



Arun

REPORTABLE

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO. 39511 OF 2022

SONALI ASHOK TANDLE,
Age 67 years, Occupation: housewife,
through her Constituted Attorney,
Shri Vikran Ashok Tandle,
r/a: NTCC, F100 MIDC,
Ambad, Nashik 422 010.

... PETITIONER**~ VERSUS ~**

1. RANKA LIFESTYLE VENTURES,
Through sole proprietor,
Bhavesh Jayantilal Jain,
Age: adult, Occupation: business,
having address at Ranka Chambers
Building, Ranka Banquets, ESIC
Hospital Road, Near Medicare
Hospital, Opp. Suryadarshan Tower,
Off. Nitin Company, Eastern Express
Highway Junctions Signal,
Thane (W) 400 604.

**2. KALPANA NAVINCHANDRA
DEDHIA,**
Age: adult, Occupation: business,
having address at 601, Oasis Royale,

ARUN
RAMCHANDRA
SANKPAL

Digitally signed by
ARUN
RAMCHANDRA
SANKPAL
Date: 2023.09.08
09:49:58 +0530

Sant Dnyaneshwar Road,
Behind T.M.C., Naupada,
Thane 400 602.

3. **THE EXECUTIVE ENGINEER,,**
F/S Division,
Mumbai Building Repair and
Reconstruction Board (M.R.R. & R
Board), Mumbai (MHADA unit),
Grihan Nirman Bhavan, Kala nagar,
Bandra (E).
4. **THE CHIEF OFFICER,**
(Mumbai Building Repair and
Reconstruction Board) (M.R.R. & R
Board), Mumbai (MHADA unit),
Grihan Nirman Bhavan, Kala nagar,
Bandra (E).
5. **THE VICE PRESIDENT AND
CEO,**
Maharashtra Housing and Area
Development Authority (MHADA)
Griha Nirman Bhavan Kalanagar,
Bandra (E)
6. **BRIHAN MUMBIA MUNICIPAL
CORPORATION,**
(A corporation established under the
provisions of Mumbai Municipal
Corporation Act), through the
Municipal Commissioner, having office
at CST (Shiv Chatrapati Terminus)
Brihan Mumbia Municipal
Corporation, Fort, Mumbai
7. **THE EXECUTIVE ENGINEER,**
Building proposals, (Ward-F) South,
M.C.G.M., having office at New
Municipal Building, Vidyalakar Road,

Antop Hill, Wadala East,
Mumbai 400 037

8. **ASSISTANT ENGINEER,**
Ward-F Sough, Building Proposals,
M.C.G.M., having address at New
Municipal Building, Vidyalakar Road,
Antop Hill, Wadala East,
Mumbai 400 037

... **RESPONDENTS**

WITH

SHOW CAUSE NOTICE NO. 5 OF 2023

IN

WRIT PETITION (L) NO. 39511 OF 2022

SONALI ASHOK TANDLE,
Age 67 years, Occupation: housewife,
through her Constituted Attorney,
Shri Vikran Ashok Tandle,
r/a: NTCC, F100 MIDC,
Ambad, Nashik 422 010.

... **PETITIONER**

~ VERSUS ~

1. **RANKA LIFESTYLE VENTURES,**
Through sole proprietor,
Bhavesh Jayantilal Jain,
Age: adult, Occupation: business,
having address at Ranka Chambers
Building, Ranka Banquets, ESIC
Hospital Road, Near Medicare
Hospital, Opp. Suryadarshan Tower,
Off. Nitin Company, Eastern Express
Highway Junctions Signal,
Thane (W) 400 604.

2. **KALPANA NAVINCHANDRA DEDHIA,**
Age: adult, Occupation: business, having address at 601, Oasis Royale, Sant Dnyaneshwar Road, Behind T.M.C., Naupada, Thane 400 602.
3. **THE EXECUTIVE ENGINEER,,**
F/S Division,
Mumbai Building Repair and Reconstruction Board (M.R.R. & R Board), Mumbai (MHADA unit), Grihan Nirman Bhavan, Kala nagar, Bandra (E).
4. **THE CHIEF OFFICER,**
(Mumbai Building Repair and Reconstruction Board) (M.R.R. & R Board), Mumbai (MHADA unit), Grihan Nirman Bhavan, Kala nagar, Bandra (E).
5. **THE VICE PRESIDENT AND CEO,**
Maharashtra Housing and Area Development Authority (MHADA)
Griha Nirman Bhavan Kalanagar, Bandra (E)
6. **BRIHAN MUMBAI MUNICIPAL CORPORATION,**
(A corporation established under the provisions of Mumbai Municipal Corporation Act), through the Municipal Commissioner, having office at CST (Shiv Chatrapati Terminus)
Brihan Mumbia Municipal Corporation, Fort, Mumbai

7. **THE EXECUTIVE ENGINEER,**
Building proposals, (Ward-F) South,
M.C.G.M., having office at New
Municipal Building, Vidyalakar Road,
Antop Hill, Wadala East,
Mumbai 400 037
8. **ASSISTANT ENGINEER,**
Ward-F Sough, Building Proposals,
M.C.G.M., having address at New
Municipal Building, Vidyalakar Road,
Antop Hill, Wadala East,
Mumbai 400 037

...RESPONDENTS

WITH
SHOW CAUSE NOTICE NO. 6 OF 2023
IN
WRIT PETITION (L) NO. 39511 OF 2022

SONALI ASHOK TANDLE,
Age 67 years, Occupation: housewife,
through her Constituted Attorney,
Shri Vikran Ashok Tandle,
r/a: NTCC, F100 MIDC,
Ambad, Nashik 422 010.

...PETITIONER

~ **VERSUS** ~

1. **RANKA LIFESTYLE VENTURES,**
Through sole proprietor,
Bhavesh Jayantilal Jain,
Age: adult, Occupation: business,
having address at Ranka Chambers
Building, Ranka Banquets, ESIC

Hospital Road, Near Medicare
Hospital, Opp. Suryadarshan Tower,
Off. Nitin Company, Eastern Express
Highway Junctions Signal,
Thane (W) 400 604.

2. **KALPANA NAVINCHANDRA
DEDHIA,**
Age: adult, Occupation: business,
having address at 601, Oasis Royale,
Sant Dnyaneshwar Road,
Behind T.M.C., Naupada,
Thane 400 602.
3. **THE EXECUTIVE ENGINEER,,**
F/S Division,
Mumbai Building Repair and
Reconstruction Board (M.R.R. & R
Board), Mumbai (MHADA unit),
Grihan Nirman Bhavan, Kala nagar,
Bandra (E).
4. **THE CHIEF OFFICER,**
(Mumbai Building Repair and
Reconstruction Board) (M.R.R. & R
Board), Mumbai (MHADA unit),
Grihan Nirman Bhavan, Kala nagar,
Bandra (E).
5. **THE VICE PRESIDENT AND
CEO,**
Maharashtra Housing and Area
Development Authority (MHADA)
Griha Nirman Bhavan Kalanagar,
Bandra (E)
6. **BRIHAN MUMBIA MUNICIPAL
CORPORATION,**
(A corporation established under the
provisions of Mumbai Municipal

Corporation Act), through the
Municipal Commissioner, having office
at CST (Shiv Chatrapati Terminus)
Brihan Mumbia Municipal
Corporation, Fort, Mumbai

7. **THE EXECUTIVE ENGINEER,**
Building proposals, (Ward-F) South,
M.C.G.M., having office at New
Municipal Building, Vidyalakar Road,
Antop Hill, Wadala East,
Mumbai 400 037

8. **ASSISTANT ENGINEER,**
Ward-F Sough, Building Proposals,
M.C.G.M., having address at New
Municipal Building, Vidyalakar Road,
Antop Hill, Wadala East,
Mumbai 400 037

... RESPONDENTS

APPEARANCES

FOR THE PETITIONER	Mr Prathamesh Bhargude, with Sumit Sonare & Sharad Dhore.
FOR RESPONDENT NO.1	Mr SC Naidu, with Pooja Thorat, i/b Anukul Seth.
FOR RESPONDENT NOS. 3 TO 5 — MHADA	Mr PG Lad, with Sayli Apte & Shreya Shah.
FOR RESPONDENT — MCGM	Mr Suresh S Pakale, Senior Advocate, with Kunal Waghmare, i/b Sunil Sonawane.
PRESENT IN COURT	Mr SK Dhekale, Court Receiver.

**CORAM : GS Patel &
Kamal Khata, JJ**

DATED : 7th September 2023

P.C.:

1. We have before us a Writ Petition and two separate Show Cause Notices Nos. 5 and 6 of 2023 in that Writ Petition.

2. The prayers in the Writ Petition must first be seen even though we are not disposing of the Writ Petition today. The relevant prayer clauses are (a), (b), (c), (d), (e), (f) and, after an amendment, prayer clause (ff). They read thus:

“A) That, this Hon’ble Court be pleased to issue a writ mandamus or writ in the nature of mandamus or any other appropriate writ direction and order thereby directing the/order thereby quashing and setting aside the order passed by the Chief Officer M.B.R. & R. board, Mumbai of MHADA dated 13th October 2022, bearing order no. R/NOC/Order/F-2406/7863 MBRRB-2022 (Exhibit S);

B) That, this Hon’ble Court be pleased to issue a writ mandamus or writ in the nature of mandamus or any other appropriate writ direction and order thereby directing the Respondent Developer to enter into permanent alternate accommodation agreement with the Petitioner for carpet area of 471 sq.ft. In Monalisa Paradise or Monalisa Residency and to allot the possession of the said premises in favour of the Petitioner within such time that this Hon’ble Court may deem fit;

C) That, this Hon’ble Court be pleased to issue a writ mandamus or writ in the nature of mandamus or any other

appropriate writ direction and order thereby directing the Developer to allot car parking space number and handover the parking space to which the Petitioner is entitled to the Petitioner along with the possession of the said tenement;

D) That, this Hon'ble Court be pleased to issue a writ mandamus or writ in the nature of mandamus or any other appropriate writ direction and order thereby directing the Developer to allot list of amenities as per the amenity list annexed with PAAA registered with other tenants;

E) That, this Hon'ble Court be pleased to issue a writ mandamus or writ in the nature of mandamus or any other appropriate writ direction and order thereby directing the Respondents to pay to the Petitioner the arrears of rent amount, amounting to Res. 1,66,320/- and interest of Rs. 4568/- there upon to the Petitioner as per the Consent Terms entered into before this Hon'ble Court dated 25th May 2018, which were approved by this Hon'ble Court (Coram: Shri. Kathawala and Shri. A.S. Gadkari JJ) (Exhibit D);

F) That, this Hon'ble Court be pleased to issue a writ mandamus or writ in the nature of mandamus or any other appropriate writ direction and order thereby directing the Respondent Municipal Corporation that, no occupancy certificate be granted in favour of the Respondent Developer in respect of the sale component of Monalisa Paradise and Monalisa Residency, until permanent accommodation agreement is entered between the Respondent No. 1 and the Petitioner and the possession of the premises of the tenement admeasuring 471 sq.ft carpet and car parking space is given to the Petitioner herein;

FF) That this Hon'ble Court be pleased to issue a writ of mandamus or writ in the nature of mandamus or any other appropriate writ direction or order thereby quashing aside the Occupation Certificate granted to the Respondent No. 1

bearing no. (CHE/CTY/1385/F/S/337 (new)/OCC/1/new), dated 26th December 2022, in favour of the Respondent No. 1 (Exhibit-AA).”

The remaining prayers are for interim reliefs.

3. Mr Bhargude appears for the Petitioner. He has instructions from Vikrant Ashok Tandale who is the son of the Petitioner and holds a Power of Attorney.

4. The 1st Respondent is Ranka Lifestyle Ventures (“**Ranka Lifestyle**”) through its sole proprietor one Bhavesh Jain. The 2nd Respondent is the owner or landlord of the plot in question. Respondents Nos. 3 to 5 are agencies of Maharashtra Housing and Area Development Authority (“**MHADA**”). Respondents Nos. 6 and 7 are various departments of the Municipal Corporation of Greater Mumbai (“**MCGM**”).

5. The challenge in the order, as is evident from the prayers, is to an order passed by the Chief Officer on 13th October 2022. According to the Petitioner, this order by MHADA was contrary to an order passed by the Division Bench of this Court on 26th September 2022.

6. There are several orders made in this Writ Petition and these will have to be briefly considered even today.

7. On 10th January 2023, a Division Bench issued notice for final disposal. It noted that the Petitioner’s contention was that the

Petitioner was entitled to a larger area in the redeveloped building, at that time stated to be 471 sq ft. In view of this submission, the Division Bench of Sunil B Shukre and MW Chandwani, JJ directed that at least one flat of carpet area of 471 sq ft be kept reserved until the next date.

8. There then followed an order of 8th March 2023 passed by a Division Bench of GS Kulkarni and RN Laddha, JJ. This is a detailed order of 15 pages which sets out the background to the matter and the Petitioner's claims for re-accommodation on the basis that she was earlier a tenant in the previous building. The background to the 26th September 2022 order was also noted (paragraph 4). Then the impugned order was considered. The grievance of the Petitioner was noted that the Petitioner was being discriminated against by being given a lesser area whereas other tenants were being given more beneficial treatment. The impugned order was assailed on other grounds as well. A submission was made on behalf of the Petitioner that the Petitioner apprehended that she would be permanently deprived of her redeveloped tenement entitlement. This is so stated in paragraph 11 of the order. The submission was that there were vacant flats in the rehab building and further third-party interest ought not to be created. A particular flat was mentioned.

9. The submissions on behalf of MHADA clearly did not find favour with the Division Bench. This is clear from paragraph 12 of that order. A finding was returned that the Chief Executive Officer ("CEO") of MHADA had acted in breach of the orders of this

Court including the order of 10th January 2023 referred to above by not keeping one flat reserved. It is in this background that the Court came to a prima facie conclusion that the Respondents were guilty of non-compliance with the order of 10th January 2023 of keeping one flat of 471 sq ft reserved until further orders of this Court. At that time, the 2nd Respondent, the owner, had not appeared before the Court but was continuing to deal with the tenements. The Court noted that the Petitioner was being severally prejudiced. She had been deprived transit rent. Now she was being denied the flat to which she was entitled.

10. Consequently, the Court made the following order:

“i) Occupation Certificate granted by the Municipal Corporation of Greater Mumbai in respect of free sell building Kant Mansion, cadastral Survey No. 7/76 at Dadar Naigaon Division, bearing No. CHE/CTY/1385/F/S/337 (new)/OCC/1/new) dated 26th December 2022, shall remain stayed till the adjourned date.

ii) The Court Receiver, High Court, Bombay is appointed in respect of the unsold free sale flats in the Rehab building as also in the free-sell building as constructed by Respondent no.1 who shall take immediate steps to hold a meeting on the site and seal such unsold flats, on notice being issued to Respondent no. 1, and make a report to this Court.

iii) Respondent no. 1 as also respondent nos. 3 to 5 and respondent no. 6 to 8 are directed to show cause as to why action should not be taken against them for non-compliance of the order dated 10.1.2020, passed by this Court.

iv) Reply affidavits on the show cause be placed on record within two weeks from today.

v) **Respondent No.1 is also directed to file affidavit of disclosure with details thereof, as to how many flats have remained unsold in the rehab building as also the free sell building as also in regard to the movable and immovable aspects, bank details and I.T. Returns (to be furnished in a sealed envelope) within two weeks from today.**

vi) **Respondent no. 1 is directed not to create third party interest whatsoever manner in respect of unsold flats in both the buildings.**

(vii) **The Court Receiver, High Court, Mumbai is permitted to take police assistance from the concerned local police station, in acting under the present order.**

(viii) At this stage, Mr. Lad, the learned Counsel submits that the Chief Officer of MHADA, be permitted to re-consider the impugned order. We shall consider such plea on the adjourned date of hearing as we reserve to pass order appropriate orders on issues as noticed by us and other non-compliance of the orders of this Court.”

(Emphasis added)

11. We now proceed to the subsequent orders. There is an order of 13th March 2023 that recorded that the Court Receiver had sealed flats, the details of which were set out in paragraphs 6 and 7 of the Court Receiver’s Report. The Division Bench noted that the case was serious because of non-compliance by the CEO of MHADA with the 26th September 2022 order.

12. Then on 10th April 2023, the Court made reference to its previous order and set out the operative portion (extracted above). In paragraph 2 of the 10th April 2023 order, reference was made to an Affidavit filed on behalf of the Repair Board. This Affidavit earned much displeasure because it was said not to be based on the official record and was altogether too casual. In particular, the Affidavit did not deal with the question of the apparently arbitrary allotment of tenements of larger areas to other persons and tenants. The Court expressed its grave disapproval and said in paragraph 3 that it was not satisfied with the explanation. Accordingly, notice was ordered to be issued to the residential Executive Engineer who had filed that Affidavit. The Court also noted that the Affidavit of Ranka Lifestyle, the 1st Respondent, did not make the disclosures that were previously ordered and was similar including in its inadequacies to the Affidavit filed by the Repair Board. Ultimately, on finding continued non-compliance and finding that there was an intention to mislead the Court by filing such an Affidavit, a separate show cause notice was required to be issued to Ranka Lifestyle's proprietor, Bhavesh Jain.

13. In paragraph 10 of that order, on behalf Ranka Lifestyle, a list of unsold flats was handed over to the Court in a sealed envelope and financial statements of the 1st Respondent were also handed over in a sealed envelope. We have something to say on this a little later.

14. On 2nd May 2023, Mr Naidu for Ranka Lifestyle/Jain tendered a fairly substantial Affidavit. The Affidavit of the Executive

Engineer of MHADA had not yet been filed. Due to the shortage of time, the matter could not be taken up further and was therefore adjourned.

15. The record indicates that the matter has been listed frequently since then. There is an order of 7th August 2023 by the Division Bench of Nitin Jamdar and Sandeep Marne, JJ. It reads thus:

“1. A request for adjournment is made on behalf of learned counsel holding for advocate Mr. Lad for Respondent No.1 on the ground that he is not feeling well. Stand over to 23 August 2023.

2. By a detailed order, the Division Bench of this Court (Coram:: G. S. Kulkarni & R. N. Laddha, JJ.) has issued show cause notices to Respondents. The order dated 02 May 2023 describes some of the Respondents as contemnors. The Registry has separately numbered the notices as Show Cause Notice No.5 of 2023 and Show Cause Notice No.6 of 2023. The notices have been listed as independent proceedings. We are not shown any Rule or Practice Note that notices to show cause in a Writ Petition are to be listed as independent proceedings with separate number. If the Court is of the opinion that a party has committed contempt of Court, then contempt proceedings can be initiated which would then have a separate number. The Registry to place on record as to whether notices issued in this petition to show cause need to be given a separate number or they be treated as part of the writ petition itself.

3. Stand over to 23 August 2023. Ad interim order to continue.”

16. We have seen the office submission dated 22nd August 2023. It says that while the Original Side Rules do not provide for numbering of a show cause notice, there is nonetheless a long-standing practice that show cause notices issued in matters other than contempt proceedings are assigned a number by the Registry. This is to allow the Registry to generate statistical data of pending show cause notices, record the disposal of these notices and to list them separately on the cause lists. Since the show cause notices were separately issued to Respondents, these have been separately numbered and separately shown on the cause list. The Report also says that the practice of assigning numbers is followed for Court Receiver's Report, Judges Order, etc., although these too have no specific provision in the High Court Original Side Rules. We accept the Report as being an adequate reply to the query of the Court. Indeed, it seems to us that the existence (or absence) of a specific rule cannot possibly fetter the discretion of a court of equity to do complete justice. It is long settled that rules are not an end in themselves, but only ever an aid to justice.

17. Pausing briefly for a moment, we note that the previous Division Bench accepted without comment the tendering of some documents in sealed cover by the 1st Respondent. This Court has previously thoroughly deprecated this practice.¹ So has the Supreme Court, most recently in *Madhyamam Broadcasting Ltd v Union of India & Ors.*² We specifically disapprove of this and do not permit it.

1 Order dated 18th September 2020 in LD-VC-Comm Arbitration Petition No 30 of 2020 and other matters, *Rajeev Kumar (HUF) & Anr v Anugrah Stock & Brokers Pvt Ltd.*

2 2023 SCC OnLine SC 366.

It undermines the legitimacy of the adjudication process in any system based on an adversarial proceeding. The simplest general principle is that anything that the Court can see, the opposing party must be allowed to see. Any exceptions must be narrowly tailored, whether under the Evidence Act or some other governing law. Nothing in this matter invites a single one of the exceptions in the Evidence Act regarding privilege, i.e., immunity from disclosure. In other jurisdictions, most particularly in the UK limited disclosures or non-disclosures are permitted. But such ‘Closed Material Proceedings’ are now governed by statute and always subject to judicial oversight. They are mostly in cases of national security, immigration, etc. It is never for a party to decide for itself what it will or will not disclose — *most especially when there is an order of the Court ordering and compelling disclosure on affidavit*. Where there are private disputes between two parties and a Court has ordered a party to make a disclosure on Affidavit of some material, there is simply no question of that party putting in anything ‘in sealed cover’. As a matter of law, that is non-compliance with a judicial order. In a given case, it will invite action in contempt. If immunity from disclosure is sought, that is an application that must be made to a court and must receive a judicial order. No litigant can disadvantage the opponent by squirrelling some information into the court record ‘in sealed cover’. No party is entitled can rely on such ‘sealed cover material’ to the prejudice of the other side, and no court should permit it. To do so flies in the face of every concept of fair justice and openness and transparency in the decision-making process. It is time to bury this thoroughly pernicious practice.

18. We refuse to accept these sealed covers. The information in those sealed covers will be placed on Affidavit and that is to be done by Monday, 11th September 2023. We are not concerned with any questions or apprehensions of prejudice.

19. We come now to Mr Naidu's Affidavit on behalf of Ranka Lifestyle in the first show cause notice. This Affidavit is indeed voluminous and a large part of it is probably entirely unnecessary given the narrow controversy. This attempt to inundate the Court with paperwork in the faint hope that this will somehow intimidate a Bench into constantly adjourning the matter will not succeed.

20. So that neither the Repair Board and its officers nor the 1st and 2nd Respondents have any lingering doubts about what this case involves, we proceed to make it plain:

- (a) The Petitioner was entitled to a redeveloped apartment;
- (b) She was entitled to transit rent till that was made ready;
- (c) She was entitled to a redeveloped apartment of a certain area and;
- (d) She was entitled to be treated on parity with all other tenants and occupants."

21. No amount of filing of Affidavits that are the size of telephone directories will assist in answering these four simple questions.

22. We will deal with the question of the show cause notices separately. But the previous order indicates to us that the Court took two steps. The first was to effectively freeze not only funds but also transactions in other apartments and flats including what are called the PAP or Project Affected Person tenements. This was obviously done because the Court felt that the Petitioner was being denied what was legitimately owed to her.

23. If we are approaching the matter slightly differently today, it is only because we believe that what is stated on the Affidavit will more than adequately protect the Petitioner. For example, we do not see how it is conceivably in the Petitioner's interest to oppose the issuance of an Occupancy Certificate ("OC"). Undoubtedly the Petitioner is entitled to a residential flat. But that residential flat without an OC is a seriously impaired or crippled right.

24. So far as the Petitioner's entitlement is concerned, we are today looking at paragraphs 8(a) and 8(b) of this Affidavit dated 1st May 2023. The Affidavit in Reply to the show cause notice has some utterly unique page numbering. But at internal page 4, the relevant portion reads:

"8. In the above circumstances, I pray that this Hon'ble Court without prejudice to the rights and contentions of all parties, in the interregnum be pleased to balance the equities and re-consider its orders dated 08.03.2023 and 10.04.2023 to provide for the following:

a. **Without prejudice to my right and contention as to the extent of entitlement of PAA area of the Petitioner, I shall not transfer, sell or assign right, title and interest in the Flat No. B-1803 admeasuring 49**

sq.mtrs (527.44 sq.ft.) RERA carpet area and the Court Receiver, High Court, Bombay be appointed as receiver of the said flat with liberty enter into agency agreement on usual terms and conditions subject to orders of this Hon'ble Court.

b. The Petitioner, without prejudice to her claim and/or contentions in this Writ Petition, in the interregnum, may accept Flat No. B-1502 toward her PAA entitlement for which the Respondent No. 1 shall issue a letter of possession in her favour.”

(Emphasis added)

25. The area of Flat No. B-1803 is actually said to be 506 sq ft and that of Flat No. B-1502 is 409 sq ft.

26. On the last occasion, we asked Mr Bhargude to take instructions from the person who instructs him. We gave time for that purpose. We wanted no ambiguity. We needed Mr Bhargude to take instructions on a simple aspect of this matter, viz., whether the Petitioner was willing to take formal physical possession *on a without prejudice basis* of Flat No. B-1502 while at the same time, this High Court would appoint a Court Receiver of Flat No. B-1803 because it has a larger area. To explain: if the Petitioner is correct that she is entitled to a larger area, then she would at any stage, once this is done, be at liberty to move from B-1502 to B-1803 and would not then have to be in hunt of a larger flat or be confronted with a situation where she and the Court were told that no flat of a larger area was available. We did not see the advantage of the Petitioner having to wait any longer and felt that it would be advisable for the Petitioner to take whatever residence is now available, while the

other aspects can be considered later, while ensuring that a larger flat is secured and kept secured.

27. Mr Bhargude has taken instructions, and these are that the Petitioner will accept the proposal, but it must on a without prejudice basis. That is of course correct. There is no doubt that Flat No. B-1502 is being offered to the Petitioner only for the present, but this, importantly, has to be seen in the context of the matter in which the Affidavit is filed. It is filed in the contempt proceeding and in response to the show cause notice. In that sense, it is an effort by the 1st Respondent to express regret and to show some level of penitence: *in locus poenitentiae*. Whether we will accept this as a sufficient ground to dispose of the contempt notice is a matter for the final disposal of the show cause notice. But at the same time, we believe that this Petitioner has suffered enough and there is no reason to prolong her suffering by saying that she should wait even further for some flat allotment. Having said that, we recognize that the Petitioner has an argument to be made about the area to which she is entitled. That is a matter for a later date. To the extent of the larger area, therefore, rather than try and secure some additional pocket of built-up space right now, we accept the suggestion from Mr Naidu that an additional larger flat will be kept vacant and under receivership to the credit of these proceedings.

28. To address Mr Bhargude's concern, therefore, this proposal may be accepted strictly on a without prejudice basis. No equities will be claimed against the Petitioner only because the Petitioner has accepted possession of Flat No. B-1502 under this order. We are not

even directing the Petitioner to actually reside there. We asked Mr Bhargude to take instructions whether his client is at all willing to take formal physical possession on this without prejudice, no equities basis of Flat No. B-1502 and put her own lock on those premises until we finally dispose of the Writ Petition and the show cause notice. Mr Bhargude on instructions agrees.

29. The Receiver will, therefore, proceed to the site by 11.00 am tomorrow, 8th September 2023 and will put the Petitioner in physical possession of Flat No. B-1502. We expect a site report. The Petitioner or her constituted attorney must sign that site report in acknowledgment of having received possession. The Receiver will simultaneously take vacant possession of Flat No. B-1803 and will seal that flat until further orders of the Court.

30. This takes us back to the remaining directions in the order of 8th March 2023 for it is now Mr Naidu's submission that some of these ought to be vacated or appropriately modified since the interests of the Petitioner are adequately protected.

31. We have considered that submission and we have seen this from the perspective not only of the 1st Respondent, who is admittedly not very high on our priority list of matters of concern, but of the Petitioner. The stay on the OC, Item (1) of the operative portion of the order of 8th March 2023 if allowed to continue would actually hurt everyone including the Petitioner. We, therefore, vacate that stay.

32. As regards the unsold free sale flats in the building, we will have to release these for two separate reasons. The first is that the immediate interest of the Petitioner is now completely secured. We do not see how a Receiver could continue for all other flats because that is not the extent of the Petitioner's claim and could never have been. The Receiver will therefore stand relieved of all flats except Flat No. B-1803 and of all PAP tenements as well.

33. We permit the 1st Respondent to deal with the PAP tenements in accordance with law and with the unsold free sale flats in the ordinary and usual course of business, but the 1st Respondent must, for the purposes of the show cause notice, maintain records and will file an Affidavit by the next date giving full particulars of which flats have been sold, the names of the purchasers, the areas of those flats, the dates of the Agreements. We do not want any further controversy in regard to these matters. That further Affidavit must also contain a detailed listing in a tabulated fashion of how all other tenants have been re-accommodated in the redeveloped building, i.e., the original areas under their occupation, the numbers of the newly developed flats, when they were put into possession and the actual area in sq ft in carpet area and built up area of those apartments/tenements. This is necessary because of the essential argument canvassed by Mr Bhargude that the Petitioner is not being treated on parity with other tenants.

34. As regards the resident Executive Engineer of the MHADA to whom a notice was issued, time to file that Affidavit is extended until 26th September 2023.

35. We will hear the Writ Petition finally and the two show cause notices themselves on 12th October 2023 at 2.30 pm.

36. List the matter on 12th October 2023 at 2.30 pm.

(Kamal Khata, J)

(G. S. Patel, J)