# IN THE HIGH COURT OF JUDICATURE AT BOMBAY
# ORDINARY ORIGINAL CIVIL JURISDICTION

## WRIT PETITION (L) NO. 34771 OF 2024
## WITH
## INTERIM APPLICATION (L) NO. 20843 OF 2025
## IN
## WRIT PETITION (L) NO. 34771 OF 2024

Javed Abdul Rahim Attar & Ors. ...Petitioners

Vs

The Maharashtra Housing & Area Development Authority & Ors. ...Respondents

## WITH
## WRIT PETITION NO. 4247 OF 2024
## WITH
## INTERIM APPLICATION (L) NO. 8139 OF 2025
## IN
## WRIT PETITION NO. 4247 OF 2024

Vijay Anant Nagwekar ...Petitioner

Vs

Municipal Corporation of Gr. Mumbai & Ors. ...Respondents

## WITH
## WRIT PETITION NO. 2637 OF 2025

Dharsey Khetsey Charities Trust ...Petitioner

Vs.

The State of Maharashtra & Ors. ...Respondents

## WITH
## WRIT PETITION NO. 790 OF 2025

Shah Associates & Anr. ...Petitioners

Vs.

State of Maharashtra & Ors. ...Respondents

## WITH
## WRIT PETITION NO.934 OF 2025

Bharat Kishormal Shah. ...Petitioner

Vs.

State of Maharashtra & Ors. ...Respondents

WITH
WRIT PETITION NO.1783 OF 2024

Bhagwati Gordhandas ...Petitioner
Vs.
Mumbai Bldg. Repair & Reconstruction Board & Ors. ...Respondents

WITH
WRIT PETITION (L) NO.1105 OF 2025

Abdur Razzaq Ismail Holy ...Petitioner
Vs.
Maharashtra Housing & Area Development
Authority and Ors. ...Respondents

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Mr. N. V. Walawalkar, Sr. Adv. i/b Mr. A. S. Rao for Petitioner.
Mr. M. M. Vashi, Sr. Adv. a/w Panthi Desai i/b M. P. Vashi & Associates for Applicant in IAL/20843/2025.
Mr. Janak Dwarkadas, Sr. Adv. a/w Mr. P. G. Lad, Ms. Namrata Vinod, Ms. Aparna Kalathi & Ms. Sayali Apte for MHADA.
Smt. Uma Palsuledesai, AGP for State.
Mr. Ranjit Thorat, Sr. Adv. i/b Suryajeet Chavan for R. No. 5.
Mr. Rupesh Raut, Residential Executive Engineer MBRRB.
Mr. Girish Godbole, Sr. Adv. i/b Mr. Sameer R. Bhalekar for Petitioner.
Mr. Joel Carlos i/b Zishan Quazi for Applicants/Intervenors in IAL/8139/2025.
Mr. Janak Dwarkadas, Sr. Adv. a/w Ms. Namrata Vinod, Mr. P. G. Lad, Ms. Aparna Kalathi & Ms. Sayali Apte for MHADA.
Ms. Meena Dhuri i/b Ms. Komal Punjabi for R. No. 1 & 2 BMC.
Ms. Uma Palsuledesai, AGP for State.
Mr. Sameer Singh for R. No. 7.
Mr. Mayur Mohite for R. No. 11.

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CORAM: G. S. KULKARNI &
ARIF S. DOCTOR, JJ.

RESERVED ON : 22 JULY 2025
PRONOUNCED ON : 28 JULY 2025

ORDER: (Per G. S. Kulkarni, J.)

1. This is a batch of petitions which assail notices issued by the Executive Engineer(s) of respondent No.2 – Mumbai Building Repairs and Reconstruction Board (for short "**Board**") which is a statutory unit of respondent No.1-

Maharashtra Housing and Area Development Authority (for short "**MHADA**").

2. As the issues arisen in all these proceedings are common, which relate to the legality of the notices issued under Section 79-A of the Maharashtra Housing & Area Development Act, 1976 (for short "**MHAD Act**"), we do not intend to delve on the facts of each and every proceeding. For convenience, wherever necessary we refer to the facts in the lead petition, Writ Petition (L) No.34771 of 2024 (Javed Abdul Rahim Attar & Ors. Vs. Maharashtra Housing and Area Development Authority & Ors.).

3. At the outset, we may observe that the issue as raised in the present petitions, is of a colossal misuse of the powers by the concerned officials of the Board, in issuance of host of notices under Section 79-A of the MHAD Act, which has seriously prejudiced and/or breached the Constitutional and the legal rights of the stakeholders, namely, of the owners of the buildings, as also in appropriate cases the tenants of the buildings. The reason being that Section 79-A of the MHAD Act which was introduced by the Amendment Act No.48 of 2022 with effect from 2 December 2022 in the circumstances as set out in Sub-section (1) thereof, is a provision which enables the rights of redevelopment of a building, on the premise that the building is declared to be dangerous. However, whether a building is dangerous or not, cannot be the *ipse dixit* of the concerned officers, as such factum is required to be decided only in the manner the provision ordains. This is precisely the issue in the present proceedings, namely, the petitioners' contention of the Executive Engineer(s) of the MHADA/Board

in the absence of any jurisdiction being available with them under sub-section (1) of Section 79-A, misusing and/or abusing such provision and highhandedly issuing notices to hundreds of buildings.

4. On such serious plea being urged before us of a patent abuse of powers vested with such officials of the Board, we inquired with Mr. Lad, learned Counsel for the Board as to how many such notices were issued, as the properties to which the notices are issued, are situated in the prime areas in the city of Mumbai, having very high monetary potential in terms of its redevelopment. Mr. Lad informed the Court that 935 notices were issued by different Executive Engineers. Many of these Executive Engineers singularly have issued hundreds of such notices in a short span against different properties. The pattern is quite unique. It appears to be quite clear that these notices are issued wholly without jurisdiction, as the further discussion would reveal.

5. We may also observe that the petitioners' case being of an extreme, unfortunate and a blatant abuse of the powers by these officers. As a Constitutional Court, we would be failing in our duty, if we do not view the matter in the perspective of what the rule of law would mandate us to do in these circumstances, as also keeping in view the paramount faith of the litigants in the rule of law, the process of the Court and the justice delivery system in protecting their legitimate expectation that public officials need to act in a lawful manner and not abuse the powers vested in them. It is such faith of the citizens which, in our opinion, would be the paramount consideration in the adjudication of the

present proceedings and in passing the present order.

6. The entire controversy revolves around the exercise of power by these officials under Section 79-A of the MHAD Act, it is hence imperative that at the very threshold, we note as what is this provision about and on whom the power is conferred to initiate action thereunder. Section 79-A reads thus:

> **"79-A. Procedure of redevelopment in case of dangerous buildings declared by Mumbai Municipal Corporation or competent authority**
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> (1) Notwithstanding anything contained in sub-section (3) of section 88 and section 92 of this Act and sections 354 and 499 of the Mumbai Municipal Corporation Act, in case of the building to which the provisions of sub-section (1) of section 82 applies (hereinafter in this Act referred to as "cessed building"), **which is declared dangerous by the Mumbai Municipal Corporation under section 354 of the Mumbai Municipal Corporation Act or by the competent authority, if the redevelopment of such building is not taken up by the owner or landlord of the cessed building, within three months from the date of issue of notice under section 354 of the Mumbai Municipal Corporation Act by the Mumbai Municipal Corporation or the competent authority, the Board may adopt the following procedure** :–
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> (a) a notice shall be issued to the owner or landlord of the cessed building to submit the proposal for redevelopment within six months from the date of issue of notice. Alongwith the proposal, consent of fifty-one per cent. of the occupants or tenants of the said building shall be accompanied;
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> (b) if the owner or landlord fails to submit the proposal within the period and the manner as provided in clause (a), the proposed co-operative housing society of the occupants or tenants of such building may submit the proposal to the Board, for redevelopment of such building under the relevant provisions of the Development Control and Promotion Regulations-2034 for Greater Mumbai, within six months from the date of communication received from the Board. The proposal shall be accompanied with the consent of at least fifty-one per cent. of the occupants or tenants : Provided that, when the building is redeveloped by the proposed co-operative housing society, the compensation to the owner or landlord shall be paid by the concerned co-operative housing society as per the provisions of sub-section (2) ;
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> (c) if the redevelopment is not initiated within the period and manner as provided in clauses (a) and (b), the Board shall reconstruct the building by acquiring such building, without insisting on consent of at least fifty-one per cent. of the occupants or tenants of the said building.

> (2) When the building is redeveloped under the provisions of clauses (b) and (c) of sub-section (1), the compensation shall be paid to the owner or landlord, at the rate of twenty-five per cent. of the amount of Ready Reckoner Rates, determined under the Maharashtra Stamp (Determination of True Market Value of Property) Rules, 1995 of the open land of such building or fifteen per cent. of the built-up area of sale component determined as per the Ready Reckoner Rates, whichever is higher.\=
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> Explanation.– For the purposes of this sub-section, "sale component" means the built-up area remaining after deducting Rehab Built-up Area from the permissible Built-up Area admissible as per the relevant provisions of the Development Control and Promotion Regulations-2034 for Greater Mumbai.
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> (3) If the building is redeveloped by the Board under clause (c) of sub-section (1), subject to the provisions of sub-section (2) for payment of compensation, the provisions of sections 92 and 93 shall mutatis mutandis apply, for acquisition of such building."

7. Having noted the provision, we may state that in our order dated 8 July 2025, noting the ambit of the provision, we observed that the building being categorized by the Municipal Corporation of Greater Mumbai to be dangerous by issuing a notice under Section 354 or on its declaration by Competent Authority [as constituted under Section 65 of the MHAD Act] to be dangerous, were the basic essential requirements a sine qua non, to be complied to take an action under this provision. In so observing, on a *prima facie* consideration of the matter, we passed an order dated 8 July 2025, observing that the Executive Engineer has no jurisdiction to issue the impugned notices and it appeared that the action on the part of the Executive Engineer was highhanded. The Court also observed as to how many such notices were issued by these officers, be informed to the Court, as several matters had reached to the Court on such issue. We, accordingly, passed the following order:

> "1. We find that the impugned notice dated 17.05.2013, as assailed in this petition, issued under Section 79-A of the Maharashtra

> Housing and Area Development Act, 1976 ("MHADA Act"), is ex-facie illegal and wholly contrary to the provisions of Section 79-A. The basic requirements of the building being categorized by the Municipal Corporation of Greater Mumbai to be dangerous by issuing a notice under Section 354 or on its declaration by Competent Authority as constituted under Section 65 of the MHADA Act, were not issued. Thus, the Executive Engineer had no jurisdiction to issue the impugned notice. It prima facie appears to us that this is a high-handed action on the part of Shri Abhay Ramteke,the Executive Engineer and we are not aware as to how many such notices have been issued by these officers.
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> 2. The Vice-Chairman of MHADA is directed to consider as to how many other matters these officers have issued 79-A notices and to examine each and every matter whether the same is bonafide. If it is found that the same is not bonafide, an inquiry be instituted against these officers. We are absolutely sure, in the facts of the present case, that the impugned notice is not only in excess of jurisdiction but also an abuse of the power by such Executive Engineer, which cannot be taken lightly. The Vice-Chairman would also take a decision whether MHADA would continue to hold such notices as legal and valid, more particularly considering the clear and unambiguous provisions of Section 79-A of the MHADA Act. Let a statement in this regard be made before the Court on the adjourned date of hearing."

8. On the aforesaid backdrop, on 10 July 2025, recording that the case involved a patent defiance of the mandate of sub-section (1) of Section 79-A and the purport of the jurisdiction and powers, which were in fact vested, with the Board under Section 79-A as envisaged under sub-section (1) of Section 79-A, we passed a detailed order while adjourning the proceedings, directing that the Vice-Chairman to take appropriate decision and inform the Court in regard to the issue as discussed in the said order. Our order dated 10 July 2025 reads thus:

> "1. The issue raised in the present petition is quite serious. In fact, such issue is being raised in number of proceedings before us which is to the effect that the proceedings are being initiated by the MHADA under Section 79-A(1)(a) or (b) of the Maharashtra Housing and Area Development Act, 1976 (for short, "MHADA Act") without the basic jurisdictional requirements as mandated under Sub-section (1) of Section 79-A of the MHADA Act being fulfilled i.e. in the absence of a notice being issued by Municipal Corporation of Greater Mumbai under Section 354 declaring the building to be dilapidated or a similar declaration by the competent authority constituted under Section 65 of the MHADA Act.

2. As contended by the petitioners, the proceedings under these notices, would fall to the ground by such patent defiance of the mandate sub-section (1) of Section 79-A would plainly provide. Once the notice under Section 79-A itself is issued illegally, it cannot create any rights of redevelopment either with the landlord or tenants, and possibly in a fully unwarranted situation of the building itself being not dilapidated. This is a matter of serious concern.

3. If such notices are issued by the concerned officers / Executive Engineer contrary to the requirements of Section 79-A (1), vis-a-vis, the effect clauses (a) and (b) of sub-section (1) would create, there is much scope to label such notices either as high-handed or malafide, issued to suit the convenience of the parties who possibly may get an undue advantage with such notices. This would amount to a brazen misuse of the powers and authority vested with the concerned officers of MHADA at whichever level, we do not know. It is in such context, we passed a detailed order on 08 July 2025 directing the Vice-Chairman to look into the issues as these issues are repeatedly coming before the Court.

4. We may observe that Section 79-A is not merely a provision which would enable redevelopment, but it is a provision which contemplates rights to be created in respect of the redevelopment, which are certainly of a nature which would grant benefit / advantage to whosoever is undertaking development. This can be done only when the prerequisites of the mandate of sub-section (1) of Section 79A are complied. Thus, on one hand it is the valuable right of property vested in the owners guaranteed under Article 300A of the Constitution which is in question on the other hand, on the failure on the part of the owner to undertake redevelopment, rights of tenants have been recognized. We are thus clearly of the opinion that such powers were required to be exercised within the framework of law and on the plain purport of what Section 79-A would mandate. Nothing could be done contrary to such legislative command.

5. Today, Mr. Walawalkar, learned Senior Counsel for the Petitioner, on instructions, submits that more than 800 notices are issued. If what is being informed to us by Mr. Walawalkar is the correct position and if such notices as observed hereinabove do not satisfy the test of law or is an exercise of power on extraneous considerations, we would be required to pass appropriate orders. including to direct a high-level inquiry to be undertaken at the appropriate hands, as such affairs and illegality, certainly cannot go unnoticed by those who are supposed to be the custodians of such powers.

6. We, accordingly, adjourn the proceedings to 17th July, 2025 (FOB).

7. If, by the adjourned date of hearing, we do not hear from the Vice-Chairman regarding MHADA's decision, we will have no alternative but to pass appropriate orders."

9. It is on the aforesaid backdrop the proceedings are before us today. We

may observe that on behalf of MHADA/Board, a reply affidavit dated 16 July 2025 of Mr. Milind Pandurang Shambharkar, Chief Officer of the Board, is tendered across the Bar by Mr. Janak Dwarkadas, learned Senior Counsel, who today appears on behalf of the Board as also the MHADA. We are quite surprised that although it is an affidavit dated 16 July 2025, such a long affidavit of 48 paragraphs and 36 pages, was tendered at the last minute and not filed, although sufficient time was available to the Board/MHADA from 16 July 2025 till today. The copies of the same were also sought to be furnished to the learned Counsel for the petitioners and other respondents.

10. Considering the case of the petitioners of a gross illegality at the hands of the Executive Engineer(s) and on the tacit approval of the high ranking officials, we proceed to examine the issues.

11. As we have noted the provisions of Section 79-A and plainly and clearly as to what it contemplates and intends, at the outset, we may observe that the applicability of Section 79-A recently had fell for our consideration in the adjudication of Writ Petition (L) No.19558 of 2025 (**Pramod Vishwanath Saraf & Ors. Vs. The State of Maharashtra & Ors.**) decided on 9 July 2025. In such decision, considering its import, the Court has held that in its applicability to the cessed buildings, first and foremost condition is that the building is required to be declared as dangerous by the Mumbai Municipal Corporation under section 354 of the MMC Act or by the Competent Authority, which has been defined under Section 65 of the MHAD Act (which provides for "Appointment of Competent

Authority") and it is only on such basic jurisdictional requirement being fulfilled, the Competent officer of MHADA can assume jurisdiction. The relevant observations in that regard are required to be noted which read thus:

> "8. Thus, from a plain reading of the aforesaid provision, it is clear that for the application of Section 79-A in respect of the "cessed building", the building is required to be declared as dangerous by the Mumbai Municipal Corporation under section 354 of the Mumbai Municipal Corporation Act or by the Competent Authority, which has been defined under Section 65 of the MHADA Act (which provides for "Appointment of Competent Authority") and it is only on such basic jurisdictional requirement being fulfilled, the Competent officer of MHADA can assume jurisdiction. If the redevelopment of such buil 량: taken up by the landlord or owner of the cessed building, within three months from the date of issue of notice under section 354 of the Mumbai Municipal Corporation Act (for short, "MMC Act") by the Mumbai Municipal Corporation or the competent authority, the Board is permitted to adopt the procedure as set out in Section 79-A(1)(a), (b), (c).
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> 9. Sub-section (1)(a) of Section 79-A provides that such notice shall be issued by the MHADA to the owner or landlord of the cessed building to submit the proposal for redevelopment of the building within six months from the date of issuance of notice. After receipt of such notice, alongwith the proposal, consent of fifty-one per cent of the occupants or tenants of the said building is required to be submitted by the owner/landlord to the MHADA. Sub-section (b) provides that if the owner or landlord fails to submit the proposal within the said period of six months and in the manner as provided in clause (a), the proposed co-operative housing society of the occupants or tenants of such building may submit the proposal to the Board, for redevelopment of the building under the relevant provisions of the Development Control and Promotion Regulations- 2034 for Greater Mumbai, within six months from the date of communication received from the Board and such proposal, which may be made by the proposed co-operative society, is required to be accompanied with the consent of at least fifty-one per cent of the occupants / tenants.
> … … ...
>
> 11. It is not in dispute that a notice under Section 79-A(1)(a) of the MHADA Act dated 18 May 2023 was issued to respondent no.5-landlord. In order to ascertain the jurisdictional requirements to consider the application of Section 79-A of the MHADA Act, we asked Mr. Shinde, learned Counsel for the

> MHADA, as to whether to invoke sub-section (1)(a) of Section 79-A, a notice declaring the building in question to be dangerous under Section 354 of the MMC Act was issued by the Mumbai Municipal Corporation or by the Competent Authority under Section 65 of the MHADA Act had declared the building to be dangerous. Mr. Shinde, on instructions, has submitted that neither of these compliances were met. It is hence contended on behalf of respondent no.5, that resultantly, the basic jurisdictional requirement to issue such notice is lacking in the present case.
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> 12. Be that as it may, albeit accepting this position that there was no jurisdiction for invoking Section 79-A(1) in the absence of two basic requirements as mandated by sub-section (1) of Section 79-A i.e. Municipal Corporation declaring the building to be dilapidated under Section 354 or is being so declared by the Competent Authority, it appears that parties namely the landlord as also the tenants proceeded on the assumption that the building would require redevelopment as it has become dangerous, however, sans the Municipal Corporation or the competent authorities saying so and are accordingly asserting their rival claims for redevelopment of the building. It is quite landlord or the tenants to assume so, as they are occupants of the building and it is them who realized that the building is in dangerous condition and would require redevelopment. However, as the parties would not dispute the complexion of such assertion changes the moment redevelopment under the garb of the provisions of Section 79-A is the subject matter of controversy, as Section 79-A is a provision wherein sub-sections (1)(a) and (1)(b) recognizes distinct rights of redevelopment on different parties namely the landlords and thereafter the tenants. The basis of such rights would stem from what has been provided for under Section 79-A(1) from what has been informed by Mr. Shinde, and not disputed by any of the parties, there was no trigger for Section 79-A to be invoked in the absence of either a Section 354 of the MMC Act notice or the building being declared dangerous by the Competent Authority.

12. We may also note that a co-ordinate Bench of this Court in **Vimalnath Shelters Pvt. Ltd. & Ors. Vs. The State of Maharashtra & Ors.**[1] also had the occasion to consider the implications and interpretation of the provisions of Section 79-A in a similar context, wherein the Court clearly held on the jurisdictional requirement the provision contemplates to the effect that the cessed

**1** 2025 SCC OnLine Bom 1109

building has to be first declared as dangerous as mandated under Section 354 of the MMC Act or by the Competent Authority of MHADA [as constituted under Section 65 of the MHAD Act]. It was held that it will not be legal and proper for the officials of MHADA to issue a notice under Section 79-A in the absence of such basic compliances and it is only then Section 79-A can be invoked and not otherwise. The Court rejected the case of the Board that the officials of MHADA, namely, the Executive Engineer can declare a building to be dangerous, when it observed that, under the provisions of the MHAD Act, it is only the Competent Authority defined under Section 2(11) of the MHAD Act, which would be a person appointed under Section 65 of the MHAD Act, requiring that the "competent authority", needs to be appointed by Notification in the Official Gazette by the State Government comprising of a person not below the rank of the "Deputy Collector" or "Civil Judge". It was also observed that the Board would not qualify to be a 'competent authority' considering such clear definition of the competent authority.

13. On the aforesaid backdrop, we have gone through the relevant contents of the affidavit filed on behalf of the MHADA/Board with the assistance of Mr. Lad as also learned Counsel appearing for the MHADA.

## Submissions on behalf of the petitioners

14. We have heard Mr. N. V. Walawalkar, Mr. G. S. Godbole and Mr. Surel Shah, learned Senior Counsels for the petitioners, who have made extensive submissions, which is as under:

(i) Nothing has been pointed out by MHADA in the reply affidavit as to whether the officials (Executive Engineers) of the MHADA would have power to issue notices under Section 79-A, when plainly going by the provisions of section 79-A, there was no jurisdiction, whatsoever, in these officers issuing such notices.

(ii) This apart, even assuming and without admitting that the notices were issued by the appropriate authority (when in fact they are not), there would be no jurisdiction with the authority to issue notices under Section 79-A, on **"visual inspection"**, as this militates against the express provisions of sub-section (1). On such vital aspect and requirement of law is clearly admitted by the Chief Officer of the Board in paragraph 35 of the affidavit when he states that 935 notices were issued only on "visual inspection" of the respective properties. It is thus submitted that in the first place, there was no authority, jurisdiction or power with the Executive Engineers to exercise any authority under Section 79-A and over and above it, such notice could not have been issued on a visual inspection, in purporting to exercise powers under Section 79-A.

(iii) It is next submitted that even in respect of properties which are not dangerous and which can be repaired, i.e., falling under the categories like 'C2A' and 'C2B', such notices are issued which is wholly without jurisdiction. It is submitted that in fact in **Javed Abdul Rahim Attar's** case (supra), on 3 May 2023, a notice was issued under Section 89 of the

MHAD Act and immediately within 15 days i.e. on 17 May 2023 a notice under Section 79-A was issued, that too after payment of excess amount of Rs.9,75,059/- was deposited for repairs. This according to the petitioners shows the high handed manner in which such notices were issued.

(iv) It is next submitted that the Vice President of the Board on 5 December 2024 issued a revised Standard Operating Procedure (for short "**SOP**") for implementation of provisions of Section 79-A of the MHAD Act under which such officials are now purportedly acting. The submission is that the SOP is issued by the Vice-Chairman without jurisdiction and beyond the authority conferred on such official under the provisions of the MHAD Act.

(v) The SOP dated 5 December 2024 is also in the teeth of the provisions of not only Section 79-A but other provisions of the MHAD Act like Section 2(3) and 28(3)(iv) & (ix) of the MHAD Act. It is submitted that the SOP cannot supplant the substantive provisions of the MHAD Act, by drawing the Court's attention to several paragraphs of SOP, which are contended to be in the teeth of these substantive provisions.

(vi) From the list of the properties as submitted on behalf of the Board / MHADA, it is submitted that it is "abundantly clear" that Section 79-A notices are issued *en bloc* by the Executive Engineers, as it is set out in the respective columns that they are issued without structural audit and in the

absence of any notice being issued by the Municipal Corporation under Section 354 of the MMC Act or a building being designated as dangerous by the competent authority under the MHAD Act.

(vii) It is next submitted that it is also clear from these lists of notices, that to first issue notices under Section 79-A and thereafter to have a structural audit or a farce of it, is wholly impermissible and not only in excess of the jurisdiction and the authority, such provision would confer, but a patent abuse of the powers vested with these officers, indicating that the motives are not lawful.

(viii) Section 79-A does not empower any SOP or guidelines to be issued, more particularly when there are specific provisions in regard to rules and regulations to be framed under the MHAD Act referring to the provisions of Section 184 (Powers to make rules), Section 185 (Power to make regulations) and Section 186 (Power to make By-laws), which could have been resorted to have a statutory framework of the rules and regulations, when it comes to implementation of the provisions of the Act. The SOP is therefore, contrary to the legislative scheme of the Act.

(ix) The issuance of the impugned notices has created serious complications, and has in fact and in a given situation conferring veto powers, in regard to redevelopment on the rival parties. This is not the object and intention of the said provision.

(x) The misuse of Section 79-A is writ large, as seen from the fact that after the notice is issued in one of the cases, the building is immediately included in a 'cluster redevelopment' which can never be the purpose and object of Section 79-A. Such action can be intended only to benefit the developer.

(xi) Looked from any angle the issuance of such notices to the petitioners under Section 79-A is ex-facie illegal and in fact it amounts to large scale abuse of the powers, considering the magnitude in which such notices are issued to different properties. Such illegality needs to be differently dealt by the Court, as it has gathered the proportion of a large scale deception, misuse of powers for ulterior motives and for extraneous reasons and considerations, as each case can demonstrate.

Submissions on behalf of MHADA/Board

15. Mr. Lad on behalf of the Board, in the peculiar facts and circumstances, has limited submissions. His first contention is in the context of our orders dated 8 July 2025 and 10 July 2025, to submit that it was not possible for the Vice-Chairman to take a decision although this Court had passed very clear orders dated 8 July 2025 and 10 July 2025 requiring the Vice-Chairman to take a position on the large scale issues of the impugned notices under Section 79-A of the MHAD Act.

16. Mr. Dwarkadas, learned senior counsel in the first session made a submission that there were large number of notices issued prior to the judgment

in **Vimalnath Shelters Pvt. Ltd.** (supra), which are 889 in number, and 46 notices were issued after this judgment. It is submitted that 46 notices issued post the judgment of the Division Bench would be withdrawn by the Board, however, it is submitted that there are no instructions to make a statement that although the other notices would be similar notices and although issued on identical basis and without the compliances/requirements under Section 79-A having being fulfilled, the same are not intended to be withdrawn and can be kept in abeyance, as the MHADA is in the process of taking decision to challenge the decision in **Vimalnath Shelters Pvt. Ltd. & Ors. Vs. The State of Maharashtra & Ors.** (supra). It is submitted that as the said decision is being challenged, the Vice Chairman is not in a position to come to a conclusion on the bonafides of such notices, which although issued without the jurisdictional requirements being fulfilled.

17. Mr. Lad has made further submissions in the second session. Mr. Lad would submit that there is duty cast upon the MHADA under the various provisions of the MHAD Act to repair the cessed building. He invites our attention to Chapter VIII of the MHAD Act to submit that the provisions would indicate that a duty is cast on the MHADA to repair and reconstruct the dilapidated buildings by referring to the provisions of Sections 76, 88, 82 and 97 of the MHAD Act. He submits that it would thus be the primary responsibility of the Board to repair the cessed buildings. When we pointed out to Mr. Lad that the issue with which these petitions are concerned is in regard to the authority of MHADA to issue notices under Section 79-A and as how these notices could be sustained on the interpretation and findings as rendered by the Division Bench in

**Vimalnath Shelters Pvt. Ltd.** (supra) and by this Bench in **Pramod Vishwanath Saraf** (supra). Mr. Lad would submit that the notices that were issued by the Executive Engineers post the said judgment in the case of Vimalnath Shelters Pvt. Ltd. (supra), would be withdrawn forthwith. Mr. Lad has no further submissions to make.

## Analysis

18. On such rival contentions, we have heard learned Counsel for the parties.

19. At the very threshold we may observe that the issue as raised by the petitioners is not akin to a routine or regular issue which would come to the Court. The issue revolves around hundreds of properties being affected by the e*n bloc* notices issued by the different Executive Engineers of the MHADA/Board under Section 79-A of the MHAD Act, which according to the petitioners are issued not only in patent abuse of the powers vested with such officials, but in law wholly without jurisdiction and highhandedly. It is considering such serious proportions and the large number of properties, many of them being prime properties, which are adversely affected by such notices, in our opinion, surely the issue has gathered the colour of a racket/scam under a *modus operandi* of misusing the provisions of law, namely, Section 79A, to foster redevelopment of the property, obviously at the behest of unscrupulous persons with vested interests, who intend to take advantage of the situation that the building is an old building.

20. It is not remotely in dispute that as noted above, the basic jurisdictional

requirements as held in the decisions in **Pramod Vishwanath Saraf** (supra) and **Vimalnath Shelters Pvt. Ltd.** (supra) are not present for issuance of the impugned notices, namely, that there has to be notice issued by the Municipal Corporation under Section 354 of the MMC Act or the Competent Authority under the MHAD Act is required to declare the building to be dangerous. The consequence of such notices issued without the basic jurisdictional ingredients of Section 79A being satisfied are horrendous to say the least. The reason being every redevelopment of a cessed property in the city of Mumbai, under the Development Control and Promotion Regulations for Greater Mumbai, 2034 (for short "**DCPR**") confers incentive FSI, which in fact, is a bonanza for commercial exploitation at the hands of developers and builders, who are the ones to undertake redevelopment in both the situations either at the behest of owners of the cessed properties or the tenants. Thus, vested interests in any manner whatsoever to have the redevelopment of these properties can be a fortune. Thus, who can be such vested persons who are actually misusing such machinery of law through these officials of MHADA is not too far to be seen which may be either at the behest of landlord or the tenants. Thus, the statutory machinery being misused for such ulterior motives and for windfall of benefits, is a matter of serious concern.

21. Be that as it may, the endeavour of the Court is to delve on such rival contentions so as to consider as to whether the impugned notices in any manner are sustainable in law and do these notices at all have a sanction under the law, even at this stage of the proceedings and as to what needs be the approach of the

Court in the event of such large scale action on the part of these Executive Engineers.

22. As noted above, in such context as held by us in **Pramod Vishwanath Saraf** (supra) the basic jurisdictional requirements of Section 79-A is to the effect that the building is required to be declared as dangerous by the Municipal Corporation under Section 354 of the MMC Act or by the Competent Authority under the MHAD Act, [as constituted under Section 65 of the MHAD Act, which provides for appointment of competent authority]. It is only on such essential requirements being fulfilled, such jurisdiction under Section 79-A is available to be exercised in the manner as clearly set out in clauses (a), (b) and (c) of sub-section (1) of Section 79-A, that is, firstly a redevelopment by the landlord, if not by the landlord then by the tenants and if not by both, then by MHADA. However, in such options/rights to be available under clauses (a), (b) and (c), the foundational requirement is as to what we have observed hereinabove of the compliance of the provisions of sub-section (1). This is also the view taken in the two decisions of the Division Bench of this Court in **Pramod Vishwanath Saraf** (supra) and in **Vimalnath Shelters Pvt. Ltd.** (supra).

23. Having noted the aforesaid clear consequences as brought about by law, i.e., on the applicability of the provisions of Section 79-A of the MHAD Act as to what has been the approach and actions of the Executive Engineers are seen from the lists of all these notices (935 in number) as tendered before us by Mr. Lad. Illustratively, we note one of such lists which contains the details of 39 notices.

Briefly, the details of 13 such notices, which would indicate as to how most arbitrarily and in brazen breach of the provisions of sub-section (1) of Section 79-A such notices are issued. This more particularly when the factual situation of the building itself not warranting issuance of such notices. The following is the extract of the details pertaining to 13 such notices:

| Sr. No. | Name of Building | Date of Notice issued | Name of Executive Engineer | Reasons for issuing Notice | | | | | | | | Status / Remark |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | Excess Over PCL Intimated | | Whether Structural Audit done Yes / No | | Notice u/s 354 given by MCGM Yes/No | | Found Dilapidated in Pre-monsoon Survey | | |
| | | | | (Yes / No) | If yes date & amount | (Yes / No) | If yes Category of Building | (Yes / No) | If yes date | (Yes / No) | If yes year | |
| 1 | Building No.4-60, "Bori Chawl", bearing Cess No.D-3075(1) situated at Banganga Road, Mumbai | EE/D-3/1219/2023 Dt.16/05/2023 | Shri B. G. Patole | Yes | No.381 dtd.22/02/2022 Rs.28,85,425/- | No | --- | No | --- | Yes | 2023-24 | It is propopsed to withdraw. |
| 2 | Building No.18, "Amar Niwas", bearing Cess No. D-3060 situated at Banganga Road, Mumbai | EE/D-3/2951/2023 Dt.20/10/2023 | Shri B. G. Patole | Yes | No.20 dtd.03/01/2025 Rs.11,78,206/- | Yes | C2-B | No | --- | Yes | 2023-24 | It is propopsed to withdraw. |
| 3 | Building No.28-28-A, bearing Cess No.D-3037-39 situated at Bhagwandas Indrajeet Road, Banganga Road, Walkeshwar, Mumbai – 400 006. | EE/D-3/3168/2023 Dt.10/11/2023 | Shri B. G. Patole | No | --- | No | --- | No | --- | Yes | 2023-24 | It is propopsed to withdraw. |
| 4 | Building No.38-38A-38C, Harishchandra Goregoankar Road & 41-41A, Gamdevi Road, bearing Cess No. D-2762 & 2763, Mumbai. | EE/D-3/3147/2023 Dt.10/11/2023 | Shri B. G. Patole | No | --- | No | --- | No | --- | Yes | 2023-24 | It is propopsed to withdraw. |
| 5 | Building No.73-A, bearing Cess No.D-3021(1) situated at Banganga Road, Mumbai | EE/D-3/1960/2023 Dt.24/07/2023 | Shri B. G. Patole | Yes | No.1438 dtd.06/06/2023 Rs.7,81,545/- | No | --- | No | --- | Yes | 2023-24 | It is propopsed to withdraw. |
| 6 | Building No.48-A, bearing Cess No.D-3383 situated at August Kranti Marg, Mumbai. | EE/D-3/1355/2023 Dt.30/05/2023 | Shri B. G. Patole | Yes | No.842 dtd.05/04/2023 Rs.33,97,251/- | No | --- | No | --- | Yes | 2023-24 | It is propopsed to withdraw. |
| 7 | Building No.56, bearing Cess No. D-3190 (1) at B. G. Kher Marg | EE/D-3/2497/2023 Dt.06/09/2023 | Shri B. G. Patole | No | --- | Yes | C-1 | No | --- | Yes | 2023-24 | Matter is sub judice before Hon. High Court (LIC Buildings). **Proposed to withdraw.** |
| 8 | Building No.56-A, bearing Cess No. D-3190 (2) at B. G. Kher Marg | EE/D-3/2496/2023 Dt.06/09/2023 | Shri B. G. Patole | No | --- | Yes | C-1 | No | --- | Yes | 2023-24 | |
| 9 | Building No.4-4A, bearing cess No. D-3166 (2) situated at Dongarshi Road | EE/D-3/2491/2023 Dt.06/09/2023 | Shri B. G. Patole | No | --- | Yes | C-1 | No | --- | Yes | 2023-24 | |
| 10 | Building No.56-C, bearing Cess No. D-3190 (4) at B. G. Kher Marg | EE/D-3/2494/2023 Dt.06/09/2023 | Shri B. G. Patole | No | --- | Yes | C2-B | No | --- | Yes | 2023-24 | |
| 11 | Building No.56-B, bearing Cess No. D-3190 (3) at B. G. Kher Marg | EE/D-3/2495/2023 Dt.06/09/2023 | Shri B. G. Patole | No | --- | Yes | C2-A | No | --- | Yes | 2023-24 | |
| 12 | Building No.7, bearing Cess No. D-3322 (1B) at Settlewad Lane / Nepean Sea Road | EE/D-3/2660/2023 Dt.22/09/2023 | Shri B. G. Patole | No | --- | No | --- | No | --- | Yes | 2023-24 | |
| 13 | Building No.13, bearing Cess No. D-3302 (4-4A) at Nepean Sea Road | EE/D-3/2662/2023 Dt.22/09/2023 | Shri B. G. Patole | No | --- | No | --- | No | --- | No | --- | |

24. It is clear to us from these several notices as impugned in the present proceedings, that the basic jurisdictional requirements to attract the applicability of Section 79-A(1) itself was not satisfied, i.e., neither the Mumbai Municipal Corporation having issued notices under Section 354 of the MMC Act nor the competent authority under the MHAD Act had declared the building as

dangerous. It is thus beyond one's imagination as to how in such large number the impugned notices under Section 79-A could at all be issued. Moreover, such breach of Section 79-A has been admitted by the MHADA in the chart of these notices as presented before us, wherein MHADA has conceded in the specific columns, that Section 354 notices were not issued in all these 935 cases, as also there is no declaration that the properties are declared dangerous by the Competent Authority of the MHADA.

25. The second and the most important issue is in regard to the manner and method in which such notices were issued by the Executive Engineers. A perusal of the list shows that the notices are issued in bunches by the Executive Engineers in their respective wards, without there being any prior structural audit and only on "visual inspection" as clearly conceded in paragraph 35 of the affidavit which reads thus:

> "35. I say that in Paragraph No. 2 of the said Order dated 8th July, 2025 this Hon'ble Court was pleased to issue direction to consider how many other notices were issued under Section 79(A) of the MHAD Act and who examined each and every matter and whether the same are bonafide and if not then initiate action against concerned officer. On this aspect I say and submit as under:
>
> I say that as per the updated information predominantly 935 Notices were issued under Section 79(A)(la) of the MHAD Act. **I say that all Notices have been issued to the buildings which are found in critical age, dilapidated and in dangerous condition as per visual inspection**. The Officers before issuing Notices have personally inspected the buildings. All officers who have visited the buildings are qualified Engineers and notices were issued taking into consideration the condition of the building. Therefore, all notices have been issued bonafidely.
>
> I say that the Notices were issued to the owners whose names were appearing in the repair cess register maintained by MCGM.

However, it was observed in some cases an actual owner differed then the names appearing in the cess register. Further till today MBRRB has carried out Structural Audit of 313 buildings out of 935 buildings and the present status regarding category is as under:

| Category | Description | Nos. of buildings |
|---|---|---|
| C-1 | Unsafe/ Dangerous/inhabitable structures need to be vacated and demolished | 124 |
| C2A | Partially unsafe/ Dangerous/ structures requiring Major structural repairs by partially vacating the dangerous part of structure | 49 |
| C2B | Structures requiring Major structural repairs without vacating the structure | 130 |
| C3 | Minor repairs | 10 |

**I say that considering the Structural Audit report received from the Licensed Structural Engineers the concerned Executive Engineer has cancelled 100 notices issued to the owners.** Further, in 119 cases MBRRB has issued letters to owners and tenants/occupants to make excess payment over & above permissible ceiling limit so that the buildings can be structurally repaired and brought to safe stage. I further say that, MHADA / MBRRB has decided to carry out Structural Audit of all the buildings for which notices under Section 79(1a) or 79(1b) has been issued.

I say that, after issue of notices under Section 79A(la) about in 67 cases the owners and the tenants/occupants has come forward and submitted redevelopment proposals of their buildings.SHA say that till today MBRRB has issued NOC's for redevelopment in 30 cases and in remaining 37 cases the proposals are under scrutiny.

I say that, under section 79A(1b), the proposed society of tenants/occupants of 38 buildings has submitted proposal for redevelopment. I say that, before granting NOC for redevelopment it is necessary to first acquired the property and 15 proposals are submitted to the Government in Housing Department for obtaining sanction for acquisition and same are under consideration."

(emphasis supplied)

26. The MHADA has clearly admitted the non-compliance of the

requirements of Section 79-A(1) when merely on visual inspection and without any data, such notices are issued by the Executive Engineers. A *fortiori* we are called upon to believe that the Executive Engineer happened to be at the building, he visually noticed that the same is not in good condition, hence notwithstanding what Section 79-A would provide, he thought it appropriate to issue the Section 79-A notice. There cannot be a higher highhandedness than this. Thus, there is no manner of doubt *inter alia* from the contents of the affidavit filed on behalf of the Board that such notices are issued purely at the *ipse dixit* of these officers and on a brazen non-compliance of the requirements of sub-section (1) of Section 79-A. It is also most surprising that some of these notices were issued and then are withdrawn, as if it is some kind of game. This is another surprise. Further a procedure/device and/or a method to apply such provision differently from what is stipulated by Section 79-A(1)(a)(b)(c), this more particularly, when there was no SOP of the nature as issued on 5 December 2024. In such circumstances, certainly, the Executive Engineers could not have assumed authority, power and jurisdiction alien to what has been provided by the Legislature for invoking Section 79-A, which was only two circumstances, as noted by us herein above i.e. Section 354 notices being issued by the Municipal Corporation and/or by the Competent Authority under the MHAD Act. If the actions of these officials of the Board as impugned are to be accepted to be the correct position in law, it would amount re-writing of the legislative provisions, namely, of sub-section (1) of Section 79-A, as also recognizing a regime of colossal arbitrariness and abuse of powers by such officials. This certainly cannot

be permitted.

27. The next issue which goes to the root of the matter is in regard to the consequence and fall out of Section 79-A, when it enables redevelopment only in a manner as ordained by sub-section (1) and clauses (a), (b) and (c) of sub-section (1). By issuance of these notices ultimately what is sought to be achieved and certainly at the behest of vested interests, is a *fait accompli* by exploiting the incentives on the redevelopment by such vested interest, by misuse of the official machinery of the MHADA/Board for the benefit of either the landlord or tenants. The issuance of such notices by such officials in the manner as resorted is only to enable and aid the sinister motives, to be achieved at the instance of one party against the other, in the redevelopment of a building without verifying whether it needs to go for redevelopment. As a Constitutional Court, we cannot fathom that the Executive Engineers who had no jurisdiction whatsoever to issue notices under Section 79-A and which was exclusively of the Board, have resorted to such large scale illegality. It is clearly seen from the scheme of Chapter VIII of the MHAD Act that the powers of the Board *inter* alia qua repairs of the cessed buildings are set out in the provisions of Sections 75*, 76*,, 77*, and 79* of MHAD Act. In the context of the scheme of these statutory provisions and the clear and unambiguous wordings of Section 79-A, the powers are required to be exercised only by the Board and in the manner as provided by such provision. It

* Section 75 – Board to exercise power and perform duties subject to the superintendence, direction and control of Authority.

* Section 76 – Duties relating to repairs and reconstruction of dilapidated buildings.

* Section 77 – Special Powers of Board.

* Section 79 – Power of Board to undertake building repairs, building reconstruction and occupiers housing and rehabilitation schemes.

is well-settled that once a power is conferred by the Legislature, it is required to be exercised only in the manner as stipulated and mandated by such provision or not at all. The principles in this regard are well settled as held in the celebrated decision of the Chancery Division in **Taylor V. Taylor**[2] following the maxim *Expressio Unium Est Exclusio Alterius*[3]. In such context, we may usefully refer to the observations of the Division bench of this Court, of which one of us (G.S. Kulkarni, J.) was a member, in **Raju Alias Devappa Anna Shetti & Ors. Vs. The State of Maharashtra & Ors.**[4], wherein the Division bench referring to the decisions of the Supreme Court in such context, made the following observations:

> "…...Such principle of law which is well settled, is borne out in the maxim Expressio Unius Est Exclusio Alterius. Such principle was applied in 1875 in the celebrated decision of the Chancery Division in Taylor v. Taylor[3] Thereafter, the Judicial Committee of the Privy Council in the case of Nazir Ahmed v. King Emperor, applying such principle in Taylor V. Taylor, held that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all. In State Of Uttar Pradesh vs Singhara Singh & Ors., the Supreme Court applying such principle, held as under:-
>
> > "8. The rule adopted in Taylor V. Taylor is well recognized and is founded on sound principle. Its result is that if a statute has conferred a power to do an act and has laid down the method in which that power has to be exercised, it necessarily prohibits the doing of the act in any other manner than that which has been prescribed. The principle beind the rule is that if this were not so, the statutory provision might as well not have been enacted…

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**2** (1875)1 Ch.D. 426

**3** The express mention of one thing implied the exclusion of another.

**4** 2025 SCC OnLine Bom 620

> 64. In Hukam Chand Shyam Lal Vs. Uniion of India & Ors. the Supreme Court recognized the applicability of the principles in Taylor v. Taylor (supra), when it was observed thus:-
>
> > "18. It is well settled that where a power is required to be exercised by a certain authority in a certain way, it should be exercised in that manner or not at all, and all other modes of performance are necessarily forbidden. It is all the more necessary to observe this rule where power is of a drastic nature and its exercise in a mode other than the one provided will be violative of the fundamental principles of natural justice…
>
> The recognition of the aforesaid principle is seen in several decisions of the Supreme Court including a decision of a recent origin in Tahsildar Vs. G. Thambidurai"(2017)12 SCC 642".

28. Adverting to such avowed principle of law and the mandatory legal requirements which Section 79-A ordains, it is difficult to accept the submission of Mr. Lad that the Executive Engineer can be held to be a Competent Officer to issue notices under Section 79-A. We may also observe that any Circular, Government Resolution or for that matter even guidelines which are issued in SOP, if the same militate against the specific mandate and requirements of Section 79-A, any assumption of power or authority in such executive directions cannot be countenanced. Moreover, there is no specific circular/direction which recognizes exclusive power of the Executive Engineer in issuing such notices in the context of Section 79-A of the Act. In fact this can never be.

29. Insofar as the SOP is concerned, in our opinion, issuance of such SOP looked from any angle is wholly unsustainable, inasmuch as, there are no powers which are conferred with the Vice Chairman to issue such SOP and more particularly when the SOP has a provision which completely defeats the statutory

scheme of the MHAD Act and more particularly the clear terms in which Section 79-A(1) is couched. The SOP being in the teeth of the provisions of Section 79-A is clear from the following contents of the SOP which reads thus:

> "A
> 1. The concern Executive Engineer or Dy. Engineer shall inspect the Buildings in routine course / during Pre Monsoon Survey (Photographs to be taken)
>
> The buildings which are prima facie found in dilapidated & dangerous condition, the structural Audit of such buildings be carried out. If Building is found in Category "C1" i.e. dangerous building, then such building shall be declared as dangerous by concern Executive Engineer. The copy of same shall be given to the proposed Co-op. Housing Society of the tenants/occupants & owners/landlords.
>
> 2. If buildings are found in Category of C2 A (Buildings which can be repaired while tenants stays in the building) as C2 B after structural audit (building which can be repaired by vacating the premises) then the Architect appointed by MBRRB shall prepare estimate of structural repair and if the expenditure for repair is more than Permissible Ceiling Limit (PCL) and if tenants do not deposit excess amount of repairs within 30 days after Notice, then Notice be given to proposed Co-op. Housing Society of the tenants/occupants & owners to vacate the premises and such building shall be declared Dangerous Building and the proposed Co-op. Housing Society of the tenants/occupants & owners be informed.
> …. .. … … .. ...
> E. i) In cases where Executive Engineer has already issued Notices to the proposed Co-op. Housing Society of the tenants/occupants u/s 79-A(1), the concern Dy. Chief Engineer shall follow the procedure of giving Joint Hearing to the Owner & tenants/occupants and thereafter shall pass appropriate Order on merits of the case. And if required Executive Engineer may get structural audit done of the Building & incase owners submit structural audit in contravention of MHADA structural audit, the same may be referred to Technical Advisory Committee (TAC). However, in this case if Technical Advisory Committee (TAC) approves Report of MHADA then further 06 months period may be given to owner to submit the proposal.
> ii) In case where Notice is issued to the proposed Co-op. Housing Society of the tenants/occupants u/s 79-A(1)(b) the concern Dy. Chief Engineer shall hold Joint hearing of owner along with tenant and pass an appropriate order if required by following process of Structural Audit and referring to Technical Advisory

> Committee (TAC). However in case Technical Advisory Committee (TAC) approves structural audit of MHADA then further 06 months period may be given to owners to submit proposal.
>
> (emphasis supplied)

30. A plain reading of Clause A(1)(supra) clearly creates a parallel machinery to what has been stipulated under sub-section (1) of section 79-A, which is certainly not permissible. It may be that the Executive Engineer has powers to undertake examination of the buildings, however the aforesaid contents of the SOP cannot be interpreted by the Executive Engineers to mean that they have been conferred power to issue notices under Section 79-A. We are also not aware as to how and in what manner, authority and purpose the Vice-Chairman quite belatedly has issued the said SOP and that too after more than 800 notices were issued by the Executive Engineers. Was the Vice-Chairman not duty bound to apply his mind to the provisions of Section 79-A and the requirements to be fulfilled in taking any action under Section 79-A. We are in fact surprised as to why the Vice-Chairman would not apply his mind, to such basic requirements the law would mandate him to adhere. Over and above this, we have a grave doubt as to the object and purpose of the SOP on the backdrop of already large number of notices issued in the year 2023-24 prior to the issuance of SOP dated 5 December 2024. The question which instantly arises to our mind is whether such SOP was issued with a design and in some manner to give a colour of legality to such bald, brazen and patent acts or illegalities of these Executive Engineers or whether there was a commonality of intention to sustain such notices and the illegal and unconstitutional actions taken thereunder affecting the

valuable rights of property guaranteed under Article 300-A of the Constitution of the different stakeholders relevant to the said provision. This apart, the rights guaranteed under Article 14 of such persons are rendered wholly illusory. Such is the seriousness of the matter. Thus, by no stretch of imagination, under the garb of the SOP, the Executive Engineers could not have issued such notices. In any event, considering the provisions of Sections 184, 185 and 186 of the MHAD Act, we have grave doubt whether the Vice-Chairman could have issued the SOP.

31. The last contention of Mr. Lad referring to the Government Resolution dated 22 August 2016 that would give the Executive Engineers power to declare a building as dangerous and to issue notice under Section 79-A, also cannot be accepted. The said Government Resolution only prescribes guidelines in regard to any mishap to be prevented of the buildings which have been declared to be dangerous by the Municipal Corporation by issuance of a notice under Section 354 of the MMC Act. The Government Resolution in no manner has intended to supplant the provisions of Section 79-A or dilute its rigours.

32. The aforesaid discussion would clearly show that there is much substance in all the contentions urged on behalf of the petitioners recorded in extenso in the foregoing paragraphs. The contentions as urged on behalf of the respondents cannot be accepted, considering the clear position in law and the implications which are brought about by the provisions of the MHAD Act.

33. Thus, considering the proportion and/or magnitude of the illegality and the high-handedness of such actions of the Executive Engineers of the MHADA/

Board, and the very severe impact of such actions on the Constitutional rights guaranteed under Article 300A read with Articles 14 and 21 of the Constitution, it is difficult to brush aside such actions lightly. Such valuable rights of the different stakeholders are brazenly violated by such actions of the Executive Engineers, thereby bringing about a situation of total lawlessness and absence of the rule of law, affecting hundreds of properties. Thus, our conscience would not permit us to merely grant an interim order of stay on such notices considering the seriousness of the issue. We are of the clear opinion that it would be imperative as also our duty as the Constitutional Court, to order an inquiry into such issues of highhandedness and abuse of powers by the concerned officials, to be undertaken by an independent committee appointed by the Court. It is in these circumstances, we are constrained to pass the following order:

## ORDER

(i) A Committee headed by **Shri. Justice J. P. Devadhar**, Former Judge of this Court alongwith **Shri. Vilas D. Dongre**, Retired Principal District Judge, is appointed to examine the issues in regard to the 935 notices issued under Section 79-A including, the subsequent actions to withdraw such notices, and the role of the different officials and/or motives if any, in issuance of these notices. Also the Committee shall examine the purpose, basis, intention and the authority of the Vice-Chairman to issue the SOP dated 5 December, 2024.

(ii) The MHADA shall place before such Committee the entire record in regard to all such notices, the details of the properties involved, names of

the officials who have issued such notices, and all other relevant details as the Committee may intend to have and/or it may deem fit and proper, in regard to the decisions taken to issue such notices.

(iii) We accept the statement of Mr. Lad that insofar as the 46 notices issued after the decision of the Division Bench in **Vimalnath Shelters** (supra) are being withdrawn. Let the MHADA/Board issue a notice of withdrawal of such notices along with the names of the parties to whom such notices were issued. Appropriate intimation of the withdrawal of these notices be issued to the concerned parties within one week from today.

(iv) We also accept the statement as made on behalf of the MHADA / Board that the 889 notices shall be kept in abeyance and no further action shall be taken under them, unless the parties have consented in the redevelopment and the redevelopment has progressed. However, all the 935 notices shall form subject matter of consideration of the Committee, so as to enable the Committee to form an overall opinion on these notices.

(v) Insofar as the impugned notices as assailed in these petitions are concerned, if they are not included in those being withdrawn by the MHADA / Board, the same shall remain stayed.

(vi) We keep open all other legal issues and larger contentions as urged on behalf of the petitioners, to be examined after the reply affidavits are filed on the legality of the provisions.

(vii) The Committee shall hear all these stakeholders in relation to the

notices and the SOP in examining the issues as underscored by us and make its report to the Court.

(viii) All contentions of the parties in that regard, to be urged before the Committee, are expressly kept open.

(ix) The report be placed before the Court preferably within a period of six months from today.

(x) The Vice Chairman of MHADA shall provide suitable venue / conference hall for the Committee to hold its sittings as also provide appropriate administrative and Secretarial assistance.

34. We now list the proceedings on **12 August 2025.**

35. At this stage Mr. Lad has requested for stay of the operation of this order. Considering the seriousness of the issues as involved, we reject the request.

(ARIF S. DOCTOR, J.) (G. S. KULKARNI, J.)