

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.3291 OF 2017**

The Municipal Commissioner, The
Municipal Corporation of Greater Mumbai ... Petitioner
Versus
Sawji Hira Singal ... Respondent

Mr. S.S.Pakale with Mr. Vinod Mahadik i/by Mr. V.H.Deshpande, for Petitioner.
Mr. Haresh Shivdasani, for Respondent.

**CORAM: S.J. KATHAWALLA, J.
DATE: 21ST NOVEMBER, 2017**

P.C.:

1. The Petitioner challenges the Judgment and Order dated 3rd April, 2016 passed by the Labour Court, Mumbai in (IDA) Application No.134 of 2013.
2. Heard the learned Advocates appearing for the parties.
3. Rule.
4. Rule is made returnable forthwith.
- i. The Petitioner Corporation shall pay an amount of Rs.5,97,221/- to the Respondent in view of the Judgment and Order dated 3rd April, 2016 passed by the Labour Court within a period of eight weeks from the date of this order.
- ii. The Petitioner Corporation has alleged that the Respondent is in unauthorized occupation of the premises / staff quarter namely 61/A, New Municipal

Chawl No. 6, Worli Naka, Mumbai - 400 018 (the Suit premises) and that it has a right to withhold the provident fund amount till he hands over the Suit premises, which the Respondent disputes. The issue in respect of the Suit premises is required to be decided under Section 105B of the Mumbai Municipal Corporation Act, 1888 (MMC Act, 1888).

Thus, the Petitioner Corporation shall be at liberty to conduct and complete the enquiry as per the Order dated 6th December, 1982 passed by the City Civil Court in Misc. Appeal No. 78 of 1982 against the Respondent employee under Section 105B of the MMC Act, 1888, which enquiry shall be concluded within a period of four months from the date of this Order.

iii. The enquiry shall commence on 18th December, 2017 at 03.00 p.m. when the Respondent shall appear before the Enquiry Officer along with a representative of his choice and cooperate in conducting the enquiry under Section 105B of the MMC Act, 1888.

iv. In the event the Petitioner Corporation finally succeeds in establishing that the Respondent is in unauthorized occupation of the Suit premises, the Respondent and his family members agree and undertake to vacate the Suit premises and handover the same to the Petitioner Corporation as per the final Orders/ directions of the Competent Authority and / or the Competent Court, as the case may be.

v. In the event of it being finally held before the Competent Authority and / or

the Competent Court, as the case may be that the Respondent is required to pay (including refund of the amount paid under this Order), any amount whatsoever to the Petitioner Corporation for unauthorizedly occupying the Suit premises, the Respondent and his son Shri Magan Sawaji Singal, who is in the employment of the Petitioner Corporation, undertake to pay the said amount to the Petitioner Corporation and further undertake that the Petitioner Corporation shall also be entitled to deduct the said amount from the salary and other dues payable to his son Shri Magan Sawaji Singal. A separate undertaking to this effect, shall be filed before this Court by the Respondent and his son Shri Magan Sawaji Singal on or before 18th December, 2017. They shall in the Affidavit set out the names of the occupiers residing in the Suit premises.

vi. If the Enquiry Officer who conducts the enquiry under Section 105B of the MMC Act, 1888, is an Advocate / Law Graduate, the Respondent shall also be allowed to defend his case through an Advocate.

vii. All contentions of the parties qua the issue of alleged unauthorized occupation of the Suit premises and the entitlement of the Petitioner Corporation to withhold the provident fund amount paid to the Respondent, are kept open.

viii. Until the above issues are finally decided, the Respondent and / or his family members shall not sell, alienate, encumber or create any third party rights in respect of the Suit premises.

- ix. Parties have agreed that no reasons be given in support of this Order.
- x. Liberty to apply.
- xi. The Writ Petition is accordingly disposed off in the above terms with no order as to cost.

(S.J.KATHAWALLA, J.)