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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL WRIT PETITION NO.2565 OF 2001

The Brihanmumbai Mahanagarpalika ... Petitioner
Versus
P. Ahmed Rehman and ors. ... Respondents

WITH

CIVIL WRIT PETITION NO. 5280 OF 2001

Municipal Commisioner of Bombay
Municipal Corporation of Greater Bombay & anr. ... Petitioner
Versus
Bashir Kunjamy and ors. ... Respondents

Mr. Narendra Walavalkar, Senior Advocate a/w Mr. D. R. Kawale for the Petitioner (BMC) in WP/5280/2001.

Mr. D. R. Kawale for the Petitioner (BMC) in WP/2565/2001.

Mr. A. I. Patel, Addl. GP with Smt. V. R. Raje, AGP for Respondent-State.

Mr. H. S. Anand for Respondent No.1 in both Petitions.

Mr. Kishor Pawar, J.E, officer present in Court.

CORAM : M.M. SATHAYE, J.

DATE : 5th OCTOBER, 2026

P.C. :

1. Both these Petitions are filed by the Petitioner - Municipal Corporation of Greater Mumbai ('the Municipal Corporation', for short), invoking Articles 226 and 227 of the Constitution of India.

2. Writ Petition No.2565 of 2001 is filed challenging the Judgment and Order dated 15.03.1999, passed by the President, of Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Tribunal, Mumbai ('the Tribunal' for short) in

Miscellaneous Application No.185 of 1998. By the said order, the Application filed by Respondent No.1 was allowed thereby quashing and setting aside the notice issued by the Petitioner / Municipal Corporation under Section 299 (wrongly mentioned as 351) of the Bombay Municipal Corporation Act, 1888 ('BMC Act', for short). Respondent No.1 in this petition claims to be the occupier of a shed situated at CTS No. C-118, Marath D'silva Compound, Land No.328/2 Sherley, Bandra (W), Mumbai 400 051.

3. Writ Petition No.5280 of 2001 is filed challenging the Judgment and Order dated 15.03.1999, passed by the same Tribunal in Miscellaneous Application No.53 of 1999. By the said order, the Application filed by Respondent No.1 therein, was allowed directing the Petitioner / Municipal Corporation, not to demolish the structure without giving Respondent No.1 alternate similar accommodation prior to demolition, and further directing that the notice for demolition, if any, should be given not less than four days prior to the proposed date of demolition. In this case, no notice was issued by the Petitioner / the Municipal Corporation; however, Respondent No.1 had directly filed Application based on apprehension that the Petitioner / Municipal Corporation would demolish the structure in question. Respondent No.1 in this writ petition claims to be the occupier of a shed situated at the junction of 13th and 15th Road, Near Khar Gymkhana, Khar (west), Mumbai – 400052.

4. Learned Senior Advocate appearing for the Petitioner / Municipal Corporation in Writ Petition No.5280 of 2001, submitted that both the impugned orders are passed without jurisdiction, as the Authority does not have jurisdiction to entertain any original Application as filed by Respondent No.1. He submitted that in both these Petitions, the area in question where the structures are situated are not declared as slum areas, therefore the Tribunal can not have any jurisdiction under Maharashtra Slum areas (Improvement, Clearance and Redevelopment) 1971 ('the Slum Act', for short). He contended that applications as filed by Respondent No.1 could not have been entertained. He submitted that under Section 45 of the Slum Act, no power is conferred except that of appellate jurisdiction, for which there has to be a declaration of the Slum. Relying on the Judgment of this Court in ***BrihanMumbai Mahanagarpalika Greater Mumbai Vs. Dy. Collector (ENC) & Competent Authority & Ors. [Writ Petition (Civil) No.5286 of 2001 decided on 21.02.2025.]***, it is submitted that the interplay between the Slum Act and BMC Act, so far as the power of the Municipal Corporation is concerned is considered. He submitted that judgment of the Division Bench of this Court in ***Suo Motu PIL No.01 of 2020*** in the case of ***Jilani Building at Bhiwandi Vs. Bhiwandi Nizampur Municipal Corporation and ors***, has been considered and it is already clarified that until an order is made for demolition of the building under the Slum Act, the power of the

Municipal Corporation to take action under the Municipal and other laws, remains unaffected. He requested that at least similar observations as in *Writ Petition (Civil) No.5286 of 2001* be given about the action that is initiated by the Petitioner / Municipal Corporation against Respondent No. 1 in both petitions. Also, in Writ Petition No.5280 of 2001, certain contentions are raised that in the documents annexed to the Affidavit-in-Reply by Respondent No.1, the area mentioned in recent licence copies differ from the original area of the structure.

5. On the other hand, the learned Advocate for Respondent No.1, appearing in both Petitions submitted that, in Writ Petition No.2565 of 2001, the structure was situated on a private property which was affected by the Town Planning scheme and that the structure had been in existence since prior to 1960-1961. He submitted that, considering various Resolutions as well as the policy of the Municipal Corporation in respect of providing alternate accommodation, Respondent No.1 in Writ Petition No.2565 of 2001 was and is entitled to such alternate accommodation. He further submitted that the Judgment in said PIL as well as the said Judgment of the Single Judge referred above, will not apply to the facts of the present case. He further submitted that the Tribunal, in both cases, has passed orders giving reasons and no interference is required. So far as Writ Petition No.5280 of 2001 is concerned, he submitted that the

documents on record have already been considered by the Tribunal, holding that the structure is situated in slum and the same is in existence prior to the applicable cut-off/datum line of 01.01.95. He submitted that Government Resolution dated 10.09.1996 was also considered. He submitted that no interference is required.

6. I have considered the rival submissions and perused the record.

7. Before the dispute is considered on facts, it will be apposite to consider the provisions of the Slum Act. Perusal of the Slum Act shows that the Tribunal is defined under Section 2(i) of the Slum Act, and it means, the Tribunal constituted by the State Government. Section 4(3) of the Slum Act provides that any person aggrieved by a declaration (of slum area) under section 4(1) can file appeal to the Tribunal. Section 17(6) of the Slum Act provides that if a person does not agree with the amount of the net average monthly income determined by the Chief Executive Officer under Section 17(5), he may prefer an Appeal to the Tribunal. Section 18(2) of the Slum Act provides that in case of the apportionment of compensation, if any dispute arises, then the Competent Authority may refer the dispute for the decision by the Tribunal. Section 23 of the Slum Act, provides that if a person aggrieved by an order of the Competent Authority refusing to grant the permission under Section 22(1) or Section 22(1A), he may file an Appeal to the Tribunal. Section 42 of the Slum

Act bars the jurisdiction of Civil Court in respect of any matter which the Tribunal is empowered by the Slum Act to determine. Under Section 44 of the Slum Act, where any expenses are incurred by the Competent Authority under the provisions of the Slum Act and which are to be recovered as arrears of the land revenue and such claim of the Competent Authority is disputed, then such question can be referred to the Tribunal. Section 45 provides for the powers of the Tribunal in exercising the jurisdiction conferred upon it under the Slum Act.

8. Thus the Tribunal is a creature of statute and it may exercise only those powers expressly conferred by the Act. It cannot assume a general power to decide matters not specifically assigned to it.

9. Therefore, it is clear that application challenging the notices issued under BMC Act or any application made on basis of an apprehension that action will be taken under BMC Act against the structure, do not fall within the jurisdiction of the Tribunal. At least, no provisions was pointed out on behalf of Respondent No.1 from the Slum Act which can be said to bring the applications filed by Respondent No.1 within the jurisdiction of the Tribunal.

10. In both the cases, perusal of the impugned orders show that the Tribunal has arrived at a finding, either about the structure being

situated in a slum or that the provisions of the Slum Act are applicable or that it has jurisdiction to pass order, without discussion about necessary factual prerequisites. In both the impugned orders, no notification or declaration under section 4 of the Slum Act is even referred to, much less discussed.

11. The observations about applicable policy of the Municipal Corporation based on a Resolution dated 30.3.1964 or under Resolution No. 1998 of 1964 regarding attempts for giving alternate accommodation etc. clearly appear to be without jurisdiction. Those considerations would squarely fall in civil suit or writ petition if notices issued by Petitioner / Municipal Corporation is to be challenged or its apprehension is to be redressed.

12. In any case, nothing is shown to the Court as having been considered by the Tribunal, which could lead to a positive conclusion regarding applicability of the Slum Act or the Tribunal having jurisdiction to consider applications directly. Whether the structure is on pavement, whether the structure is on private property affected by the Town Planning Scheme or whether Respondent No.1 is entitled to any alternate accommodation based on any policy or resolution are not considerations which the Tribunal could have gone into.

13. Therefore, the applications as filed by Respondent No.1 directly challenging the notices issued or apprehended action under BMC Act

could not have been entertained by the Tribunal. The Tribunal has not given any satisfactory reason or discussed factual aspects as to how the Slum Act applies.

14. Going one step further, it is important to note that even if the Slum Act applies, in view of the law laid down in *Jilani Building at Bhiwandi (supra)*, which was then considered by the single Judge of this Court in WP No.5286 of 2001, it is now settled that until an order of demolition is made by the Competent Authority under the Slum Act, the powers of the Municipal Authorities remained unaffected or undiminished.

15. In the aforesaid facts and circumstances and for the reasons indicated above, impugned orders passed by the Tribunal are perverse and interference is required.

16. **Hence, both the writ petitions are allowed.** Both impugned orders dated 15.03.1999 are quashed and set aside. Rule is made absolute in above terms. No order as to costs.

17. All concerned to act on duly authenticated or digitally signed QR verifiable copy of this order.

(M.M. SATHAYE, J.)