

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO.241 OF 2018**

Manjit Singh Salooja

..Petitioner

vs.

Municipal Corporation of Greater Mumbai & Anr.

...Respondents

Mr.Atharva Dandekar a/w Ms. Manpreet Kaur Salooja for the Petitioner.

Mr. J. Reis, senior counsel a/w Ms. Vandana Mahadik for the MCGM.

Mr.Sagar Talekar for the Intervenor-Naigaon Education Society.

CORAM : A.S. OKA & P. N. DESHMUKH, JJ.

DATE : 30th JANUARY, 2018

P.C.:

. Heard the learned counsel for the Petitioner. Even according to the case of the Petitioner, one Shri K. V. Desai was a lessee of the Mumbai Municipal Corporation in respect of the subject premises. The challenge in this Petition under Article 226 of the Constitution of India is to the notice issued by the Municipal Corporation on 12th January 2018 in the name of Shri K.V. Desai calling upon him to vacate the premises to enable the Municipal Corporation to implement the judgment and order dated 13th December 2017 passed in Writ Petition No.493 of 2003 under which the said premises are required to be handed over to Naigaon Educational Society.

2. Mr.Dandekar, the learned counsel appearing for the Petitioner submitted that the rights of Shri K. V. Desai have been assigned to the Petitioner under a Deed of Assignment dated 31st July 1996. He submitted that not only that the Deed of Assignment has been executed but Shri K. V. Desai executed a Power of Attorney on 31st July 1996 in favour of the Petitioner. He submitted that the Petitioner paid consideration of Rs.5 Lakhs to Shri K.V.Desai. He also relied upon an affidavit executed by Shri

K.V. Desai. His submission is that in any event, due process of law has not been followed. He submitted that the Petitioner's predecessor has been held entitled to alternate accommodation and therefore, the Petitioner is entitled to alternate accommodation. He submitted that the application made by the Petitioner to the Mumbai Municipal Corporation for transfer of the tenancy in his name is pending with the Municipal Corporation. He, therefore, submitted that the Petitioner cannot be dispossessed without due process of law.

3. We have given careful consideration to the submissions. According to the case of the Petitioner, Shri K.V. Desai was a tenant of the Mumbai Municipal Corporation. The Petitioner has relied upon an unregistered Deed of Assignment dated 31st July 1996 allegedly executed by and between Shri K.V. Desai and the Petitioner. Firstly, we must note here that though the said Deed of Assignment is purportedly executed before a Notary, the same does not bear the notarial register number. Secondly, on page 2, in the recitals, total consideration is mentioned as Rs.15,51,000/-. However, in clause (1) of the Deed of Assignment, the consideration is kept blank.

4. The Petitioner has relied upon the document at page 59 which is a receipt in the sum of Rs.5,00,000/- dated 4th June 1996. No document is produced on record to show that balance amount of Rs.10,51,000/- was paid by the Petitioner to Shri K. V. Desai . There is one more important aspect of the matter. We have carefully gone through the application dated 27th April 2017 addressed by the Petitioner to the Administrative Officer of the Mumbai Municipal Corporation. Surprisingly, though the said application refers to the affidavit dated 31st July 1996 and the Power of Attorney dated 31st July 1996, there is no specific reference to the alleged Deed of Assignment which was allegedly executed on 31st July 1996. In fact

along with the said application, copies of only the affidavit and Power of Attorney were forwarded to the Mumbai Municipal Corporation.

5. We have perused the affidavits of Shri. K.V. Desai annexed to the Petition. First such affidavit is at page 29 in which Shri K.V.Desai has stated that the Municipal Corporation has agreed to issue tenancy monthly rent bills in his name. All that the affidavit records is that due to old age and sickness, he has decided to settle down at his native place and that he has given exclusive possession of the said subject premises to the Petitioner and that he had relinquished his right in favour of the Petitioner. The said affidavit does not refer to any consideration or for that matter execution of any Deed of Assignment. We may note here that even the said affidavit is allegedly executed before a Notary. However, the notorial register number is not mentioned. As far as the Power of Attorney is concerned, it cannot create any right, title or interest in favor of the Petitioner.

6. Exhibit "D" is the order of Inquiry Officer dated 18th January 2007 in inquiry proceedings under section 105B of the Mumbai Municipal Corporation Act, 1988. Evidence was recorded in the said proceedings which was contested by Shri K.V.Desai by filing a reply and also by engaging an advocate. The contents of the reply of Shri K. V. Desai have been summarized in the said order. The specific case of Shri K.V. Desai was that he was in actual possession of area of an 1260 sq.ft. In the reply, Shri K.V.Desai did not dispute the issue of public purpose set out in the notice for eviction under section 105B of the said Act. The only dispute raised by him was as regards the allotment of an alternate accommodation. Thus, the said order indicates that Shri K.V.Desai was willing to vacate the subject premises but raised a dispute about the nature and extent of alternate accommodation. However, perusal of the said order shows that one Shri Nagale, the witness examined by the Municipal Corporation, who was a

Municipal officer stated that he took measurements of the inquiry premises in the presence of one Manjitsing (apparently the present petitioner). This order shows that atleast in the year 2007, the Petitioner was aware that Shri K.V.Desai was claiming to be in possession. The said order holds that Shri K.V. Desai is entitled to alternate accommodation having an area equivalent to area actually in his possession. What is more important is a categorical finding recorded in the said order dated 18th January 2007 by the Inquiry Officer that the ground of unauthorized occupation of the inquiry premises by Shri K.V. Desai has been established. There is nothing on record to show that Shri K.V.Desai has challenged the said order. Thus, this order establishes that Shri. K. V.Desai was himself in unauthorized use and occupation of the subject premises. There is a serious doubt about the genuineness of the Deed of Assignment dated 31st July 1996 relied upon by the Petitioner. Moreover, assuming that the same Deed of Assignment as genuine, it is not a registered document. Secondly, Shri K.V.Desai who purportedly executed the Deed of Assignment was himself held to be in unauthorized occupation of the subject premises. Thirdly, the said Deed of Assignment was purportedly executed without the consent of the Municipal Corporation. Fourthly, as noted earlier, even in the application dated 27th April 2017 made by the Petitioner, the said Deed of Assignment is not referred.

7. If according to the case of the Petitioner, he is entitled to the allotment of an alternate accommodation which was agreed to be allotted to Shri K.V.Desai, it is for him to take appropriate proceedings in accordance with law. Going by the order under section 105B dated 18th January 2007, the Petitioner is not entitled to alternate accommodation. At the highest, Shri K.V. Desai will be entitled to an alternate accommodation.

8. We, therefore, find that the entire case of the Petitioner is doubtful. In any case, the Petitioner's alleged predecessor is already held to be in unlawful use of the subject premises and the said finding is recorded in the inquiry proceedings under section 105B of the said Act. Hence, the Petitioner cannot be allowed to invoke extraordinary jurisdiction of this Court under Article 226 of the Constitution of India. There is absolutely no merit in the Petition and the same is accordingly rejected.

9. At this stage learned counsel for the Petitioner submits that the observations made in this petition may come in the way of the Petitioner. The Petitioner has relied upon the documents in support of his case and, therefore findings on the documents have been recorded. Therefore no such clarification can be issued.

10. On a request made by the learned counsel for the Petitioner, ad-interim relief operative till today is extended by a period of 4 weeks from today.

(P.N. DESHMUKH, J)

(A.S. OKA, J.)