IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 12377 OF 2022

1. **Amrit Bansraj Sahu**]
   Age : 62 years]
2. **Mohanlal Bansraj Sahu**]
   Age : 59 years]
3. **Omprakash Bansraj Sahu**]
   Age : 55 years]
4. **Bela Bansraj Sahu**]
   Age : 50 years]
5. **Sushila Bansraj Sahu**]
   Age : 42 years]
6. **Dhanraj Bansraj Sahu**]
   All of them inhabitants of Mumbai residing]
   at 65F, Sheetal Cnhaya Co-Op. Housing]
   Society Ltd., 5th Floor, S. K. Bole Marg, Dadar,]
   Mumbai – 400028.] **...Petitioners**

Versus

1. **Maharashtra Housing and Area Development Authority**]
   A statutory authority constituted under the]
   Maharashtra Housing and Area Development]
   Act, 1976]
   Having its registered office at Griha Nriman]
   Bhavan, Kalanagar, Bandra (E), Mumbai –]
   400050.]
2. **Mumbai Building Repairs and Reconstruction Board**]
   A statutory authority constituted under the]
   Maharashtra Housing and Area Development]
   Act, 1976]
   Having its registered office at Griha Nirman]
   Bhavan, Kalanagar, Bandra (E), Mumbai –]

400050.]

3. **The State of Maharashtra**]
Through the Secretary, Housing Department,]
Mantralaya, Madam Cama Road, Mumbai – 400021.]
] …Respondents

Mr. Kunal Bhanage, Mr. Akshay Pawar for Petitioner.
Mr. P. G. Lad, Ms. Sayali Apt, Mukalidharan Kalathil for Respondent No. 5-MHADA.

CORAM : SHARMILA U. DESHMUKH, J.

DATE : 22nd June, 2026

Oral Judgment :

1. By the present Petition, the challenge is to the order dated 17th February, 2021 and notices dated 9th February, 2022 and 18th July, 2022 by which the Respondent No. 1-MHADA has directed the Petitioner to get the amended plans approved from MCGM and provided carpet area of 185 sq. ft. shop premises to Hansaben Jayantilal Dave and others in the newly constructed building in view of the judgment of the Trial Court dated 18th October, 2010 passed in S.C. Suit No. 2334 of 2024 and to surrender the surplus built-up area admeasuring 53.36 sq. metre to the Respondent No. 2-M.B.R. and R Board.

2. The Petitioners had obtained no objection certificate of MHADA for the purpose of redevelopment of property at final plot no. 307 which NOC was granted on 3rd October, 2000 subject to the terms and

conditions contained therein which included a condition that all the occupants of old building shall be re-accommodated in new building and that NOC for cocupation certificate for free sale buildings will be given only after all the old occupants are re-housed in newly constructed building. One of the condition of NOC was surrender of surplus built-up area admeasuring 53.36 sq. metre to M.B.R. and R Board. The impugned order and notices came to be issued for non-compliance of handing over of surplus area to M.B.R. and R Board and for failure to rehabilitate the old occupant in accordance with the judgment of City Civil Court dated 18th October, 2010.

3. Mr. Bhanage, learned counsel appearing for Petitioner would submit that though the Repair Board certified the area occupied by Dave family as 156 sq. ft. built-up area, the said Hansaben Dave has approached the Trial Court seeking allotment of area of 185 sq. feet. He submits that the Appeal has been filed by the Petitioners against the order of Trial Court and the decree has been stayed. He submits that in view thereof, the Respondent-Board could not have passed the impugned order directing compliance with the order of Trial Court. Insofar as the handing over of surplus area is concerned, he has tendered the additional Affidavit stating that presently, there are three flats on the third floor and Flat Nos. 302 and 303 which are surrendered to the Petitioner's family by the erstwhile eligible

occupant can be handed over to MHADA as surplus area, though the same would exceed surplus area of 53.36 sq. metre. He submits that the Petitioners have not sold any constructed flat in the said building to the third-party and except, Dave family, all other occupants have been duly accommodated.

4. He submits that the Petitioner is ready and willing to submit an undertaking to Repair Board/MHADA that they would abide by the orders passed by the Appellate Court in respect of allotment in favor of Dave family. He would further submit that the certified area of 156 sq. feet built-up area *qua* the Dave family would be secured and kept vacant and no third-party rights would be created in respect of the said area. He would further submit that the Petitioners would submit necessary documents to MHADA to demonstrate the surrender of Flat Nos. 302 and 303 by erstwhile occupant, which can be accepted by MHADA as surplus area. He would further submit that considering the compliance of conditions of NOC by the Petitioners, as further construction is required to be carried out, the application, if filed with MHADA for NOC for seventh floor and for issuance of occupation certificate/part occupation certificate, it may be considered expeditiously by MHADA.

5. Mr. Lad, learned counsel appearing for the Respondent-MHADA would submit that the order came to be issued in view of the decree of

the Trial Court and also for the reason that the surplus area was not handed over. He would submit that in the sanctioned plan, Flat No. 5 & 6 of third floor was earmarked for MHADA and as the same was not handed over, the order has been rightly passed. He submits that it is for the Petitioners to satisfy the authorities that the Flat Nos. 302 and 303 can be handed over in lieu of the surplus area to the MHADA, which authorities will consider on the basis of documents tendered by the Petitioner. He submits that it is also necessary to secure the certified area of 156 sq. feet built-up area in respect of Dave family. He submits that in event, the application is filed by Petitioner seeking NOC for further construction of occupation certificate, the same will be considered by MHADA in accordance with law.

6. I have considered the submissions and perused the record.

7. The impugned order/notices seeks compliance of the conditions of NOC issued by MHADA of accommodating the occupants in redeveloped building and handing over surplus area to MHADA. Insofar as surplus area is concerned, the Petitioners are ready and willing to handover Flat Nos. 302 and 303 admeasuring 27.87 carpet area each, which was surrendered to the Petitioner's family. The pleading in paragraph no. 4 of additional Affidavit would indicate that the erstwhile occupant has surrendered the premises to the present Petitioners. In view of the said statement, the Petitioners to satisfy

MHADA authorities that Flat Nos. 302 and 303 is available for being handed over to MHADA as surplus area. In event, necessary documents evidencing the handover by the erstwhile occupant to the Petitioner's family is produced, the authorities to take possession of the surplus area.

8. Insofar as compliance with judgment of the Trial Court is concerned, as the First Appeal has been filed by the Petitioners and Decree has been stayed, necessary undertaking to be filed by the Petitioners with MHADA authorities undertaking to secure the certified area of 156 sq. ft. built-up area till the pendency and final disposal of the First Appeal and secondly, that the Petitioner's would adhere to the orders passed by the Appellate Court insofar as rehabilitation of Dave family is concerned.

9. In event, Petitioners file an application with MHADA seeking NOC for further construction or for issuance of occupation certificate/part occupation certificate, considering that all the tenants except the Dave family have been duly re-accommodated in the new building, MHADA is requested to consider the application expeditiously and in any event, within period of four weeks from the date of filing of the application, in accordance with law.

10. The applications to be considered by accepting the undertaking filed by the Petitioners for rehabilitation of Dave family.

11. Writ Petition is disposed of in the above terms.

12. In view of above, nothing survives for consideration in pending Applications, if any, and the same stand disposed of.

[SHARMILA U. DESHMUKH, J.]