

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.6989 OF 2021

Bharti Santosh Bhosale .. Petitioner

Vs.

Municipal Corporation of Greater
Mumbai - Through Municipal
Commissioner & Anr. .. Respondents

ALONG WITH
WRIT PETITION NO.6990 OF 2021

Sharda Ramchandra Indulkar .. Petitioner

Vs.

Municipal Corporation of Greater
Mumbai - Through Municipal
Commissioner & Anr. .. Respondents

ALONG WITH
WRIT PETITION NO.6992 OF 2021

Prachi Lahu Parab (Heirs & LR's of
Late Chavan Yashwant S.) .. Petitioner

Vs.

Municipal Corporation of Greater
Mumbai - Through Municipal
Commissioner & Anr. .. Respondents

ALONG WITH
WRIT PETITION NO.6993 OF 2021

Shweta Anant Shirke & Anr. .. Petitioners

Vs.

Municipal Corporation of Greater
Mumbai - Through Municipal
Commissioner & Anr. .. Respondents

ALONG WITH
WRIT PETITION NO.6994 OF 2021

Mugdha Dube .. Petitioner

Vs.

Municipal Corporation of Greater
Mumbai - Through Municipal
Commissioner & Anr. .. Respondents

ALONG WITH
WRIT PETITION NO.6996 OF 2021

Lalita K. Bhuvandas (Heir & LR of
Late Shri Bhuvandas K.G.) .. Petitioner

Vs.

Municipal Corporation of Greater
Mumbai - Through Municipal
Commissioner & Anr. .. Respondents

ALONG WITH
WRIT PETITION NO.7001 OF 2021

Anandkumar Sadashiv Parab .. Petitioner

Vs.

Municipal Corporation of Greater
Mumbai - Through Municipal
Commissioner & Anr. .. Respondents

ALONG WITH
WRIT PETITION NO.7005 OF 2021

P.S. Shanbag .. Petitioner

Vs.

Municipal Corporation of Greater
Mumbai - Through Municipal
Commissioner & Anr. .. Respondents

ALONG WITH
WRIT PETITION NO.7006 OF 2021

Kadam Sujata Vijay .. Petitioner

Vs.

Municipal Corporation of Greater
Mumbai - Through Municipal
Commissioner & Anr. .. Respondents

ALONG WITH
WRIT PETITION NO.7011 OF 2021

Ghag Kashinath Keshav .. Petitioner

Vs.

Municipal Corporation of Greater
Mumbai - Through Municipal
Commissioner & Anr. .. Respondents

ALONG WITH
WRIT PETITION NO.7013 OF 2021

Prakash J. Dalvi & Ors. .. Petitioner

Vs.

Municipal Corporation of Greater
Mumbai - Through Municipal
Commissioner & Anr. .. Respondents

ALONG WITH
WRIT PETITION NO.7014 OF 2021

Sushma Bhanudas Sonanis Thr.
Her PoA Mahesh Bhanudas Somanis .. Petitioner

Vs.

Municipal Corporation of Greater
Mumbai - Through Municipal
Commissioner & Anr. .. Respondents

ALONG WITH
WRIT PETITION NO.7015 OF 2021

Vivek Vinayak Gawade .. Petitioner

Vs.

Municipal Corporation of Greater
Mumbai - Through Municipal
Commissioner & Anr. .. Respondents

ALONG WITH
WRIT PETITION NO.7017 OF 2021

Pawar Ashok Dattaram .. Petitioner

Vs.

Municipal Corporation of Greater
Mumbai - Through Municipal
Commissioner & Anr. .. Respondents

ALONG WITH
WRIT PETITION NO.7018 OF 2021

Abhyudaya Bhagwan Landge .. Petitioner

Vs.

Municipal Corporation of Greater
Mumbai - Through Municipal
Commissioner & Anr. .. Respondents

ALONG WITH
WRIT PETITION NO.7019 OF 2021

Bakul Kamalkumar Kothare .. Petitioner

Vs.

Municipal Corporation of Greater
Mumbai - Through Municipal
Commissioner & Anr. .. Respondents

ALONG WITH
WRIT PETITION NO.7020 OF 2021

Ashok Shridhar Phodkar .. Petitioner

Vs.

Municipal Corporation of Greater
Mumbai - Through Municipal
Commissioner & Anr. .. Respondents

ALONG WITH
WRIT PETITION NO.7021 OF 2021

Solanki Pushpa Kisan .. Petitioner

Vs.

Municipal Corporation of Greater
Mumbai - Through Municipal
Commissioner & Anr. .. Respondents

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Mr. Rohan Cama with Mr. Anish Karande i/b Ms. Sapana Rachure for the petitioners.

Mr. Om Suryawanshi for the respondent-MCGM in all, except Writ Petition No.6994 of 2021.

Mr. Joel Carlos with Mr. Om Suryawanshi for respondent-MCGM in Writ Petition No.6994 of 2021.

Ms. Pratibha A. Sankhe, Estate Officer, P to R Wards is present in the court.

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CORAM : MRS. BHARATI DANGRE, J.

RESERVED ON : 18TH NOVEMBER, 2021.

PRONOUNCED ON : 08TH DECEMBER, 2021.

JUDGMENT:-

1. The group of petitions filed under Article 227 of the Constitution of India pose challenge to an order dated 13/10/2021 passed by the City Civil Court at Bombay in distinct miscellaneous appeals filed under Section 105F of the Mumbai Municipal Corporation Act, 1888 (hereinafter referred to as “the MMC Act”. By the said order, the miscellaneous appeals filed by various petitioners assailing the legality, validity and propriety of the order dated 09/02/2018 passed by Respondent No.2 i.e. the Enquiry Officer on issuance of notice under Section 105-B of the MMC Act were dismissed.

2. On listing of group of petitions, the respective counsel submit that they would argue the petitions finally at the stage of admission and they were directed to place on record the compilation of documents in support of their stand and on compliance, the petitions are taken up for final hearing at the stage of admission. Hence, Rule. Rule made returnable forthwith, with the consent of the parties.

I have heard learned counsel Mr. Rohan Cama, learned counsel for the petitioners along with Mr. Anish Karande. I have also heard Mr. Joel Carlos along with Mr. Om Suryawanshi for the MCGM. Ms. Pratibha A. Sankhe, Estate Officer, P to R Wards is also present in the court during the hearing.

3. From the list of dates placed on record by learned counsel Mr. Cama, the events involved can be traced back to early 1960s when respondent No.1 – Municipal Corporation of Greater Mumbai (hereinafter referred to as “the MCGM” or “the Corporation”) acquired certain parcels of land in the suburbs of Mumbai city and embarked upon the development schemes for housing to be provided to the affected/dishoused persons and the tenements came be constructed from the Improvement Trust Budget for housing the public and for housing municipal employees on ownership basis.

As the project affected persons were reluctant to accept the allotment, the land was not suitable, the employees of the

Corporation, who were willing to be accommodated in such places, were given the tenements on leave and licence basis. From here, there is a variance in the contention of respective counsel appearing for the parties as the claim of Mr. Cama is to the effect that the accommodation was provided with an assurance and understanding that at a later point of time, the premises would be allotted to them on ownership basis whereas, learned counsel for MCGM deny the same and the stand of the Corporation is that it decided to allot residential accommodation to its employees to cater to their need for housing and since it was only available to them on the basis of tenancy during their period of service with the Corporation and on their retirement, they were duty bound to vacate the said premises.

4. The stand of the Corporation is that the allotment made to the employees was in the form of 'staff quarters'; with no right, title and interest accruing to the employees. The submission of learned counsel for the Corporation is to the effect that after the members/ex-employees ceased to be in service of the Corporation, on retirement or otherwise, they ought to have handed over the tenements to the Corporation in view of the acute shortage of housing accommodation to the existing serving employees and, therefore, the claim of the petitioners is resisted by the Corporation on the ground that the premises allotted to them are in the form of a municipal accommodation/staff quarters and they cannot claim any vested right to occupy them,

since their right is restricted to their employment with the Corporation and once it has come to an end, co-extensively the right to occupy the said premises shall also come to an end.

5. Amidst these respective stands, learned counsel Mr. Cama would submit that at some point of time, there were some steps taken to convert the allotted residential accommodation on leave and licence basis to ownership basis, subject to finalization of terms and conditions and the Estate Officer in charge of allotment of properties of the Corporation had caused to finalize the terms and conditions on the basis of which the premises would be converted to one's ownership. This lead to persons similarly situated like the petitioners to form a Co-operative Housing Society in the name and style of "Shraddha Cooperative Housign Society", consisting of the residents of the Mithanagar Municipal Colony. Learned counsel would submit that in the year 2007, th then Municipal Commissioner made a reference to the State Government through the Chief Secretary, Urban Development Department for disapproving the resolution, which was passed by the Corporation and as a consequence, the Corporation initiated proceedings under Section 105B of the MMC Act against the persons similarly situated like the petitioners, residing in other similar municipal colonies.

6. An Association was formed and the action of the Corporation was challenged by filing several writ petitions by

the petitioners, who were sought to be evicted and the various Associations espousing their cause. The group of petitions was dismissed by the Division Bench of this court on 06/01/2017 (Coram : S.C.Dharmadhikari & B.P.Colabawalla, JJ.) and this order was confirmed upto the Hon'ble Supreme Court.

7. Pursuant to this, the Corporation issued notice to various members of the Association including the petitioner asking them to hand over peaceful possession of the tenements. The said Association protested by referring to paragraph 54 of the judgment dated 06/01/2017 and the submission of learned counsel for the petitioners is to the effect that talks were again initiated at the level of Secretariat of the Government, for considering the proposal for re-development of Mithanagar Municipal Colony. However, without waiting for the outcome, the petitioners were served with a notice under Section 105B of the MMC Act, which was in conformity of paragraph No.54 of the judgment dated 06/01/2017. The notice issued was in the form of show cause notice with an averment that the individual petitioner is in unauthorized occupation of the premises described in the schedule and in exercise of powers conferred under sub-section (1) of Section 105B of the MMC Act, they are ordered to vacate the said premises and he is called upon to tender an explanation and produce evidence, if any, and show cause on the date of hearing mentioned as to why the proposed order should not be made. The respective notice received by

each of the individual petitioner is appended to the petition filed by them.

8. From the issuance of the show cause notice, till the final order passed by the Enquiry Officer, ordering the petitioners to vacate the premises i.e. on 09/02/2018, the exercise undertaken has been described by Mr. Cama to be a farce, masquerade and in fact it ridicule the statutory provision, which is mandatory in its compliance. According to him, the entire process adopted is lacking fairness, which is a necessary concomitant of principles of natural justice and the submission is that this is in utter violation of the well known principle, accepted by the judicial system being ‘justice should not only be done but should be manifestly seen to be done’ and the exercise undertaken is travesty of justice.

9. The sequence of events narrated by Mr. Cama between the issuance of show cause notice dated 08/01/2018 and final order being passed by the Enquiry Officer on 09/02/2018 can be tabulated in seriatim, as under:

<u>Date</u>	:	<u>Events</u>
08/01/2018	:	Show cause notice issued under Section 105B of the MMC Act.
12/01/2018	:	The petitioner filed reply to the show cause

		notice before respondent No.2.
12/01/2018	:	Respondent No.2 adjourned the proceedings to 23/01/2018 for recording the statement/examination in chief of respondent No.1's witness.
23/01/2018	:	Examination-in-chief of Sandya T. Shinwadkar, Administrative Officer (Estate) of respondent No.1 along with documents, filed.
25/01/2018	:	Cross-examination of Shirwadkar by the petitioner – commence and concluded.
29/01/2018	:	Evidence Statement of the petitioner, filed. Cross-examination of the petitioner by Shirwadkar – commenced and concluded. Arguments in the enquiry proceedings – commenced and concluded. The matter was adjourned for orders.
09/02/2018	:	The impugned order passed, directing the premises to be vacated within one month.

10. In the backdrop of the aforesaid dates, learned counsel Mr. Cama would assertively state that the petitioners were given only three days' time to respond to the show cause notice being issued to them on 08/01/2018. In contrast, on the reply being filed by them, 12 days' time was given to respondent No.2 to file their

evidence affidavit. It is submitted that on 23/01/2018, the Administrative Officer stepped in the witness box and only one day was given to the petitioners to cross-examine the witness. On 25/01/2018, The Administrative Officer was cross-examined by 16 petitioners and the cross-examination was declared over. The evidence statement of petitioners was filed on 29/01/2018 and on the very same day, all the 16 petitioners were cross-examined by the Administrative Officer. On the very same day, the arguments in the enquiry proceedings were concluded and the matter was listed for orders. The examination and cross-examination of 16 petitioners or by 16 petitioners on one day is argued to be a pretense and empty formality and also an impossibility unless it was by a predetermined mindset, the whole process was being adopted is the submission of Mr. Cama.

11. In a short span of one month, within which the entire process contemplated under Section 105B of the MMC Act has been completed, is argued to be parody, particularly considering the said provision to be mere procedural rigmarole and that is how there is infraction of the procedure contemplated under Chapter V-A of the MMC Act, is the submission advanced on behalf of the petitioners.

12. Learned counsel Mr. Cama would submit that when the petitioners filed appeal before the City Civil Court at Bombay, it stayed the effect and operation of the impugned order and called

for the record and proceedings. The stay continued till the final hearing of the appeals i.e. till 13/10/2021, when the appeals came to be dismissed in utter ignorance of the submissions, advanced on behalf of the petitioners, who urged before the court that the proceedings in the enquiry are flawed since it lacked opaqueness and fairness. Learned counsel Mr. Cama would submit that the failure to follow the principles of fairness has become more imperative because the petitioners were appearing in person before the Enquiry Officer and in absence of any legal assistance, the proceedings have been conducted with a predetermined mindset as if the authority had the end result on its mind all the while and only the formality remained to be carried out, before putting a seal on their fate.

13. Per contra, Mr.Suryawanshi, learned counsel for the Corporation, would submit that the petitioners have been afforded every opportunity and fairplay and ultimately, who are the petitioners? They are the persons who have retired long back from the Corporation on attaining the age of superannuation and still they are holding on to the premises of the Corporation as usurpers. The tenements, which were allotted to the employees of the Corporation on tenancy basis to cater to the housing needs of the employees of the Corporation, but even after severing their relationship with the Corporation, they have not vacated the staff quarters and this is causing inconvenience of the present employees of the Corporation, who must be provided with the

housing accommodation, is his precise contention.

He would heavily fall back on the observations made by the Division Bench of this court, when it discussed the petitions instituted by various individuals and similarly situated as the petitioners as well as the housing society formed by such individual occupants, being aggrieved by action of the Corporation and my attention is invited to the observations made by the Division Bench to the following effect:

“41. The Municipal Corporation is right in insisting that they abide by their undertakings and voluntarily surrender the premises in their possession to the Municipal Corporation. Thus, his case was that by accepting all the terms and conditions, the benefit is obtained in the form of allotment of staff quarters and municipal premises. The Municipal Commissioner points out that in the last five decades or more, new premises could not be constructed by the Municipal Corporation. It is not possible to obtain any vacant land or property for construction of new houses. What he has highlighted is that even if there are Improvement Committee and General Body recommendations from the year 1989, there is huge wait list of the municipal employees awaiting allotment of municipal accommodation. If the existing premises are handed over on permanent tenancy/ occupancy, then, this wait listed employees can never be provided any municipal premises. Thereafter, he highlights as to how municipal governance is the primary duty and responsibility of the Municipal Corporation. The Municipal Corporation serves the residents and members of the public. The Municipal Corporation is a public body. Those Joining the services of the Corporation and later on retiring from the services would never surrender or handover the municipal premises in their occupation. That would set a bad precedent The Municipal Corporation's premises and particularly those

vacant lands, which are reserved for construction of residential structures, have been encroached and it is very difficult to obtain vacant possession thereof. It is in these circumstances and when the municipal employees obtain municipal houses, which are public properties, for their residence, it is their bounden duty to hand them over to the Municipal Corporation after their retirement. Converting them into permanent occupancy would defeat the larger public interest.

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45. It is not as if a public property is in exclusive domain of the municipal administrators. It is a public property. Ultimately, all power is in the nature of a trust. In these circumstances, we cannot call upon the Commissioner or the Corporation to betray this trust, which is reposed in them. Eventually, public trust is paramount in discharge of public duties. We cannot direct the Municipal Corporation to dispose of the properties after invoking the above principles. Any decision and equally by us would run counter to these provisions and the mandate flowing from the MMC Act.

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53. We made it clear to the petitioners' counsel that in the event the petitioners are ready and willing to handover peaceful possession of their premises within a specific time period, then, the recoveries and as threatened against them may not come into effect. There would be no further deductions or if there is any balance payable post such deduction, it would be released. We have not found any petitioner voluntarily coming forward and to give such an undertaking to this court. We are, therefore, constrained to pass a conditional order in that regard.

54. We, therefore, direct that if such of the petitioners, who surrender and handover peaceful possession of their premises (municipal premises in their possession) within three months from today, the Municipal Corporation shall

not make any further deductions, but release all the balance sums due and payable with proportionate interest to such employees. In the event the petitioners do not handover the premises within this period and continue to retain them, then, all consequences in law shall follow. Meaning thereby, the Municipal Corporation can proceed with its action under section 105B and other provisions of the MMC Act and recover penal rent/damages/compensation as well. That can be recovered by attaching movable and immovable properties of the occupants.”

14. It is in the wake of the observations of the Division Bench at paragraph No.54 of the judgment, the notice came to be issued to the petitioner under Section 105B of the MMC Act, which is the power to evict a person from the properties of the Corporation. Section 105B of the MMC Act reads thus:

105B. (1) Where the Commissioner is satisfied -

(a) that the person authorised to occupy any corporation premises has, whether before or after the commencement of the Bombay Municipal Corporation (Amendment) Act, 1960 -

(i) not paid for a period of more than two months, [the rent, taxes, fees or compensation] lawfully due from him in respect of such premises;

or

(ii) sub-let, whole or any part of such premises; or

(iii) committed or is committing, such acts of waste as are likely to diminish materially the value, or impair substantially the utility, of the premises; or

(iv) otherwise acted in contravention of any of the terms,

express or implied under which he is authorised to occupy such premises;

(b) that any person is in unauthorised occupation of any corporation premises;

(c) that any corporation premises in the occupation of any person are required by the corporation in the public interest,

the Commissioner may notwithstanding anything contained in any law for the time being in force, by notice (served by post, or by affixing a copy of it on the outer door or some other conspicuous part of such premises or in such other manner as may be provided for by regulations), order that person, as well as any other person who may be in occupation of the whole or any part of the premises shall vacate them within one month of the date of the service of the notice.

(2) Before an order under sub-section (1) is made against any person, the Commissioner shall issue, in the manner hereinafter provided, a notice in writing calling upon all persons concerned to show cause why an order of eviction should not be made.

The notice shall, -

(a) specify the grounds on which the order of eviction is proposed to be made, and

(b) require all persons concerned, that is to say, all persons who are or may be in occupation of, or claim interest in, the corporation premises, to show cause against the proposed order, on or before such date as is specified in the notice.

If such person makes an application to the Commissioner for the extension of the period specified in the notice, the Commissioner may grant the same on such terms as to payment and recovery of the amount claimed in the notice,

as he deems fit.

Any written statement put in any person and documents produced, in pursuance of the notice, shall be filed with the record of the case, and such person shall be entitled to appear before the Commissioner by advocate, attorney or pleader.

The notice to be served under this sub-section shall be served in the manner provided for the service of a notice under sub-section (1); and thereupon, the notice shall be deemed to have been duly given to all persons concerned.

(3) If any person refuses or fails to comply with an order made under sub section (1), the Commissioner may evict that person and any other person who obstructs him and take possession of the premises, and may for that purpose use such force as may be necessary.”

Sub-section (4) of Section 105B of the MMC Act permits the Commissioner to remove or cause to be remove, or dispose of by public auction any property remaining on such premises and sub-section (5) takes the said procedure further. Sub-section (6) of the said section is also relevant which reads thus:

“(6) If a person, who has been ordered to vacate any premises under sub clause (i) or (iv) of clause (a) of sub-section (1), within one month of the date of service of the notice, or such longer time as the Commissioner may allow, pays to the Commissioner the rent and taxes in arrears, or as the case may be, carries out or otherwise complies with the terms contravened by him to the satisfaction of the Commissioner, the Commissioner shall on such terms, if any including the payment of any sum by way of damages or compensation for the contravention aforesaid), in lieu of evicting such person under sub section (2), cancel his order made under sub-section (1);

and thereupon such person shall continue to hold the premises on the same terms on which he held them immediately before such notice was served on him.”

15. Section 105C of the MMC Act is the power of the Corporation to recover rent or damages as arrears of property taxes and Section 105D is a provision, which stands without prejudice to the provisions of Section 105B, where rent can be recovered by deduction from salary or wages of the employees of the Corporation. Section 105E of the MMC Act empower the Commissioner, while he is holding an enquiry and he is vested with the same powers as of a civil court under the CPC when trying a suit viz. summoning and enforcing the attendance of any person and examining him on oath, requiring the discovery and production of documents, etc. and act as per the Regulations framed under Section 105H of the MMC Act in relation to holding of enquiries under the said Chapter.

16. In the scheme of enactment, the argument advanced on behalf of the petitioners by Mr. Cama will have to be appreciated.

17. It is settled position of law that the procedure to be followed by a statutory body/authority, as the present one, which is prescribed by a statute, then compliance of the said procedure is a yardstick of fairness. Rule of fairness is an essential feature of any Government action. The procedure must be in

consonance of fundamental principles of fair justice and, if it offends the fundamental principles of fairness or established judicial ethos or traditions or shocks the conscience of court then, the action based on the same deserves to be struck down as unconstitutional. His Lordship, Justice K. Ramaswamy (as he was then) in case of **Kartar Singh v. State of Punjab (1994) 3 SCC 569** has aptly remarked as under:

“Appearance of injustice is denial of justice. Built in procedural safeguards assure a feeling of fairness. When the procedure prescribed by the statute offends the principle of fair justice or established judicial ethos or traditions or shocks the conscience, it could be said that it is fundamentally unfair and violative of the fundamental fairness which are essential to the very concept of justice and civilised procedure. Whether such fundamental fairness has been denied is to be determined by an appraisal of the totality of facts, gathered from the setting, the contents and the procedure which feed the end result. The procedure which smacks of the denial of fundamental fairness and shocks the conscience or universal sense of justice is an anathema to just, fair or reasonable procedure. Articles 14 and 21 frown against arbitrary and oppressive procedure.”

18. By this time, it is a well settled position in law that a quasi judicial body/authority while acting in exercise of its statutory power must act fairly and is expected to act with an open mind while initiating show cause proceedings. A show cause is intended to give a person proceeded against, a reasonable opportunity of making his objection against the proposed charges indicated in the notice, which he is called upon to show

cause. It is not permissible to approach the proceedings on the predefined and desired conclusions and, if that is done, the entire proceedings initiated by the issuance of the show cause notice will get vitiated by unfairly and biased approach and subsequent proceedings become a mere formality to be completed. The legislature never intended the authorities, upon whom, it conferred power to act as a quasi judicial authority and determine the right of the parties, to abuse the process of law or to act unfairly. Where the law requires the authority to act or decide, it is implicit that the exercise of power by the said authority should be done objectively, fairly and reasonably. The action of such authority shall be tested on the anvil of 'Rule of law' and fairness of justice particularly if the competing interest of the members of the society is involved. The exercise of a power by an authority, which is vested with certain discretion will require a responsible approach and it is expected of the authority to be guided by the principles provided in the statute or rules or regulations subject to which the power or the discretion, if any, shall be exercised. The rule of fairness is an essential feature of the Government action and, when a statute contain a provision for issuance of show cause notice, it necessarily contemplates that the person proceeded against must be informed about the charges so that he can take his stand/defence and prove his innocence or establish that the said action initiated against him need to be dropped. But, when the functioning of the authority is with a predetermined approach and, instead if he

is made to confront with the definite conclusion with a prejudged mind, such action shall fail for lack of fairness.

19. Justice is the goal of the quasi judicial proceedings too, and to inspire confidence and to justify its existence and exercise of power, such authority must act with fairness. In the present case, from the show cause notice, it is apparent that the Estate Officer has demonstrated his opinionated approach and such a closed and shut approach is inconsistent with the scheme of Section 105B of the MMC Act. While issuing a show cause notice, the authority must take care to manifestly keep an open mind as it is expected to act fairly, in adjudicating the guilt or otherwise of the person proceeded against. The principle that ‘justice should not only be done but it must eminently appear to be done’ is equally applicable to the quasi judicial proceedings, if such proceeding has to inspire confidence in the mind of those people, who are subjected to it.

20. As regards whether the procedure for eviction initiated under Chapter IV of the MMC Act by issuing of show cause notice and its culmination into an order directing eviction of the noticee is vitiated by bias, following the test in **Ridge v. Baldwin & Ors.** reported in **(1963) 2 WLR 935** must be invoked; that by fair procedure one would mean that what a reasonable man would regard as fair in a particular circumstances. Undue haste, in absence of any urgency, would shake the confidence of

an individual in the authority, which is bound to decide as per law. If the procedure followed is unjust or outrageous, such decision shall be set aside as arbitrary and unreasonable. The Hon'ble Supreme Court in the case of **Vinod Kumar v. State of Haryana** reported in **(2015) 3 SCC 138** has made the following observations:

“23. In these cases, where the courts are concerned with judicial review of the administrative action, the parameters without which the administrative action can be reviewed are well settled. No doubt, the scope of judicial review is limited and the courts do not go into the merits of the decision taken by the administrative authorities who are concerned with the decision making process. Interference with the order of administrative authority is permissible when it is found to be irrational and unreasonable or there is procedural impropriety.”

21. There can be no doubt about the position in law, that fair procedure and just treatment is the core of our jurisprudence. The extent of applicability of principles of natural justice and the concept of fairness depends upon the circumstances of case, the statutory frame work, the subject matter to be dealt with, the nature of enquiry, the consequence that may visit a person after such enquiry form out of the decision, pursuant to such an inquiry and so forth.

The rule of fair hearing, a reasonable opportunity of hearing, which is an important ingredient of *audi alteram partem* rule and embraces almost every facet of fair procedure. The rule of fair hearing requires that the affected party should be

given an opportunity to meet the case against him effectively and the right to fair hearing takes within its fold a just decision supplemented by following fair procedure, coupled with assigning of reasons and rational on which the conclusion is based.

22. The right of fair hearing, in the words of the Apex Court in the case of **Kanachur Islamic Education Trust v. Union of India & Anr.** reported in **(2017) 15 SCC 702** casts a steadfast and sacrosanct obligation on the adjudicator to ensure fairness in procedure and action, so much so that any remiss or dereliction in connection therewith would be at the pain of invalidation of the decision eventually taken. Every executive authority empowered to take an administrative action having the potential of visiting any person with civil consequences must take care to ensure that justice is not only done but also manifestly appears to have been done.

23. In the absence of contrary indication in the statute, the procedural fairness is an implied mandatory requirement to protect an arbitrary action where the statute provides wide power coupled with wide discretion on the authority. The duty is to act fairly, not so much to act judicially. The action of the authority is expected to be impartial and to be free from even appearance of unfairness, unreasonableness and arbitrariness.

24. In modern administration set up, what is important is the fairness of procedure with elimination with elements of arbitrariness. The Apex Court in the case of **Management of M/s M.S. Nally Bharat Engineering Co. Ltd. v. The State of Bihar & Ors.**, reported in **(1990) 2 SCC 48** has held as under.

“29. The State functionaries must act fairly and reasonably. That is, however, not the same thing to state that they must act judicially or quasi-judicially. The term ‘fairness in procedure’ ‘fair play in action’, ‘duty to act fairly’ are perhaps used as alternatives to ‘natural justice’ without drawing any distinction. But, such phrases may sometimes be used to refer not to the obligation to observe the principles of natural justice but, on the contrary, to refer to a standard of behavior which increasingly, the courts require to be followed even in circumstances where the duty to observe natural justice is inapplicable. Fairness is a rule to ensure that state power in modern state is not abused but properly exercised. The State power is used for proper and not for improper purposes. Fairness is also a principle to ensure that statutory authority arrives at a just decision either in promoting the interest or affecting the rights of persons. The use of the time hallowed phrase that justice should not only be done but be seen to be done’ is the essence of fairness equally applicable to administrative authorities. Fairness is thus a prime test for proper and good administration. It has no set form or procedure. It depends upon the facts of each case. Fairness does not necessarily require a plurality of hearings or representations and counter representations. It cannot have too much elaboration of procedure since wheels of administration must move quickly.”

25. Action of the respondent No.1 being determined on the aforesaid parameters, falls short of it.

The procedure adopted by the enquiry officer can be described as an action in haste, without any necessity of being hasty. True it is, that the MCGM is interested in evicting the petitioners, on a declaration coming from this court that they are not entitled to claim any right, title and interest in the premises, which were acquired by them as 'staff quarters' and no concession can be made in favour of the occupants by the Corporation as they are holding the property in trust and no public property can be disposed of even by a public body except as authorized by law. The judgment of the Division Bench has frowned upon an attempt on the part of the administration to deal with the property, devoid of the element of public trust.

However, in spite of the said observations, after giving opportunity to the occupants to vacate the premises within a stipulated period, the court was constrained to pass a conditional order to the effect that if they vacate the premises peacefully, the deductions and recoveries as threatened against them may not come into effect. The option was given by the Division Bench to the occupants to surrender and hand over the peaceful possession of the premises within three months and the Corporation was directed not to make any further deduction but release all the balance sums due and payable to them towards their retirement benefits. However, in a contingency when the petitioners fail to comply and do not hand over the premises within the prescribed time limit, the consequence in law were directed to be followed. The Division Bench made it amply clear in paragraph No.54 and

the consequences in law that shall follow has been clarified to be the action under Section 105B of the MMC Act and to recover penal rent/damages/possession as well and also of attaching moveable and immoveable properties of the occupants.

26. In view of such liberty being granted to such authority to exercise its power under Section 105B of the MMC Act, it is not only in the interest of the Corporation to follow the procedure, since the said section also contemplate the levy of damages or compensation for contravention of the orders of the Commissioner, who has been asked to vacate the premises by virtue of sub-section (6) of Section 105B. The procedural shortcut which the Corporation is adopting is not only denying justice to the petitioners but is also depriving the Corporation to initiate action in terms of the scheme contained in Section 105B of the MMC Act which permits the Corporation to evict persons from its premises and also to recover rent and taxes and arrears in case there is failure to vacate the premises. Enquiry officer unmindful of the provision has proceeded with the show cause notice as an empty formality with a closed mind, about the conclusion which has arrived at, before evicting the occupants.

27. In any action taken in haste and concluded barely within a period of one month, where 16 petitioners being examined and cross-examined on one single day, itself justify an interference at the instance of this court. The City Civil Court at Bombay has

failed to consider the aspect of fairness which is lacking the entire proceedings and has perfunctorily dismissed the Appeals, by laying emphasis on the judgment of the Division Bench, unmindful of the fact that the Division Bench itself has asked to follow the procedure under Section 105B of the MMC Act. The following observations in the order, clearly reflect this.

“12. In that view of the matter, on merits when the appellant has neither raised, nor is in a position to make out any vested right in respect of the premises in question, it cannot at all be said that the possession is authorized when the service has come to end long back.

13. As regards principle of natural justice is concerned, it has been contended that the proceedings were culminated within a period of one month. It cannot be lost sight of that the factual matrix of the matter is that the appellant had no legal right to be made out before Enquiry Officer. Whatever grounds that could be raised or were sought to be raised has been exhaustively considered by the Hon’ble High Court while passing the judgment recorded hereinabove and in that view of the matter the proceedings were required to be undertaken.

14.

15.

16. Thus, there does not appear to be any violation of principles of natural justice or any fallacy in the procedure especially in the facts and circumstances of the present case. Moreover, test of ‘real prejudice’ as has been evolved in respect of adherence of principles of natural justice by the Hon’ble Supreme Court has in any case not been made out...”

28. In the light of the aforesaid observation, the decision of the Enquiry Officer, sans adhering to the principle of fairness, which

is upheld by the City Civil Court at Bombay, cannot be sustained and set aside. The proceedings under Section 105B of the MMC Act, initiated against the petitioners is remitted back to the Enquiry Officer with a stipulation that the petitioners shall, in no way, contribute in delaying the culmination of the proceedings and the Enquiry Officer shall conclude the said proceeding by adhering to the procedure of law, including adequate opportunity being afforded to the petitioners to show cause to the notices received by them, within a period of six months from today.

Rule is made absolute in the aforesaid terms. No order as to costs.

[SMT. BHARATI DANGRE, J.]