



Gaikwad RD

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**ORDINARY ORIGINAL CIVIL JURISDICTION**  
**WRIT PETITION (L) NO. 20423 OF 2023**

Sushila Gordhandas Parikh & Ors ...Petitioners  
*Versus*  
The State of Maharashtra & Ors ...Respondents

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**Ms Rishika Harish, i/b Prashant Goyal, for the Petitioners.**  
**Mr SB Gore, AGP, for Respondent No.1-State.**  
**Ms Manisha Jagtap, for the Respondents Nos.2 and 3-MHADA.**  
**Mr Karl Tamboly, for Respondent No.4.**  
**Mr Ashish Kamat, Senior Counsel, with Aseem Naphade, Chirag Sarawagi, Riya Thakkar, i/b Tushar Goradia, for Respondent No.6.**  
**Mr Santosh Pathak, with Purva Naik, Kailash Pathak, i/b Law Origin, for Respondent No.7.**  
**Mr Farhan Dubash, with Nilesh Modi, Kshitij Kadam, i/b Rustomji & Ginwala, for Respondent No.8.**  
**Mr Sushant Chavan, for Respondent No.9.**  
**Mr Sagar Patil, for the Respondent No.10-MCGM.**

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**CORAM G. S. Patel & Neela Gokhale, JJ.**  
**DATED: 7th August 2023**

**PC:-**

1. The Petition is the by now familiar story of distress to several dozen individual residents, some of them senior citizens, all

subjected to enormous hardship in the course of what was supposed to be a quick redevelopment of a cessed building.

2. There are altogether before us 65 Petitioners. The 4th Respondent, Parekh Constructions was the original Developer appointed by 8th Respondent, Darshana, the owner of one of the two properties. The 6th Respondent, Nishcon Realty Private Limited (“**Nishcon Realty**”) then came into join Parekh Constructions and they apparently formed the 5th Respondent, Parekh Constructions LLP. The 7th Respondent is one of the partners. The 9th Respondent is a Public Charitable Trust and owns an abutting plot. The 2nd Respondent is the Maharashtra Housing and Area Development Authority (“**MHADA**”).

3. Between Parekh Constructions and Nishcon Realty there are the predictable disputes. These may be in arbitration. We have no concern with these. Ms Jagtap for MHADA tells us that at no point was MHADA ever informed of Nishcon’s involvement.

4. There are two properties. One is owned by Darshana and the other is the property of the Trust. On the plot owned by Darshana there was a building that has now been pulled down. The structure on the Trust’s plot still stands.

5. What is not in dispute is that the Petitioners, originally occupying tenements in Parvati building on the plot owned by Darshana, have been out on transit rent since 2012, for the last 11

years. The old structure has been demolished. But as Ms Jagtap points out, for the last 10 years nothing at all has happened on site.

6. Ms Harish on behalf of the Petitioners says that the amount that is now due to the Petitioners as transit rent without including even the agreed annual increases, let alone interest or penalty is about Rs 11 Crores.

7. Apparently, the arrangement between Nishcon and Parekh Constructions, at least according to Mr Kamat and Mr Naphade for Nishcon, is that an amount of Rs 4.33 crores was Parekh Construction's liability and beyond that the financial responsibility for the redevelopment including transit rent would be borne by Nishcon Realty.

8. On a rough and ready calculation, Nishcon Realty accepts that it is in arrears of transit rent since 2020 amounting to a little over Rs 7 crores. We have taken these as approximate figures.

9. But to understand what this means and to put it in context. It tells us that for the better part of a decade an enormous amount of Rs 11 Crores has remained unpaid as transit rent. Occupants of the Parvati building have lost their homes. They are now, as the cause title itself shows, dispersed across the city and even beyond this city at distant places — Navi Mumbai, Thane, Surat, Alibaug and elsewhere. An entire community is fractured. These people have been forced to make their own arrangements for taking alternative premises on leave and license or rent. Those rentals or license fees

have always only gone up, never down. And yet they have never been paid the amount of promised transit rent.

**10.** We note this because when, in these facts, the Developer tells us that an amount of Rs 1 Crore will come in a few days and the rest in a few weeks, we are singularly underwhelmed. We do not believe it is the purpose of redevelopment projects to allow developers to profit like this or to inflict financial and day-to-day misery on the lives of occupants. It is the entitlements of these persons to transit rent and to rebuilt accommodation that alone entitles developers to the profits from the free sale component. Yet in case after case in this city we see a situation where developers argue that their rights to profit must be safeguarded, that they must be given enlarged time to make good on their defaults, that their profits are somehow to be preserved at all costs but that the interest of the society members, tenants and occupants are secondary.

**11.** We are having none of this. If this is the approach or the argument, our answer is “not on our watch”. We will not sit by and allow residents of this city to be treated as a necessary evil, an irritant or a nuisance in developers’ pursuit of profits or their worship of Mammon. The rights of genuine and eligible residents are primary. The developers’ rights are distinctly secondary and will remain subordinated to the rights of such residents.

**12.** To put it even more bluntly. Every developer will now realise that if there is a default in meeting its obligations to residents, societies and tenants, we will not even direct MHADA to cancel the

No Objection Certificate (“NOC”). We will terminate that NOC ourselves. Far too many of our citizens are being subjected to this day in and day out. It is time that this Court said enough is enough.

13. Indeed, the situation across the city is now so dire that we believe it is necessary for the government to step in with drastic steps to curb errant builders in default of their obligations.

14. If according to Nishcon Realty, there is today an amount of Rs 7 crores payable, we would ordinarily have been justified in demanding that the whole of it be brought into Court immediately. Mr Kamat does not have instructions but Mr Naphade had earlier suggested that Rs 1 crore could be brought in by Friday, 11th August 2023 and the balance in a few weeks’ time. We found this unacceptable.

15. We expect the first 50% of the amount that is due even according to Nishcon, i.e., Rs 3.5 crores to be brought in by Friday, 11th August 2023.

16. How Nishcon Realty arranges its affairs with Parekh Constructions is not our concern, but we make it clear that this is a direction against Nishcon Realty, 6th Respondent, Parekh Constructions, 4th Respondent and their LLP, 5th Respondent jointly and severally. We will not contemplate a situation where any one of these entities continues in this project if there is a default.

17. After the first amount of Rs 3.5 crores is brought in, we are willing to consider submissions from the Developers about payment of the accumulated arrears (Rs 3.5 crores plus any additional amount) in tranches or instalments.

18. We will address the remaining claim of the Petitioners at that time.

19. We expect further that the transit rent for August 2023 to all occupants must be paid in full by 25th August 2023 and that every month's transit rent will be paid on or before the 25th of that month thereafter.

20. What we next propose is a structured programme for the completion of the redevelopment of these buildings in reasonable time frame up to the stage of an application for an Occupancy Certificate.

21. There will be provisions for an event of default.

22. If the amount of Rs 3.50 crores is not brought to Court by Friday, 11th August 2023, we will direct MHADA to immediately cancel the NOC of the only Developer it has on record namely Parekh Constructions.

23. We do not want cheques issued to individuals. This is usually far too complicated. Instead, the Developer will either bring a demand draft in favour of the Prothonotary and Senior Master or

transfer the amount online through the Prothonotary and Senior Master. For future deposits, we will set up an arrangement by which deposits may be made with MHADA and MHADA will then permit withdrawals from its online account.

24. We are told that there is a hearing before MHADA tomorrow under Section 91(A) of the MHADA Act. Since we have passed this order that hearing will presently not proceed.

25. List the matter at 2.30 pm on Friday 11th August 2023.

**(Neela Gokhale, J)**

**(G. S. Patel, J)**

RAJU  
DATTATRAYA  
GAIKWAD

Digitally signed by  
RAJU DATTATRAYA  
GAIKWAD  
Date: 2023.08.08  
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