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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L)NO.1690 OF 2018

Cancer Aid & Research Foundation ...Petitioner
vs.
Municipal Corporation of
Greater Mumbai ...Respondent

Mr.O.A.Pechkar for the Petitioner
Ms K.H.Mastakar for the respondent

CORAM : A.S.OKA, &
 RIYAZ.I.CHAGLA,JJ.
DATE : JUNE 4, 2018

P.C.:

1 Heard the learned counsel appearing for the parties. Considering the narrow controversy involved in this petition, the same is forthwith taken up for final disposal.

2 Even according to the case of the respondent-Mumbai Municipal Corporation, the petitioner which is a Cancer Aid and Research Foundation was allowed to occupy five rooms in a municipal school. Even according to the case of the Municipal Corporation, the petitioner has been using the said rooms for treating poor cancer patients, for counselling them and for storing medicines.

3 The Administrative Officer (Schools) (Prashaskiya Adhikari) of the Municipal Corporation issued a notice to the petitioner calling upon it to

vacate the said five rooms. The petitioner was heard by the Deputy Commissioner (Education) who passed an order dated 8th January 2015 fixing a time bound schedule for vacating the said five rooms. The said order was subjected to a challenge by the petitioner by filing Writ Petition No.2652 of 2015. By order dated 15th December 2017 the said petition was disposed of by passing the following order:

"2 In view of this statement, we need not keep the petition pending. Hence, we dispose of the Writ petition by passing the following order:

(I) We direct the petitioner to make a representation as aforesaid within a period of one month from today;

(I) The representation shall be considered by the Municipal Commissioner or the appropriate Authority appointed by the Municipal Commissioner within a period of three months from the date on which the representation is made;

(II) The order passed on the representation shall be communicated to the petitioner within a period of 15 days from the date of passing the same;

(III) Till the date of communication of the order to the petitioner, action of eviction shall not be taken against the petitioner;

(IV) If representation made by the petitioner is rejected, we direct that the aforesaid protection shall continue to operate for a period of one month from the date on which order is communicated to the petitioner. In such event, the petitioner is at liberty to file appropriate proceedings in accordance with law;

(V) Writ petition is disposed of on above terms."

4 According, a representation was made which has been decided by the impugned order/communications dated 27th April 2018. The said communication records that the petitioner shall remove itself from the five rooms within a period of one month from the date. It is not in dispute that the petitioner was in continuous possession of the said rooms. In terms of the liberty granted under sub clause (iv) of clause 2 of the order dated 15th December 2017, the petitioner has filed this present petition.

5 The submission of the petitioner is that unless there is an order of eviction made by a Competent Authority, the petitioner cannot be evicted. It is pointed out that in a similar case, one NGO has been allowed to occupy premises in the Municipal School. The submission of the learned counsel for the respondent-Corporation is that the petitioner was allowed to use the said five rooms on Leave and Licence basis and therefore, the petitioner has no right. In the order dated 8th January 2015, it is

noted by the Deputy Commissioner (Education) that the said rooms are required for the educational purposes.

6 In short, the opposition of the respondent is on the ground that the petitioner has no right to continue as the petitioner was inducted on Leave and Licence basis. Moreover, its contention is that the premises are required for educational purposes.

7 In the representation dated 3rd January 2018 made by the petitioner in terms of the order of this Court, the petitioner relied upon the fact that in case of another NGO (Helen Keller Institute for Deaf & Dumb Mumbai), an application was made by the said institution for occupying a premises of the Municipal Corporation was favourably considered by the Municipal Corporation. Reliance was also placed on the order dated 25th February 2016 in Writ Petition No.2134 of 2016 filed by the said Institution. We find that this aspect was not dealt with in the impugned communication dated 27th April 2018 by which the representation made by the petitioner was rejected.

8 Even taking the stand taken across the bar by the learned counsel appearing for the Mumbai Municipal Corporation as correct, at highest it can be said that now the possession of the petitioner of the said five rooms is unauthorized. If that be so, the respondent-municipal corporation will have to take recourse to the provisions of section 105-B of

the Mumbai Municipal Corporation Act, 1888 (for short 'the said Act'). Under section 105-B of the said Act, the Municipal Corporation has a power to evict persons from the Municipal premises after following the procedure laid down therein. There is also a provision under section 105-F which provides for a statutory appeal against order of eviction passed under section 105-B.

9 In fact, in the impugned communication, a threat is given that administrative action will be taken against the petitioner on the failure of the petitioner to vacate the premises. By such an executive fiat, the petitioner cannot be evicted and the only remedy available for the respondent-municipal corporation is of taking recourse to the proceedings of eviction under section 105-B of the said Act.

10 Accordingly, we dispose of the petition by passing the following order:

(I) We hold and declare that the respondent-municipal corporation is not entitled to evict the petitioner on the basis of either the impugned communication dated 27th April 2018 or the order dated 8th January 2015 (Exhibit-A to the petition) and that if the respondent-municipal corporation wants to evict the petitioner, the same can be done only after following the procedure under section 105-B of the said Act;

(II) We, therefore, direct that on the basis of the impugned communication dated 27th April 2018 or the order dated 8th January 2015, the petitioner shall not be evicted;

(III) We however make it clear that we have made no adjudication on the rights and liabilities of the parties and all issues are left open to be decided in the proceedings under section 105-B of the said Act;

(IV) Rule is made partly absolute on above terms with no order as to costs.

(RIYAZ.I.CHAGLA,J.)

(A.S.OKA,J.)