



Talwalkar

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO. 1456 OF 2021
WITH
INTERIM APPLICATION NO. 3337 OF 2021
IN
WRIT PETITION (L) NO. 1456 OF 2021
WITH
INTERIM APPLICATION (L) NO. 24282 OF 2022
IN
WRIT PETITION (L) NO. 1456 OF 2021
WITH
INTERIM APPLICATION (L) NO. 24273 OF 2022
IN
WRIT PETITION (L) NO. 1456 OF 2021
WITH
INTERIM APPLICATION (L) NO. 13487 OF 2022
IN
WRIT PETITION (L) NO. 1456 OF 2021**

Shakil Mohammed & Ors

...Petitioners

Versus

State of Maharashtra & Ors

...Respondents

Mr MA Khan, with Dipti Mehta, for the Petitioner.

Mr Abhay Patki, Addl GP, for the Respondent-State.
Mr Kunal Waghmare, for the Respondent-MCGM.
Mr Rakesh Agrawal, for the Respondent No. 6.
Mr. Anuj Jain, Partner of Respondent No. 6 is present.

**CORAM G.S. Patel &
Kamal Khata, JJ.**
DATED: 28th August 2023

PC:-

1. Of the original 37 Petitioners, Petitioner Nos. 5, 6, 7, 15, 16, 17, 19, 20, 21, 22, 25, 30, 31, 32, 33 and 37 have been deleted. Respondent No. 5 is the original developer, Mithila Developers. Respondent No. 6 Aashirwad Shelaji is the changed or newly appointed developer. Respondent No. 4 is the Society called Mithila Heights CHSL. The property in question straddles several CTS Numbers at Kamathipura Byculla. The property is owned by the MCGM. The old structure was known as Bengali House. The rights of the original Petitioners as tenants are not disputed although there is some suggestion that Petitioner No. 18 (not one of those deleted) died on 6th July 2018 before the Petition was filed and that his signature on the Petition is not genuine.

2. The complaint is the usual one of not being paid transit rent and of delay in development.

3. To begin with, we are constrained to observe that this is an unacceptable state of affairs from every perspective that when it comes to development supervised by the MCGM, such as the present one, where MCGM is the owner of the building that goes

into redevelopment, there is no structured development supervision system in place. For their part, SRA and MHADA have now developed fairly detailed and sophisticated systems for monitoring development. We see no reason why MCGM should be excluded from this discipline. Just two or three areas of attention will suffice. SRA and MHADA now insist as a matter of routine that transit rent as determined by the authorities payable to those eligible must be deposited in advance whether it is for 12 months or 24 months. The MCGM does not do so. It does not even decide the amount of transit rent although this is fairly easily done depending on the Ready reckoner rates for a given year and the given area. The MCGM instead leaves it to the developer and the society, if there is one, and this process invariably leads to ambiguity and confusion. It sometimes causes conflicting claims amongst eligible occupants. MCGM also needs to have in place a system of biometric identification and Aadhaar-based identification so that people do not illicitly traffic in rehab units. Those other two public authorities also enforce the execution of Permanent Alternate Accommodation Agreements (“PAAAs”) so that these are not only properly executed but are registered as required by law. In this case, for example, we are told that some PAAAs have only been notarized. The result of this lack of supervision is that inconsistencies and disruptions abound. Most importantly from the perspective of a writ court, there are bound to be inequalities because some persons may succeed in getting PAAAs that are more favourable to them than others. That is to be avoided at all costs. The SRA and MHADA also have systems to ensure that the work of development of rehab or reconstructed premises continues on a specified schedule and if not, the developer is held responsible, given a warning and if there is

no improvement is forced to be substituted. We see no reason why the MCGM should be excluded from this practice either.

4. To put this into perspective, the individual tenants are of course the most immediate victims because they are in this state of constant uncertainty. In this case, they vacated their homes in **2010**. We are in 2023. The building is not complete. Arrears of transit rent have accumulated. Developers have changed hands. Even today there is no greater certainty. The remaining Petitioners, for example, contend that the amount of transit rent paid is only a part of what is actually due. Agreed annual increases have not been paid.

5. But even from the perspective of the developer, this lack of supervision is more than just annoying. It is an unacceptable abdication of municipal administration, duties and obligations. If a developer knows the amount of transit rent that is payable, expressed on a per square foot basis, and knows that he is required to deposit that amount for 12 months in advance with the MCGM or to make payment in advance to those found eligible, then the developer has clarity and certainty about the financial aspects of the project that the developer has undertaken. He can make financial projections accordingly and can adjust his obligations, borrowings and cash flows accordingly so that the project proceeds on schedule. No developer is interested in prolonging the development because the amount of transit rent keeps going up. There is the interest component on borrowed money and on servicing debt: money has a carrying cost. Further delay requires a further cash infusion because

then there are annual increases to be taken care of. Delayed projects also increase significantly the cost of construction itself. All this benefits precisely nobody. And it is all due to the lack of supervision by the planning authority.

6. We cannot dictate a law on this aspect of the matter but we commend to the MCGM at the highest levels that this be taken up on a priority basis and that a structured system be put in place by means of a circular or some regulations that can be binding so that MCGM-monitored development projects across the city progress on schedule and in an open, transparent and clear manner. Let a copy of this order be placed before the MCGM Law Officer and before Municipal Commissioner for their consideration.

7. In this particular matter, on 17th January 2022 the Estate Department of the MCGM approved the appointment of Respondent No. 6, Ashirwad Shelaji, as the new developer. A rehab wing was completed in December 2022.

8. On 23rd December 2022 and 24th July 2023, the Estate Department gave an NOC to apply for an occupancy certificate for the rehab building. Ashirwad Shelaji applied for an occupancy certificate on 21st August 2023. We are told that transit rent till the end of August 2023 has been paid on par with the other tenants to Petitioner Nos. 1, 2, 10, 11, 13, 23, 26 and 35.

9. Petitioner Nos. 27, 28 and 34 are yet to establish their eligibility. However, there is an undertaking before us which we

accept as an undertaking to the Court that if found eligible, Respondent No.6 will pay transit rent to these three petitioners once that eligibility is established.

10. And this shows us now precisely the problem. Had this been MHADA or SRA we would have required 12 months rent for these three persons to be deposited with SRA or MHADA. We dare not risk doing that with MCGM because we do not know where that money will go. Instead, therefore for these three persons, the transit rent on par with others will be deposited in court at the same rate as are payable to the others and this will be done within two weeks from today. Once they are found eligible, Petitioner Nos. 27, 28 and 34 will be entitled to apply to this Court for withdrawal of the amount with accumulated interest. The amount deposited is to be invested by the Registry in accordance with the usual practices of its office initially for a period of 6 months and thereafter for like periods until further orders of the Court. It is not possible for the developer to agree to making a payment directly simply because these are the heirs of the original tenants. They would need to obtain representation to the estates in some recognised form and they will have to provide necessary indemnities to both the developer and to the MCGM. Without this it will not be possible for the amounts to be released to them.

11. There is also an undertaking that as regards all other persons entitled to transit rent, from September onwards, transit rent will be paid on parity until possession with an OC of the rehab premises is offered. This statement is accepted as an undertaking to the Court.

12. Mr Anuj Jain on behalf of Respondent No. 6 is present in Court. He states that he has instructions from the LLP and states that the amount that is due from September onwards will be credited directly to the accounts of those who are entitled to it except for the Petitioner Nos. 27, 28 and 34. The bank account details are to be given by the Advocates for the Petitioners to Advocates for Respondent No. 6 by Friday, 1st September 2023. Once again, we accept this as an undertaking to this Court. We make it clear that the amount of transit rent will be payable on or before the 10th of each month. If that date is not met, then we exercise our discretion and allow the developer a further grace period of four banking days to make up the default and to make the payment. However, if there is any default even after cure period in making payment to a single person, this will constitute an event of default and will be sufficient ground for the MCGM to immediately cancel the LOI issued to Respondent No. 6. In that event, not only the amount that is in default but the entire claim of the Petitioners including all annual increases will become immediately payable and will be executable as an order of this Court.

13. On the basis that there is no default, as regards the other money claims of the Petitioners, if any, we take the liberty of excluding for the purposes of limitation the time spent in prosecuting this petition and allow the Petitioners to pursue any other remedies whether in a civil court or in arbitration as they may be advised.

14. Lastly coming to the question of PAAAs, while it is clear that no mandamus will be issued to Respondent No. 6, we direct the MCGM Respondent No.2 to ensure that Respondent No. 6 executes the PAAAs with all the persons who are found eligible and does so within a period of 30 days from today. The PAAAs will be on exactly the same terms as are made available to all others.

15. Learned Advocate for Respondent No. 6 states that PAAAs for all continuing Petitioners except Petitioners Nos. 18, 27, 28 and 34 will be forwarded to the Advocate for the Petitioners by tomorrow. Those remaining Petitioners (except 18, 27, 28 and 34) will come to Court on Thursday, 31st August 2023. The PAAAs will be signed in Court on Thursday itself. An authorized representative of Respondent No. 6 will be present along with a letter of authority, seal, stamp, etc. and parties will proceed for registration directly from Court itself.

16. We exclude Petitioner No 18 from any of these benefits until the precise status is verified. If he died before the Petition was filed, we need to know who signed the Petition purportedly in his name. Once those identities are ascertained, we will make further orders.

17. List the matter on 31st August 2023.

(Kamal Khata, J)

(G. S. Patel, J)