



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5788 OF 2016

Priyadarshini Memorial Trust, Nanded
Through its President-
Balasaheb s/o Jalabajirao Madhaswad,
Age 46 years, Occu: Business,
R/o Bajrang Colony, Nanded

... PETITIONER

VERSUS

Nanded-Waghala City Municipal Corporation,
Nanded, Through its Commissioner.

... RESPONDENT

Mr. S. V. Warad, Advocate for the Petitioner
Mr. M. D. Narwadkar, Advocate for Respondent

CORAM : R. M. JOSHI, J.

DATE : 24th JULY, 2025

JUDGMENT :-

1. Heard learned Counsel for both sides finally at the stage of admission.
2. This Petition takes exception to the order dated 8th January, 2014 passed by the Principal District Judge, Nanded in Regular Civil Appeal No. 116 of 2007 filed by the Petitioner under Section 81F of the Bombay Provincial Municipal Corporations Act (for short 'BPMC Act') taking exception the order passed by Municipal Commissioner, Nanded under Section 81B of the BPMC Act, whereby the Petitioner was directed to be evicted from the property owned by the Corporation.

3. The facts which led to the filling of the Petition as narrated in the petition can be recorded in brief as under:-

(i) The Petitioner is an Educational Institution and an aided school. The premises of the school is situated on Survey No.1 and 2 admeasuring 1.5 acres at Asadullabad, Tq. and District Nanded. The said land is declared reserved for the purpose of school and playground. By resolution dated 16th October, 1992, the said land allotted to the Petitioner for charitable purpose initially for a period of three years on lease. It is claimed that on the basis of the said lease the Petitioner is in possession of the subject land. The Municipal Corporation sought recommendation of the said proposal for its sanctioned of by the State Government. Admittedly the recommendations has not been received till date. Thereafter, the Petitioner sought permission to carry out construction and some construction came to be carried out. The lease period came to be renewed for further three years and initially Assistant Director of Town Planning, Nanded had determined the rent at the rate of Rs.89,650/- per annum. The Petitioner requested the Municipal Corporation for reduction in the rent amount. The Municipal Corporation passed resolution dated 30th October, 1995 fixing the lease rent at Rs.151/- per month.

(ii) It is further case of the Petitioner that the said amount of rent as per the resolution was offered to the Corporation, however, the Corporation refused to encash the cheque. It is alleged that the Corporation tried to dispossess the Petitioner and hence the suit bearing R.C.S. No. 194 of 2006 came to be filed for simplicitor perpetual injunction. Temporary injunction Application came to be allowed on 19th October, 2006 restraining the Corporation from obstructing the possession of the Petitioner over the subject property. The challenge to the said order in M.C.A. No. 125 of 2006 was unsuccessful.

(iii) It is further case of the Petitioner that on 27th February, 2006, Petitioner for the first time came to know that the Corporation has passed order under Section 81B of the BPMC Act for eviction of the Petitioner. It is further claimed that on 28th February, 2006 request was made for certified copy of the said order. But the said copy was not supplied. Petitioner being aggrieved by the order passed by the Corporation preferred Appeal on 28th September, 2007 before the District Judge under Section 81F of the BPMC Act. The learned District Judge, Jalgaon dismissed the appeal by passing order dated 8th January, 2014 in R.C.A. No. 116 of 2007. Hence, this petition.

(iv) The Petition is opposed by Corporation by filing affidavit-in-reply. It is specifically alleged that the Petitioner intends to grab the Municipal property. There is specific statement made in the affidavit that in the larger public interest for the further expansion of airport the land is required by the airport authority and the development of airport has been stalled. The Respondent-Corporation filed reply of Estate Manager denying the contentions of the Petitioner. It is claimed that since the Petitioner has failed to pay the lease rent, a notice was issued to the Petitioner on 26th September, 2001 and after giving hearing, order came to be passed by the Commissioner. It is specifically stated on oath that the Petitioner is having its own premises at Bajrang colony, Nanded which is four storied building in RCC structure having 32 rooms. It is also claimed that the Petitioner Institution is running Marathi medium school in the said premises. The Petitioner is also said to have been running a English medium school in the Bajrang colony near the the Marathi medium school having 14 room with carpet area of 3655 sq.ft.

4. Learned Counsel for the Petitioner submits that the Corporation has failed to comply with the mandatory provisions of Section 81B of the BPMC Act and the order under Section 81B of the BPMC is passed without notice and hearing to the Petitioner. It is his

submission that earlier the lease for 99 years was granted in favour of the Petitioner by the Municipal Corporation, Nanded and thereafter the Municipal Council by passing resolution dated 30th October, 1995 has decided the lease rent to be Rs.151/- per month and in such circumstances, it was not open for the Corporation to claim the rent at the rate of Rs. 89,650/- per annum as per the earlier lease. It is his submission that the Petitioner is Education Institution and hence, even otherwise the eviction of the Petitioner from the subject property in cause inconvenience to the students.

5. Learned Counsel for the Respondent supported the impugned order. It is his submission that the whole attempt of the Petitioner is to some how keep the possession of the subject property. It is his submission that the Petitioner cannot be allowed to blow hot and cold at the same time. It is argued that if the Petitioner places reliance on the resolution dated 30th October, 1995, the said resolution indicates that the period of the lease has already been expired. It is his submission that Section 81B of the BPMC Act apart from non payment of the lease rent provides a ground of unauthorized occupation of the property for eviction. It is his submission by referring to the affidavit-in-reply that the document on record clearly indicates about a notice being issued by the Corporation to the Petitioner on 18th October, 2001

under Section 81B(2) of the BPMC Act. He further drew attention of the Court to the order passed by the Commissioner indicating that the hearing was held on 4th September, 2004 and President of the Petitioner Trust was present in the said hearing. It is his submission that there is no specific denial of the said fact by the Petitioner. It is his further contention that the Appeal has been filed beyond period of limitation and hence the same has been rightly dismissed by the Appellate Court. It is his submission that the Principal District Judge, Jalgaon has rightly taken into consideration the facts of the case and has dismissed the Appeal and that in exercise of writ jurisdiction no interference is required therein.

6. In order to consider the submissions of the rival parties it would be relevant to take note of the provision of Section 81B of BPMC Act, which reads thus:

***"81B. Power to evict persons from Corporation premises. - (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 Provincial Municipal Corporations (Second Amendment) Act, 1969,-

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

(ii) sub-let, contrary to the terms and conditions of his occupation, the 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 of 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 public interest,

the Commissioner may, 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 or, of 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 by 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 other legal practitioner.

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 subsection (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.

(4) The Commissioner may, after giving fourteen clear days' notice to the person from whom possession, of the Corporation premises has been taken under subsection (3) and after publishing such notice in the Official Gazette and in at least one newspaper circulating in the locality, remove or cause to be removed, or dispose of by public auction any property remaining on such premises. Such notice shall be served in the manner provided for the service of a notice under sub-section (1).

(5) Where the property is sold under sub-section (4), the sale proceeds shall, after deducting the expenses of sale, be paid to such person or persons as may appear to the Commissioner to be entitled to the same :Provided that, where the Commissioner is unable to decide as to the person or persons to whom the balance of the amount is payable or as to the apportionment of the same, he shall refer such dispute to a Civil Court of competent jurisdiction, and the decision of the Court thereon shall be final.

(6) If a person, who has been ordered to vacate any premises under sub-clause (i) to (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 (3) 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."

7. This provision clearly indicates that in case of non payment

of the lease rent so also on unauthorized occupation of the property belonging to the Corporation, the said provision can be invoked. Record indicates that notice dated 18th October, 2001 was issued by the Corporation to the Petitioner. This notice was duly responded by the Petitioner by letter dated 29th October, 2001. It is thus clear from the said record that prior taking action under Section 81B of the BPMC Act, notice was duly served upon the Petitioner. Apart from this there is a specific mention in the order that the hearing was given to the Petitioner on 4th September, 2004 and the President of the Petitioner Trust appeared in the said hearing. It is thus not the case that the order in question passed by the Commissioner under Section 81B of the BPMC Act has been passed without notice or without giving opportunity of hearing to the Petitioner.

8. It is the case of the Petitioner that a resolution was passed by the Municipal Corporation, Nanded on 30th October, 1995, wherein the lease rent was fixed at Rs.151/- per month, however, the period of lease was for three years. Learned Counsel for the Petitioner during the course of the argument has sought to make submission that in respect of the period of lease, the resolution passed by the Municipal Council has not been approved by the State Government and therefore the same would not apply. If, this submission is to be accepted, needless to

say that the entire resolution passed by the Council has not been approved by the State Government and hence, question of considering the case of the Petitioner that the Petitioner was not liable to pay Rs.89,650/- per annum to the by way of lease rent also does not become acceptable. The Petitioner is trying to blow hot and cold simultaneously which is wholly in permissible. The Petitioner cannot be permitted to claim that the resolution in question passed by the Municipal Council should be implemented in the piecemeal and only to the extent it is beneficial to the Petitioner.

9. The afore stated facts clearly indicate that the Petitioner was duly heard before passing of the order under Section 81B of the BPMC Act. The said order came to be passed in the year 2004. Thereafter, the Petitioner filed suit against the Corporation and obtained interim injunction, however, no appeal was filed under Section 81F of the BPMC Act till year 2007. The learned Principal District Judge, Jalgaon framed issue with regard to the limitation and has recorded the findings that the Appeal is barred by limitation. In the facts of the case as indicated herein above, the said findings recorded by the Principal District Judge being in consonance with the material on record require no interference.

10. On the merit also the learned Principal District Judge has carefully taken into consideration the contention of the parties and material evidence on record in order to hold that no case is made out by the Appellant to cause interference in the order impugned before him.

11. Since the order passed by the Commissioner of the Municipal Corporation is on due compliance of provisions of Section 81B of BPMC Act and also in view of the fact that the Petitioner is unauthorizedly occupying the subject property, the order of eviction of the Petitioner is fully justified. It is pertinent to note that after the expiry of the period of lease, for years together the Petitioner has never made an Application to the Corporation for extension of lease. In absence of any such Application being made there was no obligation on the part of the Corporation to extend the lease.

12. As a result of above discussion, there is no perversity in the order impugned passed by the learned Principal District Judge confirming the order passed by the Commissioner under Section 81B of the BPMC Act, hence petition deserves to be dismissed and Petition stands dismissed accordingly.

13. Learned Counsel for Petitioner seeks continuation of interim

relief for period of six weeks. Though it is claimed by the Petitioner that school is being run in the subject property, affidavit has been filed on behalf of the Corporation indicating that actually the premises is not used for running a school as there are other premises in which the school is run. There is no rejoinder to this affidavit. Hence, the contention of the Corporation deserves acceptance. In the facts of the case request of continuation of interim relief stands rejected.

(R. M. JOSHI, J.)

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