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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO. 1544 OF 2016

M/s. Powerhouse Fitness Ltd. ... Petitioner
Versus
The Commissioner, Municipal Corporation of ... Respondents
Gr. Mumbai & Ors.

Mr. Darryl Paul Barretto for the Petitioner.
Ms. Vandana Mahadik, for the Respondent – BMC.
Ms. Kavita Anchan, i/b M/s. M.V. Kini & Co. for Respondent No.3.

**CORAM: A.S. OKA AND
RIYAZ I. CHAGLA, JJ.**
DATED: 4TH APRIL 2018.

PC:-

1. Heard the learned counsel appearing for the Petitioner and the learned counsel appearing for the first to third Respondents. After the Petition is amended, the challenge in this Writ Petition under Article 226 of the Constitution of India is to the notice dated 26th August 2016. The Petition was filed on the basis of an apprehension that the Petitioner will be dispossessed without following due process of law. On 26th February 2018 rule was issued in this Petition and ad-interim relief was granted in terms of clause 4 of the said order which reads thus:-

***4. “By way of ad-interim relief, we restrain the
Mumbai Municipal Corporation from evicting the***

petitioner without following due process of law. We clarify that on the basis of the notice dated 26th August 2016, the petitioner cannot be evicted without following due process of law”.

2. According to the case of the Petitioner, the fourth Respondent was inducted in the subject premises and that on the basis of a leave and license agreement executed by the fourth Respondent on 28th October 2008 that the Petitioner was inducted in the subject premises and thereafter, the Petitioner is carrying on business therein.

3. The perusal of the impugned notice dated 26th August 2016 shows that the Municipal Corporation has alleged that show cause notice was issued to the Petitioner on 30th March 2016 calling upon the Petitioner to show cause as to why the possession of the subject premises should not be taken over. By the impugned notice dated 26th August 2016, the Petitioner has been called upon to deliver subject premises to the Municipal Corporation within a period of 7 days failing which the Petitioner will be dispossessed and the movables inside the premises will be seized.

4. Thus, according to the case of the Municipal Corporation, the possession of the Petitioner is unauthorised as he has been

illegally inducted by the fourth Respondent.

5. Under Section 105 B of The Mumbai Municipal Corporation Act, 1888 (for short the said Act), the Municipal Corporation has a power to evict a person in a unauthorised occupation of Municipal premises. The Petitioner is not disputing that the premises of the subject matter of the Petition are vesting in the said Corporation. Moreover, under sub section (2) of Section 105 C, the Municipal Corporation has a power to recover damages from a person who is unauthorizedly in possession of Municipal property.

6. Even if, this Petition was to remain pending, the ad-interim relief granted on 26th February 2018 was required to be continued while permitting the Municipal Corporation to adopt due process of law. Therefore, no purpose is served by keeping this Petition pending. If the Petitioner is in unauthorised possession of a Municipal property, it is the duty of the Municipal Corporation to initiate proceedings under Section 105 B and 105 C of the said Act. However, only by sending the impugned notice, the Petitioner cannot be forcibly dispossessed especially when the Municipal Corporation has abundant powers under Section 105 B to evict a person who is in unauthorised occupation of a Municipal property.

7. We accordingly dispose of the Petition by passing following order:-

a) We hold that the Petitioner cannot be dispossessed on the basis of impugned notice dated 26th August 2016 (Exhibit "N" to the Petition);

b) However, we make it clear that it will be always open for the Municipal Corporation to initiate proceedings under Section 105 B as well as under Section 105 C of the said Act.

c) All contentions of parties are kept open.

d) Rule is partly made absolute on above terms.

(RIYAZ I. CHAGLA J.)

(A.S. OKA, J)