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

WRIT PETITION (Lodging) No. 1092 of 2019
ALONG WITH
WRIT PETITION (Lodging) No. 1093 of 2019

- 1) Renuka Dhanrajgir Batlivala]
Indian Inhabitant,]
Age 75 years, Occup:Business]
residing at "G" Block, Dhanraj Mahal,]
Chhatrapati Shivaji Marg,]
Mumbai 400 001.]
- 2) Riaz Batlivala]
Indian Inhabitant,]
Age 40 years, Occu:Business]
residing at "G" Block, Dhanraj Mahal,]
Chhatrapati Shivaji Marg,]
Mumbai 400 001.]
- 3) Zahan Batlivala]
Indian Inhabitant,]
Age 37 years, Occu:Business]
residing at "G" Block, Dhanraj Mahal,]
Chhatrapati Shivaji Marg,]
Mumbai 400 001.]

PETITIONERS

versus.

- 1) Municipal Corporation of Greater Mumbai]
Head Quarter,]
Mumbai C.S.T. 400 001.]
- 2) Office of the Hydraulic Engineer's Department]
Municipal Corporation of Greater Mumbai,]
1st Floor, Engineering Hub, Dr. E. Moses Road]
Worli, Mumbai 400 018]

RESPONDENTS

Mr. Priyank Kapadia a/with Ms. Akshita Bhargava i/by M. Mulla Associates for the petitioners.

Mr. Ram Apte, Senior Counsel with Ms. Rupali Adhate for the respondent-MCGM.

**CORAM : S.C. DHARMADHIKARI &
B.P. COLABAWALLA, JJ.**

DATE: 26th April, 2019.

ORAL JUDGMENT [PER: B. P. COLABAWALLA, J.]

1. Both these writ petitions have been filed challenging the orders passed by the Municipal Corporation of Greater Mumbai (for short “**the MCGM**”), both dated 1st February, 2019 under which the petitioners were inter alia directed to vacate the premises that form the subject-matter of the said order, before 14th February, 2019, failing which necessary action would be taken.

2. As far as W.P.(Lodging) No. 1092/2019 is concerned, the property is Plot “A3” and “A4” i.e. land bearing CTS 96 (Pt) of village Paspoli, Powai, admeasuring 1682 square meters abutting the Powai Lake. As far as W.P.(Lodging) No. 1093/2019 is concerned, the same is with respect to Plot “Q” i.e. land bearing CTS No. 96 of village Paspoli, admeasuring 565.00 square meters abutting the Powai

Lake. Since the petitioners as well as the respondents in both the petitions are the same and the issues raised in both the petitions are identical, they are being disposed of by this common order and judgment.

3. According to the petitioners, they are the heirs and legal representatives of the late Mrs. Homai A. Peerbhoy (alias Mrs. Homai H. Batlivala) and Mr. Rutton H. Batlivala. Respondent No.1 is the MCGM and respondent No.2 is the office of the Hydraulic Engineer of respondent No.1. According to the petitioners, the aforementioned plots, namely, Plots "A3", "A4" and "Q" were given on lease to the petitioners. The lease agreements were sanctioned by the Improvements Committee of respondent No.1 under its Resolution No. 158 dated 24th July, 1951 and Resolution No. 392 dated 8th November, 1960 respectively. According to the petitioners, the Deputy Municipal Commissioner, the Improvements Committee and Mr. Akbar A. Peerbhoy entered into Articles of Agreement dated 13th September, 1963 with respect to Plots "A3" and "A4". Even though the Articles of Agreement was styled as a Leave and Licence Agreement, it is the contention of the petitioners that the same was treated as a lease. As far as Plot "Q" is concerned, it is the case of the petitioners that respondent No.1, the Municipal Commissioner and

Mrs. Homai H. Batlivala and Mr. Rutton H. Batlivala executed an indenture of lease dated 18th December, 1963.

4. It is common ground before us that both these alleged leases expired by the efflux of time on 7th April, 2001. In these circumstances, the Powai Plot owners association applied for extension of the aforesaid leases vide their letter dated 28th March, 2001. Thereafter, respondent No.2 addressed a letter dated 4th November, 2003 to Mrs. Homai A. Peerbhoy (alias Mrs. Homai H. Batlivala) stating that the lease for the aforesaid plots may be extended for a further period of 30 years i.e. up to 7th April, 2031, subject to the approval of Improvements Committee/respondent No.1, as per the conditions specified in the said letter. This letter can be found at Exh. "C" to the petition and is at page 41 of the paper-book of W.P.(Lodging) No.1092/2019. It is to be noted that this letter has been addressed by the Deputy Hydraulic Engineer (P & C) and clearly states that the lease may be extended for a period of thirty (30) years from 8th April, 2001, subject to the approval of the Improvements Committee/MCGM and on the conditions mentioned in the said letter. One of the conditions also stipulates that construction of any type of structure on the said plots shall not be allowed as this area is notified as a No Development Zone by the

Government of Maharashtra vide a Notification dated 10th September, 2001.

5. Be that as it may, by his communication dated 30th April, 2007, the Municipal Commissioner of respondent No.1 decided not to renew, extend or grant a fresh lease of the said plots. Accordingly, the Advocate and Deputy Law Officer, Legal Department of respondent No.1, addressed a letter dated 11th October, 2007 to Mr. A.A. Peerbhoy and Mrs. Batlivala stating that the leases granted with respect to the said plots came to an end on 7th April, 2001 and therefore they had no right to continue to occupy the same after the expiry of the lease. By this very letter, the said persons were called upon to quit, vacate and deliver peaceful and vacant possession of the said plots along with the structures standing thereon to respondent No.2 within seven days, failing which they would be liable to be evicted as per the procedure laid down under Section 105B of the Mumbai Municipal Corporation Act (for short "**the MMC Act**").

6. In reply to this letter dated 11th October, 2007, the Advocates of the predecessor of the petitioners addressed a letter dated 16th October, 2007, wherein it was contended that the lease of

the said plots was extended for a period of 30 years upto 7th April, 2031 vide letter dated 4th November, 2003 addressed by respondent No.2 and to which we have adverted to earlier.

7. It is thereafter averred in the petition that no action was taken by the Municipal Authorities and in fact, they were accepting rent from the petitioners and therefore the lease be treated as valid and subsisting especially considering that respondent No.2 was accepting the payment of rent and also issued rent receipts. Thereafter, it is stated in the petition that show cause notices were issued of which the petitioners had no knowledge, after which the impugned order has been passed.

8. In this backdrop, the learned Counsel appearing on behalf of the petitioners submitted that the impugned order dated 1st February, 2019 proceeds on a completely wrong assumption that the leases of the aforesaid plots namely Plots “A3” and “A4” as well as Plot “Q” were not renewed and that the lease granted in relation to those plots have come to an end by the efflux of time on 7th April, 2001. To further this argument, the learned Counsel heavily relied upon the letter dated 4th November, 2003 addressed by the Deputy Hydraulic Engineer (P & C) to the predecessors of the petitioners.

According to the learned Counsel, this letter clearly shows and establishes that the lease with reference to the aforesaid plots has been extended by a period of 30 years from 8th April, 2001. This being the case, the learned Counsel submitted that no show cause notice could have been issued to the petitioners and neither could they have been directed to vacate the aforesaid plots and the structures standing thereon.

9. Assuming without admitting and strictly in the alternative to the primary argument canvassed and set out earlier, the learned counsel submitted that if this Court holds that the leases do not stand renewed, then, on account of the fact that the Petitioners were holding over after the determination of the leases in the year 2001 for the past more than one decade, and the Municipal Corporation was accepting the rent or monthly compensation from the Petitioners, the Petitioners are entitled to a notice and hearing from the Municipal Corporation. The Municipal Corporation is still obliged to follow the due process of law. In that regard, our attention is invited to the MMC Act and particularly a full Chapter thereunder enabling the Municipal Corporation to resume or take possession of its own properties. Chapter V-A contains Sections 105-A to 105-H and that needs to be invoked, is the submission. This not having been done, vitiates the impugned

order, was the argument canvassed before us. For all these reasons, the learned Counsel submitted that the impugned orders dated 1st February, 2019 be set aside by us in our writ jurisdiction under Article 226 of the Constitution of India.

10. We are unable to agree with the submissions canvassed on behalf of the learned Counsel appearing for the petitioners. At the outset, we must state that we find that these writ petitions are nothing but an abuse of the process of this Court. The entire arguments canvassed by the learned counsel appearing for the petitioners is on the footing that there is a subsisting lease in favour of the petitioners. On a plain reading of the documents that have been annexed to the petition it is clear that the leases with respect to the abovementioned plots was never renewed by the Municipal Corporation. The letter that was relied upon by the learned Counsel dated 4th November, 2003, clearly stipulates that the lease of the said plots may be extended for a period of 30 years from 8th April, 2001, subject to the approval of the Improvements Committee/Corporation. It is not even the case of the petitioners that the Improvements Committee/Corporation has granted any such approval. This being the case, we find that the argument canvassed by the learned Counsel for the petitioners is wholly

misconceived. In fact, in the letter dated 11th October, 2007 addressed by the Legal Department of the MCGM to the predecessors of the petitioners, it is categorically stated that the lease with respect to plots “A2”, “A3” and “A4” as well as plot “Q” was extended by the Improvements Committee vide their Resolution No. ICR/723 dated 26th May, 1984. It is an admitted position before us that no further extension has been granted by the Improvements Committee and neither any other resolution has been passed for granting a fresh lease to the petitioners. We therefore are clearly of the opinion that the petitioners have been occupying public property without any authority of law. Though the lease has expired on 7th April, 2001, the petitioners are still occupying the aforesaid plots for almost 18 years. Merely because the Municipal Corporation has been accepting the rent after the aforesaid date, without anything more, cannot lead us to presume that the lease has been extended. In fact, if we were to assume, that by their conduct, the MCGM has extended/renewed the lease, it would be in the teeth of Section 92 (c) of the MMC Act which deals with the provisions governing the disposal of municipal property. What Section 92 (c) stipulates is that the Commissioner may lease, sell or otherwise convey any immovable property belonging to the Corporation only with the sanction of the Corporation. It can hardly be disputed that

this sanction has to be in writing. As mentioned earlier, there is no such sanction and that is an admitted fact. We must mention that in relation to public properties none can enter upon, use or remain on the same without the authority of law. There is nothing like a deemed renewal or formal renewal as there are specific powers conferred on the MCGM to enter into and make contracts, including leases. Leased properties and which belong to the MCGM are not for persons like the petitioners which are occupied by them even after the initial permission or lease came to an end. As mentioned earlier, there is neither any lease nor any license granted in writing to the petitioners to remain on the said plots. Unless there are any such written documents executed by the competent person under the provisions of the MMC Act, and in terms and the powers conferred therein, none can claim a semblance of a right, much less a right of the nature claimed by the petitioners and asserted boldly before us in this petition. This being the case, we are unable to agree with the learned Counsel appearing on behalf of the petitioners that the leases is renewed up to 7th April, 2031.

11. There is another reason why we find that there is absolutely no merit in these writ petitions. We must mention that a Public Interest Litigation No. 38 of 2014 was filed in this Court in

respect of the Powai-Lake for reliefs on several issues like desilting, preserving and conserving trees, prohibiting dumping of waste material/quarrying works and various other reliefs. In that Public Interest Litigation, this Court had directed all the concerned authorities to hold a meeting and prepare a plan for taking measures in the matter. In compliance of the said orders passed in the Public Interest Litigation, the MCGM has decided to implement a preservation and beautification project for the Powai Lake. This Project was proposed to be implemented by the MCGM in phases, under which the Powai Lake Front land is being beautified as a place where a healthy and pleasant water body will attract the public at large. The development involves various works like restricting inflow of untreated sewage and removing hyacinth; developing islands, pathways/landscaping inside the Powai Garden, etc. It is also supposed to include a play zone for children. The plans and estimate for this project are ready but an uninterrupted stretch of land is required for the implementation of the aforesaid project, otherwise the proposed beautification project would be partial. It is not in dispute that the plots on which the petitioners lay claim fall within the part of the aforesaid project. One can hardly dispute that the beautification of the Powai Lake is in larger public interest. This project is being undertaken by the MCGM pursuant to the orders

passed by this Court in PIL No.38 of 2014 and is for the benefit of the public at large. It can hardly be disputed that when the public interest is pitted against private interest, public interest would prevail. In the facts of the present case and as mentioned earlier, it is not in dispute that the plots on which the petitioners lay claim, fall within the aforesaid beautification project. Their interest therefore would certainly have to give way for the benefit of the public at large and for whose interest the beautification project of the Powai Lake has been undertaken by the MCGM. In fact, this power has been specifically granted under Section 105B of the MMC Act and which deals with the power to evict the persons from Corporation premises. Section 105B(1)(c) clearly stipulates that where the Commissioner is satisfied that any corporation premises in occupation of any person are required by the Corporation in public interest, the Commissioner may, notwithstanding anything contained in any other law for the time being in force, by following the procedure laid down therein, order that a person as well as any other person who may be in the occupation of whole or any part of the premises, to vacate the same. This is yet another reason why we do not think that these petitions can be entertained at the instance of the petitioners.

12. As far as the alternate argument of the petitioners that no show cause notices were issued or received by the petitioners and that the MCGM ought to resume or take possession of the said plots by only following the procedure under Chapter V-A of the MMC Act, the same need not detain us any further. Firstly, in W.P.(L) No. 1093/2019 the show cause notices have been specifically referred to and annexed to the petition. In these circumstances, this argument can be of no assistance to the Petitioners. Even otherwise, we find the alternate argument to be baseless for the simple reason that it is the Petitioners who have come to the Court asserting that they cannot be evicted by the Municipal Corporation on the strength of a show cause notice and unless a Full Chapter in the MMC Act is complied with by them. This argument is based on the fact that the Petitioners are in continued possession of the Municipal premises and they have not been evicted by the Municipal Corporation despite the leases in their favour came to an end by the efflux of time. The Petitioners, therefore, raise their case as high as on a deemed renewal of the lease justifying their continuance in possession after the determination or expiry thereof by the efflux of time. Secondly, they assert before this Court that renewal has come about by the acts of the Municipal Officials and the Municipal Corporation itself. Thirdly, they rely upon the correspondence carried out in that

regard. We have found that there is a law, namely the MMC Act in place which allows the Municipal Corporation to execute contracts. When it comes to the Municipal property, that can be disposed off only in accordance with the statutory provisions and each of which are mandatory. If there is no compliance with these mandatory provisions and to be found in the same legislation, then, there is no contract and there is no renewal. Absent this, a person holding over the public property and municipal premises in particular, cannot be heard to say that now the law must take its course to throw him away. Once he comes to Court and does not succeed, then, he cannot be heard to say that the law must still be complied with. Once we were called upon to decide whether there was any subsisting lease in favour of the petitioners and having demolished these arguments and coming to a categorical finding that there was no extension / renewal or execution of a fresh lease, coupled with the fact that the petitioners have been occupying the aforesaid plots for the last 18 years without any authority or law, we cannot shut our eyes and set aside the impugned orders on the so called ground that no show cause notices were issued to the petitioners. In these facts, even if we were to assume that no show cause notice was issued or received by the petitioners, the issuance of any show cause notice, in the peculiar facts and circumstances of this case would be an exercise in

futility. In such circumstances, this alternate argument fails to impress us. It would be a mockery of the rule of law if a person coming to Court and placed like the Petitioners before us, admittedly found to be in possession of public property without the authority of law, can still request the Court that the real owner (namely the MCGM), now has to evict the petitioners by following the provisions of Chapter V-A. If we were to order such a course being adopted in our writ jurisdiction, it will be perpetuating a wrong. A wrong doer can never take advantage of his own wrong and continue perpetuating the wrong with the assistance of Municipal Officials. Here, the Municipal Corporation has already informed the Petitioners that their leases have come to end by the efflux of time and they must vacate the premises. Once we have upheld the contention of the MCGM that the leases have come to an end by the efflux of time and there is no renewal or a fresh lease, then, we do not see how the alternate argument can be accepted. It is therefore rejected. We may also mention that in both the impugned orders dated 1st February, 2019 passed by the Hydraulic Engineer, it has been specifically recorded that the petitioners were asked to see the said Hydraulic Engineer on 10th November, 2017 for a personal hearing. This was communicated by a letter dated 2nd November, 2017. Despite this, the petitioners did not appear nor submitted their

say and it is in these circumstances that the impugned orders came to be passed. Apart from a bald assertion that the show cause notices were not received, there is nothing else on record to substantiate the aforesaid allegations. In these peculiar circumstances and looking to the totality of the facts of the case, we do not think that the alternate argument would in any way vitiate the well reasoned orders passed by the Municipal Authorities.

13. As mentioned earlier, we find that these petitions are nothing but an abuse of the process of the Court. We have come to this conclusion because even on the documents as annexed to the petition, it is clear that the lease with reference to the aforesaid plots was never renewed by the MCGM. Despite this, the petitioners have been occupying the said plots along with the structures thereon for a period of more than 18 years and thereafter have approached this Court in its writ jurisdiction. We are increasingly finding that such litigations are filed in this Court and which we would not hesitate to term as “chance litigations”. This practice has to be nipped in the bud and litigants who engage in this kind of litigation and waste precious judicial time, should be saddled with heavy costs so that it would dissuade other parties (like the petitioners in this case) from filing such frivolous petitions. In the aforesaid circumstances, we

dismiss both these petitions and direct the petitioners in both the petitions to pay cost of Rs.5,00,000/- (Rupees Five Lakhs) in each petition, to the MCGM. These costs shall be paid within a period of four weeks from today, failing which the MCGM shall be entitled to recover the same as arrears of land revenue.

(B. P. COLABAWALLA,J)

(S.C. DHARMADHIKARI,J)