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

WRIT PETITION NO. 14235 OF 2017.

Santosh Ghadigaonkar	...	Petitioner
V/s.		
The Municipal Corporation of Greater Mumbai	...	Respondent.

Mr. Rajesh Devgharkar, a/w Ms. Pallavi Kamble, for
the Petitioner.
Mr. Pradeep M. Patikl a/w Ms. Oorja Dhond, for the
Respondent Corporation.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 22nd MARCH, 2018.

P.C. :

- 1] Heard learned counsel for the petitioner and respondent.
- 2] By this petition filed under Article 227 of the Constitution of India, the petitioner is challenging the order dated 25.10.2017, passed by 1st Additional Principal Judge, City Civil Court, Greater Mumbai, thereby dismissing the Misc. Civil Appeal No.88 of 2017.
- 3] The said appeal was preferred by the petitioner-plaintiff, challenging the correctness of the order passed by the Enquiry Officer on 11.5.2017 in Enquiry No. D/3/Estate/2016; whereby the Enquiry Officer had ordered eviction of the petitioner from the enquiry premises bearing shop No.11(A), 502(A), on the ground floor, Hiravi

Chawl, S.G. Marg, Tardeo, Mumbai 400 034.

4] The contention of the learned counsel for the petitioner is that the petitioner is in possession of the suit premises since more than 30 years. He is having documentary evidence to that effect and his possession was known to the respondent Municipal Corporation. The petitioner has also on earlier two occasions filed applications to the respondent Municipal Corporation for regularization of his possession in the enquiry premises. Instead of deciding the said applications, the eviction notice was issued and thereafter even the eviction order is passed. It is urged that as the possession of the petitioner in the enquiry premises is since last more than 30 years, the said possession needs to be protected, at least until petitioner's applications for regularization of the enquiry premises are decided by the respondent Corporation.

5] However, as rightly submitted by learned counsel for the respondent Corporation and as held by the Enquiry Officer and the Appellate Court, petitioner is not seeking the retention or the occupation of the enquiry premises on the ground that his possession in the enquiry premises is authorized or legal. As per the own case of the petitioner himself, the enquiry premises were let out to him by one Praja Samajwadi Party, but there is not a single document

produced on record to that effect. There is also no iota of material to show that at any time respondent corporation has authorized the petitioner to remain in possession of the enquiry premises. In view thereof, after issuance of notice, his possession has become unauthorized, within 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”.

6] Thus, the possession or occupation of any person in the Corporation premises without authority for such occupation or the continuance in occupation by any person of the premises, after the authority under which he was allowed to get occupy the premises has expired, such possession becomes unauthorized.

7] In the present case, the petitioner has failed to produce on record a single document to show under which authority he is occupying the enquiry premises. Hence, both the enquiry officer and

the Appellate Court have rightly passed eviction order.

8] In the writ petition, therefore, no interference is warranted in the said order as no illegality is pointed out in the proceeding conducted before the Enquiry Officer.

9] In view thereof, the writ petition being without any merit, stands dismissed.

10] At this stage, learned counsel for the petitioner seeks extension of the stay granted by this Court on 23rd December, 2017 for further qw weeks in order to enable the petitioner to approach the Hon'ble Supreme Court.

11] Learned counsel for respondent Municipal Corporation opposed the said request.

12] However, considering that the petitioner is in possession of the enquiry premises since last 30 years and during the pendency of this writ petition, interim stay was running against the Municipal Corporation, said stay is extended for a period of eight weeks, subject to condition that within a week from the date of this order, the

petitioner shall file an affidavit-cum—undertaking that he will not create third party interest in the enquiry premises during this period and on the expiry of period of eight weeks, he will hand over the vacant and possession of the enquiry premises to respondent corporation, if he fails to get any protective order from the Hon'ble Supreme Court, within the stipulated period of 8 weeks.

[DR.SHALINI PHANSALKAR-JOSHI, J.]