# Municipal Corporation Of Greater ... vs Vivek V. Gawde on 13 December, 2024

## Author: Dipankar Datta

## Bench: Prashant Kumar Mishra, Dipankar Datta

REPORTAB

2024 INSC 985

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. OF 2024
[ARISING OUT OF SLP (CIVIL) NOS. 19602-19619 OF 2022]

MUNICIPAL CORPORATION OF GREATER
MUMBAI AND OTHERS … APPELLANTS

VERSUS

VIVEK V. GAWDE ETC. ETC. …RESPONDENTS

JUDGMENT

DIPANKAR DATTA, J.

1. Leave granted.

2. The appellants are aggrieved by the common judgment and order dated 19th July, 20221 passed on a batch of writ petitions under Articles 226 and 227 of the Constitution by a learned Judge of the High Court of Bombay.

3. The operative part of the impugned order expedites proceedings for eviction pending before the Inquiry Officer under the Mumbai Municipal Corporation Act, 18882 against the respondents in the manner directed within 12 months. This direction could not have and has not left the appellants aggrieved; however, they are seriously aggrieved for an altogether different Date: 2024.12.13 19:29:14 IST Reason:

> impugned order, hereafter Act, hereafter reason, i.e. the learned Judge has framed points for determination by the Inquiry Officer. According to the appellants,

> proceedings for eviction of unauthorised occupants of public premises are summary in nature where, upon a show cause notice being issued, the noticee is required to place his defence which the Inquiry Officer, as the delegate of the Municipal Commissioner, is required to consider, reasonably, and proceed to determine, in accordance with fair procedure, as to whether the noticee is indeed an unauthorised occupant. Also, the Inquiry Officer is under obligation to bear in mind the provisions in Chapter V-A of the Act titled 'POWER TO EVICT PERSONS FROM CORPORATION PREMISES', which is a code in itself, while so proceeding. In the present cases, the appellants submit, the learned Judge took upon himself the burden of framing points for determination and has, in effect, laid down a procedure which is not only contrary to the provisions of Chapter V-A of the Act but in the process has nullified binding decisions of the High Court and this Court and thrown legal principles asunder, by acting entirely in excess of jurisdiction.

4. Before proceeding further, it would be worthwhile to notice the basic facts triggering these appeals.

4.1. The respondents are occupants and/or legal heirs of the original occupants who were allotted the subject premises on leave and license basis in the 1960s, owing to their employment with the appellants. 4.2. In 2007, eviction proceedings were initiated against the respondents under the provisions of the Act. The respondents knocked the doors of the High Court, invoking its writ jurisdiction, seeking to convert their tenancy to permanent ownership on the basis of a resolution which had allegedly been passed by the Municipal Commissioner. The High Court firmly struck down such challenge by holding that the land belonged to the people and could not be the subject of State largesse, especially when the terms of the respective allotments categorically stated that the license would terminate upon the occupant's retirement from municipal service. This Court, vide order dated 01st May, 2017 dismissed the challenge to the order of the High Court refusing to nullify the eviction proceedings, thus, stamping its approval on initiation and continuation of such proceedings. 4.3. Notices were issued to the respondents under section 105B(1) of the Act, directing them to vacate the premises which triggered the second round of litigation by the respondents. They assailed the same, inter alia, on the ground of breach of principles of natural justice. The High Court by its order dated 8th December, 2021 allowed the challenge with a direction to the Inquiry Officer to decide the eviction proceedings de novo. 4.4. It is the re-commencement of these inquiry proceedings which has ultimately resulted in the present round of litigation. Put on notice, the respondents wished the Inquiry Officer to decide two primary contentions:

> (i) whether in the absence of regulations framed under section 105H of the Act, the proceedings should continue; and (ii) whether the Municipal Commissioner ought to refer the dispute to any independent forum for a decision in a just, fair and unbiased manner. By an order dated 21st March, 2022, the Inquiry Officer ruled against the respondents. Aggrieved thereby, the respondents presented an appeal before the Principal Judge, City Civil and Sessions Court, Mumbai under section 105F of the Act. The appellate authority by its order dated 4th May, 2022 refused to interfere and dismissed the appeals as not maintainable. Still aggrieved, the respondents, in yet

> another challenge, invoked the jurisdiction of the High Court under Articles 226 and 227 of the Constitution and assailed the eviction proceedings premised on the same points that were raised before the Inquiry Officer, i.e., (i) regulations not having been framed under section 105H of the Act, proper conduct of the proceedings cannot even be thought of; and (ii) institutional bias has vitiated the proceedings and the rule nemo debet esse judex in propria sua causa breached to the utter prejudice and detriment of the noticees, inasmuch as the Inquiry Officer being the delegate of the Municipal Commissioner would be unlikely to derogate from the authority's decision to evict them.

5. The High Court, in the impugned judgment, commenced with deciding the issue in favour of the appellants herein by holding that mere lack of regulations could not be a valid ground for keeping the proceedings in abeyance. It was further held that though the Inquiry Officer was an employee of the first appellant, he was acting in a quasi-judicial capacity under section 68 of the Act in an independent manner, and was thus duly authorized to conduct the inquiry proceedings and pass appropriate orders on the basis of evidence adduced.

6. However, after holding that the Inquiry Officer was so authorised, the High Court, in an apparent volte face which is unexplainable, proceeded to frame the following 9 (nine) points for determination with respect to the pending inquiry proceedings:

> "Points for determination in the Inquiry proceedings before Respondent No. 2.
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> A. Whether the Applicant (MCGM) proves that the premises in the aforesaid 18 enquiries are Municipal staff quarters? B. Whether the Applicant (MCGM) proves that upon retirement of the employees, their possession of the said premises in the aforesaid 18 enquiries has/had become unauthroized (sic, unauthorized) C. Whether the Applicant (MCGM) proves that the proceedings under section 105B of the MMC Act, 1888 in the aforesaid 18 enquiries are within the period of limitation prescribed under Article 137 under the Schedule to the Indian Limitation Act, 1963?
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> D. Whether the Opponents prove that the proceedings u/s 105B in the aforesaid enquiries are barred by the law of limitation and are required to be dismissed under Section 3 of the Indian Limitation Act, 1963? E. Whether the Applicant (MCGM) proves that the Enquiry Officer has the jurisdiction to try and decide the question raised by the Opponents relating to their continuation in possession of the enquiry premises u/s 53A of the Transfer of Property Act, 1882?
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> F. Whether the Opponents prove that they are entitled to continue in possession of the premises in the aforesaid 18 enquiries u/s 53A of the Transfer of Property Act, 1882 irrespective of the proceedings u/s 105B of the MMC Act, 1888?
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> G. Whether the Opponents prove that the proceedings u/s 105B are vitiated by "institutional bias" (Nemo judex in causa sua i.e., No one can be a judge in their own

case) as the Enquiry Officer being a delegate of the Municipal Commissioner cannot decide the enquiry proceedings contrary to the stand of the Municipal Commissioner in his representation/notice dated 20/12/2007 sent to the Government of Maharashtra under the second proviso to section 64(3) of the MMC Act, 1888 for cancellation of the Improvement Committee Resolution No. 208 dated 10/08/1989 and the Municipal Corporation Resolution No. 343 of 1989 dated 01/09/1989 or any other or further letter sent by the Municipal Commissioner to the Government of Maharashtra including letter dated 16/09/2017 pursuant to the meeting dated 03/05/2017 presided by the Chief Minister?

H. Whether the Opponents prove that the State Government is a proper and necessary party to the proceedings u/s. 105B of the MMC Act, 1888 and the proceedings ought to be dismissed for its non-joinder? I. Whether the Opponents prove that the Enquiry Officer does not have powers to summarily decide the proceedings u/s. 105B of the MMC Act, 1888 without the regulations u/s. 105H prepared by the Municipal Commissioner?"

7. The appellants have assailed the impugned order on the grounds that Chapter V-A of the Act being a complete code in itself, the High Court effectively granted a premium to the dilatory tactics being adopted by the respondents who are none else but unauthorised occupants of public premises.

8. These appeals stem from the third round of litigation initiated by the respondents before the High Court and it is the second which has reached the Supreme Court. The proceedings, pertaining to eviction of unauthorised occupants despite having commenced a decade and a half back, on 28th January, 2009 to be precise, have not progressed much due to repeated forays made by the respondents questioning the jurisdiction of the Inquiry Officer to proceed against them. Assuming that this judgment terminates the third round of litigation, without there being a review, the Inquiry Officer has to resume proceedings from the stage of inquiry allowing the parties to lead evidence. Upon evidence being led by both parties, it is the appellants' assertion that it would be for the Inquiry Officer to identify the contentious issues that arise for decision by him and by assigning reasons in support of the conclusions reached qua such issues, he is required to submit a report for consideration by the Municipal Commissioner. Even before the stage for leading evidence having matured, the appellants allege that the High Court has unnecessarily interfered and deflected the course of justice.

9. On the contrary, the respondents have voiced in chorus that the approach of the High Court is one that sub-serves justice with a view to secure the precious right to life of the respondents by narrowing down the controversy so that the proceedings could be taken to its logical conclusion as early as possible. Mr. Pai, learned senior counsel for the respondents, however, has been fair in conceding certain points but having regard to the long pendency of the eviction proceedings, we do not wish to decide any point resting on such concession.

10. Having recorded thus, we now proceed to adjudicate the lis on merits.

11. We deem it fit to commence the discussion with an examination of the constitutional provisions invoked by the respondents before the High Court i.e. under Articles 226 and 227. Challenge was laid in the writ petitions to an order passed by the Principal Judge, City Civil Court, Mumbai, in appeals under section 105F of the Act. Such order held the respondents' appeals to be not maintainable. In their writ petition, the respondents sought, inter alia, a writ of certiorari to quash the orders passed by the Principal Civil Judge and that of the Inquiry Officer. We shall first proceed to examine the challenge laid to the former.

12. A perusal of section 105F(1) would be of profit. It reads:

> 105F. Appeals. (1) An appeal shall lie from every order of the Commissioner, made in respect of any corporation premises, under section 105B or section 105C, to an appellate officer who shall be the principal Judge of the City Civil Court of Bombay or, such other judicial officer in Brihan Mumbai of not less than ten years' standing, as the principal Judge may designate in this behalf.

13. The question that arises is, whether the order was passed by the Principal Judge as a persona designata, so as to be amenable to writ jurisdiction under Article 226 or whether the same was passed in the capacity of a judicial authority for the same to be amenable to Article 227 jurisdiction? This question has been emphatically answered by a 3-Judge Bench decision of this Court in LIC v. Nandini J. Shah3, wherein this Court with respect (2018) 15 SCC 356 to a similar provision of appeal in the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 held that:

> "34. ***We are not called upon to consider the question as to whether the Estate Officer, while exercising powers invested in him, acts as a court or has the trappings of a court. The only question that we have attempted to answer is whether the appointment of the Appellate Officer referred to in Section 9 of the Act before whom an appeal shall lie, is in the capacity of persona designata or as a court.
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> 35. Sub-section (1) of Section 9 is the core provision to be kept in mind for answering the point in issue. It postulates that an appeal shall lie from every order of the Estate Officer, passed under the Act, to an Appellate Officer. As to who shall be the Appellate Officer, has also been specified in the same provision. It predicates the District Judge of the district in which the public premises are situated or such other judicial officer in that district of not less than 10 years' standing as the District Judge to be designated for that purpose. The first part of the provision does suggest that the appeal shall lie to an Appellate Officer, however, it does not follow therefrom that the Appellate Officer is persona designata. Something more is required to hold so. Had it been a case of designating a person by name as an Appellate Officer, the concomitant would be entirely different. However, when the Appellate Officer is either the District Judge of the district or any another judicial officer in that district possessing necessary qualification who could be designated by the District Judge, the question of such investiture of power of an appellate authority in the District Judge or Designated Judge would by no standards acquire the colour or for that matter

trappings of persona designata. In the first place, the power to be exercised by the Appellate Officer in terms of Section 9 is a judicial power of the State which is quite distinct from the executive power of the State. Secondly, the District Judge or designated judicial officer exercises judicial authority within his jurisdiction. Thirdly, as the Act predicates the Appellate Officer is to be a District Judge or judicial officer, it is indicative of the fact of a pre-existing authority exercising judicial power of the State. Fourthly, the District Judge is the creature of Section 5 of the Maharashtra Civil Courts Act, 1869, who presides over a District Court invariably consisting of more than one Judge in the district concerned. The District Court exercises original and appellate jurisdiction by virtue of Sections 7 and 8 respectively, of the 1869 Act and is the principal court of original civil jurisdiction in the district within the meaning of CPC, as per Section 7 of that Act. As per Section 8 of the Act of 1869, the District Court is the court of appeal from all decrees and orders passed by the subordinate courts from which an appeal lies under any law for the time being in force. ***

39. Indeed, the expression used in Section 9 is 'Appellate Officer' and not 'appellate authority' as has been used in Section 6-C of the Essential Commodities Act, 1955, considered by the Supreme Court in Thakur Das [Thakur Das v. State of M.P., (1978) 1 SCC 27 : 1978 SCC (Cri) 21]. That, however, would neither make any difference nor undermine the status of the District Judge or the designated judicial officer so as to reckon their appointment as persona designata. The thrust of Section 9(1) is to provide for remedy of an appeal against the order of the Estate Officer before the District Judge who, undeniably, is a pre-existing authority and head of the judiciary within the district, discharging judicial power of the State including power to condone the delay in filing of the appeal and to grant interim relief during the pendency of the appeal. Though described as an Appellate Officer, the District Judge, for deciding an appeal under Section 9, can and is expected to exercise the powers of the civil court. ***

59. Reverting to the facts of the present case, the respondents had resorted to remedy of writ petition under Articles 226 and 227 of the Constitution of India. In view of our conclusion that the order passed by the District Judge (in this case, Judge, the Bombay City Civil Court at Mumbai) as an Appellate Officer is an order of the subordinate court, the challenge thereto must ordinarily proceed only under Article 227 of the Constitution of India and not under Article 226.***" (emphasis supplied)

14. In view of such binding decision, the inescapable conclusion presenting itself is that the appellate order under challenge before the High Court was rendered by a civil court, and it is trite that orders passed by a civil court cannot be challenged in a writ petition under Article 226 of the Constitution. This point in law has been decisively reiterated in the 3-Judge Bench decision in Radhey Shyam v. Chhabi Nath4. This Court, while holding that an order of the civil court could only be challenged under Article 227 of the Constitution, and not Article 226 thereof, ruled that:

> "25.***All the courts in the jurisdiction of a High Court are subordinate to it and subject to its control and supervision under Article 227. Writ jurisdiction is constitutionally conferred on all the High Courts. Broad principles of writ jurisdiction followed in England are applicable to India and a writ of certiorari lies against patently erroneous or without jurisdiction orders of tribunals or authorities or courts other than judicial courts. There are no precedents in India for the High Courts to issue writs to the subordinate courts. Control of working of the subordinate courts in dealing with their judicial orders is exercised by way of appellate or revisional powers or power of superintendence (2015) 5 SCC 423 under Article 227. Orders of the civil court stand on different footing from the orders of authorities or tribunals or courts other than judicial/civil courts. While appellate or revisional jurisdiction is regulated by the statutes, power of superintendence under Article 227 is constitutional. The expression "inferior court" is not referable to the judicial courts, as rightly observed in the referring order [Radhey Shyam v. Chhabi Nath, (2009) 5 SCC 616] in paras 26 and 27 quoted above.

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27. Thus, we are of the view that judicial orders of civil courts are not amenable to a writ of certiorari under Article 226. We are also in agreement with the view [Radhey Shyam v. Chhabi Nath, (2009) 5 SCC 616] of the referring Bench that a writ of mandamus does not lie against a private person not discharging any public duty. Scope of Article 227 is different from Article 226." (emphasis supplied)

15. Thus, the writ petition of the respondents seeking quashing of the decision of a civil court by issuing a writ of certiorari was not maintainable and ought to have been dismissed at the threshold with respect to its primary relief.

16. We now proceed to discuss, noticing that the petition of the respondents was also filed under Article 227, whether the High Court could have granted succour to the respondents by exercise of its powers under such article. It is well settled that the provision bestows the high courts with powers of administrative and judicial superintendence over subordinate courts. The test for exercise of such power was laid down in a 5-Judge Constitution Bench decision of this Court in Rajendra Diwan v. Pradeep Kumar Ranibala5 as follows:

> "85. The power of superintendence conferred by Article 227 is, however, supervisory and not appellate. It is settled law that this power of judicial superintendence must be exercised sparingly, to keep subordinate courts and tribunals within the limits of their authority. When a Tribunal has acted within its jurisdiction, the High Court does not interfere in exercise of its extraordinary writ jurisdiction unless there is grave miscarriage of justice or flagrant violation of law. Jurisdiction under Article 227 cannot be exercised 'in the cloak of an appeal in disguise'.
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> (2019) 20 SCC 143

> 86. In exercise of its extraordinary power of superintendence and/or judicial review under Articles 226 and 227 of the Constitution of India, the High Courts restrict interference to cases of patent error of law which go to the root of the decision; perversity; arbitrariness and/or unreasonableness; violation of principles of natural justice, lack of jurisdiction and usurpation of powers. The High Court does not re-

assess or re-analyse the evidence and/or materials on record....The writ jurisdiction of the High Court cannot be converted into an alternative appellate forum, just because there is no other provision of appeal in the eye of the law." (emphasis supplied)

17. Though adverted to before, a perusal of the grounds urged in the writ petition reveals two primary grounds of challenge which are interconnected – violation of principles of natural justice and that of institutional bias. The latter ground will be dealt with at a subsequent part of this judgment while the former does not appear to carry any merit.

18. It is not the respondents' submission that they were not given an opportunity of being heard by the civil court. Such opportunity having been given, even if the conclusion arrived at by the civil court was erroneous, it could not be remedied by the High Court in exercise of its powers under Article 227 of the Constitution. As was held by this Court in Mohd. Yunus v. Mohd. Mustaqim6, a mere wrong decision is not enough to attract the jurisdiction of the High Court under Article 227. Thus, the petition of the respondents also failed to merit the exercise of the High Court's supervisory powers and should have been rejected in view of the same.

19. We now proceed to consider the second relief claimed in the writ petition of the respondents, i.e., the challenge laid to the order passed by the Inquiry Officer. It is well settled that decisions rendered by administrative authorities can be interfered with by high courts in exercise of Article 226 (1983) 4 SCC 566 powers, however, sparingly. Recently, this Court in W.B. Central School Service Commission v. Abdul Halim7 while considering the scope of interference under Article 226 in an administrative action held that:

> "31. In exercise of its power of judicial review, the Court is to see whether the decision impugned is vitiated by an apparent error of law. The test to determine whether a decision is vitiated by error apparent on the face of the record is whether the error is self- evident on the face of the record or whether the error requires examination or argument to establish it. If an error has to be established by a process of reasoning, on points where there may reasonably be two opinions, it cannot be said to be an error on the face of the record, as held by this Court in Satyanarayan Laxminarayan Hegde v. Millikarjun Bhavanappa Tirumale [Satyanarayan Laxminarayan Hegde v. Millikarjun Bhavanappa Tirumale, AIR 1960 SC 137] . If the provision of a statutory rule is reasonably capable of two or more constructions and one construction has been adopted, the decision would not be open to interference by the writ court. It is only an obvious misinterpretation of a relevant statutory provision, or ignorance or disregard thereof, or a decision founded on reasons which are clearly wrong in law, which can be corrected by the writ court by issuance of writ of certiorari.

> 32. The sweep of power under Article 226 may be wide enough to quash unreasonable orders. If a decision is so arbitrary and capricious that no reasonable person could have ever arrived at it, the same is liable to be struck down by a writ court. If the decision cannot rationally be supported by the materials on record, the same may be regarded as perverse.
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> 33. However, the power of the Court to examine the reasonableness of an order of the authorities does not enable the Court to look into the sufficiency of the grounds in support of a decision to examine the merits of the decision, sitting as if in appeal over the decision. The test is not what the Court considers reasonable or unreasonable but a decision which the Court thinks that no reasonable person could have taken, which has led to manifest injustice. The writ court does not interfere, because a decision is not perfect.' (emphasis supplied)

20. The decision was approved by a further decision of this Court in Municipal Council, Neemuch v. Mahadeo Real Estate8, wherein it was held that:

> (2019) 18 SCC 39 (2019) 10 SCC 738 "14. It could thus be seen that the scope of judicial review of an administrative action is very limited. Unless the Court comes to a conclusion that the decision-maker has not understood the law correctly that regulates his decision-making power or when it is found that the decision of the decision-maker is vitiated by irrationality and that too on the principle of 'Wednesbury unreasonableness' or unless it is found that there has been a procedural impropriety in the decision-

making process, it would not be permissible for the High Court to interfere in the decision-making process. It is also equally well settled that it is not permissible for the Court to examine the validity of the decision but this Court can examine only the correctness of the decision-making process.

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16. It could thus be seen that an interference by the High Court would be warranted only when the decision impugned is vitiated by an apparent error of law i.e. when the error is apparent on the face of the record and is self-evident. The High Court would be empowered to exercise the powers when it finds that the decision impugned is so arbitrary and capricious that no reasonable person would have ever arrived at. It has been reiterated that the test is not what the Court considers reasonable or unreasonable but a decision which the Court thinks that no reasonable person could have taken. Not only this but such a decision must have led to manifest injustice." (emphasis supplied)

21. For the present, we keep aside the doctrine of merger. Once the appellate order of the Appellate Officer came into existence, the order of the Inquiry Officer merged in the former. It had no independent existence. Yet, we have perused the order of the Inquiry Officer and we wish to consider, at this point of time, whether the same warrants interdiction. A perusal thereof reveals a reasoned order, supported by judicial decisions, answering distinctly each and every contention

raised by the noticees. What seems to be apparent is the absence of any of the telling circumstances, as laid down in the decisions above, which could have warranted interference by the High Court in exercise of its writ jurisdiction under Article 226; thus, on this count too, the respondents' writ petition was liable to be dismissed.

22. In view of the discussion aforesaid, it is held that the High Court in the present case exceeded the ambit of both, its writ and supervisory, jurisdiction insofar as it proceeded to frame points for determination in a summary proceeding, more so when the proceedings were at the embryonic stage of notice having been issued to the respondents. Having directed that the proceedings be conducted in consonance with the principles of natural justice, the High Court overstepped its limits and took unto itself a duty which the Act entrusts the statutory authority to exercise. The High Court could, at best, have moulded relief as deemed fit and proper, but in framing issues for the Inquiry Officer to determine, the High Court went far beyond its domain by substituting its own wisdom for that of the civil court.

23. Now, it would be apt to examine the points of determination framed by the High Court and decide how far the same are justified on facts and in the circumstances and whether the same were, at all, necessary. The points can be classified into six categories, which we shall delineate and address hereunder.

24. The first two points framed by the High Court pertain to the status of the subject premises and the nature of occupation thereof by the residents. Determination of these issues stands barred by res judicata, a previous bench of the High Court having answered the same against the respondents vide judgment and order dated 06th January, 2017 by expressly holding that the allotments not having been made to the respondents independent of their identity as municipal servants, they could not stake any claim therein. This decision attained finality by the dismissal of the special leave petition by this Court vide order dated 01st May, 2017.

25. The third and fourth points touch upon the aspect as to whether the proceedings initiated under section 105B of the Act are barred by limitation. Reference has been made by the High Court to section 3 of the Limitation Act, 19639. We are at a loss to comprehend as to how section 3, scope whereof is relatable to proceedings like suits, appeals and applications before judicial fora, could have been attracted to eviction proceedings before the Inquiry Officer which, though obliging the Inquiry Officer to discharge quasi-judicial functions in course thereof, yet, are basically administrative in character. Additionally, in referring to Article 137 , the High Court ignored and/or overlooked the Preamble of the Limitation Act and the heading of the Third Division under the Schedule read with sections 2(j) and section 3.

26. The fifth and sixth points framed by the High Court pertain to the right of the respondents to remain in possession by virtue of section 53A of the Transfer of Property Act, 1882. It is alleged that the first appellant instead of resuming possession of the subject premises had retained the retirement benefits of the respondents as monetary consideration for converting the nature of possession from that of a licensee to that of an owner. We leave this point open for the Inquiry Officer to determine, if at all the respondents raise the same before him, bearing in mind the fact

that such point is not in the nature of a demurrer which could be raised for nipping the Limitation Act, hereafter proceedings in the bud for lack of jurisdiction and, thus, had not been examined in the previous round of litigation.

27. The seventh point raises the issue as to whether the proceedings are vitiated by institutional bias insofar as the same are being conducted by an officer of the first appellant. The answer to this issue is squarely covered by the decision of this Court in Accountant and Secretarial Services (P) Ltd. v. Union of India10, wherein the question which fell for consideration was whether the appointment of an officer of a nationalised bank, in proceedings pertaining to eviction from the premises of the very same bank, would violate Article 14 of the Constitution. This Court, while upholding such appointment, held that:

> "32. Dr Chitale, while initially formulating his contentions, outlined an argument that the provision in the 1971 Act appointing one of the officers of the respondent Bank as the Inquiry Officer is violative of Article 14. We do not see any substance in this contention. In the very nature of things, only an officer or appointee of the government, statutory authority or corporation can be thought of for implementing the provisions of the Act. That apart, personal bias cannot necessarily be attributed to such officer either in favour of the bank or against any occupant who is being proceeded against, merely because he happens to be such officer. Moreover, as pointed out earlier, the Act provides for an appeal to an independent judicial officer against orders passed by the Inquiry Officer. These provisions do not, therefore, suffer from any infirmity. ..." (emphasis supplied)

28. This decision was affirmed by this Court in Delhi Financial Corpn. v. Rajiv Anand11, wherein this Court further explained that:

> "14. Thus, the authorities disclose that mere appointment of an officer of the corporation does not by itself bring into play the doctrine that 'no man can be a judge in his own cause'. For that doctrine to come into play it must be shown that the officer concerned has a personal bias or a personal interest or has personally acted in the matter (1988) 4 SCC 324 (2004) 11 SCC 625 concerned and/or has already taken a decision one way or the other which he may be interested in supporting."

29. Reference to the decision of this Court in Hyderabad Vanaspathi Ltd. v.

A.P. SEB12 would also be of profit, wherein the 3-Judge Bench was tasked with examining whether adjudication of malpractice and electricity pilferage cases by officers of the very electricity board against whom the wrong has been committed would constitute bias. While negativing such challenge, this Court held that:

> "43. The principle 'nemo judex in causa sua' will not apply in this case as the officers have no personal lis with the consumers. As pointed out by learned Senior Counsel for the Board, they are similar to income tax or sales tax officials. There is nothing

> wrong in their adjudicating the matter especially when the consumers may be represented by an advocate and the formula for making provisional assessment is fixed in the clause itself. ...” (emphasis supplied)

30. The discussion would be incomplete without a reference to the 7-Judge Constitution Bench decision in Maganlal Chhaganlal (P) Ltd. v. Municipal Corpn. of Greater Bombay13 cited by Mr. Mehta, learned senior counsel for the appellants, wherein this Court while upholding the constitutional validity of Chapter V-A of the Act held that:

> “47. If we examine the question before us in the light of these general observations, it will be apparent that the special procedure set out in Chapter VA of the Municipal Act is not substantially more drastic and prejudicial than the ordinary procedure of a civil suit. The initial authority to determine the liability to eviction is no doubt the Municipal Commissioner who is the chief executive officer of the Municipal Corporation and who may not be possessed of any legal training but Section 68 of the Municipal Act provides that this function may be discharged by any Municipal officer whom the Municipal Commissioner may generally or specially empower in writing in that behalf and the Municipal Commissioner can, therefore, authorise a Deputy Municipal Commissioner attached to the Legal Department of the Municipal (1998) 4 SCC 470 (1974) 2 SCC 402 Corporation, who would be an officer trained in law, to discharge this function and indeed we have no doubt that the Municipal Commissioner, if he is himself not trained in law, would do so. The determination of the liability to eviction would, therefore, really in practice be made by a Municipal officer having proper and adequate legal training. Then again, the occupant against whom the special procedure is set in motion would have a right to file his written statement and produce documents and he would also be entitled to examine and cross-examine witnesses. The Municipal Commissioner or other officer holding the inquiry is given the power to summon and enforce the attendance of witnesses and examine them on oath and also require the discovery and production of documents. The occupant is also entitled to appear at the inquiry by advocate, attorney or pleader. Thus, in effect and substance the same procedure which is followed in a civil court is made available in the proceeding before the Municipal Commissioner or other officer holding the inquiry. Then there is also a right of appeal against the decision of the Municipal Commissioner or other officer and this right of appeal is to a senior and highly experienced judicial officer and not to a mere executive authority. The appeal lies to the Principal Judge of the City Civil Court or such other judicial officer in Greater Bombay of not less than ten years standing as the principal Judge may designate in that behalf and it is an appeal both on law and fact. It is true that a revision application against the appellate order is excluded, but if the judicial officer invested with appellate power has failed to exercise his jurisdiction or acted in excess of his jurisdiction or committed an error of law apparent on the face of the record or the decision given by him has resulted in grave miscarriage of justice, it is always open to the aggrieved party to bring it up before the High Court for examination under Article 226 or Article 227. The ultimate decision is, therefore, by a judicial

officer trained in the art and skill of law and not by an executive officer. ...” (emphasis supplied)

31. In view of the above authorities, it is clear as crystal that if the officers have no personal interest in the lis, bias cannot be imputed; especially since, the officer is acting not in his capacity as an executive official, but as a quasi- judicial authority. The issue, thus, does not survive for determination by the Inquiry Officer. It is apposite to note that the High Court, in paragraph 13 of the impugned order had already rendered a finding on the issue by holding that though the Inquiry Officer was an officer of the first appellant, in the inquiry proceedings, he is an independent quasi-judicial officer under the Act. To frame a point despite such determination is plainly incomprehensible.

32. The eighth point raises the issue of impleading the State Government in the proceedings under section 105B of the Act. The legality of the proceedings have already been held against the respondents, and the subject premises admittedly being that of the first appellant, the question of impleading the State Government is superfluous.

33. The ninth point examined by the High Court as regards the Inquiry Officer’s competence to proceed with the inquiry in the absence of regulations having been framed under section 105H of the Act, yet again, compels us to take a critical view. The High Court framed an issue, the answer to which was given by it in paragraph 13 of the impugned order wherein it has been held that mere non-framing of regulations would not entitle the respondents to keep the proceedings in abeyance, and the proceedings would thus continue, in compliance with the principles of natural justice. Further, section 105H of the Act was examined to observe that it was not mandatory for the first appellant to frame regulations, since the provision stated that the Commissioner “may” make regulations for taking possession of premises of the first appellant.

34. We hold that even in the absence of regulations being framed under section 105H of the Act, the proceedings for eviction can be continued by the Inquiry Officer by adhering to principles of natural justice. The said provision cannot be construed as placing an embargo on the Inquiry Officer to proceed until regulations were framed. Much of the utility in ensuring that public premises are made free of unauthorised occupants would be lost on such technical pleas based raised and examined on a provision of law which is not imperative in terms. All that is required, as held above, is adherence to natural justice principles wherever applicable.

35. The impugned order entertaining writ petitions which were not maintainable in the form they were presented did not warrant the High Court to exercise jurisdiction by framing points for determination by the Inquiry Officer. For the foregoing reasons, the same is indefensible; it has to be and is, accordingly, set aside. The civil appeals stand allowed. The Inquiry Officer is directed to allow both parties to lead evidence and raise whatever points are available in defence, except to the extent determined by judicial orders previously. Such officer would proceed to independently notice contentions and issues arising for his decision on the basis of evidence led and the defence raised by the respondents, and decide the claims in consonance with principles of natural justice. The Inquiry Officer is encouraged to proceed with expedition.

36. There shall be no order as to costs.

……J. (DIPANKAR DATTA) ……J. (PRASHANT KUMAR MISHRA) New Delhi;

December 13, 2024.