

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.255 OF 2016
WITH
CHAMBER SUMMONS (L) NO.251 OF 2018**

Anita Ankush Ramane and Ors.	...	Petitioners
versus		
The Municipal Corporation of Greater Mumbai and Ors.	...	Respondents

Mr. Siddesh Pilankar, for Petitioners.
Mr. Ashwin Sakolkar with Ms. Yamuna Parekh, for MCGM.
Ms. Pooja Joshi, Admn. Officer, Estate, F/N Ward of MCGM present.

**CORAM: S.J. KATHAWALLA &
B.P.COLABAWALLA, JJ.
DATE: 19th NOVEMBER, 2019**

P.C.:

1. The Petitioner No.1 is a widow and Petitioner Nos.2 and 3 are the sons of late Ankush Ramane, who was in the employment of the Municipal Corporation of Greater Mumbai (MCGM). The MCGM had during the period when Shri Ankush Ramane was in their employment, allotted him and his immediate family members an unused room which was part of a Welfare Centre at Azad Nagar, Wadala, Mumbai – 400 031 (the said Premises). For this purpose, a leave and license agreement was executed by and between the MCGM and Shri Ankush Ramane. The leave and license agreement provided that the licensor as well as licensee could terminate the agreement by serving one month's notice to the other. Admittedly, Shri Ankush Ramane made several applications to the Corporation requesting them to accept him

as a permanent tenant of the Corporation in respect of the said premises occupied by them, which request was not acceded to by the Corporation and Shri Ankush Ramane continued to be a licensee of the Corporation.

2. Shri Ramane passed away in the year 2006 whilst he was in service. The Petitioner No.2 was given employment by the Corporation on compassionate basis. Since the Petitioners did not handover possession of the premises which was allotted on leave and license basis to Shri Ankush Ramane only for use by him with his immediate family members, the Corporation issued a notice dated 4th August, 2007 to the Petitioner No.1 and called upon her to vacate and deliver peaceful possession of the said premises to the Corporation. The Petitioners did not respond to the said notice and continued to reside in the said premises. In view thereof, the Corporation once again issued notice dated 21st May, 2014 under Section 105-B of the Mumbai Municipal Corporation Act, 1888 (“the Act”) calling upon the Petitioners to vacate and deliver peaceful possession of the said premises to the Administrative Officer or to his representative within 7 days from the date of receipt of the said Notice. The Petitioners once again failed and neglected to respond to the said notice. Instead, they filed the above Writ Petition only on 5th October, 2015 impugning the said notice.

3. Whilst the above Writ Petition was pending, the Corporation once again issued a notice dated 21st May, 2018 in the name of the deceased Ankush Ramane under Section 105-B of the Act inter alia recording that the possession of the said

premises is being retained by the allottee, even after the expiry of his service and that vacant and peaceful possession of the same be handed over to the Corporation. The Petitioners have therefore, taken out Chamber Summons (L) No.251 of 2018 seeking leave to amend the Petition and impugn the said notice dated 21st May, 2018.

4. Sub-Section 1 of Section 105-B of the Act, sets out the circumstances in which a person in occupation of the whole or any of the Corporation premises can be issued a notice calling upon him/her to vacate such premises within one month of the date of the service of the notice. However, sub-Section 2 of Section 105-B makes it mandatory for the Corporation to issue a notice in writing calling upon all persons concerned to show cause why an order of eviction should not be made before the order under sub-Section 1 of Section 105-B of the Act, is made.

5. The Petitioners have correctly pointed out that in the impugned notices issued by the Corporation to the Petitioners under Section 105-B of the Act, the Corporation has called upon the Petitioners to vacate the premises without first issuing any show cause notice to the Petitioner under sub-Section 2 of Section 105-B of the said Act. In view thereof, we are constrained to allow the Petition on this ground alone. We therefore, pass the following order :

(i) The Notices dated 16th May, 2014 & 21st May, 2018 issued by the Corporation to the Petitioners under Section 105-B of the Act, are quashed and set aside.

(ii) The Corporation shall issue a show cause notice under sub-Section 2 of Section 105-B of the Act, to the Petitioners on or before 10th January, 2020.

(iii) The Petitioners shall respond to the said notice on or before 24th January, 2020.

(iv) In the event of the Corporation not being satisfied by the explanation offered to the show cause notice by the Petitioners, the Corporation shall on or before 31st January, 2020 proceed to issue notice to the Petitioners under sub-Section 1 of Section 105-B of the Act.

(v) The above Writ Petition as well as Chamber Summons are accordingly disposed of.

(B.P.COLABAWALLA, J.)

(S.J.KATHAWALLA, J.)