



Sumedh

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 2737 OF 2018**

Mohan Yeshwant Padawe & Ors ...Petitioners
Versus
The State Of Maharashtra & Ors ...Respondents

Mr Anand Mishra, i/b AM Saraogi, for the Petitioner.
Mr Anoop Patil, with Pooja Yadav i/b Sunil Sonawane, for Respondent
No.2-BMC
Mr Ashish Kamat, Senior Advocate, with Mohit Khanna, Dipti
Sawant, Priyanka Desai i/b Aditya Lele, for the Respondent
Nos.41 to 43.
Mr Abhay Patil, Addl GP, for the Respondent-State.
Mr Narbat, Assistant Engineer G South Ward.

CORAM G.S. Patel &
Kamal Khata, JJ.
DATED: 24th August 2023

PC:-

1. There are four Petitioners. They came to court in 2018, five years ago now, claiming that water and electricity to their premises was being abruptly disconnected. They said that they had received notices under Section 354 of the Mumbai Municipal Corporation Act, 1888 (“MMC Act”) that the structures in which they occupied premises were dilapidated and needed to be pulled down.

Through the Petition, apart from the municipal authorities, a developer named Sanghavi Grih Nirman Pvt Ltd was Respondent No. 4 and then Respondent Nos. 5 to 40 were individuals said to also be residing there.

2. The Petition as originally filed proceeded on the basis that the Petitioners and Respondent Nos. 5 to 50 were the original “residents” of this plot of land, City Survey No. 13, FT No. 1274, TPS IV, Mahim, G/ South Ward Mumbai – 400 016. There was no clear statement about the basis on which these persons were entitled to occupation, whether as tenants or otherwise.

3. More importantly, the Petition proceeded directly in paragraph 2 itself, to a narrative about a redevelopment proposal. The first sentence of paragraph 2 is materially misleading because it said that the *occupants* decided to redevelop the building, postulating that they had some right in law to do so to begin with. This will become important shortly. There is a reference to an agreement of 7th February 2009. The fact that the Petitioners and others like them were tenants in a MHADA chawl is not mentioned. The fact that the property is privately owned by Respondent Nos. 41 to 43 is not mentioned. The owners, the Nagwekars were not even joined as a parties to the Petition. It was only on their intervention that very recently in 2023, they came to be joined to the petition.

4. The Petitioners moved the Vacation Bench on 25th May 2018 and obtained an order on a statement made on behalf of the Municipal Authorities that power and water supply would be

reconnected. The Court stated that these parties could occupy at their own risk.

5. There the matter remained for years together until 29th September 2022, when a bench of which one of us, GS Patel J, was a member with Gauri Godse J, had before it an Interim Application No. 1885 of 2021 seeking that the 25th May 2018 order be vacated. That Interim Application was by the Municipal Corporation of Greater Mumbai (“MCGM”). It was only then that a few further facts emerged, including, importantly, that these persons are not occupying the original structures at all. They are in a transit building, a matter of some consequence even to law under the MMC Act. We considered the application moved by the MMC and found that nobody had asked for the 2018 interim order to be vacated until 2021. We held that if at all, it would be the developer who would be interested in having that ad interim order of 2018 vacated. The developer did not even appear. The owners were not parties. It is only thereafter that the Nagwekars sought impleadment and which was subsequently allowed.

6. Now we have a much clearer picture. There were originally 103 tenants or occupants. Not at all of them occupied cessed premises. Today, the four Petitioners and some 14 others continue in this transit building.

7. Before we go further, a word about these transit buildings. As the name suggests, these buildings are necessarily temporary. They do not have a life beyond three to five years and the Nagwekars’

Affidavit says in terms that the buildings were constructed in 2006 with a life of five years. We are well past that time. We dislodge immediately any notion the Petitioners might have of applying the MCGM policy, circular and the judgment of this Court of structural audit and a reference to the Technical Advisory Committee (“TAC”). That cannot apply to transit buildings. The reason is axiomatic. Transit buildings are by the very nature of their construction and by structural design temporary and not meant to last beyond three to five years. There is no question of repairs or of these buildings being made permanent. Even the planning permissions that are granted for transit buildings are not granted in the same manner or subject to the same stringent requirements as they are for permanent constructions. We have only a few days ago noted that the attempt to apply the law on the TAC in structural audits to transit buildings is not only an inversion of law but is a perversion of the law. We do not propose to allow it.

8. Of the 103 tenants, as many as 63 are off-site now in MHADA camps. Another 10 non-cessed tenants are off-site in accommodation for which they have made their own private arrangements. Another 12 non-cessed tenants stay in alternate accommodation (that is to say not on transit rent). These 12 were among the parties to the Petition who have since moved out. Only 18 continue today in these transit buildings.

9. Mr Kamat on behalf of the Nagwekars states that the original developer was one Jankie Developers. Respondent No. 4 was an associate or co-developer. That development agreement has been

terminated. The development agreement was with the owners the Nagwekars and was terminated by the Nagwekars. It was not a decision of the tenants, nor theirs to take. This is all a matter of record.

10. He also has instructions to state that exactly on the same terms as are offered to all other tenants, those in the present transit building, i.e., the four Petitioners and the 14 others will be given permanent alternate accommodation agreements, i.e., agreements assuring them of ownership-basis redeveloped homes. They will also have the choice of moving out to transit accommodation of their choice or of their liking but against payment by the Nagwekars of transit rent of Rs. 30,000/- per month (which according to us it is eminently fair) and 12 months being paid in advance. This will be payable from the date of possession of the transit building. Alternatively, these 18 persons will have the choice of not receiving transit rent but of shifting to transit accommodation in a 5 km radius which the Nagwekars will show them. The Nagwekars will be bound and held to an undertaking to pay the licence fees or rental for that alternate accommodation directly to the licensors or landlords. Mr Kamat however makes it clear that these 18 persons will be treated exactly on parity with all other tenants. His instructions are that the Nagwekars are prepared to show the available alternative premises to the 18 persons so that they can take an informed decision and requests that the Court should fix a timeline within which this choice must be exercised and also a date by which these premises in the transit building must be vacated.

11. We have repeated requests to adjourn the matter for Mr Saraogi's convenience. We are making it clear that this is the last time that we are going to do this. If Mr Saraogi is unavailable, the answer is not that one of his perfectly competent juniors will come to Court and seek an adjournment every Thursday but that they will carry on with the matter when it reaches. We now make it abundantly clear that this is the last time we will accommodate Mr. Saraogi and we will not any longer be able to arrange our docket to his diary. It will be the other way around. It is indeed regrettable that we are compelled to have to record something like this but it is equally unavoidable.

12. We are making it abundantly clear that we require the four Petitioners to be present in Court tomorrow because it is also our experience that very often the Petitioners in a case do not come to Court or are kept from coming to Court so that yet another adjournment is obtained on the ground that instructions are required. We will not adjourn the matter beyond tomorrow under any circumstances.

13. This has nothing at all to do with what Mr Kamat says or does not say. Our concern is not with the Nagwekars at all, let alone for any developer that the Nagwekars may have chosen. The numbers shown to us tell their own story and are indeed alarming. These are only 18 of 103 people and the future prospects, homes, dreams, livelihoods and futures of the others are jeopardised by these 18 people — at precisely zero cost to themselves. Without paying a single rupee out of their pockets, they have sat on an ad inteirm

order from 25th May 2018 right till 2023 and for no good reason. That has to end. We do not know what has happened to the people of this city that they no longer have the slightest concern about their own neighbours and others in their society. There are dozens of others who are out on transit rent or in transit accommodation and are forced to stay there indefinitely. Already, five years are lost, possibly for no fault of these tenants; but their continued obstruction only heaps on further delay.

14. We do not accept the argument that a tenant has the right to choose a developer or the right to dictate the terms of the redevelopment. These four people do not have the authority to speak on behalf of anybody else. This is not a PIL. There is no leave obtained under Order I Rule 8 of the CPC to sue in a representative capacity. We reject out of hand the submission faintly attempted before us even today that there are many others who have not received large amounts in transit rent. These four Petitioners will speak for themselves and for no one else.

15. We are making it clear that we intend to fix a date and we will not be unreasonable in that regard, by which time these Petitioners and others in the building must vacate the premises. If they fail to do so, we will enforce that order through our Court Receiver and with the assistance of the police authorities apart from vacating the ad interim order and directing mandatorily the disconnection of power and water supply. We find it utterly incongruous and astonishing that these 18 people can without spending a single rupee on development, prejudice the futures of dozens of other tenants. Even

now it is clear that not one of these four Petitioners has either the readiness or the willingness to make a single rupee's contribution towards the redevelopment of these buildings or to the reaccommodation of the other tenants. We have made this abundantly clear in the past and we do so now as well: if these tenants claim that they have these great rights, they will first establish their bona fides by depositing in Court the entire expenditure on transit rent for the other tenants who are off-site, in advance, for the next 24 months, before we will afford them a hearing.

16. By tomorrow we require from Mr Kamat an exact list with the names in a tabulated form of those who are presently in occupation of the transit building so that there is no ambiguity. The unit numbers must be correctly and exactly identified. The alternative sites they are being shown must also be identified and communicated to us. We have too long operated in generalities. This must now come down to specifics.

17. We are also making it abundantly clear that as currently advised, we propose that the building will be entirely vacated no later than by 26th September 2023. On this we will hear no argumentation from the Petitioners. If there is slightest argument about this, we will not postpone the date, we will advance it.

18. As to the question of any allegation regarding an accumulation of arrears, we will pass separate directions in that regard.

19. All Affidavits to be filed in the Registry.
20. List the matter first on board on 25th August 2023.

(Kamal Khata, J)

(G. S. Patel, J)