

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 6744 OF 2022

Muslim Library, Nagpur, through its
Trustee and Secretary, Shameem Sadiq
S/o. Mohammad Alimuddin, Aged about
77 years, Occu.: Retired, R/o.C/o. Shammi
Fine Arts, Mohammad Ali Road, Mominpura,
Nagpur.

.... **PETITIONER.**

// VERSUS //

The City of Nagpur Corporation,
through its Municipal Commissioner,
Office at “Chhatrapati Shivaji Maharaj”
Administrative Building, Civil Lines,
Nagpur – 440 001.

.... **RESPONDENT.**

Shri A.C.Dhamadhikari, Advocate for Petitioner.
Shri J.B.Kasat, Advocate for Respondent.

CORAM : ANIL S. KILOR, J.

DATE OF RESERVING THE JUDGMENT : 05/06/2023

DATE OF PRONOUNCING THE JUDGMENT : 25/07/2023

ORAL JUDGMENT :

1. Heard.

2. **RULE.** Rule made returnable forthwith. Heard finally by
consent of the parties.

3. The Petitioner-Public Trust was allotted the land in question for establishing library, by Nagpur Municipal Corporation. The Municipal Corporation issued a notice for eviction under Section 81-B (1) of the Maharashtra Municipal Corporations Act, 1949 (hereinafter referred to as “the Corporation Act”) to which the petitioner submitted his reply. The respondent No.1 thereupon, passed an order dated 29/07/2022 rejecting the objection raised by the petitioner and directed to hand over the possession of the land in question. The said order dated 29/07/2022, passed by the Municipal Commissioner was questioned in an appeal filed under Section 81-F of the Corporation Act before the District Judge-6, Nagpur, which came to be dismissed vide judgment and order dated 18/10/2022. The same is the subject matter of the present writ petition.

4. Shri Dharmadhikari, learned counsel for the petitioner makes following submissions :

- a) The eviction notice is illegal as the lease was for a perpetual period;
- b) Since there is no breach of any condition as alleged in the notice, the notice under Section 81-B of the Corporation Act vitiates;

- c) The Municipal Commissioner as well as the learned District Judge has wrongly held that the Petitioner-Trust has breached the condition of grant of lease by allowing encroachment by Muslim Library Canteen and Karnal Biryani Centre.
- d) After issuance of notice under Section 81-B of the Corporation Act on 20/10/2012 no action was initiated for 10 years and thereafter on 29/07/2022 the order as regards handing over possession by the petitioner was passed. Whereas, a fresh notice ought to have issued.
- e) The alleged encroachment by M.L. Canteen and Karnal Biryani Centre cannot be attributed to the petitioner.
- f) The learned District Judge as well as the Municipal Commissioner committed grave error in holding against the petitioner-Trust and directing the petitioner to hand over possession of the land in question to the respondent-Municipal Corporation.

5. On the other hand, Shri Kasat, learned counsel for the respondent Municipal Corporation makes following submissions:

- i) The lease is not perpetual but it is for a fixed period and after the first renewal and on expiry of its period, the lease was not renewed and therefore, presently the petitioner is in illegal possession of the land in question.

- ii) The Corporation has established by numerous documents that the petitioner has breached the conditions of the lease deed and thereby allowed M.L. Canteen as well as Karnal Biryani Centre to encroach upon the land.
- iii) The learned District Judge as well as the Municipal Commissioner both have rightly held that there was a breach of condition of the Lease Deed and under Section 81-B of the Corporation Act the petitioner is liable to handover the possession back to the Corporation.

6. In light of rival contentions of both the parties, I have perused the record and the impugned orders.

7. In the matter at hand, there are two Lease Deeds dated 28/03/1928 and 09/05/1931 granting land in question on lease for 30 years. On 30/01/1962 the lease was renewed for another 30 years. However, thereafter it was not renewed and the applications/representations filed by the petitioner for renewal of lease are pending with the Corporation.

8. At this juncture it is necessary to refer to the relevant conditions of the lease deed, which read thus :

“(1) That the lessor does hereby demise on 30 years lease on to the lessee an area measuring 40’ x 70’ in Mominpura circle No.17/25, which is bounded on the Borth-open land of Municipal Committee, on the south-open land of the Municipal Committee, lane and Nazul Plot No.759/651 on the East- Open land of the Municipal Committee and on the West -Shanichara Bazar Road, free of any premium but on rent of Rs.3/- per annum provided :

(a) the lessee shall use the land for the purpose of Muslim library, but shall not use it for any other purpose whatsoever;

(b) the lessee shall not transfer or let or sub-let or mortgage the said land or any part thereof and any such transfer shall be absolutely void, and in-operative unless previously assented to by a resolution of the said Municipal Committee passed at a meeting convened for the purpose.

(c) That the lessee shall not erect any permanent building on the said land without the previous consent and approval to their designs in writing of the lessor and the Municipal Engineer – In approving the designs the lessor may call upon the lessees to leave such space as he deem fit between the proposed permanent building and the land not under the control of the lessee.

(2) In the event of the lessee failing to comply with the conditions in paragraph 1 the grant shall be forfeited and the said plot reverts to the said Municipal Committee with all structures if any standing thereon without any compensation being paid for them.

(3) In the event of the Muslim Library ceasing to exist this demise shall cease and be determined and the said land shall revert to the lessor subject to the payment by the lessor to the lessee the then market value of the structures standing on the said land.

In the event of the parties failing to agree as to such value the same shall be fixed by two arbitrators and an umpire one arbitrator being appointed by each party and the umpire by both of them. Their award shall be final and binding upon both the parties.

(4) After the expiry of the lease the said land shall revert to the lessor on payment by the lessor to the lessee the then market value of the structure standing on the said land. In the event of the parties failing to agree as to such value the same shall be fixed by two arbitrators and an umpire, one arbitrator being appointed by each party and umpire by both of them. Their award shall be final and binding upon both the parties. ...”

9. The learned counsel for the petitioner is harping upon clause (3) of the Lease Deed to state that the lease is for perpetual period, as the said clause (3) says that, in the event of Muslim Library ceases to exist the said demise shall cease and be determined.

10. However, clause (3) cannot be read in isolation, but it has to be read in harmony with other clauses.

11. Clause (4) of the Lease Deed says that after the expiry of the lease the land shall revert back to the lessor.

12. Thus, if the Lease Deed is considered as a whole, it indicates that clause (3) refers to a contingency, which may arise before completion

of expiry period of the lease i.e. 30 years. Meaning thereby, if for any reason before completion of period of lease i.e. 30 years, the Muslim Library ceases to exist for any reason, the demise shall cease and be determined. However, by no stretch of imagination Clause (3) stipulates lease for perpetual period.

13. In the circumstances, the submission of the learned counsel for the petitioner that the lease is for perpetual period, is misconceived and hence, rejected.

14. The sub-clauses (a), (b) & (c) of Clause (1) of the Lease Deed indicate that the lease was for the purpose of Muslim Library and it was not transferable or let or sub-let or mortgage the said land or any part thereof or the lessee shall not erect any permanent building on the said land without previous consent and approval.

15. The petitioner in its reply, filed in response to notice under Section 81-B of the Corporation Act, has made following statements as regards M.L. Canteen:

“(h) It is specifically denied that the leased land is being used for commercial gains as alleged. As a matter of fact the land is being used for the purpose for which it was allotted and there is no commercial element involved in

the user of the said land. The land is being used for establishing a Library which is still functioning. Beside this a portion of the land is used as Volley Ball Court, which is the part of the recreational activity of the Library.

(i) Further in order to facilitate the members of the public visiting the library, the Trust proposed for establishing a Canteen on the portion of the land to facilitate the services to the visiting members of the public while they spent time at the library pursuing their reading and scholarly activities. It was then decided by the executive members of the library that a canteen facility be provided for the benefit of the library users.

j) It is submitted that the Muslim Library had applied for the approval of a plan for the said canteen and the rooms for storage and servants for the said purpose and the said plan was sanctioned by this office vide Order dated 17-4-1956 (Document No.10). The said rooms of the canteen were erected as per the sanctioned plan (Document No.11).

k) The Trust in the year 1956 after seeking necessary sanction from the Corporation and for facilitating the members visiting the Library, has permitted the establishment of canteen over the portion of the land, without charging any amount, with a view to facilitate the members visiting the Library. There is no commercial element involved in the establishment of the said library. Moreover, the establishment of the canteen does not amount to change of user as the said canteen was established for facilitating the members and the same was established for seeking necessary sanction and permission.

l) The lessee/Library had allowed the canteen contractor (M/s. M.L. Canteen) to use the said place without any charge so that the benefit of the canteen could be derived by the members of the public visiting the library. The library was in no way undertaking the canteen activity for any pecuniary gain. Therefore, it is submitted that the canteen contractor is a permissive occupier without any consideration only to the extent

of the premises sanctioned by the Corporation vide its Order dated 17-4-1956 as referred above.

m) The library has no concern with the other alleged activities being undertaken in the vicinity of its premise. It is submitted that the library allows parking of vehicles of the members of the public who visit the library for using its reading room or for issuance of books etc.”

16. Thus, there is an admission by the petitioner that the petitioner permitted the M.L. Canteen to be established on the land in question.

17. The Municipal Commissioner as well as the learned District Judge, after considering the documentary evidence produced on record which was sought to be placed on record under Order 41 Rule 27 of the Code of Civil Procedure, has held that the construction carried out for M.L. Canteen and Karnal Biryani Centre was unauthorized and made by encroaching the land in question. Even the M.L. Canteen and Karnal Biryani Centre fight out their cases up to Hon'ble Apex Court and it was their case that the land was let out by the petitioner-Trust to them.

18. The learned District Judge has discussed the evidence in detail and categorically held that there is a breach of condition at the behest of the petitioner by allowing M.L. Canteen and Karnal Biryani Centre to use the land in question by making unauthorized construction.

19. The co-ordinate Bench of this Court in the case of *Ramchandra ..vs.. Pune Municipal Corpn.*, reported in **2013 (1) Mh.L.J 245** has held thus :

“13. This argument is only stated to be rejected because in all cases what has been found as a fact by the authorities is that the Municipal Premises were allotted for a specific period to all the allottees like the petitioners. That period has come to an end. There is no renewal of the term. In such circumstances, each of the premises being located in prime locality and having tremendous market value are sought to be disposed of by the Corporation by inviting bids from the public. There is no question of the petitioners, then continuing and once their authority to occupy and use the same having come to an end. ...”

20. In the light of above referred observations and the findings recorded, I do not find any perversity or illegality committed by the learned District Judge or the learned Municipal Commissioner in issuing directions to the petitioner to handover the possession of the land in question.

21. Moreover, it has come on record that the land in question is needed by the Corporation for construction of ‘Samaj Bhavan’ to be used by Muslim Community for holding social and religions functions and for the same a Member of Parliament has sanctioned Rs.Fifty Lakhs from the Development Funds.

22. In the circumstances, I do not find any merit in the present matter to interfere with the impugned judgment and order passed by the learned District Judge. Accordingly, I pass the following order:

The Writ Petition is **dismissed**. Rule stands discharged. No order as to costs.

23. At this stage, the learned counsel for the petitioner makes a request to continue the interim protection granted by this Court vide order dated 28/10/2022.

24. The learned counsel for the respondent-Corporation strongly opposed the said request.

25. Considering the fact that the order of status quo is in operation since 14/11/2022, no prejudice will be caused to the Corporation if the said order is continued for another four weeks. Accordingly, the status quo granted on 28/10/2022 is continued for four weeks from today and thereafter it shall stand vacated automatically.

26. The learned counsel for the petitioner further seeks leave to make representation for running Muslim Library, if any, constructed or established with the proposed “Samaj Bhavan” (Community Hall) by the respondent-Municipal Corporation.

27. The petitioner is at liberty to make representation, if such occasion arises in future.

(ANIL S. KILOR, J)

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