

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI

ORIGINAL APPLICATION NO.41 OF 2016
(Subject : Recovery)

DISTRICT: THANE

Shri Sampat Baburao Sawant,)
R/at. B-102, Aniruddha Arcade Society,)
Plot No.102, Sector-35, Kamothe,)
Navi Mumbai 410 204)

.. Applicant

Versus

- 1) The State of Maharashtra,)
Through the Additional Chief Secretary,)
Home Department, Mantralaya, Mumbai.)
- 2) The Director General of Police,)
M.S. Shahid Bhagat Singh Road,)
Colaba, Mumbai.)
- 3) The Commissioner of Police for Greater Mumbai)
Having office at Crawford Market, Mumbai 1)
- 4) The Deputy Commissioner of Police,)
(H.Q.2), Desk-8, Building Branch,)
Crawford Market, Mumbai 1)
- 5) The Joint Commissioner of Police (Admn))
Desk 8, Bldg Branch, Police Commissionerate)
Premises, Mumbai 1)

..Respondents

Shri K.R. Jagdale, the learned Advocate for the Applicant.

Ms. S.P. Manchekar, the learned Chief Presenting Officer for the Respondents.

CORAM : JUSTICE SHRI A.H. JOSHI, CHAIRMAN

DATE : 10.08.2018.

J U D G M E N T

1. Heard Shri K.R. Jagdale, the learned Advocate for the Applicant and Ms. S.P. Manchekar, the learned Chief Presenting Officer for the Respondents.
2. This matter is rolling on the board since January, 2016.
3. The recovery is ordered against the Applicant towards occupation of official quarter for about 51 months, though he was transferred from Mumbai to Navi Mumbai on three different occasions. It is apparent that for the intervening period for which recovery is not sought, the Applicant was considered to be entitled to occupy the quarter.
4. Applicant claims that on all these occasions of transfer, applicant was not allotted quarter at the town of his new posting.
5. Applicant has challenged the recovery, inter alia, on the following grounds :-
 - (a) Recovery for the period older than five years shall not be permissible in view of the judgment in case of **State of Punjab and others etc. V/s. Rafiq Masih (White Washer) etc.** reported in a group of cases **Civil Appeal No.11527/ 2014 arising out of SLP (C) No.11684 of 2012 & Ors.**
 - (b) Applicant was not allowed service quarter at Navi Mumbai where he was transferred.
 - (c) Notice for vacating service quarter was never served on him.
 - (d) Applicant has voluntarily vacated the quarter after retirement.
 - (e) Various officers namely, Shri Ashok Deshbhartar, was posted at Thane, Shri Laxman Farande (API – transferred to Bhiwandi), API Shri Kiran Shriram Shaligram (transferred to Navi Mumbai) and PR Shri Sanjay Rangnekar (transferred to Navi Mumbai), for occupying of Government quarters beyond the period of their posting at Thane and Mumbai.
 - (f) There are large number of Government servants from whom similar recovery is due, but it is not done, and applicant is singled out. However, the recovery of any penal rent is not done from plenty of officers hence applicant has been discriminated.

6. Averments contained in paragraph 7.6 reads as follows :-

“7.6 That the act of recovery of rent under the name of overstay against the Applicant is arbitrary, discriminatory and contrary to the Article 14 & 16 of Constitution of India because following officers were working in the office of Respondent No.3 but were subsequently transferred/ promoted out of Greater Mumbai Police Commissionerate but despite then the Respondent No.3 did not order of recovery of service quarter occupied by them at Greater Mumbai Police Commissionerate. The names of the officers are as follows: DCP Deshbratar was posted at Thane, Mr. Laxman Farande (API – transferred to Bhiwandi), API Kiran Shriram Shaligram (transferred to Navi Mumbai) and PR Sanjay Rangnekar (transferred to Navi Mumbai).”

(Quoted from page 7, paragraph 7.6 of the paper book of O.A.)

7. Paragraph 7.6 is replied by the Assistant Commissioner of Police in the affidavit which commences at page 37 by the averment contained in paragraph 19 which is at page 41 which reads as under :-

“19. With reference to para 7.6, I say that the Police Inspector Mr. Sanjay Rangekar has not living in Government quarter establishment of Mumbai Police Commissioner. Mr. Sanjay Rangnekar is living in, B-212/S Govt. Colony Bandra. This is under establishment of General Administration Department, Govt. of Maharashtra. Hence this reasons our office has no license fee/ fine amount of arrears is not recover from them.

(Quoted from page 41, paragraph 19 of the paper book of O.A.)

8. The Commissioner of Police has replied paragraph 7.6. The paragraph 7.6 is answered at page 65 and 66 which reads as follows :-

“6. With reference to Ground No.7.6 of O.A., I submit that, averment raised by the applicant in this para that the act of recovery of rent under the name of overstay against the Applicant is arbitrary, discriminatory and contrary to the Article 14 & 16 of Constituion of India, are not relevant to the subject matter involved and hence are not tenable and are denied.

Respondent further submit that 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 authoirity is shown to have committed any illegality or irregularity in favors of any individual or group of individual’s others cannot claim the same illegality or irregularity on the ground of denial thereof of them “*

In the case of four officers referred to by the applicant in Ground 7.6 of the O.A. the following details are submitted :

(i) Shri Ashok Deshbartar was posted as D.C.P. Zone-3, Mumbai, and was allotted quarter no:-402, Sanskriti Building, Worli, Mumbai. After his transfer to Thane as D.C.P., he did not vacate the quarter. After his tenure at Thane he was posted back to Mumbai as D.C.P., Railway. Out office issued necessary notice dated 18-12-2010 and eviction order dated 09-12-2012. Copies of notice dated 18.12.2010 and eviction order dated 09-12-2012 are annexed hereto and marked as EXHIBIT “AR-5” and EXHIBIT “AR-6”.

Shri Ashok Deshbhartar was charged penal rent for overstaying in the Govt. quarter. He deposited the amount of Rs.55,047/- vide Pay-in-Slip dated 09-02-2015 and dated 10-02-2015 of Axis Bank. Copy of Pay-in-Slip dated 9.2.2015 and 10.2.2015 are annexed hereto and marked as EXHIBIT "AR-7 (colly)".

During his tenure as D.C.P. Railway he continued to stay in the Govt. quarter on the establishment of Mumbai Police. At the same time Shri Kaiser Khalid was posted as Additional Commissioner of Police, East Region and was residing in the European Quarter No.55/A/2/4, Sir Bhalchandra Road, Dadar which is on the establishment of Commissioner of Police, Mumbai Railway. As mutual understanding, they continued to reside the earlier quarters though their establishment had changed. Letter of Shri Deshbhartar to support this fact is annexed hereto and marked as EXHIBIT "AR-8".

(ii) Mr. Laxman Farande, A.P.I., retired on 31/10/2004. He vacated the quarter on 21/06/2005. Copy of letter dated 23.2.2016 along with police station dairy showing vacating the government quarter is annexed hereto and marked as EXHIBIT "AR-9".

(iii) Mr. Kiran Shaligram was issued a notice for penal rent vide letter no.जा.क्र.पोआ/कक्ष-8(7)/1689/14, dtd. 29.4.2014. Copy of notice dated 29.4.2014 is annexed hereto and marked as EXHIBIT "AR-10".

(iv) In the case of Mr. Sanjay Rangnekar, it is submitted that he was residing in Govt. quarter which is on the strength of General Administration Department, Govt. of Maharashtra, Mumbai. Hence this office is not empowered to take any penal action in case of overstay in the quarter.

(Quoted from page 65 & 66, paragraph 6 of the paper book of O.A.)

9. It is thus evident that the only ground of objecting the recovery is discrimination and on humanitarian ground namely applicant was not supplied alternative accommodation whenever he was transferred to Navi Mumbai. Barring the case of Shri Ashok Deshbhartar, it is not shown that the recovery has not been done.

10. In so far as denial by the Commissioner of Police etc is concerned, it is evasive and it is not denied in unambiguous terms that the officers, who were serving in higher ranks where subjected to recovery of penal rent. Clear statement that penal rent is recovered from all erring officers is not made and this abstinence is deliberate.

11. The explanation offered by Respondents relating to discriminatory treatment is evasive. Moreover present case is of granting largesse by implied forbearance from taking action. It is a case of granting relaxation by neglect. Therefore, Government has adopted the practice of pick and choose for recovery of penal rent. Practice of pick and choose is an act of open violation of rule of law, quality and fairness.

12. It is clear and evident that deficiency of distinct treatment is given to subordinate police staff while a favoured treatment is given to the Higher Officers.

13. In the result without any adjudication on other points Original Application partly succeeds on the point of discrimination and unequal treatment in the matter of condonation of payment/ recovery of penal rent. No recovery shall be done against the Applicant unless the recovery of pending penal rent is done from other officers named in O.A. and other names which applicant may furnish.

14. In the event turn of applicant for recovery arises, applicant shall be free to agitate grounds of challenge as available in law.

15. Prayer clause 10(a) is allowed subject to qualification and rider as narrated in foregoing paragraph Nos.11 to 13 and 14. Prayer clause 10(a) reads as under :-

“(a) By suitable order or directions this Honourable Tribunal may be pleased to quash and set aside the impugned communication dated 04.09.2015 passed by the Respondent No.4, forthwith, with all other consequential service benefits.”
(Quoted from page 9, paragraph 10(a) of the paper book of O.A.)

16. Parties are directed to bear own costs.

Sd/-

(A.H. Joshi, J.)
Chairman

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