

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.19103 OF 2024

WITH

INTERIM APPLICATION (ST) NO. 714 OF 2026

IN

WRIT PETITION NO.19103 OF 2024

Ravindra Govind Jaiswal

...Petitioner

Versus

Vice President And CEO MHADA And Ors.

...Respondents

Mr. Valmiky H. Narvekar *i/b Sumit Kate, for the Petitioner.*

Ms. Priyanka Chvan *for the Respondent Nos.1 and 2.*

Mr. Mayur Khandeparkar *a/w Mr. Aditya Miskita, Mr. Sanjeet Kadam,*

Ms. Netra Jagtap *i/b Kadam & Company, for the Respondent No.3.*

Mr. Aseem Naphade *i/b Taniya Murudkar, for the Respondent Nos.5 and 6.*

Mr. P. V. Nelson Rajan, A.G.P., for State.

CORAM: SOMASEKHAR SUNDARESAN, J.

DATE: SEPTEMBER 8, 2026

JUDGEMENT :

Context and Factual Background:

1. This Writ Petition is filed under Article 227 of the Constitution of India impugning three orders by which the Petitioner's objection to the certification

of eight tenancies on the second, third and fourth floors of the “*Dadarkar Building*” was rejected – these are orders of Respondent No. 2, the Chief Officer, Mumbai Buildings Reconstruction & Redevelopment Board (“*MBRRB*”) dated November 1, 2019; the order in First Appeal passed by Respondent No. 1, the Vice President & CEO, MHADA dated September 4, 2023; and the order in Second Appeal No. 04 of 2023 passed by Respondent No. 7, the Additional Chief Secretary, Housing Department dated November 12, 2024 (collectively, “*Impugned Orders*”).

2. The grievance relates to land bearing C.S. Nos. 1278 and 1279 of Girgaon Division (“*Subject Property*”), Building Nos. 249-302, 302A and 302B, located at Vithalbhai Patel Road, Bangadwadi, Girgaon, Mumbai (bearing Cess Nos. D-1644, D-1645(1-2) and D-1646(1)), known as Dadarkar Building (“*Dadarkar Building*”) on C.S. No. 1278; and Guru Niwas Building (“*Guru Niwas Building*”) and Guru Niwas Chawl (“*Guru Niwas Chawl*”) on C.S. No. 1279.

3. The Petitioner is Mr. Ravindra Govind Jaiswal (“*Jaiswal*”), Tenant of Room Nos. 48 and 48A, Guru Niwas Chawl (on C.S. No. 1279), a room held since the time of his father. Jaiswal was summarily evicted from Room No. 48 under Section 95A of the Maharashtra Housing and Area Development Act, 1976 (“*MHADA Act*”) in 2021. Jaiswal’s challenge to the grant of no-objection

certificates to the project on the premise that the certified list of tenants contained bogus entries was dismissed first by order dated November 1, 2019 by Respondent No.2, and subsequently by an order dated September 14, 2021 passed by a Division Bench of this Court in , in Writ Petition No. 476 of 2020 (“**WP 476**”) on the ground of alternate efficacious remedy being available to Jaiswal. Another challenge by Jaiswal in Writ Petition No. 1453 of 2021 (“**WP 1453**”) to the summary eviction notice and eviction order against him, was dismissed with costs by a separate order of the same date.

4. Jaiswal himself was certified as an eligible tenant and he is also said to have given irrevocable consent to the redevelopment by letter dated April 4, 2017. It is contended that he has signed a Memorandum of Understanding dated September 17, 2017 and has agreed to or has indeed executed a Permanent Alternate Accommodation Agreement (“**PAAA**”) dated October 12, 2023 and is therefore, personally a beneficiary of the scheme of redevelopment.

5. Respondent No.3 is Sugree Two Developers LLP (“**Sugree**”), the Owner and Developer who has purchased C.S. No. 1278 with Dadarkar Building from M/s. Marudhar Enterprises by Deed of Conveyance dated January 6, 2017 (“**2017 Conveyance**”). On September 30, 2010, a Deed of Conveyance (“**2010 Conveyance**”) had been executed between the landlord, the Dadarkar Family

and M/s. Marudhar Enterprises to convey C.S. No. 1278, in which Recital (ix) refers to tenants. Sugee is now carrying out a composite redevelopment of all three structures under Regulation 33(7) of the Development Control and Promotion Regulations, 2034 ("**DCPR Regulations**"). The no-objection certificate had been issued by MBRRB on May 10, 2018 under the Development Control Regulations, 1991 ("**DCR 1991**"), and a revised NOC was issued on August 2, 2019, converting the scheme to one under DCPR 2034.

6. Respondents No.4 to 6 are certified tenants who have acquired tenancies and have been given entitlements to flats in the new buildings. Respondent No. 4 is Mr. Avishkar Agarwal ("**Agarwal**"), certified tenant of Room Nos. 1 to 4, 2nd floor, Dadarkar Building. Tenancies are said to have been transferred to Agarwal on August 12, 2016, for which he is purportedly entitled to Flat Nos. 1701 and 1702 in the new building.

7. Respondent No. 5 is Bijal Manav (Malav) Shah ("**Bijal**"), certified tenant of Room Nos. 1 to 3, 3rd floor, Dadarkar Building. Tenancies are said to have been transferred to Bijal on August 12, 2016, for which Bijal is purportedly entitled to Flat Nos. 1801 and 1802 in the new building.

8. Respondent No. 6 is Ms. Vijeta Sunil Shah ("**Vijeta**"), certified tenant of Room No. 1, 4th floor, Dadarkar Building. Tenancy is said to have been

transferred to Vijeta on April 27, 2017, for which she is purportedly entitled to Flat No. 1902 in the new building.

9. Interim Application (Stamp) No. 714 of 2026 has been taken out to add Mr. Priyank Mehul Kothari (“**Kothari**”), proposed Respondent No. 8, who is a transferee of the 2nd floor tenancies of Agarwal by agreements dated November 11, 2023. It also seeks to add Ms. Sneha Binoy Shah (“**Sneha**”), proposed Respondent No. 9, who claims joint tenancy of the 3rd floor unit with Bijal, who is described in the Interim Application as Sneha’s spouse.

Contentions of the Parties:

10. By consent of parties, the Petition was taken up for final hearing and disposal, on an as-if amended basis. Rule, made returnable forthwith.

11. I have heard Mr. Valmiky Narvekar, Learned Advocate on behalf of Jaiswal, Ms. Priyanka Chavan, Learned Advocate for MHADA, Mr. Mayur Khandeparkar, Learned Advocate for Sugee, Mr. Aseem Naphade, Learned Advocate for Bijal and Vijeta (“**Tenants**”, along with Agarwal), and Mr. P.V. Nelson Rajan, AGP, on behalf of the State.

12. Jaiswal’s case is that eight tenancies certified in the names of the Tenants on the second, third and fourth floors of Dadarkar Building are fabricated in order to inflate the rehabilitation area and, with it, the incentive

FSI and surplus area available to Sugee under Regulation 33(7) of DCPR 2034.

The chain of events relied upon by Jaiswal is as follows:

A] The MCGM inspection extract of 1995-96 shows the three floors, with enclosed terraces, in the possession of the landlord, the Dadarkar family. The 1998 repair plans show one kitchen on the second floor and internally connected rooms across the floors, and the voter lists (Sr. Nos. 606, 609, 610, 611) show the Dadarkar brothers living there as one joint household. There was therefore no tenant on these floors before the datum line of June 13, 1996;

B] On September 8, 2010, four registered documents were executed in favour of Jigna Shah, Pramila Chandan, Payal Shah and Satish Chandan, each a close relative of a partner of M/s. Marudhar Enterprises. The Index-II describes them as lease deeds, not tenancy transfers. One month later, M/s. Marudhar Enterprises purchased the building. The 2010 Conveyance records four tenants on the three floors;

C] In August 2016 and April 2017, those four tenancies were transferred to the Tenants and, by the time of the 2017 conveyance to Sugee, these appear as eight tenancies. Sugee sought the NOC on May 3, 2017 with the eight tenancies included; the eligibility list was, according

to Jaiswal, prepared and first signed by Sugee and the architect, not by the Executive Engineer, MHADA;

D] The documents against the names of the Tenants in the certified list are electricity bills and voter IDs standing in the names of the Dadarkar Family, and these are all post-1996 documents. Nothing shows these purported tenants or their predecessors, as being in occupation before 1996;

E] Sneha, a joint lessee was excluded while Bijal was certified; the fourth floor was leased to Ms. Seema Agarwal in 2016 but Vijeta was certified; although the four second-floor and three third-floor rooms were “clubbed” as single tenements, Agarwal and Bijal are each shown for two (earlier three) flats in the new building with more area than genuine tenants receive; and

F] Overall, Jaiswal contends that additional construction valued at more than Rs. 30 crores at Rs. 50,000 per square foot has been permitted to Sugee’s project pursuant to the aforesaid alleged manipulation.

13. Jaiswal would contend that under the Government Resolution dated August 16, 2010 (Schedule B) (“**2010 GR**”) and Clause 13 of Appendix III to

Regulation 33(7) of the DCR 1991 (now Regulation 33(7)(13) of DCPR 2034), it is the tenancy, not the tenement, that must exist prior to June 13, 1996. Persons without documentary proof of tenancy prior to 1996 are ineligible, Jaiswal would contend.

14. Sugee's contention that the existence of the tenement before the datum line would suffice, is opposed by Jaiswal, who submits that such a reading would render the 2010 GR redundant. Clause 18 of the 2010 GR, relied on by the First Appellate Authority, applies only where the occupant proves possession prior to 1996, which none of the Tenants have shown. Jaiswal contends that Condition 17 of the NOC makes Sugee answerable if the pre-datum occupant count is found to be bogus. Moreover, the Government Resolution dated August 22, 2023 ("**2023 GR**") empowers MBRRB to take over a project for breach of conditions.

15. Jaiswal contends that the three authorities concurrently have accepted the names as they appeared in the certified list without examining how they came to be there. He would attack the very certification and submit that these concurrent findings are perverse and open to correction under Article 227 of the Constitution of India, relying on the judgement in *Chandavarkar*¹.

¹ *Chandavarkar Sita Ratna Rao v. Ashalata S. Guram*, 1986 (4) SCC 447 – Paragraphs 16 to 20

16. It was contended on behalf of Sugree that Jaiswal has no locus to raise these issues, particularly when he is a beneficiary of the very same project, and that this is not a public interest litigation. To this, Jaiswal responds by contending that he is no stranger to the project and therefore has locus to point out an illegality in implementation of the scheme. Jaiswal would submit that in WP 476, Sugree had argued that an alternate remedy was available and that alternate remedy was availed of and is now subject matter of this Petition. Sugree had not contended lack of locus in the disposal of WP 476 and the appellate remedy was expressly open.

17. The relief sought by Jaiswal is that the Impugned Orders be quashed and his complaints made in 2018-19 be allowed, that the tenancies in favour of the Tenants be declared illegal and their certification cancelled. He prays that MBRRB be directed to take over the project for breach of the NOC dated May 10, 2018 and revised NOC dated August 2, 2019; and for costs.

18. By letters dated February 7, 2025, obtained under the RTI Act, Jaiswal learnt that Agarwal has transferred all four second-floor tenancies to Kothari by agreements dated November 11, 2023, and that Kothari seeks entitlement under the applicable Permanent Alternate Accommodation split into Flat Nos. 1701 and 1702; and that Bijal, jointly with Sneha, seeks joint certification and a split of the entitlements into Flat Nos. 1801 and 1802. The amended plan is said to still show two units each for Agarwal and Bijal. Hence the proposed

amendment to implead them was deemed permitted and the Petition was heard on an “as if amended” basis.

19. The Chief Officer, MBRRB, in the Impugned Order dated November 1, 2019, proceeded on the report of the Executive Engineer “D-1” Division (office note dated May 3, 2019) after site inspection, and after two hearings at which Jaiswal and the NOC-holder’s representative were present. The order deals with each objection in tabular form. On the central objection it records that the 1995-96 inspection extract reflects the second, third and fourth floors as three separate entries “with owner”; that the four tenements on the second floor and the three on the third floor were clubbed and accepted as single “R” tenements, with one “R” tenement on the fourth floor, under the 2010 GR; and that the certification therefore tallies with the extract. The MBRRB held that the enclosed terraces were reflected in the extract and their carpet area was correctly included under Clause 11 of the 2010 GR. This order held that Plan approval and incentive FSI computation fell within the domain of the municipal authorities and the floor space index depends on certified carpet area, not built-up area. The operative portion of the order reads thus:

“The NOC for redevelopment of the subjected property issued by this office vide letter dated 10.05.2018 is as per prevailing provisions of DCR and guidelines issued by the Government and is as per law.”

[Emphasis Supplied]

20. The impugned order passed by the Vice President & CEO, MHADA on September 4, 2023, recorded the submission of the NOC-holder's representative that certification and verification fell within MBRRB's jurisdiction while incentive FSI fell within the jurisdiction of the municipal authorities. The order relies on Clause 18 of the 2010 GR, which provides that where the inspection extract records an entire floor with the owner but tenants/occupants are in fact residing there with strong proof of existence prior to 1996, they are to be held eligible, and that separate families in separate occupation are to be treated separately. This order finds that the three floors are physically separate and have three electric meters pre-dating the datum line. Therefore, it was held that the certification tallies with the extract, and that the documents relied on are listed against each entry. The relevant portion reads thus:

"Hence, it is observed that, there is no inflation of tenancies occurred during certification as per Inspection Extract of the year 1995-96 with respect to tenements of 2nd floor, 3rd floor & 4th floor and the contention that, the owner occupied properties shall not be entitled for incentive FSI has no ground because since the owners of property are occupiers as well and hence as per DCPR, 2034 under section 33(7) they are eligible for rehabilitation."

"As per the provision of DCPR 2034 under Regulation 33(7) and as per GR dated 16.08.2010 Clause No.18 the incentive FSI shall be given to the occupier of cess building, whether he/she shall be tenant/occupant or owner of the cess building."

Hence, the objection raised by Mr. Ravindra Govind Jaiswal regarding the illegal certification on 2nd, 3rd & 4th Floor of Building No.302B, V. P. Road is hereby rejected.”

[Emphasis Supplied]

21. The third impugned order dated November 12, 2024, passed by the Additional Chief Secretary, Housing Department records the submissions of the parties at length and finds thus, in a single paragraph:

*“Considering the submission made by Appellant and documents produced before this Authority, this Authority has examined the authorized documents. **The Date of installation of the BEST and the address of installation, the Voter ID for each tenement and each tenant proves independent residence prior to the datum line.** The data in the BEST Consumer Information system has been scrutinized and has substantiated the eligibility of the tenants in the present appeal.”*

[Emphasis Supplied]

22. Sugee alludes to MHADA’s affidavit in reply dated February 17, 2020 and an additional affidavit dated April 26, 2021 in WP 476 denying the allegation of bogus tenancies. The Housing Secretary’s order of April 6, 2022 in favour of Dr. Neha Borole is under challenge in Writ Petition No. 2708 of 2023 and, according to Sugee, during its pendency the parties have executed a notarised “recording statement” dated October 12, 2023, settling all disputes and agreeing to withdraw all pending cases, complaints and objections, and

that 57 of the 58 families in the scheme are cooperating with the redevelopment.

23. Sugee would also point to the 2010 Conveyance and the 2017 Conveyance which document the existence of the tenancies in question and the provisions of Conditions No. 4 and 17 of the NOC and the three concurrent findings pointing to there being no bogus tenancies. Sugee's submissions may be summarised thus:

A] Jaiswal, having given irrevocable consent by letter dated April 4, 2017, cannot be permitted to challenge the scheme;

B] He is not an occupant of Dadarkar Building but a resident of Guru Niwas Chawl and has no locus to raise the dispute;

C] An individual tenant has no locus to challenge the tenancy rights or certification of other tenants in the project; his rights are limited to receiving premises in the new building on ownership basis;

D] The Court ought not to interfere with concurrent findings of three authorities;

E] The Petition raises disputed questions of fact which cannot be

gone into in the extraordinary writ jurisdiction; and

F] Jaiswal has at every stage sought to scuttle the scheme when 57 of 58 tenants/occupants have willingly joined it.

24. The Tenants would submit that Jaiswal is one of the eligible occupants of the property and has even executed a PAAA in his favour. They too point to the 2010 Conveyance, reciting tenants in a ground-plus-four-floor building and listing the predecessors of the Tenants. This is also seen in the 2017 Conveyance and the transfers of August 12, 2016 (second floor to Agarwal) and April 27, 2017 (fourth floor to Vijeta), they contend, and submit that Bijal and Vijeta were certified on electricity bills that pre-date the datum line, making the tenements occupied by such tenants and transferred to them, eligible under Regulation 33(7)(13). Bijal is contended to have held three rooms on the third floor, with two supported by the electricity bills and the third being clubbed with the other two under Clause 13 of the 2010 GR (adjacent rooms to be clubbed) and not treated as an independent tenement.

25. The Tenants' contentions on entitlements may be summarised thus:

A] Each residential occupant is rehabilitated in the carpet area occupied, subject to a minimum of 27.88 sq. m. (300 sq.ft.) and a maximum of 120 sq. m. (1,292 sq. ft.);

B] Area above 120 sq. m. counts for rehab FSI but not for incentive FSI;

C] Incentive FSI is computed on the area actually occupied, at the percentage fixed by the basic ratio in the table to Regulation 33(7)(5)(a) or (b); and

D] Therefore, even if Sugee allots the Tenants more than 1,292 sq. ft. each, Sugee's incentive FSI is capped by reference to the area occupied and cannot exceed the 120 sq. m. ceiling.

26. It may be mentioned that one Dr. Neha Borole, who is Jaiswal's daughter has been separately held eligible for a unit in lieu of Room No. 48A by an order dated April 6, 2022 of the Housing Secretary, which has been impugned by Sugee in Writ Petition No. 2708 of 2023 (“**WP 2708**”).

Analysis and Findings:

27. Having heard the Learned Advocates for the parties, and having examined the material on record with their assistance, I am not satisfied that this is a fit case for exercise of the extraordinary writ jurisdiction in this case for the following reasons:

A] The 2010 Conveyance executed in 2010 depicts the existence of the tenancies. Even if one were to discount the depiction in the 2017 Conveyance as simply replicating what was contained in the 2010 Conveyance, it is apparent that a registered document indicates the existence of tenancies as of the date of the 2010 Conveyance. While neither of these conveyance deeds can speak to the existence as of the datum line, and indeed the 2010 Conveyance is executed 14 years after the datum line, the relevance of distinct electricity meters and bills for the units, presents a disputed question of fact, the trial of which cannot be conducted in the writ jurisdiction. Indeed, the 2017 Conveyance mechanically names the tenancies set out in the 2010 Conveyance and not the new transferred tenancies that are said to have come about between the two conveyance deeds. Be that as it may, the question to ask is whether the Impugned Orders lend themselves to interference by the Writ Court.;

B] Clause 13 of the 2010 GR provides that if a single tenant or resident is in possession of more than one consecutive tenement included in the certified extract, and if such person is found eligible, the area of such tenements should be combined and shown in the name of that tenant or resident. However, if such tenant or resident possesses more than one tenement that are not consecutive, they should be

treated as separate, and the tenant or resident should be held eligible for more than one tenement;

C] Clause 17 of the 2010 GR also provides that if the actual use is different from the use shown in the inspection and if such use is proven to be authorised based on evidence, then the use established by evidence should be accepted. It provides that care must be taken to ensure that the occupier's intent to obtain a larger area by showing a change in use does not succeed. Thereafter, Clause 18 provides that at times the inspection extract records an entire floor with the owner although tenants or residents in fact reside in the premises. In such cases, if the residing tenants or residents have strong evidence regarding their stay prior to 1996, and if the same tenants or residents are residing there at the time of inspection, they should be deemed eligible. It also provides that if it is proven that the area shown under the owner was divided among different families of the owner prior to 1996, such families should be considered as independent families;

D] Therefore, the existence of separate electricity meters has to be given some weight. Since there are independent electricity connections involved, although they may have been in Dadarkar's name, there is a strong pointer to the existence of separate family units using the

premises. What Jaiswal seeks to do is create doubt, but this is not a case where one has to apply the standard of beyond reasonable doubt – instead, whether the Writ Court ought to act as a Court of Appeal is the point to be considered. It is plausible that there were individual and separate residential units and those came to be let out or transferred before the 2010 Conveyance;

E] Moreover, as pointed out by Mr. Naphade, the first condition in the revised NOC dated August 2, 2019, reflecting Regulation 33(7)(2) of DCPR 2034, indicates that the entitlement for each occupant family has a floor (27.88 sq. m., or 300 square feet) and a cap (120 sq. m., or 1,292 square feet). Therefore, if the incentive FSI is to be computed on the area actually occupied, provided for and capped, the contention that excess area has been availed of by the Sugree would stand undermined;

G] The issue then becomes whether Sugree has benefitted from any excessive FSI on the premise that it has rehabilitated tenants with tenancies that were allegedly non-existent. As stated above, the question to ask is whether the existence of electricity meters would point to the existence of independent units that were let out or transferred subsequently. Since the existence of separate meters does point to it being plausible that there were independent units and even if different

units of the landlord's families were occupying it, the 2010 GR treats these as independent units, I am not inclined to delve into a fact-finding exercise in the writ jurisdiction to adjudicate errors of fact, in the circumstances of this case.

F] Indeed, the inspection extract by the municipal authorities in August 15, 1995 uses the phrase "with owner" in respect of the second, third and fourth floors but the 2010 GR permits that to be displaced by evidence, which has taken the form of separate electricity meters;

G] Indeed, the following extracts from ***Chandavarkar***, although pressed into service by Jaiswal, are noteworthy:

16. This appeal challenges the said judgment and order. As mentioned hereinbefore two questions require consideration – how far and to what extent in exercise of its jurisdiction under Article 226 or 227 of the Constitution and in this respect regarding power to deal with factual findings, the jurisdiction of the High Court is akin both under Articles 226 and 227 the Constitution, can the High Court interfere with the findings of fact ? It is well settled that the High Court can set aside or ignore the findings of fact of an appropriate court if there was no evidence to justify such conclusion and if no reasonable person could possibly have come to the conclusion which the courts below have come or in other words a finding which was perverse in law. This principle is well settled. In D.N. Banerji v. P.R. Mukherjee, it was laid down by this Court that unless there was any grave miscarriage of justice or flagrant violation of law calling for intervention it was not for the High Court under Articles 226 and 227 of the Constitution to interfere. If there is evidence on

record on which a finding can be arrived at and if the court has not misdirected itself either on law or on fact, then in exercise of the power under Article 226 or Article 227 of the Constitution, the High Court should refrain from interfering with such findings made by the appropriate authorities.

28. 17.In case of finding of facts, the court should not interfere in exercise of its jurisdiction under Article 227 of the Constitution. Reference may be made to the observations of this Court in *Babhutmal Raichand Oswal v. Laxmibai R. Tarta* where this Court observed that the High Court could not in the guise of exercising its jurisdiction under Article 227 convert itself into a court of appeal when the legislature has not conferred a right of appeal....

[Emphasis Supplied].

H] Consideration of the challenge and the allegation that newer tenancies were created just before the 2010 Conveyance, when made by a party that has participated in the very same scheme, benefitted from it, and is claimed to have settled all disputes with Sugee, I do not think it appropriate in exercise of discretion in the writ jurisdiction to effect any intervention. In my view, this is not a fit case for the Writ Court to expend judicial time on adjudicating the grievances raised by Jaiswal; and

I] Therefore, I do not think it necessary to delve into and pronounce upon the contentions about whether the entitlements are linked to

tenements or to tenancies, except to state that in the facts of this case, the concurrent findings of existence of pre-1996 distinct occupation cannot be treated as manifestly perverse findings.

28. In the result, the Writ Petition and the attendant Interim Application are *finally disposed of* without any interference with the Impugned Orders. Rule is discharged accordingly. No costs.

29. All actions required to be taken pursuant to this order shall be taken upon receipt of a downloaded copy as available on this Court's website.

[SOMASEKHAR SUNDARESAN, J.]