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

WRIT PETITION NO.5158 OF 2003

Pune Municipal Corporation and Anr. ..Petitioners
Versus
Kalakar ..Respondent

**WITH
WRIT PETITION NO.5159 OF 2003**

Pune Municipal Corporation and Anr. ..Petitioners
Versus
Manoranjan ..Respondent

**WITH
WRIT PETITION NO.5160 OF 2003**

Pune Municipal Corporation and Anr. ..Petitioners
Versus
Varad Ranga Bhoomi ..Respondent

**WITH
WRIT PETITION NO.5161 OF 2003**

Pune Municipal Corporation and Anr. ..Petitioners
Versus
Manoranjan ..Respondent

Mr. Rajdeep S. Khadapkar, for the Petitioners in all Petitions.
Mr. A. L. Gore, for the Respondent in all Petitions.

CORAM : NITIN W. SAMBRE, J.

DATE : 10th MARCH, 2022

PC.

1. Heard.

2. Since the issue involved in all these matters is common, by consent same are decided by this common order.
3. For the purpose of convenience, the facts of Writ Petition No.5158 of 2003 are taken into consideration.
4. Impugned in the proceedings before Court below are, orders of the Commissioner, thereby directing the respondent to vacate the premises which was allotted to them way back around 1970. The said orders were passed by the petitioner/Corporation in exercise of powers under Section 81(B) of the Bombay Provincial Municipal Corporation Act, 1949.
5. Feeling aggrieved by the said orders passed on 22nd April, 1997 under Section 81(B) of the aforesaid Act, appeal under Section 81(F) of the said Act was lodged before the District Judge, Pune. Learned District Judge has allowed said appeal vide order impugned dated 18th April, 2002. As such, these petitions by the local planning authority i.e. Pune Municipal Corporation.
6. Submissions of learned counsel for the petitioners are, the learned District Judge while exercising appellate powers has exceeded its jurisdiction as the Court below has failed to appreciate the scope of the appeal and the appellate powers. In addition, his contentions are, once the Commissioner of the Corporation has subjectively satisfied that there was a sub-tenant and the conditions

of allotment were breached, the Appellate Court ought not to have substituted its finding. He would further claim that the Appellate Court has misread the evidence which is considered by the Commissioner of the Corporation while ordering the eviction. That being so, the impugned order is liable to be quashed and set aside maintaining the order of the Commissioner.

7. Submissions are resisted by the counsel for the respondent, as according to him, the learned District Judge has considered the legality and validity of the order of eviction passed by the Commissioner and has specifically recorded a finding that neither it can be inferred that the premises were sublet nor there is violation of any condition of allotment.

8. I have appreciated the said submissions.

9. It appears that the premises in question were allotted sometime before 1980.

10. Subsequent thereto, the Corporation has tried to change the conditions of allotment of the premises and accordingly issued notice and called for consent from the respondent/occupier which the respondent has not accepted/not responded.

11. The Corporation thereafter proceeded against the respondent alleging that the property is misused or use of the same

was diverted and caused a show-cause notice which was resisted by the respondent through its reply. While rejecting the explanation of the respondent, Commissioner has ordered eviction of respondent/occupier.

12. I have appreciated the findings to that effect recorded by the Commissioner in the impugned order. It appears that the property was allotted for particular purpose. The condition of allotment were not adhered to is the finding recorded. Finding of fact is recorded that other Sanstha was also permitted to use the premises. Authorization to use such premises by Manohar Kulkarni on 05.11.1980 executed by respondent is sought to be relied on for passing the order impugned.

13. The Commissioner has failed to consider the contents of the said authorization letter so as to substantiate the said finding that the premises were used for some different purpose by different agency than the one to whom it was allotted. It is apparent from the part of the findings of the order of the Commissioner that the purpose for which the premises were allotted were in fact used for the same may be by a different person who were not authorized lawfully by the Corporation.

14. That by itself will not lead this Court or the Appellate Court to record a finding that there was misuse of the premises as same was sublet.

15. Apart from above, the appellate authority which has exercised the powers is required to reappreciate the entire evidence and the pleadings, has rightly proceeded to record a finding that the premises cannot be said to be transferred as has been allotted or permitted to be used by third person.

16. In the wake of above, since the findings recorded by the District Judge are based on appreciation of evidence, I hardly see any reason which warrants interference in the impugned order.

17. That being so, all these petitions as such fail, dismissed.

[NITIN W. SAMBRE, J.]