



Bhogale

904.wp-3386-2025.odt

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.3386 OF 2025

Mumtaz Ahmad Shah

... Petitioner

Versus

Chief Executive Officer

Slum Rehabilitation Authority and ors. Respondents

Adv. A. A. Maniyar a/w Adv. Sharif Khan, for the petitioner.

Dr. Milind Sathe, Advocate General a/w Adv. Ravleen Sabharwal, Adv. Aarushi Yadav, Adv. Rutuja Shedge, Adv. Yashi Bhatt, for the respondent-SRA.

Dr. Milind Sathe, Advocate General a/w Dr. Dhruti M. Kapadia, AGP, for the respondent-State.

Adv. Aniesh S. Jadhav a/w Adv. Rushikesh Kekane, Adv. Nikhil Adkine, for respondent No.2-MHADA.

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

DATE : 22nd JULY 2026

ORAL ORDER (PER M. S. KARNIK, J.) :

1. Heard learned counsel for the parties.
2. By this writ petition filed under Article 226 of the Constitution of India the petitioner prays for the following relief :-

“(a) this Hon’ble Court may kindly be pleased to issue Writ of Mandamus or any other appropriate Writ, direction or Order in the nature of Mandamus under Article 226 of the Constitution of India directing and Ordering the Respondent Nos.1 & 2 to implement and comply with Order dated 4th July 2023 passed by the Tehsildar-2 (Special Cell) Slum Rehabilitation being Exhibit “C” herein within stipulated time.”

3. The brief facts of the case are that the Sub-Registrar, Co-operative Societies, Slum Rehabilitation Authority (“SRA”, for short) by a letter dated 07/12/2021 informed the Deputy Collector, SRA about the allotment of Flat No.402, Shivaji Nagar Co-operative Housing Society, opposite Swastik, Chembur, Mumbai 400 071 (“the said flat”, for short) to one Mr. Imtiyaz Ahmed Shah. The Registrar sent a report on 04/02/2022 to the SRA that the respondent Nos.3 to 5 are residing in the said flat illegally and recommended SRA to initiate action against them. The officer of the respondent No.1 passed the order dated 04/07/2023 in favour of the petitioner.

4. The respondent No.2 sent a letter dated 07/12/2023 to the respondent No.1 and demanded the payment of cost for police protection for implementation of the order dated 04/07/2023.

5. Learned counsel for the petitioner submits on instructions that the petitioner is willing to pay the cost of the police protection.

6. The petitioner sent a legal notice dated 16/01/2025 to the respondent Nos.1 and 2 calling upon them to comply with the order dated 04/07/2023.

7. We have heard learned counsel for the respondent-Maharashtra Housing Area Development Authority ("MHADA", for short). Learned counsel for the respondent - MHADA submits that no doubt the order dated 04/07/2023 has been passed wherein the possession of the subject premises in question are directed to be handed over to the petitioner. Therefore, the occupants of the premises are required to vacate the premises. However, learned counsel for MHADA submitted that though an order of eviction is passed, the Competent Authority does not have the machinery to execute and implement the order and has to rely upon the SRA for its execution.

8. Learned counsel for the SRA, on the other hand, submitted that it may not always be possible for the SRA to

provide the machinery for the execution of eviction orders, as the contract of the contractor who had been engaged to carry out the execution and implementation of such orders has expired.

9. We had requested the learned Advocate General to assist this Court in resolving the controversy as on the one hand the Competent Authority says that it does not have the machinery to implement the order and on the other hand the SRA says that presently they do not have any machinery to assist the Competent Authority of MHADA for the enforcement of the order as the contract with the concerned has expired.

10. We have therefore with the assistance of the learned Advocate General gone through the relevant provisions of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 ("Slum Act", for short). Section 2(c) of the Slum Act defines the "Competent Authority" means a person or body appointed to be the Competent Authority under Section 3. Section 3E provides for restrictions on transfer of tenements. Section 3E is reproduced reading thus :-

“3E. Restrictions on transfer of tenements.

(1) The tenements allotted to the persons under the Slum Rehabilitation Scheme shall not be transferred by the allottee thereof by way of sale, gift, exchange, lease or otherwise for a period of first five years commencing from the date of allotment of the tenement. After the expiry of the said period of five years, the allottee may, with the permission of the Slum Rehabilitation Authority, transfer such tenement in accordance with the prescribed procedure.

(2) If the tenement is transferred by the allottee in contravention of the provisions of sub-section (1), the Competent Authority shall, by order, direct the eviction of the person in possession of such tenement in such manner and within such time as may be specified in the order, and for the purpose of eviction, the Competent Authority may use or cause to be used such force as may be necessary:

Provided that, before issuing any order under this sub-section, the Competent Authority shall give a reasonable, opportunity to such person to show cause why he should not be evicted therefrom.”

11. We must then refer to the relevant provisions of Section 33 of the Slum Act which provides for the power of eviction to be exercised only by the Competent Authority. Section 33 of the Slum Act reads thus :-

“33. Power of eviction to be exercised only by the Competent Authority

Where the Competent Authority is satisfied either upon a representation from the owner of a building or upon other information in its possession that the occupants of the building have not vacated it in pursuance of any order or direction issued or given by the Authority, the Authority shall, by order, direct the eviction of the occupants from the building in such manner and within such time as may be specified in the order, and for the purpose of such eviction, may use or cause to be used such force as may be necessary:

Provided that, before making any order under this section the Competent Authority shall give a reasonable opportunity to the occupants of the building to show cause why they should not be evicted therefrom.”

12. Thus, in the present case, there is no dispute that the Deputy Chief Officer (Marketing) of Mumbai Housing and Area Development Board is the Competent Authority so far as the subject premises are concerned. It is the Chief Officer of MHADA being the Competent Authority has the power to evict. We must, nonetheless, make a reference to the Notification dated 12/08/2021 of the Housing Department of the State Government. In exercise of powers conferred by sub-section (1) of Section 3, sub-section (1) of Section 3Y and sub-section (1) of Section 35 of the Slum Act and in supersession of all notifications issued in this behalf, the Government of Maharashtra, for the land in the areas of Municipal Corporation of Brihan Mumbai and Municipal Corporation of Thane [including land under the Central Government where no objection is granted, Airport Authority of India, Maharashtra Housing and Area Development Authority (MHADA), Mumbai Metropolitan Region Development Authority

(MMRDA), Semi Government and Private lands] appointed the officers specified therein as the Competent Authority. So far as the area where the subject premises are situated, the Competent Authority prescribed was Competent Authority-10, Slum Rehabilitation Authority, Mumbai.

13. Thereafter, by a Notification dated 11/02/2022, the Entry No.10, in column (3) of the above notification was deleted and thereupon the Deputy Chief Officer (Marketing), Mumbai Housing and Area Development Board was appointed as the Competent Authority.

14. It is therefore that the order dated 04/07/2023 of which implementation is sought was passed by the Competent Authority. Section 33 of the Slum Act provides that where the Competent Authority is satisfied either upon a representation from the owner of a building or upon other information in its possession that the occupants of the building have not vacated it in pursuance of any order or direction issued or given by the Authority, the Authority shall, by order, direct the eviction of the occupants from the building in such manner and within such time as may be specified

in the order, and for the purpose of such eviction, may use or cause to be used such force as may be necessary. The proviso to Section 33 of the Slum Act says that before making any order under this section the Competent Authority shall give a reasonable opportunity to the occupants of the building to show cause why they should not be evicted therefrom.

15. Thus, it is the obligatory on the part of the Competent Authority to enforce and implement the direction for eviction and for the purpose of such eviction, may use or cause to be used such force as may be necessary. In these circumstances, it is therefore imperative for the Competent Authority to devise a mechanism and for MHADA being the statutory body to ensure that the Competent Authority has the necessary machinery and wherewithal to implement the order of eviction.

16. Merely passing an order of eviction without a machinery to enforce the order renders Section 33 of the Slum Act meaningless. On the contrary Section 33 of the Slum Act empowers the Competent Authority to enforce the order of eviction and for that purpose use such force as may be necessary.

The very purpose of Section 33 of the Slum Act would be defeated if such a machinery for enforcing the order of eviction is not available with the Competent Authority. Passing eviction orders without any means to enforce the same would be a futile exercise defeating the object of Section 33 of the Slum Act thereby encouraging unauthorised occupancies. In our opinion, the stand taken by MHADA that it does not have the machinery to enforce and implement the order is not justified. Section 33 of Slum Act casts an obligation on the Competent Authority to use such force as may be necessary for implementation of the order of eviction. We therefore are in agreement with the stand of the learned Advocate General that it is for the Competent Authority to ensure the execution and implementation of the order of eviction.

17. In enforcing the order under Section 33 of the Slum Act, the Competent Authority may seek the assistance of the SRA for the purpose of implementing the order. However, merely because the SRA is not in a position to provide the necessary machinery for enforcement of the order of eviction, it does not justify the Competent Authority's refusal to enforce the order. It is for the

Competent Authority to devise a mechanism and put a machinery in place for the execution and implementation of the order of eviction.

18. We therefore request the Principal Secretary of Housing Department in co-ordination with the Vice President and Chief Executive Officer of MHADA and the Competent Authority to immediately look into the matter and ensure that the machinery is in place for implementation of the orders of eviction passed by the Competent Authority. The Competent Authority to coordinate with the Principal Secretary of Housing Department as well as the Vice President and Chief Executive Officer of MHADA to put the mechanism for eviction in place, for ultimately it is the statutory duty of the Competent Authority to ensure implementation of the eviction order.

19. The writ petition is allowed in terms of prayer clause (a).

20. List the writ petition on 24/08/2026 under the caption “for compliance”.

(S. M. MODAK, J.)

(M. S. KARNIK, J.)