

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.121 OF 2021

DISTRICT : MUMBAI

Shri Dilip Dashrath Jadhav.)
Age : 56 Yrs., Occu.: Assistant Sub)
Inspector at Gam Devi Police Station,)
Residing at Worli BDD Chawl No.26,)
Room No.70, Mumbai.)...**Applicant**

Versus

1. The Commissioner of Police.)
Office of Commissioner of Police at)
Dr. D.N. Road, Fort, Mumbai – 1.)
2. Deputy Commissioner of Police)
(Headquarter-2), Brihan Mumbai,)
Dr. D.N. Road, Fort, Mumbai.)
3. Senior Police Inspector.)
Worli Police Station, Annie Besant)
Road, Mumbai.)...**Respondents**

Mr. D.B. Khaire, Advocate for Applicant.

Mr. A.J. Chougule, Presenting Officer for Respondents.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 25.02.2022

JUDGMENT

1. The Applicant has challenged order dated 29.01.2021 issued by Respondent No.3 – Senior Police Inspector, Worli Police Station, Mumbai and also challenged order dated 18.12.2020 issued by Respondent No.2 –

Deputy Commissioner of Police, Mumbai directing the Applicant to vacate service quarter within seven days, invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

2. Shortly stated facts giving rise to this application are as under :-

The Applicant is serving in the cadre of Assistant Sub-Inspector on the establishment of Respondent No.1 – Commissioner of Police, Mumbai. Presently, he is posted at Gamdevi Police Station, Grant Road, Mumbai. He is due to retire on 31.05.2023. He joined service as Police Constable on 01.01.1988. Quarter i.e. Room No.70, Bombay Development Directorate Chawls (BDD), Worli was allotted to him and since then, he is staying in the said quarter. The Respondent No.2 – Deputy Commissioner of Police issued order dated 18.12.2020 for eviction of the service quarter on the ground of nuisance by him and his family to the neighbors i.e. other Police Personnel residing in the chawl, exercising powers under Section 31(2) of Maharashtra Police Act, 1951. It is on the basis of it, Respondent No.3 – Senior Police Inspector issued notice dated 29.01.2021 to the Applicant directing him to vacate service quarter within seven days failing in which he will be evicted from the quarter. The Applicant has challenged these orders in the present O.A.

3. Shri D.B. Khaire, learned Advocate for the Applicant sought to assail the impugned orders *inter-alia* contending that prior to issuance of these orders, an opportunity of hearing was not given to the Applicant and the impugned action is in breach of principles of natural justice. Secondly, the impugned action for eviction exercising powers under Section 31(2) of Maharashtra Police Act is totally bad in law, since eviction proceeding of Government Premises is governed by Maharashtra Government Premises (Eviction) Act, 1956 (hereinafter referred to as 'Eviction Act 1956' for brevity) which *inter-alia* provides detailed mechanism and procedure for eviction of Government premises. The learned Advocate for the Applicant, therefore, submits that the impugned action is totally bad in law. In this behalf, he sought to place reliance on

the decision rendered by this Tribunal in **O.A.No.14/2012 (Smt. Prema S. Jiman Vs. Commissioner of Police) decided on 07.03.2012** wherein in similar situation, it has been held that the provisions of 'Eviction Act 1956' would prevail over the provisions of Maharashtra Police Act, 1951 and action of eviction under the provisions of Maharashtra Police Act is held bad in law.

4. Per contra, Shri A.J. Chougule, learned Presenting Officer made feeble attempt to justify the impugned action *inter-alia* contending that the Applicant and his family is abusive and behaving in very indecent manner thereby causing constant nuisance to other Police Personnel residing in the chawl. It is further alleged that the Applicant is alcoholic, always threatens other Police Personnel and in habit of raising quarrels. Therefore, enquiry was conducted and after enquiry, Respondent No.2 – Deputy Commissioner of Police exercising powers under Section 31(2) of Maharashtra Police Act issued order of eviction by order dated 18.12.2020. Respondent No.3 – Senior Police Inspector, therefore, issued notice of eviction dated 29.01.2021 for execution of order issued by Respondent No.2 – Deputy Commissioner of Police. The learned P.O. further sought to contend that quarter in question being belonging to Police Department, the provisions of 'Eviction Act 1956' have no relevance. With this submission, he submits that challenge to the impugned action holds no water.

5. In view of submissions advanced at the Bar, main issue posed for consideration is whether eviction proceedings of a quarter in question is governed by Maharashtra Police Act, 1951 or by the provisions of 'Eviction Act 1956'.

6. Indisputably, Quarter No.70, BDD Chawl, Worli, Mumbai has been allotted to the Applicant in 1998 and since then, he is in occupation of said quarter. Though Respondents sought to contend that before issuance of notice of eviction, the enquiry was conducted. No such

record is forthcoming. The Respondents have not produced any such papers of enquiry allegedly conducted by the Respondents before issuance of notice of eviction. Material question comes about the legality of impugned action taken exercising powers under the provisions of Maharashtra Police Act. Section 31 of Maharashtra Police Act reads as under :-

“31. Occupation of and liability to vacate premises provided for Police Officers.

(1) Any Police Officer occupying any premises provided by the State Government for his residence –

- (a) shall occupy the same subject to such conditions and terms as may generally or in special cases, be specified by the State Government; and
- (b) shall, notwithstanding anything contained in any law for the time being in force, vacate the same on his ceasing to be a Police Officer or whenever the State Government or any officer authorized by the State Government in this behalf thinks it necessary and expedient to require him to do so.

(2) If any person who is bound or required under sub-section (1) to vacate any premises fails to do so, the State Government or the officer authorized in this behalf by the State Government may order such person to vacate the premises and may direct any Police Officer with such assistance as may be necessary to enter upon the premises and remove therefrom any person found therein and to take possession of the premises and deliver the same to any person specified in the direction.”

7. Whereas, material to note ‘Eviction Act 1956’ has been enacted after the enactment of Maharashtra Police Act, 1951. The ‘Eviction Act 1956’ provides complete mechanism or procedure for eviction of persons from Government premises. The perusal of the scheme and provisions of ‘Eviction Act 1956’ reveals that the powers of eviction are conferred upon the competent authority and competent authority means an Officer appointed as competent authority under Section 3 of the said Act. Section 3 of ‘Eviction Act 1956’ is as under :-

“3. The State Government may, by notification in the Official Gazette, appoint an officer who is holding or has held an office, which in its opinion is not lower in rank than that of a Deputy Collector or an Executive Engineer, to be the competent authority for carrying out the purposes of this Act [in such area, or in respect of such premises or class of premises in any area, as may be specified in the notification, and more than one officer may be appointed as competent authority in the same area in respect of different premises or different classes of premises].”

8. Whereas, Section 4 of the said Act provides detail procedure to be followed by competent authority for eviction from Government premises *inter-alia* on the ground of non-payment of rent for more than two months, subletting, committing act likely to diminish materially the value of premises, unauthorized occupation, where Government premises are required for any other Government premises, etc. Whereas, Section 4(2) of the said Act provides that before an order of eviction is made against any person, the competent authority is required to issue notice in writing calling upon the person concerned to show cause why an order of eviction shall not be made. It is only after issuance of notice, if person fails to comply with the notice, the competent authority is empowered to evict that person and to take possession of the premises and may use such force, as may be necessary. As per explanation to Section 4, the expression ‘unauthorized occupation’ includes the continuous in occupation after the authority under which he was allowed to occupy the premises has been duly determined. Suffice to say, ‘Eviction Act 1956’ provides complete mechanism and procedure for eviction of a person from Government premises where competent authority is satisfied that the person is in unauthorized occupation of Government premises.

9. Material to note that Government of Maharashtra had issued Notification about the enforcement of ‘Eviction Act 1956’ and appointed the first day of March, 1960 to be the date on which the said Act shall come into force in whole of the State of Bombay. The Notification reads as under :-

**“G.N.L. & S.W.D. No.INT.1559-M, dated 14th January, 1960
(B.G.Pt.IV-B, p. 105)**

S.1(12) – In exercise of the powers conferred by sub-section (2) of section 1 of the Bombay Government Premises (Eviction) (Extension and Amendment) Act, 1959 (Bom. LXII of 1959), the Government of Bombay hereby appoints the 1st day of March 1960 to be the date on which the said Act shall come into force in the whole of the State of Bombay.”

10. Now, let us see the Notification dated 03.02.1956 which reveals that in exercise of powers conferred by Section 3 of Bombay Government Premises (Eviction) Act, 1956, the Government has appointed the Director, D.D. Chawls, Bombay to be the competent authority for the purposes of the said Act, which is as under :-

**“G.N.R.H. & B.C.D. No.DDC.5055, dated 3rd February, 1956
(B.G.Pt.IV-B, p. 128)**

S. 3 – In exercise of the powers conferred by sub-section 3 of Bombay Government Premises (Eviction) Act, 1955 (Bom. II of 1956), the Government of Bombay hereby appoints the Director, D.D. Chawls, Bombay to be the Competent Authority for carrying out the purposes of the said Act in the area comprising of the Bombay Development Department Chawls situated in the City of Bombay at Worli, Delisle Road, Naigaum and Sewri.”

11. Furthermore, Notification dated 21.08.1958 and Notification dated 20.12.1958 about declaration of competent authority is as under :-

**“G.N.L. & S.W.D. No.DDC.5058, dated 21st August, 1958
(B.G.Pt.IV-B, p. 847)**

S. 3 – In exercise of the powers conferred by section 3 of the Bombay Government Premises (Eviction) Act, 1955 (Bom. II of 1956), the Government of Bombay hereby appoints the Deputy Commissioner of Police (Headquarter), Greater Bombay to be the Competent Authority for carrying out the purposes of the said Act in the area comprising of Municipal Ward ‘A’ of Greater Bombay.

**G.N.L. & S.W.D. No.DDC.5058-158903-G, dated 20th December, 1958
(B.G.Pt.IV-B, p. 34)**

S. 3 – In exercise of the powers conferred by section 3 of the Bombay Government Premises (Eviction) Act, 1955 (Bom. II of 1956), the Government of Bombay hereby appoints the District Deputy Collector, Bombay Suburban District, to be the Competent Authority for carrying out the purposes of the said Act in the area comprising of the Municipal Wards of Greater Bombay :-

- (1) 'B' Ward.
- (2) 'C' Ward (excluding the area of "Khara Talao").
- (3) 'D' Ward.
- (4) 'E' Ward.
- (5) 'G' Ward (excluding the area of Bombay Development Department Chaws situated at Worli).

12. It is thus explicit that in view of enforcement of the then Bombay Government Premises Act, 1956, the Government had appointed competent authority for carrying out the purposes of the provisions of Bombay Government Premises (Eviction) Act, 1956. Curiously, the Deputy Commissioner of Police (Headquarter), Greater Bombay is declared as competent authority for carrying out the purposes of the said Act in the area comprising Municipal Ward 'A' of Greater Bombay. Whereas, insofar as BDD Chawl is concerned, as per Notification dated 03.02.1956 reproduced above, the Director, BDD Chawls, Bombay has been declared as competent authority for carrying out the purposes of the said Act.

13. It is thus manifest that after the enforcement of Bombay Government Premises (Eviction) Act, 1956, the competent authorities has been notified for carrying out the purposes of the said Act area-wise in Bombay. Admittedly, the quarter in question is of Bombay Development Directorate Chawls for which as per Notification dated 03.02.1956, the Director, B.D.D. Chawls, Mumbai has been appointed as competent authority for carrying out the purposes of the said Act. Thus, the Government notified various competent authorities for the purpose of Bombay Government Premises (Eviction) Act, 1956 knowingly the provisions of Maharashtra Police Act, which leaves no doubt that the provisions of Bombay Government Premises (Eviction) Act, 1956 have to be implemented, and therefore, notified the competent authorities, since it would prevail over the provisions of Maharashtra Police Act, which was enacted earlier in 1951. If there was no applicability of the provisions of Bombay Government Premises (Eviction) Act, 1955 to the Police premises or premises in B.D.D. Chawls, Bombay, there was no reason for

declaration of competent authorities under the provisions of Bombay Government Premises (Eviction) Act, 1956. There is nothing in Bombay Government Premises (Eviction) Act, 1956 to exclude Police premises from the operation of the said Act. On the contrary, the Government had issued various Notifications from time to time, as referred to above thereby appointing competent authorities to carry of the purposes of Bombay Government Premises (Eviction) Act, 1956.

14. In view of above, the submission advanced by the learned P.O. that the provisions of Maharashtra Police Act prevails over the provisions of Bombay Government Premises (Eviction) Act, 1956 is totally misconceived and fallacious.

15. At the cost of repetition, it is necessary to emphasize that the quarter in question falls in B.D.D. Chawls for which Director, B.D.D. Chawls, Bombay has been declared as competent authority. This being the position, it was for Director, B.D.D. Chawls, Bombay to take appropriate action being declared as competent authority. However, in the present case, impugned action is taken by Respondent Nos.2 & 3 who are not competent authorities in terms of provisions of Bombay Government Premises (Eviction) Act, 1956 and Notification dated 03.02.1956. Resultantly, the impugned action will have to be held bad in law.

16. Indeed, the issue of applicability of provisions of Bombay Government Premises (Eviction) Act, 1956 to the Police Premises is no more *res-integra* in view of decision rendered by this Tribunal in O.A.No.14/2012 in **Jiman's** case (cited supra). In that case, in Para No.14, this Tribunal held as under :-

“**14.** Now in the light of the judgments of the Hon'ble Supreme Court quoted hereinabove, it is clear that the principles of natural justice will have to be followed in the sense that detailed procedure as contemplated under Sec 4 of the Bombay Government Premises (Eviction) Act, 1955 would be the fair option. The aforesaid Bombay Government Premises

(Eviction) Act, 1955, applies to all Government premises and the Act does not exclude the premises belonging to Police Force. Shri Khaire, learned Chief Presenting Officer, had fairly stated that the Police quarters are Government premises under the control of the Police Commissioner for the purpose of allotment etc. It is also clear from the judgment of the Hon'ble Supreme Court in the case of **DELHI TRANSPORT CORPORATION Vs. D.T.C MAZDOOR CONGRESS & OTHERS AIR 1991 SC 101**, that rule of law requires that powers to be exercised in a manner which is just, fair, reasonable and not in an unreasonable capricious and arbitrary manner leaving room for discrimination. In the light of the above, Regulation 9(b) was struck down by the Hon'ble Supreme Court in that case as violative of Article 14 of the Constitution of India. It should be remembered that Article 14 is the soul of our Constitution, which contemplates fairness, reasonableness and prevents unjust and capricious action. Using Article 14 as a touchstone in the above, it is clear that provisions of Bombay Government Premises (Eviction) Act, 1955 which is enacted subsequently, provides no exception with regard to premises occupied by police personnel, hence Section 4 of the Bombay Government Premises (Eviction) Act, 1955 would prevail over the Bombay Police Act, 1951, because Section 4 of the Bombay Government Premises (Eviction) Act, 1955, provides a detailed and fair procedure to a Government employee, on the contrary Section 31 of the Bombay Police Act, 1951, is an absolute and untrammelled powers with no legal guidelines which can always be misused capriciously.

17. The totality of aforesaid discussion leads me to conclude that the impugned orders/notice dated 18.12.2020 and 29.01.2021 are bad in law and liable to be quashed. Hence, the order.

ORDER

- (A) The Original Application is allowed.
- (B) The impugned orders dated 18.12.2020 and 29.01.2021 issued by Respondent Nos.2 and 3 respectively are quashed and set aside.
- (C) No order as to costs.

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

Mumbai
Date : 25.02.2022
Dictation taken by :
S.K. Wamanse.

D:\JUDGMENTS\2022\Feburary, 2022\O.A.121.21.w.2.2022.Service Quarter.doc

Uploaded on