IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5494 OF 2018

Mr.Dinesh Babu Kotian]
Aged about 45 years, Indian]
Inhabitant, Occ.Business,]
Residing at Room No.6, Ground Floor,]
Laxmibai Building, Vaccharaj Lane,]
Matunga (East), Central Railway,]
Mumbai – 400 019.] .... Petitioner.

Versus

1. **Municipal Corporation of Greater Mumbai**, a statutory Body,]
constituted and incorporated under]
the provisions of Mumbai Municipal]
Corporation Act, 1888, having its head]
office at Mahapalika Marg,]
Mahapalika Bhavan, Fort,]
Mumbai – 400 001.]

2. **Chief Enquiry Officer**]
Municipal Corporation for Greater]
Mumbai, Room No.28, 2nd Floor,]
F/South Ward office, Dr. Babasaheb]
Ambedkar Road, Parel,]
Mumbai – 400 012.] ... Respondents.

- Mrs.Zahara Tejani for the Petitioner.
- Mr.J.F. Reis, Sr. Advocate a/w. Ms.Oorja Dhond for the Respondents.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 4th MAY, 2018.

ORAL JUDGMENT :

1] Heard learned counsel for the Petitioner and learned counsel for the Respondents.

2] Rule. Rule is made returnable forthwith with the consent of learned counsel for both the parties and the Writ Petition is taken up for final hearing.

3] By this Writ Petition, filed under Article 227 of the Constitution of India, the Petitioner is challenging the order dated 12th April 2018 passed by the Principal Judge, Greater Mumbai, thereby dismissing Miscellaneous Appeal No.96 of 2017. The said appeal was preferred by the present Petitioner under Section 105F of Mumbai Municipal Corporation Act, 1888, challenging the order of eviction dated 11th August 2017 passed by the Chief Enquiry Officer in proceedings initiated under Section 105B of the said Act.

4] As per the contention of the Petitioner, he is in possession of the enquiry premises comprising Room No.3, 4 and 5 at ground floor of Laxmi Niwas, Repair Chouki, Vastraj Lane, Matunga (E), Mumbai, since the last several years. The Respondents-Municipal Corporation has issued notice to him for eviction on the ground of unauthorized occupation under Section 105B(2) of the said Act. The

said notice was personally served on the Petitioner on 12th April 2017. The Petitioner then appeared before the Chief Enquiry Officer in the said enquiry. The evidence of both the parties was recorded and thereafter, on being satisfied about the occupation of the Petitioner in the enquiry premises being that of unauthorized, the Enquiry Officer was pleased to pass the order of eviction, which was challenged by the Petitioner in Miscellaneous Civil Appeal before the Principal Judge, City Civil Court, Mumbai, who by the impugned judgment and order dismissed the said appeal.

5] The grievance of learned counsel for the Petitioner is that the Petitioner is admittedly in possession of the enquiry premises since the year 1950 from the time when his father was in service of late Laxmibai Keshvaji Vaghaji and was tenant of the said premises. It is submitted that, though it is the contention of the Respondents-Municipal Corporation that the building in which said premises are situate was gifted by Laxmibai to the Municipal Corporation, as observed by the Appellate also, the deed of settlement is not brought on record. In view thereof, it is submitted that if the Petitioner is in possession of the premises as a tenant and the premises are yet not proved to be owned by the Municipal Corporation, the eviction order passed by the Chief Eviction Officer cannot be maintainable and

sustainable in law and hence, it is liable to be quashed and set-aside.

6] Coming to the first contention raised by learned counsel for the Petitioner, that possession of the Petitioner in the enquiry premises is that of a tenant of Laxmibai, as observed by the Chief Enquiry Officer and also by the Appellate Court, not a single document is produced on record to that effect like the rent receipt or the entry of his name in the Municipal extract as a tenant. There is thus no iota of evidence on record that Petitioner's possession in the enquiry premises is that of a tenant of Laxmibai or even that of Municipal Corporation. Merely, because he is in possession since 1950, his possession cannot be protected. Once the notice is issued by the Municipal Corporation, calling upon him to hand over the vacant possession thereof for the public purpose, his possession having become unauthorized, thereafter he cannot get the protection of his possession.

7] Though, much reliance is placed by learned counsel for the Petitioner in this respect on the various documents like Ration Card, Electricity Bill etc.; those documents cannot prove his tenancy over the suit premises and as stated above, mere possession cannot give rise to tenancy to occupy the said premises.

8] As regards the second contention that the enquiry premises were owned by one Laxmibai and there is no deed of settlement brought on record to show that she has handed over the same to the Municipal Corporation; the trial Court has rightly considered the order passed in the earlier suit, bearing No.7256 of 1970 which was filed by the father of the Petitioner for restoration of possession and in that order, the learned City Civil Court has clearly observed as follows:

> *"The plaintiff in the suit claim to be in possession of room no.6 on the ground floor of a building known as Laxmi Nivas, Vachraj Road, Matunga, Bombay-19 of which the defendant Corporation became the owner in pursuance of a Deed of Settlement dated 6/9/1950. According to the plaintiff he has been in occupation of the said room no.6 since the year 1950. In support of his claim the plaintiff has produced his ration card wherein his address has been shown as room no.6, on the ground floor of the building Laxmi Nivas. The plaintiff has also produced a certified copy of the extract from the Electoral Roll of the year 1966 wherein also the same address has been shown. On the strength of these two documents the plaintiff contends that he has been in occupation of the said room since the year 1950. According to the plaintiff, on 23/9/1970 the defendants with the help of their officers and employees dispossessed him from room no.6 and placed all his material possessions of the road outside."* *(emphasis supplied)*

9] These observations in the said order thus clearly go to show that even the Petitioner's father has accepted the Municipal Corporation as owner of the enquiry premises, in pursuance of a deed of settlement dated 6th September 1950.

10] As a matter of fact, this Court has also, in earlier Writ Petition No.14187 of 2017 along with Writ Petition (Stamp) No.29743 of 2017 and Writ Petition No.14186 of 2017 has categorically held on the basis of evidence that the building in which the enquiry premises are situated is belonging to the Municipal Corporation. Accordingly, the eviction order is passed against the other occupants was confirmed by this Court rejecting the similar contentions raised therein.

11] Thus, when both the contentions which are raised by the Petitioner are found to be devoid of merits, there is absolutely no reason to set-aside or in any way disturb the order passed by the Chief Enquiry Officer, which is confirmed by the Appellate Court also.

12] The Writ Petition therefore, being without merits, stands dismissed.

13] Rule discharged.

14] At this stage, learned counsel for the Petitioner seeks time of four weeks in order to approach the Hon'ble Supreme Court against the order of this Court. Learned counsel for the Respondent opposes the said prayer.

15] In the interest of justice, the period of four weeks is granted to the Petitioner to approach the Hon'ble Supreme Court and stay to that extent is granted to the eviction order, subject to the Petitioner giving an undertaking to this Court that, on the expiry of the period of four weeks, the Petitioner will voluntarily hand over the possession of the enquiry premises to the Respondents, if the Petitioner does not succeed in getting any further protection order from the Hon'ble Supreme Court. There should be an undertaking also to the effect that during this period of four weeks the Petitioner shall not create any third party interest or part with possession of the enquiry premises. The undertaking to be filed by the Petitioner within a period of 8 days, otherwise the order of stay shall stand vacated automatically without further reference to this Court.

[DR.SHALINI PHANSALKAR-JOSHI, J.]