

## Municipal Corporation Of Greater Mumbai Vs Dr. Harish M. Pathak

**Court:** Bombay High Court

**Date of Decision:** Nov. 21, 2018

**Acts Referred:** Constitution of India, " Article 227

Mumbai Municipal Corporation Act, 1888 " Section 105A(d), 105B, 105B(1), 105B(1)(b), 105B(1)(c), 105B(2), 105G

**Hon'ble Judges:** R.D. Dhanuka, J

**Bench:** Single Bench

**Advocate:** J.F. Reis, Santosh Parad, M.U.H. Deshpande, Bipin J. Joshi, Sahil Ansari

**Final Decision:** Disposed Off

### Judgement

1. By this petition filed under Article 227 of the Constitution of India, the petitioner has impugned the order dated 3rd July, 2015 passed by the learned

Principal Judge, City Civil Court, Bombay, allowing Miscellaneous Appeal No.18 of 2015 filed by the respondent herein under section 105-B of the

Mumbai Municipal Corporation Act, 1888 (for short "MMC Act"). Pursuant to the order dated 15th October, 2018 passed by this Court, the

matter was heard finally. Some of the relevant facts for the purpose of deciding this writ petition are as under :

2. The respondent was working as a Lecturer in LTMG Hospital, run by the petitioner. He was residing at Old Barrack in the premises of LTMG

Hospital at Sion. On 5th August, 2008, the respondent addressed a letter to the Additional Municipal Commissioner (Western Suburbs) of the

petitioner requesting for allotment of a residential allotment from centre pool under Ward Officer (Estate). It was stated in the said letter that he was

working as the Additional Project Director, Mumbai District AIDS Control Society (MDACS) and was staying in the Old Barrack at LTMG Hospital,

Sion at that time which accommodation was allotted to him nine years back. He was a Lecturer at LTMG Hospital. The said accommodation was in

bad shape. It was stated that there were many leakages in the roof. The size of the room was very small. The respondent stated that he had learnt

that few flats in the centre pool under the Ward Officer (Estate) were lying vacant at that moment. The respondent accordingly requested the learned

Additional Municipal Commissioner (Western Suburbs) to allot him one of those flats as residential accommodation to him. On the said letter, the

learned Additional Municipal Commissioner recommended and forwarded the said proposal for allotment as a special case from AC (Estate)

Residential Buildings to the Joint Municipal Commissioner (I) AC (Estate). On 3rd October, 2008, there was further endorsement made by the higher

authority on the said file to allot "Superintendent's Bungalow" at Acworth Leprosy Hospital at Wadala (East) to the respondent, Additional

Project Director, Mumbai District AIDS Control Society. (Hereinafter referred to as the 'said premises').

3. On 14th October, 2008, the petitioner and the respondent executed an agreement. Under the said agreement, the respondent agreed to various

terms and conditions mentioned in the said Writing dated 15th October, 2008 regarding allotment of Medical Superintendent's Bungalow at Acworth,

Municipal Hospital, Wadala (West). Condition nos.1, 2, 3, 6, 7 and 15 which are relied upon by both the parties.

4. On 18th March, 2008, the Executive Medical Officer issued a letter of allotment in respect of the said premises to the respondent with effect from

16th October, 2008 and handed over the keys thereof.

5. With effect from 25th April, 2012, the respondent was posted as Professor of head of the Department of Forensic Medicine, State G.S. Medical

College, Parel, Mumbai. It is the case of the petitioner that since the said premises were allotted to the respondent as a special case and since the

respondent was already transferred to the Department of Forensic Medicine, State G.S. Medical College, Parel, Mumbai with effect from 25th April,

2012, the Chief Medical Officer addressed a letter to the respondent on 29th April, 2012 stating that the said deputation of the respondent was over on

25th April, 2012 and he was no longer holding the post of Additional Project Director. The respondent was accordingly directed to vacate the same

premises within 15 days.

6. On 30th April, 2012, the respondent replied to the said notice dated 29th April, 2012 contending that the said premises were not allotted to the

respondent by virtue of his posting as the Additional Project Director. On 10th April, 2015, the Executive Health Officer of the petitioner addressed a

letter to the respondent contending that the respondent was allotted the said premises by virtue of the post of Additional Project Manager of MDACS

which post was held by the respondent at the time of allotment of the said premises on 16th October, 2008. It was stated that since the respondent

was no longer holding the post of the Additional Project Director, MDACS, he was directed to vacate the Medical Superintendent's Service quarter at

Acworth, Municipal Hospital, Leprosy within 15 days from the date of the said notice.

7. On 14th December, 2012, the Executive Health Officer addressed another letter to the respondent informing him that as a special case, the

respondent was allotted the said premises due to his appointment as the Additional Project Director. With effect from 25th April, 2012, the respondent

was appointed as the Professor of Forensic Department, KEM Hospital being his original appointment. The Executive Health Officer directed the

respondent to vacate the said premises within 7 days from the date of the said notice and made it clear that in the event of default, the proceedings

under section 105-B of the MMC Act would be initiated against the respondent.

8. It is the case of the respondent that by a letter dated 31st May, 2014, the Additional Commissioner asked Dr.Smt.Padmaja Keskar to take authority

with effect from 1st June, 2014 as an Acting Medical Officer.

9. On 30th June, 2014, Executive Medical Officer (Acting) of the petitioner addressed a letter to the respondent asking him to vacate the said

premises within 7 days from the date of the receipt of the said notice and in the event of failure, threatened to initiate the proceedings against him

under section 105-B of the MMC Act.

10. On 15th July, 2014, Deputy Medical Officer, Acworth, Municipal Corporation addressed a letter to the Executive Medical Officer of the petitioner

informing that the respondent had been appointed at his original post as the Professor, Forensic Medicine Department, KEM Hospital with effect from

25th April, 2012 and on the basis of clauses 7 and 15 of the agreement, an employee has to vacate the quarter whenever required by the Executive

Health Officer of the petitioner. The petitioner's concerned Additional Commissioner granted sanction on the said recommendation made by the

Deputy Medical Officer on 18th July, 2015. On 31st July, 2014, Deputy Medical Officer addressed a letter to the respondent calling upon him to

vacate the said premises.

11. On 10th July, 2014, Dr.Smt.Padmaja Keskar, Acting Executive Officer addressed a letter to the Additional Municipal Commissioner (Estate)

informing that she was residing at Dahisar and for better serving the petitioner she should be allotted the said premises which was allotted to the

respondent.

12. On 1st August, 2014, the respondent addressed a letter to the Municipal Commissioner of the petitioner pointing out that he had spent substantial

amount for carrying out repairs on the said premises. On 30th August, 2014, Deputy Law Officer of the petitioner issued a notice under the provisions

of section 105-B of the MMC Act to the respondent calling upon the respondent to vacate the said premises within seven days from the date of the

receipt of the said notice and threatened to initiate the proceedings under section 105-B of the MMC Act against the respondent. The Deputy Medical

Superintendent Acworth Municipal Hospital addressed a letter on 12th September, 2014 to the Enquiry Officer along with presentation form for taking

action of eviction against the respondent in respect of the said premises.

13. On 15th September, 2014, the respondent addressed a letter to the Deputy Law Officer protesting against the said notice under section 105-B of

the MMC Act issued by the Deputy Law Officer on 30th August, 2014. The respondent was thereafter issued a show cause notice under section

105-B(2) of the MMC Act by the Enquiry Officer as to why the proposed order of eviction should not be passed. The Enquiry Officer fixed the date

of hearing as 1st October, 2014. In the said notice, it was alleged that the respondent was in unauthorized occupation of the said premises. On 29th

October, 2014, the petitioner examined Dr. Avinash Khade, Senior Medical Officer as a witness before the Enquiry Officer who produced nine

documents. On 12th November, 2014, the respondent replied to the Enquiry Officer and contended that no specific premises was demanded by the

respondent. The respondent had demanded the vacant premises available in the centre plot.

14. On 12th November, 2014, the respondent addressed a further letter to the Enquiry Officer placing his case on record. On 17th November, 2014,

the said witness examined by the petitioner was cross-examined by the respondent. On 2nd January, 2015, the respondent furnished his written

submissions. On 27th January, 2015, the Enquiry Officer passed an order directing the respondent to vacate the said premises within one month from

the date of service of the notice under section 105-B(1) of the MMC Act.

15. Being aggrieved by the said order dated 27th January, 2015, the respondent preferred an appeal bearing Miscellaneous Appeal No.18 of 2015

before the Principal Judge of the Bombay City Civil Court under section 105-B of the MMC Act. By a judgment and order dated 3rd July, 2015,

learned Principal Judge of the Bombay City Civil Court allowed the said Miscellaneous Appeal No.18 of 2015 filed by the respondent and was pleased

to set aside the impugned order of eviction dated 27th January, 2015 passed by the learned Enquiry Officer. Being aggrieved by the said judgment and

order dated 3rd July, 2015, the petitioner herein preferred this writ petition under Article 227 of the Constitution of India.

16. Mr. J.F. Reis, learned senior counsel for the petitioner invited my attention to various annexures to the writ petition including the correspondence

exchanged between the parties, agreement entered into between the parties, the portion of the cross-examination of the witness examined by the

petitioner conducted by the respondent, various findings recorded by the learned Estate Officer and also the findings rendered by the learned Principal

Judge, City Civil Court, Bombay.

17. Learned senior counsel submits that the respondent was already allotted an accommodation at Sion in the year 1988-89 when he was working as a

Lecturer at LTMG Hospital. The respondent had made a request to the petitioner on 4th August, 2008 requesting for allotment of one of the flat lying

vacant in the centre pool under the Ward Officer (Estate) on the ground that he was working as an Additional Project Director MDACS and earlier

accommodation was in bad shape. He submits that the said request of the respondent was considered favorably by the petitioner. The respondent was

allotted the said Superintendent's Bungalow as a special case subject to various conditions. He strongly placed reliance on the condition no.15 of the

Agreement dated 15th October, 2008 signed by the petitioner as well as the respondent stating that the employee has to vacate the quarter whenever

required by the Executive Health Officer, MCGM.

18. It is submitted by the learned senior counsel that since the petitioner was on deputation at MDACS as Additional Project Director and since such

deputation was over on 25th April, 2012 and the respondent was not holding the post of Additional Project Director, MDACS and since the petitioner

required the said premises, under clause 15 of the said Agreement, the respondent was called upon to vacate the said premises at Wadala. He submits

that since the respondent did not vacate the said premises in respect of the said agreement, the respondent was in unauthorized occupation of the said

premises and was liable to be evicted under the provisions of section 105-B of the MMC Act.

19. Learned senior counsel placed reliance on several letters addressed by the petitioner calling upon the respondent to vacate the premises to enable

the petitioner to allot the said premises to other employee of the petitioner. He submits that the respondent has been already allotted another staff

quarter at Parel on 3rd June, 2015. The said quarter is however kept vacant till date and is not occupied by the respondent. The respondent continued

to occupy the said Superintendent's Bungalow which was allotted to the respondent as a special case. Since the respondent was no longer on

deputation and was already transferred to another department, the respondent could not have continued to occupy the said premises.

20. Learned senior counsel invited my attention to the cross-examination of the respondent considered by the learned Enquiry Officer that he had not

vacated the enquiry premises after a period of deputation as APD of MDACS was over. He further admitted in the cross-examination that in spite of

the notices from the Executive Health Officer and Deputy Superintendent of Health for vacating the enquiry premises, he had failed to vacate and

hand over the said premises to the petitioner. He further admitted that he was not permitted to occupy the enquiry premises after deputation period as

Additional Project Director of MDACS was over and after expiry of period specified in the notices to vacate issued by the petitioner.

21. Learned senior counsel invited my attention to the various findings of fact reported by the learned Enquiry Officer and would submit that the

learned Enquiry Officer after considering the documents and evidence led by the parties had rightly held that the respondent was in unauthorized

occupation of the premises of the petitioner corporation and that the said premises were already allotted to Dr.Mrs.Padmaja Keskar, who was

working as the Project Director of MDACS. Learned Enquiry Officer also held that Dr.Mrs.Padmaja Keskar was in need of enquiry premises

working in the capacity of Project Director of MDACS which allotment was duly approved by the Municipal Commissioner of the petitioner. The

respondent also had admitted the fact that the enquiry premises were now allotted to Dr.Mrs.Padmaja Keskar.

22. Learned senior counsel invited my attention to the findings and the observations in the impugned order passed by the learned Principal Judge, City

Civil Court Bombay and would submit that the learned Principal Judge erroneously posed a question for consideration whether the enquiry premises

was allotted to the respondent by virtue of his holding the post of Additional Project Director, MDACS. He submits that the finding of the learned

Principal Judge that none of the correspondence would indicate that the respondent had requested for accommodation only because he was posted as

Additional Project Director, MDACS and that the said allotment also did not suggest that the enquiry premises was allotted to the respondent only

because he was holding the said post is contrary to evidence on record. Learned Principal Judge erroneously held that there was no mention in the

allotment letter that the respondent would be entitled to occupy the said premises as long as the respondent would hold the post of Additional Project

Director of MDACS and thereafter he would have to vacate the same.

23. It is submitted that the findings of the learned Principal Judge that the Agreement dated 14th October, 2008 entered into between the parties also

does not indicate that while taking possession of the enquiry premises, enquiry premises was allotted to the respondent by virtue of he being appointed

to the post of the Additional Project Director or that he had agreed to vacate the same after he ceases to hold the said post is ex-facie contrary to the

documents on record.

24. It is submitted by the learned senior counsel that the learned Principal Judge totally overlooked the oral evidence recorded by both the parties in

the impugned order and has passed an order allowing the said appeal filed by the respondent based on erroneous reasons. He also totally overlooked

the binding effect of clause 15 of the Leave and License Agreement entered into between the parties. He submits that the eviction notice issued under

section 105-B(1)(c) of the MMC Act did indicate that the said action was initiated in accordance with clause 15 of the Leave and License

Agreement. He submits that the finding is ex-facie contrary to the eviction notice issued by the petitioner from time to time which specifically referred

to clause 15 of the Leave and License Agreement as one of the ground for seeking eviction of the respondent.

25. Learned senior counsel submits that the respondent had applied for allotment of a flat as an Additional Project Director. In the evidence of the

respondent, he had admitted that he was allotted the said premises as an Additional Project Director. He placed reliance on "Revised Rules For

Allotment Of Staff Quarters" dated 19th March, 2002 issued by the petitioner and more particularly Rule 6 thereof. He submits that under Rule 6,

since the respondent was already transferred from the post of Additional Project Director, MDACS and since his deputation period was over on 25th

April, 2012 and was appointed as a Professor of Forensic Medicine Department, KEM Hospital, allotment of the staff quarters to the respondent

automatically stood cancelled and thus he was bound to vacate the service quarter immediately on his transfer of service within one month of such

transfer.

26. Learned senior counsel placed reliance on an unreported judgment of this Court delivered on 13th March, 2018 in case of Shantaram Bhikaji

Jadhav vs. The Municipal Corporation of Greater Mumbai in Writ Petition No.14187 of 2017 along with other companion matters and more

particularly on paragraphs 13, 15, 17 to 19 and 26. It is submitted that since the respondent was in unauthorized occupation of the said premises, action

initiated by the petitioner under section 105-B of the MMC Act was fully justified and within the parameters of law. The impugned order passed by

the learned Principal Judge, City Civil Court, Bombay being perverse and thus deserves to be set aside by this Court.

27. Mr. Joshi, learned counsel for the respondent, on the other hand, submits that the respondent had joined the services of the petitioner as a lecturer

in the year 1999 in L.T. M.G. hospital and has been provided with an accommodation at Sion which was smaller in size. The respondent had

requested the petitioner to allot him a flat from centre pool as few flats in centre pool were lying vacant when the respondent addressed a letter dated

4th August 2008. It is submitted that the respondent was working as the Additional Project Director of Mumbai District AIDS Control Society

(MDACS) at that time. The accommodation provided to the respondent was in bad shape and there were many leakages in the roof. He submits that

the said accommodation i.e. Superintendent Bungalow allotted to the respondent was not in his capacity as Additional Project Director. He submits

that Dr.Smt. Padmaja Keskar was appointed in place of the respondent in the year 2012 in the Health Department and was working as Executive

Health Officer, MCGM. She has been however given a charge as Deputy Executive Health Officer. She was given additional charge of Executive

Health Officer from 1st June 2014.

28. In support of this submission, learned counsel placed reliance on the order issued by the petitioner on 31st May 2014. On 10th July 2014, the said

Dr.Smt.Padmaja Keskar applied for allotment of the said quarter which was allotted to the respondent since the said Dr.Smt.Padmaja Keskar was

staying at Dahisar. He submits that his client had not requested for any particular accommodation in the said letter. The said Dr.Smt.Padmaja Keskar

is holding a post lower than the post occupied by the respondent. She submits that the said special case considered by the petitioner was in respect of

a particular premises and was not for a particular post held by the respondent at the time of allotment of the said premises. The pay scale of

Dr.Smt.Padmaja Keskar was lower than the pay scale of the respondent. The said allotment made in favour of the respondent in respect of the said

premises was in consonance with the post held by the respondent. He submits that the allotment of new staff quarter on 3rd June 2015 in favour of

the respondent was in the building occupied by several members of the staff who were junior to the respondent. The respondent would retire after 12

years whereas the said Dr.Smt.Padmaja Keskar would be retiring within 1 and half years.

29. Learned counsel for the respondent invited my attention to the agreement entered into between the parties on 14th October 2008 and placed

reliance on clauses 1, 2, 6 and 7 of the said agreement dated 14th October 2008. He submits that the allotment of quarter to the staff members would

be on seniority basis in the respective category. He submits that the respondent was much senior to the said Dr.Smt.Padmaja Keskar in all respects.

30. It is submitted that clause 6 of the said agreement does not apply to the respondent in view of the fact that the respondent was not promoted to

any post which did not carry the benefit of quarter. In so far as clause 15 of the said agreement is concerned, it is submitted that the words "the

employee has to vacate the quarter whenever required by the Executive Health Officer, MCGM" shall be construed as "the quarter whenever

reasonably required by the Executive Health Officer, MCGM."

31. Learned counsel for the respondent placed reliance on the show cause notice dated 29th April 2012 issued by Chief Medical Officer, Acworth



Municipal Hospital for Leprosy, Wadala (W), Mumbai and would submit that there was no reference to clause 15 of the said agreement in the said

notice stating that the said premises was required by the Executive Health Officer of the petitioner.

32. Learned counsel for the respondent also invited my attention to various correspondence exchanged between the parties and would submit that the

said clause 15 of the said agreement was never invoked by the petitioner. He submits that since the respondent was an authorised occupant in respect

of the said premises, the provisions of Section 105A(d) of the Mumbai Municipal Corporation Act, 1888 which defines "unauthorised occupation" would not apply to the case of the respondent. He submits that the enquiry officer had not invoked the provisions of clause 15 of the said agreement

but had passed an order of eviction only by invoking clauses 6 and 7 of the said agreement.

33. Learned counsel placed reliance on the show cause notice issued by the petitioner and would submit that the said show cause notice was also

issued under Section 105B(1)(b) of the Mumbai Municipal Corporation Act, 1888 which provisions were not at all applicable to the respondent

occupying the said premises in view of the respondent being in service of the petitioner and was not an unauthorised occupant. He submits that for the

purpose of exercising powers under Section 105A (d) read with Section 105B of the Mumbai Municipal Corporation Act, 1888, the petitioner was

required to prove that the Commissioner was satisfied that the respondent was in unauthorised occupation of the said premises. The petitioner could

not prove the mandatory compliance of Section 105B of the Mumbai Municipal Corporation Act, 1888.

34. Learned counsel for the respondent invited my attention to the order passed by the learned Principal Judge of the City Civil Court, Mumbai in the

impugned order and more particularly in paragraphs 9 to 12 and would submit that the learned Principal Judge who was the Appellate Officer under

the provisions of Section 105B of the Mumbai Municipal Corporation Act, 1888 had rendered various findings of facts on interpretation of the

agreement entered into between the parties and also the provisions of the Mumbai Municipal Corporation Act, 1888 which findings cannot be

interfered with by this Court in this petition filed under Article 227 of the Constitution of India.

35. In so far as the unreported judgment of this Court in the case of Shantaram Bhikaji Jadhav (supra) relief upon by the learned senior counsel for the

petitioner is concerned, the learned counsel for the respondent submits that the said judgment is clearly distinguishable on the ground that in the said

judgment, this Court has considered the case of employee of the Municipal Corporation whose services were terminated and had not vacated the

service quarter allotted to him. He submits that in this case, the respondent was allotted the said premises to the respondent when he was admittedly in

service of the petitioner and continues to be in service even today.

36. Learned counsel for the respondent placed reliance on the judgment of the Hon'ble Supreme Court in the case of Prakash Warehousing Co. Vs.

Municipal Corporation of Greater Bombay & Anr., (1991) 2 SCC 304 and in particular paragraphs 18 to 21 in support of his submission that the

findings of facts rendered by the Appellate Officer under Section 105G of the Mumbai Municipal Corporation Act, 1888 are final and binding and

cannot be interfered with by this Court under Article 227 of the Constitution of India.

37. It is submitted that the short question arose for consideration before the learned Principal Judge in the appeal preferred by the respondent was

whether the allotment of the said premises was as a special case in favour of the respondent in view of the respondent holding a post of Additional

Project Director of MDACS or whether the said premises was allotted to the respondent in view of the earlier premises allotted to the respondent

being in bad condition and had severe leakages. He submitted that this issue has been specifically dealt with by the learned Principal Judge and a

finding has been rendered on this issue in favour of the respondent. The said finding against the petitioner that cancelling the allotment of the said

premises after several years of allotment of the said premises was ex facie mala fide was correct and thus the decision of the learned Principal Judge

cannot be set aside by this Court.

38. Mr.Reis, learned senior counsel for the petitioner in rejoinder submits that under clause 15 of the said agreement dated 14th October 2008, the

respondent who was allotted the said service quarter was bound to vacate whenever required by the Executive Health Officer of the petitioner. He

submits that the respondent was on deputation at MDACS as Additional Project Director which deputation was already over on 25th April 2012 and

since then the respondent was not holding the said post of Additional Project Director of MDACS as per the order of the petitioner and thus the Chief

Medical Officer, Acworth Municipal Hospital for Leprosy, Wadala required the said premises back from the respondent for making allotment thereof

to another officer who was appointed to the said post. He submitted that the respondent could not have continued to occupy the said premises which

were required to be allotted to another officer of the petitioner. He submits that the respondent had not shifted to the new premises allotted to the

respondent on 3rd June 2015 deliberately, though the same was close to the hospital where the respondent was transferred.

39. In so far as the submission of the learned counsel for the respondent that the petitioner had not invoked clause 15 of the agreement entered into

between the parties is concerned or that the learned enquiry officer had not passed the order of eviction invoking clause 15 of the agreement is

concerned, learned senior counsel for the petitioner invited my attention to several notices issued by the petitioner already referred aforesaid to the

respondent to vacate the said premises. He submits that there was no question of any malafides on the part of the petitioner since the said notices

were issued after deputation of the respondent at MDACS was already over on 25th April 2012 and the respondent was ceased to hold the post of the

Additional Project Director of MDACS as per the order of higher authority of the petitioner. He submits that the respondent had not disputed that he

was no longer holding the post of Additional Project Director of MDACS and has been already transferred to KEM hospital. The respondent had also

not disputed that he was already allotted new quarter upon his transfer from Acworth Municipal Hospital for Leprosy, Wadala to KEM hospital.

40. Learned senior counsel for the petitioner invited my attention to the grounds raised in the memorandum of appeal filed by the respondent before

the learned Principal Judge of the Bombay City Civil Court in Municipal Appeal No.18 of 2015 and would submit that the respondent himself had

admitted that the petitioner had allotted the said premises to the respondent as a special case. He invited my attention to the order passed by the

learned enquiry officer and more particularly on internal pages 10 and 12 of the said order and would submit that the learned enquiry officer had

specifically considered the clause 15 of the said agreement and rendered findings of fact in favour of the petitioner and against the respondent while

passing an order of eviction against the respondent.

41. It is submitted by the learned senior counsel that the staff quarter allotted to the respondent from 3rd June 2015 at Parel which is close to KEM

hospital is normally allotted to Dean of the hospital. Learned senior counsel placed reliance on various portions of the cross-examination of the

petitioner and the respondent referred by the enquiry officer in the impugned order and would submit that the respondent had admitted in cross-

examination that the respondent had not vacated the said premises after his period of deputation as Additional Project Director of MDACS was over.

The respondent had also admitted that the respondent had to vacate the said premises after the said period of deputation of the respondent as

Additional Project Director of MDACS was over. Learned enquiry officer had rendered a finding that the said premises was now allotted to Dr.Smt.

Padmaja Keskar who was working as a Project Director of MDACS and was in need of the said premises working in the capacity of Project

Director of MDACS. The said allotment in favour of the Dr.Smt. Padmaja Keskar was approved by the Municipal Corporation of the petitioner. This

fact was also admitted by the respondent before the enquiry officer.

42. It is submitted by the learned senior counsel that the said premises was allotted to the respondent in view of his personal request to allot the said

premises from centre pool under the Ward Officer (Estate) and that point of time, he was holding the post of Additional Project Director of MDACS

at Wadala. He was allotted the said premises as a special case and in view of clause 15 of the agreement between the parties and in view of Rule 6

of 'Revised Rules for Allotment of Staff Quarters' issued on 19th March 2002 by the petitioner, the services of the respondent having been

transferred, the allotment of the said Superintendent Bungalow to the respondent stood automatically cancelled. He submits that the learned Principal

Judge of the Bombay City Civil Court has reversed the findings of the learned Estate Officer totally overlooking the evidence led by the parties and

also contrary to the provisions of Section 105B of the Mumbai Municipal Corporation Act, 1988 and thus deserves to be set aside.

#### REASONS AND CONCLUSIONS

43. A short question that arises for consideration of this court is whether the respondent who was allotted a residential quarter for occupation by the

petitioner as a special case was in unauthorized occupation after termination of such licence by the petitioner in respect of such corporation premises

and whether the proceedings under section 105-B of the Mumbai Municipal Corporation Act, 1888 could be invoked against the respondent who is in

the employment of the petitioner for not vacating the corporation premises after authority to occupy such premises was over or withdrawn?

44. It is not in dispute that the respondent was working as a lecturer in LTMG, Hospital run by the petitioner and was residing at Old Barrack in the

premises of the said LTMG Hospital at Sion. The respondent had made a request to the petitioner by a letter dated 5th August, 2008, for allotment of

the residential allotment from centre pool which were available according to the respondent on the ground that the said residential premises allotted to

the respondent in the Old Barrack in the premises of the LTMG Hospital was not in the good condition. A perusal of the record indicates that the case

of the respondent was considered as a special case by the petitioner on such request made by the respondent on 11th August, 2008. Pursuant to the

said sanction granted by the petitioner, the respondent was allotted a "Superintendent's Bungalow" at Acworth Leprosy Hospital, Wadala (West),

Mumbai "400 031.

45. A perusal of the agreement entered into between the petitioner and the respondent on 14th October, 2008 and more particularly clause (15) of the

agreement entered into between the petitioner and the respondent clearly indicates that it was agreed by and between the parties that the respondent

had to vacate the quarter whenever required by the Executive Health, Officer of the petitioner. It is not in dispute that the respondent who was

deputed as the Additional Project Director, MDACS, his deputation was over on 25th April, 2012 and the respondent was no longer continued to hold

the post of Additional Project Director in MDACS. The petitioner accordingly addressed various correspondence referred to aforesaid directing the

respondent to vacate the said "Superintendent's Bungalow" at Acworth Leprosy Hospital, Wadala.

46. In the correspondence addressed by the respondent to the petitioner in response to those notices, it was the case of the respondent that the said

accommodation at "Superintendent's Bungalow" was never allotted to the respondent by virtue to any posting as Additional Project Director at

MDACS but was allotted by virtue of his service with the petitioner. It was also contended by the respondent that the respondent had neither retired

nor had resigned from the service of the petitioner. The respondent had been repatriated to his original cadre and was working as professor in the

Department of Forensic, Toxicology at G.S. Medical College and K.E.M. Hospital, Parel, Mumbai. It was also the case of the respondent that since the

respondent was repatriated to his parent municipal service Department as a professor which was a higher post than the Additional Project Director,

MDACS, he was eligible and was willing to seek to any alternate accommodation if provided to him. The respondent thus did not vacate the said

Superintendent's Bungalow though had repatriated to the original post on completion of his deputation as Additional Project Director at MDACS.

47. The petitioner accordingly issued a show cause notice to the respondent under the provision of section 105-B of the MMC Act. The respondent

responded to the said show cause notice. The parties led oral evidence before the learned enquiry officer. The learned enquiry officer passed an order

on 27th January, 2015 holding that the respondent was in unauthorized occupation of the municipal premises after expiry of the authority under which

he was allowed to occupy the premises and such authority had been determined by the petitioner. The enquiry officer accordingly directed the

respondent to vacate the said premises within one week from the date of receipt of the notice. A perusal of the said order including the part of the

evidence placed on record clearly indicates that the learned enquiry officer considered the evidence of both parties, various documents and also the

agreement entered into between the parties. The respondent did not dispute the ownership of the petitioner in respect of the said premises and also did

not dispute that the period of deputation of the respondent as Additional Project Director at MDACS had been over and that the respondent was

posted as a professor at G.S.Medical College and K.E.M.Hospital.

48. The respondent had agreed to occupy the said Superintendent's Bungalow as a licensee of the petitioner on various terms and conditions including

the condition that the respondent would vacate the said premises whenever required by the Executive Health Officer of the petitioner. The respondent

admitted in his cross examination held on 9th January,2015 that he had not vacated the said premises after the period of deputation as the Additional

Project Director at MDACS was over. He further admitted that inspite of several notices received from the Executive Health Officer and Deputy

Superintendent of Health of the petitioner for vacating the said premises, the respondent had failed to vacate and handover the said premises to the

petitioner.

49. The learned enquiry officer also rendered a finding that the said premises were now allotted to Dr.Mrs.Padmaja Keskar who was working as a

Project Director of MDACS and was in need of the said premises working in the capacity of the project director in MDACS. It is held by the enquiry

officer that since the respondent had admitted in the cross examination that his deputation period on the said post of Additional Project Director at

MDACS was already over, the decision of the termination of the licence of the respondent by the petitioner was not arbitrary. The learned enquiry

officer also considered the definition of unauthorized occupation under section 105-A(d) of the MMC Act read with clause (15) of the agreement

entered into between the parties and passed an order of eviction against the respondent.

50. Learned counsel for the respondent did not dispute before this court that his deputation as Additional Project Director at MDACS was already

over and he was already repatriated to his original assignment as a professor. The main contention of the respondent before this court was that the

respondent was not allotted the said Superintendent Bungalow for occupation in view of the respondent holding the said post of Additional Project

Director, MDACS but was allotted to him because he was in service of the petitioner. It was vehemently urged by the learned counsel for the

respondent before this court that according to the seniority also the respondent was entitled to continue to occupy the said Superintendent Bungalow

and he being senior to Dr.Mrs.Padmaja Keskar.

51. In my view, there is no merit in this submission of the learned counsel for the respondent. Admittedly, the respondent was on deputation as a

Additional Project Director, MDACS in Acworth Leprosy Hospital, Wadala. The deputation of the respondent was already over on 25th April,2012.

The respondent was allotted the said premises as a special case. After the deputation of the respondent to the said post was over, the new incumbent

who was allotted the said Superintendent Bungalow was required to be handed over vacant premises of the said Superintendent Bungalow. Learned

counsel for the respondent could not dispute that the respondent was already allotted another accommodation on 3rd June, 2015 close to the place of

the work of the respondent upon completion of his deputation. The respondent has not occupied the said new premises allotted to him and kept the

same vacant till date. In these circumstances, I do not find any infirmity with the impugned order passed by the learned enquiry officer.

52. Insofar as the submission of the learned counsel for the respondent that the proceedings under section 105-B could not have been initiated at all

against the respondent is concerned, learned counsel for the respondent could not dispute that his client had agreed to vacate the quarter allotted to

him whenever required by the Executive Health Officer under clause (15) dated 14th October, 2008 entered into between the parties. Learned counsel

could not dispute that the said premises was allotted to his client as a licensee under the said agreement dated 14th October, 2008. The respondent also

did not dispute that several notices were issued by the Executive Health Officer of the petitioner calling upon the respondent to vacate the said

premises as the same was required to be allotted to another officer. I am thus not inclined to accept the submission of the learned counsel for the

petitioner that the said clause (15) was to be read as reasonably required. The respondent never disputed the agreement entered into between the

parties including clause (15) thereof. The respondent thus cannot be allowed to urge that the said clause (15) has to be read reasonably.

53. Rule 6 of the Revised Rules for Allotment of Staff Quarters dated 19th March, 2002 framed by the petitioner clearly provides that if an employee

to whom free quarters are allotted is dismissed or removed from service or if his service are terminated or he is sent on deputation or transferred or

retires or resigns etc. from service, the allotment of free quarters to him will automatically stand cancelled and he should vacate the quarters

immediately on his dismissal, removal, termination or resignation of service and within one month of deputation, transfer, retirement etc. The employee

will have to pay compensation to the Corporation equivalent to the standard rent for his stay beyond the date on which he ceases to enjoy the benefit

of service quarters except for one period allowed under the M.S.R. In my view, under Rule (6) also the respondent having been transferred to the

original department on completion of his deputation period was bound to handover the said quarter back to the petitioner within one month from the

date of such transfer.

54. The petitioner had repeatedly called upon the respondent to handover the said quarter but the respondent continued to occupy the same in breach

of Rule (6) of the Revised Rules for Allotment of Staff Quarters dated 19th March, 2002 read with clause (15) of the agreement entered into between

the parties.

55. Section 105A(d) defines 'unauthorized occupation in relation to any corporation premises' as under :-

“Unauthorized occupation in relation to any corporation premises means the occupation by any person of corporation premises without authority

for such occupation; and includes the continuance in occupation by any person of the premises after the authority under which he was allowed to

occupy the premises has expired, or has been duly determined.

In my view, a perusal of the said provision clearly indicates that any person continues to occupy the corporation premises after authority under which

such person is allowed to occupy the corporation premises though such authority has come to an end or has been determined, it would amount to

unauthorized occupation in relation to such corporation premises. Admittedly, the agreement entered into between the parties had been determined by

the petitioner by exercising clause (15) thereof and calling upon the respondent to vacate the said premises in view of the deputation period of the

respondent was over.

56. The commissioner of the petitioner has ample power to evict such unauthorised occupant by exercising powers under section 105-B of the MMC

Act. There is no substance in the submission of the learned counsel for the respondent that the provisions of section 105-B could not have been

exercised by the petitioner against an employee of the petitioner who did not vacate the service quarter allotted to him though his authority or license

to occupy such corporation premises is over. In this case, the said service quarter i.e. the said Superintendent Bungalow was allotted to the respondent

as a special case and since the said authority to occupy the said premises was over by virtue of his deputation period being over and such authority

having been determined in respect of corporation premises, such person though being an employee of the respondent, would be also an unauthorized

occupant in relation to the corporation premises. Merely because the respondent still continues to be in service of the petitioner corporation, he cannot

be allowed to continue to occupy the corporation premises after the authority under which he was allowed to occupy such premises has been

determined and such licence having been expired. In my view, the provisions of section 105-A(d) read with section 105-B would apply to such

employee of the petitioner also who is in unauthorized occupation of the corporation premises. In my view, there is thus no merit in the submission of

the learned counsel for the respondent.



57. The submission of the learned counsel for the respondent that the enquiry officer had not invoked clause (15) of the agreement entered into

between the parties is ex-facie contrary to the plain reading of the impugned order passed by the learned enquiry officer. Not only the petitioner had

invoked the clause (15) of the said agreement entered into between the parties in the show cause notice but the learned enquiry officer also applied

the said provision against the respondent while passing the order of eviction under section 105- B of the MMC Act.

58. Insofar as submission of the learned counsel for the respondent that the learned Principal Judge of the City Civil Court, Bombay has rendered

various findings of fact which cannot be interfered with by this court under Article 227 of the Constitution of India is concerned, a perusal of the order

passed by the learned Principal Judge of the City Civil Judge clearly indicates that the findings rendered by the learned Principal Judge are overlooking

the oral and documentary evidence led by the parties and the provisions of the agreement entered into by the parties and shows perversity. Since the

findings rendered by the appellate officer under the provisions of MMC Act being perverse, this court has ample power to interfere with such findings

of fact under Article 227 of the Constitution of India. There is no dispute about the proposition of law laid down by the Supreme Court in case of

Prakash Warehousing Co. (supra) relied upon by the learned counsel for the respondent. Since the findings rendered by the learned appellate officer

being ex-facie perverse, the said judgment of the Supreme Court in case of Prakash Warehousing Co.(supra) would not assist the case of the

respondent.

59. A perusal of the order passed by the learned Principal Judge indicates that the learned Judge has proceeded on the premise that in the letter of

allotment of the Superintendent Bungalow to the respondent as a service quarter was not on the premises that the respondent was holding a post of

Additional Project Director, MDACS and that he would have to vacate the same if he ceases to be the Additional Project Director, MDACS. This

finding in the impugned order is ex-facie contrary to the agreement entered into between the petitioner and the respondent, the correspondence

exchanged between them and also contrary to the oral evidence led by both the parties. The respondent was on deputation on the said post. His

deputation was admittedly over prior to the petitioner asking the respondent to vacate the said premises. The said premises was required by the

petitioner to allot the same to the next incumbent.

60. Learned Principal Judge has also rendered an erroneous finding that there was nothing on record to show that the respondent herein had

committed any breach of any of the terms and conditions of the Leave and License Agreement or that the said license was not liable to be terminated

on the respondent ceasing to be the Additional Project Director, MDACS of the petitioner. The finding of the learned Principal Judge that there was

no clause in the Leave and License Agreement that the license could be terminated at any time is contrary to clause 15 of the said agreement dated

14th October, 2008 entered into between the parties and also contrary to Rule 6 of "Revised Rules For Allotment Of Staff Quarters". The said

Rule 6 clearly provided that the employees who were allotted free quarters are liable to hand over vacant possession of the quarter immediately upon

his transfer to the petitioner. The respondent has not disputed that his deputation period was over and he was repatriated to his original department

from which he was sent on deputation as Additional Project Director, MDACS.

61. In my view, the finding of the learned Principal Judge that it was necessary for the Estate Officer to mention the ground in the show cause notice

that eviction of the respondent had been sought on the ground contained in section 105-B(1)(c) of the MMC Act is ex-facie contrary to the show

cause notice issued by the petitioner and in the impugned order passed by the Enquiry Officer under section 105-B of the MMC Act.

62. This Court in case of Shantaram Bhikaji Jadhav vs. Municipal Corporation of Greater Bombay in an unreported judgment delivered on 13th

March, 2018 in Writ Petition No. 14187 of 2017 has rejected the submission of a municipal employee who was allowed to stay in the enquiry premises

and upon retirement of such employee, his occupation could not be considered as of trespasser or encroacher. After adverting to the judgment of the

Hon'ble Supreme Court in case of Prakash Ware Housing Co. (supra), this Court held that if a municipal employee occupies the municipal properties

during the course of his services, then he is obliged to hand over the said premises on his retirement or superannuation to the Municipal Corporation so

that the Municipal Corporation can utilize the said premises for housing to those who have entered services or existing employees. The principles laid

down by this Court in case of Shantaram Bhikaji Jadhav (supra) would squarely apply to the facts of this case and would apply even in case of

transfer of the existing employee from one department to another department and more particularly in case where such employee has been already

allotted another alternate premises close to the place of transfer.

63. In my view, an employee of the Municipal Corporation who was allotted service quarter is bound to hand over vacant possession of such premises

to the petitioner upon his transfer to another department when earlier premises were allotted to him as a special case and for a limited purpose. The

respondent cannot be allowed to retain both the premises at the same time. In my view, the respondent falls under the category of unauthorized

occupant within the meaning of section 105-A(d) of the MMC Act and thus in these circumstances the action initiated by the petitioner under section

105-B for evicting the respondent was absolutely within the parameters of law and was not without jurisdiction. No case is made out by the

respondent that action of the petitioner was malafide.

64. In my view, the impugned order passed by the learned Principal Judge of the City Civil Court, Bombay being perverse and contrary to law thus

deserves to be quashed and set aside.

65. I therefore, pass the following order :-

(a). The impugned order dated 3rd July, 2015 passed by the learned Principal Judge, City Civil Court, Bombay allowing Miscellaneous Appeal No.18

of 2015 below Exhibit "2" filed by the respondent herein is quashed and set aside. Miscellaneous Appeal No.18 of 2015 is dismissed. Order passed

by the Enquiry Officer on 27th January 2015 is upheld.

(b). The respondent is directed to hand over vacant possession of the said premises in question to the petitioner within four weeks from today, without

fail.

(c). Rule is made absolute in aforesaid terms.

(d). In view of disposal of the writ petition, civil application does not survive and is accordingly disposed of.

(e). There shall be no order as to costs.

(f). Parties to act on the authenticated copy of this order.