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

WRIT PETITION NO.13248 OF 2023

Mohammed Abdul Hussain
Lokhandwala ... Petitioner

V/s.

The Municipal Corporation of Greater
Mumbai ... Respondent

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Mr. Atul Damale, Sr. Advocate a/w Ms Payal Vardhan &
Anil Rao i/by Imtiyaz Ahmed Ismailsha Patel, for
Petitioner.

Mr. Drupad S. Patil a/w Mr Santosh Parad, for
Respondent (MCGM).

CORAM : AMIT BORKAR, J.

DATED : NOVEMBER 4, 2023

P.C.:

1. By this writ petition under Article 227 of the Constitution of India, the petitioner claiming to be the statutory tenant of Municipal Corporation is challenging order of eviction confirmed by the City Civil Court in an appeal challenging order passed by the competent authority in exercise of power under Section 105-B (1c) of the Mumbai Municipal Corporation Act, 1888 (for short "MMC Act").
2. The Municipal Corporation is the owner of premises in question.
3. In 1986, the Improvement Committee & General Body of the

Municipal Corporation passed Resolution recommending premises given to the tenant and or his nominee.

4. On 14 October 2004, the monthly tenancy agreement was executed in favour of the petitioner in respect of Bungalow.

5. In the process of execution of tenancy agreement, the petitioner on 30 October 2002 executed indemnity bond in favour of Municipal Corporation stating that he will abide by the decision of Municipal Corporation in the land under the provisions of Maharashtra Regional and Town Planning Act, 1966 (for short “MRTP Act”).

6. It is not in dispute that in the development plan under the provisions of MRTP Act, the bungalow in question along with land around it has been reserved for public purpose i.e. to develop a Club/Gymkhana.

7. Based on the contents of development plan, the Municipal Corporation on 10 October 2018 issued notice under Section 105-B of MMC Act to the petitioner calling upon him to show cause as to why order of eviction could not be passed against the petitioner. After considering the reply, the competent authority under Section 105-B of MMC Act passed an order on 7 October 2022 directing eviction of petitioner within one month from the date of service of notice.

8. The petitioner challenged the order of competent authority by filling Miscellaneous Appeal No.73 of 2023.

9. The appellate authority dismissed the appeal; however, on

furnishing an undertaking, the petitioner was granted time to vacate the premises till 30 November 2023.

10. Learned Senior Advocate for the petitioner submitted that the purpose mentioned in the eviction notice is “public purpose i.e. to develop Club/Gymkhana as per reservation”. According to him, in absence of details of such public purpose, there is possibility that such Club or Gymkhana will be used by a private person and, therefore, such purpose mentioned in the notice cannot be termed as a public purpose. Hence, action of issuance of notice under Section 105-B(1c) of MMC Act is bind in accordance with law.

11. It is not in dispute that in the development plan on the date of issuance of eviction notice, the premises in question is shown to be reserved for a purpose of developing Club/Gymkhana. Section 22(a) of MRTP Act provides for the purpose that land in the region should be used, the Regional Board can provide for regional plan. Claus (a) of Section 22 is read as under:

(a) proposals for allocating the use of land for purposes, such as residential, industrial, commercial, agricultural recreational ;

12. On perusal of Section 22(a) of MRTP Act, in my opinion, the entry recreational covers the purpose of development of Club/Gymkhana. Therefore, it will be treated as public purpose. Once, it is shown that the notice is issued for public purpose, it is for the petitioner to show as to how the petitioner is entitled to continue his possession with the premises. There is no statutory right pleaded by the petitioner which entitles him to continue with

the possession nor there is any contractual right except the agreement in question dated 14 October 2004.

13. On perusal of the agreement, it is evident that the petitioner was permitted to occupy the premises as monthly tenant. It is mentioned in the agreement that each party is entitled to terminate the tenancy at the end of month by giving to the other party one months previous notice.

14. In view of nature of rights conferred on the petitioner (statutory monthly tenant), in my opinion, once the notice under Section 105-B (1c) is issued, the petitioner is no longer entitled to continue his possession. Hence, the City Civil Court was justified in dismissing the appeal.

15. At this stage, learned Senior Advocate for the petitioner states that on filing of undertaking period to vacate be extended by further period of 4 weeks. Hence, following order:

- a) The writ petition is dismissed.
- b) The period granted by the City Civil Court under clause (3) shall continue for period of 4 weeks from today on the same terms and conditions mentioned in the clause (3) of the impugned order.
- c) The petitioner shall file undertaking as stated in clause (3) of the impugned order within 1 week from today.

16. Accordingly, the writ petition is disposed of in above terms. No costs.

(AMIT BORKAR, J.)