

MHCC010084072018



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**IN THE COURT OF CITY CIVIL FOR GREATER BOMBAY
AT BOMBAY
MISC. APPEAL NO. 433 OF 2018
(Enquiry No.ME/210/Estate of 2017 dt.31.05.2018)
CNR No. MHCC010084072018**

~~Aruna Keshav Chavan~~

(Deleted)

~~Legal heir of Keshav Shankar Chavan~~

~~Aged : 86 years~~

~~R/at : Room No.7, Block No.E-4~~

~~New Municipal Colony Deonar,~~

~~Govandi, Mumbai 400 043,~~

1 (a) Sunil Keshav Chavan

Son of Aruna Keshav Chavan (since deceased)

Aged : 66 years

Occ : Retired

R/at : Room No.7, Block No.F-4

New Municipal Colony Deonar,

Govandi, Mumbai 400 043

**... Appellant/
(Org.Respondent)**

Versus

1. The Municipal Corporation of Greater Mumbai,

A body Corporate constituted

under the Mumbai Municipal Corporation

Act 1888 having its principal office at

Mahapalika Marg, Mumbai 400 001

(Respondent)

CORAM : H.H.THE PRINCIPAL JUDGE

SHRI A.SUBRAMANIAM(C.R.No.19)

DATED : 9th FEBRUARY 2023

Ld.Counsel Mr.P.D.Gandhy a/w Suraj Iyer, Adv.Kunal Vaishanav, Adv.Mani Thevar, Adv.Hardik Desai and Adv.Kavita Sharma I/b M/s.Ganesh & Co. for appellant.

Ld. Counsel Mr. Dharmesh Vyas a/w Adv. Gajanan Giri for Respondents/BMC.

ORAL JUDGMENT

1. By the present appeal, the appellant is challenging the eviction order passed by the learned Enquiry Officer of BMC.
2. This is the group of 300 plus proceedings and all appeals were argued by common arguments by the appellants and nearly similar arguments on behalf of the respondents. Considering the common issues being involved in all the matters, the appeals are disposed of by common order, it is only by way of convenience that separate orders are placed in each of the matters.
3. It is the case of the appellant that the eviction proceedings have been initiated on behalf of the Corporation alleging that appellants are residing staff quarters after the death/retirement of allottee. . Directions are given in a Writ Petition preferred by some persons. The Corporation contends that the premises in question are staff quarters and they are allotted to the employees by way of staff quarter. The said concerned employee has retired/expired and their legal heirs are occupying the premises in most of the cases. They have failed to vacate the premises inspite of repeated requests and considering the same, notices were issued. The concerned employees preferred Writ Petition through their Society alleging that the Corporation had assured them that the premises would be given to them on ownership basis and asking for such compliance. It has been held by the Hon'ble High Court that there was no such finality of agreement, and considering the same the claim of the said employee was rejected by the Hon'ble High Court. The SLP

filed against the said order has also rejected by the Hon'ble Supreme Court of India and said order has attained finality. In such circumstances, it is prayed that the notices were issued requesting the concerned employees and their legal heirs to vacate the premises and having failed to do so and found them to be an unauthorized occupant, notices as contemplated under Chapter-VA of MMC Act have been issued. On failure thereof necessary present proceedings have been initiated resulting in impugned order. The Corporation has served notices on all the appellants and after due enquiry, impugned order has been passed in all the proceedings.

4. The appellant/original opponent contends that principles of natural justice have not been followed. So much so that there is no individual personal hearing was not given to each of the party. The contentions raised by the appellants are not considered in true sense. The aspect of part performance, limitation etc. have not been considered by the learned Court in proper perspective. Considering the various aspect of the case, it is pointed out that there are various issues involved which violates principles of natural justice. On the same day the order was passed in 350 matters. Cross-examination was shown conducted in all the matters on the same day and individually matters are not considered. Thus, considering these aspects, there is violation of principles of natural justice. In similar matters the Hon'ble High Court remanded the case back to the learned Enquiry Officer for a fresh hearing and in connected matters, various issues have been required to be formulated for consideration of the issues before the learned Enquiry Officer. Considering the same, there is no proper appreciation of the facts of the case and hence the impugned order requires to be set aside.
5. Perused the written arguments as well as considered the oral submissions of the parties as advanced herein before.

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6. Perused the record and proceedings of the matter, impugned order, appeal memo and considered the submissions, following points arise for my consideration and I answer the same as under for the reasons stated hereinafter:-

Sr. Nos.	POINTS		FINDINGS
1.	Whether the principles of natural justice are violated?	::	In the Negative
2.	Whether the appellant is said to be unauthorized occupant?	::	In the Affirmative
3.	Whether the impugned order requires an interference?	::	In the Negative
4.	What order?	::	As per final order

REASONS

As to Point No.1:

7. The vehement contention is that these group of matters were before the learned Enquiry Officer and no proper separate hearing was given in each of the matter. It is contended that the appellant herein has different defences and considering the same, the matters ought to have been considered in the same perspective. Each and every matter has to be considered differently considering the facts that some of the appellants are employees and others are legal heirs and some have retired at different ages of time and hence have different rights. It is further contended that the various aspects of the case so as to differentiate between the order passed in Writ Petition are not considered and considering the same, it requires a fresh hearing.
8. In support of their contentions, the appellant has relied upon the following judgments:

1.	Bharti Santosh Bhosale V/s. Municipal Corporation of Gr.Mumbai – Ththrough Municipal Commissioner & Anr in Writ Petition No.6989 of 2021 along with Group matters order dated 08th December 2021 of the Hon'ble Bombay wherein it is held 4. In modern administration set up, what is important is the fairness of procedure with elimination with elements of arbitrariness. The Apex Court in the case of <u>Management of M/s M.S. Nally Bharat Engineering Co. Ltd. v. The State of Bihar & Ors.</u>, reported in (1990) 2 SCC 48 has held as under. "29. The State functionaries must act fairly and reasonably. That is, however, not the same thing to state that they must act judicially or quasi-judicially. The term 'fairness in procedure' 'fair play in action', 'duty to act fairly' are perhaps used as alternatives to 'natural justice' without drawing any distinction. But, such phrases may sometimes be used to refer not to the obligation to observe the principles of natural justice but, on the contrary, to refer to a standard of behavior which increasingly, the courts require to be followed even in circumstances where the duty to observe natural justice is inapplicable. Fairness is a rule to ensure that ast power in modern state is not abused but properly exercised. The State power is used for proper and not for improper purposes. Fairness is also a principle to ensure that statutory authority arrives at a just decision either in promoting the interest or affecting the rights of persons. The use the time hallowed phrase that justice should not only be done but be seen to be done' is the essence of fairness equally applicable to administrative authorities. ..."
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2.	Vivek Gawade V/s Municipal Corporation of Gr.Mumbai and others In Writ Petition No.5983 of 2022 along with Group matters order dated 19th July 2022 of the Hon'ble Bombay High Court. Of framing of issues
3.	Kranti Associates Pvt.Ltd. & Anr. V/s. Masood Ahmed Khan & Ors. (2010)9 SCC 496. <i>The necessity of giving reason by a body or authority in support of its decision came up for consideration before this Court in several cases.The Commissioner, Hindu Religious and Charitable Endowments Dept. and Ors., AIR 1980 SC 1, while giving the majority judgment Chief Justice Y.V. Chandrachud referred to Broom's Legal Maxims (1939 Edition, page 97) where the principle in Latin runs as follows:</i> <i>"Ces-sante Ratione Legis Cessat Ipsa Lex"</i> 34. The English version of the said principle given by the Chief Justice is that:"Reason is the soul of the law, and when the reason of any particular law ceases, so does the law itself." (See para 29 page 11)h. The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the life blood of judicial decision making justifying the principle that reason is the soul of justice. i. Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.
4.	Kashish Park Realty Pvt. Ltd. & Anr. V/s. State of Maharashtra (2021(3) Mh.L.J. <i>If a Judge or a quasi-judicial authority is not candid enough about his/her decision making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism. l. Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or 'rubber-stamp reasons' is not to be equated with a valid decision making process. m. It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision making not only makes the judges and decision makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor (1987) 100 Harward Law Review</i>

731-737).

9. In support of their contentions, the Corporation/Respondents herein have relied upon the following judgments:

1.	Ajit Kumar Nag V/s General Manager(PJ), Indian Oil Corpn. Ltd., Haldia & Ors., (2005)7 SCC 764, <i>The Court, however, observed that in certain circumstances, application of the principles of natural justice could be modified and even excluded. Both in England and in India, it is well established that where a right to a prior notice and an opportunity to be heard before an order is passed would obstruct in the taking of prompt action, such a right could be excluded. It could also be excluded where the nature of the action to be taken, its object and purpose and the scheme of the relevant statutory provisions warrant its exclusion. The maxim audi alteram partem could not be invoked if import of such maxim would have the effect of paralysing the administrative process or where the need for promptitude or the urgency so demands.Thus, where the second proviso applies, though there is no prior opportunity to a government servant to defend himself against the charges made against him, he has the opportunity to show in an appeal filed by him that the charges made against him are not true. This would be a sufficient compliance with the requirements of natural justice.</i>
2.	Dayaram Maurya & Ors V/s. MCGM, 2005(4) Mh.L.J 763 <i>12. As the very name suggests, the principles of natural justice are not statutory and evolved by the Court is order to do justice naturally between the parties. They are not static. The manner in which the principles of natural justice are to be observed and followed also cannot be static and may vary from case to case.</i> <i>Broadly speaking the principles of natural justice are :</i> <i>(i) The person concerned should know the nature of accusation made. The accusation, the charge or the improper conduct alleged against a person must be told to the person clearly.</i> <i>(ii) The person concerned should be given an opportunity to state his case. Whether the opportunity of hearing would include a personal hearing or only an opportunity of making written submissions would depend upon the facts and circumstances of each case. Though hearing in person or through a counsel is usually allowed, there may be exceptions and in a given case an</i>

	opportunity to make written submissions may suffice. (iii) The tribunal or the authority taking a decision should act fairly and in good faith. No person should be a judge in his own cause and the tribunal, body or authority deciding the matter should be unbiased. 16. It is unnecessary to burden the judgment by citing any more decisions in support of the proposition that principles of natural justice are flexible. They are not a judicial missile to be used for striking down any and every administrative action or quasi-judicial decision on the ground of an infraction, howsoever inconsequential. A person alleging infraction of the principles of natural justice may not prove beyond reason of doubt that prejudice was caused to him by reason of the infraction. However he must atleast allege prejudice or injustice. There must be atleast a possibility (not probability) howsoever small, of injustice or prejudice being caused to him. There must be an allegation of prejudice or injustice and a possibility, howsoever remote, of an injustice or prejudice. This may not be true when the allegation is of a bias against the tribunal or authority deciding the matter but that is on account of an oft quoted saying "Justice must not only be done but must be seen to have been done."
3.	Municipal Committee, Hoshiarpur V/s. Punjab State Eletricit Board & Anr (2010)13 SCC 2166 33. There may be cases where on admitted and undisputed facts, only one conclusion is possible. In such an eventuality, the application of the principles of natural justice would be a futile exercise and an empty formality. (Vide State of U.P. v. Om Prakash Gupta [(1969) 3 SCC 775 : AIR 1970 SC 679] , S.L. Kapoor v. Jagmohan [(1980) 4 SCC 379 : AIR 1981 SC 136] and U.P. Junior Doctors' Action Committee v. Dr. B. Sheetal Nandwani [(1990) 4 SCC 633 : AIR 1991 SC 909])......36. In view of the above, in case there is a non-compliance with a statutory requirement of law or the principles of natural justice have been violated under some circumstances, non-compliance with the aforesaid may itself be prejudicial to a party and in such an eventuality it is not required that a party has to satisfy the court that his cause has been prejudiced for non-compliance with the statutory requirement or principles of natural justice.
4.	A.S.Motors Pvt.Ltd. V/s. Union of India & Ors., 2013(1) SCC 114, where this Court with approval quoted the following observations of Sir Willam Wade (Administrative Law, 9th Edn. pp.468-471) “... ... it is not possible to lay down rigid rules as to when the

	<i>principles of natural justice are to apply, nor as to their scope and extent... There must also have been some real prejudice to the complainant; there is no such thing as a merely technical infringement of natural justice. The requirements of natural justice must depend on the facts and circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject-matter to be dealt with and so forth."</i>
5.	Dharampal Satyapal Limited V/s. Deputy commissioner of General Excise, Gauhati and Other, (2015)8 Supreme Court Cases 519, 39. <i>We are not concerned with these aspects in the present case as the issue relates to giving of notice before taking action. While emphasising that the principles of natural justice cannot be applied in straitjacket formula, the aforesaid instances are given. We have highlighted the jurisprudential basis of adhering to the principles of natural justice which are grounded on the doctrine of procedural fairness, accuracy of outcome leading to general social goals, etc. Nevertheless, there may be situations wherein for some reason—perhaps because the evidence against the individual is thought to be utterly compelling—it is felt that a fair hearing “would make no difference”—meaning that a hearing would not change the ultimate conclusion reached by the decision-maker—then no legal duty to supply a hearing arises. Such an approach was endorsed by Lord Wilberforce in <i>Malloch v. Aberdeen Corpn.</i> [(1971) 1 WLR 1578 : (1971) 2 All ER 1278 (HL)] , who said that : (WLR p. 1595 : All ER p. 1294)“... A breach of procedure ... cannot give [rise to] a remedy in the courts, unless behind it there is something of substance which has been lost by the failure. The court does not act in vain.”....Relying on these comments, Brandon L.J. opined in <i>Cinnamond v. British Airports Authority</i> [(1980) 1 WLR 582 : (1980) 2 All ER 368 (CA)] that : (WLR p. 593 : All ER p. 377)“... no one can complain of not being given an opportunity to make representations if such an opportunity would have availed him nothing.” In such situations, fair procedures appear to serve no purpose since the “right” result can be secured without according such treatment to the individual.40. In this behalf, we need to notice one other exception which has been carved out to the aforesaid principle by the courts. Even if it is found by the court that there is a violation of principles of natural justice, the courts have held that it may not be necessary to strike down the action and refer the matter back to the authorities to take fresh decision after complying with the procedural requirement in those cases where non-grant of hearing has not caused any prejudice to the person against whom the action is taken. Therefore, every</i>

	<i>violation of a facet of natural justice may not lead to the conclusion that the order passed is always null and void. The validity of the order has to be decided on the touchstone of "prejudice". The ultimate test is always the same viz. the test of prejudice or the test of fair hearing.</i>
6.	Ajit and Others V/s. General Manager, BEST underaking of the Municipal Corporation of Gr.Bombay and Others, AIR 1985 Bombay 362, <i>9-10. It is an admitted position that the premises were allotted to respondent 3 as an incident of his employment and by virtue of the agreement entered into at the time of the allotment, respondent 3 was required to vacate the tenement on retirement. He was compulsorily retired on 18th February 1983. The authority under which he was allotted to occupy the premises thus stood duly determined and his continuing in occupation of the allotted premises became unauthorised within the meaning of cl (d) of, S. 105A from the date of his compulsory retirement. Respondent 3 thus became liable to be evicted under cl. (b) of sub-sec. (1) of S. 105B of the B.M.C. Act. It is an admitted position that before the order under sub-sec. (1) was passed against respondent 3, he was duly served with a notice contemplated by sub-sec. (2) of S. 105B.</i> <i>13. An analysis of these definitions will make it clear that occupation of premises contemplates possession, either actual or constructive or control over, or enjoyment of the premise's in pursuance of a right to possess or to have control or of enjoyment, real or purported. Mere residence along with the person who has or had a right to possession of the premises, as a member of his family or with his permission does not amount to possession and much less occupation. A member of allottee's family who resides in the premises along with the allottee cannot be said to be in possession or occupation of the premises in his or her own right. The possession and occupation is that of the allottee and not of the members of his family. It is not necessary that the right to possess or control or enjoy premises should be considered by, or exercisable against the true owner. The right might be created by or exercisable against a person in unauthorised occupation of the premises or whose occupation has become unauthorised. A person who claims to be occupation must be in occupation in exercise of a right and on his own behalf. A member the family residing as such with a person who is in unauthorised occupation or whose occupation has become unauthorised has no right to be in occupation either against the said person or against the true owner. Such person cannot be said</i>

	<i>to be in occupation of the premises.</i>
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10. At the outset, although the said arguments looks attractive, there is basic fallacy, even before this Court all the 350 appeals were heard at one go, common points were advanced in all the appeals. No separate grounds were made out in the other appeals. Thus, if all the appeals are considered together and disposed of together, I do not find that there is any variance or violation of principles of natural justice.

11. The aspect of jointness of hearing and speedy hearing are held to be not violative of 'fairness' as held in the case of *Bharati Bhosale as*

"Fairness is thus a prime test for proper and good administration. It has no set form or procedure. It depends upon the facts of each case. Fairness does not necessarily require a plurality of hearings or representations and counter representations. It cannot have too much elaboration of procedure since wheels of administration must move quickly."

12. The aspect of prejudice of natural justice is seen to be seen as on case to case basis and not a rule basis.

13. It is necessary also to consider that the contentions or defence raised of all the employees or all the appellants is the same in all the matters. The letters written and the documents relied upon are also same in all the matters. The society on behalf of the appellants as members preferred one writ petition claiming similar contentions. Thus, it would be an irony to say that each and every matter should be decided separately just for because the appellants are separate. Merely because the appeals and proceedings are decided by a similar order will not imply that the proceedings are vitiated. No such contention that they were to given separate hearing on grounds or separate opportunity of hearing should be given in their case was raised before the competent authority. No such application or contentions is seen to be preferred. In

fact, it is seen that the proceedings were held in commonness by the concerned parties and common documents as well as common contentions and same evidence was led in all the matters. Only difference was name of employee/date of retirement/or death of employee as the case may be and quarter description. If we consider this aspect, one has to consider whether there is any violation of principles of natural justice.

14. Principles of natural justice contemplates a fair hearing to the parties involved. If the issues involved in all the proceedings are same and same grounds and contentions are taken up and considered by the Enquiry Officer, only because each one was not brought forth separately and differently will not imply violation of principles of natural justice. As regards the absence of filing of documents, it is apparent that it was for the appellants to call upon the respondents any document if they so felt it necessary.
15. Much was harped upon the order of the Hon'ble High Court in Writ Petition No.6989 of 2021 and other allied Writ Petitions wherein in case of 16 cases, the Hon'ble High Court has held that the matters are required to be remanded back. It is necessary to point out that in the said case, the notices that was issued to the respondents therein i.e. occupants was a very short period of notices. The Corporation was given longer time. There was three days' time was given to the respondents to the show cause notice.
16. On perusal of the present proceedings, the Enquiry Proceedings were initiated in 2017. The statements of the applicant were recorded on December 2017 and thereafter the order is passed in January 2018. Thus, at no point of time that is it shown that there was any prevention for not giving any opportunity to any party to represent or participate in the proceedings or non consideration of any documents or refusal of

documents by the Competent Authority. In absence of such instances specifically been shown as in the cited case, the violation of principles of natural justice will not apply. In such circumstances, I consider that the principles of violation of natural justice is not violated.

17. Hearing has been given. It could be that one of the matters has been taken up as the lead matter and other matters are decided accordingly. Unless prejudice is shown because of said issues involved, one cannot consider that there is violation of principles of natural justice by using the same procedure. Hence, I answer the said point accordingly.

As to Point No.2:

18. Much was harped upon the aspect with regard to the proof of unauthorized occupation and capacity of occupation. Much reliance was also placed on on the judgment of the Hon'ble High Court in the Case of Writ Petition No.5983/2022 dated 19.07.2022. It needs to be pointed out that the above judgment relates basically to the aspect of pending proceedings and not concluded proceedings. Secondly, it would be difficult to directly imply that the grounds raised in those proceedings and the defences raised in the present proceedings are same and hence requires consideration. Thus, what has to one consider is the aspect of occupation.
19. It is part of record that there is leave and license executed by the original employee that he will vacate the premises on his retirement or that the premises will be vacated when his services stands determined. In fact , the said statements are made and is basis of claim that they are entitled for ownership basis premises through society. It is an admitted fact that none of the original employees are in service right now. (Some of the appellants could be in service, but in their own capacity and not

as original employees who had executed the leave and license agreement)

20. It is also not in dispute that the quarters were allotted as staff quarters. On consideration of the judgment passed in the Writ Petition, it is apparent that the Society on behalf of appellants as members had preferred the Writ Petition. A lame attempt is made that the Writ Petition is filed by the Society and the present proceedings are against an individual. There is basic fallacy in this argument so much so that the so-called transfer was to be effected only in favour of Society and not individual. It is also part of record that the Society represented the members i.e. appellants. Thus, in view of these facts and circumstances, it would not lie in the mouth of the appellants that they were not parties before the Hon'ble High Court in the earlier round of proceedings.

21. I have already considered the said judgment in my another round of appeals. There can be two aspects while considering these earlier judgments one is by view of the binding nature being between the parties and, secondly by considering it also as precedent in the said set of facts.

22. I am reproducing the relevant findings in the Earlier Writ petition of *More Eknath* (WRIT PETITION NO. 957 OF 2013)

“Eventually, everything has to be placed before the General Body of the Municipal Corporation. The General Body has yet not passed any resolution conferring any right. Therefore, the policy decision not to grant the conversion nor to permit retention of the quarters on the above basis binds the Municipal Corporation.

..... The Municipal Commissioner, thereafter, disclosed his intention to grant the tenements at Parksite (Vikhroli), Barvenagar (Ghatkopar), Mithanagar (Goregaon) and Deonar on ownership basis. That is how the Municipal Corporation passed Resolution No. 343 dated 1st September, 1989.

..... As required, an offer was submitted by the petitioners. The petitioners complied with the requisitions and other terms in the letters of the Municipal Corporation. It is in these circumstances that the petitioners submit that they were hopeful of the benefits being granted. They were also hoping that till the outcome of the proceedings pending in this court, no coercive measures would be initiated. The petitioners also relied upon certain correspondence with their architect.

..... We must clarify at once that this is not a case of those persons who are in occupation of municipal properties and premises because they are displaced by a public project and therefore, styled as project affected persons. They are not the dis-housed occupants of municipal premises because such premises have become unfit for human inhabitation by passage of time. These are ex-municipal servicemen or employees, who have retired from municipal services. During their tenure, they were allowed to occupy the municipal premises on account of the specific orders of allotment. The terms and conditions of this allotment are clear. Even if the allotment of municipal premises in favour of the employees is on leave and licence basis or in lieu of the Housing Rent Allowance, still, the nature of occupancy remains the same. This occupancy does not create any right, title or interest in the municipal property, which is a public property

.....Therefore, the recommendation of the Municipal Commissioner was placed before the Municipal Corporation's General Body and that General Body resolved that these proposals/recommendations of the Municipal Commissioner can be temporarily approved provided the co-operative housing society of such occupants presents a concrete proposal for consideration of the Commissioner and thereafter the Commissioner forwards it for approval of the Municipal Corporation. Thus, this is a proposal which has to be initiated from the Municipal Commissioner. We do not see how this resolution can be termed as a final decision of the Corporation to grant permanent occupancy rights. These are not final recommendations or accepted proposals so as to convert the individual occupancy into either ownership or permanent tenancy basis. This is at best a request emanating from all these occupants, on which the Municipal Commissioner endorses his remarks and observations and then forwards them to the House

..... Once they understand this as only a request made by them to the Municipal Corporation for consideration of their cases sympathetically, then, all the more we do not see how moved by their plight alone, the municipal properties can be handed over to them permanently. Further, if this court were to allow such a request and issue the writ as prayed, that would be a mockery of the rule of law. This court's orders and writ cannot be contrary to the MMC Act. The municipal property can be disposed off only in accordance with section 92 of the MMC Act. The petitioners ought to be aware of this settled legal position and as annunciated in the MMC Act. No public property can be disposed off even by a public body except as authorised by law

..... What we have noted from these circulars is that when such authorities are empowered to take a harsh decision, then, all the more allowing the petitioners to retain the tenements, despite ceasing to be in service and retiring decades back would, as rightly contended before us by the Corporation, be putting a premium on their wrongful and illegal acts. No premium attaches to such patent illegality. We cannot, in the garb of any sympathetic considerations, allow retention of the municipal staff quarters

.....The Municipal Corporation approved this recommendation of the Municipal Commissioner on 1st September, 1989, but mentioning clearly that these are special factors and circumstances. It had not passed a firm resolution nor has taken any final and binding decision. It, as noted above, only directed that the Municipal Commissioner should forward the necessary proposal specifying the terms and conditions for allotment for due consideration and specific approval of the Municipal Corporation. There are further representations and correspondence, which would indicate as to how this whole proposal was not found to be feasible.

.....They have not obtained any right independent of their status as employees of the Municipal Corporation and rendering municipal services, which would enable them to retain these premises. If there is no specific order converting their occupancy into permanent tenancy or otherwise on ownership basis, then, they must hand over these premises, else, they must face the deduction “

23. This judgment of the Hon'ble High Court that there was no concluded contract. It is also the judgment of the Hon'ble High Court

that the quarters were staff quarters. It is also the judgment of the Hon'ble High Court that these employees have no right in the said premises. Thus, if that is so, none of the contentions raised in the defence survives and same would be hit by the findings in said Writ Petitions .

24. Even if one considers that the proceedings are between the Society and the Corporation, law of precedent implies that the said judgment would apply to the present facts with all force. The said judgment examines all the documents and circumstances.
25. It is certainly true and it has been observed in the said earlier judgment also that certain representations of consideration of proposal of transfer of the ownership rights would be given to the Society, would be considered. It is also part of record and all the correspondence relied herein also which shows that it was merely a proposal and all the terms and conditions were to be agreed and decided upon. The proposal was never accepted even in principle. It was always subject to its feasibility and implementation. Even the members, area, occupation rights, place were to be ascertained. By passage of time, it is seen that the project was not feasible for the Corporation to consider such proposal. In such circumstances, it is very clear that the discretion of the Corporation has been upheld by the Hon'ble High Court of Bombay and same has been confirmed by the Hon'ble Supreme Court of India.
26. In such circumstances, it would not lie to hold in this case, that there was an agreement and possession was in pursuance of that agreement. There is difference between a concession and an agreement. A concession could be to be in occupation till that issue of proposal is decided. The agreement is that after or in pursuance of the agreement the possession is handed over or possession is taken. There is no termination or determination of earlier occupation of premises and

coming into premises in new capacity. These aspects are conspicuously absent to consider the protection of possession by virtue of any such alleged agreement.

27. Apparently, by virtue of the above earlier proceedings, it is held that there is no agreement. Thus, there can be no right flowing under such consideration. In such circumstances, even if one considers that “yes” there was some proposals passing forth and compliance by the society members, that was never concluded proposal also. This is apparent from number of documents filed on record by the appellant himself. Even the various documents show that what was only the mere discussion on the various proposals of transfer of ownership. In such circumstances, it does not lie that the agreement existed wherein it was agreed that the ownership tenement would be given to this person.

28. However unfortunate it may seem to be, the Enquiry Officer had very limited scope for consideration as to whether the appellant had a right or not to occupy the premises. In view of the leave and license agreement and the judgment of the Hon’ble High Court, it is a settled fact and same which has attained the finality that there was no such right existing or subsisting in favour of the appellant and considering the same, the learned Enquiry Officer rightly held that only point for consideration is whether the appellants are unauthorized occupants. The action is also Thus, the issue is answer accordingly by the Ld Competant authority and rightly so.

As to Point No.3:

29. Various points for consideration were raised and it was tried to be pointed out various issues will have to be considered. As regards in this case, it is admitted that these are the staff quarters and there is direct clause in the leave and license agreement that the premises are to be handed over on retirement. It is also necessary to point out that the

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Enquiry Proceedings cannot be said to be a sue. It is also part of record that various proceedings were filed and various process were under progress before initiation of the proceedings. In the earlier round the Hon'ble High Court permitted initiation of proceedings and in that case also the Hon'ble High Court granted time to vacate the appellants and only failing which proceedings U/s.104 were permissible. Considering these circumstances, it is my view that the learned Competent Authority has considered all the issues in correct perspective. In such circumstances, I hold that the learned Competent Authority has considered the facts in correct perspective and I pass the following order.

ORDER

1. Misc.Appeal is dismissed.
2. Time is granted to the appellant/s to vacate the premises till 31/03/2023 subject to appellant/s filing an undertaking before this Court within 4 weeks from today that the appellant/s is/are in physical occupation of the premises and that appellant/s will not create any third party interest in the said property and further appellant/s will honour the order of the learned Enquiry Officer on its attaining finality.
3. If the above undertaking is/are not filed within the stipulated period, the execution can be proceeded with.
4. Record and proceedings be returned to the Respondent No.1/BMC.

09/02/2023



(A.SUBRAMANIAM)
PRINCIPAL JUDGE,
CITY CIVIL COURT, MUMBAI.
(JO CODE MH01711)

Dictated on : 09/02/2023
Transcribed on : 10/02/2023
Signed by HHJ on : 01/03/2023

: 20 :

“CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL
SIGNED JUDGEMENT/ORDER”

UPLOAD DATE	TIME	NAME OF STENOGRAPHER
02.03.2023	11.20 a.m	B.R.HATEKAR (S.G.)
Name of the Judge		HH THE PRINCIPAL JUDGE SHRI A.SUBRAMANIAM (CR No.19)
Date of Pronouncement of Judgment/Order.		09.02.2023
Judgment/order signed by P.O on		01.03.2023
Judgment/order uploaded on		02.03.2023