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

WRIT PETITION (ST) NO. 26239 OF 2019

Ayesha Education Society through its Secretary
Mr Anis Subhan Shaikh
vs
Municipal Corporation of Gr. Mumbai & Anr.

...Petitioner.
...Respondents

.....
Mr. Chintamani Bhagoji i/b Mr R.K.Mendadkar for the Petitioner
Mr. Rajesh Patil a/w Mr Vinod Mahadik and Mr Santosh Parad for the
Respondent-M.C.G.M.
Mr. Machindra Bhosale, JE (B & F) M/W Ward from the M.C.G.M. present.
Mr Anis Subhan Shaikh, Trustee and Secretary of the Petitioner present.
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**CORAM : S. J. KATHAWALLA &
B. P. COLABAWALLA, JJ.
DATED 03 DECEMBER, 2019.**

P.C.:

By the above Writ Petition the Petitioner has impugned the communication dated 5th August, 2019 issued by Respondent No.2 directing the Petitioner to vacate the premises i.e. Gymnasium at Rajashree Shahu Maharaj Garden, Shivaji Nagar, Govandi, Mumbai- 400 043. Admittedly the premises of the Municipal Corporation is used by the Petitioner- Trust to run Gymnasium on Leave and License basis. Admittedly, the Leave and License agreement executed on 14th July, 2015, was only for a period of one year. Clause 44 of the Leave and License Agreement reads as under :-

“44. *It is hereby agreed between the parties that on the expiry of the period of this*

agreement or on earlier revocation thereof, the Licensee shall forthwith at the cost of the Licensee remove all the belongings, furnitures/fixtures etc. of the Licensee from the said premises failing which it shall lawful for the Licensor to remove and dispose off the same at the risk and cost of the Licensee. ”

2 Admittedly the Leave and License agreement has come to an end on 31st March, 2016 as can be seen from the recitals of the License Agreement on page No.17 of the Writ Petition. The Municipal Corporation has not taken any rent / compensation from the Petitioner after 31st March, 2016. Instead of vacating the premises as agreed in clause 44 of the Agreement, the Petitioner breached the same by continuing to remain in possession of the licensed premises, and more than eight months after expiry of the Leave and License agreement, made an application seeking renewal of the license for the year 2017. In the circumstances, the Municipal Corporation issued notices to the Petitioner dated 13th November, 2018 and 15th July, 2019 calling upon them to vacate the premises. Since the Petitioner had failed and neglected to act on the said notices, final notice dated 5th August, 2019 was issued calling upon the Petitioner – trust to vacate the licensed premises within a period of 48 hours failing which they would take possession of the same. Accordingly, on 24th August, 2019 the Municipal Corporation has taken possession of the licensed premises and sealed the same.

2 Mr. Anis Subhan Shaikh, Trustee and Secretary of the Petitioner Trust is present in Court today. He now states that he shall remove the equipments of the Petitioner-trust from the Gymnasium on 13th December, 2019 at 11.00 a.m.

Mr. Anis Shaikh undertakes that while removing the equipments which are fixed in the wall, he shall not cause any damage to the structure including the walls. The statement/ undertaking are accepted.

4. The Officer of the Municipal Corporation shall remain present in the Gymnasium premises on 13th December, 2019 at 11.00 a.m. He shall open the seal of the Gymnasium and allow the Petitioner-Trust to remove the equipments.

5 The Writ Petition is disposed off as dismissed.

(B. P. COLABAWALLA, J.)

(S. J. KATHAWALLA, J.)