

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION  
WRIT PETITION NO.4166 OF 2022**

Jayashree Dhondiba Jadhav .. Petitioner  
Versus  
The State of Maharashtra & Ors. .. Respondents

**WITH  
WRIT PETITION (L) NO.21705 OF 2025**

Rajesh Govil .. Petitioner  
Versus  
The State of Maharashtra through its  
Secretary .. Respondents

**WITH  
WRIT PETITION NO.2952 OF 2018**

Umesh Chandiwade & Ors. .. Petitioners  
Versus  
The State of Maharashtra & Ors. .. Respondents

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Mr. B.S. Nayak for the petitioners in WP No. 2952/2018.  
Mr.Atul Damle, Senior Advocate with Mr.Ashif Husain, Mr.  
Mohd Dais, Mr.Shaijad Mansuri, Mr.Huzer Qureshi and Mr. S.  
Khan for the petitioner in WPL 21705/2025.  
Ms.Archana Gaware i/b V.Y. Sanglikar for the petitioner in WP  
No. 4166/2022.  
Mr.Milind More, Addl. G.P for the State in all the petitions.

Mr. Akshay P. Shinde for respondent no.4 in WP No. 4166/2022 and for respondent no.6 in WP No. 2952/2018 and WPL No. 21705/2025.

Ms. Jyoti Mhatre with Ms. Anuja Tirmali i/b Komal Punjabi for respondent no.5 in WP 4166/2018 and WPL 21705/2025.

**CORAM : BHARATI DANGRE &  
MANJUSHA DESHPANDE, JJ  
DATED : 16<sup>th</sup> APRIL, 2026**

**JUDGMENT:- (Per Bharati Dangre, J)**

1. In the three Writ Petitions, the Petitioners seek issuance of writ of mandamus, or any other appropriate writ or direction to the State of Maharashtra, Urban Development Department, as well as the District Collector and Competent Authority, (Urban Land Ceiling Act, 1986) to transfer and/or sell/ allot the flats in 'Blue-Bell' building to the petitioners on permanent ownership basis, and the relief is claimed on the the basis of the order dated 22/2/2012 passed by this Court in PIL No.131/2008.

Writ Petition No. 2952/2018 is filed by 29 petitioners, whereas WP No.4166/2022 is filed by Jayashree Dhondiba Jadhav, and WP(L) 21705/2025 is filed by Rajesh Shaligram Govil and three others.

Since the Writ Petitions seek identical relief, the same are clubbed and are heard together and disposed of by this common judgment.

Upon the pleadings being completed, as the affidavit in reply is filed by the State Government in WP No.2952/2018

and since the Additional Government Advocate, Mr. More made a specific statement that the same stand is adopted by the State in all the said writ petitions, we have heard the petitions finally at this stage of admission.

By consent of parties, we issue 'Rule', which is made returnable forthwith.

2. The grievance of the petitioners flow out of the judgment dated 22/2/2012 passed by this Court in PIL Nos. 131/2008, PIL No. 91/2008 and PIL No. 21/2008.

The petitioners in the three Public Interest Litigations challenged the construction put up on some portion of land of village Powai and (Tirandaz) by the private developer, who was granted the right of a development through a tripartite agreement executed with the State of Maharashtra, Mumbai Metropolitan Regional Development Authority (MMRDA), and the Developer on behalf of the landlords as their Constituted Attorney.

The permission to develop was granted by MMRDA, the Planning Authority in the backdrop of an exemption order under Section 20 of the Urban Land (Ceiling and Regulation) Act, 1976.

The petitioners made a grievance that the development work is being carried out in utter breach of the tripartite agreement, and therefore the petitioners, through the PIL sought revocation of the exemption order. The PIL petitioner also sought appropriate civil and criminal action against the

officers and employees of MMRDA, who were alleged to have acted in collusion with the Developer.

3. For the purpose of adjudicating the grievance of the petitioners, we need not get into the niceties of the challenge and its adjudication by this Court, but suffice it to note that the Court found substance in the contention advanced on behalf of the petitioners, as the State Government officers, in collusion with the developer, had turned Nelson's eye to the gross violation of the tripartite agreement and therefore, a corrective action in the interest of public was clearly stipulated, and this was so done by making an arrangement of affordable housing to a class of people, leaving the petitioners free to take up the issue of corruption through criminal prosecution against the errant public officers and the developer.

Since 70 buildings were already constructed, the Division Bench deemed it appropriate to issue several directions, the prominent amongst which, and which forms the basis of the petitioners grievance read thus :-

(h) The developer shall sell to the State Government from such construction such of the flats or units as would represent 15% of the total FSI of the total plot consumed under the development @ Rs. 135/- per sq. ft. and the State Government shall offer those flats to be purchased by the employees of the State Government at the aforesaid rate in a transparent manner.

The petitioners in the three Petitions heavily rely upon the direction in relation to 'Blue Bell' building, and it is their contention that it was in terms of the direction issued by the

High Court, it was imperative for the Developer to arrange for public housing reservation, as the Court had directed that 10% of total constructed residential flats under the Powai Area Development Scheme be allotted and earmarked to Government employees, particularly those in service of the Government of Maharashtra, as part of the public housing reservation scheme, arising out of public-private development arrangement governed by a tripartite agreement executed between the land owner, the developer and the State authorities.

According to the petitioners, in compliance with the said directions, the petitioners, all of whom are serving as Government employees, (except those who have retired) were allotted the flats in the Blue-Bell Building constructed under the Scheme, and they have been in occupation of the said flat for periods ranging from 8 to 15 years. Claiming that their occupation is not only long-standing and peaceful, but is also lawful and traceable to the eligibility conditions specifically recognised and protected under the judgment of this Court in the Public Interest Litigation, the petitioners claim that they are entitled to regularisation of their occupation, by conferring permanent ownership as the petitioners, till date, are not conferred with the said status.

Being aggrieved by the respondents' conduct, including their refusal to confer their ownership rights, in accordance with the directions of this Court, and the threats of coercive

action under the pretext of unauthorised occupation, the petitioners approached the Court, alleging that the action of not regularising their occupation is violative of Articles 14 and 21 of the Constitution and even it violate the binding judgment of this Court.

Every petition before us is accompanied by tripartite agreement executed between the owners/developer and the Government with the presence of the MMRDA.

4. We have heard learned senior counsel Mr.Atul Damle for the petitioner in WP No. 21705/2025, learned counsel Mr. B.S. Nayak for the petitioners in WP No. 2952/2018 and Ms.Archana Gaware representing the petitioner in WP No. 4166/2023.

Mr.Damle would submit that the directions issued by this Court in the Public Interest Litigation, clearly contemplated a scheme in respect of the buildings constructed in Powai and the Court directed that the petitioners and the developer and Metropolitan Commissioner of MMRDA, shall prepare a statement of all the building and structures and prepare a chart showing vacant area of the plot under the Powai ADS, where further buildings may be constructed.

Inviting our attention to the specific stipulation that the construction shall only be of 1,511 flats of 40 sq.m and 1,593 of 80 sq.m, without any amalgamation, exception or further allowance, the learned Senior Counsel would emphasize on

clause (h) of the direction of the Court, which made it imperative for the developer to sell to the State Government, from such construction, such of the flats or units which would represent 15% of the total FSI of the total plots consumed under the development, @ Rs.135/- per sq.ft.

According to Mr. Damle, the Court directed that the State Government shall then offer those flats to the employees of the State Government at the same rate i.e. Rs.135/- per sq.ft, by following a transparent procedure.

By inviting our attention to the representation addressed to the Hon'ble the Chief Minister in reference to the direction of the Court, it is submitted that a grievance was made in respect of 'Blue-Bell' building, wherein upon computing 10% of area, 72 flats came to the share of the State Government and were allotted to the Government employees as Government accommodation. However, the grievance was made that they are not allotted on ownership basis.

In the representation, it was stated that in the said building, private persons as well as the Government Officers and employees were residing and the building has now become dilapidated and require repairs, but since the flats are not in the ownership of the occupiers, no attention is paid by the Government for its maintenance.

A request was therefore, made that the 72 flats in the said

building shall be sold in favour of those who were in its occupation.

Inviting our attention to the noting which contemplated the aspect to be examined in the backdrop of the directions issued by the Court, Mr. Damle has invited our attention to the communication dated 27/10/2015 addressed by the MMRDA to the Secretary, Town Planning, with reference to the representation addressed to the Hon'ble Chief Minister, where it was stated that the possession of the quarters/flats was taken by the Government through the Additional Collector, and therefore, the MMRDA was not responsible in any manner.

5. It is the contention of the petitioners that after some more correspondence entered into, on 17/8/2018, the State Government refused to indulge the petitioners who sought transfer of the flats in their name, as it was communicated that the flats have been put to use as Government accommodation for Government servants. According to Mr. Damle, the petitioners have been waiting for the flats to be transferred in their favour, as they were put in possession of the flats pursuant to the directions issued by this Court in the PIL Petitions and the tripartite agreement which was executed between the MMDRA, the Developer and the State Government.

The learned counsel Mr.Nayak and Ms. Gaware adopt the argument of Mr.Damle in submitting that by not transferring the flats in the name of the petitioners, the respondents are in breach of the direction issued by this Court, and it also amount

to failure of discharge of the statutory duty and amounts to abdication of public responsibility. It is also vehemently urged before us that the refusal on part of the respondent State Authorities, despite repeated reminders, is proof of systematic indifference and a breakdown in administrative accountability.

It is also argued that, the State Government, as the custodian of the said flats, which are in occupation of the petitioners and other employees in their capacity as Government servant, and since the petitioners have not availed of any other State housing Scheme and they do not have any accommodation of their own, upon the flats being handed over to the State Government, in terms of the judgment delivered in the Public Interest Litigation, they ought to have been allotted to the Government employees @ Rs.135/- per sq.ft by adopting a transparent procedure. It is therefore, urged that failure to do so has amounted to disobedience of the order passed by the Court and the respondents shall be compelled by issuance of writ of mandamus to transfer the flats in favour of the petitioners on an ownership basis.

6. The learned Additional Government Advocate Mr. More has vehemently opposed the petitions and the reliefs sought therein, and he would place reliance on the affidavit filed by the in-charge Resident Deputy Collector, where it is categorically stated that by virtue of the Special Scheme known as 'Powai Area Development Scheme' the Developer nominated by the owners, agreed to transfer certain percentage of the

built-up area to the State Government in form of constructed tenements at a concessional rate and the built up tenements could be situated in one or more buildings. It is also stated that in or around 1989-90, the Developer expressed willingness to hand over 96 tenements in 'Blue-Bell', and the State Government chose to purchase 72 out of 96 tenements for allotting them to its serving employees as service quarters.

By an agreement to purchase dated 23/9/1990 executed between the Public Works Department and the Developer, 72 tenements were purchased, whereas balance 24 tenements were allotted under the Chief Minister's discretionary quota scheme, which was in force.

Mr. More would question the legal right of the petitioners to claim allotment of tenement on an ownership basis as he would submit that the State Government had deemed it appropriate to utilize the flats purchased by it as service quarters, the allocation of the same being done by General Administration Department (GAD) and the flats are allotted for accommodation to the employees of the State Government while he is in service.

7. Responding to the Petitions, the Under Secretary, Urban Development Department, Mr. Samadhan Khatkhale has filed an affidavit, in compliance of the directions issued by this Court on 1/8/2019, clarifying the following points :-

“(a) Firstly, as to mention flats handed over by the Developer to the State Government, pursuant to the Tripartite Agreement prior to

22.02.2012 passed in PIL (AS) No.131 of 2008.

b) Secondly, the manner of distribution of the said flats as handed over the State Government.

c) Thirdly, further Developments, which might have taken place subsequent to the passing of the said Order dated 22.02.2012, in PIL (AS) No. 131 of 2008.

d) Fourthly, steps which have been taken against the Developer in the event, the developer has not carried out directions of the Hon'ble Court."

The affidavit has been filed in response to the aforesaid, where it is stated that, prior to the passing of the order dated 22/2/2012 in the three PILs, the Developer had handed over 400 flats which included 96 flats in Blue-Bell Building, out of which 72 tenements were purchased by the Public Works Department (PWD) and 24 were allotted under the Chief Minister's discretionary quota scheme. The affidavit also state that the discretionary allotment of the tenements was subjected to challenge in WP No. 882/2018 and by order dated 20/3/2014, the same has been declared to be arbitrary, irrational and illegal and the State Government is restrained from making allotments on the said basis.

The affidavit proceed to state that pursuant to the order dated 22/2/2012, when the Public Interest Litigation was listed on 22/8/2017, on consideration of the application moved by the Developer for certain modifications stating that it would require sale of an aggregate area admeasuring 17,146.5 sq.m, in order to discharge the remaining obligations as per the tripartite agreement, and since some portion of the order was

already handed over to the State Government, the balance may be permitted to be handed over to ensure compliance with the tripartite agreement.

The Division Bench therefore, clarified that “the obligation on part of the applicant developer was only to the extent of an aggregate area admeasuring 17,146.5 sq.m”, which was required to be sold to the State Government @ Rs.135/- per sq.ft.

The affidavit opposes the claim of the petitioners, who are informed to be occupying the respective residential tenements as service quarters in Blue-Bell Building, purely till the tenure of their employment. It is also pleaded that they do not have any inherent right to seek allotment of the residential tenements on a permanent ownership basis.

8. In the backdrop of the factual scenario, we find merit in the stand adopted by the State Government, as by the impugned communication, it has refused to hand over the flats purchased by the State Government through the Public Works Department, to its occupants on ownership basis.

A perusal of the judgment delivered in PIL No.131/2008 dated 22/2/2012, would reveal that the private respondents in the proceedings were the initial land holders and therefore, land was acquired by MMRDA for development of affordable housing and it granted six separate leases to the land holders for a period of 80 years on premium of Rs.1/- per hectare i.e.

Rs.15/- in total.

The leases were executed on 18/11/1986 for development to be carried out in accordance with the permissions under the sanctioned plan of Mumbai Municipal Corporation and in accordance with the provisions of the Bombay Municipal Corporation Act and the Maharashtra Regional and Town Planning Act, 1968.

Contemporaneously with the said agreement to lease, the Developer, the MMRDA as a planning authority and the State entered into a tripartite agreement, setting out the terms and conditions for development of entire area under a Scheme called as Powai Area Development Scheme (Powai ADS).

The petitioners filed the Public Interest Litigation, alleging breach of the essential conditions of the tripartite agreement and it alleged that the land to be developed was to be exempted Chapter III of the Urban Land Ceiling Act on the terms and conditions contained in the order of exemption, and the exemption order clearly set out the purpose for which the exemption was granted, by keeping in mind the location of the land being far away from the habitat of city of Bombay and the purpose of the use of the land being development of affordable housing.

Since the land was open and barren and would not have attracted habitation, the land holders were therefore, given back the acquired land for a pittance, to develop and that is how the excess land held by them was exempted from the

rigors of Urban Land Ceiling (ULC) Act and the exemption order which stipulated the conditions clearly set out that any breach of the conditions would result in withdrawal of the order and the provisions of ULC Act would then become applicable.

It was urged before the Court that the condition subject to which the exemption was granted, clearly set out the maximum area of construction of flats/units and 50% of the units were not to exceed 40 sq.m FSI and the remaining 50% were not to exceed 80 sq.m FSI and this was the main condition for affordable housing for the public in the city of Mumbai, but instead the petitioners alleged that the Developer had outrageously ignored the specific condition and constructed large, palatial units, so as to put them out of the reach of the middle class people.

9. It is in these background facts, when largely the buildings were completed and the Court reached a conclusion that it was in utter violation of the conditions of the tripartite agreement, and on collating the necessary data which was placed before the Court about the area of the flats which could have been constructed, the conclusion was drawn that the officials of the State had ignored the stipulations of the tripartite agreement by the Developer, but since largely the construction of the buildings was over, the condition (h) was imposed, so as to compensate the State Government, by directing that the developer shall sell to the State Government from the

constructed area equivalent to 15% of the total FSI of the total plot consumed @ Rs.135/- per sq.ft, and the State Government shall offer the flats to its employees at the aforesaid rate, in a transparent manner.

The whole emphasis of the direction was to provide affordable housing for the Low Income Group people and this included the employees of the State Government.

**10.** Undisputedly, under different schemes, 400 flats are received by the State Government and this include 96 flats in Blue-Bell Building, of which 72 tenements are purchased by PWD. However, instead of selling these flats to Government employees, the State Government chose to retain the flats to be used as Government accommodation to its own employees. The flats purchased by PWD were made available for allotment by the General Administration Department in favour of the employees of the State Government and as on date, the State Government continue to be the owner of these flats but the same are being put to use by it as Government accommodation.

**11.** We find no flaw in the said decision of the State Government, as having purchased 72 flats in Blue-Bell building, it has inducted its own employees, by treating the same as Government accommodation and if these flats are to be utilised as Government accommodation, the facility shall be availed till a person is in its employment and he will have to vacate the said flat, once he superannuate from service.

We see no right in the petitioners to claim that the flats

shall be sold to them on an ownership basis, as once the Government has acquired these flats, in form of surrendered tenements, as per the direction of this Court in the Public Interest Litigation, it is open to the State Government to utilise it in the manner which would, in any way, cater to the need of housing and if it chooses a class of such people i.e. its employees, we do not find any illegality in it.

The insistence of the petitioners that they should be offered the flats occupied by them on an ownership basis, *sans* any right in them, either legal or fundamental, and as long as any of the petitioner is in service of the State Government, he can continue to occupy the said flat as Government accommodation, but once he superannuate, he must vacate the same, so that it can be allotted to another Government servant while he continue to be in government service.

**12.** Finding no merit and substance in the contention in the claim of the petitioners that the flats, which they are occupying must be sold to them, as the High Court had directed its purchase by the State Government at a specified rate, and its subsequent sale to the Government employee, and since the Government has chosen to allot these 72 flats in 'Blue-Bell' as government accommodation, we are of the considered view that those petitioners who are in employment of State Government, can be in occupation of the said flat, till he/she attain the age of superannuation.

However, if any of the petitioner has already attained the

age of superannuation, we deem it appropriate to grant 12 weeks time to him from today to vacate the flats in his/her possession, but if there is failure to vacate, the State Government and its officials authorized in this regard, are entitled to evict the petitioner, as there is no legal entitlement in him to continue the occupation, if he ceases to be a Government servant.

With this clarification offered, since we do not find any merit and substance in the grievance of the petitioners, we dismiss all the three Writ Petitions.

Rule is discharged.

**(MANJUSHA DESHPANDE, J)**

**(BHARATI DANGRE, J)**