

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

**WRIT PETITION NO.1882 OF 2007**

Vishwas Sakharam Pawar and Ors. .. Petitioners

v/s.

Municipal Corporation of Greater  
Mumbai and Ors. .. Respondents

**WITH**

**INTERIM APPLICATION (L) NO.21960 OF 2021**

Sidram Gurunath Ausekar .. Applicant

v/s.

Municipal Corporation of Greater  
Mumbai and Ors. .. Respondents

**WITH**

**INTERIM APPLICATION (L) NO.31447 OF 2022**

Vishwas Sakharam Pawar and Ors. .. Applicant

v/s.

Sidram Gurunath Ausekar and Ors. .. Respondents

Mr. P. B. Shah a/w. Kayval P. Shah, for the petitioner and applicant in  
IAL/31447/2022.

Ms. Oorja Dhond i/by Mr. Sunil Sonawane, for respondent No.1 –  
MCGM.

Mr. Ajit N. Jakhadi, Mr. Amol Anant Chile, for respondent No.2

**CORAM : R.D. DHANUKA &**

**KAMAL KHATA, JJ.**

**DATED : 30TH SEPTEMBER, 2022.**

**P.C. :**

1. By this petition filed under Article 226 of the Constitution of India, petitioners have prayed for a writ of mandamus for seeking an order and direction against respondent No.2 – Society relating to the allotment of premises to the petitioners, granting of membership of the petitioners in respondent No.2 – Society. The Petitioners also seek the membership of the employees of the Municipal Corporation in the respondent No.2 – Society and an order and direction against respondent No.2 to accommodate the petitioners and make them members of respondent No.2 in pursuance and furtherance to the order dated 20<sup>th</sup> June, 1988.
2. The petitioners also seek an order and direction against respondent No.1 to order the respondent No.2 to recommend the petitioners and to make them the members of the respondent No.2 – Society. The petitioners also seek to impugn the notices dated 12<sup>th</sup> February 2007 and 15<sup>th</sup> March 2007 terminating the rights of the petitioners to occupy the premises in possession of the petitioners at the time of filing the writ petition.
3. The petitioners have also prayed for the passing and setting aside of the proceedings under Section 105B of the Mumbai Municipal

Corporation Act initiated by respondent No.1 – Corporation.

4. Petitioner No.1, original petitioner No.2 and petitioner No.3 were the employees of respondent No.- 1 Corporation and were the occupants of certain tenements as the employees of the Municipal Corporation.
5. It is not in dispute that the petitioners are retired employees of the respondent No.1 – Corporation. Respondent No.2 – Society is the society comprising of the employees of the Municipal Corporation.
6. There were certain proceedings filed by the petitioners for seeking membership of respondent No.2 – Society. Various orders came to be passed in favour of the petitioners by the authority under the provisions of Maharashtra Cooperative Societies Act, 1960. Being aggrieved by those orders, respondent No.2 –Society filed two writ petitions in this Court bearing Writ Petition No. 2318 of 2007 and Writ Petition No.2329 of 2007.
7. By a judgment dated 10<sup>th</sup> December, 2015, the learned Single Judge of this Court rejected those two petitions filed by respondent No.2 – Society. It was however clarified that the membership of the petitioner society would not be construed to move by said respondents (petitioners herein) and would

automatically be entitled to allotment of the premises in the new building proposed to be constructed and such entitlement, if any, would have be decided independently after considering all the facts and circumstances of that case.

8. It is submitted that, it is not in dispute that upon the retirement of petitioner No.1, original petitioner No.2 and petitioner No.3 these petitioners did not vacate the temporary alternate accommodation allotted to them by the Municipal Corporation in lieu of the existing service quarters at that point of time. The Municipal Corporation accordingly initiated proceedings under Section 105B of the Mumbai Municipal Corporation Act against the petitioners. The estate officer passed an order against petitioners for eviction in those proceedings. The order passed by estate officer was challenged by the petitioners before the Principal Judge of the City Civil Court, Bombay.
9. By a judgment delivered by the Principal Judge of the City Civil Court, the order passed by estate officer under section 105B of the Mumbai Municipal Corporation Act came to be set aside. Being aggrieved by the order passed by the Principal Judge of the City Civil Court, the Municipal Corporation filed a writ petition bearing Writ Petition No.4905 of 2009 in this Court. By a detailed

judgment delivered by the learned Single Judge of this Court on 27<sup>th</sup> April 2018, the said writ petition filed by the Municipal Corporation came to be allowed. This Court was pleased to quash and set aside the order passed by the learned Principal Judge and restore the order of eviction passed by the estate officer.

10. Mr. Shah, learned counsel for the petitioners vehemently urged that the petitioners were the employees of the respondent No.1 – Corporation and thus were entitled to seek accommodation in the tenements in the building proposed to be constructed by respondent No.2 – Society by way of redevelopment.

11. It is submitted by the learned counsel that the proceedings initiated by the Municipal Corporation were in respect of the temporary alternate accommodation granted by the Municipal Corporation in lieu of the tenements which were in their possession and were handed over to the petitioners temporarily. He submits that the rights of the members are recognized by this Court in the writ petitions filed by the respondent No.2 – Society.

### **REASONS AND CONCLUSIONS**

12. It is not in dispute that the petitioners were erstwhile employees of the Respondent No.1 – Corporation. The petitioners were granted accommodation by respondent No.1 at the relevant

time, being employees of the Municipal Corporation. They were required to shift to the temporary alternate accommodation in view of the facts that the tenements occupied by them were in a dilapidated condition. The petitioners however continued to occupy the temporary alternate accommodation even after their retirement. The Municipal Corporation accordingly initiated proceedings under Section 105B of the Mumbai Municipal Corporation Act against these three employees i.e. petitioner No.1, original petitioner No.2 and petitioner No.3. The estate officer was pleased to pass the order of eviction against the petitioners.

13. The learned Principal Judge of City Civil Court allowed the appeal preferred by the petitioners. This Court however, in the a detailed judgment rendered by this Court on 27<sup>th</sup> April, 2018 allowed the writ petition filed by the Municipal Corporation. In paragraph No.13 of the said judgment, this Court recorded findings that admittedly in this case, the petitioners herein were keeping possession of the suit premises on leave and license basis, being the employees of the Municipal Corporation. It was not disputed that except for petitioner No.1, petitioner Nos.2 and 3 had already ceased to be in service. At the time of passing such order, petitioner No.2 also ceased to be in service.

14. This Court accordingly clarified in paragraph No.39 of the said judgment that even petitioner No.3 had ceased to be in service and had lost the right to be in possession of the subject premises. All the submissions made by the petitioners were considered in detail by learned Single Judge of this Court in the said judgment. Admittedly, the petitioners did not impugn the said judgment dated 27<sup>th</sup> April, 2018 passed by this Court rejecting their contention that they were entitled to continue to occupy the service quarters given to them by the Municipal Corporation.

15. Insofar as the issue of membership of the petitioners is concerned, certain orders came to be passed in favour of these petitioners by the authorities under the provisions of Maharashtra Co-operative Societies Act, 1960. Respondent No.2 – Society had challenged those orders passed by the authorities in favour of the petitioners. With the assistance of the learned counsel for the parties we have perused the detailed judgment rendered by learned Single Judge of this Court on 10<sup>th</sup> December 2015. Though, this Court has dismissed the writ petition filed by the respondent No.2 – Society, this Court clarified that their grant of membership of the petitioner society would not be construed to mean that the said respondents would automatically be entitled to

the benefit of allotment of premises in the new proposed building to be constructed and such entitlement, if any, would have to be decided independently after considering all facts and circumstances of the case.

16. It is not in dispute that the said judgment was delivered by this Court on 10<sup>th</sup> December 2015 whereas the judgment delivered by another learned Single Judge of this Court and the proceedings arising out of the proceedings initiated by the Municipal Corporation under Section 105 B of the Mumbai Municipal Corporation Act was delivered on 27<sup>th</sup> April 2018, restoring the order passed by the estate officer. Admittedly, the petitioners have already handed over the vacant possession of their respective tenements to the Municipal Corporation.

17. We find that the notices dated 12th February, 2007 and 15<sup>th</sup> March, 2007 were culminated into an order passed by the estate officer, the same order which has been restored by the said judgment of this Court passed by the learned Single Judge of this Court in the writ petition filed by the Municipal Corporation.

18. Prayer clauses (c) and (d) of the petition accordingly would not survive. Insofar as prayer clauses (a) and (b) are concerned, in view of the petitioners not having impugned the judgment of this

Court in the writ petition filed by the Municipal Corporation and also judgment of this Court in writ petition filed by respondent No.2 – Society, makes it clear that though the petitioners would be members of respondent No.2 – Society, they would not be entitled to any benefits in the new proposed building to be constructed by the respondent No.2. We cannot direct the Municipal Corporation to accommodate the petitioners as members of the respondent No.2 in pursuance and furtherance to the order on the Estates/4836/So of 20<sup>th</sup> June, 1988.

19. In our view, the writ petition is totally devoid of merits and is accordingly dismissed. Rule is discharged. No orders as to costs.

20. In view of the disposal of the writ petition, the pending interim application, if any, does not survive and is accordingly disposed off.

**(KAMAL KHATA, J.)**

**(R.D.DHANUKA, J.)**