

## **Mrs. Mahabanoo Contractor and Anr. Vs. M/s. Kalikund Developers and Ors.**

Civil Appeal No. 9342 of 2026 @ SLP (C) No. 4498 of 2026 · Supreme Court of India · 2026-07-23 · J. B. Pardiwala · K. Vinod Chandran · F2J-C-1099

### **Full judgment text**

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K. Vinod Chandran, J.

1. Leave granted.

2. The appellants assert their status as 'occupant' and seek enforcement of the Permanent Alternate Accommodation Agreement (PAAA) dated 17.10.2019 produced as Annexure P4.

3. The respondent is the owner-developer of the building who obtained consent and possession from various occupants of the building; tenants continued for long in the cessed building, found unfit for human habitation by the local authority for the purpose of demolition and reconstruction/redevelopment on the assurance that all the occupants will be provided alternate premises for occupation in the reconstructed building.

The 1st respondent had proceeded for such redevelopment under the Maharashtra Housing and Area Development Act, 1976 (MHAD Act) on the basis of a No Objection Certificate (NOC) issued by the Maharashtra Housing and Area Development Authority (MHADA). The MHADA has overall supervision and is the regulatory authority under the MHAD Act and Development Control Regulations for Greater Bombay, 1991 (DC Regulations) inter alia ensuring reconstruction/redevelopment of cessed buildings and also securing alternate accommodation to the occupants of the old building; who vacated the premises and gave consent for such redevelopment, as per the agreements entered into.

4. The 1st appellant was an occupant with another, Ms. Gool Peshotan Unwalla, who died leaving the appellants together, as sole legal heirs entitled to succeed to her estate; the estate being the occupancy status in Room No.5 of the Third Floor of the old building. The MHADA after completion of the redevelopment issued two orders dated 28.05.2025 & 27.06.2025 and a Show Cause Notice (SCN) dated 10.07.2025; which were challenged in a writ petition before the High Court of Bombay. The first two impugned orders directed the 1st respondent to execute the PAAA in favour of the appellants as per the certificate of probate dated 30.01.2024 and register it as specified in PAAA and handover possession of the promised premises to the appellants. The SCN was against noncompliance of the earlier orders, threatening action under Section 91A of the MHAD Act.

5. A Division Bench of the High Court in the writ petition filed by the developer found that there was complete non-application of mind by the MHADA since the original proposal was to build 34 floors now confined to 30 floors. The developer's contention was that since the height was confined to 30 floors, the fungible Floor Space Index (FSI) was not utilized and hence the area available for reallocation would be lesser than that agreed to be accorded as a benefit to the different tenants who were in occupation earlier. It was noticed that the developer offered two flats with carpet area of 2108 sq. ft. (1054 sq. ft. each) comparable to the area occupied prior to redevelopment, which according to the appellants fell short of the agreed upon area in the PAAA.

It was found that the PAAA was a private arrangement, not amenable to writ jurisdiction; an appropriate remedy being available only before the civil court. The concession made by the 1st respondent that two flats would be kept encumbrance free till appropriate orders are passed in a civil suit, the writ petition stood disposed of. The Division Bench finding non-application of mind enjoined the MHADA from taking any further coercive steps as per the impugned orders and the SCN. The directions left the parties in limbo since though the undertaking of the developer that no encumbrance will be created on two flats till the civil court decides the matter was recorded, there was in fact no civil case pending between the parties.

6. A civil suit bearing CS No.4579 of 2026 was filed only on 06.02.2026, after the impugned judgment before the High Court of Bombay, by the developer. The plaint produced in the counter affidavit as Annexure - 1 indicates that the prayers made are against the very claim of the appellants, who are defendants 4 & 5 therein, for allotment in the reconstructed building, either as an occupant or as the legal heir of the deceased occupant, of the entire 3336.92 sq. feet area; quite contrary to and in violation of the undertaking made before the High Court. The PAAA is also challenged in its entirety as invalid, nonest and unenforceable.

7. Mr. Shyam Divan, learned Senior Counsel appearing for the appellants would emphasize on the definition of the term 'occupant' as available in the MHAD Act and Rule 33(7) of the DC Regulations which is the reigning consideration in identification of persons entitled to allotment in a project for reconstruction/redevelopment of cessed buildings. Mr. Divan, in addition to the PAAA pointed out various documents in which the 1st appellant, who along with the 2nd appellant is the legal heir and the joint occupant of one Ms. Gool Peshotan Unwalla. Various proceedings before the MHADA are also referred to, in which the only dispute raised in reallocation was that the appellants had no right to such allotment under the redeveloped project since the original occupant had died. The first appellant has the status of an 'occupant' and the appellants are the only legal heirs of the other occupant, which is evidenced from the probate proceedings issued by the competent court.

8. The High Court misconstrued the PAAA as a private arrangement, especially since it was entered into under a statutory scheme as provided under the MHAD Act and the DC Regulations which facilitated redevelopment/reconstruction of cessed buildings so that the landlord could avail the benefit of having additional space while ensuring that the tenants who were continuing in the old building is not thrown out to the streets. The PAAA is regulated by the statute and the regulations, the enforcement of which is an authority conferred on the MHADA under whose NOC the project itself is commenced. The space as delineated in the PAAA by the developer has to be necessarily handed over to the appellants is the contention.

9. Mr. Vinay Navare, learned Senior Counsel, on the other hand submits that the PAAA is a concocted document. It was entered into by a person who was expelled from the 1st respondent for misdemeanours carried out without proper authorisation, one of which was the instant PAAA. It is further pointed out from the affidavit in reply filed by the 1st appellant before the High Court, as produced at Annexure P11, that the probate proceedings are noticed as Testamentary Petition No.1607 of 2022 initiated on 27.02.2022 based on the Will of 27.05.2009. While the PAAA dated 17.10.2019 speaks of an application for grant of probate of the last Will and testament of Ms.Gool Peshotan Unwalla is pending.

It is asserted that Ms. Unwalla was the original tenant and the only tenant of Room No.5 situated on the third floor of the building, and the recital including the 1st appellant as 'occupant' along with the original tenant was only by mistake. It is further argued that in the certified list approved by MHADA the 1st appellant appears only in the column of 'occupants' and not as a 'tenant' and she has no right to get allotment on redevelopment, especially when the rent receipts, the contemporaneous electricity and telephone bills and the notarized irrevocable consent for redevelopment are in the sole name of the original tenant.

10. It is argued that the original tenant passed away on 21.03.2012 and she was the sole occupant of the whole premises. The appellants as legal heirs have no right to succeed to the tenancy which stood extinguished on the death of the original tenant. It is also argued that as per the certified list, the total carpet area of the original tenement was 185.09 sq. mtrs. against which the total built up area as per the PAAA comes to 219.81 sq. mtrs.; far in excess. It is urged, without prejudice, that if at all, the appellants are only entitled to two flats each having an area of 1054 sq. ft. (Flat No.1403 and 1702) comparable to the area occupied in the original tenement, which was offered to the appellant even before the High Court, which offer was declined.

It is urged that even now the 1st respondent is ready to concede the said two flats to the possession of the appellants while the appellant has absolutely no right over the third premises, which is far in excess of the space occupied in the original tenement. The suit now filed before the High Court too is also urged to restrain us from interfering with the impugned order which had left the parties to agitate their cause before the civil court which is the remedy as available to the parties to the dispute.

11. Mr. Chirag M. Shroff, learned counsel appearing for the MHADA emphasized that it is the statutory authority which issues an NOC for redevelopment under Regulation 33(7) of the DC Regulations read

with Appendix III thereof for old, cessed buildings. There is a statutory procedure involving the preparation of a certified list of eligible occupants which certified Ms. Unwalla and the 1st appellant as eligible tenant/occupant.

The orders passed by MHADA is only to facilitate due occupation by the eligible tenants/occupants who have vacated the land for the purpose of redevelopment/reconstruction on the basis of the NOC issued by MHADA. Only if the PAAA is executed, registered and the possession handed over to all the original certified occupants the developer gets a right to seek 'Occupation Certificate'. It is asserted that MHADA had exercised its statutory powers judiciously and in the best interest of the tenant/occupants based on the records which were submitted by the 1st respondent itself for the purpose of NOC.

12. The MHAD Act defines only 'occupier' under Section 2 (25) which includes (i) any person who is liable to pay to the owner the rent or any portion of it; (ii) the owner in occupation or otherwise using his land or building; (iii) a rent-free tenant; (iv) a licensee in occupation; or (v) any person who is liable to pay damages for the use and occupation; of land and building. An occupancy, hence is not a statutory tenancy which continues at the will of the owner or on the strength of an agreement. A person in occupation without any rent, or liable to pay the owner damages, brings in even a rank trespasser who can have a valid claim of occupancy based only on her possession enabling reallocation of space, when there is attempted a redevelopment/reconstruction. Rule 33(7) under which the proceedings of redevelopment/reconstruction clearly provides for the application of MHAD Act and specifies landlords and/or 'occupiers' of a cessed building.

13. Annexure P1 is the public notice issued by the respondent initiating the process for obtaining the NOC of MHADA for the building known as "18/20, 20C, 20D, 20A, 20F, WIMBRIDGE COMPOUND" situated at N.B. Marg, Grand Road (W), free from all encumbrances but subject to monthly tenancies clearly shown in the statement as appended to the public notice. At Item No.24 of the first column having the heading 'Name of the tenants' appears Mrs. Gool Peshotan Unwalla, while in the next column for 'Occupants' along with the original tenant, the 1st appellant's name is also shown.

The public notice specifically called upon any person having claim or interest against the same property to proffer their claim, in writing, to the developer/owner within 15 days of the publication. Relevant is the fact that the public notice issued by the developer/owner as early as in 2010, when the original tenant was alive showed the 1st appellant to be in joint occupation of the premises in the old building. There is also no allegation that any other person had made a claim to the specified premises shown to have been occupied by the original tenant and the 1st appellant any time after the public notice dated 21.04.2010.

14. The NOC issued by the MHADA is produced as Exhibit 15 in I.A. No.42662 of 2026 which is dated 21.09.2010; which is obviously after the public notice and presumably since no claims were raised or those raised were settled amicably. The NOC stipulates that all occupants of the old building shall be accommodated in the redeveloped building and given equal carpet area as occupied by her for residential purposes, subject to a minimum and maximum as provided in the MHAD Act.

Clause (2) specifies that the tenements in the reconstructed building shall be allotted by the landlord to the occupiers as per the list certified by the Mumbai Repairs and Reconstruction Board (MBRR Board). Clause (15) brings in a rigor in so far as the full and final occupation certificate for any free sale building/component would be given only after all the occupants as certified by the Executive Engineer of the MBRR Board, including those staying in the pre-transit camps are housed in the newly constructed buildings.

This ensures that the owner/developer would be entitled to its share of the additional space in the new building only after complete rehabilitation of the 'occupants' of the old building. The list of certified tenants appended to the NOC as certified by the Executive Engineer of the MBRR Board also shows Ms. Unwalla as the tenant and herself and the 1st appellant as the occupants, as was shown in the public notice of the owner/developer. The revised NOC as available in the same I.A. produced as Exhibit E dated 21.08.2012 reiterates the above mandate.

15. The PAAA, Annexure P4 executed on 17.10.2019 concedes to the 1st appellant 219.81 sq. mtrs. + 35% fungible area i.e. in all, 309.98 sq. mtrs. and thus one flat of 1227.42 sq. ft and two flats of 1054.75 sq. feet each. Clause (v) of the said agreement stipulating the above area measurements also speaks of the said area being inclusive of fungible area as permissible under DC Regulations; to be constructed in the new building with three covered parking space in the Podium; which are referred to

as the Permanent Alternate Accommodation. On the very same day, the possession is handed over to the 1st respondent as per Annexure P25 produced in I.A. No.187553 of 2026. Pertinently, the possession was handed over by the 1st appellant, the original tenant having died in the year 2012. Annexure P25 specifically indicates the possession having been accepted by the developer/owner, which document is not at all disputed.

16. The approved plan was amended on 30.06.2021 by the 1st respondent which is produced as Annexure P16 in I.A. No.42662 of 2026. As per Annexure P16 the amended plan, Ms. Unwalla was in occupation of carpet area excluding balcony of 294.95 sq. mtrs. (Column 9) and the built-up area as per the plan of rehabilitation is shown as 324.45 (Column 19) while the total area of the three flats would come to 309.98 sq. mtrs. (3336.50 sq. feet). The approved plan, as amended and the measurement shown therein more or less align with the measurement of the premises which was agreed to be conceded to the 1st appellant, as per the PAAA.

17. Despite the further communication of MHADA to the developer as per Annexure P26 dated 22.11.2022 to comply with the extended time limit i.e., up to 21.09.2023 the flats in the reconstructed building were not handed over. The 1st appellant approached the MBRR Board as per Annexure P27 dated 10.06.2024 seeking MHADA's intervention to register the PAAA and handover vacant and peaceful possession of the premises in the new building. The continued refusal of the developer to handover the premises to the appellants resulted in the orders which were impugned before the High Court.

18. The writ petition filed is produced as Annexure P9 in which the appellant has produced a consent affidavit of 26.02.2009, showing the appellant as an occupant, which is alleged to have been stated wrongly. The other documents, including the certified list of tenants were also alleged to have shown the name wrongly; all of which are documents which are even prior to the date of the public notice in the year 2010. It is alleged that the person who executed the PAAA on behalf of the developer, though was authorised to represent the developer, serious disputes arose between the present managing partners and the said person and his associates, resulting in criminal/arbitration proceedings having been initiated against them.

It is also stated that it was in March-April 2024 that the present partners came into the management of the company. It is pertinent that after the present management came into office, there was neither communication addressed to the MHADA against the PAAA or the validity of the claim of the 1st appellant as an occupant nor was any denial of such claim addressed to the 1st appellant herein whose name admittedly was available in all the contemporaneous documents as an occupant from 2009 when the consent affidavit was obtained.

19. The anomaly pointed out by the learned Senior Counsel; the PAAA in its recital having noticed the pendency of a probate application, which admittedly was initiated much later does not vitiate the agreement as such. Even without a probate, the 1st appellant was entitled to the premises as an occupant as per the documents of MHADA and the developer. Further the consent obtained for redevelopment and the possession handed over was specifically from and by the 1st appellant.

The developer cannot casually after all these years having obtained a consent, leading to vacation of premises and possession being handed over for the purpose of redevelopment, on the promise of allotment of premises as specified in the PAAA, turn around and challenge the very claim raised by the 1st appellant as an occupant. The probate if at all is by way of abundant caution since the developer had defaulted to handover the premises even after its completion.

20. The writ petition in its averments also speaks of the inter se dispute between the partners of the developer, having been settled by mutual understanding, having been reduced into writing as per the Consent Terms dated 09.03.2024. It is the contention of the developer that as per the Consent Terms, any writing, document or agreement executed by the earlier partners with the original tenant or her heirs or Respondent No. 4 herein shall not be binding on the first respondent firm in any manner. We are surprised to see such a contention having been raised in a writ petition, especially since there is no averment as to the beneficiaries of the agreements executed by the erstwhile authorised partner, having been made a party to the Consent Terms.

The settlement of inter se disputes between the partners without the junction of the beneficiary of the PAAA, who has the right to seek a validly executed conveyance and handover of the premises, cannot absolve the developer from his obligations as per the validly executed agreement based on which

vacant possession of the premises was obtained, the old premises demolished and the new building constructed wherein the earlier occupants had a clear claim for allotment of alternate premises with excess fungible area.

21. The mere fact that fungible area was not fully utilised cannot be a ground to allow the developer to renege from its agreement to redevelop and allot alternate premises to the occupants of the old building as agreed upon. Significant is also the fact that despite the Consent Terms having been brought into effect in the year 2024 and the 1st appellant having raised a claim before MHADA in which the developer also participated the order dated 28.05.2025 indicates that the Advocate who appeared on behalf of the developer raised only a contention that the 1st appellant did not produce any document showing her relationship with Ms. Unwalla who was again pointed out as certified along with the 1st appellant as the occupant of Room No.5 in the third floor of the captioned property. The MHADA by the said order after looking at the documents directed execution of the PAAA with the 1st appellant as per the probate dated 30.01.2024.

22. As we already observed, even without the probate, the 1st appellant was entitled to the premises in the new building as per the PAAA executed with her; validating her status as an occupant which cannot be merely brushed aside as having been wrongly executed which contention falls in the wake of the various contemporaneous documents in which she was clearly shown as the occupant. The orders dated 28.05.2025 and 27.06.2025 passed by the MHADA which are produced as Annexures P6 and P7 are perfectly sustainable under the statutory scheme of reconstruction/redevelopment of cessed buildings. The failure of the developer to comply with the orders led to initiation of SCN dated 10.07.2025 which is produced as Annexure P8. The final order of MHADA passed on 30.10.2025 was passed immediately after the impugned order of the High Court; obviously without being made aware of the restraint issued in the impugned order.

23. We are satisfied that the impugned judgment erred in restraining MHADA from taking further proceedings as per the orders issued against the developer with respect to the execution of the PAAA, handing over of possession of premises to the 1st appellant herein and the show cause notice issued. We set aside the impugned judgment of the High Court and in that circumstance Annexure P10 order is revived which we find to be perfectly valid and sustainable in the facts and circumstances of the case.

24. In this context, we have to also notice the suit filed by the developer after the undertaking before the High Court that the two flats were conceded by the developer as the 1st appellant's entitlement. Reliefs were sought challenging the PAAA in its entirety and also seeking interference to the very claim raised by the 1st appellant as a joint occupant of the premises in the old building. We are of the opinion that the Civil Suit itself is misconceived and mala fide in the context of the undertaking given before the High Court which is sought to be resiled from, which more than reflects the conduct of the developer/landlord.

25. We direct the 1st and 2nd respondents to execute the PAAA and handover possession of the three apartments in the new building within a period of two months from today, failing which the appellants would be entitled to the damages at the monthly rental value for the three flats in that location, which they would be entitled to recover from the 1st and 2nd respondents. We also make it clear that the appellants would be entitled to sue for damages for the delay caused in delivering the property, computed on the value as hereinabove mentioned. In the interest of justice, we are also of the opinion that the High Court be directed not to proceed with Civil Suit No.4579 of 2026.

26. With the above directions, the appeal stands allowed with costs of Rs.50,000/- (Rupees Fifty Thousand) each before the High Court and this Court, payable by the 1st and 2nd respondents to the appellants herein.

27. Pending application(s), if any, shall also stand disposed of.

.....J. (J. B. Pardiwala)

.....J. (K. Vinod Chandran)

New Delhi;

July 23, 2026.

Source disclosure: Complete sanitized public judgment text retained for research; official-primary replacement remains pending.

Disclaimer: General information only. Verify the current legal position and obtain professional advice before acting.