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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

**CIVIL APPLICATION NO.2808 OF 2015
IN
WRIT PETITION NO.9363 OF 2014**

Dharmaveer Anand Dighe Vyayamshala

..Applicant.
Intervenor.

IN THE MATTER OF

Jay Trimurti Co-op. Hsg. Society
V/s.

..Petitioner

Thane Municipal Corporation and Ors.

..Respondents.

Mr.S.M.Oak i/b. Mr.Sagar Anant Joshi for applicant-intervenor.

Mr.Yogendra Pendse for the petitioner.

Mr.R.S.Apte, Senior Advocate i/b. Mr.Mandar Limaye AGP for
respondent Nos.1 and 2.

Mr.V.S.Gokhale, AGP for respondent No.3.

**CORAM : A.S.OKA AND
V.L.ACHLIYA, JJ.**

DATED : 13TH OCTOBER, 2015

P.C. :-

1. Heard the learned counsel appearing for the applicant,
the learned senior counsel appearing for the Municipal Corporation,
the learned counsel appearing for the writ petitioner and the
learned AGP for the State.

2. The dispute in the main writ petition pertains to a

structure constructed on a portion of property surrendered by the petitioner society to the Thane Municipal Corporation. The said portion was earmarked as a set back area. The contention raised in the petition by the petitioner which is a co-operative society is that an illegal structure has been erected on the land surrendered by the petitioner. There is a reply dated 28th September, 2015 filed by Shri Shankar Ravji Patole, the designated officer in which the Thane Municipal Corporation has relied upon the order of demolition dated 15th September, 2015 and it is stated that the illegal construction will be demolished.

3. The contention of the applicant-intervenor is that the structure has been constructed by the Municipal Corporation itself and, therefore, the same does not require any development permission. It is contended that the Municipal Corporation has executed an agreement of lease in favour of the applicant on 23rd October, 2003 which was to remain in force for a period of 11 years which came to an end on 22nd October, 2014. He pointed out that the applicant is running Gymnasium in the said premises. He submitted that on the basis of the demand notice dated 6th October, 2015 issued by the Deputy Engineer of the Estate Department of the Municipal Corporation, the applicant has deposited the entire arrears of rent and in fact rent upto March, 2016 has been deposited which has been accepted by the

Municipal Corporation. He invited our attention to the information furnished to the applicant by the Municipal Corporation under the Right to Information Act, 2005 on 6th October, 2015. He contended that by spending a sum of Rs.1,99,150/- the Municipal Corporation has provided equipments in the Gymnasium. He pointed out that further improvements were made from 2005 onwards in the structure of the Gymnasium by the Municipal Corporation. He submitted that the present rent is Rs.14,935/- per year. He submitted that as the rent has been accepted till March, 2016, the applicant has a right to occupy the said premises till March, 2016. He urged that till the Municipal Corporation completes the procedure of executing a fresh lease, the applicant cannot be disturbed. Moreover, he submits that the structure cannot be said to be illegal as it is constructed by the Municipal Corporation itself.

4. The submission of the learned counsel for the writ petitioner is that no one had any authority to construct the structure on a set back land. He urged that the petitioner surrendered the area of 1773.50 square meters which was a set back area to be used for road widening on which the said structure has been erected.

5. On the last date, we had called upon the learned counsel appearing for the Municipal Corporation to produce the

relevant file. We have carefully perused the file. The applicant has produced a compilation of documents which we have perused. We find that before purportedly letting out the structure which was admeasuring 70 square meters, there was no fair and transparent procedure followed by the Municipal Corporation. There was no public notice given inviting applications to run the Gymnasium. The law laid down by the Apex Court in the case of **Akhil Bhartiya Upabhokta Congress V/s. State of M.P.**¹ is that a public property can be disposed of only after following a fair and transparent procedure. Any procedure which does not permit all the eligible persons to compete and seek allotment cannot be said to be a fair and transparent procedure. There is a letter dated 10th June, 2002 addressed by the local elected municipal councillor recommending that the structure may be allotted to the applicant. The said letter itself records that the sports equipments have been provided in the said structure. There is an undated application on record filed by one Krishna Jairam Sawant for allotment of the said structure for a period of 30 years. Even the recommendation of the local councillor is that the structure may be allotted for 30 years. There is a recommendation of the Mayor of the City by a letter dated 22nd August, 2003 recommending that the structure may be allotted to the applicant. We do not find any resolution passed either by the general body or by the Standing Committee

¹ (2011) 5 SCC 29

confirming the decision of the Commissioner to let out the said structure to the applicant. Under clause (c) of section 79 of the Maharashtra Municipal Corporations Act, 1949 (for short "the said Act"), the Commissioner could let out the said structure only with the sanction of the Municipal Corporation. The Resolution dated 23rd March, 2001 passed by the general body only resolves that the structure may be allotted to a third party. There is a note prepared on 24th June, 2003 which is signed by the Municipal Commissioner. The note initially recorded that the applicant has sought the said premises on rental basis for 30 years. The figure "30" is struck off and figure "11" is written thereon. There are no initials made by any officer against the said correction. There is nothing on record to show that any inquiry was made to determine what was the market rate of rent in respect of the structure.

6. We have perused a copy of unregistered deed dated 23rd October, 2003. It records that the yearly rent of Rs.5,000/- will be payable for the newly constructed structure admeasuring about 700 square feet in which there were also equipments procured by the Corporation. The yearly increase by 10% was provided. The agreement does not provide for payment of any rent in respect of the equipments. Thus, in our view, the action of granting lease to the applicant is completely contrary to law and in particular section 79 of the said Act. Moreover, the Municipal Corporation took no

steps against the applicant though the period of lease expired on 22nd October, 2014. Not only that no action was taken, during the pendency of the writ petition, after order of demolition was passed by the Municipal Corporation, the Deputy Engineer of the Estate Department of the Municipal Corporation issued a notice dated 6th October, 2015 to the applicant, calling upon the applicant to pay the arrears of rent as well as the rent for the year 2015-16. This conduct on the part of the municipal officers calls for a serious inquiry at the hands of the Commissioner of the Municipal Corporation.

7. There is another serious aspect of the matter. The applicant is relying upon the information furnished under the Right to Information Act dated 6th October, 2015. It records that on 19th August, 2005, a sum of Rs.1,08,700/- was spent by the Municipal Corporation for construction of a shed. Moreover, in the year 2006, a sum of Rs.8,97,000/- was spent by the Municipal Corporation for construction of an additional floor. In the year 2006 and in the year 2011 there was a large scale renovation carried out and the amounts spent for the renovation by the Municipal Corporation were Rs.99,900/- and Rs.5,77,000/- respectively. The additional construction made in the year 2006 was allowed to be occupied by the applicant without following any procedure. In fact, the additional construction could have been allotted only by

following a fair and transparent procedure. Thus, not only that the lease was granted to the applicant in respect of the original structure, but the applicant was permitted to use the additional structure constructed in the year 2006 without payment of any additional rent. Thus, between 2006 to 2011, the Municipal Corporation has spent more than Rs.16 lacs in making additional construction and on renovation of the structure. As against this, in the year 2015-16, the yearly rent of Rs.14,935/- has been recovered from the applicant. Moreover, even according to the case of the learned counsel appearing for the applicant, there are number of persons who have been granted membership of the Gymnasium by the applicant. The applicant is recovering charges from its members.

8. The sum and substance of the aforesaid discussion is that even assuming that the lease was validly granted to the applicant on 23rd October, 2003, the same has come to an end on 22nd October, 2014. Thereafter, the applicant continues to be in possession. Thus, at present the applicant has no right in respect of the structure and, therefore, the application for intervention at the instance of the applicant cannot be entertained.

9. We direct the Commissioner of the Thane Municipal Corporation to hold an inquiry into the conduct of the municipal

officers of not taking any action against the applicant though the lease has expired on 22nd October, 2014. The Commissioner shall also inquire into the role played by the Deputy Engineer of the said department or any other officer who issued the notice on 6th October, 2015 calling upon the applicant to pay rent upto 31st March, 2016 and who accepted the rent upto 31st March, 2016.

10. Subject to the above direction, the application is rejected. The report of the inquiry be submitted by the Municipal Commissioner within a period of two months from today.

11. Place the petition under the caption of direction on 30th November, 2015 for reporting compliance.

12. The learned counsel appearing for the applicant prays for continuation of the ad-interim relief granted on 8th October, 2015 for a period of six weeks from today. The learned counsel for the petitioner opposed the prayer. We extend the ad-interim relief granted on 8th October, 2015 for a period of six weeks from today. We, however make it clear that this order will not prevent the Municipal Corporation from proceeding against the applicant for taking over the possession of the structure.

(V.L.ACHLIYA, J.)

(A.S.OKA. J.)