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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.145 OF 2018

Fortpoint Automotive Private Limited)
A company registered under the provisions)
of Companies Act, 1956, having their)
registered office at Mahim Bus Depot)
Premises, L.J. Road, Opposite St. Michael)
Church, Mahim, Mumbai – 400 016,)
through its Constituted Signatory)
Mr.Narendra Vithal Deorukhkar) ...Petitioner

....Versus....

1). Mumbai Municipal Corporation)
Mahapalika Bhavan, Mahapalika)
Marg, Mumbai.)
)
2). The Commissioner, Mumbai)
Municipal Corporation, Mahapalika)
Bhavan, Mahapalika Marg, Mumbai.)
)
3). The Brihanmumbai Electric Supply &)
Transport Undertaking, BEST Bhavan)
BEST Marg, Mumbai – 400 001.)
)
4). The Estate Manager & Competent)
Authority, The Brihanmumbai Electric)
Supply & Transport Undertaking,)
BEST Bhavan, BEST Marg,)
Mumbai – 400 001.) ...Respondents

Mr.Harish Pandya with Mr.H.K. Sudhakaran I/b KKS Legal for the
Petitioner.

Ms.Dhond for the Respondent Nos.1 and 2.

Mr.Aseem Naphade with Ms.Kavita Anchan I/b M.V. Kini & Co. for the

Respondent Nos.3 and 4.

CORAM : R.D. DHANUKA, J.
RESERVED ON : 11TH SEPTEMBER, 2018
PRONOUNCED ON : 19TH SEPTEMBER, 2018

JUDGMENT :-

1. By consent of the respondent nos.1 and 2, the order dated 20th July, 2017 passed by the learned Registrar (Judicial-I) dismissing the writ petition against the respondent nos.1 and 2 is set aside. The writ petition against the respondent nos.1 and 2 is restored to file.

2. Rule. Ms.Dhond, learned counsel waives service for the respondent nos.1 and 2. Mr.Naphade, learned counsel waives service for the respondent nos.3 and 4. By consent of parties, this petition is heard finally. Some of the relevant facts for the purpose of deciding this writ petition are as under :

3. On 22nd September, 1992, the respondent no.3 i.e. The Brihanmumbai Electric Supply & Transport Undertaking (BEST) issued an advertisement inviting the bids from the prospective lessees for lease out an additional available area at Mahim Bus Depot at Mahim admeasuring about 622 sq. ft. abutting the main Mahim Bus Depot. The petitioner responded to the said advertisement vide letter dated 30th September, 1992 and expressed its interest to take the said land on lease. On 30th October, 1992, the bid of the petitioner was accepted by the respondent no.3. The said portion of the land was allotted to the petitioner on the terms and conditions mentioned in the said letter of allotment. The petitioner paid the sum of Rs.12,75,000/- towards the security deposit. The respondent no.3 agreed to the request of the petitioner and lease out

the unused open land admeasuring about 483 sq. ft. on the rare side of the said premises given on lease. On 12th November, 1995, the petitioner and the respondent no.3 executed a Deed of Lease effecting from 16th January, 1993 for a period of five years i.e. from 15th January, 1998 or till the period the demise premises were required for any public purposes by the respondent no.3 or the respondent no.1 whichever was earlier. The said lease deed was renewed from time to time along with increase in the security deposit and monthly lease rentals.

4. It is the case of the petitioner that before expiry of the renewed lease for the period 2003-2008, the petitioner vide its letter dated 17th August, 2007 requested the respondent no.3 to renew the said lease for a period of 15 years at a time. The responded no.3 proposed to redevelop the said Mahim Bus Depot. The Urban Development Department, Government of Maharashtra vide notification dated 27th July, 2006 granted an approval to develop the entire land reserved for BEST Bus Depot on commercial basis subject to the maximum limit of 30% built-up area of the total permissible floor area of the plot. The responded no.3 accordingly invited bids from the developers for development of the said plot at Mahim Bus Depot. The respondent no.3 had also lease out a portion of the said Mahim Bus Depot to "M/s.New Aaram Restaurant".

5. It is the case of the petitioner that upon receipt of the bids on 21st June, 2007, the respondent no.3 placed the matter before a Committee to consider the bids received by it. It is the case of the petitioner that in the meeting held in the month of June, 2007, the said Committee noted that out of total plot of 6304 sq. mtrs., a portion of the land admeasuring 427 sq. mtrs. was handed over to the

respondent no.1 i.e. Mumbai Municipal Corporation as set-back area on 24th July, 1976 and balance area that was available for redevelopment was 5877 sq. mtrs. It was stated in the said minutes of the meeting that the existing commercial premises of the petitioner and the staff quarters had been retained as it was in the proposed lay out and separate structure would be constructed for the Bus Depot and the office of the Electric Supply Department on North-East side of the plot. In the tender condition, it was provided that part portion of the ground floor admeasuring 118 sq. mtrs. of the existing Bus Depot building had been allotted M/s.New Aaram Restaurant by the BEST Undertaking. The developer was required to accommodate the said M/s.New Aaram Restaurant at his costs by allotting the same built-up area on the ground floor of the new structure under commercial exploitation. It was further provided that the existing commercial premises of the petitioner and the staff quarters should be retained at its place.

6. Pursuant to the request of the petitioner vide letter dated 17th August, 2007 to renew the lease deed, the respondent no.3 by its letter dated 23rd December, 2008, renewed the premises on the terms and conditions set out therein and enhanced the security deposit amount at Rs.1,24,91,000/-. The said lease was further renewed vide letter dated 19th May, 2013 for a further period of five years i.e. upto 15th January, 2018. It is the case of the petitioner that on 8th October, 2015, the petitioner paid the total security deposit of Rs.2,11,85,000/-. The redevelopment of the said Mahim Bus Depot was initially awarded to Parshwanath Developers however, the same was fully developed by Kanakia Builders.

7. On 18th September, 2015, the respondent no.3 issued a

notice thereby terminating the lease of the land granted in favour of the petitioner. In the said notice, it was mentioned that prior to the commencement of work, the set-back along L.J. Road was required to be handed over to the Municipal Corporation of Greater Mumbai and the premises allotted to the petitioner fell in that set-back area. The respondent no.3 accordingly called upon the petitioner to vacate and to hand over peaceful possession of the area to the respondent no.3 to facilitate handing over the set-back area to the Municipal Corporation of Greater Mumbai. The respondent no.3 gave two months advance notice for discontinuation of the monthly tenancy.

8. Prior to issuance of the notice of termination, the respondent no.1 had issued a notice upon the petitioner under section 351 of the Mumbai Municipal Corporation Act, 1888 (for short the "said MMC Act") alleging unauthorized construction carried out by the petitioner. The petitioner along with several other parties had challenged various notices under section 351 of the said MMC Act issued by the respondent no.1 by filing a writ petition. By an order and judgment dated 10th April, 2014 passed by this Court, the petitioner along with other petitioners in various writ petitions were directed to file a civil suit and rejected those writ petitions as not maintainable. The petitioner has filed a Suit bearing No.1560 of 2014 before the City Civil Court, Mumbai.

9. The Estate Manager, the respondent no.4 herein thereafter issued a notice on 2nd March, 2016 under section 105B of the said MMC Act upon the petitioner for conducting an enquiry. Various meetings were held by the learned Estate Manager which were attended by the petitioner. The petitioner filed the written submissions, but did not lead any oral evidence. The respondent no.3

examined a witness who was cross-examined by the petitioner's advocate.

10. On 16th June, 2017, learned Estate Manager passed an order directing the petitioner to vacate the premises allotted to the petitioner on lease. Being aggrieved by the said order passed by the learned Estate Manager, the petitioner preferred a Miscellaneous Appeal No.92 of 2017 before the City Civil Court, Bombay. By an order and judgment dated 27th October, 2017, the City Civil Court dismissed the said Miscellaneous Appeal filed by the petitioner and granted four weeks stay in favour of the petitioner to impugn the said order dated 27th October, 2017. Being aggrieved by the said order and judgment dated 27th October, 2017 and the order dated 16th June, 2017 passed by the learned Estate Manager and Competent Authority under section 105(B) of the said MMC Act, the petitioner has filed this writ petition under Article 227 of the Constitution of India.

11. Mr. Pandya, learned counsel appearing for the petitioner invited my attention to various exhibits annexed to the petition and also some of the averments made in the affidavit in reply filed by the respondent no.3 dated 24th January, 2018 in this petition. It is submitted by the learned counsel that when the plot was allotted to the petitioner on lease, no further set-back area was required to be handed over to the respondent no.1 by the respondent no.3. The lease granted in favour of the petitioner on 12th November, 1995 with effect from 16th January, 1995 was renewed from time to time till 15th January, 2018 the petitioner had already deposited substantial amount towards security deposit. He submits that when the tenders were invited by the respondent no.3 in the month of June, 2007, it was specifically mentioned that the existing commercial premises of the

petitioner and the staff quarters should be retained at its space. He submits that the said condition in the tender document was binding on the respondent no.3.

12. It is submitted that based on such assurance and promise given by the respondent no.3 in the said tender notice, which was approved by the Committee, the petitioner had deposited further security amount with the respondent no.3 for granting renewal of the lease in favour of the petitioner. He submits that in view of the assurances and the promises given by the respondent no.3, the respondent no.3 could not have terminated the lease granted in favour of the petitioner on the ground that the portion of the land was required to be handed over to the respondent no.1 as a set-back area. He submits that whatever set-back area was required to be handed over to the Municipal Corporation was already handed over in the year 1976. The respondent no.3 was thus estopped from terminating the lease of the petitioner in view of the promise made in the said tender document and approved by the Committee. In support of this submission, the learned counsel for the petitioner placed reliance on the judgment of the Supreme Court in case of **M/s.Motilal Padampat Sugar Mills Co. Ltd. vs. The State of Uttar Pradesh & Ors. AIR 1979 SC 621.**

13. It is submitted by the learned counsel that the respondent no.3 has already handed over the set-back area to the respondent no.1 as far back as on 24th July, 1976 and only thereafter the lease deed was executed in favour of the petitioner by the respondent no.3 in the year 1993 which came to be renewed from time to time. There is no proposal to demolish the structure of the petitioner made by the respondent no.3 for any alleged public purpose. The tender

conditions stating that the structure of the petitioner would be retained was never modified at any point of time by the respondent no.3. The respondent no.1 and respondent no.3 are part of the same undertaking. Neither in the IOD nor in the commencement certificate, any area was specified by the respondent no.1 including the area of the petitioner which fell in any set-back area. He submits that insofar as condition nos. 5 and 10 of the IOD are concerned, the same are standard conditions without specifying any area of the petitioner allegedly falling in the set-back area. The respondent no.3 has not produced any approved sanction plan on record showing the alleged set-back area.

14. Learned counsel for the petitioner placed reliance on the reply to question no.18 of the cross examination of the witness examined by the respondent no.3 in support of his submission that the said witness had admitted that the commercial area allotted to the petitioner in the year 1993 did not form part of any set-back area since the set-back area was handed over to the respondent no.1 in the year 1976. He submits that the impugned order passed by the learned Estate Manager and also by the City Civil Court, Bombay is contrary to the evidence on record. He submits that since the witness examined by the respondent no.3 has admitted in the cross examination that there was no provision of termination of the lease agreement and that the commercial premises allotted to the petitioner did not fall back in the set-back area, the petitioner was not required to lead any oral or documentary evidence before the respondent no.4.

15. It is submitted that there was no public purpose. He submits that the only purpose of so called re-modelling of the Mahim Bus Depot was to oblige the developer which did not amount to any

public purpose. He submits that both the orders are thus perverse and thus deserves interference by this court under Article 227 of the Constitution of India.

16. Mr.Aseem Naphade, learned counsel for the responded nos. 3 and 4 on the other hand invited my attention to the various conditions for the lease deed executed in favour of the petitioner by the respondent no.3, various findings rendered by the respondent no.4 and also by the Bombay City Civil Court while dismissing the appeal filed by the petitioner, the undertaking executed by the petitioner in favour of the responded no.3 while executing the said lease deed, various annexures to the affidavit in reply filed by the respondent nos. 3 and 4 in this writ petition, terms and conditions of the IOD.

17. It is submitted by the learned counsel that under clause 23 of the lease agreement dated 12th November, 1995 and clause 6 of the undertaking dated 16th June, 2009 filed by the petitioner, the respondent no.3 had absolute right to terminate the lease agreement if the demised premises are required to be demolished during the term of the lease, for reasons of any public work. He submits that under the said lease deed and also the undertaking executed by the petitioner, the respondent no.3 was entitled to terminate the lease by giving two calender months notice in writing. Such writing could be exercised even by the petitioner simultaneously. He submits that the structure along with open land had fallen within the set-back area and the respondent no.1 having called the respondent no.3 to surrender the set-back area before requesting for further commencement certificate for part or full occupation certificate to the building, the respondent no.3 had rightly terminated the lease agreement and had called upon the petitioner to vacate the said structure and the plot and

to handover the same to the respondent no.3.

18. It is submitted that since the petitioner had not handed over the possession of the said structure and the land which was leased to the petitioner, the respondent no.3 in turn is not able to handover the set-back area to the respondent no.1. The respondent no.1 has thus refused to issue occupation certificate in favour of the respondent no.3 for not surrendering the set-back area to the respondent no.1.

19. Learned counsel for the respondent nos.3 and 4 placed reliance on the letter dated 8th December, 2017 addressed by the respondent no.1 to the respondent no.3 calling upon the respondent no.3 to handover the said set-back land affecting the plot bearing plot FP-766 of TPS Mahim III of Mahim Bus Depot to the respondent no.1 free of encumbrances and to transfer the said set-back land in favour of the respondent no.1 before requesting for further commencement certificate or part occupation certificate/full occupation certificate to the building on the said plot. The respondent no.4 had accordingly issued a notice under section 105B of the Mumbai Municipal Corporation Act, 1888 in view of the petitioner not handing over the said structure and land inspite of the termination of the lease agreement by the respondent no.3.

20. Insofar as the alternate accommodation offered to M/s.New Aaram Restaurant in the said tender document is concerned, learned counsel invited my attention to the possession receipt dated 17th September, 2009 showing that the said M/s.New Aaram Restaurant had handed over the possession of the said land on which the said restaurant was constructed to the respondent no.3 as far back as on 17th September, 2009.

21. It is submitted by the learned counsel that since the structure as well as the land in question was required for public project and for handing over the set-back area to the respondent no.1, the petitioner could not have challenged the said action on the part of the respondent no.3. He placed reliance on the judgment of this court in case of **The Municipal Corporation of Greater Mumbai vs. M/s.Craftsman Electronic Corporation Private Limited & Ors., 2016 SCC OnLine Bom 9539** and in particular paragraphs 4, 5 and 28 to 31. He submits that since the termination of the lease was for executing the public project of the respondent no.3, the termination of the lease by the respondent no.3 and the order of eviction passed by the respondent no.4 cannot be interfered with by this court under Article 227 of the Constitution of India.

22. It is submitted by the learned counsel that since the finding of the respondent no.4 and the City Civil Court, Bombay being concurrent findings rendered against the petitioner and those findings being not perverse, cannot be interfered with by this court under Article 227 of the Constitution of India. In support of this submission, learned counsel for the respondent nos. 3 and 4 placed reliance on the judgment of Supreme Court in case of **Nagar Palika, Raisinghnagar vs.Rameshwar Lal and Another, (2017) 9 SCC 618** and in particular paragraph 13 and the judgment of Supreme Court in case of **Arya Vyasa Sabha and others vs. The Commissioner of Hindu Charitable and Religious Institutions & Endowments, Hyderabad & Others, (1976) 1 SCC 292** and in particular paragraphs 5 and 7.

23. Insofar as the judgment of Supreme Court in case of

M/s.Motilal Padampat Sugar Mills Co. Ltd. (supra) relied upon by the learned counsel for the petitioner is concerned, the said judgment is distinguished on the ground that in this case, there was no promises or assurances given by the respondent no.3 to the petitioner. It was only a part of the tender condition that the structure of the petitioner would be retained. He submits that the petitioner is claiming rights under the lease document which was a contractual lease and thus the question of any promissory estoppel does not arise. He submits that **M/s.Motilal Padampat Sugar Mills Co. Ltd.** (supra) would not apply to the facts of this case.

24. Insofar as the plan annexed to the writ petition is concerned, it is submitted by the learned counsel that the said plan was never produced by the petitioner before the respondent no.4 or before the City Civil Court, Bombay and cannot be relied upon for the first time in this writ petition.

25. Insofar as the issue of set-back area is concerned, it is submitted by the learned counsel that the set-back area handed over by the respondent no.3 to the respondent no.1 in the year 1976 was different than the set-back area now required to be handed over to the respondent no.1. He submits that in the terms and conditions of the IOD, it was specifically provided as a condition precedent by the respondent no.1 that the set-back area will have to be handed over by the respondent no.3 to the respondent no.1. He submits that in any event, the petitioner had also rendered an undertaking that the petitioner would abide by the terms and conditions of the lease agreement and thus the petitioner is bound to handover the vacant possession of the structure along with the land which was subject matter of the lease agreement to the respondent no.3 in view of the

respondent no.3 having terminated the said lease agreement and the order of eviction having been passed by the respondent no.4 and confirmed by the City Civil Court, Bombay.

26. Learned counsel for the respondent nos. 3 and 4 placed reliance on section 2(N) of the Mumbai Municipal Corporation Act and would submit that the respondent no.3 is an undertaking of the respondent no.1. He also placed reliance on section 105B (1)(C) and also section 105(G) of the said Act and would submit that the action initiated by the respondent no.3 was in public interest and thus cannot be interfered with by this court. The orders passed under section 105B are final and binding.

27. It is submitted by the learned counsel that admittedly the petitioner did not lead any oral or documentary evidence before the respondent no.4. The onus was on the petitioner to prove that the structure of the petitioner and the land on which the said structure was constructed was not falling in the set-back area.

28. Insofar as the document obtained by the petitioner under the provisions of the Right to Information Act annexed as Exhibit "E" is concerned, it is submitted by the learned counsel that the said letter issued by the respondent no.1 and more particularly the remarks at the bottom of the said letter would clearly indicate that the said remarks were offered only from the zoning point of view without reference to ownership, without carrying out actual site inspection and without verification of the status of the structures if any on the land under reference. It is further mentioned therein that the status of the existing road, if any shall be confirmed from the concerned Ward Office. He submits that the said information thus obtained by the

petitioner would be of no assistance to the petitioner.

29. Ms.Dhond, learned counsel for the respondent nos.1 and 2 adopted the submissions made by Mr.Naphade, learned counsel for the respondent nos.3 and 4.

30. Mr.Pandya, learned counsel for the petitioner in rejoinder submits that since there was contradiction in the oral evidence led by the witness examined by the respondent no.3 on the aspect of set-back area or on the powers of the respondent no.3 to terminate the lease agreement, the petitioner was not required to lead any oral evidence before the respondent no.4. He submits that there was no clause in the lease agreement about the set-back area. The IOD and the commencement certificate issued by the respondent no.1 also does not specify the set-back area.

31. Insofar as the map relied upon in the writ petition by the petitioner is concerned, it is submitted that the respondent no.3 has knowledge of the said map produced by the petitioner and is not a new document produced. He submitted that the said map ought to have been produced by the respondent no.3 before the respondent no.4 and also before the City Civil Court, Bombay.

32. Insofar as the judgment relied upon by the learned counsel for the respondent nos.3 and 4 are concerned, it is submitted that there is no dispute about the propositions of law laid down by the Hon'ble Supreme Court and this Court in those judgments. He however submits that the facts before the Hon'ble Supreme Court and this Court in those judgments being different would not apply to the facts of this case. He submits that the writ Court is also empowered to

go into the factual aspects and evidence even if the findings recorded by the respondent no.4 and by the City Civil Court, Bombay were concurrent. This Court has ample power to set aside such concurrent findings being perverse.

REASONS AND CONCLUSIONS :

33. It is not in dispute that the respondent no.3 had entered into a lease agreement with the petitioner on 12th November, 1995 for a period of five years on the terms and conditions recorded in the said agreement pursuant to the acceptance of bid submitted by the petitioner which was found suitable. The said lease agreement renewed from time to time till 15th January, 2018.

34. Clause 23 of the said lease agreement clearly provided that the petitioner had agreed to vacate the demised premises without claiming any compensation and to hand over vacant possession of the demised premises to the lessor i.e. the respondent no.3 herein if the demised premises are required to be demolished during the term of lease for the reason of any public work such as for widening of Mahim Causeway or Fly over etc. in which case the lease would be terminated by giving one month's notice. The petitioner has not disputed that the petitioner has also executed an undertaking in favour of the respondent no.3 on 15th June, 2009 annexed at Exhibit "D" to the affidavit in reply filed by the respondent no.3 to abide all the terms and conditions of the lease during the tenancy of the demised premises and had accepted those terms and conditions.

35. In clause 6 of the undertaking, it was clearly provided that the tenancy may be terminated by two calendar months' notice in

writing by either party, expiring at the end of calendar month. In clause 15 of the said undertaking, it was provided that upon termination of the tenancy in the manner provided in the said undertaking, the petitioner would hand over peaceful and vacant possession of the demised premises, fitting, fixtures and installations etc. in the same good condition in which the same respectively were when the premises were first let to the petitioner by the respondent no.3 and the respondent no.3 shall forthwith return the security deposit to the petitioner.

36. A perusal of the record clearly indicates that the respondent no.3 had taken over the plot of land of 6304 sq. mtrs. at Mahim through the respondent no.1 on 18th October, 1954. The respondent no.3 had handed over the area of about 427 sq. mtrs. as a set-back area along L.J. road to the respondent no.1 some time in the year 1976. The respondent no.1 had constructed ground plus two storeyed structures and had allotted the area of about 118 sq. mtrs. to M/s.New Aaram Restaurant. Insofar as the petitioner is concerned, the petitioner was allotted 622 sq. ft. built up area on 16th January, 1963 and an open area approximately 483 sq. ft. on 9th July, 1993 on lease basis. The said lease was renewed from time to time and upto 15th January, 2018.

37. It is the case of the respondent no.3 that Mahim Bus Depot being one of the major terminus, there was heavy traffic and looking to the need of larger Bus Depot, the respondent no.3 invited tenders for redevelopment of Mahim Bus Depot along with re-modelling of the existing Bus Station structure in the year 2007. The respondent no.3 was granted requisite permission by the authority. It was pointed out in the said tender document that part portion of the ground floor of

1009 sq. ft. of the then existing Bus Depot building admeasuring 1118 sq. mtrs. Built up was in possession of M/s.New Aaram Restaurant and the developer had agreed to make suitable arrangement to accommodate M/s.New Aaram Restaurant in the proposed structure. It was further provided in the tender document that the existing commercial premises of the petitioner and the staff quarters building should be retained at its place.

38. Learned counsel for the petitioner laid emphasis on the issue that the respondent no.3 having assured and having given promises in the tender document that the existing structure of the petitioner and the relevant portion of the land on which such structure was constructed, would retain at the place where it was situated the termination of lease was in breach of such promises and assurances given by the respondent no.3. A perusal of the terms and conditions of the lease and more particularly clause 23 thereof clearly indicates that the petitioner had agreed under the said lease agreement that if the property under lease given to the petitioner if required for any public project, the respondent no.3 could terminate the lease granted to the petitioner and in that event the petitioner would hand over vacant and peaceful possession of the leasehold land along with structure to the respondent no.3. The petitioner had also clearly given an undertaking in this regard.

39. The relationship between the petitioner and the respondent no.3 being of a lessee and the lessor under a contractual lease, the question of any alleged breach of promissory estoppel as sought to be canvassed by the learned counsel for the petitioner did not arise. No such arguments were ever urged by the petitioner either before the respondent no.3 or before the City Civil Court. Be that as it may,

the respondent no.3 is even otherwise empowered to evict from any corporation premises in the occupation of any person under section 105B(1)(c) if the same is required by the Corporation in the public interest. The redevelopment of the Bus Depot and re-modelling thereof was undoubtedly a public purpose. The portion of the land and the structure in possession of the petitioner which was given on lease, was required to be handed over to the respondent no.1 as set-back area. In my view, the judgment of the Hon'ble Supreme Court in case of **M/s.Motilal Padampat Sugar Mills Co. Ltd.** (supra) thus relied upon by the learned counsel for the petitioner was not at all applicable to the facts of this case and would not assist the case of the petitioner. The issue of public interest which is an issue pressed in service by the respondent no.3 by virtue of clause in the lease document and also by virtue of section 105B(1)(c) was not the issue before the Hon'ble Supreme Court in case of **M/s.Motilal Padampat Sugar Mills Co. Ltd.** (supra).

40. Insofar as the issue as to whether the set-back area was mentioned in the lease document or not or whether was one of the condition prescribed in the IOD and the commencement certificate is concerned, though there is no mention about the set-back area in the lease agreement entered into between the petitioner and the respondent no.3, the parties were bound by the provisions of the Mumbai Municipal Corporation Act, 1888 and also the terms and conditions of the IOD. In the IOD issued by the respondent no.1 annexed at Exhibit "D-4", clause 10 thereof clearly provided that the registered undertaking and additional copy of plan shall be submitted for agreeing to hand over the set-back land free of compensation and that the set-back handing over certificate will be obtained from Ward Officer before demanding commencement certificate and that the

ownership of the set-back land will be transferred in the name of the respondent no.1 before obtaining commencement certificate. I am thus not inclined to accept the submission made by the learned counsel for the petitioner that there was no requirement of handing over any set-back area to the respondent no.1 by the respondent no.3. The provisions of the Mumbai Municipal Corporation Act, 1888 and the conditions of IOD prescribed by the respondent no.1 were binding on the parties.

41. This Court in case of **The Municipal Corporation of Greater Mumbai** (supra) has construed the provisions of section 105B of the said MMC Act and has held that if the property is required for redevelopment in the interest of public at large, the Corporation can evict the occupants and take possession by following due process of law as per section 105B of the MMC Act. This Court adverted to the judgment of this Court in case of Sadanand Palkar vs. The Municipal Corporation of Greater Mumbai in Writ Petition No.4487 of 2007 dated 12th October, 2007 holding that “once it is found that redevelopment of the properties is in public interest, then the order of eviction cannot be interfered with. In my view, the principles of law laid down by this Court in case of **The Municipal Corporation of Greater Mumbai** (supra) applies to the facts of this case. I am respectfully bound by the said judgment.

42. In this case also, the respondent no.3 has established that the land in question along with structure was required for the purpose of handing over set-back area to the respondent no.1 which was necessitated for carrying out redevelopment and re-modelling of Mahim Bus Depot. I am not inclined to accept the submission made across the bar by the learned counsel for the petitioner that there was

no public purpose for which the tenancy of the petitioner was required to be terminated. In my view, merely because public project of redevelopment or re-modelling of Mahim Bus Depot was allowed to be carried out by giving a contract to a developer, public purpose does not cease to be a public purpose. The arguments thus advanced by the learned counsel for the petitioner that the project was given to the developer for carrying out construction and thus was not a public purpose is totally misplaced. This case clearly falls within the provisions of the section 105B(1)(c) of the said MMC Act.

43. Since the petitioner is not handing over possession of the leasehold property to the respondent no.3, the respondent no.3 in turn is not able to hand over the set-back area to the Municipal Corporation and thus the respondent no.1 is not issuing the occupation certificate and/or completion certificate to the respondent no.3. It has been one of the condition in the IOD as well as in the correspondence exchanged between the respondent no.3 and the respondent no.1 that unless the set-back area is handed over to the respondent no.1, the respondent no.3 will not be issued any occupation certificate and completion certificate. The letter dated 8th December, 2017 annexed at Exhibit "F" to the affidavit in reply from the respondent no.1 to the respondent no.3 clearly indicates that the respondent no.1 had made it clear that unless and until the set-back area was handed over to the respondent no.1 free of encumbrances and the ownership of the set-back area was transferred in the name of the respondent no.1, the request of the respondent no.3 for further occupation certificate or part occupation certificate or full occupation to the building on the plot would not be considered.

44. Insofar as the submission of the learned counsel for the

petitioner that there was no provision in the lease deed for termination of the lease deed and in support of this submission, reliance placed by the learned counsel on the cross-examination of the witness of the respondent no.3 is concerned, in my view, there is no substance in this submission of the learned counsel for the petitioner. The termination clause is clearly recorded in clause 23 of the lease deed which has to be also read with the undertaking rendered by the petitioner. The respondent no.3 was entitled to terminate the lease granted in favour of the petitioner on the ground that the land in question was required for public project. Under section 105B(1)(c) of the said MMC Act also the respondent no.3 is empowered to call upon the petitioner to hand over vacant possession of the premises of the Corporation as the same are required for public purpose.

45. Insofar as the submission of the learned counsel for the petitioner that the witness examined by the respondent no.3 having admitted in the cross-examination that the commercial premises allotted to the petitioner was not in the set-back area is concerned, in my view, if the said deposition in the cross-examination is contrary to the documentary evidence placed on record before the respondent no.4 and also before the City Civil Court, Bombay, the documentary evidence will prevail. Learned counsel for the petitioner does not dispute that the termination clause exist in the lease deed entered with the respondent no.3.

46. Be that as it may, the Court has to consider the entire evidence in toto and not an answer to a single question asked to the witness for the purpose of rendering a conclusion while passing an order. The onus was on the petitioner to prove that the land of the petitioner did not fall in the set-back area at least in the rebuttal. The

respondent no.3 had already led evidence on this issue and had produced the undisputed documents on record. The petitioner admittedly did not enter the witness box. Learned Estate Manager as well as the City Civil Court, Bombay were thus justified in passing an order of eviction against the petitioner.

47. The respondent no.4 as well as the City Civil Court, Bombay have rendered various findings of fact in the impugned orders which findings are rendered after considering the documentary and oral evidence on record and not being perverse, cannot be interfered by this Court in this petition filed under Article 227 of the Constitution of India. The principles laid down by the Hon'ble Supreme Court in case of **Arya Vyasa Sabha & Ors.** (supra), in case of **Nagar Palika, Raisinghnagar** (supra) and also in case of **The Municipal Corporation of Greater Mumbai** (supra) would clearly apply to the facts of this case. I am respectfully bound by the same.

48. No case is thus made out for interference with the impugned orders passed by the respondent no.4 as well as by the City Civil Court, Bombay. The writ petition is totally devoid of merit.

49. I therefore, pass the following order :-

- a). The Writ Petition No.145 of 2018 is dismissed.
- b). There shall be no order as to costs.

Vasant
Anandrao
Idhol

Digitally signed
by Vasant
Anandrao Idhol
Date: 2018.09.19
19:45:18 +0530

(R.D. DHANUKA, J.)