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

WRIT PETITION NO.14186 OF 2017

Mumbai Hindi Sahitya Parishad	]
a Trust having library known as Bhartiya	] <u>Petitioner</u>
Vidya Mandir Pustakalaya,	] Original
Ground Floor, Laxmi Nivas Building	] Appellant
Matunga (Central Railway) East	]
Mumbai 400 019	]

V/s.

1. The Municipal Corporation of	]
Greater Mumbai, a body Corporate	] <u>Respondent.</u>
Constituted under the Mumbai Municipal	] <u>No.2</u>
Corporation Act, 1888,	] Original
having its office at Mahapalika Marg,	] Respondent
Mumbai	]
	]
2. Inquiry Officer	]
F/South Ward, Dr. Babasaheb	] Respondent
Ambedkar Road, Parel	] <u>No.2</u>
Mumbai 400 012	]

Mr. S. K. Dubey i/by Shraddha K. Khandhadia, for the
Petitioner.

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 JUDGMENT :

1] Heard learned Counsel for the petitioner and learned

Senior Counsel for the respondent corporation.

2] Rule.

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

4] By this writ petition filed under Article 227 of the Constitution of India, petitioner is challenging the order dated 22.9.2017, passed by the Principal Judge, City Civil & Sessions Court, Greater Mumbai, thereby dismissing his Misc. Civil Appeal No.73 of 2017, which was preferred by petitioner against the 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/3 of 2016, thereby directing the petitioner to vacate the enquiry premises, that is room No.9 Laxmi Nivas, Municipal Repairs Chowky, ground 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.

5] The case of the respondent Municipal Corporation is that Laxmi Niwas Building is owned by the Municipal Corporation and since the petitioner trust is found to be occupying this room unauthorizedly, a show cause notice dated 7.4.2016, came to be issued to it. It was served in order to give an opportunity to show cause as to

how possession of the petitioner trust over this room (hereinafter referred as, “enquiry premises”) is authorised.

6] The petitioner resisted the said notice by contending that the petitioner trust is in possession of the enquiry premises since 1956-57. The property in which enquiry premises is situated belonged to Smt. Laxmibai, who has donated the enquiry premises to the petitioner. It was denied that the Municipal Corporation is the owner of the enquiry premises. It was urged that in the property card, the name of Municipal Corporation is shown only as a “trustee” and not as owner. The petitioner had then relied upon the letters exchanged between trust and respondent corporation, to prove its occupation and to contend that petitioner cannot be evicted from possession of enquiry premises in this Summary enquiry.

7] In support of its contention, the petitioner examined its authorised person Mr. Rampati Shukla; whereas on behalf of respondent it's Jr. Engineer examined himself.

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

9] 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 appeal, preferred by the petitioner.

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

11] The submission of learned counsel for the petitioner is that none of the authorities below have considered the documentary evidence on which the petitioner has relied upon, namely, Change Report desired in the record of rights register of the public trust and correspondence exchanged between petitioner and respondent, to show that that the petitioner trust is in possession of the said premises since 1956-57..

12] It is submitted that the Municipal Corporation has not produced on record any document to show that Municipal Corporation is the owner of the enquiry premises. In the property card the name of Municipal Corporation is still shown as trustee. It is further submitted that all the trustees of the petitioner-trust are not given notice, moreover, the requisite permission of the Charity Commissioner is also not obtained before filing such eviction proceeding. It is ultimately urged that the possession of petitioner a trust over the enquiry premises cannot be called as that of

“trespasser or encroacher”; so also, it cannot be called as unauthorized, when the Municipal Corporation itself has permitted the petitioner 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 petitioner cannot be evicted summarily from the enquiry premises. It is urged 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.

13] 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 the petitioner to show that the petitioner has been authorized to remain in possession of the enquiry premises. In this respect, learned counsel for respondent has drawn attention of this Court to the admission given by the petitioner's witness in his cross examination before the enquiry officer admitting that the Municipal Corporation is owner of the property in which enquiry premises is situated. It is further admitted that the property is transferred in the name of Municipal Corporation from one Smt. Laxmibai in the year 1950

itself. The petitioner, has further admitted that Municipal Corporation has not allotted the enquiry premises to the petitioner or also not permitted the petitioner to occupy the enquiry premises. It is further admitted that the petitioner has no document to show that the petitioner has paid, rent, fees or compensation in respect of enquiry premises. Or that the premises are gifted to the petitioner by the Municipal Corporation. Thus, there is absolutely no evidence produced on record to show that petitioner's possession is authorized by the respondent corporation. Hence, in view of the clear cut admission given by the witness of petitioner that the Municipal Corporation is the owner of enquiry premises, the submission made in this respect cannot be accepted. Hence it is urged that both, the Chief Enquiry Officer and the Appellate Court have rightly held that the possession of the petitioner over the enquiry premises is unauthorized and the the petitioner has no right to remain in possession thereof.

14] 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”.

15] It is submitted by learned Senior Counsel for the respondent that in this case, the occupation of the petitioner over the enquiry premises, is since its inception, unauthorised as the petitioner trust is not having any single document to show, on which basis, the petitioner is occupying the said premises. Even if it is the case of petitioner that the petitioner is occupying the same for running library for public purpose, it also cannot be considered as authorised occupation. 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.

16] 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”.

17] 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”.

18] In the present case it is proved on record that the enquiry premises belong to the Municipal Corporation and Municipal Corporation has issued due notice to the petitioner calling upon the petitioner to show the authority under which petitioner is occupying the enquiry premises. Hence the only issue for consideration is, whether the petitioner has shown or produced any authority, under which the the petitioner is occupying the enquiry premises?

19] In this respect, it is admitted by the witness of petitioner, in his cross-examination that the Municipal Corporation is the owner of the property in which enquiry premises is situated. It is further admitted that the property is transferred in the name of Municipal Corporation from one Smt. Laxmibai in the year 1950. The petitioner, has further admitted that Municipal Corporation has not allotted the enquiry premises to the petitioner trust or also not permitted the trust to occupy the enquiry premises for it's use. It is further admitted that the petitioner has no document to show that petitioner has paid, rent, fees or compensation in respect of enquiry premises, or that the premises are gifted to the petitioner by the Municipal

Corporation.

20] Thus, there is clear admission given by the witness for petitioner that petitioner is not having any authority to occupy the enquiry premises, as petitioner is neither a tenant nor a licensee, nor having any document to show that the petitioner is having authority to remain in possession of the enquiry premises.

21] It may be true that as the petitioner is in possession of the enquiry premises since last several years, no objection might have been given by the Municipal Corporation to the petitioner to obtain electric or telephone connection in the enquiry premises, but that cannot make the petitioner's occupation over the enquiry premises as "authorised". It was for the petitioner to show as to how the petitioner is "authorized" to occupy the enquiry premises, but on its own saying, the petitioner does not have any such authority. Therefore, as stated in the notice issued to the petitioner, the possession of the petitioner is required to be held as unauthorized, as petitioner has failed to show under which authority petitioner is occupying the same.

22] The documentary evidence on which petitioner has relied upon such as correspondence exchanged between the petitioner and respondent and property extract etc., at the most prove its occupation but not the "authority" under which the petitioner is

occupying the enquiry 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 petitioner has no right to remain in possession, hence the petitioner is liable to be evicted.

23] As to the contention raised by the petitioner that the show cause notice was not issued to all the trustees of the petitioner trust, as held by this Court in the case of *Shyamabai wd/o Surajkaran Joshi and others -vs- Madan Mohan Mandir Sanstha* [2014 (2) Mh. L. J. 547], all the trustees are not necessary parties to such eviction proceeding even in a civil suit. Here in the case the proceedings are before the enquiry officer and not before Civil Court. Hence next contention raised about permission of Charity Commissioner under Sections 50 and 51 of the Maharashtra Public Trust Act also cannot be accepted.

24] As regards the submission that earlier also such eviction action was initiated, but it was dropped, the petitioner has himself admitted that there is no evidence on record to show that such proceedings were initiated and dropped. Hence this contention is also devoid of merits.

25] At this stage, the submission of learned counsel for the petitioner is that the petitioner is a small library running under

Charitable Trust, therefore, the petitioner should not be evicted or at least be allotted some alternate premises on public interest.

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] As a result, there is no substance in the writ petition, hence it is dismissed.

28] In the end, learned counsel for the petitioner submits that as the petitioner intends to approach the Hon'ble Supreme Court, against the order of this Court, the interim protection granted to the petitioner in respect of possession of enquiry premises, should be extended for a period of 12 weeks from today.

29] Learned Senior Counsel for respondent-Municipal Corporation strongly resists the said prayer by submitting that after dismissal of this writ petition, such discretionary relief should not be extended to the petitioner. In the alternate, it is submitted that if such relief is to be extended, then it should be for a limited period and subject to petitioner trust's giving an undertaking to this Court that if

it does not succeed in getting any further protective orders from the Hon'ble Supreme Court, petitioner trust will vacate the premises, on expiry of the period to be stipulated by this Court.

30] Accordingly, in the interest of justice, as the petitioner intends to approach the Hon'ble Supreme Court and till today petitioner's 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 petitioner's' filing undertaking before this Court, within a week that petitioner will not create any third party interest in the enquiry premises and hand over peaceful and vacant possession of the premises, if the petitioner fails to get any protective orders from the Hon'ble Supreme Court, within the stipulated period of 8 weeks.

[DR.SHALINI PHANSALKAR-JOSHI, J.]