

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION 375 OF 2015

DISTRICT : MUMBAI

Shri Vijay Nimbadas Sonawane,)
Occ : Retd Government servant,)
Add : Flat no. 101, Sonal C.H.S,)
Plot no. 113, Charkop Sector-1,)
Kandivali [W], Mumbai 400 067.)...**Applicant**

Versus

1. The State of Maharashtra)
Through Secretary,)
Home Department, Mantralaya,)
Mumbai 400 032.)
2. The Commissioner of Police,)
Greater Bombay, Mumbai.)...**Respondents**

Shri C.T Chandratre, learned advocate for the Applicant.

Shri A.J Chougule, learned Presenting Officer for the Respondents.

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CORAM : Shri Rajiv Agarwal (Vice-Chairman)

DATE : 19.08.2016

ORDER

1. Heard Shri C.T Chandratre, learned advocate for the Applicant and Shri A.J Chougule, learned Presenting Officer for the Respondents.

2. This Original Application is filed by the Applicant who has challenged the communication dated 18.4.2015, ordering recovery of Rs. 5,65,463/- which has been calculated as rent/penal rent of the Government quarters which the Applicant has retained from 1.4.2008 to 7.6.2011, in Mumbai, unauthorizedly when he was posted to Ratnagiri.

3. Learned Counsel for the Applicant argued that the Applicant was working in the Mumbai Police Commissionerate and he was allotted quarters no. 7 in Type 4 Building in Kandivali Police Station Compound. He was transferred to Divisional Caste Scrutiny Committee, Mumbai Division, Ratnagiri under the administrative control of the Department of Social Justice. The Applicant was under the bonafide belief that his posting was in Mumbai Division and could retain accommodation in Greater Mumbai. He, therefore,

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requested the Respondent no. 2 to allow him to keep the Government quarters in Kandivali, Mumbai. The Applicant's sons were studying in Mumbai and his representation is dated 17.4.2008. The Applicant did not claim any House Rent Allowance at Ratnagiri. The Applicant was entrusted with additional charge of the post of Deputy Superintendent, Caste Scrutiny Committee No. 1, Navi Mumbai and Committee No. 3 at Chembur, Mumbai by order dated 16.7.2010 issued by the Director of Social Welfare, Maharashtra State, Pune. The Applicant was holding additional charge of these posts for almost one year. The Applicant was asked to vacate quarters only on 5.11.2011 by the Respondent no. 2. The Applicant by letter dated 15.11.2011 requested that he may be allowed to retain the quarters till his superannuation. The Applicant retired on 31.10.2012. The Applicant was granted regular pension. However, by letter dated 23.10.2013, which was received by the Applicant on 22.10.2013, the Applicant was asked to pay the penal rent for the Kandivali quarters for the period from 1.7.2008 to 7.6.2011 amounting to Rs. 5,65,463/-. Learned Counsel for the Applicant argued that the Respondents have waived their right by their conduct to make this recovery. Applicant was granted No dues certificate and his pension was sanctioned. The Respondents are estopped from recovery of penal rent from the Applicant at this stage. Learned Counsel for the Applicant argued that other Police Officers were not




charged penal rent when they were transferred outside Mumbai. Shri G.D Pol, was transferred to Navi Mumbai, but he was allowed to keep Government quarters in Mumbai and no penal rent was charged from him. The Applicant is being put up hostile discrimination. Learned Counsel for the Applicant argued that penal rate of rent is Rs. 20/- per sq. ft per month, however, the Applicant is being asked to pay Rs. 50/- per sq. ft/month, which is arbitrary and unreasonable. Learned Counsel for the Applicant argued that the impugned order may be quashed and set aside.

4. Learned Presenting Officer (P.O) argued on behalf of the Respondents that a Government servant is required to pay penal rent for occupation of Government quarters unauthorizedly. As per Rule 134-A of the Maharashtra Civil Services (Pension) Rules 1982, penal rent for unauthorized occupation before and after retirement can be recovered from a retired employee. The Applicant has not challenged the relevant rules. The ground raised by the Applicant are not valid at all. The Applicant was transferred to Social Welfare Department, Ratnagiri. The Applicant was not eligible to retain the Government accommodation at Mumbai, which is for the Police Personnel working in Mumbai Police only. If he had not claimed House Rent Allowance at Ratnagiri, that will not entitle him to retain accommodation at Mumbai. If that contention is accepted, any Government servant

on transfer out of Mumbai may claim retention of accommodation in Mumbai and the Government servants posted to Mumbai will have no place to stay. The Applicant was a Group 'A' officer, and his claim that he was under bonafide belief that his posting was in Mumbai Division and he could keep house in Mumbai is unbelievable. If that was the case, he should have applied for pool accommodation in Mumbai. How unrealistic this claim is can also be seen from the fact that there were separate Caste Scrutiny Committees for Mumbai City at Chembur and for Navi Mumbai. The Applicant was asked to hold additional charge of these posts. However, he must have claimed TA/DA for visiting various places while holding additional charge of these posts. He cannot claim that he could retain Police Quarters in Mumbai for 3 years, for holding charge of a post in Mumbai for a short period. Learned Presenting Officer argued that the Applicant cannot be allowed to take advantage of oversight/mistake ~~on time~~ ^{in time} of the Respondents in not recovering penal rent. However, that mistake cannot be said to mean that the Respondents have waived the right to recover penal rent from the Applicant. In any case, the present Respondents have no such right to waive the penal rent under the law. Learned Presenting Officer argued that there was a policy decision to allow Government servants to retain quarters in Mumbai on transfer to Navi Mumbai and Thane. However, the Applicant was transferred to Ratnagiri and

was not eligible for retaining accommodation in Mumbai. Shri G.D Pol, was allowed to retain accommodation in Mumbai when he was posted to Navi Mumbai. Even if that decision is held to be wrong, the Applicant cannot be allowed to claim similar treatment, as it will amount to allowing another wrong.

5. It is true that the Applicant was transferred to Ratnagiri and he was not eligible to retain Government quarters meant for Police Personnel in Mumbai City. The fact that he did not claim H.R.A during his posting at Ratnagiri cannot be a ground to allow him to retain accommodation at Mumbai. Learned Presenting Officer has referred to G.R which permitted Government employees transferred to Thane/Navi Mumbai to retain accommodation in Mumbai. However, that was due to the fact that there was acute shortage of Government accommodation in these towns. That facility has since been withdrawn. Government employees on transfer to Naxal affected / Tribal areas can retain accommodation in earlier place of posting. However, if an employee is allowed to continue to occupy Government accommodation in Mumbai, where there is acute shortage of such accommodation, this will have deleterious effect on efficiency of administration in Mumbai as eligible employees will have to wait for long Government accommodation. Such wait will become longer, affecting their morale. The fact that the Applicant's



sons were studying in Mumbai or he was holding additional charge of a post in Mumbai for some time, in my view, will not entitle the Applicant to continue to occupy the Government quarters in Mumbai. Similarly, if no reply to his representation was received, the Applicant could not have assumed that his representation was accepted. A clear approval for retaining Government accommodation from Commissioner of Police, Mumbai, who is the Competent Authority to allot Police Quarters in Mumbai, was required. In absence of such a sanction, the Applicant has to be held in unauthorized occupation of Police Quarters for which penal rent is levied and is sought to be recovered from him.

6. The Applicant has claimed that after his retirement, No Dues Certificate was issued to him and now, it can be held that the Respondents have waived their rights to recover penal rent from him by their conduct. This contention of the Applicant cannot be accepted. At best, issuance of No Dues Certificate can be called a mistake and an authority can always rectify its mistake. Also, there cannot be said to be any hostile discrimination against the Applicant if Shri Pol was allowed to retain accommodation in Mumbai, while posted to Navi Mumbai. Apparently, a G.R in the field permitted that. All the facts regarding exemption granted to Shri Pol are not available in this Original Application.

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Even if it is held that Shri Pol was granted such a permission against the rules, the same/similar mistake cannot be ordered by this Tribunal in the case of the Applicant. Hon'ble Supreme Court held in the case of **STATE OF BIHAR & ORS Vs. KAMESHWAR PRASAD SINGH & ANOTHER : (2000) 9 SCC 94** that:-

“30. The concept of equality as envisaged under Article 14 of the Constitution is a positive concept which cannot be enforced in a negative manner. When any authority is shown to have committed any illegality or irregularity in favour of any individual or group of individuals, others cannot claim the same illegality or irregularity on the ground of denial thereof to them.”

The Applicant's claim in this regard has to be rejected. The Applicant has raised the issue of rate of penal rent. His case is that the rate of Rs. 50/- per sq. ft/month is arbitrary. It is seen that as per G.R dated 5.3.2008, penal rent was Rs. 25/- per sq. ft and the same is charged from him. This contention does not appear to be correct. The Applicant was in unauthorized occupation of Government accommodation in Mumbai from 1.9.2008 to 7.6.2011. As per the relevant rule, viz. Rule 134-A of the Maharashtra Civil Services (Pension) Rules, 1982, penal rent for unauthorized occupation of Government accommodation can be recovered from the pension of a

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retired Government employee. The issues raised by the Applicant has been examined and have been found to be lacking merit.

7. As a result, this Original Application is dismissed with no order as to costs.

Sd/-

(Rajiv Agarwal)
Vice-Chairman

Place : Mumbai

Date : 19.08.2016

Dictation taken by : A.K. Nair.