

Sayali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.12740 OF 2017

**SAYALI
DEEPAK
UPASANI**

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Estate Officer, Officer of Assistant
Commissioner and Others ... Petitioners
V/s.
Khairunnisa Mohammed Aslam Ansari ... Respondents

Mr. Dhrupad Patil with Mr. Santosh Mali, for
Petitioners/BMC.

Mr. Dinesh Kumar Jain with Mr. H. M. Singh, for
Respondent No. 1.

CORAM : AMIT BORKAR, J.

DATED : OCTOBER 12, 2026

P.C.:

1. The present Petition challenges the order passed by the Civil Court in appeal, whereby the order of eviction passed by the Eviction Officer under Section 105D of the Mumbai Municipal Corporation Act, 1888, came to be set aside. The Petitioner Municipal Corporation had issued a show-cause notice to Respondent No. 1 mainly on two grounds. Firstly, Respondent No. 1 had inducted a tenant in the premises. Secondly, his occupation of the premises was alleged to be unauthorised. The Eviction Officer, after considering the matter, directed the

eviction of Respondent No. 1. However, the Civil Court set aside the said order in appeal. Being aggrieved by the order passed by the Civil Court, the Municipal Corporation has filed the present Petition.

2. Mr. Patil, learned Advocate appearing for the Petitioner, has invited my attention to the material on record indicating the existence of an earlier tenancy in respect of Room No. 14. He submitted that, under the policy of the Municipal Corporation, a person who is already occupying the premises belonging to the Corporation as a tenant is not entitled to obtain another premises in the same capacity. According to him, Respondent No. 1 had obtained a second tenancy in respect of the premises in question, which was contrary to the policy of the Municipal Corporation. It was, therefore, submitted that such occupation itself ought to be treated as unauthorised occupation, justifying the initiation of eviction proceedings against Respondent No. 1.

3. I have considered the definition of the expression “unauthorised occupation” under Section 105A(d) of the Act. A reading of the said definition indicates that where a person occupies the premises belonging to the Corporation without any authority for such occupation, or where the authority granted by the Corporation has expired or has been terminated, such person can be treated as being in unauthorised occupation. Thus, the existence or otherwise of the authority under which the premises are occupied is an important consideration. In the present case,

the material available on record does not indicate that the Municipal Corporation had issued any notice determining the tenancy or otherwise bringing the authority of Respondent No. 1 to occupy the premises to an end before issuing the show-cause notice for eviction.

4. In my opinion, where a person has entered into occupation of the premises under an authority granted by the Municipal Corporation, his occupation cannot be treated as unauthorised merely on the basis of an allegation that such occupation is contrary to the policy of the Corporation. It would be necessary for the Corporation to take appropriate steps to determine the subsisting relationship, wherever such determination is legally permissible, by issuing the necessary notice. Alternatively, where the authority to occupy the premises is granted for a specified period, the Corporation may proceed in accordance with law after such authority comes to an end by efflux of time. Unless the authority under which the person is occupying the premises has come to an end in a manner recognised by law, the occupation cannot be treated as unauthorised merely because the Corporation alleges that the grant of tenancy was contrary to its policy.

5. In the present case, the facts and the material available on record do not indicate that the tenancy of Respondent No. 1 was determined or that the authority under which he occupied the premises had otherwise come to an end before the eviction

proceedings were initiated. In the absence of such material, it is not possible to hold that Respondent No. 1 was in unauthorised occupation of the premises at the relevant stage. Therefore, on the basis of the material presently available on record, the finding of unauthorised occupation cannot be sustained. This conclusion, however, does not prevent the Municipal Corporation from taking appropriate action in accordance with law, if the circumstances so warrant.

6. Mr. Patil has further submitted that, having regard to the policy governing the occupation of the premises belonging to the Municipal Corporation, if a person has obtained a tenancy by suppressing a material fact regarding the existence of an earlier tenancy, the Corporation is entitled to take appropriate steps to determine such tenancy and initiate proceedings under Section 105D of the Act. This submission raises a matter which the Municipal Corporation may examine in accordance with law. If the Corporation considers that Respondent No. 1 obtained the tenancy by suppressing a material fact and that such suppression provides a lawful ground for determining the tenancy, it shall be open to the Corporation to take appropriate steps after complying with all the legal requirements. The Corporation may thereafter initiate proceedings under Section 105D of the Act, if the conditions prescribed by law are satisfied. In the event of initiation of such proceedings, the Authorised Officer shall independently consider the material placed on record, including the material relating to the alleged earlier tenancy and the policy

of the Municipal Corporation. The Authorised Officer shall record a specific finding on whether Respondent No. 1 is in unauthorised occupation of the premises, after granting him a reasonable opportunity of hearing. The mere allegation of suppression or the existence of an earlier tenancy shall not, by itself, conclude the issue. The matter shall be decided in accordance with the applicable provisions of law and the material produced by the parties.

7. Considering that the present proceedings have remained pending for a considerable period, it would be appropriate to ensure that any fresh proceedings, if initiated, are decided without further delay. Accordingly, if the Municipal Corporation initiates proceedings under Section 105D of the Act in respect of the premises in question, the Authorised Officer shall endeavour to decide the same within six months from the date of filing of such proceedings, after granting the parties an opportunity of hearing. Subject to the aforesaid observations and liberty, the Petition stands disposed of.

8. Respondent No. 1 shall communicate his current and correct address to the Municipal Corporation so that any notice required for determination of the tenancy or for initiation of proceedings under Section 105D of the Act may be duly served upon him. Such address shall be furnished within two weeks from today. If Respondent No. 1 fails to furnish his current address despite being required to do so, he shall not be entitled

to claim that an opportunity of hearing was not granted to him merely on the ground that notice could not be served because of his failure to communicate the correct address. This shall not, however, dispense with any other requirement of service.

(AMIT BORKAR, J.)