

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NOS.1021 & 1022 OF 2018

DISTRICT : MUMBAI

ORIGINAL APPLICATION NO.1021 OF 2018

- 1] Shri Pandurang R. Karande.)
Age : 59 Yrs, Occu.: Nil,)
[Retired as Police Sub Inspector],)
attached to LA-1, Naigaon,)
Dadar (E), Mumbai – 400 014.)
- 2] Shri Anil Pandurang Karande.)
Age : 31 Yrs., Working as Police)
Constable attached to LA-3, Worli,)
Company No.4, Mumbai – 400 018.)
)
Both residing at H/503, Police)
Vasahat, Chirag Nagar, Ghatkopar)
(West), Mumbai – 400 086.)...**Applicants**

Versus

1. The Commissioner of Police,)
Mumbai through Assistant)
Commissioner of Police (HQ-3),)
Having office at Mumbai Police)
Commissionerate, L.T. Marg,)
Opp. Crawford Market, Fort,)
Mumbai – 400 001.)
2. The State of Maharashtra.)
Through Addl. Chief Secretary,)
Home Department, Mantralaya,)
Mumbai – 400 032.)...**Respondents**

WITH

ORIGINAL APPLICATION NO.1022 OF 2018

- 1] Shri Pandurang R. Karande.)
Age : 59 Yrs, Occu.: Nil,)

[Retired as Police Sub Inspector],)
 attached to LA-1, Naigaon,)
 Dadar (E), Mumbai – 400 014.)

- 2] Shri Anil Pandurang Karande.)
 Age : 31 Yrs., Working as Police)
 Constable attached to LA-3, Worli,)
 Company No.4, Mumbai – 400 018.)
)
 Both residing at H/503, Police)
 Vasahat, Chirag Nagar, Ghatkopar)
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 Mumbai – 400 001.)
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 Through Addl. Chief Secretary,)
 Home Department, Mantralaya,)
 Mumbai – 400 032.) **...Respondents**

Mr. A.V. Bandiwadkar, Advocate for Applicants.

Mrs. K.S. Gaikwad, Presenting Officer for Respondents.

CORAM : SHRI A.P. KURHEKAR, MEMBER-J

DATE : 25.09.2020

JUDGMENT

1. As these two Original Applications are arising from common facts, those are decided by this common Judgment.

2. O.A.1021/2018 is filed challenging order of recovery dated 03.08.2018 for recovery of Rs.1,29,240/- towards unauthorized

occupation of quarter and also to vacate the quarter and order dated 09.10.2018 whereby the claim of Applicant No.2 for continuation of service quarter allotted to his father (Applicant No.1) stands rejected. Whereas, O.A.1022/2018 is filed challenging order dated 20.02.2018 passed by Assistant Commissioner of Police (ACP) thereby rejecting the claim of Applicant No.2 for continuation of service quarter on the ground that he is not entitled for service quarter of more than 350 sq.ft.

3. Shortly stated undisputed facts are as under :-

The Applicant No.1 viz. Pandurang R. Karande in both the O.As is the father of Applicant No.2 Shri Anil Pandurang Karande. The Applicant No.1 joined Police Force as Police Constable in 1978 and promoted to the post of Head Constable and later Police Sub-Inspector. During the course of service, the Quarter No.503, 'H' Building, Police Vasahat, Chirag Nagar, Ghatkopar (West) having area of 425 sq.ft. was allotted to him. He was staying in the said service quarter along with his son Applicant No.2, who was selected and appointed on the post of Police Constable and accordingly joined on the establishment of Commissioner of Police, Mumbai on 03.10.2013. The Applicant No.1 was due to retire on attaining the age of superannuation on 30.09.2017. As Applicant No.2 was staying in service quarter with father, he made an application dated 02.09.2017 for continuation of service quarter allotted to his father. In application, he requested to transfer service quarter in his name after retirement of his father in terms of Government policy. However, his claim for continuation of service quarter is rejected by orders which are impugned in the present O.A.

4. Shri A.V. Bandiwadekar, learned Advocate for the Applicant submits that in view of G.R. dated 10th October, 2000 issued by Home Department, the Government has taken policy decision to transfer service quarter in the name of son and Applicant No.2 fulfilled all necessary conditions set out in G.R. dated 10.10.2000. He further

pointed out that Home Department by G.R. dated 1st December, 2016 has decided entitlement of the carpet area of service quarters of Police Personnel which *inter-alia* provides that Police Personnel in the cadre of Police Constable, Head Constable, Assistant Sub-Inspector and Police Sub-Inspector are entitled to service quarter of 50 sq.mtr. carpet area (equal to approximately 500 sq.ft.). He, therefore, submits that rejection of request for transfer of service quarter on the ground that Applicant No.2 is entitled to 350 sq.ft. area only is unsustainable in law. In addition to it, he also raised the issue of competency of Assistant Commissioner of Police for issuance of direction to vacate the quarter by impugned order dated 08.08.2018 also raised the ground of discrimination.

5. Per contra, Smt. K.S. Gaikwad, learned Presenting Officer in reference to contentions raised in reply submits that in terms of decision of Quarter Allotment Committee dated 02.02.2015, the Applicant is entitled to service quarter of 350 sq.ft. only and quarter in question being of 450 sq.ft, the rejection cannot be faulted with. She further submits that in terms of decision taken by the Committee on 02.09.2017 (Page No.52 of P.B. in O.A.1021/2018), the service quarter situated at Ghatkopar was required to be allowed to Police Personnel in the rank of PSI and above only. She has further pointed out that as per entitlement of Applicant No.2 on Quarter Room No.15/B-201, Saki Naka Police Colony has been allotted to Applicant No.2 by order dated 12.11.2018, but he did not take possession of the said quarter. With these submissions, the learned P.O. submitted that the impugned orders cannot be faulted with.

6. In view of pleadings and submissions advanced at the Bar, the question posed for consideration is whether the Applicant No.2 is entitled to continue service quarter allotted to his father during tenure of his service and the impugned orders directing the Applicants to vacate the

quarter and to pay penal charges for unauthorized occupation are sustainable in law.

7. Indisputably, the service quarter in question was allotted to Applicant No.1 having area of 450 sq.ft. and he retired on 30.09.2017. Admittedly, much before his retirement, the Applicant No.2 was appointed on the same establishment as Police Constable and joined on 03.10.2013. Therefore, he applied for transfer of service quarter in his name by application dated 02.09.2017.

8. To appreciate the issue involved in the matter, reference of G.R. dated 10th October, 2020 and G.R. dated 1st December, 2016 is essential. The perusal of G.R. dated 10th October, 2000 reveals that earlier the Government had taken policy decision by Circular dated 17th March, 1994 to transfer service quarter of retired Police Personnel to his son who has completed three years' service. However, this condition of completion of three years' service has been relaxed by G.R. dated 10th October, 2000 and new instructions were issued. The important conditions are as follows :-

“शासन निर्णय :- उपरोक्त पार्श्वभूमीवर किमान ३ वर्षे सलग सेवेची अट शिथिल करून तसेच यापूर्वीचे आदेश अधिकृत करून सुधारित, स्वयंस्पष्ट आदेश निर्गमित करण्याची बाब शासनाच्या विचाराधीन होती. यास्तव आता शासन खालीलप्रमाणे सुधारित आदेश देत आहे. -

(अ) गृह विभागाच्या अधिपत्याखालील विविध पोलीस घटक प्रमुखांच्या आस्थापनेवरील पोलीस निवासस्थान मिळालेले पोलीस अधिकारी व कर्मचारी, नियत वयोमानानुसार सेवानिवृत्त/शारिरिक विकलांगता, रुग्णता किंवा कायमचे अपंगत्व इत्यादी कारणांमुळे सक्तीने सेवानिवृत्त झाल्यास/अथवा सेवेत असतांना कारवाईत वा अपघातात अकाली मृत झाल्यास संबंधित पोलीस अधिकारी/कर्मचारी यांच्या समवेत राहणा-या व पोलीस सेवेत असलेल्या कुटुंबातील व्यक्तीच्या नावे सदर निवासस्थान वर्ग करतांना ते खालील अटीच्या अधीन राहून वर्ग करण्यात यावे. -

१) अशा कुटुंबिय व्यक्तीची पोलीस सेवेत महाराष्ट्र लोकसेवा आयोगामार्फत किंवा सेवा प्रवेश नियमांनुसार विहित मार्गाने नियमित नियुक्ती झालेली असावी.

२) अशा कुटुंबिय व्यक्तीची पोलीस सेवेतील नियुक्ती ही पोलीस विभागातील संबंधित अधिकारी/कर्मचारी (वडील/पती) सेवानिवृत्त/मृत होण्यापूर्वी झालेली असावी.

३) अशी कुटुंबिय व्यक्ती संबंधित सेवानिवृत्त/मृत पोलीस अधिकारी/कर्मचारी यांच्या सोबत त्याच्या कुटुंबाचा घटक म्हणून वास्तव्य करीत असलेली असावी.

४) संबंधित सेवानिवृत्त/मृत पोलीस अधिकारी/कर्मचारी याचे व पोलीस सेवेत असलेल्या अशा कुटुंब व्यक्तीचे मुख्यालय एकच असले पाहिजे. तसेच संबंधित पोलीस अधिकारी/कर्मचारी प्रतिनियुक्तीवर असतांना सेवानिवृत्त/मृत झाल्यास, त्यास देण्यास आलेले पोलीस निवासस्थान ज्या मुख्यालयाच्या आस्थापनेवर असेल, त्याच मुख्यालयाच्या आस्थापनेवर अशी कुटुंबिय व्यक्ती पोलीस सेवेत असली पाहिजे.

५) अशा कुटुंबिय व्यक्तीच्या नावे वर्ग करण्यात येणारे निवासस्थान हे त्या कुटुंबिय व्यक्तीच्या वेतनश्रेणीच्या टप्प्यानुसार त्याला अनुज्ञेय असलेल्या क्षेत्रफळा इतकेच/टाईपचे असावे. जर नावावर वर्ग करावयाचे निवासस्थान कुटुंबिय व्यक्तीला अनुज्ञेय असलेल्या क्षेत्रफळापेक्षा/टाईप पेक्षा अधिक क्षेत्रफळाचे/मोठ्या टाईपचे असेल तर, अशावेळी त्या कुटुंबिय व्यक्तीला अनुज्ञेय असलेल्या क्षेत्रफळाचे/टाईपचे निवासस्थान प्राथम्याने त्याच ठिकाणी अथवा अन्यत्र उपलब्ध करून देण्यात यावे.

६) पोलीस निवासस्थान नावावर वर्ग करण्यापूर्वी अशा कुटुंबिय व्यक्तीने घरभाडे भत्ता प्रदान करण्यात आलेला नाही/येत नाही अशा आशयाचे प्रमाणपत्र कार्यालय प्रमुखामार्फत सादर करणे आवश्यक राहिल. तसेच सादर निवासस्थान नावावर वर्ग झाल्यावर देखील अशा कुटुंबिय व्यक्तीला घरभाडे भत्ता अनुज्ञेय राहणार नाही.

७) सेवानिवृत्तीनंतर स्वतःच्या राहण्याची अन्यत्र व्यवस्था केलेल्या अधिकारी/कर्मचारी यांच्या कुटुंबिय व्यक्तींना ही सवलत अनुज्ञेय राहणार नाही.

८) पोलीस विभागच्या आस्थापनेवरील मंत्रालयीन अधिकारी व कर्मचारी यांना त्यांच्या पोलीस सेवेतील वडीलांच्या/पतीच्या नावावरील पोलीस निवासस्थान कमी करून देता येणार नाही. अशा मंत्रालयीन अधिकारी/कर्मचा-यांना सामान्य प्रशासन विभागाकडून अभिहस्तांकीत करण्यात आलेली अथवा सार्वजनिक बांधकाम विभागाच्या आस्थापनेवरील निवासस्थान अनुज्ञेय राहतील व त्यांना सामान्य प्रशासन विभागाचे शासन परिपत्रक क्र. शानिवा-२५८६/प्र.क्र. ६३/८६/२३-अ, दिनांक २७.९.९९ मधील तरतूदी लागू राहतील.”

9. There is no denying that Applicant No.2 fulfilled all requisite conditions set out in G.R. dated 10th October, 2000. As regard area of service quarter *vis-à-vis* entitlement of the Police Personnel, the Home Department by G.R. dated 1st December, 2016 has decided entitlement of carpet area to the Police Personnel. The perusal of G.R. dated 1st December, 2016 reveals that Police Personnel in the cadre of Police Constable, Hawaldar, ASI and PSI are entitled to 50 sq.mtr. service quarter.

10. Now turning to the justification for refusal to transfer the service quarter in the name of Applicant No.2, the entire emphasis of Respondents is on the minutes of Quarter Allotment Committee dated 02.02.2015 whereby the Committee decided that the area of quarter for the cadre of Police Constable should be upto 350 sq.ft. True, the perusal of minutes (Page Nos.69 to 75 of P.B. in O.A.1022/2018) reveals that the Committee had taken decision to allot service quarter of 350 sq.ft. area as per availability to the Police Personnel in the cadre of Constable. Whereas in contrast, in terms of G.R. issued by Government dated

01.12.2016, the Police Constable is entitled to 50 sq.mtr. service quarter which is equal to approximately 500 sq.ft. As such, the decision of Quarter Allotment Committee being prior to G.R. dated 1st December, 2016 loses its efficacy or legality and it is subsequent G.R. dated 1st December, 2016 which will prevail and hold the field.

11. Needless to mention that it is the G.R. issued by Government being policy decision would always prevail over the minutes of Quarter Allotment Committee of 2015. Consequently, the decision taken by the Quarter Allotment Committee headed by Assistant Commissioner of Police are superseded and quarter allotment now has to be in terms of G.R. dated 1st December, 2016 read with G.R. dated 10th October, 2000 which *inter-alia* provides for transfer of service quarter of retired Police Personnel in the name of his son, if employed in Police Department and staying with him. The learned P.O. could not point out that the G.R. dated 10th October, 2000 and G.R. dated 1st December, 2016 have been modified by the Government at any point of time. Suffice to say, the G.R. dated 1st December, 2016 should prevail and quarter allotment must be in consonance with instructions mentioned therein.

12. Now turning to Notice No.0290 dated 29.11.2017 issued by the Office of Respondent No.1, the learned P.O. sought to contend that by virtue of Police Notice dated 29.11.2017 (Page No.44 of P.B. in O.A.1022/2018), a decision was taken for allotment of quarter of Ghatkopar to the Police Personnel in the cadre of PSI and above in view of scarcity of quarters, and therefore, the quarter in question being of Ghatkopar could not be allotted or transferred in the name of Applicant No.2. The perusal of Police Notice dated 29.11.2017 reveals that the Quarter Allotment Committee seems to have taken decision to allot quarters of Ghatkopar only to PSI or above PSI. The said decision seems to have been taken to give priority to the Police Personnel in the cadre of PSI and above. Material to note that, as per Notice itself, it is prospective in operation and it has no retrospective effect. It is applicable to new

allotment only. Whereas, in the present case, by virtue of G.R. dated 10.10.2000 and G.R. dated 01.12.2016, the Applicant's right to get service quarter transferred in his name has been crystallized in view of his appointment in Police Department. Therefore, such entitlement accrued in favour of Applicant No.2 cannot be taken away by Police Notice dated 29.11.2017. This being the position, the Police Notice dated 29.11.2017 hardly justify the rejection of the claim of Applicant No.2. As stated above, it is G.R. dated 10.10.2000 and 01.12.2016 which govern the issue and hold the field.

13. Apart, as rightly pointed out by the learned Advocate for the Applicant that Respondents have adopted policy of pick and choose and Applicants are subjected to discrimination. It is rightly pointed out by the learned Advocate for the Applicants that Respondent No.1 in similar situation had allotted quarter of 425 sq.ft. to Police Constable Manoj D. Athwale after retirement of his father by order dated 12.06.2019. The said quarter was allotted to Manoj Athwale by the Government. Furthermore, the order dated 12.06.2019 which is taken on record during the course of hearing and marked by letter 'X' further reveals that in 17 cases, the quarter was allotted to the sons of deceased Police Personnel though they have not completed three years' service. The learned P.O. fairly concedes this position. It is thus obvious that the Applicants are subjected to discrimination which is violative of Article 14 of Constitution of India. Suffice to say, the rejection of the application of Applicant No.2 to transfer of service quarter in his name on the ground that service quarter is of more area cannot be justified. The decision is arbitrary, discriminatory and directly in contravention of G.Rs. dated 10.10.2000 and 01.12.2016.

14. Apart, I also find merits in the submission advanced by the learned Advocate for the Applicant that Assistant Commissioner of Police who has issued impugned order of eviction invoking Section 31(2) of Maharashtra Police Act, 1951 is not competent to pass such orders. This

issue has been already decided by this Tribunal in **O.A.No.14/2012 (Smt. Prema Jeevan Vs. Commissioner of Police) decided by Hon'ble Chairman on 07.03.2012** wherein it has been held that Assistant Commissioner of Police, Head Quarter was not competent to issue eviction order, as Notification dated 03.12.1954 issued under Section 31 of Maharashtra Police Act, 1951 empowers Deputy Commissioner of Police, Head Quarter and not Assistant Commissioner of Police. The Tribunal further held that for eviction, the provisions of Bombay Government Premises (Eviction) Act, 1955 would prevail. The learned P.O. could not point out that there is any Notification issued under Section 31(1) and (2) of Maharashtra Police Act, 1951 empowering Assistant Commissioner of Police to issue eviction order. This being the position, the eviction order dated 03.08.2018 passed by Assistant Commissioner of Police is unsustainable in law.

15. The necessary corollary of aforesaid discussion leads me to conclude that the impugned orders are not sustainable in law and liable to be quashed. The Respondents ought to have transferred the service quarter in the name of Applicant NO.2. Shri Bandiwadekar fairly submits that his client would refund the amount of H.R.A, if any paid to him. Hence, I pass the following order.

ORDER

- (A) The Original Application Nos.1021/2018 and 1022/2018 are allowed.
- (B) The orders dated 03.08.2018 and 09.10.2018 in O.A.No.1021/2018 are quashed and set aside.
- (C) The order dated 20.02.2018 in O.A.No.1022/2018 is quashed and set aside.
- (D) Service Quarter No.503, 'H' Building, Police Vasahat, Chirag Nagar, Ghatkopar (West) be transferred in the name of

Applicant Nok.2 - Anil P. Karande and necessary orders to that effect be issued within a month.

- (E) The Applicant No.2 shall refund HRA, if any paid to him within a month.
- (F) No order as to costs.

Sd/-
(A.P. KURHEKAR)
Member-J

Mumbai

Date : 25.09.2020

Dictation taken by :

S.K. Wamanse.

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