

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 698/2017 (S.B.)

Mr. Sudam Daulat Sahare, aged about 61 Yrs.
Occ. Retd., R/o Kharbi Chowk, Nagpur (Died). **Original applicant**

- (a) Devayani Sudam Sahare,
Aged about 49 years, Occ. Household
- (b) Ashish Sudam Sahare,
Aged about 27 years, Occ. Nil
- (c) Ekta Sudam Sahare,
Aged about 25 years, Occ. Education
- (d) Yogita Sudam Sahare,
Aged about 24 years, Occ. Education

All R/o Aditya Vihar-II, Pipla Square, Hudkeshwar Road,
Nagpur. (All are legal heirs of the original applicant)

Applicants.

Versus

- 1) State of Maharashtra,
through its Additional Chief Secretary,
Home Department, Mantralaya,
Mumbai-32.
- 2) Additional Director General of Police
and Inspector General of Prison,
Pune.
- 3) Deputy Inspector General of Prison,
East Zone, Nagpur.
- 4) Superintendent,
Nagpur Central Prison, Nagpur.

Respondents.

Shri S.C. Deshmukh, Advocate for the applicant.

Shri A.M. Khadatkhar, P.O. for the respondents.

**Coram :- Hon'ble Shri Anand Karanjkar,
Member (J).**

Date of Reserving for Judgment : 20th August, 2019.

Date of Pronouncement of Judgment : 20th August, 2019.

JUDGMENT

(Delivered on this 20th day of August,2019)

Heard Shri S.C. Deshmukh, learned counsel for the applicant and Shri A.M. Khadatkar, learned P.O. for the respondents.

2. The applicant was serving as Hawaldar in Central Jail, Nagpur and in the year 2009 he was transferred to Akola. When the applicant was transferred his son is taking education in 12th Standard, therefore, he sought permission to retain the Government quarter in the Jail premises and permission was granted to occupy the quarter till 05/02/2010. It is submitted that due to education of daughter and illness of the wife the applicant was unable to vacate the quarter. The applicant thereafter was transferred from Akola to Bhandara and he received the order passed by the respondent no.4 dated 15/04/2016. It is submitted that as per this order the Superintendent, Bhandara Jail directed to deduct amount Rs.1,88,055/- from DCRG, the amount of Rs.2,39,880/- out of commutation value and direction was given to recover remaining amount Rs.5,50,245/- @ Rs.2001/- in 275 instalments from the pension of the applicant. It is submission of the applicant that this action was taken by the respondents without giving

opportunity of hearing to the applicant and this action is in violation of the law as laid down by the Hon'ble Apex Court and the Hon'ble Bombay High Court and therefore the impugned order of recovery be set aside.

3. The application is opposed by the respondent nos. 2 to 4 vide reply which is at page no.18. The respondents have justified the action on the ground that the applicant was transferred from Nagpur to Akola, but he did not vacate the quarter after 5/2/2010. The applicant thereafter never sought permission to retain the quarter, the action of the applicant was illegal and therefore in pursuance of the Government G.Rs. dated 13/11/2001, 17/02/2001, 24/08/2009 and 29/07/2011 the amount is recovered by the respondents and it is inconsonance with the Government G.R. It is submitted that the conduct of the applicant retaining the Government accommodation without seeking permission caused inconvenience to the respondents and therefore there is no illegality committed by the respondents in recovering part of the amount from the Gratuity, commutation value and the recovery of some of the amount from the pension of the applicant. It is contention of the respondents that there is no substance in this G.R. and therefore it is liable to be dismissed.

4. The learned counsel for the applicant has placed reliance on the Judgment in case of **R. Kapur Vs. Director of Inspection**

(Painting and Publication) Income Tax & Ano.,1994 II CLR,885. In

Para 9 the Hon'ble Apex Court has observed as under –

“(9) This Court in M. Padmanabhan Nair's (supra) has held as under –

Pension and gratuity are no longer any bounty to be distributed by the government to its employees on their retirement but have become, under the decisions of this Court, valuable rights and property in their hands and any culpable delay in settlement and disbursement thereof must be visited with the penalty of payment of interest at the current market rate till actual payment”.

5. The learned counsel for the applicant has also placed reliance on the Division Bench Judgment of Bombay High Court in case of

N.C. Sharma Vs. Union of India & Ors., 2004 (3) Bom. C.R.24. In

Para 19 of the Judgment following observations are made by the Hon'ble Bombay High Court.

“19. A debate was raised before us that the direction in this decision to recover dues for unauthorised occupancy of official quarters in accordance with law would include the Rules in question and powers conferred thereunder. We find it difficult to accept this contention. Here, the direction of the Division Bench cannot be misconstrued to mean recourse to any other mode than institution of proceedings under [Public Premises \(Eviction of Unauthorised Occupants\) Act](#). If the premises partake the character of public premises then the remedy provided by [Section 7](#) of this enactment coupled with the right of appeal provided thereunder would be the only remedy. In case of a doubt about the nature of occupancy and the character of the premises, civil suit is the other remedy. The moment authorities seek to recover penal damages in respect of official accommodation or its retention beyond the permissible period, then the aforesaid modes of recovery only are available. It is not permissible for the authorities to fall back on the Rules pertaining to grant of Terminal benefits and effect recovery therefrom”.

6. The applicant has also placed reliance on the Judgment in O.A. 41/2016 in case of **Shri Sampat Baburao Sawant Vs. State of**

Maharashtra & Ors., decided on 10/08/2018. After reading the above

Judgments, it is made clear that without giving opportunity of hearing such drastic action cannot be taken against the Government servant.

In this background, I would like to point out that as laid down by the Hon'ble Division Bench of the Bombay High Court as the applicant did not vacate the quarter in time, the respondents could have initiated the action under the Public Premises Eviction Act and they could have claimed damages for illegal occupation of the Government quarter. The unilateral action taken by the respondents to pass the order to recover the specific amount is absolutely in violation of law. Under these circumstances, I would like to point out that the respondents are at liberty to initiate action as per the law to recover the damages for illegal occupation of the Government accommodation by the applicant and as per the law they can recover this amount from the applicant, but the orders passed by the respondent no.4 to recover the amount Rs.10,21,515/- and the procedure adopted by the Superintendent Bhandara Jail is in violation of law.

7. In view of this discussion, the O.A. is partly allowed and the orders dated 15/04/2016 and 17/10/2016 are hereby quashed and set aside. No order as to costs.

Dated :- 20/08/2019.

(A.D. Karanjkar)
Member (J).

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I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : D.N. Kadam

Court Name : Court of Hon'ble Member (J).

Judgment signed on : 20/08/2019.
and pronounced on

Uploaded on : 21/08/2019.