

*Ajay*

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

**WRIT PETITION NO. 5983 OF 2022**

Vivek Gawde	..	Petitioner
<b>Versus</b>		
Municipal Corporation of Greater Mumbai and Ors.	..	Respondents

**WITH  
WRIT PETITION NO. 5984 OF 2022**

Sharda Ramchandra Indulkar Through her Constituted Attorney Devendra Indulkar	..	Petitioner
<b>Versus</b>		
Municipal Corporation of Greater Mumbai and Ors.	..	Respondents

**WITH  
WRIT PETITION NO. 5985 OF 2022**

Smt. Shweta Shirke And Anr.	..	Petitioners
<b>Versus</b>		
Municipal Corporation of Greater Mumbai and Ors.	..	Respondents

**WITH  
WRIT PETITION NO. 5986 OF 2022**

Sujata Vijay Kadam	..	Petitioner
<b>Versus</b>		
Municipal Corporation of Greater Mumbai and Ors.	..	Respondents

**WITH  
WRIT PETITION NO. 5993 OF 2022**

Abhyudaya B Landge	..	Petitioner
<b>Versus</b>		
Municipal Corporation of Greater Mumbai and Ors.	..	Respondents

**WITH**  
**WRIT PETITION NO. 5994 OF 2022**

Mr. P. S. Shabang	..	Petitioner
<b>Versus</b>		
Municipal Corporation of Greater Mumbai and Ors.	..	Respondents

**WITH**  
**WRIT PETITION NO. 5995 OF 2022**

Mrs. Sushma Bhanudas Sonanis	..	Petitioner
<b>Versus</b>		
Municipal Corporation of Greater Mumbai and Ors.	..	Respondents

**WITH**  
**WRIT PETITION NO. 5996 OF 2022**

Prachi L. Parab	..	Petitioner
<b>Versus</b>		
Municipal Corporation of Greater Mumbai and Ors.	..	Respondents

**WITH**  
**WRIT PETITION NO. 5997 OF 2022**

Anandkumar Sadashiv Parab	..	Petitioner
<b>Versus</b>		
Municipal Corporation of Greater Mumbai and Ors.	..	Respondents

**WITH**  
**WRIT PETITION NO. 5999 OF 2022**

Prakash J. Dalvi		
H. And LR of Smt. Mangala Jaganath Dalvi	..	Petitioner
<b>Versus</b>		
Municipal Corporation of Greater Mumbai and Ors.	..	Respondents

**WITH**  
**WRIT PETITION NO. 6000 OF 2022**

Ashok S. Phodkar	..	Petitioner
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**Versus**

Municipal Corporation of Greater Mumbai  
and Ors.

.. Respondents

**WITH**

**WRIT PETITION NO. 6003 OF 2022**

Bharati Bhosale

H & LR of Smt. Hemlata S. Sakhalkar

.. Petitioner

**Versus**

Municipal Corporation of Greater Mumbai  
and Ors.

.. Respondents

**WITH**

**WRIT PETITION NO. 6004 OF 2022**

Smt. Lalita Bhuvandas Through her  
Constituted Attorney Amruta Sudesh

.. Petitioner

**Versus**

Municipal Corporation of Greater Mumbai  
and Ors.

.. Respondents

**WITH**

**WRIT PETITION NO. 6005 OF 2022**

Bakul Kamalkumar Kothare

.. Petitioner

**Versus**

Municipal Corporation of Greater Mumbai  
and Ors.

.. Respondents

**WITH**

**WRIT PETITION NO. 6010 OF 2022**

Tushar Ghag

H & LR of Shri Kashinath Ghag

.. Petitioner

**Versus**

Municipal Corporation of Greater Mumbai  
and Ors.

.. Respondents

**WITH**

**WRIT PETITION NO. 6011 OF 2022**

Ashok Dattaram Pawar

Through his Constituted Attorney

Supriya Sunil Pawar

.. Petitioner

**Versus**

Municipal Corporation of Greater Mumbai  
and Ors.

.. Respondents

**WITH**

**WRIT PETITION NO. 6067 OF 2022**

Smt. Pushpa Kisan Solanki

.. Petitioner

**Versus**

Municipal Corporation of Greater Mumbai  
and Ors.

.. Respondents

**AND**

**WRIT PETITION NO. 6069 OF 2022**

Mugdha Dube

H & L.R. of Smt. Indira S. Kanvinde

.. Petitioner

**Versus**

Municipal Corporation of Greater Mumbai  
and Ors.

.. Respondents

.....

- Mr. Rajendra Pai, Senior Advocate a/w. Mr. Aloukik R. Pai, Mr. Akshay R. Pai, Mr. Amogh P. Khadye, S. Joshi, Ms. Maansi R. Gupta, Ms. Prajкта Shringarpure, Siddhant V. Doshi, Ms. Ashesha Chheda and Ms. Gauri Patil i/by Bina R. Pai for Petitioners in all 18 Writ Petitions;
- Ms. Dhruvi M. Kapadia a/w. Om Suryavanshi i/by Sunil Sonawane for the Respondents - in all Writ Petitions;
- Ms. Pratibha A. Sankhe, Estate Officer, P & R Ward;
- Mr. Arun Naik, Estate Inspector.

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**CORAM : MILIND N. JADHAV, J.**

**RESERVED ON : MAY 20, 2022.**

**PRONOUNCED ON : JULY 19, 2022.**

**JUDGMENT :**

- 1.** Rule. Rule made returnable forthwith.

**2.** This common judgment shall dispose of the following 18 Writ Petitions: W.P. Nos. 5983 of 2022, 5984 of 2022, 5985 of 2022, 5986 of 2022, 5993 of 2022, 5994 of 2022, 5995 of 2022, 5996 of 2022, 5997 of 2022, 5999 of 2022, 6000 of 2022, 6003 of 2022, 6004 of 2022, 6005 of 2022, 6010 of 2022, 6011 of 2022, 6067 of 2022 and 6069 of 2022.

**3.** The basic facts are common in all the above writ petitions. Proceedings are similar and the impugned order dated 04.05.2022 is a common order passed by the Appellate Authority i.e. the Principal Judge, City Civil and Sessions Court, Mumbai. The above writ petitions were filed on 05.05.2022 and 07.05.2022. At that time, the reasoned impugned order was not available; the reasoned impugned order became available subsequently, and has now been placed on record. The matters have been argued fully by the learned Advocates appearing for the respective parties.

**4.** For the sake of convenience, facts pleaded in Writ Petition No.5983 of 2022 are referred to herein. As stated, facts are identical in all respect otherwise.

**5.** Impugned order dated 04.05.2022 is an interlocutory order rejecting Petitioners' Application for stay of enquiry made section 105B

of the Municipal Corporation Act, 1988 (for short "**the said Act**")  
eviction proceedings which have commenced before Respondent No.3  
- the statutory Enquiry Officer (E.O.) of the Respondent No.1 -  
Municipal Corporation of Greater Mumbai i.e. (for short "**the Corporation**").

**5.1.** Petitioners claim to be occupants/tenants and/or legal heirs/representatives of the original occupants/tenants in respect of the premises, i.e. rooms situated at Chawl No. B/20, Mitha Nagar, near BMC Colony, Goregaon (West), Mumbai - 400 104 (for short "**the said premises**"). Petitioners are members of the Shraddha Co-operative Housing Society Limited, registered under the Maharashtra Co-operative Societies Act, 1960 (for short "**the MCS Act**"). Petitioners/their predecessors are all former employees and/or heirs of former employees of the Corporation.

**5.2.** Petitioners/their predecessors were allotted the said premises i.e. rooms in Mitha Nagar, BMC Colony on leave and license basis almost three to four decades ago. This position is undisputed.

**5.3.** Petitioners claim that Corporation subsequently offered to change the status of the said premises into ownership basis. There

were certain obligations which were met and thus Petitioners continued to remain in possession of the said premises for a long period of time.

**5.4.** There is a variance in the stand of the Petitioners and the Corporation pertaining to the status of the said premises. While Petitioners claim that the said premises were allotted to them with an assurance and understanding that at a later point in time the same would be converted into their names on ownership basis, however the Corporation has refuted this claim. According to the Corporation the said premises were allotted to the Petitioners for occupation only during the tenure of their service with the Corporation as employee of the Corporation and on their superannuation/retirement they/their families were bound to vacate the same. The right of residential housing accommodation provided to the employees of the Corporation is thus intermingled with the claim of the Petitioners seeking entitlement to permanent accommodation in the said premises in the present case.

**5.5.** It is pertinent to make a note that for almost several years after allotment of the said premises to the Petitioners/their predecessors, Corporation did not commence any eviction proceedings under Chapter V-A of the said Act and it is only sometime in 2007 such steps

were taken for the first time.

**5.6.** Some time in the year 2007, Commissioner of the Corporation made a reference to the State Government for disapproving a resolution passed by the Corporation pertaining to persons similarly placed like the Petitioners to form a "Co-operative Housing Society" in the name and style of Shraddha Co-operative Housing Society consisting of residents of Mitha Nagar, Municipal Colony. Corporation as a consequence of taking steps initiated statutory eviction proceedings for the first time under Section 105B of the said Act against all such persons residing in Municipal Colonies around Mumbai. An association was formed to challenge the action of the Corporation to initiate eviction proceedings under Section 105B of the said Act; the association filed Writ Petition No.1797 of 2009 in this Court. A Division bench of this Court (Coram: S.C. Dharmadhikari and B.P. Colabawalla, JJ.) by order dated 06.01.2017 dismissed the Association's Writ Petition. SLP against the order dated 06.01.2017 also came to be dismissed by order dated 01.05.2017.

**5.7.** Corporation thereafter continued with the eviction proceedings under Chapter V-A of the said Act. Though it is pleaded that during the interregnum, there was some development for arriving at a compromise between the Association formed by the Petitioners and



the State Government to convert the status of the said premises into ownership basis in favour of the Petitioners, it is also pleaded that the State Government held meetings with the Association and passed certain affirmative resolutions in the said meetings assuring the Petitioners of the aforesaid conversion into ownership basis. Minutes of such meetings are also placed on record, however nothing fructified.

**5.8.** Hence statutory notices were issued to the Petitioners under section 105B(1) of the said Act on 08.01.2018. On 12.08.2018, Petitioners filed their replies; on 23.01.2018 recording of statement of examination-in-chief of Corporation's witness took place; on 25.01.2018 cross-examination was conducted; on 21.01.2018 evidence of the Petitioners was recorded; Petitioners were cross-examined; arguments concluded and proceedings were adjourned for orders. On 09.02.2018, Petitioners were directed to vacate the said premises within one month.

**5.9.** Being aggrieved, Petitioners filed a batch of 18 writ petitions in this Court assailing the orders passed by the Respondent No.2 - Enquiry Officer on various grounds. By common order dated 08.12.2021, the Petitions were disposed by setting aside the order dated 09.02.2018 and directing the Respondent No.2 - Enquiry Officer

to *de novo* decide the eviction proceedings under Section 105B of the said Act and conclude the same in accordance with law after giving adequate opportunity to the Petitioners to show cause to the notices received by them within a period of six months from the date of the said order.

**5.10.** In the fresh enquiry proceedings Petitioners filed 3 Applications dated 10.02.2022, 21.02.2022 and 25.02.2022 to oppose the conduct of enquiry proceedings, mainly on the ground that regulations for conducting the enquiry were not framed by the Commissioner as prescribed under section 105H of the said Act. By order dated 21.03.2022 Respondent No.2 rejected the Applications and directed both parties to proceed with the enquiry and directed them to record their evidence. Being aggrieved, Petitioners challenged the order dated 21.03.2022 before the Appellate Authority i.e. the Principal Judge, City Civil and Sessions Court, Mumbai and filed an Application for stay of the eviction proceedings before the Respondent No.2. By a speaking order dated 04.05.2022 the stay Application was rejected.

**5.11.** Hence, the present petitions.

**6.** Mr. Pai, learned Senior Advocate appearing for the Petitioners has vehemently argued and made the following submissions:

- (i) that as directed by this Court vide its remand order dated 08.12.2021, before commencement of the enquiry proceedings, Corporation is required to frame the statutory regulations under section 105H of the said Act; that admittedly no such regulations are framed; the Corporation has admitted that there are no regulations framed and therefore in the absence of such regulations which are mandated by the provisions of Section 105H, the statutory enquiry proceedings for eviction of the Petitioners under chapter V-A are non-est, null and void and cannot be proceeded with before the Respondent No.2;
- (ii) that for eviction proceedings to be undertaken there is a mandate on the Corporation to frame the statutory regulations under Section 105H of the said Act which is admittedly not done, hence the enquiry proceedings it proceeded with would stand vitiated;
- (iii) that without the regulations in place it is impossible for the Respondent No.2 to proceed with the statutory enquiry proceedings and grave prejudice and harm would be caused to the Petitioners if they are made to do so;
- (iv) that eviction proceedings under chapter V-A are

proceedings having very serious and penal consequences; the proceedings may culminate into dishousing persons from their dwelling houses occupied since several years on the ground of "unauthorized occupation" and thus affect the constitutional right of such persons to their property and their right to life under Article 21 of the Constitution of India; that when such a drastic state action is involved, there needs to be a statutorily prescribed procedure in place to implement the provisions of the statute; that in the present case, despite Section 105H being on the statute book for several years, the regulations have not been framed by the Corporation to devise the procedure for eviction of persons under Section 105B and this is fatal to the enquiry proceedings if commenced;

- (v) that the Enquiry Officer is an officer/delegate of the Corporation and has been delegated the powers to conduct eviction proceedings and has been given the power to pass eviction orders after duly appreciating the evidence on record, thus, Respondent No.2 has adjudicating powers after considering the evidence collected/presented by the parties; hence without the

regulations in place, the Enquiry Officer cannot proceed with the trial and collect evidence without there being any proper procedure and mechanism to conduct the eviction proceedings;

(vi) that delegation of judicial enquiry in eviction proceedings in the hands and at the discretion of the Enquiry Officer without the statutory regulations in place as to the procedure for conduct of such proceedings results into "excessive delegation" and is in violation of the Constitution of India, 1950;

(vii) that clauses (a) to (f) of Section 105H cover various subjects of such eviction proceedings and the statutory regulations, if framed under Section 105H, will determine the entire procedure to be followed for conduct of eviction proceedings under Section 105B; that in the absence of such regulations conduct of eviction proceedings could be subject to the unguided and excessive powers of the Enquiry Officer which in itself will be against the basic principles of natural justice;

(viii) that Corporation falls under the definition of "State" as defined under Article 12 of the Constitution of India, 1950 and if such proceedings are permitted to be continued, it

would result in violation of the fundamental rights enshrined in the Constitution of India, 1950 and there will be an arbitrary power and discretion vested in the hands of the Enquiry Officer who is an officer of the Corporation;

(ix) that in the absence of regulations, enquiry proceedings will suffer from "excessive delegation";

(x) that the present enquiry being of a very peculiar nature, involves determination of complex questions of title to the said premises with reference to various statutes as well as interpretation of statutes and these questions cannot be answered by Enquiry Officers in summary proceedings without the regulation in place;

(xi) that the present enquiry involves serious questions of public interest relating to disputed questions of facts and law spanning over three decades, further claims of the Petitioners are contrary to the stand taken by the Corporation; hence in these circumstances there is every possibility of the Respondent No.2 having a biased approach in the manner of conducting the enquiry in the absence of regulations;

(xii) that the jurisdiction of Respondent No.2 is directly affected by the ratio laid down by the Apex Court in the

following judgments - (a) *(1982) 2 SSC 134 Government of Andhra Pradesh Versus Thummala Krishna Rao and Anr.* (b) *1995 Supp (2) SSC 290 State of Rajasthan V/s. Padmavati Devi by Lrs. & Ors.* and (c) *(1998) 8 SCC 483 State of U.P & Anr. V/s. Zia Khan;*

(xiii) that if the present eviction proceedings are permitted to be continued before Respondent No.2, the proceedings will be illegal and untenable as they will suffer from the well settled principle of judicial bias, especially, institutional bias;

(xiv) that the action of the Respondents to undertake the present eviction proceedings is in breach of (a) Resolution No.208 of 1989 of the Improvements Committee of the Corporation; (b) Resolution No.343 of 1989 passed by the Municipal Corporation; (c) the judgment and order dated 06.01.2017 passed by this Court in Writ Petition No.1797 of 2009; (d) the decision of the State Government in its meeting held on 03.05.2017; (e) the provisions of Section 64 of the said Act and (f) the contract for conversion of the said premises into ownership basis after appropriating 1/3<sup>rd</sup> gratuity or economic rent of five years whichever is more;

(xv) that the Respondent No.1 has consistently taken an adversarial stand and opined against the petitioner as regards to the status of the said premises and if present eviction proceedings are permitted to be continued then there will be an obvious likelihood of bias against the Petitioners;

(xvi) that the eviction proceedings have been initiated under Section 105B of the said Act on the ground of "unauthorized occupation" and Respondent No.1 has already taken a stand that the Petitioner is in unauthorized occupation of the said premises; hence it becomes futile for the Petitioners to be compelled to undergo such eviction proceedings before Respondent No.2 who is a delegate of Respondent No.1 when such adjudictory authority has already made its opinion and stand clear and that too in the absence of the statutory regulations;

(xvii) hence, he has prayed for a stay on the eviction proceedings under Section 105B before the Respondent No.2 until the regulations are framed by the Respondent No.1 under Section 105H in accordance with law.



**7. *PER CONTRA***, Ms. Kapadia learned counsel appearing for the Corporation has vehemently opposed grant of any relief to the Petitioners and made the following submissions:-

- (i) that a bare perusal of section 105H of the MMC Act will make it abundantly clear that the Commissioner with the approval of the Standing Committee and General Manager with the approval of the Brihan Mumbai Electric Supply and Transport Committee may make regulations for the holding of inquiries under chapter V-A of the said Act; that section 105H clearly demonstrates that it is an option for the Commissioner to frame such regulations, if necessary, however, the word "may" does not mean that it is mandatory; that chapter V-A of the said Act specifies a reference made to sections 105B to 105F, which clearly prescribe the detailed procedure to be followed for issuance of notice, power of the Commissioner under the said Chapter to evict persons from Corporation's premises, prescribing the process and manner in which the proceedings before the Enquiry Officer are to be conducted;
- (ii) that if the arguments put forth by the Petitioners that the word "may" stands for mandatory framing of regulations

are countenanced, then in that case even the appeal filed under the provisions of section 105F cannot be heard and entertained, as section 105H(e) clearly states that the Commissioner may make regulations in relation to the manner in which appeal may be preferred under section 105F and the procedure to be followed in such appeal; hence the word "may" in the said section means that if in case framing of regulations is required in addition to the powers provided to the Enquiry Officer under chapter V-A for conducting the enquiry proceedings, in that case only the Commissioner is required to frame the regulations and not under any other circumstances; and most pertinently chapter V-A itself provides for the procedure to be followed by the Enquiry Officer for holding the enquiry under the said Act;

- (iii) that procedure to be adopted under chapter V-A has been dealt with and decided by this Court in its order dated 08.12.2021 in paragraph Nos.14 and 15 of the said order; this Court has clearly observed and that section 105E indicates that the Enquiry Officer shall have the powers of the Judge of the City Civil Court, therefore there is no necessity for framing any regulations when the statute

itself provides a fair and detailed procedure for conducting the enquiry proceedings; that the argument of the Petitioners that the Enquiry Officer is not the proper forum to decide the issue of eviction of persons from Corporation's premise in the absence of regulations under Section 105H is therefore incorrect;

- (iv) that Chapter V-A read as a whole provides an effective procedure and mechanism of a trial Court to conduct the eviction proceedings; such procedure is replete with opportunity to show cause, hearing, to lead evidence, to lead evidence in rebuttal, to cross-examine, to be represented by pleader / advocate, etc.;
- (v) that chapter V-A of the said Act gives the Enquiry Officer powers of a Civil Court and hence he is empowered by the statute itself to conduct enquiry proceedings; that the said chapter demonstrates the procedure to be followed for eviction of persons illegally holding onto Corporation's premises including the process to be followed for conducting such enquiry proceedings etc.;
- (vi) that the petitioners have with malafide intentions attempted to delay the statutory proceedings before the Enquiry Officer, despite the observations and directions of

this Court in its order dated 08.12.2021 to proceed with the enquiry proceedings; that the applications filed before the Enquiry Officer dated 10.02.2022 by the Petitioners are nothing but a deliberate attempt to delay the enquiry proceedings before the Enquiry Officer;

(vii) that this Court while passing is order dated 08.12.2021 has strictly observed that the Enquiry Officer shall conduct the enquiry proceedings by giving reasonable opportunities to the Petitioners to show cause to the notices received by the Petitioners; however the same must be concluded within six months from the date of the order and had also observed that the Petitioners shall in no way contribute in delaying the proceedings before the Enquiry Officer; despite such directions, the Petitioners have delayed the proceedings with malafide intent and hence the Petitions deserve to be dismissed with exemplary costs.

**8.** I have heard both the learned counsel at length and perused the pleadings. Submissions made by the counsel are on pleaded lines. I have also perused the judgment and order dated 08.12.2021 passed by this Court (Coram: Mrs. Bharati Dangre, J.) in the earlier batch of Writ Petitions directing/remanding the case of the Petitioners for enquiry to

the Respondent No.2.

**9.** It is seen that Petitioners have challenged an interlocutory order dated 04.05.2022 passed by the Appellate Court against the order dated 21.03.2022 passed by the Respondent No.2 in the inquiry proceedings under Chapter V-A. Pursuant to the remand order dated 08.12.2021, the enquiry proceeding commenced before the Respondent No.2. The Petitioners filed interlocutory applications in the proceedings, *inter alia*, contending that unless and until the Corporation frames the Regulations as contemplated under Section 105H of the said Act for the purpose of enquiry under Section 105B, the proceedings before the Enquiry Officer be kept in abeyance. The Respondent No.2 while referring to the order dated 08.12.2021, *inter alia*, by his order dated 21.03.2022 held that in view of the timeline given by this Hon'ble court directing the Petitioners and the Enquiry Officer to conclude the said proceedings within a period of six months, no case was made out for stay; resultantly the Applications were rejected leading to the Petitioners approaching the Appellate Court. The order dated 21.03.2022 passed by the Enquiry Officer rejects the Application of the Petitioners for seeking a declaration that the enquiry proceedings under Section 105H are *non-est* since no regulations have been framed; that in view thereof, the impugned proceedings suffer from an institutional bias and the Enquiry Officer does not have the

jurisdiction to decide the eviction of the Petitioners from the said premises in a summary jurisdiction as contemplated under Section 105B of the said Act. The Petitioners have pleaded that substantive and complicated mixed questions of fact and law have arisen in the present case in as much as determination of the Petitioners' right and entitlement to occupy the said premises; hence, the Petitioners have pleaded that unless and until rules or procedure for conducting the enquiry to retrieve possession of the said premises under Section 105H are not framed, the proceedings under 105B are vitiated and therefore the impugned order dated 04.05.2022 by the Appellate Court rejecting the stay of the Petitioners miscellaneous Applications has been incorrectly passed.

**10.** In order to appreciate the rival submissions, it will be appropriate to revisit the findings in the judgment and order dated 08.12.2021 passed by this Court (Coram: Mrs. Bharati Dangre, J.) in Writ Petition No.6989 of 2021 alongwith the other companion Writ Petitions. It will be useful to reproduce such of the relevant paragraphs from the said judgment which will have an impetus on the passing of the present order. Paragraphs Nos.18 to 24 of the said judgment are relevant and reproduced below:-

*“18. By this time, it is a well settled position in law that a quasi judicial body/authority while acting in exercise of its statutory power must act fairly and is expected to act with an open mind while initiating show cause proceedings. A show*

cause is intended to give a person proceeded against, a reasonable opportunity of making his objection against the proposed charges indicated in the notice, which he is called upon to show cause. It is not permissible to approach the proceedings on the predefined and desired conclusions and, if that is done, the entire proceedings initiated by the issuance of the show cause notice will get vitiated by unfairly and biased approach and subsequent proceedings become a mere formality to be completed. The legislature never intended the authorities, upon whom, it conferred power to act as a quasi judicial authority and determine the right of the parties, to abuse the process of law or to act unfairly. Where the law requires the authority to act or decide, it is implicit that the exercise of power by the said authority should be done objectively, fairly and reasonably. The action of such authority shall be tested on the anvil of 'Rule of law' and fairness of justice particularly if the competing interest of the members of the society is involved. The exercise of a power by an authority, which is vested with certain discretion will require a responsible approach and it is expected of the authority to be guided by the principles provided in the statute or rules or regulations subject to which the power or the discretion, if any, shall be exercised. The rule of fairness is an essential feature of the Government action and, when a statute contain a provision for issuance of show cause notice, it necessarily contemplates that the person proceeded against must be informed about the charges so that he can take his stand/defence and prove his innocence or establish that the said action initiated against him need to be dropped. But, when the functioning of the authority is with a predetermined approach and, instead if he is made to confront with the definite conclusion with a prejudged mind, such action shall fail for lack of fairness.

19. Justice is the goal of the quasi-judicial proceedings too, and to inspire confidence and to justify its existence and exercise of power, such authority must act with fairness. In the present case, from the show cause notice, it is apparent that the Estate Officer has demonstrated his opinionated approach and such a closed and shut approach is inconsistent with the scheme of Section 105B of the MMC Act. While issuing a show cause notice, the authority must take care to manifestly keep an open mind as it is expected to act fairly, in adjudicating the guilt or otherwise of the person proceeded against. The principle that 'justice should not only be done but it must eminently appear to be done' is equally applicable to the quasi-judicial proceedings, if such proceeding has to inspire confidence in the mind of those people, who are subjected to it.

20. As regards whether the procedure for eviction initiated under Chapter IV of the MMC Act by issuing of show cause notice and its culmination into an order directing eviction of the noticee is vitiated by bias, following the test in Ridge v. Baldwin & Ors. reported in (1963) 2 WLR 935 must be invoked;

that by fair procedure one would mean that what a reasonable man would regard as fair in a particular circumstances. Undue haste, in absence of any urgency, would shake the confidence of an individual in the authority, which is bound to decide as per law. If the procedure followed is unjust or outrageous, such decision shall be set aside as arbitrary and unreasonable. The Hon'ble Supreme Court in the case of Vinod Kumar v. State of Haryana reported in (2015) 3 SCC 138 has made the following observations:

*“23. In these cases, where the courts are concerned with judicial review of the administrative action, the parameters without which the administrative action can be reviewed are well settled. No doubt, the scope of judicial review is limited and the courts do not go into the merits of the decision taken by the administrative authorities who are concerned with the decision making process. Interference with the order of administrative authority is permissible when it is found to be irrational and unreasonable or there is procedural impropriety.”*

21. There can be no doubt about the position in law, that fair procedure and just treatment is the core of our jurisprudence. The extent of applicability of principles of natural justice and the concept of fairness depends upon the circumstances of case, the statutory frame work, the subject matter to be dealt with, the nature of enquiry, the consequence that may visit a person after such enquiry form out of the decision, pursuant to such an inquiry and so forth. The rule of fair hearing, a reasonable opportunity of hearing, which is an important ingredient of audi alteram partem rule and embraces almost every facet of fair procedure.

The rule of fair hearing requires that the affected party should be given an opportunity to meet the case against him effectively and the right to fair hearing takes within its fold a just decision supplemented by following fair procedure, coupled with assigning of reasons and rational on which the conclusion is based.

22. The right of fair hearing, in the words of the Apex Court in the case of Kanachur Islamic Education Trust v. Union of India & Anr. reported in (2017) 15 SCC 702 casts a steadfast and sacrosanct obligation on the adjudicator to ensure fairness in procedure and action, so much so that any remiss or dereliction in connection therewith would be at the pain of invalidation of the decision eventually taken. Every executive authority empowered to take an administrative action having the potential of visiting any person with civil consequences must take care to ensure that justice is not only done but also manifestly appears to have been done.

23. In the absence of contrary indication in the statute, the procedural fairness is an implied mandatory requirement to



*protect an arbitrary action where the statute provides wide power coupled with wide discretion on the authority. The duty is to act fairly, not so much to act judicially. The action of the authority is expected to be impartial and to be free from even appearance of unfairness, unreasonableness and arbitrariness.*

24. *In modern administration set up, what is important is the fairness of procedure with elimination with elements of arbitrariness. The Apex Court in the case of Management of M/s M.S. Nally Bharat Engineering Co. Ltd. v. The State of Bihar & Ors., reported in (1990) 2 SCC 48 has held as under. “29. The State functionaries must act fairly and reasonably. That is, however, not the same thing to state that they must act judicially or quasi-judicially. The term ‘fairness in procedure’ ‘fair play in action’, ‘duty to act fairly’ are perhaps used as alternatives to ‘natural justice’ without drawing any distinction. But, such phrases may sometimes be used to refer not to the obligation to observe the principles of natural justice but, on the contrary, to refer to a standard of behavior which increasingly, the courts require to be followed even in circumstances where the duty to observe natural justice is inapplicable. Fairness is a rule to ensure that state power in modern state is not abused but properly exercised. The State power is used for proper and not for improper purposes. Fairness is also a principle to ensure that statutory authority arrives at a just decision either in promoting the interest or affecting the rights of persons. The use the time hallowed phrase that justice should not only be done but be seen to be done’ is the essence of fairness equally applicable to administrative authorities. Fairness is thus a prime test for proper and good administration. It has no set form or procedure. It depends upon the facts of each case. Fairness does not necessarily require a plurality of hearings or representations and counter representations. It cannot have too much elaboration of procedure since wheels of administration must move quickly.”*

11. As seen from the aforementioned paragraphs of the judgment, this court has clearly held that conducting proceedings with fairness is an implied mandatory requirement to protect against any arbitrary action of the State, wherein the rule of fair hearing and granting of reasonable opportunity being an important ingredient of the principles of natural justice are required to be followed by the Authority. This court while doing so by the order dated 08.12.2021 gave directions for

conduct of the enquiry proceedings which are contained in Paragraph

Nos.25 to 28 of the said judgment, the same are reproduced below:-

*“25. Action of the respondent No.1 being determined on the aforesaid parameters, falls short of it.*

*The procedure adopted by the enquiry officer can be described as an action in haste, without any necessity of being hasty. True it is, that the MCGM is interested in evicting the petitioners, on a declaration coming from this court that they are not entitled to claim any right, title and interest in the premises, which were acquired by them as ‘staff quarters’ and no concession can be made in favour of the occupants by the Corporation as they are holding the property in trust and no public property can be disposed of even by a public body except as authorized by law. The judgment of the Division Bench has frowned upon an attempt on the part of the administration to deal with the property, devoid of the element of public trust.*

*However, in spite of the said observations, after giving opportunity to the occupants to vacate the premises within a stipulated period, the court was constrained to pass a conditional order to the effect that if they vacate the premises peacefully, the deductions and recoveries as threatened against them may not come into effect. The option was given by the Division Bench to the occupants to surrender and hand over the peaceful possession of the premises within three months and the Corporation was directed not to make any further deduction but release all the balance sums due and payable to them towards their retirement benefits. However, in a contingency when the petitioners fail to comply and do not hand over the premises within the prescribed time limit, the consequence in law were directed to be followed. The Division Bench made it amply clear in paragraph No.54 and the consequences in law that shall follow has been clarified to be the action under Section 105B of the MMC Act and to recover penal rent/damages/possession as well and also of attaching moveable and immoveable properties of the occupants.*

*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.*

27. *In any action taken in haste and concluded barely within a period of one month, where 16 petitioners being examined and cross-examined on one single day, itself justify an interference at the instance of this court. The City Civil Court at Bombay has failed to consider the aspect of fairness which is lacking the entire proceedings and has perfunctorily dismissed the Appeals, by laying emphasis on the judgment of the Division Bench, unmindful of the fact that the Division Bench itself has asked to follow the procedure under Section 105B of the MMC Act. The following observations in the order, clearly reflect this.*

*“12. In that view of the matter, on merits when the appellant has neither raised, nor is in a position to make out any vested right in respect of the premises in question, it cannot at all be said that the possession is authorized when the service has come to end long back.*

*13. As regards principle of natural justice is concerned, it has been contended that the proceedings were culminated within a period of one month. It cannot be lost sight of that the factual matrix of the matter is that the appellant had no legal right to be made out before Enquiry Officer. Whatever grounds that could be raised or were sought to be raised has been exhaustively considered by the Hon’ble High Court while passing the judgment recorded hereinabove and in that view of the matter the proceedings were required to be undertaken.*

14. *... ..*

15. *... ..*

16. *Thus, there does not appear to be any violation of principles of natural justice or any fallacy in the procedure especially in the facts and circumstances of the present case. Moreover, test of ‘real prejudice’ as has been evolved in respect of adherence of principles of natural justice by the Hon’ble Supreme Court has in any case not been made out...”*

28. *In the light of the aforesaid observation, the decision of the Enquiry Officer, sans adhering to the principle of fairness, which is upheld by the City Civil Court at Bombay, cannot be*

*sustained and set aside. The proceedings under Section 105B of the MMC Act, initiated against the petitioners is remitted back to the Enquiry Officer with a stipulation that the petitioners shall, in no way, contribute in delaying the culmination of the proceedings and the Enquiry Officer shall conclude the said proceeding by adhering to the procedure of law, including adequate opportunity being afforded to the petitioners to show cause to the notices received by them, within a period of six months from today.”*

12. From the above, it is seen that this court has analyzed the procedure to be followed for the conduct of the enquiry proceedings by the Respondent No.2 in exercise of its powers under Section 105B of the said act. While passing the said order this court clearly gave directions which have been stated in the last seven lines of Paragraph 28 of the order dated 08.12.2021.

13. It is seen that and it also appears from the record that after the above proceedings were remanded before the Respondent No.2, Petitioners apprehended that they would once again face a summary enquiry before the Enquiry Officer. This apprehension however is not well founded. In the order dated 21.03.2022, the Respondent No.2 had called upon the parties to lead evidence. Though the Enquiry Officer is an officer of the Corporation, in so far as the present enquiry is concerned, he is an independent quasi-judicial officer under the provisions of 68 of the said Act. The Enquiry Officer is duly authorized to conduct the enquiry proceedings and pass appropriate orders on the basis of evidence recorded by him. Undoubtedly, in the present case

the regulations under Section 105H for conduct of enquiry under Section 105B for eviction proceedings have admittedly not been framed, but merely because the said regulations have not been framed, the Petitioners cannot assert that unless and until the regulations are framed, the enquiry proceedings under Section 105B will have to be kept in abeyance. In the first place such a ground was never taken by the Petitioners before this Court in the earlier round of Writ Petitions when the order of the Appellate Authority upholding the order of the Enquiry Officer was challenged by the Petitioners. The contention of the Petitioners that the provisions of Section 105H are mandatory and the Corporation needs to frame the regulations to follow the conduct of enquiry proceedings under Section 105B is therefore not well founded and rejected. Petitioners will have to face the enquiry under Section 105B before the Respondent No.2, while adhering to the principles of natural justice and directions contained in the judgment and order dated 08.12.2021 and the present order.

**14.** Let us analyse the legal provisions applicable to the present case. Section 105B and 105H are relevant and reproduced below for reference:-

*"105B. Power to evict person from Corporation premises. - (1)  
Where the Commissioner is satisfied -*

*(a) that the person authorised to occupy any corporation premises has, whether before or after the commencement of the Bombay Municipal Corporation (Amendment) Act, 1960, -*

*(i) not paid for a period of more than two months, [the rent, taxes, fees, or compensation] lawfully due from him in respect of such premises; or*

*(ii) sublet,\*\*\*] the whole or any part of such premises; or*

*(iii) committed, or is committing, such acts of waste as are likely to diminish materially the value, or impair substantially the utility, of the premises; or*

*(iv) otherwise acted in contravention of any of the terms, express or implied, under which he is authorised to occupy such premises;*

*(b) that any person is in unauthorised occupation of any corporation premises;*

*(c) that any corporation premises in the occupation of any person are required by the corporation in the public interest, the Commissioner may notwithstanding anything contained in any law for the time being in force, by notice (served by post, or by affixing a copy of it on the outer door or some other conspicuous part of such premises, or in such other manner as may be provided for by regulations), order that that person, as well as any other person who may be in occupation of the whole or any part of the premises, shall vacate them within one month of the date of the service of the notice.*

*(2) Before an order under sub-section (1) is made against any person, the Commissioner shall issue, in the manner hereinafter provided, a notice in writing calling upon all persons concerned to show cause why an order of eviction should not be made.*

*The notice shall,-*

*(a) specify the grounds on which the order of eviction is proposed to be made, and*

*(b) require all persons concerned, that is to say, all persons who are or may be in occupation of, or claim interest in, the corporation premises, to show cause against the proposed order, on or before such date as is specified in the notice.*

*If such person makes an application to the Commissioner for the extension of the period specified in the notice, the Commissioner may grant the same on such terms as to payment and recovery of the amount claimed in the notice, as he deems fit.*

*Any written statement put in by any person and documents produced, in pursuance of the notice, shall be filed with*

*the record of the case, and such person shall be entitled to appear before the Commissioner by advocate, attorney or pleader.*

*The notice to be served under this sub-section shall be served in the manner provided for the service of a notice under sub-section (1); and thereupon, the notice shall be deemed to have been duly given to all persons concerned.*

*(3) If any person refuses or fails to comply with an order made under sub-section (1), the Commissioner may evict that person and any other person who obstructs him and take possession of the premises; and may for that purpose use such force as may be necessary.*

*(4) The Commissioner may, after giving fourteen clear days' notice to the person from whom possession of the corporation premises has been taken under sub-section (3) and after publishing such notice in the Official Gazette and in at least one newspaper circulating in the locality, remove or cause to be removed, or dispose of by public auction any property remaining on such premises. Such notice shall be served in the manner provided for the service of a notice under sub-section (1).*

*(5) Where the property is sold under sub-section (4), the sale proceeds shall, after deducting the expenses of sale, be paid to such person or persons as may appear to the Commissioner to be entitled to the same:*

*Provided that, where the Commissioner is unable to decide as to the person or persons to whom the balance of the amount is payable or as to the apportionment of the same, he shall refer such dispute to a civil court of competent jurisdiction, and the decision of the court thereon shall be final.*

*(6) If a person, who has been ordered to vacate any premises under sub-clause (i) or (iv) of clause (a) of sub-section (1), within one month of the date of service of the notice, or such longer time as the Commissioner may allow, pays to the Commissioner the rent and taxes in arrears, or as the case may be, carries out or otherwise complies with the terms contravened by him to the satisfaction of the Commissioner, the Commissioner shall on such terms, if any (including the payment of any sum by way of damages or compensation for the contravention aforesaid), in lieu of evicting such person under sub-section (2), cancel his order made under sub-section (1); and thereupon such person shall continue to hold the premises on the same terms on which he held them immediately before such notice was served on him.*

#### **105H. Power to make regulations**

*The Commissioner, with the approval of the Standing Committee and the General Manager with the approval of*

*Brihan Mumbai Electric Supply and Transport Committee, may make regulations for all or any of the following matters, namely:-*

*(a) the forms of notices under sections 105B and 105C and for prescribing the other manner in which they may be served those actions;*

*(b) the holding of inquiries under this Chapter;*

*(c) the procedure to be followed in taking possession of any corporation premises under section 105B;*

*(d) the manner in which the damages under section 105C may be assessed and the principles which may be taken into account in assessing such damage;*

*(e) the manner in which appeals may be preferred under section 105F and the procedure to be followed in such appeals;*

*(f) any other matter which has to be, or may be, prescribed under this Chapter by regulations."*

15. It is seen that 105H refers to the word "may" in the opening sentence of the said section which reads thus "The Commissioner, with the approval of the standing Committee and the General Manager with the approval of Brihan Mumbai Electric Supply and Transport Committee, **may** make regulations for all or any of the following matters, namely,

a...

b...

c. the procedure to be followed in taking possession of any Corporation premises under Section 105B."

16. The contention of the Petitioners is that the word may as



appearing in 105H should be read as "shall" and therefore there is a mandate on the Commissioner of the Corporation to make the regulations for the procedure to be followed in taking possession of any Corporation premises under Section 105B. On a plain reading of the Section it cannot be interpreted to mean that there is a mandatory direction to the Corporation and the direction contained therein is purely discretionary. Hence, in the absence of the statutory regulations and on reading the provisions of Chapter V-A, it cannot be held that in the absence of the regulations, the enquiry proceedings under Section 105B will have to be held in abeyance.

17. In the present case, it is seen that several mixed questions of fact and law are involved. The Petitioners have time and again repeatedly pleaded that they had occupied and continued in possession of the said premises in part performance of the contract between the Petitioners and the Corporation. According to the Petitioners, the contract seeks conversion of their right and entitlement to occupy the subject premises from leave and licence basis to ownership basis. Petitioners have therefore argued that as such their possession could never be construed to be unauthorized, rather one of the grounds pleaded by the Petitioners is the applicability of the provisions of Section 53A of the Transfer of Property Act, 1882 to the Petitioners' case. That apart, Petitioners have also pleaded estoppel as one of the

grounds for consideration of the Petitioners' case in the background of two specific decisions dated 03.05.2017 and 22.11.2017 taken by the State Government in its meetings with the Petitioners' Association in respect of the Petitioners' case. Petitioners have also argued that the challenge in Writ Petition No.1791 of 2009 filed by the Association was altogether different and the common judgment dated 06.01.2017 passed therein does not preclude the Petitioners from agitating their right in the present proceedings and on the facts and circumstances of the Petitioners' case.

**18.** In the above backdrop, though it is discernible that the Petitioners will have to face the enquiry proceedings, the demand and request of the Petitioners that unless and until statutory regulations under Section 105H of the said Act are framed, the enquiry be kept in abeyance cannot be acceded to. Petitioners are apprehending that the Corporation and the Enquiry Officer shall once again hold a summary enquiry and pass the order of eviction against the Petitioners. This apprehension is however not well founded in view of the order dated 08.12.2021 passed by this court while setting aside the earlier order dated 09.02.2018 and giving specific directions to the Corporation to exercise its authority under Section 105B of the said Act and follow the procedure as prescribed in terms of the scheme of Section 105B. Such directions are given in paragraph Nos.26 to 28 of the above order

and are alluded to hereinabove.

19. In the present case, it is seen that pursuant to the order dated 08.12.2021 directing the Enquiry Officer to conclude the enquiry proceedings under section 105B of the said Act within a period of six months, the Petitioners before me filed applications dated 10.02.2022, 21.02.2022 and 25.02.2022. By these applications, Petitioners opposed the conduct of the enquiry proceedings for eviction under section 105B on the ground that the regulations were not framed under section 105H of the said Act. As alluded to herein above it is clear that the Petitioners cannot stall/stay the proceedings until regulations are framed under Section 105H. The provisions of chapter V of the said Act refers to Sections 105A to 105H, Section 105H whereas Section 105B expressly provides the procedure to conduct enquiry proceedings by adhering to the principles of natural justice. This section envisages that the noticee is entitle to a notice specifying the grounds of enquiry for eviction, appearance/representation through an Advocate/Attorney /Pleader in the enquiry alongwith right to file written statement, produce documents and most importantly the provisions of Section 105E envisage that for the purpose of holding any enquiry the Commissioner shall have the same powers either vested in a Civil Court, such as summoning and enforcing the attendance and examining and allowing cross-examination, discovery and production

of documents etc. The Petitioners filed the stay applications which came to be disposed of by the Enquiry Officer by a common order dated 21.03.2022, wherein the Enquiry Officer held as under:-

*"It may be stated that, "unauthorized occupation of enquiry premises, by the Opponent is itself only ground of this enquiry proceeding whether occupation of enquiry premises by the Opponent is a unauthorized or authorised is a matter of evidence." Evidence of both parties need to be recorded. Opportunity is always given to both parties to adduced their evidences. Let Opponent and Applicants adduce their evidence before Enquiry Forum to come to the final conclusion of the case."*

20. The petitioners challenged the said order before the first appellate authority i.e. Principal Judge City Civil and Sessions Court, Mumbai. The learned appellate court after hearing the parties, passed the following order:-

*"CORAM - HER HONOUR THE PRINCIPAL JUDGE, SMT. U.S. JOSHI-PHALKE (C.R. NO.19) Adv. Maansi R. Gupta for appellant is present. Adv. Som Sinha a/w Adv. Ruhi Hajare for respondent/BMC is present. Order is dictated and pronounced in open court. Exh. 11 - Common order in MA No.12/22 to 29/22. F.R.S.R. Following order is passed. ORDER 1. Misc. Appeal Nos.12 of 2022 to 29 of 2022 are dismissed as not maintainable. 2. Stay Applications filed alongwith the appeals stand disposed off. 3. Original Judgment be kept in Misc. Appeal No.12 to 2022 and Copies of the Judgments be kept in Misc. Appeal Nos.13 of 2022 to 29 of 2022. Appellant has filed common application for stay. TOR and marked as Exh.12. Order - Ld. Adv. Gupta for the appellant appearing on behalf of Adv. Pai submitted that appellants have to challenge the said order before the Honble High Court and hence implementation and execution of order be stayed. This court has already observed that appeals are not maintainable and hence dismissed. This Honble High Court in writ petition No.6989 of 2021 and Ors. dated 08.12.2021 already directed the appellants and the Enquiry Officer to conclude the said proceeding within a period of six months. Appellants are already directed by the Honble High Court that they in no way contribute in delaying the proceeding. As appeals are dismissed being not maintainable. In view of directions of the Honble High Court proceeding is expedited. No case made out*

*for stay, hence rejected.*  
*DISMISSED*  
*04-05-2022."*

**21.** The Petitioners have approached this Court by filing the present petitions challenging both the aforesaid orders. One of the principal apprehension expressed by the Petitioners is that in the event if the enquiry proceedings are once again conducted by the Enquiry Officer, the same shall be conducted in a summary fashion as has been done in the earlier round of proceedings. The Petitioners have also challenged for stay of the proceedings in view of the regulations under section 105H having not been framed by the Corporation. For the reasons mentioned herein above, this challenge of the Petitioners stands rejected. Petitioners cannot stall the enquiry proceedings on the above ground. Petitioners have relied on various case laws in respect of the similar proceedings under the provisions of the Central Act i.e. the Public Premises (Eviction and unauthorised Occupants) Act, 1971 and the State Act i.e. the Bombay Government Premises (Eviction) Act, 1955 in respect of their cases.

**22.** No doubt, the principles of natural justice will have to be adhere to. However, this Court feels that in the interest of justice the Petitioners and the Corporation both need to determine the points for determination i.e. the issues between the parties so as to enable the

Enquiry Officer to permit each of the parties before the Enquiry Officer to argue their respective cases on the basis of the rights averred and denied by the parties in their respective pleadings.

**23.** With the assistance of the both the learned counsel appearing for the parties, it was found appropriate that if points for determination are framed for determining the *lis* between the parties both the parties can effectively discharge their burden before the Enquiry Officer and complete the statutory proceedings. In doing so, Petitioners and the Corporation shall both be given an adequate opportunity by the Enquiry Officer to lead oral as well as documentary evidence on their respective points for determination in each individual case depending upon the facts and circumstances of each case, rather than have a common generic approach in determining the rights of the Petitioners by having common evidence. However it is best left to the parties concerned and the Enquiry Officer to determine the conduct of the proceedings before him in consonance with the procedure prescribed under Section 105B of the said Act. The issues raised by the Petitioners shall thus be taken care of by adhering to the principles of natural justice by the Enquiry Officer. It is directed that Petitioners and the Corporation shall both be entitled to lead evidence in the nature of oral as well as documentary evidence in support of their respective cases as also to lead evidence in rebuttal. On

examination of the pleadings and with the assistance of both the counsel, the following points for determination are framed for consideration by the Enquiry Officer to determine the *lis* between the parties so as to enable the parties to lead evidence if so desired:-

**POINTS FOR DETERMINATION IN THE INQUIRY PROCEEDINGS BEFORE RESPONDENT NO.2.**

- 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 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?
- 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?

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?

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?

**24.** Considering that the six months time period granted by the order dated 08.12.2021 has expired, it would be appropriate to direct the Enquiry Officer to complete the proceedings under section 105B of the said Act within a period of 12 months from the date of this order in respect of each of the Petitioners' case. Needless to state that the common impugned order dated 04.05.2022 cannot be sustained and is therefore set aside. The order dated 21.03.2022 passed by the Enquiry Officer stands substituted with the directions contained in the

present order. The Enquiry Officer is directed to conduct the enquiry proceedings under section 105B of the said Act by according opportunity to both the parties to lead oral and documentary evidence on the points of determination which have been suggested in paragraph 18 by this Court. In addition to the points of determination as suggested by this Court, it shall be open for both the parties to request the Enquiry Officer to add to, delete and or frame additional points for determination, if the same are requested by the parties. It shall be open to the Petitioners to decide to proceed with the enquiry proceedings either together or in respect of each of the petitioners involved separately by adhering to the principles of natural justice and considering the points for determination framed herein and the proceedings shall be culminated finally within a period of 12 months from the date of this order. Parties shall appear before the Respondent No.2 Enquiry Officer on 21.07.2022 at 12.00 noon for further directions and conduct of inquiry.

**25.** All rights and contentions of both the parties are expressly kept open before the Enquiry Officer.

**26.** Rule made absolute in the above terms. No order as to costs.

**27.** Petitions disposed of.

**[ MILIND N. JADHAV, J. ]**