report be furnished to learned AGP as also to Mr. Lad, who now represents MHADA. Mr. Lad has made a statement that MHADA is ready and willing to provide transit accommodation to the petitioner till further appropriate orders are passed on this writ petition.

3. In the peculiar facts of the case, considering that the petitioner is a widow and a senior citizen, we are required to pass appropriate final orders on this petition, more particularly considering the stand presently taken on behalf of the State Government, which, *prima facie*, appears to be oblivious to the ground realities and the fact that the petitioner's tenement has been used as residential premises since the year 1985. We may also observe that no affidavit can be filed ignoring such ground realities, as what has transpired for a period more than 40 years cannot be overlooked, i.e., the continuous occupation of the said premises as residence initially by the deceased husband and thereafter by the petitioner/widow.

4. In our *prima facie* view, the petitioner would certainly be entitled to permanent alternate accommodation as offered to others, and she ought not to be held ineligible. We find that there cannot be any discrimination, as the petitioner is similarly placed to the other persons who were in occupation of various premises in the BDD chawl. Merely because the petitioner's premises was categorized in the official record as a bathroom, the petitioner ought not to be held ineligible.

5. Mr. Upadhye, learned AGP, has fairly submitted that the ground realities need to be examined by the concerned officer, in view of the report of the Court Officer. He accordingly seeks an accommodation. We accept such request and accordingly permit the concerned officials to reconsider the issues. An appropriate statement in that regard be made on the adjourned date of hearing, failing which we shall proceed to pass further appropriate orders on this petition after hearing learned counsel for the parties.

6. We also permit the petitioner to amend the petition and implead Maharashtra Housing and Area Development Authority (MHADA) as a party respondent who is already represented by Mr. Lad. Amendment be carried out during the course of the day. Re-verification is dispensed with. Mr. Lad waives service on behalf of MHADA.

7. We had directed the respondents to deposit a sum of Rs.5,000/- with the Registry of this Court for the necessary expenses of the visit as also towards the photography charges. The photographer is also required to be paid. Accordingly,

an additional amount of Rs.5,000/- be deposited by the respondents on or before 23 December 2025. The said amount be paid by the Registry to the concerned Court official, including to meet the expenditure incurred by him.

8. Stand over to **23 December 2025 at 03.00 p.m.**

9. Ad-interim order, if any passed earlier, shall continue to operate till the adjourned date of hearing.

(AARTI SATHE, J.)

(G. S. KULKARNI, J.)