



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 6343 OF 2024

Shri Satish Mahadeo Rupwate,
Heir and L.R. of Late Shri Mahadeo Rupawate,
Age : 72, Indian Inhabitant,
Room No. 1, Chawl No. D/18,
664 Tenements, V. P. Municipal Colony,
Vikhroli (W), Mumbai-400 079

... Petitioner

Vs.

1. Municipal Corporation of Greater Mumbai
(through the Municipal Commissioner),
Mahanagar Palika Road,
Opposite CST Station,
Fort, Mumbai-400 001
2. Mr. Kisan Govind Dharade
Administrative Officer
Estate Department
“N” Ward, MCGM. 3rd Floor
Jawahar Road, Ghatkopar (East)
Mumbai-400 077
3. Mr. J. K. Kadam
Enquiry Officer
“N” Ward Office, MCGM, 3rd Floor
Jawahar Road, Ghatkopar (East)
Mumbai-400 077

... Respondents

WITH
WRIT PETITION NO. 6378 OF 2024

Smt. Jayashree Rajaram Rasam

Heir & L.R. of Late Shri Rajaram Rasam

Age : 53, Indian Inhabitant

Room No. 6, Chawl No. D/18

664 Tenements, V. P. Municipal Colony,

Vikhroli (W), Mumbai-400 079

... Petitioner

Vs.

1. Municipal Corporation of Greater Mumbai

(through the Municipal Commissioner),

Mahanagar Palika Road,

Opposite CST Station,

Fort, Mumbai-400 001

2. Mr. Kisan Govind Dharade

Administrative Officer

Estate Department

“N” Ward, MCGM. 3rd Floor

Jawahar Road, Ghatkopar (East)

Mumbai-400 077

3. Mr. J. K. Kadam

Enquiry Officer

“N” Ward Office, MCGM, 3rd Floor

Jawahar Road, Ghatkopar (East)

Mumbai-400 077

... Respondents

WITH
WRIT PETITION NO. 6410 OF 2024

Asha Sudhakar Ghodke

Age : 59, Indian Inhabitant

Room No. 5, Chawl No. D/18

664 Tenements, V. P. Municipal Colony,

Vikhroli (W), Mumbai-400 079

... Petitioner

Vs.

1. Municipal Corporation of Greater Mumbai
(through the Municipal Commissioner),
Mahanagar Palika Road,
Opposite CST Station,
Fort, Mumbai-400 001

2. Mr. Kisan Govind Dharade
Administrative Officer
Estate Department
“N” Ward, MCGM. 3rd Floor
Jawahar Road, Ghatkopar (East)
Mumbai-400 077

3. Mr. J. K. Kadam
Enquiry Officer
“N” Ward Office, MCGM, 3rd Floor
Jawahar Road, Ghatkopar (East)
Mumbai-400 077

... Respondents

WITH

WRIT PETITION NO. 6412 OF 2024

Shri Girish Umesh Sodiye

Age : 57, Indian Inhabitant

Room No. 2, Chawl No. D/14

664 Tenements, V. P. Municipal Colony,
Vikhroli (W), Mumbai-400 079

... Petitioner

Vs.

1. Municipal Corporation of Greater Mumbai
(through the Municipal Commissioner),
Mahanagar Palika Road,
Opposite CST Station,
Fort, Mumbai-400 001
2. Mr. Kisan Govind Dharade
Administrative Officer
Estate Department
“N” Ward, MCGM. 3rd Floor
Jawahar Road, Ghatkopar (East)
Mumbai-400 077
3. Mr. J. K. Kadam
Enquiry Officer
“N” Ward Office, MCGM, 3rd Floor
Jawahar Road, Ghatkopar (East)
Mumbai-400 077

... Respondents

WITH

WRIT PETITION NO. 6347 OF 2024

Smt. Parveen Usman Shaikh
Age : 53, Indian Inhabitant
Room No. 3, Chawl No. D/18
664 Tenements, V. P. Municipal Colony,
Vikhroli (W), Mumbai-400 079

... Petitioner

Vs.

1. Municipal Corporation of Greater Mumbai
(through the Municipal Commissioner),
Mahanagar Palika Road,
Opposite CST Station,
Fort, Mumbai-400 001
 2. Mr. Kisan Govind Dharade
Administrative Officer
Estate Department
“N” Ward, MCGM. 3rd Floor
Jawahar Road, Ghatkopar (East)
Mumbai-400 077
 3. Mr. J. K. Kadam
Enquiry Officer
“N” Ward Office, MCGM, 3rd Floor
Jawahar Road, Ghatkopar (East)
Mumbai-400 077
- ... Respondents

WITH

WRIT PETITION NO. 6436 OF 2024

Yeshwant A. Gaonkar,
Heir and L.R. of late Shri K. Y. Gaonkar
Age : 67, Indian Inhabitant
Room No. 7, Chawl No. D/18
664 Tenements, V. P. Municipal Colony,
Vikhroli (W), Mumbai-400 079

... Petitioner

Vs.

1. Municipal Corporation of Greater Mumbai
(through the Municipal Commissioner),

Mahanagar Palika Road,
Opposite CST Station,
Fort, Mumbai-400 001

2. Mr. Kisan Govind Dharade
Administrative Officer
Estate Department
“N” Ward, MCGM. 3rd Floor
Jawahar Road, Ghatkopar (East)
Mumbai-400 077

3. Mr. J. K. Kadam
Enquiry Officer
“N” Ward Office, MCGM, 3rd Floor
Jawahar Road, Ghatkopar (East)
Mumbai-400 077

... Respondents

Mr. Rajendra Pai, Senior Advocate a/w Aloukik Pai a/w Akshay Pai a/w Siddhi Bhosale a/w Saharsh Sakhare a/w Omkar Kalundrekar a/w Rishabh Shanbhag a/w Sanika Gawade i/b Bina R. Pai for the Petitioner.

Mr. Som Sinha a/w Divya V. a/w Rutuja Thaker a/w Rutuja Bhise a/w Santosh Mali for the Respondent-MCGM.

Mr. Sandeep K. Ghige, Estate Officer N. Ward, Present.

Mr. Shamkant Baviskar, Water Works N. Ward, Present.

CORAM : GAURI GODSE, J.

RESERVED ON: 4th SEPTEMBER 2025

PRONOUNCED ON: 16th SEPTEMBER 2025

JUDGMENT:

1. These petitions are filed to challenge the judgment and order passed by the City Civil Court in the respective appeals filed by these petitioners under Section 105F of The Mumbai Municipal Corporation Act, 1888 ("MMC Act"). The appeals were filed to challenge the eviction order, passed by the Inquiry Officer under Section 105B of the MMC Act. All these petitioners are the heirs and legal representatives of the employees of the respondent corporation. Since common questions are involved in all these petitions, they were heard together and are disposed of by this common judgment.

Facts in brief :

2. These petitions have a chequered history; hence, the following facts would be necessary to understand the controversy involved in these petitions:

(a) The structures involved in these litigations, presently occupied by these petitioners, were allotted in lieu of the employment, to the corporation's employees as staff quarters on a leave and licence basis. As per the leave and licence agreement, the employees had agreed to vacate the

respective premises on their retirement/ superannuation/ discharge from employment. Despite retirement, none of the ex-employees vacated their respective structures.

(b) **2006-2007**: Notices were issued to the occupants under Section 105B of the MMC Act, calling upon them to vacate their respective structures. In response to the notice issued to the occupants, all occupants, including these petitioners, contended that their structures were included in the Corporation's scheme of permanent housing accommodation in 1992. They relied on a circular dated 1st September 1989 to claim that the corporation had agreed to convert the premises from a leave and licence basis to an ownership basis after redevelopment.

(c) **7th October 2010**: The Corporation issued a circular withholding retirement benefits as the occupants had refused to vacate their respective premises. Various writ petitions were filed in this court sometime in 2008, 2009, 2010 and 2013.

(d) **6th January 2017**: The group of petitions were decided by a common judgment by the Division Bench of this court.

The petitions were filed by either ex-employees or their heirs and legal representatives, who had retired from the corporation's service. The petitioners claim that their respective structures were allotted to them on a permanent tenancy /ownership basis. They claimed that the co-operative societies formed by the ex-employees formed an association. These cooperative societies pertain to five different sites where structures were allotted on a similar leave and licence basis to the employees of the corporation. The petition filed by ***More Jeevan Yashwant and Others vs. Mumbai Municipal Corporation and Another¹***, pertained to the site at Chembur. The other petitions were filed by the Federation of Co-operative Societies, formed by former employees. In all these petitions, the petitioners claimed the benefit of permanent housing accommodation. This court dismissed all the petitions by a common judgment.

(e) This Court, in ***More Jeevan Yashwant and Others***, along with other connected petitions, granted an option to the petitioners to vacate the premises within three months, and subject to their vacating the premises, the balance of the

1 2017 SCC OnLine Bom 10101

retirement benefits that were withheld by the corporation were directed to be released. The Division Bench of this court further held that the petitioners cannot retain the structures endlessly, and if the premises are not handed over within the time granted, the corporation shall take necessary action for evicting the respective occupants.

(f) 1st May 2017: The occupants challenged the order passed by the Division Bench of this court before the Hon'ble Apex Court. However, the Special Leave Petitions were dismissed, and the order passed by the Division Bench of this court was confirmed.

(g) 3rd May 2017 : The State Government directed the corporation to verify whether the structures occupied by the ex-employees of the corporation or through their heirs and legal representatives could be considered for conversion on an ownership basis.

(h) 5th June 2017: The corporation examined the documents and issued Show Cause Notices to the occupants as contemplated under sub-section (2) of Section 105B of the MMC Act. Accordingly, enquiry proceedings were initiated.

(i) **29th September 2021** : Enquiry proceedings in respect of a group of occupants at Vikhroli Parksite Municipal Colony were decided by a common judgment by the enquiry officer, and the enquiry officer granted one month's time to vacate and hand over the premises from the date of service of the notice under sub-section (1) of Section 105B of the MMC Act.

(j) **November 2021** : These petitioners filed their respective appeals under Section 105F of the MMC Act. The petitioners filed an application for leading additional evidence to bring on record certain documents prior to the circular issued by the corporation in 1989, and the documents which were not part of the petitions before the Division Bench.

(k) **1st February 2024** : The appeals filed by these petitioners were decided by passing separate judgments. All the appeals were dismissed, and the petitioners were granted time to vacate the premises. The application for leading additional evidence was also rejected. Hence, these petitions.

Submissions on behalf of petitioners:

3. Learned senior counsel for the petitioners submitted that various municipal premises were constructed sometime in 1964

at five different locations at Vikhroli Parksite Municipal Colony, Barve Nagar Ghatkopar, Malad Malvani, Mithanagar Goregaon and Deonar, Chembur. According to the learned senior counsel for the petitioners, the structures were constructed under Budget “B” of the Improvements Committee of the Corporation for housing project affected persons. In exercise of powers under Section 92 of the MMC Act, a resolution was passed on 7th May 1985 to convert these premises constructed in 1964 into an ownership basis. Accordingly, a resolution was passed by the Improvements Committee on 10th August 1989, and the same was approved by the General Body of the corporation on 1st September 1989. The terms and conditions for converting the structures into ownership basis were finalised by a resolution dated 19th December 1991. Accordingly, the occupants of the respective colonies at the five different locations formed co-operative housing societies. These co-operative housing societies prepared proposals for redevelopment and submitted them before the corporation.

4. Learned senior counsel for the petitioners submitted that on 20th October 2007, though the Municipal Commissioner made a reference under Section 64 of the MMC Act for

cancelling the resolution of 1989 for converting the structures into ownership basis, the said proposal submitted by the then Municipal Commissioner before the State Government remained pending, and it was never approved. On 3rd May 2017, the State Government directed the corporation to explore the possibility of a scheme for the conversion of the structures into an ownership basis. However, the corporation initiated proceedings under Section 105B for the summary eviction of all the occupants.

5. Learned senior counsel for the petitioners relied upon the orders passed in the other group of petitions filed before this court, in the case of Vivek Gawde and others pertaining to the site of Mithanagar, Goregaon. These petitions were filed to challenge the order rejecting their prayer to stay the enquiry till the regulations under Section 105H were framed. The Enquiry Officer rejected the prayer; hence, appeals were filed, which were dismissed. This court decided the group of petitions filed by Vivek Gawde and Others on 19th July 2022. This court framed nine points for consideration and directed that the enquiry be conducted as per the nine points for consideration framed by this court. He submits that being aggrieved by the said decision in the group of petitions of Vivek Gawde and Others, the

corporation filed a Special Leave Petition before the Hon'ble Apex Court.

6. The Hon'ble Apex Court disposed of the Special Leave Petition of *Municipal Corporation of Greater Mumbai and Others Vs Vivek Gawde and others*² by directing that the 5th and 6th points framed by this court be decided. Learned senior counsel for the petitioners submitted that the Hon'ble Apex Court observed that if the occupants raise the point to remain in possession by virtue of Section 53-A of the Transfer of Property Act, 1882 ("TP Act"), it would be open for the Enquiry Officer to determine the same. The petitioners, therefore, also relied upon additional evidence sought to be produced by filing applications for additional evidence to contend that they were entitled to protect their possession under Section 53-A of the TP Act.

7. Learned senior counsel for the petitioners submitted that the proposal submitted by the then Municipal Commissioner on 20th December 2007, proposing to cancel the scheme approved on 10th August 1989, was a proposal under Section 64 of the MMC Act. Since there was no response from the State Government within the 45 days from the date of the proposal,

the same shall be deemed to have been rejected by the State Government. He relied upon the proviso to clause (e) of sub-section 3 of Section 64 of the MMC Act. He therefore submitted that based on the scheme approved by circular dated 10th August 1989, the occupants of the respective locations on the five different sites formed a co-operative housing society and submitted a proposal for redevelopment. Accordingly, one-third of the retirement benefit of the respective occupants were withheld by the corporation.

8. Learned senior counsel for the petitioners relied upon the model letter annexed on page 102 of the first petition to support his submissions that the partial retirement benefits were withheld as and by way of consideration for the conversion of the structures on an ownership basis. He submitted that such letters were issued to all the petitioners at the time of their respective retirement.

9. According to the learned senior counsel for the petitioners, the present petitioners are concerned with Writ Petition No. 1797 of 2009 filed before the Division Bench of this Court by the Federation of Societies. He points out the prayers made in the

petition, whereby the federations prayed for the implementation of Resolution No. 343, dated 1st September 1989, for converting the tenements to an ownership basis. He thus submits that the prayer made on behalf of the federation was for specific performance of the Resolution No. 343. He submits that in view of the prayers for specific performance, the federation challenged the eviction notice issued in January 2009. He thus submits that even if the prayer for specific performance is rejected, the petitioners would be entitled to raise a ground of defence to protect their possession as contemplated under Section 53-A of the TP Act. He submits that in the petition filed by the federation, the prayers for protection were not in the context of Section 53-A of the TP Act, and the petitioners' protection prayers were only with reference to the eviction notice.

10. Learned senior counsel for the petitioners thus submits that the earlier action initiated by the corporation under Section 105B of the MMC Act was given up by the corporation. After the order passed by the Division Bench, fresh action under Section 105B was initiated by the corporation, which is the subject matter of the challenge in the present petitions. He thus submits

that in view of the fresh notice issued for eviction, the petitioners are entitled to claim benefit under Section 53-A of the TP Act. He submits that even if, in the reply to the fresh notice for eviction, a plea under Section 53A of the TP Act is not taken by these petitioners, they would be entitled to raise these grounds at a subsequent stage. To support his submission learned senior counsel for the petitioner relied upon the decision of the Madras High Court in the case of *T. S. Karthikeya Mudaliar vs. Singaram Pillai and Another*³.

11. Learned senior counsel for the petitioners submits that though a separate application for leading additional evidence was not filed in all the appeals, an application in the appeal of Satish Mahadeo Rupwate was treated as a common application for all these petitions. He relies upon the application at Exhibit-4, which, according to the learned senior counsel for the petitioners, was treated as a common application for all these petitions. He submits that the foundational document for seeking protection under Section 53-A of the TP Act is the document dated 24th April 1985, which is a commissioner's report with the subject of conversion of the municipal tenements on leave and

³ 1956 SCC Online Mad 85

licence into ownership basis. This document is on page 63 of the compilation for additional evidence marked as Exhibit 'X-1' in these petitions. He submits that all the reports by the earlier commissioners were referred to in this report, which stated the reason for converting the structures on a leave and licence basis into an ownership basis. According to the learned senior counsel for the petitioners, these reports were prepared in exercise of powers under Section 92 of the MMC Act. Based on these reports, a decision was taken which was approved by the General Body on 1st September 1989.

12. Learned senior counsel for the petitioners relies upon a sample letter, which is annexed on page 17 of the compilation marked as 'X-2'. He submits that the sample letter clearly records the conversion of the structures allotted on leave and licence to an ownership basis to the co-operative societies. He submits that the Ward Officer issued the letter to the concerned Administrative Officer. Hence, according to the learned senior counsel for the petitioners, the petitioners' possession was not required to be taken after the retirement of the respective employees of the corporation.

13. Learned senior counsel for the petitioners relied upon a sample undertaking annexed on page 21 of the compilation marked as 'X-2'. He submits that, as per the sample undertaking, the employees had stated that the tenants have no other premises. He further relies upon the settlement claim annexed at page 24 of the compilation marked as 'X-2' to support his submissions that, as per the settlement claim issued by the corporation, it was agreed that vacant possession would not be necessary, and the reference for this settlement was the Circular No. 343 of 1989. He therefore submits that one-third of retirement benefits were withheld, which is the consideration for the conversion of the structure on leave and license basis into ownership basis. He further points out the circular dated 1st February 1991, on page 26 of the compilation marked as 'X-2', for the purpose of releasing pension. He submits that even these circular records, possession would not be necessary to be given, and partial retirement benefits shall be released. He thus submits that this circular shows that there was a new contract which took place, substituting the original leave and licence agreement. Hence, there was a novation of the contract. He thus submits that in view of the novation of the contract, these

petitioners are entitled to seek benefit as contemplated under Section 53-A of the TP Act.

14. The learned senior counsel for the petitioners points out that in the earlier round of litigation, when eviction notices were issued, this court, vide order dated 16th October 2009, had granted ad-interim protection. He thus submits that even during the pendency of the decision in the writ petitions decided in the case of *More Jeevan Yashwant and Others*, the petitioners' possession was protected.

15. Learned senior counsel for the petitioners relied upon the documents from page 19 onwards in the compilation marked as 'X-1' pertaining to the site at Mithanagar, Goregaon. He submits that all these documents were produced in the enquiry pertaining to the other sites. After these petitioners learnt about these documents, they filed an application for producing them by way of additional evidence in the appeals filed by these petitioners. He points out that the learned Judge of the City Civil Court erred in keeping the application for additional evidence pending for deciding it along with the appeal. He relies upon Section 107 of the Code of Civil Procedure, 1908

("CPC"), which, according to the learned senior counsel for the petitioners, provides for inherent powers read with procedural powers under Order XLIII Rule 27 of the CPC, permitting the court to rely upon additional evidence.

16. According to the learned senior counsel for the petitioners, the protection under Section 53-A is pleaded in the appeals filed by these petitioners. However, the learned Judge of the City Civil Court, while deciding the appeals, failed to apply the relevant provisions under Order XLI Rule 27 of the CPC. To support his submissions for relying upon the documents produced by way of additional evidence in support of the plea of Section 53-A of the TP Act, he relied upon the decision of this court in the case of *Sudhir Bhatia vs. Central Government of India and Others*⁴, and an unreported decision in the case of *The Premier Automobiles Ltd. vs. Kabirunissa wd/o. Amiruddin Karim Ashraff, alias Kallu Changu and Others*⁵ and the decision in the case of *Hasanate Taheriyaah Fidayyiah vs. Mahesh s/o. Kishor Saran*⁶.

4 2010 SCC Online BOM 1648

5 Writ Petition No. 382 of 1993

6 2014 SCC OnLine Bom 1593

17. Learned senior counsel for the petitioners relied upon a letter dated 20th December 2007 issued by the then Municipal Commissioner, which, according to the learned senior counsel for the petitioners, was a proposal to cancel the conversion scheme floated by the circular of 1989. According to the learned senior counsel for the petitioners, this proposal stood cancelled as the State Government never accepted it. Hence, the powers exercised by the earlier Municipal Corporation under Section 92 of the MMC Act, approved by the corporation in the General body in 1989, stand confirmed. The corporation acted upon the decision of 1989 by withholding one-third of the retirement benefit towards consideration for the conversion of the structures allotted on leave and licence basis to ownership basis. Hence, according to the learned counsel for the petitioners, the protection under Section 53-A of the TP Act is applicable. To support his submissions, learned senior counsel for the petitioners relied upon the decision of the Hon'ble Apex Court in the case of *Ghanshyam vs. Yogendra Rathi*⁷ and *Maneklal Mansukhbhai vs. Hormusji Jamshedji Ginwalla and Sons*⁸.

⁷ (2023) 7 SCC 361

⁸ 1950 SCC 83

18. Learned senior counsel for the petitioners, therefore, submitted that even if a written contract of transfer is not signed but an agreement to contract or the terms of the agreement are agreed upon and the terms of the contract can be deduced through such an agreement, the protection under Section 53-A has to be applied. Hence, according to the learned counsel for the petitioners, if it can be ascertained that an executory contract was entered into, though not executed, still Section 53-A was applicable to protect the possession.

19. Learned senior counsel for the petitioners, therefore, submits that it was necessary for the appeal court to consider the applicability of Section 53-A of the TP Act by permitting the petitioners to lead additional evidence as per the application filed in the appeals. He thus submits that the impugned orders must be set aside and the proceedings must be remanded to the enquiry officer for deciding the applicability of Section 53-A of the TP Act to the petitioners to protect their possession.

Submissions on behalf of the respondents (Corporation):

20. Learned counsel for the corporation submitted that the agreement for leave and licence executed by the employees of

the corporation provides for categorical clause where the employees had agreed to vacate the respective premises on their retirement/superannuation/discharge from the employment. Despite the retirement of the respective employees the premises were not handed over to the corporation. Hence, necessary action was initiated by the corporation, which was the subject matter of challenge in the various petitions, which were decided by the Hon'ble Division Bench in the case of ***More Jeevan Yashwant and Others***, including the petitions filed by the federation.

21. Hence, according to the learned counsel for the corporation, the issues raised by these petitioners were squarely covered in the petition filed on behalf of the federation, which was also decided by the Division Bench in the common judgment. The petitioners raised the grounds for their entitlement to conversion of the premises into ownership based on the Resolution No. 343 dated 1st September 1989 and the letter issued by the then Municipal Commissioner on 20th December 2007 proposing to cancel the Resolution No. 343. He submits that the Division Bench of this court decided all these aspects in the decision of ***More Jeevan Yashwant and Others***.

He points out that the ex-employees of the corporation and the respective association had filed various writ petitions, which were decided by the common judgment in the case of ***More Jeevan Yashwant and Others***. He points out that the main prayers in these petitions were for conversion of the allotment to the respective employees into ownership basis in accordance with Resolution No. 343, with further prayers restraining the corporation from evicting the occupants.

22. Learned counsel for the corporation points out the relevant findings of the Division Bench in the decision of ***More Jeevan Yashwant and Others***. He submits that the Division Bench of this court categorically held that the Resolution No.343 was a mere proposal and cannot be termed as a final decision of the corporation to grant the structures on a permanent basis. He points out that this court, in the decision of ***More Jeevan Yashwant and Others***, categorically recorded that the petitioners had an option to hand over the premises to the corporation and accept the retirement benefits without any deduction. However, none of the occupants, including these petitioners, agreed to the option given by the Division Bench of this court. Hence, as directed by the Division Bench of this court, the corporation

initiated action under Section 105B of the MMC Act for the eviction of the occupants, including these petitioners. The corporation, therefore, followed due process of law as contemplated under the MMC Act for the eviction of these petitioners. The petitioners failed to vacate the premises, hence the enquiry proceedings were initiated. After giving the reasonable opportunity to the petitioners to lead evidence, the enquiry officer passed an order on 29th September 2021 directing the petitioners to vacate the respective premises. The decision of the enquiry officer was challenged by filing an appeal, which was also heard at length. The appeal court, after taking cognisance of the various observations and directions issued by the Division Bench of this Court, examined all the documents sought to be relied upon by these petitioners by way of additional evidence.

23. Learned counsel for the corporation referred to the judgments passed by the appeal court. The appeal court has, in detail, examined all the documents sought to be produced by way of additional evidence and rightly held that none of the documents support the petitioners' contention for protection under Section 53-A of the TP Act. He submits that the

documents sought to be relied upon by way of additional evidence are nothing but an attempt on behalf of the petitioners to further delay the implementation of the eviction orders. He relied upon the affidavit-in-reply filed on behalf of the corporation in response to the documents at X1, X2 and the SLP compilation. He submits that neither are there any pleadings in support of the additional documents nor any of the documents have any relevance for the applicability of protection under Section 53-A of the TP Act. None of the parameters contemplated under Order XLI Rule 27 of the CPC are satisfied for the production of additional evidence; hence, the appeal court has rightly rejected the application. He submits that even if the documents sought to be produced by way of additional evidence were produced before the enquiry officer, the same would not have made any difference in the reasons recorded for passing the eviction order. He therefore submits that in the absence of any supporting pleadings, and in the absence of any valid ground to produce the same at the appeal stage, the application is rightly rejected. He submits that none of the documents would support the arguments raised for protection of possession under Section 53-A of the TP Act.

24. Learned counsel for the corporation points out that the common ground taken by these petitioners includes an objection of institutional bias. However, this aspect is also considered by the appeal court by relying upon the decision of the Hon'ble Apex Court in the case of *Bibi Batool Jafer Glam Hussein vs. The Principal Judge, City Civil Court, Bombay*⁹ and the decision of *Maganlal Chhaganlal (P) Ltd. Vs. Municipal Corporation of Greater Mumbai and Others*¹⁰. Thus, the learned counsel for the corporation submits that by referring to the well-settled legal principles, the appeal court rightly confirmed the decision of the enquiry officer for the eviction of these petitioners. He points out that the issue relating to the conversion of the premises into an ownership basis was decided by the Division Bench in the case of *More Jeevan Yashwant and Others*. He thus submits that the issue now cannot be reopened. He submits that the Division Bench of this court held that the premises occupied by the petitioners are owned by the corporation and the petitioners had occupied the same only by way of their employment. Hence, now they would not be entitled to seek any protection under Section 53-A of the TP Act.

9 1967 SCC OnLine Bom 121

10 (1974) 2 SCC 402

25. The issue regarding the one-third retirement benefits withheld by the corporation is also considered in the decision of ***More Jeevan Yashwant and Others***, where it is held that the amount was withheld because the occupants had failed to vacate the premises. The grounds raised regarding the entitlement for conversion of the premises allotted in lieu of the employment into an ownership basis are rejected by the Division Bench in the decision of ***More Jeevan Yashwant and Others***; hence, there is no question of novation of the contract for the purpose of claiming protection under Section 53-A of the TP Act. He submits that in view of the decision in the case of ***More Jeevan Yashwant and Others***, thereby holding that the nature of the premises is of ownership of the corporation, and the petitioners' occupancy is only by way of employment, there is no question of applying protection under Section 53-A of the TP Act. The learned counsel for the respondents, therefore, submits that the corporation has followed due process as directed by the Division Bench of this court. None of the documents relied upon by way of additional evidence would pertain to the applicability of Section 53A. He submits that the petitioners have neither pleaded nor made any averment regarding raising a plea of

protection under Section 53-A. He submits that for the first time, the petitioners orally argued in the appeal regarding the applicability of Section 53-A of the TP Act, and the averments are for the first time taken in these petitions.

26. Learned counsel for the corporation submits that the decision of the Hon'ble Apex court in the case of ***Vivek Gawde and Others***, granting liberty for raising the plea of Section 53-A of the TP Act, cannot be made applicable to the present petitioners. He submits that after the decision of this court in the case of ***More Jeevan Yashwant and Others***, the Supreme Court confirmed the decision on 1st May 2017, and thereafter, immediately on 3rd May 2017, the occupants approached the State Government. The minutes of the meeting dated 3rd May 2017 only record the request of the government for a fresh survey. Thus, the request / directions recorded in the minutes of the meeting dated 3rd May 2017 have no co-relation with the 1989 resolution. He points out that the Municipal Commissioner's letter dated 16th September 2017 in response to the minutes dated 3rd May 2017 cannot be read to mean that it was agreed to convert the premises of these petitioners into ownership basis.

27. According to the learned counsel for the Corporation, the appeal court considered all the relevant aspects regarding the nature of the occupants of these petitioners, as held by the Division Bench of this Court in the case of ***More Jeevan Yashwant and Others***. The premises in occupation are not premises which, even according to the petitioners, were agreed to be transferred to them on an ownership basis. Even as per the submissions made on behalf of the petitioners, the premises agreed to be allotted on an ownership basis are the premises that were proposed after redevelopment. Hence, there is no question of applying the protection of Section 53-A of the TP Act.

28. Learned counsel for the corporation submitted that the nature of possession and the nature of contract, as argued on behalf of the occupants, is decided by the Division Bench in the case of ***More Jeevan Yashwant and Others***, and the same is confirmed by the Hon'ble Apex Court. Hence, there is no question of applying the provisions of Section 53-A at this stage. He submits that filing an application for leading additional evidence is only an attempt to delay eviction when documents in the compilation sought to be produced by way of additional

evidence are after 2017, which only pertains to the requests made by the State Government for carrying out a survey. Thus, after the Hon'ble Apex confirmed the decision of this court in the case of ***More Jeevan Yashwant and Others***, the occupants rushed to the State Government for some protection. He thus submits that a direction issued for carrying out a survey cannot be construed as a ground to seek protection under Section 53-A of the TP Act. As per directions issued by the Hon'ble Division Bench of this court in the case of ***More Jeevan Yashwant and Others***, the corporation has initiated due process as contemplated under Section 105B of the MMC Act. Hence, at this stage, there is no question of applying protection under Section 53-A of the TP Act.

Analysis and Conclusions :

29. I have carefully perused all the papers of the petition, including the documents sought to be relied upon by way of additional evidence. On a specific query made to the learned senior counsel for the petitioners regarding the applications filed by these petitioners for leading additional evidence, learned counsel for the petitioners submitted that a common application

filed in the case of Shri Channabasappa S. Hotanahalli was treated as a common application in the appeals filed by these petitioners. Hence, to avoid any confusion this court vide order dated 25th August 2025 issued necessary directions for identifying the documents sought to be relied upon by these petitioners by way of additional evidence and accordingly the compilation filed with an index dated 4th September 2025 was marked as 'X-1' for identification and compilation of index dated 20th August 2025 was marked as 'X-2' for identification. The petitioners' submissions were accordingly recorded that, except for the documents in the compilation marked as 'X-1' and 'X-2' along with the documents with the lists part I, which contains a copy of SLP No. 13605 of 2017 along with all the annexures filed in the Hon'ble Apex Court, the petitioners did not rely upon any other documents. Hence, with the assistance of the respective counsels for the parties, I have carefully gone through all the documents sought to be relied upon by the petitioners to support their submissions on the applicability of the protection under Section 53-A of the TP Act.

30. The controversy surrounding these petitions centres on the nature of the occupation and whether the petitioners would

be entitled to seek protection for continuing with it. Since the controversy involved in these petitions is already decided by the Division Bench of this court in the case of ***More Jeevan Yashwant and Others*** and confirmed upto the Hon'ble Apex Court, it would be relevant for deciding the arguments raised on behalf of the petitioners in this group of petitions. The Division Bench in the case of ***More Jeevan Yashwant and Others*** dealt with the claims of ex-employees of the corporation who had approached this court on the ground that there was a representation from the Municipal Corporation to the occupants that their occupancy would be converted on a permanent tenancy/ownership basis in terms of certain decisions taken by the Municipal Corporation. Relying upon the various decisions of the corporation, the ex-employees claimed mandatory directions to be issued to the Municipal Corporation not to apply the circular dated 7th October 2010, which directed that the corporation should release the retirement benefit/dues with effect from the date of the respective retirement with interest @ 18% per annum. The ex-employees and their federation also claimed directions that the corporation should not evict them from their respective tenements.

31. The Division Bench of this Court recorded all the factual aspects and thus proceeded to decide the petitions by a common judgment. The Division Bench recorded that the petitioners proceeded on the footing that the respective tenements occupied by the petitioners were included by the corporation in the scheme for permanent house accommodation in the year 1992, and on 25th March 1997, the corporation issued a letter to that effect. Since the scheme was not implemented, the ex-employees filed various representations, and thus, based on their occupation, they sought various reliefs for conversion of their tenements into ownership or permanent tenancy. All the petitions before the Division Bench pertaining to the five different sites were decided by a common judgment. All the arguments raised on behalf of the petitioners in these petitions were categorically raised before the Division Bench, including the arguments based on the applicability of Sections 64 and 92 of the MMC Act.

32. Though a specific ground as contemplated under Section 53-A of the TP Act was not raised in the group of petitions, all the grounds regarding protection of possession, based on the circular of 1989, were raised and decided by the Division Bench. The Division Bench also decided the issue regarding the retirement

benefits withheld by the Corporation. The Division Bench held that the occupancy of the ex-employees would not create any right, title or interest in the municipal property, which is public property. It would be necessary to reproduce the relevant extracts from the findings recorded by the Division Bench of this Court, which deal with all the grounds argued in these petitions. The relevant extracts from the judgment of ***More Jeevan Yashwant*** read as under :

“37. For properly appreciating the rival contentions, we must first clear the factual background. 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.

38. It is high time that we clarify that those in possession of public property have no right to continue in their possession and occupation. The municipal servants must realise, like others, that they are public servants. The Municipal Corporation must realise that it is a trustee of the public property. They do not have authority to dispose of these properties as if they belong to them exclusively. They are made over to the municipalities for municipal administration and governance. Therefore, the local authorities and Municipal Corporations are as much bound by the mandate of Article 14 of the Constitution of India, as these employees. This court cannot perpetuate an illegal act by its writ. Equal protection of the law postulates that those not entitled to any relief based on a right cannot continue to insist on the same. Once a leave and licence arrangement in law does not confer any right, title and interest in the property, much less of tenancy, then, we do not see how the Municipal property, coming in the petitioners' possession during the course of their services, places them in a different class. They are comparable with those municipal servants to whom municipal premises are allotted in lieu of payment of House Rent Allowance. The House Rent Allowance is paid because those occupying their own or rented premises should be in a position to bear the monetary liability. In some cases, the salary is not enough to meet these expenses and therefore, such schemes, namely, payment of House Rent Allowance or grant of housing accommodation in lieu thereof, are proposed and implemented. These schemes are implemented so as to

assist the municipal employees and public servants and in return, it is expected that they render efficient and prompt services. The municipal services are rendered to fulfill the mandate of the constitution of India and Sections 61 and 63 of the MMC Act. We need not highlight as to what are the duties of the Municipal Corporation and its functions. There is enough indication in that regard in the MMC Act itself. That contains both, the obligatory and discretionary duties. Eventually, all municipal services are rendered for the welfare and benefit of the residents of the city. The Municipal Corporations themselves occupy a constitutional status. The Constitution envisages establishment and incorporation of a Municipal Corporation so as to ensure better and quality municipal governance. Given this status, the municipal employees ought to be aware that if they occupy municipal properties during the course of their services, then, they are also obliged to handover these premises on their retirement or superannuation so that the Municipal Corporation can utilise them for housing those who have entered the services or existing employees. Given the shortage of accommodation, there is a huge waiting list. Hence, we find that the contrary impression that parties like the petitioners and municipal authorities entertain needs to be dispelled forthwith. None can, therefore, take a decision to handover municipal properties to anybody save and except in accordance with law. No provision has been brought to our notice in the MMC Act, which obliges the Municipal Corporation to make a provision for housing its retired employees. Therefore, there is

no statutory right, which can be claimed in such matters.

39. The right that has been claimed and sought to be enforced is based on a decision of the Improvement Committee. The Improvement Committee is stated to have considered and sympathetically the request of certain types of occupants of Municipal Properties. We have been shown several documents in that regard and from the paper book. It has been pointed out that though the allotment is made on a specific condition that the allottee is in municipal service and therefore, he would be required to comply with certain conditions, including executing an agreement and undertaking to handover the premises. Yet, in 1966, some association was informed by the then Deputy Municipal Commissioner (Improvements) that the request of the employees, to continue in occupation as tenants on their retirement, can be accepted. Reliance is placed on the letter dated 24th June, 1966, where under, one administrative officer (Estates) has informed the Secretary of the municipal employees' association that this Deputy Municipal Commissioner (Improvement) has approved their request subject to condition that they pay standard rent and furnish fresh agreement if they desire to continue to remain in occupation of their tenements. In this letter, we do not see any decision of the Municipal Corporation. Then, what is pressed into service is a resolution and which was passed in the Municipal Corporation's meeting held on 1st September, 1989. Resolution No. 343 dated 1st September, 1989 refers

to the letters of the Commissioner dated 4th July, 1989 and 7th August, 1989. That letter refers to the plight of the municipal servants, who have been rendered homeless because of certain developments. That specifically refers to the condition of the municipal tenements as well. Therefore, Barvenagar (Ghatkopar), Mithanagar (Goregaon) and Deonar Municipal Colonies and Parksite (Vikhroli) contain structures and singly storeyed. They were granted on leave and licence basis. However, there is a conversion proposed by the Municipal Commissioner and on ownership basis. 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. The General Body has

considered them and resolved to accept them provided fulfillment of certain terms and conditions and satisfaction of the same by the Municipal Commissioner. In that event, the House may consider approving the same. Beyond this, we do not read anything, much less a vested right, which can be claimed by the petitioners to continue in occupation and possession. 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 the relevant provisions under Order XLI Rule 27 of the CPC. To by law. If we agree to the request of the petitioner, none would ever vacate staff or service quarters, but retain them even after their retirement. Those in public service and fulfilling the criteria of a public servant would then have to wait for allotment of premises in the event they require them. We cannot direct a Municipal Corporation and particularly the Municipal Corporation of Greater Mumbai, which has a work force of more than one lakh employees, to grant the permanent occupancies and in the form requested.

We have found from the record that there is no dispute that there is a waiting list of employees. There is no dispute that it becomes difficult for the Municipal Corporation to house even the staff members who render emergency services. Thus, those working and serving in the Fire brigade, Water Works and hospitals, whose presence is required by the establishment 24/7 have to be housed at distant accommodations. In that event, their availability is a huge question mark and not assured. Therefore, when their presence is required to meet an emergency, then, all the more such request as made by the petitioners cannot be granted. Once the municipal premises have not been allotted to them independent of their identity as municipal servants, then, all the more such reliefs as are claimed in these petitions cannot be granted.

40. Mr. Rupawate would submit that the issue is not covered by a Single Judge Bench decision of this court, in Writ Petition No. 110 of 1983, decided on 5th July, 1990 rendered by Hon'ble Mr. Justice M. L. Pendse as his Lordship then was. He would submit that much water has flown after this decision. We do not see any substance in this contention either. Mr. Rupawate placed reliance on a letter, which has been addressed by the Municipal Commissioner of Greater Mumbai to the Government. We have carefully perused that letter. That letter highlights what we have been shown from the records of the present petitions. The Municipal Corporation has placed before us the entire compilation of documents, based on

which we must consider these cases. There are as many as five compilations placed before us by the counsel appearing for the Municipal Corporation. These compilations contain policies and relevant circulars. We have carefully considered a policy and which has been stated to be in force, which is for allotment of staff/service quarters. Rather, they are the rules of allotment. It is the entitlement of employees, who have put in 10 years service and their eligibility for allotment of the staff quarters, which is placed in the forefront, but the allotment is conditional. The allotment will be on the basis of seniority in service, taking into account the date of joining the service. The allottee should execute a leave and licence agreement. Pausing here, it is apparent that the allotment of municipal properties or staff quarters to municipal servants is under these rules. The manner in which the allotment is made is set out and that envisages a leave and licence agreement as per the instructions prevailing at the time of the agreement. That fortifies the position that the licensee has no right, title and interest in the premises. The licence fees have to be paid by him. He would render himself liable to departmental action under the Municipal Service (Conduct and Discipline) Rules for violation of the conditions of allotment. The allotment is of a residential tenement. It is for residence of the employee and his/her family members. Their names have to be listed in the leave and licence agreement. Thus, this is a residential accommodation and granted for residence of the employee and his/her authorized family members. The terms and conditions indicate as to how possession of this tenement

shall be immediately surrendered to the concerned Ward Officer on ceasing to be a municipal employee. Thus, it is not as if post retirement until his/her obtaining a private accommodation that he can retain the municipal premises. We do not see any change in this policy. Rather from the rules, though they were revised on 19th March, 2002, what we have noted is, by passage of time, certain additional terms and conditions have been incorporated and to take care of those who indulge in irregularities while in possession of these tenements. By passage of time, the municipal administration has learnt a lesson and is by now wise enough to realise that any municipal servant, while in service, unfortunately expires or is dead, his/her heir or legal representative is not entitled to continue and reside in the premises. They would have to vacate the municipal premises within two months of the death of the employee. It was found that on sympathetic grounds, extensions are obtained and thereafter, the vacant possession thereof is not handed over. It is unfortunate that the Municipal Corporation had to insert a rule that if the husband and wife both work in the Department, then, they would be entitled to only one tenement and allotment may not be of more than one or two tenements, one in the name of husband and another in the name of wife. The circulars of the Municipal Corporation and which have been compiled, indicate as to how the applications have to be made. One such circular dated 2nd July, 1990 and subsequent to that of 16th October, 2008, 30th October, 2010 and 7th September, 2010 are highlighted by Mr. Sakhare, because he would

submit and rightly that there is increasing trend of employees not vacating the staff quarters or to obtain peaceful possession of the municipal tenements. The circulars empower the Municipal Commissioner and higher authorities therefore to withhold the retrial benefits of those retirees who are continuing to occupy the tenements even after the permissible period. We would advert to this aspect a little later. 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. What we have further noted is that there are resolutions passed from time to time. On 10th August, 1989, the Improvement Committee recommended that the Municipal Commissioner be requested to allot premises on ownership basis at Barvenagar, Mithanagar, Parksite and Deonar, as per the decisions contained in the Municipal Commissioner's letters dated 4th July, 1989 and 7th August, 1989. These letters set out the special circumstances for such a decision and also to allot some of the tenements to project affected persons. 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. It was not possible to pick up some tenements in occupation of retired persons and conferring on them alone the benefit of permanent occupancy or tenancy. We have already referred to the Commissioner's letter. The Commissioner's letter, copy of which is placed before us in this compilation, indicates as to how there is acute shortage of accommodation. He has, in his detailed letter addressed to the Government, pointed out that all these persons while entering the municipal service have undertaken to vacate the municipal tenements on ceasing to be in municipal services. Such undertakings and agreements are in force. These agreements have certain sanctity and a legal efficacy. The Municipal Corporation is right in insisting that they abide by their undertakings and voluntarily surrender the premises in their possession to the Municipal Corporation. Thus, his case was that by accepting all the terms and conditions, the benefit is obtained in the form of allotment of staff quarters and municipal premises. The Municipal Commissioner points out that in the last five decades or more, new premises could not be constructed by the Municipal Corporation. It is not possible to obtain any vacant land or property for construction of new houses. What he has

highlighted is that even if there are Improvement Committee and General Body recommendations from the year 1989, there is huge wait list of the municipal employees awaiting allotment of municipal accommodation. If the existing premises are handed over on permanent tenancy/ occupancy, then, this wait listed employees can never be provided any municipal premises. Thereafter, he highlights as to how municipal governance is the primary duty and responsibility of the Municipal Corporation. The Municipal Corporation serves the residents and members of the public. The Municipal Corporation is a public body. Those joining the services of the Corporation and later on retiring from the services would never surrender or handover the municipal premises in their occupation. That would set a bad precedent. The Municipal Corporation's premises and particularly those vacant lands, which are reserved for construction of residential structures, have been encroached and it is very difficult to obtain vacant possession thereof. It is in these circumstances and when the municipal employees obtain municipal houses, which are public properties, for their residence, it is their bounden duty to hand them over to the Municipal Corporation after their retirement. Converting them into permanent occupancy would defeat the larger public interest. These nine important points, which he has highlighted in a detailed letter addressed to the State Government may have been noticed, but no action one way or the other has been taken thereon. However, based on that, no right can be claimed by the petitioners. The State Government is neither accepting the stand of the Municipal

Commissioner set out in his letter dated 20th December, 2007 nor has rejected it.”

emphasis applied by me

33. The Division Bench also examined the arguments based on Sections 64 and 92 of the MMC Act. The relevant extract of the findings recorded in paragraph 41 reads as under:

“We do not see how this section and with the amendments thereto would alter the legal position. Rather, if something that requires a specific approval of the Municipal Corporation, the Commissioner cannot do that on his own. Even if there is a resolution of the Municipal Corporation or a decision taken by it, if that decision is found to be violating the mandate of law, then, the Commissioner can move the State Government and ask for it being quashed and set aside. Merely because the State Government has not acted or taken any decision, that does not mean that the Commissioner is bound by the Corporation's decision and which in any event is not borne out by the record. As held above, there is no decision or order of the Municipal Corporation accepting the petitioners' request to convert staff quarters in their occupation and possession into permanent occupancies. Similarly, as is clear from

Section 92 of the MMC Act, a municipal property, with respect to its disposal, is governed by the same. It is the discretion of the Commissioner and as is evident from clauses (a) and (b) of Section 92. Similarly, it is with the sanction of the Municipal Corporation, the Commissioner may lease, sell or otherwise convey the immovable property belonging to the Corporation. After clause (d) appears clause (dd). Thus, what is clear from these provisions is that a municipal property cannot be disposed of at the sweet will of the Municipal Commissioner/ Corporation.

emphasis applied by me

34. Thus, it is clear that the Division Bench of this court decided the nature of the property, including the ownership of the corporation and the nature of the occupancy of these petitioners. The Division Bench held that the public property is not in the exclusive domain of the Municipal Administrator, and it is public property. Thus, a commissioner or corporation cannot be called upon to betray this trust which is reposed in them. Hence, the public trust is paramount in the discharge of public duties. Hence, the municipal corporation cannot be directed to dispose of public property, and any decision to do so would run counter to the

provisions and mandates of the MMC Act. Thus, in view of these findings, it was directed that the gratuity shall be payable to an employee on termination of employment. Hence, it was held that the amount which were withheld would not amount to any obligation on the part of the corporation, and the issue regarding the payment of gratuity and the amounts that were withheld was discussed in detail by the Division Bench. It was thus held that in the event the occupants were ready and willing to hand over the physical possession of the premises within a specific period, recoveries threatened against them by the corporation would not come into effect. Hence, it was directed that no further directions would be needed, and the balance payable amount would be released if the petitioners were willing to vacate the premises.

35. Since none of the occupants had shown willingness to give such an undertaking, the Division Bench passed conditional directions. The relevant directions contained in paragraphs 53 and 54 read as under :

“53. We, therefore, direct that if such of the petitioners, who surrender and handover peaceful possession of their premises (municipal premises in their possession) within three months from today, the Municipal

Corporation shall not make any further deductions, but release all the balance sums due and payable with proportionate interest to such employees. In the event the petitioners do not handover the premises within this period and continue to retain them, then, all consequences in law shall follow. Meaning thereby, the Municipal Corporation can proceed with its action under section 105B and other provisions of the MMC Act and recover penal rent/damages/compensation as well. That can be recovered by attaching movable and immovable properties of the occupants.

54. However, we have seen a very peculiar feature of this case, Some of the petitioners have retired long time back. Some of these petitions have been filed and are pending in this court for more than five years. In some cases, we have found that this is a successive round of the litigation. This court has also passed some orders for protecting possession of the occupants. We would, therefore, direct the Municipal Corporation not to take into consideration the pendency of these petitions and the period during which the interim order was in force, so as to deduct and adjust the municipal dues in the aforesaid manner. To that extent, the Municipal Corporation stands restrained from enforcing its circulars and decisions withholding or seeking to adjust the retiral dues.”

emphasis applied by me

36. It is thus clear that the Division Bench decided all the grounds regarding the nature of the occupation. The Division Bench referred to the increasing tendency to hold on to the government property. The Division Bench in paragraph 57 held that *"The Hon'ble Supreme Court has commented upon the increasing tendency to hold on to the Government property and termed that there is a mushroom growth of unauthorised occupation of Government premises in almost all parts of the country in flagrant violation of the rules prevailing in the civilised society, which is detrimental to the interest of a large number of Government servants, who have been waiting for years together for allotment of Government premises."* With these observations, the Division Bench rejected the petitioners' plea for seeking conversion of the respective premises given in lieu of their employment on an ownership basis.

37. As far as the arguments made for the protection of possession by applying Section 53-A of the TP Act are concerned, it is necessary to deal with the arguments by referring to the well-settled legal principles for the applicability of Section 53-A of the TP Act. Section 53-A of the TP Act reads as under :

“53-A. Part performance.—Where any person contracts to transfer for consideration any immovable property by writing signed by him or on his behalf from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty,

and the transferee has, in part performance of the contract, taken possession of the property or any part thereof, or the transferee, being already in possession, continues in possession in part performance of the contract and has done some act in furtherance of the contract,

and the transferee has performed or is willing to perform his part of the contract,

then, notwithstanding that or, where there is an instrument of transfer, that the transfer has not been completed in the manner prescribed therefor by the law for the time being in force, the transferor or any person claiming under him shall be debarred from enforcing against the transferee and persons claiming under him any right in respect of the property of which the transferee has taken or continued in possession, other than a right expressly provided by the terms of the contract:

Provided that nothing in this section shall affect the rights of a transferee for consideration who has no

notice of the contract or of the part performance thereof.”

38. The protection under Section 53-A of the TP Act requires the basic principles of a written agreement and the possession is in part performance of the contract. So far as the facts of the present case are concerned, admittedly, there is no written contract between the petitioners and the corporation. In fact, the Division Bench in the case of ***More Jeevan Yashwant and Others***, in categorical terms, held that the premises in question are public property and the corporation has no authority to allot the same on an ownership basis. The observations of the Hon'ble Apex Court relied upon by the petitioners in the recent decision of ***Vivek Gawde and Others*** are with reference to the occupants of the location at Mithanagar, Goregaon. The Hon'ble Apex Court in paragraph 26 observed as under:

“26. In view of such liberty being granted to such authority to exercise its power under Section 105B of the MMC Act, it is not only in the interest of the Corporation to follow the procedure, since the said section also contemplate the levy of damages or compensation for contravention of the orders of the Commissioner, who has been asked to vacate the premises by virtue of sub-section (6) of Section 105B.

The procedural shortcut which the Corporation is adopting is not only denying justice to the petitioners but is also depriving the Corporation to initiate action in terms of the scheme contained in Section 105B of the MMC Act which permits the Corporation to evict persons from its premises and also to recover rent and taxes and arrears in case there is failure to vacate the premises. Enquiry officer unmindful of the provision has proceeded with the show cause notice as an empty formality with a closed mind, about the conclusion which has arrived at, before evicting the occupants.”

39. The Hon’ble Apex Court held that if at all the respondent in the said cases raised a plea of Section 53-A before the enquiry officer, the same shall be decided bearing in mind that such a point is not in the nature of a demurrer which could be raised for nipping the proceedings in the bud for lack of procedure. The present case deals with the location at Parksite, Vikhroli. However, the grounds raised by all these occupants from these locations have already been decided by the Enquiry Officer. The findings recorded in the present case are consistent with the findings recorded in the decision of ***More Jeevan Yashwant and Others***. Hence, the liberty granted by the Hon’ble Apex Court is with reference to the grounds raised in the case of ***Vivek Gawde and Others*** where this court had

framed points for consideration to be decided by the Enquiry Officer in the pending enquiry. So far as the present petitions are concerned, the appeal court has in detail discussed all the documents relied upon by way of additional evidence. Though all the petitioners have never filed any separate application for leading additional evidence, all the documents are referred to and relied upon by the appeal court. For the sake of clarity this court has marked compilation of documents as 'X-1' and 'X-2' and the third compilation which contained the special leave petition filed before the Hon'ble Apex Court. The decision by the appeal court examines all the documents relied upon by the petitioners with reference to the protection under Section 53-A.

40. The appeal court held that the essential condition for part-performance of the contract, namely, taking possession of the property, is absent in the facts of the present case. The consideration for finalisation of the terms is with reference to the letters issued by the society and the recommendation by the Corporation. The concept of the redevelopment scheme and Regulation No. 33(7) was also considered from 1966 to 1989 and from 1989 to 2007. The appeal court held that the scheme was never finalised and there was no material on record that the State

Government had granted any approval for granting a lease to the co-operative societies. Even after the decision of the Hon'ble Apex Court in the year 2017 confirming the decision of the Division Bench in the case of ***More Jeevan Yashwant and Others*** there was no valid or legal contract as contemplated under Section 53-A to apply any protection as argued on behalf of the petitioners. The exchange of the pre-proposal and preparation of the conditions that would be required for compliance of the proposal was not on record. Hence, the situation post 2017 was also considered by the appeal court. The appeal court therefore rightly held that in view of the decision of the Division Bench in the case of ***More Jeevan Yashwant and Others*** as confirmed upto the Apex Court and the documents on record does not contemplate any protection under Section 53-A of the TP Act.

41. The Hon'ble Apex Court in the decision of ***Sudhir Bhatia*** held that it is sufficient for the party seeking permission to produce additional evidence that it establishes that such evidence could not, after the exercise of due diligence, be produced at the time when the decree appeal against was passed. This court, in the decision of ***The Premier Automobiles Ltd.*** held that the intention of the legislature appears to be to give an additional opportunity to the

parties to produce the evidence which was not produced at the trial stage for the reasons mentioned in clause (aa). This Court in the decision of *Hasanate Fidayyiah* held that the exercise of the jurisdiction by the appellate court to permit production of additional evidence is to be able to pronounce the judgment based on the record of the trial court as it was, and it might still consider that in the interest of justice, something which remained obscure should be filled up so that it can pronounce the judgment in a more satisfactory manner.

42. In the decision relied upon by the learned counsel for the petitioners in the case of *T S Karthikeya Mudaliar*, the High Court at Madras held that Section 53-A of the TP Act furnishes a statutory defence to a person who has no registered title if he can prove a written and signed contract in his favour and some action on his part in part performance of that contract.

43. The Hon'ble Apex Court in the decision of *Ghanshyam* held that the buyer, having performed his part of the contract and lawfully in possession, acquires possessory title, which is liable to be protected in view of Section 53-A of the TP Act. The Hon'ble Apex Court in the decision of *Maneklal Mansukhbhai* held that

section 53-A of the TP Act, furnishes a statutory defence to a person who has no registered title deed in his favour to maintain his possession, if he can prove a written and signed contract in his favour and some action on his part in part performance of that contract.

44. The Hon'ble Apex Court, in the decision of ***Bibi Batool Jafer Gulam Hussein***, while upholding the validity of Section 105B of the MMC Act, held that there has been no lack of guidance, that is, there exist principles for guidance, and those principles would guide the authority concerned, and there would be no discrimination or violation of Article 14 of the Constitution of India. In the decision of ***Maganlal Chhaganlal (P) Ltd.***, the Hon'ble Apex Court upheld the legality of the proceedings taken under Chapter V-A of the MMC Act and the Bombay Government Premises Eviction Act 1955.

45. In the present case, the findings recorded by the enquiry officer were also considered in detail by the appeal court. The occupancy of the petitioners, therefore, was confirmed as based on the occupancy in pursuance of the respective employment. Hence, the termination of the occupancy by the corporation was held to be

legal and valid, and the petitioners' occupation is held as unauthorised.

46. The reasons recorded by the appeal court are based on the findings recorded by the Division Bench of this court in the case of ***More Jeevan Yashwant and Others*** as confirmed by the Apex Court. None of the documents relied upon by the petitioners by way of additional evidence supports the plea of protection of possession under Section 53-A of the TP Act. The reasons recorded by the appeal court are therefore consistent with the view taken by the Division Bench in the case of ***More Jeevan Yashwant and Others***, as confirmed by the Apex Court. The nature of the structure involved in this litigation is held as public property. The petitioners' occupancy is held only in lieu of employment. Thus, no different view can be taken in these petitions. None of the parameters contemplated under Section 53-A of the TP Act exist. There is neither any written contract to transfer the structures nor any terms necessary to constitute the transfer that can be ascertained with reasonable certainty. The findings recorded by the Division Bench, holding that the petitioners' possession is in lieu of the employment and that there existed no contract to transfer the structures on a permanent basis, are confirmed by the Hon'ble

Apex Court. Hence, in the absence of any contract to transfer the structures on a permanent basis, the petitioners' possession cannot be held as in part performance of any contract to transfer the structures. The source of possession and the nature of continued possession is a relevant factor to consider the applicability of Section 53-A. Hence, there is no question of applying Section 53-A of the TP Act to protect the possession of these petitioners. There is no substance in the arguments made by the learned counsel for the petitioners on novation of contract. In view of the nature of occupancy held in lieu of employment, there is no question of any novation of contract. In view of the peculiar facts of the case as discussed in the preceeding paragraphs, I find substance in the arguments of the learned counsel for the corporation that filing of application to lead additional evidence and raise a plea of Section 53-A and seek an order of remand is an attempt to delay the implementation of the eviction order and continue to illegally occupy the structures.

47. It is a well-established legal principle that no evidence would be relevant in the absence of any supporting pleadings. In the present case, the documents sought to be relied upon by way of additional evidence are not supported by any pleadings. However,

the Appellate Court has considered all the documents and held that none of the documents support the plea of protection of possession as contemplated under Section 53-A of the TP Act. This court has also considered all the documents. I see no reason to take a different view from the view expressed by the Appeal Court. Hence, the Appeal Court has rightly rejected the application under Order XLI Rule 27 of the CPC, as there is no ground made out as contemplated under the said provision.

48. The Appellate Court has passed a well-reasoned judgment after considering all the relevant factual aspects as well as the well-established legal position for applying the protection under Section 53-A of the TP Act. I do not find any illegality or perversity in the reasons recorded in the impugned judgments. There is no ground to exercise the discretionary jurisdiction under Article 227 of the Constitution of India for interfering with the impugned judgments.

49. For the reasons recorded above, the petitions are dismissed.

[GAURI GODSE, J.]

RAJESHWARI
RAMESH
PILLAI

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