

M/S. ASHOK CATERERS  
v.  
MUNICIPAL CORPORATION OF GREATER BOMBAY  
(BEST UNDERTAKING)

FEBRUARY, 19, 1997

[K. RAMASWAMY AND S. SAGHIR AHMAD, JJ.]

*Rent and Eviction :*

*Bombay Municipal Corporation Act, 1888 :*

*S. 105-B(1)—'Unauthorised occupant'—Eviction of—Appellant given the premises on lease on monthly basis for five years—Lease expired by efflux of time—Also tenancy determined—Eviction order against appellant passed—Appellant challenged the eviction on the ground that it could not be treated as an unauthorised occupant and as such the respondent—Corporation could not resort to summary remedy u/s. 105-B(1)—Held, unauthorised occupation includes continuance in occupation by a person after the authority under which he occupied the premises has "expired" or it has been "duly determined"—After expiry of lease period under the contract or its determination, the quantum tenant becomes unauthorised occupant—Authorities cannot arbitrarily determine the right and interest created in the person in lawful possession except either for a public purpose or for contravention of conditions of contract or for violation of statutory provisions—Corporation pleaded that it needed the premises for expansion of the existing bus stop—In the circumstances determination of lease and initiating summary proceedings u/s. 105-B(1) is clearly in consonance with the provisions of the Act—High Court has not committed any error of law in holding the appellant an unauthorised occupant.*

*Prakash Warehousing Co. v. Municipal Corporation of Greater Bombay & Anr., [1991] 2 SCC 304, referred to*

CIVIL APPELLATE JURISDICTION : Special Leave Petition (C)  
No. 3659 of 1997.

From the Judgment and Order dated 15.1.97 of the Bombay High Court in W.P. No. 6276 of 1996.

A Bhimrao Naik, Shakeel Ahmed and Safia Khan for the Petitioner.

The following Order of the Court was delivered :

B This special leave petition arises from the judgment and order dated January 15, 1997 passed by the learned Single Judge of the Bombay High Court in W.P. No. 6276 of 1996.

C The petitioner had a lease on monthly basis and the respondent had offered it for five years though the petitioner had not accepted the same. Subsequently, as found by the courts below, the lease expired in January 1990 by afflux of time. However, the tenancy was determined by order dated December 24, 1994. Thereafter, summary proceedings were initiated under Section 105-B(1) of the Bombay Municipal Corporation Act (for short, the "Act") and eviction order was passed. The petitioner filed an appeal before the civil court which by order dated 5th December, 1996 D affirmed the eviction order. Feeling aggrieved, the petitioner filed the writ petition which has come to be dismissed by the High Court. Thus this special leave petition.

E Shri Bhimrao Naik, learned senior counsel for the petitioner placing reliance on a decision of this Court in *Prakash Warehousing Co. v. Municipal Corporation of Greater Bombay & Anr.*, [1991] 2 SCC 304, contends that the respondents has no power to unilaterally terminate the tenancy, after the expiry of the period of lease, unless any of the grounds is made out either in terms of the contract or under the statute for ejecting the petitioner. In the light of the law laid down in the said decision, the F eviction order is illegal. The petitioner cannot be treated as an unauthorised occupant and the respondent could not avail of the summerty remedy under Section 105-B(1) of the Act. We find no force in the contention of Shri Naik. It is seen that the renewal made in 1985 expired in 1990. He placed before us a copy of the lease. Admittedly, it does not G prescribe any particular period of lease but it mentions words "from month to month". In other words, it is a tenancy on monthly basis. Correspondence appears to have taken place between the parties on the fixation of the period of the lease which ultimately did not bear fruit. Be that as it may, the question is : whether the petitioner can be treated as "unauthorised occupant" within the meaning of Section 105-B (1)(b) of the Act which H reads as under :

"105-B(1) where the Commissioner is satisfied -

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

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, in such other manner as may be provided for by regulations), order 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."

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This definition shows that occupation of Corporation premises without authority for such occupation is an unauthorised occupation. Such occupation includes continuance in occupation by a person after the authority under which he occupied the premises has "expired" or it has been "duly determined". The definition thus includes not only a trespasser whose initial and continued occupation has never been under any valid authority, but it also includes in equal measure a person whose occupation at its commencement was under authority, but such authority has since expired, or, has been duly determined - which means validly determined. The expiry of authority to occupy occurs by reason of the terms or conditions of occupation. On the other hand, the determination of authority to occupy to be due or valid must be founded on one of the grounds specified by the statute. Any order of eviction on the ground of either "expiry" or "due determination" has to be made in accordance with the procedure prescribed by the statute.

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In *Prakash Warehousing Co.* case (supra) relied upon by the learned counsel, unfortunately, attention of the Court was not drawn to the *non obstante* clause in the main part of Section 105-B(1) while it was required to consider the question whether the person in occupation of the premises after the expiry of the period of the lease or its determination could be treated as "unauthorised occupant". It is true that under the Transfer of Property Act or the Rent Act, the contractual or statutory tenancy is required to be determined for non-compliance of any of the conditions of the contract or the statute envisaged thereunder. But the *non obstante* clause contained in the main part of Section 105-B(1) takes out the wind

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- A from the sail of the rigour of the law and enables the Corporation-respondent to terminate the tenancy and take back possession. After the expiry of the lease period under the contract or its determination, the quardrum tenant becomes unauthorised occupant. It is also true that the authorities cannot arbitrarily determine the right or interest created in the person in lawful possession of the public property except either for public purpose
- B or for contravention of the conditions of the contract or for violation of the statutory provisions. The lease, unlike licence, creates interest in immovable property which could be put an end to by determination in accordance with law or contract. In this case, it is pleaded that the Corporation needs the premises for expansion of the existing bus stand. Under those circumstances, the determination of the lease and initiating summary proceedings under Section 105-B(1) of the Act is clearly in consonance with the provisions of the Act. Accordingly, we hold that the High Court has not committed any error of law in coming to the conclusion that the petitioner is an unauthorised occupant.
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D The special leave petition is accordingly dismissed. Six month's time is granted to the petitioner to vacate and hand over possession of the premises subject to its filing the usual undertaking within four weeks from today.

R.P.

Petition dismissed.