

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
WRIT PETITION NO.11091 OF 2025**

Sambhaji Anandrao Ghotane
Since deceased through his Legal Representatives
Shri. Pramod Sambhaji Ghotane
Age: 46 years, Occu: Business
R/o. 2287, 'B' Ward, Shingoshi Market,
Mangalwar Peth, Kolhapur. ..Petitioner

Versus

1. Kolhapur Municipal Corporation
'C' Ward, Bhausingji Road,
Kolhapur.
2. Kolhapur Municipal Corporation,
Through its Commissioner
'C' Ward, Bhausingji Road,
Kolhapur. ..Respondents

**AND
WRIT PETITION NO.11089 OF 2025**

Chopdabai Anandrao Ghotane,
Since deceased through his Legal Representatives
Shri. Pramod Sambhaji Ghotane,
Age: 46 years, Occu: Business
R/o. 2287, 'B' Ward, Shingoshi Market,
Mangalwar Peth, Kolhapur. ..Petitioner

Versus

1. Kolhapur Municipal Corporation
'C' Ward, Bhausingji Road,
Kolhapur.
2. Kolhapur Municipal Corporation,
Through its Commissioner
'C' Ward, Bhausingji Road,
Kolhapur. ..Respondents

**AND
WRIT PETITION NO.11090 OF 2025**

Nirmala Govindrao Rane
 Since deceased through his Legal Representatives
 Shri. Vivek Govindrao Rane,
 Age: 70 years, Occu: Business
 R/o. 739A-1, Nirmal, Opp. D.S.P. Office
 Kasaba Bawda, Kolhapur. ..Petitioner

Versus

1. Kolhapur Municipal Corporation
 'C' Ward, Bhausingji Road,
 Kolhapur.
2. Kolhapur Municipal Corporation,
 Through its Commissioner
 'C' Ward, Bhausingji Road,
 Kolhapur. ..Respondents

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Mr. Chetan G. Patil a/w Mr. Bhushan Jadhav a/w Mr. S. R. Chavan,
 Advocate for Petitioners.
 Mr. Abhijit Adagule a/w Ms. Ketaki Patil, Advocate for Respondents.

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CORAM : S. G. CHAPALGAONKAR, J.

RESERVED ON : 02nd SEPTEMBER, 2025.
PRONOUNCED ON : 04th SEPTEMBER, 2025.

JUDGMENT:-

1. Rule. Rule made returnable forthwith. With consent of parties, matters are taken up for final hearing at admission stage.
2. The present Writ Petitions take exception to order dated 25.07.2025 passed by District Court, Kolhapur in Municipal Appeal Nos.1/2025, 2/2025 and 3/2025 respectively, thereby approving order passed by learned Commissioner/Administrator, Kolhapur Municipal

Corporation under Section 81-B of Maharashtra Municipal Corporation Act, 1949 (for the sake of brevity hereinafter referred as 'MMC Act').

3. Mr. Chetan Patil, learned Advocate appearing for petitioners submits that Committee of respondent-Corporation had passed Resolution No.692 dated 31.03.1974 and allotted properties mentioned in paragraph no.1 of Appeal to respective petitioners by executing Lease Deed. The petitioners are enjoying possession of property as lessee from the date of execution of Lease Deed.

4. On 02.12.2024, Corporation issued notice under Section 81-B (2) of MMC Act calling upon petitioners to show cause as to why possession of property should not be taken giving reason of public interest. The petitioners filed reply to show cause notice and controverted averments in notice. Thereafter, learned Additional Commissioner issued notice for final hearing. The petitioners caused their appearance in response to notice and submitted an application raising demand of relevant documents, particularly copy of Lease Deed, Resolution of Corporation requiring property for public interest and budgetary provision for development of property or documents in support of sanction of funds. However, said application was rejected. Ultimately, learned Commissioner/Administrator passed order dated 10.03.2025 directing eviction of petitioners.

5. Mr. Chetal Patil further submits that in Appeals filed by petitioners before learned District Court under Section 81-F of MMC Act, respondent-Corporation relied upon various documents, which were not supplied to petitioners during proceeding before learned Commissioner. As such, there is gross violation of principles of nature justice. The learned District Judge relied upon such documents first time tendered in Appeals and confirmed order passed by learned Commissioner. There is nothing to show that property in possession of petitioners is required for public purpose. In absence of general body Resolution or Resolution of Committee, public purpose cannot be presumed. Petitioners have acquired possession of property based on lease agreement, thus provision under Transfer of Property Act, 1882 would be applicable. The respondents have proposed to construct complex and for that purpose, they are seeking eviction of petitioners, which does not fall within meaning of public interest. The burden to prove public interest vests on Corporation and in absence of satisfactory evidence, eviction order under Section 81-B (2)(c) of MMC Act could not have been passed. In support of his contentions he relies upon observations of this Court in case of *Karansingh Shivsingh Gill Vs. Nashik Municipal Corporation through its Municipal Commissioner and Others*¹.

6. Per contra, Mr. Abhijit Adagule, learned Advocate appearing for respondents-Corporation would submit that admittedly Corporation is

¹ (2024) 6 Bom CR 1.

owner of property in possession of petitioners. The State of Maharashtra allotted funds of Rs.25.10 crores to Kolhapur Municipal Corporation for development of “Sangit Surya Keshavrao Bhosale Auditorium and Rajashri Shahu Khasbag Wrestling Ground” under Government Resolution dated 30.09.2024. The property in possession of petitioners is required for development of complex. The petitioners were served with show cause notice dated 02.12.2024 on two grounds. Firstly, term of Lease Deed dated 31.03.1974 is expired and they are defaulters of rent. Secondly, State of Maharashtra has sanctioned funds for development of complex and Corporation has already taken work for development of complex i.e. for public purpose. In pursuance to said notice, respondents submitted reply refuting contents of notice. The notice dated 08.01.2025 issued for final hearing was served upon petitioners. After considering contentions of petitioners, eviction order has been passed, which is rightly confirmed by District Court in Appeals filed by petitioners under Section 81-F of MMC Act. In support of his contentions, he relies upon observations of this Court in case of *Ramchandra Jivatram Chetwani Vs. Pune Municipal Corporation and Others*², *Pawan Sukhlal Jain Vs. The Deputy Municipal Commissioner (Revenue), Nagpur Municipal Commissioner, Nagpur (Writ Petition No.54/2023* decided on *05.06.2023*) and judgment of Supreme Court in case of *State Bank of Patiala and Others Vs. S. K. Sharma*³.

² 2013 (1) Mh.L.J. 245.

³ (1996) 3 SCC 364.

7. Having considered submissions advanced by learned Advocates appearing for respective parties and on perusal of material tendered into service before this Court, it can be observed that petitioners are in possession of suit premises on the basis of three years lease agreement, executed in year 1974 . Admittedly, there is no renewal of lease period. The petitioners were served with show cause notice dated 02.12.2024 u/s 81-B (2) of MMC Act, which was generally replied by them. The petitioners were further served with notice for final hearing. At this stage, petitioners filed an application before Commissioner seeking direction for production of documents, which was rejected observing that documents asked were irrelevant for determining controversy. Ultimately, order dated 10.03.2025 has been passed upholding public purpose as stipulated in show cause notice. The order of Commissioner has been confirmed by learned District Judge in Appeals filed under Section 81-F of MMC Act.

8. In light of submissions advanced, deliberation is required on two aspects of matter, which are as under:

(i) Whether eviction order is passed by following due process of law particularly in due adherence to principles of natural justice and procedure contemplated under law?

(ii) Whether eviction order is in deference to public interest ?

9. At this stage, it is apposite to refer relevant part of Section 81-B of MMC 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.

10. Apparently, show cause notice dated 02.12.2024 served upon petitioners, stipulates two reasons. Firstly, period of lease agreement is over and there is default in payment of rent. Secondly, premise is required for public purpose i.e. for development of Sangit Surya Keshavrao Bhosale Auditorium and Rajashri Shahu Khasbag Wrestling Ground, for which funds are sanctioned by State Government. The petitioners replied show cause notice and refuted aforesaid assertions. It appears that eviction order was ultimately pressed on ground of public interest as contemplated under clause "C" of subsection 1 of section 81B of act. Pertinently, petitioners were served notice dated 08.01.2025 for final hearing. At this stage, they moved application before learned Commissioner seeking directions for providing in all five documents i.e. Resolution of Municipal Corporation dated 31.03.1974, copy of lease agreement, Resolution of Corporation or Standing Committee requiring property for public purpose and documents depicting budgetary provisions made for that purpose.

11. This court finds that such documents were not relevant, particularly when General Body or Standing Committee was not functional and Administrator is in control of affairs of corporation. The public purpose as depicted in show cause notice can be ascertained without referring to any such document or such documents would not have defeated case of Corporation on point of public interest, hence, learned Commissioner rightly declined to entertain petitioners' application. Finally eviction order is passed recording satisfaction that property is required for public purpose. It is true that it is burden of Corporation to establish public purpose but same is discharged based on contents of Government Resolution dated 30.09.2024 depicting requirement of suit property for public purpose. The GR is available in public domain and could not have been disputed by petitioners.

12. Although petitioners were not supplied with documents as claimed by them, there is nothing to demonstrate prejudice caused to them due to non-production of such documents. The petitioners do not dispute that they were granted lease in view of Resolution of Standing Committee dated 31.03.1974 accordingly they acquired possession of property. Admittedly, term of lease was never renewed after expiry from 1977. The learned Commissioner has rightly uphold public interest in terms of Clause (c) of Section 81-B (1) of MMC Act, which can be easily inferred from contents of Government Resolution dated 30.09.2024. Apparently, fund of Rs.25.10 crores has been sanctioned

by state for restoration of Auditorium and development of entire complex with adjoining area. Petitioners have not disputed aforesaid fact.

13. Although learned Advocate appearing for petitioners heavily relied upon observations of this Court in case of ***Karansingh Shivsingh Gill*** (supra) to contend that burden to prove public interest would be shouldered upon Corporation and Commissioner is required to pass reasoned order of eviction recording his satisfaction as to public interest, in present case it cannot be said that learned Commissioner has passed order without recording his satisfaction as to public interest. Adequate reasons are supplied by him in support of eviction order in public interest.

14. So far as procedural aspects of the matter are concerned, apparently, petitioners were served with show cause notice to which they have elaborately replied, so also served with notice for final hearing in response to which they filed detailed reply. The learned Commissioner has duly considered contentions raised on behalf of petitioners. Even from contents of reply to show cause notice, no specific ground to disbelieve or discard reason of public interest is discerned. Reliance of District court on contents of GR or undisputed documents would not prejudice petitioners in any manner when eviction order is passed in public interest

15. In that view of the matter, no jurisdictional error warranting interference is brought to the notice of this Court so as to invoke jurisdiction under Article 227 of Constitution of India. In result, Writ Petitions sans merits. Hence, stands dismissed.

16. Rule stands discharged.

(S. G. CHAPALGAONKAR)
JUDGE

17. At this stage, learned Advocate appearing for Petitioners requests for continuation of interim protection that was already granted vide order dated 25.07.2025 by learned District Court, Kolhpaur, since petitioners may take chance before Hon'ble Supreme Court.

18. Learned Advocate appearing for Corporation objects for continuation of interim relief.

19. Considering nature of dispute, interim protection already granted shall continue for a period of four weeks from today.

(S. G. CHAPALGAONKAR)
JUDGE