

**THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

**ORIGINAL APPLICATION NO.546 OF 2016
(Subject : Vacate the service quarter)**

DISTRICT : MUMBAI

Shri Ashok Laxman Jadhav)
Occu. Serving as Clerk-cum-Typist,)
PWD Department, Mantralaya, Mumbai 32)
Residing at : Type-3, Flat No.B-114/3,)
Govt. Colony Bandra East, Mumbai 400 051.)

...APPLICANT

VERSUS

The State of Maharashtra,)
Through Additional Chief Secretary,)
General Administration Department,)
Mantralaya, Mumbai 400 032.)

.....RESPONDENT.

Shri R.G. Panchal, learned Counsel for the Applicant.

Smt. K.S. Gaikwad, learned Presenting Officer for the Respondent.

CORAM : SHRI RAJIV AGARWAL, VICE-CHAIRMAN

DATE : 23.01.2017.

J U D G M E N T

1. Heard Shri R.G. Panchal, learned Counsel for the Applicant and Smt. K.S. Gaikwad, learned Presenting Officer for the Respondent.

2. This Original Application has been filed by the Applicant challenging the order dated 17.05.2016 directing the Applicant to vacate the service quarters which was allotted to him by order dated 16.05.2005 in Government Colony, Bandra (East), Mumbai.

3. Learned Counsel for the Applicant argued that the Applicant was allotted Flat No.B-114/3, Government Colony, Bandra (East), Mumbai by order dated 16.05.2005. The Applicant had joined Government service as a Peon on 21.09.1998 and was promoted as Clerk-cum-Typist w.e.f. 03.08.2004. Government has issued Government Resolution (G.R.) dated 05.08.1976 laying down the policy of occupation of own houses by Government servant, purchased constructed with the help of Government loan. If such residential accommodation is not within 20 kms. in Mumbai from the place of duty, the Government servant is eligible to get Government accommodation. This distance is different in other places. By G.R. dated 01.01.1977, it was laid down that if the accommodation owned by a Government servant was small than $3/4^{\text{th}}$ of the area of accommodation he was entitled, the Government servant was not required to vacate Government quarters. This was revised by G.R. dated 31.10.1979 and if own accommodation was smaller than entitled accommodation, the Government servant was not required to vacate the Government quarters. As per G.R. dated 03.06.2008. if a Government servant has acquired a flat on concessional term and if the area thereof exceeded 50% of the area of Government quarter to which an employee is

entitled, he will not be eligible to get Government accommodation. If the Government servant wanted Government accommodation, he was required to surrender his flat to Government on rent to be fixed by Government. The Applicant's wife was allotted a flat admeasuring 465 sq. feet at Mira Road, District Thane from Chief Minister's quota. The Applicant was made to submit an affidavit to the Government that he would vacate the Government accommodation, though it is not a statutory requirement but is provided by Circular dated 17.04.2003. The Applicant received a notice on 09.02.2015 to vacate the service quarters within 30 days, failing which proceedings under Section 4(1) of the Bombay Government Premises (Eviction) Act 1955 would be initiated against him. Learned Counsel for the Applicant argued that no other Government servant has been asked to vacate the Government accommodation in similar circumstances. On 12.04.2016, the Competent Authority issued order imposing penal rent for Government accommodation @ Rs.50/- per sq. feet from 26.02.2012 to 25.03.2016. The Applicant filed O.A.No.395 of 2016 against the notice of eviction and by order dated 04.05.2016 this Tribunal accepted the communication dated 04.05.2016 from the Respondent that the objections raised by the Applicant would be considered before taking a final decision. However, without hearing the Applicant in person and against the provision of G.R. dated 03.06.2008, the Respondent passed impugned order dated 17.05.2016. Learned Counsel for the Applicant argued that this order is arbitrary and discriminatory, against the laid down policy of the Government. There are a large number of officers and

employees owning houses in Mumbai, who have been allotted Government quarters. However, only the Applicant is asked to vacate Government quarters.

4. Learned Presenting Officer (P.O.) argued on behalf of the Respondent that as per G.R. dated 06.03.1999, those Government servants, who have their own accommodation in Mumbai, Navi Mumbai and on route of the local trains' upto Karjat / Kasara and Virar are not eligible to get Government accommodation in Mumbai. The Applicant was allotted a house from Government Quota by Collector, Thane at Mira Road, District Thane. Mira Road is on the local train route of Virar. As per Government circular dated 17.04.2003, if an employee is allotted accommodation from Government quota, he has to vacate Government accommodation in Mumbai. The Applicant was allotted house at Mira Road by Government letter dated 10.11.2010 as he was in urgent need of a house. The Applicant had given an undertaking that he will vacate Government quarters in Mumbai, if he was allotted accommodation from Government Quota. He cannot now turn around and seek retention of Government accommodation in Mumbai. Learned P.O. argued that order dated 17.05.2016 has been passed after considering all the issues raised by the Applicant. It was not necessary to give him a person hearing before passing that order.

5. By the letter of allotment dated 25.01.2011 Flat No.403 (area 465 sq. feet) in Stanley Regency, at Mira Road was allotted to the Applicant and his wife by Collector, Thane.

(Annexure G). The subject of the order mentions that the allotment was made to the Applicant and his wife as per orders of the Government as they were in dire need (जागेची तिब्रनिकड) of accommodation. This allotment at concessional rate was done under the provision of Urban Land Ceiling Act, 1976, which envisages such allotments in concessional terms of houses to persons belonging to certain eligible categories. Government has issued Circular dated 17.04.2003 regarding such allotments. As per paragraph 2 of that Circular, such allotment are subject to undertaking from the beneficiary, (if he is a Government servant) that he will vacate Government accommodation allotted to them within 10 days. The relevant paragraph reads :-

“२) ज्या शासकीय कर्मचा-यांना स्वेच्छाधिकार कोटयातून नव्याने सदनिका वितरीत करण्यात आल्या आहेत. परंतु प्रत्यक्षात सदनिकेचा ताबा अद्याप दिलेला नाही, असे कर्मचारी शासकीय निवासस्थानात रहात असतील तर स्वेच्छाधिकार कोटयातील सदनिकेचा ताबा देताना १० दिवसाचे आत शासकीय निवासस्थान सोडण्याबाबत त्यांचकडून हमीपत्र घेण्यात यावे व नंतरच सदनिकेचा ताबा देण्यात यावा.”

In para 4.10, of the O.A. the Applicant has admitted that he had given such an undertaking.

Paragraph 4.10 reads :-

“4.10 The applicant says that while the flat was being allotted to the applicant, the applicant was made to submit an affidavit by the govt that the applicant shall vacate the Govt accommodation. It is pertinent to note that such affidavit was not a statutory requirement under any statute but only a circular dated 17.4.2003, states that such affidavit be obtained from the Govt servants.

The Applicant is a Group ‘C’ employees of the Government. We has requested for allotment of a house from Government quota, which is given on concessional rate. He

has stated that he was in dire need of that accommodation. He had given an undertaking that he would vacate Government accommodation, if he was allotted a house from Government Quota. In the circumstances, it cannot be held that the Applicant was "made to submit an affidavit". If he did not want, the Applicant was free not to get the flat allotted to him from Government quota at highly concessional rate. Learned Counsel for the Applicant has argued that Circular dated 17.04.2003 cannot prevail over G.R.s in the field. This contention is difficult to accept. This circular stands on its own and is applicable to only those Government servants who are allotted flats from Government quota on concessional rates while other G.R.s in the field have general application. Such persons cannot compare themselves with other Government servants, who have acquired accommodation on their own. This circular is issued by order and in the name of Governor of Maharashtra. On the basis of his own Undertaking alone, the Applicant is required to vacate Government accommodation in Mumbai.

6. The Respondent has relied on G.R. dated 06.03.1999. This G.R. has been issued by the General Administration Department (G.A.D), who deals with the allotment of Govt. accommodation. The G.R. is at Annexure 'E' paragraph 3 of this G.R. reads :

“३. खुल्या प्रवर्नासाठी आरक्षित केलेल्या ४८ बिंदूतील ३२ बिंदू हे बदलीपात्र व बृहन्मुंबई, ठाणे व नवी मुंबई या जिल्हयाच्या क्षेत्राच्या बाहेरून सेवेसाठी आणि त्या अधिकारी / कर्मचारी यांची स्वतःच्या / कुटुंबियांच्या नावे मुंबई / नवी मुंबई तसेच लोहमार्गाकरीन विरार पर्यन्त व मध्य लोहमार्गाकरीन कर्जत / कसरा पर्यन्त (जेथून कर्मचारी रोज मुंबईतील कार्यालयांत ये-जा करू शकतात/

करतात). सदनिका नाहीत, अशांना निवासस्थानाचे वाटप करण्यासाठी वापरण्यात यावेत.”

Paragraph 7 states that निवासस्थानाचे वाटप बिंदू नामावलीनुसारच करण्यात येईल. (Emphasis added). It is thus clear that Government servants who does not own accommodation in Mumbai / Navi Mumbai or on local train route till Virar, Karjat, Kadara is only eligible to get accommodation in Mumbai. This G.R. has to be harmoniously construed with other G.R.s in the field. G.R. dated 03.06.2008 provides that if the area of own accommodation in Mumbai or Mumbai suburban of a Government servant is more than 50% of entitled area, he will not be entitled to a house in Mumbai. These G.R.s dated 06.03.1999 and 03.06.2008 will have to be construed harmoniously.

7. The Applicant claims discrimination on the ground that only he has been asked to vacate Govt. quarters in Mumbai, though according to him there are many Govt. servants/ officers in Mumbai, who have been allotted Govt. accommodation there and who own residences in Mumbai. Navi Mumbai or on, local train route mentioned above. In relief clause 8(b) the Applicant is seeking details of all such persons and the action proposed to be taken against them. Learned P.O. argued that the Applicant has made vague allegations without giving any details. Even if in some cases, some Govt. servants are occupying Govt. accommodation in Mumbai in violation of any G.R./ circular, that will not entitle the Applicant to claim similar relief on ground of discrimination. This Tribunal by judgment dated 15.06.2016

in O.A.No.922 of 2015, relying on judgments of Hon'ble Supreme Court in the case of State of Bihar & others Vs. Kameshwar Prasad Singh and Another : (2009) 9 SCC 94 and Chandigarh Administration Vs. Jagjit Singh : (1995) 1 SCC 745 has held that the Applicant therein was not entitled to a house bigger than his entitlement only on the ground that some other person has been given an house bigger than his entitlement. The aforesaid judgments of Hon'ble Supreme Court are squarely applicable in the present case. Even if the contention of the Applicant that some Government servants continued to occupy Government accommodation in Mumbai though they own houses in Mumbai / Navi Mumbai or on the local train route upto Virar, Karjat or Kasara is accepted as true, that will not give any right to the Applicant to seek similar benefit, in violations of various G.R.s/Circular and his own undertaking at the time of getting flat from Government Quota at concessional rate. The impugned order does not suffer from any infirmity and there is no case to interfere with it. As the Applicant has not made out a case that he is proceeded against arbitrarily, it is not necessary to consider other contentions made by him in this O.A. Having regard to the aforesaid facts and circumstances of the case, this O.A. is dismissed with no order as to costs.

(RAJIV AGARWAL)
VICE-CHAIRMAN

Place : Mumbai
Date : 23.01.2017.
Typed by : PRK