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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.14187 OF 2017

Shantaram Bhikaji Jadhav	]
age: 63 years, Occn. Retired from Municipal	] <u>Petitioner</u>
Corporation, residing at: room No.14, Laxmi	] Original
Nivas, Municipal Repairs Chowki, 1 st floor	] Appellant
Vatsaraj Lane, Matunga (East)	]
Mumbai 400 019	]

V/s.

The Municipal Corporation of	]
Greater Mumbai, a body Corporate	] <u>Respondent.</u>
Constituted under the Mumbai Municipal	] Original
Corporation Act, 1888,	] Respondent.
having its office at Mahapalika Marg,	]Mumbai

ALONG WITH

WRIT PETITION (ST) NO.29743 OF 2017

Bhimsen Shivram Kamble	]
age: 69 years, Occn. Retired from Municipal	] <u>Petitioner</u>
Corporation, residing at: room No.13, Laxmi	] Original
Nivas, Municipal Repairs Chowki, 1 st floor	] Appellant
Vatsaraj Lane, Matunga (East)	]
Mumbai 400 019	]

V/s.

The Municipal Corporation of	]
Greater Mumbai, a body Corporate	] <u>Respondent.</u>
Constituted under the Mumbai Municipal	] Original
Corporation Act, 1888,	] Respondent.
having its office at Mahapalika Marg,	]
Mumbai	

ALONG WITH

WRIT PETITION (ST) NO.29751 OF 2017.

Dagdu Balu Sawant	]
age: 66 years, Occn. Retired from Municipal	]
Corporation, residing at: room No.15, Laxmi	]
Nivas, Municipal Repairs Chowki, 1 st floor	]
Vatsaraj Lane, Matunga (East)	]
Mumbai 400 019	]

V/s.

The Municipal Corporation of	]
Greater Mumbai, a body Corporate	]
Constituted under the Mumbai Municipal	]
Corporation Act, 1888,	]
having its office at Mahapalika Marg,	]
Mumbai	]

ALONG WITH

WRIT PETITION NO.3 OF 2018.

Sitaram Laxman Jadhav	]
age: 62 years, Occn. Retired from Municipal	]
Corporation, residing at: room Nos.11 & 12, Laxmi	]
Nivas, Municipal Repairs Chowki, 1 st floor	]
Vatsaraj Lane, Matunga (East)	]
Mumbai 400 019	]

V/s.

The Municipal Corporation of	]
Greater Mumbai, a body Corporate	]
Constituted under the Mumbai Municipal	]
Corporation Act, 1888,	]
having its office at Mahapalika Marg,	]
Mumbai	]

Mr. R. D. Soni, i/by Ram & Co., in for the Petitioners

in all the petitions.

Mr. N. V. Walawalkar, Senior Advocate with Ms. Oorja Dhond, for the Respondent Corporation.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 13st MARCH, 2018.

ORAL COMMON JUDGMENT :

1] Heard learned counsel for the petitioners and learned Senior Counsel for the respondent corporation.

2] Rule.

3] Rule is made returnable forthwith with the consent of learned Senior Counsel for both the parties and the Petitions are taken up for final hearing.

4] As the common questions of facts and law are raised in all these petitions, these petitions are decided by this common judgment.

5] By these writ petitions, filed under Article 227 of the Constitution of India, petitioners are challenging the identical orders dated 22.9.2017, passed by the Principal Judge, City Civil & Sessions Court, Greater Mumbai, thereby dismissing the Misc. Civil Appeals, which were individually preferred by the petitioners against the common order passed by the Chief Enquiry Officer, on 27.02.2017, in the proceeding, filed under Section 105(B) of the Mumbai Municipal

Corporation Act, 1888 (for short called as, “MMC Act”) in Enquiry No.FN/4 to FN/7 of 2016, thereby directing the petitioners to vacate the enquiry premises, that is room Nos.14, 13, 71 and 11 & 12 of Laxmi Nivas, Municipal Repairs Chowky, first floor, Vatsaraj Lane, Matunga (E), Mumbai 400 019, within one month from the date of service of Notice under Section 105B(1) of the MMC Act.

6] The case of the respondent Municipal Corporation is that “Laxmi Niwas” Building is owned by the Municipal Corporation and since the petitioners are found to be in unauthorised occupation of the respective rooms in their possession, the notice dated 7.4.2016, came to be issued to them to show cause as to how their possession in those rooms (hereinafter referred as, “enquiry premises”) is authorised.

7] The petitioners resisted the said notice by contending that their possession in the enquiry premises is since last more than 30 to 40 years, and it is only with the due permission and knowledge of the respondent Corporation. It was submitted that on the no-objection given by the respondent, the petitioners were given electricity and telephone connections, in the enquiry premises and therefore, their occupation cannot be called as unauthorized. It was also contended that they have been inducted in possession of the enquiry premises, being the employees of the respondent, on the oral permission granted by the Ward Officer/Assistant Engineer of the Corporation

and their individual applications for regularization of their possession have already been submitted to the Municipal Corporation and they are still pending. Therefore, they cannot be evicted from enquiry premises till those applications are decided.

8] In support of their respective contentions, petitioners examined themselves and also relied upon the documentary evidence such as electricity bill, ration card, Aadhar card etc. On behalf of respondent, its Junior Engineer, examined himself.

9] On appreciation of this oral and documentary evidence, the Chief Enquiry Officer was pleased to hold that petitioners have not produced a single document on record to show that their possession over the enquiry premises is authorized and hence he was pleased to pass the order of their eviction.

10] Against this order, when petitioners approached the Appellate Court, the Appellate Court was pleased to confirm the order of the Enquiry Officer and dismissed the appeals, preferred by the petitioners.

11] Therefore, the petitioners have approached this Court, against the concurrent findings of fact recorded by the Chief Enquiry Officer and by the Appellate Court.

12] The submission of learned counsel for the petitioners is that none of the authorities below have considered the documentary

evidence, on which the petitioners have relied upon, namely, their ration cards, Aadhar Cards, Electricity Bills, telephone bills, PAN Cards, to show that that the petitioners are in possession of the enquiry premises since 1990 and applications were also made for regularization of their possession to the Municipal Corporation.

13] It is submitted that being the Municipal Employees, they were allowed to stay in the enquiry premises, as regular licencees, even after their retirement, on payment of municipal taxes. Hence, their possession over the enquiry premises cannot be called as that of “trespassers” or “encroachers”; so also, it cannot be called as unauthorized, when the Municipal Corporation itself has permitted the petitioners to have electricity and telephone connections on the address of the enquiry premises. Hence, according to learned counsel for the petitioner, the provisions of Section 105(B)(1) of the MMC Act, cannot be applicable to such cases and the petitioners cannot be evicted summarily from the enquiry premises. It is submitted that none of the two authorities below, have considered these aspects and therefore, the impugned order of eviction passed by the Chief Enquiry Officer and confirmed by the Appellate Court needs to be quashed and set aside.

14] Per contra, learned Senior Counsel for the respondent Municipal Corporation has supported the impugned order, by pointing

out that there is absolutely no document produced on record by any of the petitioners to show that they were authorized to remain in possession of the enquiry premises. The attention of this Court is drawn to various admissions given by petitioners, in their cross examination admitting that they are neither the tenants nor the licencees nor they have paid any rent, fees or compensation in respect of the enquiry premises. Hence it is urged that both, the Chief Enquiry Officer and the Appellate Court have rightly held that the possession of the petitioners' over the enquiry premises is unauthorized and they have no right to remain in possession thereof.

15] Learned Senior Counsel for respondent corporation, in support of his submission that, this speedy remedy, as provided under Chapter VA- of the MMC Act, is to ensure the public interest and its constitutional validity is also upheld by the Hon'ble Supreme Court, has placed reliance on the Judgment of the Hon'ble Supreme Court in the case of, *Maganlal Chhaganlal (P) Ltd -vs- Municipal Corporation of Greater Bombay and ors*, [(1974) 2 SCC 402], wherein the Hon'ble Supreme Court was pleased to observe in paragraph No.31 as under:-

“The Chapter V-A of the MMC Act, was enacted to provide to the Municipal Corporation a speedier remedy for eviction of unauthorized occupants from

the Municipal premises, as against the ordinary remedy of civil suit involving expense and delay, so that the Municipal Corporation should be able to carry out effectively its policy of slum clearance, speedy development of estates of the Corporation, and providing more housing accommodation”.

16] It is submitted that by learned counsel for the petitioners that in this case, the occupation of the petitioners over the enquiry premises' is, since its inception unauthorised as the petitioners are not having any single document to show, on which basis, they are occupying those said premises. Even if it is their case that they were permitted to occupy the same as employees of the Municipal Corporation, as now they have ceased to be the “employees” of the Municipal Corporation since long back, on their retirement, therefore, they are having no more authority to remain in possession of the enquiry premises. Hence, it is urged that no interference is warranted in the impugned orders of eviction passed by the Chief Enquiry Officer and confirmed by the Appellate Court.

17] In the instant case, as the action of eviction is initiated under Section 105(B) (1) of the MMC Act, it is necessary to consider the definition of the term “unauthorized occupation” as defined in Section 105A (d) of the MMC Act, which reads as follows :-

“Unauthorized occupation in relation to any corporation premises” means the occupation by any person of corporation premises without authority for such occupation; and includes the continuance in occupation by any person of the premises after the authority under which he was allowed to occupy the premises has expired, or has been duly determined”.

18] As observed by the Hon'ble Apex Court, in the case of *Prakash Ware Housing Co., -vs- Municipal Corporation of Greater Bombay and anr*, [(1991) 2 SCC 304],

“This definition shows that occupation of Corporation premises without authority for such occupation is an unauthorised occupation. Such occupation includes continuance in occupation by a person after the authority under which he occupied the premises has "expired" or it has been "duly determined". The definition thus includes not only a trespasser whose initial and continued occupation has never been under any valued authority, but it also includes in equal measure a person whose occupation at its commencement was under authority, but such authority, has since expired, or, has been duly determined- Which means validly determined. The expiry of authority to occupy occurs by reason of the terms or conditions of occupation. On the other hand, the determination of authority to occupy to be due or valid must be founded on one of the grounds specified by the statute. Any order of eviction on the ground of either "expiry" or "due determination" has to be made in accordance with the

procedure prescribed by the statute”.

19] In the present case it is not disputed that the enquiry premises belong to the Municipal Corporation and Municipal Corporation has issued due notices to the petitioners calling upon them to show the authority under which petitioners are occupying the enquiry premises. Hence the only issue for consideration is whether the petitioners have shown or produced any authority, under which they are occupying the enquiry premises?

20] In this respect, it is admitted by petitioners, in their cross-examination that they do not have any document to show that their occupation over the enquiry premises is authorized. They have also admitted that they are neither the tenants nor the licencees of the Municipal Corporation. They have further admitted that they have not paid any rent, fees or compensation in respect of enquiry premises to the Municipal Corporation.

21] Thus, there is clear cut admission given by petitioners themselves that they are not having any authority to occupy the enquiry premises as they are neither the tenants nor the licencees, nor having any document to show that they are having authority to remain in possession of the enquiry premises.

22] It may be true that as they are in possession of the

enquiry premises since last several years, “no objection” might have given by the Municipal Corporation for them to obtain electric or telephone connections in the enquiry premises, but that cannot make their occupation over the enquiry premises as “authorised”.

23] It was for them to show that as to how they are “authorized” to occupy the enquiry premises, but in their own saying, they do not have any such authority. They have also admitted that the applications made by them and by their Union for regularization of their possession, over the enquiry premises are not allowed by the Municipal Corporation. Therefore, as stated in the notice issued to the petitioners, the possession of the petitioners' is required to be held as unauthorized, as they have failed to show under which authority they are occupying the same.

24] The documentary evidence on which petitioners have relied upon such as electricity bills, ration cards, Aadhar Card, PAN Cards etc, at the most prove their occupation but not the “authority” under which they are occupying those premises. In such situation, no fault at all can be found in the impugned order, passed by the Chief Enquiry Officer, which is confirmed by the Appellate Court, holding that the petitioners have no right to remain in possession, hence they are liable to be evicted.

25] At this stage, learned counsel for the petitioners submits

that as the petitioners are in occupation of the enquiry premises since last more than 30 years, their occupation, if cannot be protected by this Court, at least considering them as “Project Affected Persons”, Respondent be directed to provide them some alternate premises. It is urged that, after all the petitioners are the former employees of the Municipal Corporation, and therefore, Municipal Corporation should take sympathetic view of the matter and considering them as Project Affected Persons, should provide them alternate accommodation.

26] However, as rightly submitted by learned Senior Counsel for Municipal Corporation this prayer is outside the purview of this court and also of the Municipal Corporation, as held by the Division Bench of this Court in the case of, *More Jeevan Yashwant and 82 ors -vs- The Mumbai Municipal Corporation and anr* in Writ Petition No.957 of 2013 dated 6th January, 2017, especially para 39 thereof which reads as follows :-

“39. It is high time that we clarify that those in possession of public property have no right to continue in their possession and occupation. The municipal servants must realise, like others, that they are public servants. The Municipal Corporation must realise that it is a trustee of the public property. They do not have authority to dispose of these properties as if they belong to them exclusively. They are made over to the municipalities for municipal administration and governance. Therefore, the local authorities and

Municipal Corporations are as much bound by the mandate of Article 14 of the Constitution of India, as these employees. This court cannot perpetuate an illegal act by its writ. Equal protection of the law postulates that those not entitled to any relief based on a right cannot continue to insist on the same. Once a leave and licence arrangement in law does not confer any right, title and interest in the property, much less of tenancy, then, we do not see how the Municipal property, coming in the petitioners' possession during the course of their services, places them in a different class. They are comparable with those municipal servants to whom municipal premises are allotted in lieu of payment of House Rent Allowance. The House Rent Allowance is paid because those occupying their own or rented premises should be in a position to bear the monetary liability. In some cases, the salary is not enough to meet these expenses and therefore, such schemes, namely, payment of House Rent Allowance or grant of housing accommodation in lieu thereof, are proposed and implemented. These schemes are implemented so as to assist the municipal employees and public servants and in return, it is expected that they render efficient and prompt services. The municipal services are rendered to fulfill the mandate of the constitution of India and Sections 61 and 63 of the MMC Act. We need not highlight as to what are the duties of the Municipal Corporation and its functions. There is enough indication in that regard in the MMC Act itself. That contains both, the obligatory and discretionary duties. Eventually, all municipal services are rendered for the welfare and benefit of the residents of the city. The Municipal Corporations themselves occupy a constitutional status. The

Constitution envisages establishment and incorporation of a Municipal Corporation so as to ensure better and quality municipal governance. Given this status, the municipal employees ought to be aware that if they occupy municipal properties during the course of their services, then, they are also obliged to handover these premises on their retirement or superannuation so that the Municipal Corporation can utilise them for housing those who have entered the services or existing employees. Given the shortage of accommodation, there is a huge waiting list. Hence, we find that the contrary impression that parties like the petitioners and municipal authorities entertain needs to be dispelled forthwith. None can, therefore, take a decision to handover municipal properties to anybody save and except in accordance with law. No provision has been brought to our notice in the MMC Act, which obliges the Municipal Corporation to make a provision for housing its retired employees. Therefore, there is no statutory right, which can be claimed in such matters". (emphasis supplied)

27] In view of the above said unequivocal observations made by the Division Bench of this Court, request made by the petitioners for alternate accommodations being in the first place, out of purview of the proceeding before this Court and otherwise also expressly deprecated by the Division Bench of this Court, neither this Court nor respondent corporation can grant the same.

28] As a result, there is no substance in these writ petitions,

hence they are dismissed.

29] At this stage, learned counsel for the petitioners submits that as the petitioners intend to approach the Hon'ble Supreme Court, against the order of this Court, the interim protection granted to them in respect of possession of enquiry premises, should be extended for a period of 12 weeks from today.

30] Learned Senior Counsel for respondent-Municipal Corporation strongly resists the said prayer by submitting that after dismissal of these writ petitions, such discretionary relief should not be extended to the petitioners. In the alternate it is submitted that if such relief this Court is inclined to grant, then it should be for a limited period and subject to petitioners' giving undertakings to this Court that if they do not succeed in getting any further protective orders from the Hon'ble Supreme Court, they will vacate the premises, on expiry of the period to be stipulated by this Court.

31] Accordingly, in the interest of justice, as the petitioners intend to approach the Hon'ble Supreme Court and till today their possession over the premises is protected, during the enquiry before the Chief Enquiry Officer, before Appellate Court and even in this Court, the said protection against the eviction is extended for a period of 8 weeks, subject to petitioners' filing their individual undertakings before this Court, within a week that petitioners will not create any

third party interest in the enquiry premises and hand over peaceful and vacant possession of the premises to the respondents, if they fail to get any protective orders from the Hon'ble Supreme Court, within the stipulated period of 8 weeks.

[DR.SHALINI PHANSALKAR-JOSHI, J.]