

Jvs.

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 10906 OF 2024**

Smt. Hamida Rahim Lakhani & Anr. } Petitioners
Versus
The Pune Municipal Corporation & Anr.} Respondents

Mr. Prashant Darandale for petitioners.

Ms. Manisha Jagtap a/w Yashashree Raut
and Sanket Khandagale for respondents.

CORAM: ALOK ARADHE, C. J.

DATE: JULY 10, 2025

ORAL ORDER:

1. In this petition under Article 227 of the Constitution of India, the petitioners have assailed the validity of the order dated 2nd December, 2023 passed by the District Judge-14, Pune under Section 81-F of the Maharashtra Municipal Corporations Act, 1949 by which the order dated 30th June, 2022 passed by the Deputy Commissioner, Estate and Management, Pune Municipal Corporation (PMC) under Section 81 (C)(1)(3) and (4) of the Maharashtra Municipal Corporations Act, 1949 has been affirmed.

2. Facts giving rise to filing of the writ petition, in nutshell, are that Plot No. 1, admeasuring about 225.50 square feet, situated at CTS No. 529, Ravivar Peth, Pune was allotted to Late Shri. Rahim Harun Lakhani sometime in the year 1960. Late Shri. Rahim Lakhani expired on 10th April 2021. The petitioners are his legal heirs. The Deputy Commissioner of Pune Municipal Corporation (PMC) issued a notice on 14th February 2022 under section 81-B (2) of the Maharashtra Municipal Corporations Act, 1949 (herein after referred to as "the Act of 1949") on the

ground that the petitioners are in arrears of rent to the tune of Rs.2,83,216/-. However, the petitioners did not pay the amount of rent. On 23rd March 2022, the shop in question was sealed. The petitioners preferred an appeal under section 81-F of the Act of 1949 before the District Judge, Pune. The District Judge, Pune, vide order dated 4th May 2022 allowed the appeal and the respondents were directed to remove the seal.

3. The petitioners, thereafter, on 27th May 2022, deposited a sum of Rs.2,03,057/- out of the total amount of Rs. 2,83,216/- demanded from them. The Deputy Commissioner, PMC on 8th June 2022, sent a notice to the petitioners under section 81-B (2) of the Act of 1949, wherein a sum of Rs.3,56,662/- was demanded from the petitioners on account of arrears of rent.

4. The Deputy Commissioner, PMC issued a notice on 14th June 2022 and directed the petitioners to remain present for hearing on 23rd June 2022. On 23rd June 2022, the petitioners attended the hearing and submitted their written statement. The petitioners pointed out that they have deposited a sum of Rs. 2,03,057/- and have not deposited the rent for the COVID-2019 period. However, the Deputy Commissioner passed an order under section 81-B of the Act of 1949 directing the petitioners to deposit a sum of Rs. 99,199/- plus taxes on or before 7th July 2022 and the petitioners were further directed to vacate the shop in question and handover the possession on or before 7th July 2022. Being aggrieved thereby, the petitioners preferred an appeal under section 81-F of the Act of 1949, which appeal has been dismissed by the District Judge, Pune vide the impugned order dated 2nd December 2023. Hence this petition.

5. Learned counsel for the petitioners submitted that the Deputy Commissioner as well as the District Judge, Pune ought to appreciate that the petitioners had deposited the entire amount of the rent. It is further submitted that the notice was issued under section 81-C of the Act of 1949 and the Deputy Commissioner, therefore, has no authority to seek possession of the premises from the petitioners.

6. On the other hand, learned counsel for PMC has supported the order passed by the Deputy Commissioner as well as the District Judge, Pune and submitted that since the petitioners were in arrears of rent and despite notice, did not pay the same, the provisions of section 81-B of the Act of 1949 have been rightly invoked.

7. I have considered the submissions made on behalf of both sides and perused the record.

8. Before proceeding further, it will be apposite to refer to section 81-B of the Act of 1949, which is reproduced hereunder:

"81-B. 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 regulation, 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.

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 of, or 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 sub-section (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 sub-section (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."

9. Thus, it is evident that in case the tenant is in arrears of rent, an order of eviction can be passed in terms of section 81-B of the Act of 1949. Admittedly, in the instant case, on 8th June 2022, a notice under section 81-B of the Act of 1949 was issued to the petitioners. The petitioners, on receipt of the aforesaid notice, did not pay the amount of rent. Thereupon, after affording an opportunity of hearing to them, an order was passed on 30th June 2022 by the Deputy Commissioner of the PMC, by which, the petitioners were asked to handover possession and to tender the balance rent on or before 7th July 2022. The order passed by the Deputy Commissioner, PMC was upheld in appeal preferred by the petitioners.

10. The petitioners were, admittedly, in arrears of rent and therefore, an action against the petitioners has been taken in

conformity with section 81-B of the Act of 1949. The impugned action has not been taken in violation of the mandate contained in section 81-B of the Act of 1949. The impugned order does not suffer from any jurisdictional infirmity. The concurrent findings of fact have been recorded by the Deputy Commissioner, PMC as well as the District Judge, Pune that the petitioners were in arrears of rent and therefore, the action of eviction has been taken in consonance with the law. The impugned order, therefore, neither suffers from jurisdictional infirmity nor an error apparent on the face of the record requiring interference of this Court in exercise of supervisory jurisdiction under Article 227 of the Constitution of India.

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VISHWANATH
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11. In the result, the writ petition fails. The same is hereby dismissed.

(CHIEF JUSTICE)