

Shabnoor

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

WRIT PETITION NO.15198 OF 2023

WITH

WRIT PETITION NO.15248 OF 2023

WITH

WRIT PETITION NO.15242 OF 2023

WITH

WRIT PETITION NO.15205 OF 2023

WITH

WRIT PETITION NO.15235 OF 2023

WITH

WRIT PETITION NO.15212 OF 2023

WITH

WRIT PETITION NO.15206 OF 2023

WITH

WRIT PETITION NO.15204 OF 2023

WITH

WRIT PETITION NO.15233 OF 2023

WITH

WRIT PETITION NO.15247 OF 2023

WITH

WRIT PETITION NO.15246 OF 2023

WITH

WRIT PETITION NO.15249 OF 2023

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WRIT PETITION NO.15211 OF 2023

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WITH
WRIT PETITION NO.15213 OF 2023

Park Khadya Padarth Vikrete

Kalyankari Sanstha

Through its President & Anr.

... Petitioners

V/s.

Solapur Municipal Corporation Through

Its Commissioner & Anr.

... Respondents

Mr. R. A. Thorat, Sr. Advocate a/w Ms. Pratibha Shelke
with Hrishikesh S. Shinde, Rahul Rote, and Akash
Nikam for petitioners.

Mr. Vishwanath Patil a/w Ms. Nidhi Chauhan a/w
Akshay Naidu a/w Mr. Kedar Nhavkar for respondent –
Corporation.

CORAM : AMIT BORKAR, J.

DATED : APRIL 30, 2025

ORAL JUDGMENT.:

1. Since a common question of law and fact arises in all these writ petitions, they are being disposed of together by this common judgment, in the interest of avoiding multiplicity of proceedings

and for the sake of convenience.

2. The factual background leading to the filing of these petitions can be stated briefly as follows: These petitions are directed against a common order passed by the learned Principal District Judge, Solapur, whereby the petitioners' appeals filed under Section 81F of the Maharashtra Municipal Corporation Act, 1949 (hereinafter referred to as "the said Act") came to be dismissed. By the said order, the learned District Judge confirmed the eviction notice issued against the petitioners by the Municipal Corporation on the ground that their continued occupation of the subject premises is unauthorised, within the meaning of Section 81B(1)(a)(i)(c) of the said Act. The petitioners were called upon to vacate the premises within one month from the date of receipt of notice on the ground that they had failed to pay or deposit rent for the period commencing from 1st December 1999 to 31st March 2022.

3. It is further the case of the Municipal Corporation that the land in question is urgently required for the development of parking facilities for the Indira Gandhi Stadium, as part of a public infrastructure project being undertaken in collaboration with the Smart City Development Corporation. Since the petitioners failed to comply with the notice, proceedings were initiated before the Commissioner under Chapter VIII-A of the said Act.

4. In reply to the proceedings, the petitioners contended that they are lawful tenants in occupation of the premises. According to them, the Corporation had accepted rent from time to time and

had thereby acknowledged their tenancy. It was further submitted that the General Body of the Corporation had resolved, by a resolution dated 27th May 2005, to grant the petitioners a lease of the said premises for a period of 29 years and 11 months. However, it is not in dispute that no formal lease deed or agreement was ever executed in favour of the petitioners in furtherance of the said resolution.

5. After considering the submissions of both sides, the learned Commissioner, by an order dated 24th June 2022, directed the petitioners to hand over vacant and peaceful possession of the premises to the Corporation. The petitioners were also directed to pay the arrears of rent due till the said date. Aggrieved by the said order, the petitioners preferred appeals before the Principal District Judge, Solapur under Section 81F of the said Act. The District Judge, however, did not find merit in the petitioners' case and dismissed the appeals. Being dissatisfied with the said decision, the petitioners have approached this Court by filing the present writ petitions under Article 226 of the Constitution of India.

6. Mr. Thorat, learned senior Advocate appearing for the petitioners, submitted that the petitioners were never in unlawful possession of the municipal property. He pointed out that the General Body of the respondent–Municipal Corporation had passed a resolution on 27th May 2005, whereby it was decided to allot the premises to the petitioners on lease for a period of 29 years and 11 months. Though it is true that no formal lease agreement came to be executed thereafter, the petitioners continued in possession and were regularly paying rent to the Corporation. According to him,

the fact that the Corporation accepted rent from the petitioners for a long period of nearly 20 years clearly indicates that their possession was recognised and lawful. He contended that, in such circumstances, the occupation of the petitioners cannot be treated as 'unauthorised' within the meaning of Section 81B(1)(a)(i)(c) of the said Act. He further argued that the concept of "unauthorised occupation" under the said provision presupposes a lack of authority from the Corporation, which is not the case here, as the Corporation had consciously accepted rent over two decades and had acted upon its own resolution.

7. On the other hand, the learned Advocate for the respondent—Municipal Corporation opposed the petition and submitted that mere passing of a resolution by the Standing Committee does not create any binding lease or tenancy rights in favour of the petitioners. He pointed out that although the resolution dated 27th May 2005 contemplated granting a lease to the petitioners, the Corporation had never executed any formal contract or registered lease deed as required under the provisions of the Maharashtra Municipal Corporation Act, 1949. He emphasized that municipal properties are public assets and their transfer or disposal must strictly comply with the procedure prescribed under the said Act. He submitted that unless the process contemplated under the law—such as obtaining approval from the General Body and execution of a formal document—is duly completed, no individual can claim legal possession or assert rights akin to that of a tenant or lessee. In his submission, since such procedural steps were admittedly not completed, the petitioners' possession remains unauthorised and

liable to be dealt with under Section 81B of the said Act.

8. On careful perusal of the documents placed on record, it appears that the respondent–Municipal Corporation had passed Resolution No.751 dated 4th December 2004, whereby it was resolved to allot the subject premises to the petitioners on lease basis. Thereafter, on 27th May 2005, the Standing Committee passed Resolution No.253, specifically deciding to lease the said premises to the petitioners for a period of 29 years and 11 months. These resolutions show that the Corporation had, in principle, agreed to lease out the premises to the petitioners.

9. However, it is equally undisputed that despite passing of the aforesaid resolutions, no formal lease deed or written contract came to be executed between the Corporation and the petitioners. The petitioners continued to remain in possession of the premises without any registered lease agreement being executed. The factum of payment and acceptance of rent for certain years may, at the highest, indicate permissive possession, but such conduct alone cannot be treated as a substitute for a valid legal contract, especially in the context of public property.

10. At this juncture, it becomes necessary to refer to the provisions of Section 73 of the Maharashtra Municipal Corporations Act, 1949 (the said Act), which lays down the procedure and restrictions regarding disposal of immovable property belonging to the Corporation. Section 73 reads thus:

“73. Power to Commissioner to execute contracts on behalf of Corporation.—With respect to the making of contracts

under or for any purpose of this Act, including contracts relating to the acquisition and disposal of immovable property of any interest therein, the following provisions shall have effect, namely. —

(a) every such contract shall be made on behalf of the Corporation by the Commissioner;

(b) no such contract or any purpose which, in accordance with any provision of this Act, the Commissioner may not carry out without the approval or sanction of some other municipal authority, shall be made by him until or unless such approval or sanction has first been duly given;

[(c) no contract, other than a contract relating to the acquisition of immovable property or any interest therein or any right thereto, which will involve an expenditure exceeding rupees twenty-five lakhs but not exceeding rupees fifty lakhs shall be made by the Commissioner, unless the same is previously approved by the Mayor. However, the total amount of all contracts approved by the Mayor shall not exceed rupees two crores and fifty lakhs during a year. [Subject to the above, for any contract which involves an expenditure in excess of the amount as specified by the State Government, by notification in the *Official Gazette*, from time to time, the previous approval of the Standing Committee shall be necessary and different amount may be specified in respect of different classes of Corporations]:

Provided that, notwithstanding anything contained in

Schedule 'D', in Chapter II, in rule 3, in clause (k), where the approval of the Standing Committee is sought by the Commissioner for any contract, the Standing Committee shall consider and dispose of the proposal made by the Commissioner in that behalf within fifteen days reckoned from the date of the meeting of the Standing Committee held immediately after the proposal is received by it, whether the item pertaining to such proposal is taken on the agenda of such meeting or not, failing which the approval to such contract shall be deemed to have been given by the Standing Committee and a report to that effect shall be made by the Commissioner to the Corporation.]

(d) every contract made by the Commissioner involving an expenditure exceeding [five lakhs rupees] and not exceeding [five lakhs rupees] or such higher amount as may for the time being prescribed under clause (c) shall be reported by him, within fifteen days after the same has been made, to the Standing Committee;

(e) the foregoing provisions of this section shall, as far as may be, apply to every contract which the Commissioner shall have occasion to make in the execution of this Act; and the same provisions of this section which apply to an original contract shall be deemed to apply also to any variation or discharge of such contract.”

11. Upon a meaningful construction of Section 73 of the Maharashtra Municipal Corporation Act, 1949, it becomes evident

that while the Commissioner is empowered to execute contracts on behalf of the Corporation, such authority is not unfettered. The execution of any contract relating to transfer, lease, or conveyance of municipal property must be preceded by a resolution of the Standing Committee, which serves as the foundational administrative decision-making body under the scheme of the Act. However, in the present case, despite the Standing Committee having resolved to lease the subject premises in favour of the petitioners, the admitted position is that no formal lease contract was ever executed. The absence of a registered lease deed strikes at the root of any claim of tenancy or leasehold rights that the petitioners may seek to assert.

12. It is trite law that no right, title, or interest in immovable property, especially one belonging to a public body such as a municipal corporation, can be transferred or created in favour of a private party without strict compliance with the statutory mandate. Mere acceptance of rent, even if continued over years, does not ipso facto lead to the creation of a lease, much less a contractual tenancy, particularly where the property in question is governed by a special statute. It is well settled that in matters involving public property, principles of public trust doctrine and statutory procedure must prevail over private equities.

13. Therefore, in absence of any legally binding contract between the parties, the petitioners cannot claim a right to remain in occupation. Their possession, in the absence of a valid lease, stands on no better footing than that of an unauthorised occupant within the meaning of Section 81B of the said Act. The

Corporation, being under a statutory obligation to manage its assets in accordance with law, was within its right to initiate proceedings for eviction. The Principal District Judge, Solapur, in my considered view, rightly concluded that the petitioners had no legal basis to resist the eviction. The reasoning adopted is both sound and sustainable in law. No infirmity can be found with the order impugned. Accordingly, the writ petitions being devoid of merit, stand dismissed.

14. At this stage, learned senior Advocate appearing on behalf of the petitioners prays for stay of the judgment and order, to enable the petitioners to take appropriate recourse in accordance with law. It is relevant to note that this Court, by ad-interim order dated 6th December 2023, had continued the interim protection originally granted by the learned Principal District Judge. In the interest of justice, and to avoid any abrupt disruption, I am of the opinion that the said interim protection deserves to be continued for a period of twelve (12) weeks from today.

15. The continuation of interim protection shall, however, be subject to the petitioners filing an undertaking before this Court within one week, inter alia stating that they shall (i) deposit the arrears of rent with the respondent–Corporation within a period of four (4) weeks from today, and (ii) hand over vacant and peaceful possession of the said premises to the Corporation on or before expiry of the said 12-week period.

16. It is clarified that such deposit of arrears shall be without prejudice to the rights and contentions of the parties regarding the

correctness of the rent amount. The petitioners shall deposit arrears as per the demand chart provided by the Corporation. However, if there is any dispute regarding the quantum of arrears, the petitioners shall be at liberty to raise the same before the Commissioner.

17. It is further directed that the amount as per the Corporation's calculation shall be deposited subject to the Commissioner's final decision on the issue of quantum. The Commissioner shall thereafter consider and decide any such dispute raised by the petitioners on its own merits and in accordance with law.

(AMIT BORKAR, J.)