



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
WRIT PETITION NO.493 OF 2025**

|                                                         |     |             |
|---------------------------------------------------------|-----|-------------|
| Paraplegic Foundation                                   | ... | Petitioner  |
| versus                                                  |     |             |
| The Municipal Corporation of Greater<br>Mumbai and Anr. | ... | Respondents |

WITH  
INTERIM APPLICATION NO.1916 OF 2025  
IN  
WRIT PETITION NO.493 OF 2025

|                                                         |     |             |
|---------------------------------------------------------|-----|-------------|
| Sagar Sudam Karande and Ors.                            | ... | Applicants  |
| and                                                     |     |             |
| Paraplegic Foundation                                   | ... | Petitioner  |
| versus                                                  |     |             |
| The Municipal Corporation of Greater<br>Mumbai and Anr. | ... | Respondents |

Mr. Sahil Mahajan for Petitioner in WP No.493 of 2025.

Mr. Sanskar Marathe i/by Ms. Anjana Modhave, for Applicant in IA No.1916 of 2025.

Mr.Som Sinha with Ms. Divya Vishwanath, Ms. Rutuja Thaker, Mr. Anand Khairnar, for Respondents.

Mr. Hemant Gaikwad, A.E. with Mr. Abhijit Chaugale, S.E., of Respondent No.1 present.

**CORAM: N.J.JAMADAR, J.**

**DATE : 10 MARCH 2025**

**JUDGMENT :**

1. Heard the learned Counsel for the parties.
2. Rule. Rule made returnable forthwith. With the consent of the parties, heard finally.
3. The Petitioner takes exception to a judgment and order dated 7 August

2024 passed by the learned Principal Judge, City Civil Court, in Misc. Appeal No.66 of 2024, whereby the appeal preferred by the Petitioner under Section 105F of the Mumbai Municipal Corporation Act, 1888 ('the MMC Act, 1888) came to be dismissed affirming the order dated 12 June 2024 passed by the Chief Enquiry Officer, directing the Petitioner to vacate the premises comprising of T-1, Old Barracks of Lokmanya Tilak Municipal General Hospital, (LTMG Hospital) Sion, Mumbai – 400 022 (the subject premises) under Section 105B of the MMC Act, 1888.

4. The background facts leading to this Petition can be stated, in brief, as under :

4.1 The Petitioner is a public charitable trust registered under the Maharashtra Public Trusts Act, 1950. The Petitioner Trust works for the treatment and rehabilitation of paraplegic patients. The services rendered by the Petitioner are covered under the Rights of Persons with Disabilities Act, 2016 (Act of 2016). The Petitioner has been catering to the physical, medical, emotional, social and rehabilitational needs of persons with disabilities, as defined under the Act of 2016, since 1968, much prior to the enactment of the Act of 2016.

4.2 It is the claim of the Petitioner that, in the year 1968, the Petitioner was allotted a premises within the precincts of Sion Hospital. The Petitioner has been rendering services to the paraplegic patients referred by the LTMG

Hospital and other Municipal and Government Hospitals.

4.3 In the year 2014, an attempt was made to forcibly dispossess the Petitioner trust. In Writ Petition No.1290 of 2024, instituted by the Petitioner, the Division Bench of this Court by an order dated 13 July 2017, restrained the State and the Municipal Corporation from evicting the Petitioner without following the due process of law in accordance with Section 105B of the MMC Act, 1888.

4.4 Another effort was made in the year 2022 to dispossess the Petitioner. The latter was again required to approach this Court. By an order dated 28 September 2022 in Writ Petition (L) No.31193 of 2022, this Court directed the Municipal Corporation not to take any coercive steps in respect of the subject premises.

4.5 LTMG Hospital is one of the busiest Municipal Hospitals in Mumbai. Respondent No.1 Corporation decided to develop the infrastructure at LTMG Hospital. Redevelopment project was approved. Respondent No.1, eventually, awarded the contract for redevelopment of the LTMG Hospital at an estimated cost of Rs.660 Crores. The subject premises was required to construct residential facilities for the students and the staff of the medical college, to which the hospital is attached.

4.6 Thus, on 28 February 2023, a notice was issued by the Enquiry Officer under Section 105B of the MMC Act, 1888 to the Petitioner trust asserting that

the subject premises was required for development of LTMG Hospital in the public interest.

4.7 The Petitioner appeared before the Enquiry Officer and filed their objection. The Enquiry Officer recorded evidence of the Dean of LTMG Hospital and Medical College and two witnesses for the Petitioner trust. After appraisal of the material and evidence on record, the Enquiry Officer returned a finding that the Respondent No.1 required the subject premises for the redevelopment of LTMG hospital in public interest. Thus, the Petitioner was ordered to vacate the subject premises within one month of the notice under Section 105B(1) of the MMC Act, 1888.

4.8 Being aggrieved, the Petitioner preferred an appeal before the learned Principal Judge, City Civil Court under Section 105F of the MMC Act, 1888. By the impugned order, the learned Principal Judge, City Civil Court, found no error in the order passed by the Enquiry Officer. The learned Principal Judge was of the view that the activities of the Petitioner had come to a standstill and the prayer of the Petitioner to have a permanent alternate premises was not bonafide. Resultantly, the appeal came to be dismissed and the Petitioner was directed to handover the possession of the subject premises on or before 30 September 2024.

4.9 Being further aggrieved, the Petitioner has again invoked the writ jurisdiction of this Court.

5. The applicants in IA No.1916 of 2025 have preferred the said application seeking to intervene in the Petition. The applicants claim to be paraplegic patients who are undergoing treatment and rehabilitation in the subject premises.

6. Affidavits in reply have been filed on behalf of the Respondents to the Petition as well as Interim Application. Respondents have also filed an additional affidavit seeking to place certain documents on record.

7. I have heard Mr. Sahil Mahajan, learned Counsel for the Petitioner, Mr. Som Sinha, learned Counsel for Respondent Nos.1 and 2, and Mr. Marathe, learned Counsel for the Applicants-Interveners. Learned Counsel took the Court through the material before the Enquiry Officer and the orders passed by the Enquiry Officer as well as the Appellate Authority. Attention of the Court was also invited to the correspondence which ensued between the parties, to substantiate their rival contentions.

8. Mr. Mahajan, learned Counsel for the Petitioner, mounted a multifold challenge to the impugned order. Firstly, the authorities have proceeded on an incorrect premise that there is no material to show that the Petitioner has been in the occupation of the subject premises since 1968. The material on record, on the contrary, would indicate that the Petitioner trust rendered services from LTMG hospital since long and the said arrangement was continued vide communication dated 26 April 1991. Secondly, the authorities

have failed to consider that the Petitioner trust has been duly registered under the provisions of Section 51(2) of the Act of 2016. Thirdly, the voluminous correspondence which clearly shows that the Respondents had agreed to provide temporary and permanent alternate accommodation, has been unjustifiably discarded by the authorities below. Fourthly, the authorities were in error in holding that the activities of the Petitioner trust have come to a standstill.

9. Mr. Mahajan would urge that the Petitioner trust is not averse to the redevelopment of the LTMG hospital. The intent of the Petitioner trust was not to hold on to the subject premises to the prejudice of public interest. However, the Petitioner trust, whose activities are indispensable for paraplegic patients, legitimately claimed alternate accommodation, which the Respondents had initially agreed to provide, and, later on, reneged. Therefore, the impugned orders deserve to be quashed and set aside as they suffer from a clear non-application of mind to the relevant and material facts.

10. Mr. Mahajan forcefully submitted that, as of now also, as many as 25 patients are availing treatment and rehabilitation services at the subject premises.

11. Mr. Marathe, learned Counsel for the Applicants in IA No.1916 of 2025, sought to lend support the submissions advanced by Mr. Mahajan. It was urged that the paraplegics cannot be left in the lurch. The Respondents who

are the public authorities are enjoined to provide suitable alternate facility to paraplegics.

12. Per contra, Mr. Sinha, learned Counsel for the Respondents, assiduously countered the submissions on behalf of the Petitioner and the Applicants. Taking the Court through the orders passed by the learned Principal Judge, Mr. Sinha endeavoured to highlight the inconvenience to which the public at large is put to on account of the alleged stubborn and adamant approach of the Petitioner trust.

13. Mr. Sinha made an endeavour to compare and contrast the patients' load at LTMG Hospital and the Petitioner trust. It was further submitted that the Petitioner trust's unjustifiable act of holding on to the premises, when the same is not being put to the use for the purpose for which it was initially allotted gratuitously, has been causing immense loss to the public exchequer, in addition to unbearable hardship to the patients, medical students, medical officers and para-medics working at the LTMG hospital,

14. Mr. Sinha laid emphasis on the facts that the subject premises is a Corporation premises, the public purpose for which the premises is required is incontestable and due process of law has been followed by the authorities. In these circumstances, according to Mr. Sinha, the impugned order is absolutely impeccable and does not warrant any interference in exercise of writ jurisdiction.

15. I have given anxious consideration to the rival submissions. To start with the jurisdictional limits of this Court in a Petition challenging the orders of the nature impugned herein. In the exercise of the supervisory jurisdiction under Article 227 of the Constitution of India, this Court does not act as an appellate authority. This Court will not be justified in reappreciating the evidence upon which the determination of the authorities below purports to be based. The supervisory jurisdiction is essentially to ensure that the courts and tribunals function within the bounds of their authority.

16. In the case of Mohd. Yunus V/s. Mohd. Mustaqim and Ors.<sup>1</sup>, the Supreme Court enunciated that the supervisory jurisdiction conferred on the High Courts under Article 227 of the Constitution is limited “to seeing that an inferior court or tribunal functions within the limits of its authority”, and not to correct an error apparent on the face of the record, much less an error of law. In exercising the supervisory power under Article 227, the High Court does not act as an appellate Court or tribunal. It will not review or re-weigh the evidence upon which the determination of the inferior court or tribunal purports to be based or to correct errors of law in the decision.

17. In the case of Surya Dev Rai V/s. Ram Chander Rai and Ors.<sup>2</sup>, the Supreme Court culled out the principles which govern the exercise of the supervisory jurisdiction, as under :

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1 (1983) 4 SCC 566

2 AIR 2003 SC 3044

“38 (4) Supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate courts within the bounds of their jurisdiction. When the subordinate Court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the Court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction.

(5) Be it a writ of certiorari or the exercise of supervisory jurisdiction, none is available to correct mere errors of fact or of law unless the following requirements are satisfied : (i) the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law, and (iii) a grave injustice or gross failure of justice has occasioned thereby.

(6) A patent error is an error which is self-evident, i.e., which can be perceived or demonstrated without involving into any lengthy or complicated argument or a long-drawn process of reasoning. Where two inferences are reasonably possible and the subordinate court has chosen to take one view the error cannot be called gross or patent.”

18. On the aforesaid touchstone, reverting to the facts of the case, it has to be seen whether the authorities have exercised the power within the bounds of the provisions contained in Section 105B and 105F of the MMC Act, 1888.

19. As noted above, there is not much controversy over the jurisdictional facts. Firstly and incontrovertibly, the subject premises is the Corporation

premises. Secondly, the possession of the Petitioner over the subject premises is referable to permission granted by the Municipal Corporation. The occupation of the subject premises, thus, originates in permissive possession. Thirdly, a notice as envisaged by Section 105B(1) of the MMC Act, 1888 was given to the Petitioner. Fourthly, an effective opportunity of hearing was provided to the Petitioner, in as much as the Petitioner cross-examined the Respondent No.1's witness and adduced evidence of its witnesses. Lastly, the Enquiry Officer passed a reasoned order.

20. Evidently, there is neither any jurisdictional error, nor such defect in procedure, which would vitiate the order passed by the Enquiry Officer.

21. On the merits of the consideration by the Enquiry Officer, on the aspect as to whether the Respondents required the subject premises in public interest, it would suffice to note that the said fact was not seriously controverted either before the Enquiry Officer or the appellate authority. As noted above, even before this Court, Mr. Mahajan candidly conceded that the Petitioner does not question the fact that the subject premises is required by Respondent No.1 in public interest. The Enquiry Officer and the learned Principal Judge have referred to the data of the patients, number of medical students and the para-medicals officers and staff who are required to access and use the facilities at LTMG Hospital. The material on record leads to no other inference than that of the absolute necessity of the subject premises in

public interest.

22. The aforesaid consideration would indicate that the trinity of corporation premises, permissive use without a semblance of right to hold the premises and requirement in public interest, is fulfilled. The Respondent has also followed due process of law. From this standpoint, the impugned order, or for that matter, the order passed by the Enquiry Officer does not suffer from such error apparent on the face of the record or patent error of law, which causes irretrievable injustice so as to warrant reversal in exercise of the writ jurisdiction.

23. One aspect of the matter which was forcefully canvassed by Mr. Mahajan was the provision for alternate accommodation. The Enquiry Officer has recorded that no document could be placed on record to substantiate the stand of the Petitioner that the Respondents had agreed to provide the alternate accommodation. The Appellate Authority also considered the plea of alternate accommodation. The Appellate Authority found that there was some correspondence which referred to such offer, in the distant past. The Appellate Authority was, however, of the view that the Petitioner intended to grab the permanent alternate accommodation in a public building and such stand of the Petitioner was not bonafide.

24. The learned Principal Judge was well within his rights in ultimately concluding that, as the appellate authority under Section 105F of the MMC Act, 1888, he was not empowered to delve into the said aspect of the matter.

However, in my considered view, a holistic view of the matter is required to be taken by this Court. Few factors deserve consideration.

25. Firstly, the Petitioner trust has been rendering services at the subject premises since more than 35 years, even if one proceeds on the basis of the stand of the Respondent No.1 Corporation and completely discounts the claim of the Petitioner trust that it has been operating at LTMG Hospital since the year 1968. A note of the then Deputy Municipal Commissioner dated 26 April 1991 (page 43) indicates that the Petitioner was assisting the hospital in rehabilitating paraplegic patients. Sanction of the Municipal Commissioner was solicited to allow the Petitioner to use the municipal premises for carrying out the activities pertaining to rehabilitation of the injured patients as this was also Hospital's responsibility and the foundation was assisting the Hospital in the said task gratuitously. Even prior thereto, in the year 1989, the then Municipal Commissioner had informed the then Office bearer of the Petitioner that the Corporation will provide accommodation for carrying out the activity of rehabilitation of paraplegic as that should be a part of treatment of such patients. The Petitioner was allowed to continue its activity at the place where it was carrying out in the residential area of LTMG Hospital.

26. Secondly, the necessity of a facility which caters to the requirements of paraplegic can hardly be over-emphasised. The treatment of paraplegic is long drawn. It tests the patience of the patients, their family members and

care-givers. It also takes a huge financial toll. Public hospitals generally do not have space, facilities and resources to cater to the requirements of paraplegics, as there are more pressing demands.

27. Thirdly, the Enquiry Officer and the learned Principal Judge have proceeded on the premise that the Petitioner trust no more requires the premises as there has been substantial reduction in the number of patients treated by the Petitioner. The Appellate authority found that during past 32 years, the Petitioner had treated only 800 odd patients, while holding on 14000 sq.ft. property.

28. Indeed, in the last few years, as emerged from the record produced by the Administrative Officer of the Petitioner, number of patients has come down substantially. A comparison between the number of patients which a busy hospital, like LTMG Hospital, treats on an yearly basis with the patients treated by the Petitioner-trust may not be an appropriate yardstick. The ratio of paraplegics to over all patients' population would be minuscule. The complexity, duration and intensity of the treatment and rehabilitation are also required to be taken into account.

29. Fourthly, the Enquiry Officer and the appellate authority were persuaded to accept the contention on behalf of the Respondents that there are alternative arrangements for the treatment of the paraplegics. Such patients are referred to physiotherapy department. Their rehabilitational needs

are taken care of by the Medical Social Workers Department. The Dean of LTMG Hospital also stated that such facility is available at Chota Sion Hospital.

30. Without doubting the correctness of the said contention, it must be noted that the requirements of paraplegics are multifold and the public hospitals, where the patients struggle to get the services on demand, primarily on account of sheer volume of the patients to whom the services are required to be provided, are not equipped to cater to the specialised needs of the paraplegics, the aforesaid measures may not be an effective substitute for a dedicated facility.

31. Lastly, there is, indeed, material on record to show that some sort of alternate accommodation was offered to the Petitioner trust by the Respondents. The additional affidavit in reply filed on behalf of the Respondents, refers to some correspondence exchanged between the parties. A communication dated 18 November 2022 addressed to the Dean, LTMG Hospital by the E.E.(HIC) City, explicitly records that the work of ground floor of transit / annex hostel building was completed as per the approved plan and the requirement of paraplegic foundation. The same was also indicated to the Dean as well as the Secretary of Paraplegic foundation. However, till date, no occupants from Paraplegic Foundation were shifted to annex hostel building.

32. Mr. Mahajan, learned Counsel for the Petitioner, banked upon the plan which was allegedly approved in a meeting between the officials of Respondent No.1 and the trustee of the Petitioner, for providing an alternate accommodation to the Petitioner. It was also submitted that the annex building construction was carried out in such a fashion as to facilitate the use thereof by paraplegics. Emphasis was laid on the fact that a ramp facility was provided to the said building. Reliance was also placed on the communication addressed by the officers of Respondent No.1 to the office bearers of the Petitioner to vacate the extended shed from the rear side of the Paraplegic Foundation barrack and the response thereto by the Petitioner on 10 May 2021.

33. This Court, in exercise of the writ jurisdiction, may not delve into the thickets of facts. Suffice to note, there is prima facie material which suggests that some alternative arrangement was offered to the Petitioner.

34. All these factors are, however, required to be appreciated keeping in view the fact that the Petitioner cannot claim alternate premises as a matter of right. The initial occupation of the Petitioner of the corporation premises was permissive in nature and has continued to be so. Therefore, the Petitioner cannot insist for an equivalent area as an alternate accommodation and that too as a permanent feature. It emerges from the record that number of patients to which the Petitioner now caters to, has been substantially reduced.

Activities of the Petitioner trust have slowed down.

35. In these circumstances, to maintain an element of continuity and ensure that paraplegics, who are currently taking treatment and rehabilitation at the Petitioner's foundation, are not left in the lurch, in my considered view, a suitable premises of reasonable dimension is required to be made available to the Petitioner trust for a limited duration. The Petitioner trust, if it intends to continue its activities, will have to make its own arrangements during the said period. Such a course, in the circumstances of the case, would meet the ends of justice.

36. Having regard to the entire gamut of the circumstances, in my view, a premises admeasuring 1400 sq.ft. would constitute a reasonable alternate accommodation to the Petitioner. Such premises shall be made available to the Petitioner trust for a maximum period of five years. During this period, the Petitioner trust would be in a position to make an alternate arrangement to house its facilities. The Court cannot lose sight of the fact that the requirement of the premises by the Respondent No.1 is in public interest, which is of paramount importance.

37. I am, therefore, inclined to partly allow the Petition and modify the order passed by the appellate authority. Appropriate conditions are also required to be imposed to ensure that the Petitioner trust vacates the alternate premises at the end of the said period of five years.

38. Hence, the following order :

ORDER

(i) The Writ Petition stands partly allowed.

(ii) The impugned order of eviction is affirmed, subject to the following conditions :

(a) The Petitioner shall handover possession of the subject premises to the Respondent No.1 – MCGM on or before 30 April 2025.

(b) Within a period of four weeks from today, Respondent No.1 shall provide suitable alternate premises admeasuring 1400 sq.ft. to the Petitioner within the precincts of LTMG Hospital.

(c) The said alternate premises or any other premises of equivalent dimension, upon redevelopment, be provided to the Petitioner for a period of five years only from the date of such allotment.

(d) The Petitioner shall file an undertaking in this Court within a period of two weeks stating that after the expiry of the said period of five years, the Petitioner shall handover possession of the said alternate premises (to be allotted to the Petitioner) to the MCGM without claiming any right to occupy the said premises in any capacity whatsoever and that during the said period of five years, the Petitioner will not create any third party interest in the said alternate premises or part with possession thereof.

(e) Rule made absolute to the aforesaid extent.

(f) No costs.

(iii) In view of the disposal of the Petition, Interim Application No.1916 of 2025 also stands disposed.

**( N.J.JAMADAR, J. )**