

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION NO 784 OF 2015

DISTRICT : THANE

Shri Dilip Rohidas Adaskar,)
Occ : Havaldar at Thane Prison,)
Planning Department, R/at Govt.)
Quarters, Room no. 10, Thane.)...**Applicant**

Versus

1. The State of Maharashtra)
Through Principal Secretary,)
Prison Section, Home Department,)
Mantralaya, Mumbai 400 032.)
2. The Superintendent,)
Thane Prison, Thane.)
3. The Superintendent,)
Byculla District Prison, Class-I,)
Byculla, Mumbai 400 008.)...**Respondents**

Shri J.N Kamble, learned advocate for the Applicant.

Shri K.B. Bhise, learned Presenting Officer for the Respondents.

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CORAM : Shri Rajiv Agarwal (Vice-Chairman)

DATE : 18.08.2016

ORDER

1. Heard Shri J.N Kamble, learned advocate for the Applicant and Shri K.B. Bhise, learned Presenting Officer for the Respondents

2. This Original Application has been filed by the Applicant challenging the order dated 16.4.2015 regarding recovery of rent and penal rent @ Rs. 50/- per sq. ft per month amounting to Rs. 1,33,980/- during the period he was in unauthorized possession of Government quarters.

3. Learned Counsel for the Applicant argued that the Applicant was posted to Byculla Prison in Mumbai by order dated 16.6.2010 and he joined there on 23.6.2010. On 29.4.2011 the Applicant was allotted barracks no. 22 & 23 and he was residing there up to 30.5.2014. The Applicant was promoted as Havaldar and posted at Thane Prison, where he joined on 26.6.2013. As he was not allotted Government Quarters at Thane, he could not vacate Government Quarters in Byculla Prison premises. The Applicant applied for allotment of accommodation to the Superintendent, Central Jail, Thane on 26.6.2013,

but he could get Government accommodation in Thane by order dated 1.6.2014, when he was allotted Room no. 14. The Applicant was given a notice by Superintendent, Byculla Prison, on 8.1.2014 to pay the rent of Byculla Quarters amounting to Rs. 44,496/- for October, 2013 to December, 2013 and he was asked to vacate the Byculla Quarters within seven days. The Applicant submitted an application on 2.5.2015 to Superintendent, Thane Prison, not to make any recoveries of rent for Byculla Quarters as he had applied for retention of that quarter. The Applicant was not claiming House Rent Allowance during his posting at Thane when he was in occupation of Byculla Quarters. Learned Counsel for the Applicant stated that despite several representations, the recovery has been ordered though, the Applicant was occupying quarters at Byculla as he was not provided Government accommodation in Thane and he has not claimed any House Rent Allowance for that period. As such, the Respondents cannot recover rent and penal rent from the Applicant. Learned Counsel for the Applicant argued that as per Rule 259(3) of the Bombay Police Manual, 1959, all Police Officers below the rank of Inspectors are entitled to rent free quarters. As such, the recovery of penal rent at the rate of Rs. 50/- per sq. ft per month is illegal. Learned Counsel for the Applicant stated that as per G.R dated 29.11.2011, penal rent can be recovered after six months, but in the case of the Applicant, it is ordered to be recovered from day one.

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4. Learned Presenting Officer (P.O) argued on behalf of the Respondents that the Applicant was posted to Thane Prison on promotion and he joined there on 26.6.2013. He was, therefore, required to immediately vacate quarters in Byculla Prison. Prison services are such in nature that employees are required to be available for emergent duties at short notice. That is why, they are provided official accommodation, nearby their place of duty, often in Prison premises. When an employee is transferred, he is required to vacate official accommodation, so that his replacement may be provided accommodation. The Applicant did not vacate quarters at Byculla till 30.6.2014. He was asked to pay normal licence fee for first three months and penal rent from October, 2013 to June, 2014. Learned Presenting Officer argued that the representation of the Applicant to allow him quarters at Byculla dated 30.12.2013 was rejected on 4.1.2014 itself. The Applicant did not vacate quarters, though he was asked to vacate the same in seven days by letter dated 8.1.2014. Learned Presenting Officer stated that as per Home Department Circular dated 12.2.2003 penal rent has to be recovered for the period during which an employee was in unauthorized occupation of Government quarters, after charging normal licence fee for first three months. Learned Presenting Officer argued that the Applicant had deliberately defied orders of his superiors and continued to unauthorizedly occupy Government quarters at Byculla. He is liable to pay

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penal rent for the period from October, 2013 to June, 2014. There is no merit in the present Original Application. Provisions of Bombay Police Manual are not applicable to the Prison employees who are not Police Personnel.

5. Learned Counsel for the Applicant raised the issue of discrimination. He stated that many Police Officers including one Shri V.V Khuje, were allowed to retain accommodation in Mumbai, when they were transferred to Thane. No penal rent was charged from Shri Khuje. This contention of the Applicant cannot be accepted for two reasons, viz (a) the Applicant is not a Police Officer, and (b) there is a circular dated 5.11.1993 which permits Police Officers posted to Navi Mumbai or Thane to retain quarters in Mumbai. However, that facility was withdrawn by G.R dated 7.7.2008. This Tribunal has granted relief to the Applicant in O.A no 192/2015 by order dated 25.1.2016 solely on the ground of discrimination as many Police Officers posted to Navi Mumbai were allowed to retain quarters in Mumbai, while the Applicant was being charged penal rent. This Tribunal has clearly held that the ratio of judgment of Hon'ble Supreme Court in the case of Syed Abdul Qadir Vs. State of Bihar : (2009) 3 SCC 475 does not apply to recovery of rent/penal rent for unauthorized occupation of Government quarters. In the present case, the Applicant's request for retaining accommodation at

Byculla was rejected by letter dated 4.1.2014. By letter dated 8.1.2014, he was asked to vacate the quarters in Byculla within seven days. Just because, he did not claim House Rent Allowance and applied for retention for the quarters in Byculla will not make his occupation of quarters in Byculla ~~un~~authorized. He was clearly in unauthorized occupation of Government quarters for which he is liable to pay penal rent as per relevant G.R. There is nothing on record to suggest that penal rent is calculated incorrectly. The Applicant cannot compare himself with Police Officers of high rank, who might have been allowed to retain quarters in Mumbai by the Competent Authority on considerations, which are not before this Tribunal in the present case. PK

6. The Respondents have relied on the judgment of Hon'ble Bombay High Court dated 17.3.2016 in W.P no 1613/2016. The Petitioner was a Clerk in District Women's Prison, Byculla, who was allotted quarters within the premises of the Prison. There was a condition in the allotment letter that the allottee would vacate the premise within 24 hours on being called up to do so by the authorities. The Petitioner did not vacate the said quarters and the Competent Authority ordered her eviction under the Bombay Government Premises Eviction Act. The appeal against eviction order was dismissed by the Principal Judge, City Civil Court, Mumbai. Hon'ble High Court upheld that order. The JK

claim of the Respondents that the quarters within Jail premises are meant for the Prison employees entrusted with guard duties and any person, who is not entrusted such duties can be asked to vacate such quarters was upheld.

7. I do not find that the Applicant is eligible to get any relief in this case. The fact of his unauthorized occupation of Government quarters is established. He was given notice to vacate the same but he failed to do so. There is nothing on record to suggest that penal rent is not calculated correctly. The cases cited by him are clearly distinguishable as discussed above.

8. Having regard to the aforesaid facts and circumstances of the case, this Original Application is dismissed with no order as to costs.

Sd/-


(Rajiv Agarwal)
Vice-Chairman

Place : Mumbai

Date : 18.08.2016

Dictation taken by : A.K. Nair.

