

MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI

ORIGINAL APPLICATION No.132 of 2019

Smt. Sae Suresh Zore)
R/at. A-11, Bandra Police Quarter,)
P. K. Patkar Marg, Bandra, Mumbai.)... **Applicant**

Versus

1. The State of Maharashtra, through)
Secretary, Home Department,)
Mantralaya, Mumbai.)
2. The Sr. Police Inspector, Bandra Police)
Station, Mumbai.)... **Respondents**

Shri A.V. Bandiwadekar , Advocate for the Applicant

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

CORAM : SHRI A. P. KURHEKAR , MEMBER (J)

DATE : 22.03.2019

JUDGMENT

1. In the present O.A., the challenge is to the impugned order dated 11.02.2019 issued by the Respondent No.2 to vacate the quarter immediately and to restore the possession of the quarter because of forcible dispossession on 12.02.2019, invoking the jurisdiction of this Tribunal u/s 19 of the Administrative Tribunal Act, 1985.

3. Shortly stated facts giving rise to this application can be stated as follows:-

The Applicant is serving as lady Police Constable, Naigaon Police Station, Mumbai. She was on maternity leave from 20.04.2018. She had applied for quarter under E-Aawas scheme which is computer run system for the allotment of police quarters. Accordingly, quarter No.A-11 of Bandra Police Station was allotted to her. She took possession of the quarter on 30/01/2019 and kept her household articles therein. As she had delivered premature baby, she was not residing in the quarter continuously and was busy in taking care of her newly born baby in the hospital. On 11/02/2019, the Respondent No.2 (Sr. Inspector, Bandra Police Station) issued notice to the Applicant stating that she had taken possession of quarter after stipulated period and, therefore, her possession is illegal. She was, therefore, called upon to vacate the quarter forthwith else legal action would follow. In the meantime, she made various representations to the concerned authorities reiterating her difficulties and requested to allow to continue the possession over the quarter. However, on 12.02.2019, the Respondent No.2 high-handedly dispossessed her by breaking lock of the quarter and removed the household articles of the Applicant.

4. The Applicant, therefore, filed present O.A. immediately on the next date i.e. 13.02.2019 challenging high-handed action of the Respondent No.2 and also prayed for interim relief. Accordingly, the interim relief for not allotment of quarter no.A-11 to anybody else till the decision of the application was granted. On this background, the Applicant prayed to set aside the impugned notice of eviction of 11.02.2019 and also prayed for restoration of the possession in view of forcibly dispossession on 12.02.2019.

5. The Respondents resisted the application by filing Affidavit-in-Reply (Page Nos.33 to 45 of Paper-Book) as well as Sur-Rejoinder (Page Nos.94 to 106 of the PB) inter-alia denying the allegations of highhanded action made by the Applicant. The Respondents contend that the E-Aawas system was introduced from January, 2019 whereby the quarters are allotted through the software without manual interference as per seniority and entitlement. As per E-Aawas scheme, the quarter No.A-11 was allotted to the Applicant and the possession was to be taken before 27.01.2019. As per E-Aawas system, if allottee fails to take the possession and entry is not recorded in the system then it will automatically allotted to the next incumbent in the next month. The Respondents contend that the possession was to be taken through administrative officer before 27.01.2019 but the Applicant had taken possession on 30.01.2019 by making entry in the station diary of Bandra Police Station without following due process contemplated in E-Aawas scheme. As the entry of the allotment of quarter No.A-11 was not taken in the system due to fault on the part of the applicant, the said quarter was allotted to Mrs. Reshma Sutar. As such, the possession of the Applicant over quarter since inception, is illegal, and therefore, notice dated 11.02.2019 was issued to vacate the quarter. As she failed to vacate it, the possession was taken by the police and her household articles were shifted outside safely. Thus, the Respondents sought to justify the issuance of notice dated 11.02.2019 as well as action of obtaining the possession in pursuance of notice. With these pleadings, the Respondents contend that the Applicant is not entitled to the relief claimed.

6. Shri A.V. Bandiwadekar, learned Advocate for the Applicant sought to contend that in absence of any specific order stipulating cut-off date for taking possession of the quarter and it's service to the Applicant, the Respondents' contention that possession was to be taken before cut-off date and it being not taken within the stipulated time, the possession taken on 30.01.2019 is illegal, cannot be accepted. In alternative submission, he urged that three days delay in taking possession of the quarter ought to have been considered by the concerned authorities considering that the Applicant was on maternity leave. He further contends that at any rate the highhanded action of dispossession of the Applicant from the quarter is arbitrary and ex-facie illegal. In this respect, he contends that the Respondents were required to take recourse of Bombay Government Premises (Eviction) Act, 1955 but without initiating due process of law, the Respondents highhandedly dispossessed the Applicant physically by force and, therefore, such action is not sustainable in law and fact.

7. Per contra, Ms S. P. Manchekar, learned Chief Presenting Officer for the Respondents urged that the Applicant was aware about details of E-Aawas Scheme and, therefore, she was required to take possession of quarter on or before 27.01.2019. However, she took possession on 30.01..2019 by making mere entry in station diary without making application to administrative officer appointed in this behalf and, therefore, her possession itself is illegal. Thereafter, as per E-Aawas Scheme, the said quarter was allotted to Smt. Reshma Sutar, and therefore, it was necessary to get it vacated. On this line of submission, learned C.P.O. for the Respondents sought to justify the notice

dated 11.02.2019 as well as the action of obtaining the possession on 12.02.2019. According to her as the possession of the Applicant since inception was illegal, there is no requirement to follow the procedure laid down under Bombay Government Premises (Eviction) Act, 1955.

8. Having gone through the pleadings and on hearing the Counsels, following factors emerges as uncontroverted :-

- (i) The Applicant was on maternity leave from 20.04.2018 till the date of dispossession as seen from leave application (Page No.88 of the P-B) and delivered premature baby in the hospital.
- (ii) E-Aawas System was introduced w.e.f. January, 2019 wherein the Applicant also applied for allotment of quarter and Quarter No.A-11, Bandra Police Quarter was allotted to her.
- (iii) The Applicant took possession of the quarter on 30.01.2019 and entry to that effect was taken in station diary.
- (iv) As per E-Aawas system and instructions therein, the possession was to be taken on or before 27.01.2019.
- (v) Police Inspector, Bandra Police Station vide letter dated 08.02.2019 informed the administrative officer that the Applicant has taken possession of the quarter on 30.01.2019.
- (vi) The Respondent No.2 issued impugned notice dated 11.02.2019 calling upon the Applicant to vacate the quarter immediately on the ground that her possession is illegal.
- (vii) The Applicant made various representations to the Joint Commissioner of Police and other concerned authorities on 08.02.2019, 10.02.2019 and 11.02.2019 requesting the concerned authorities that because of maternity leave, she could not obtain

the possession before cut-off date and, therefore, she should not be dispossessed from the quarter and be allowed to stay there.

- (viii) On 12.02.2019, the Respondent No.2 forcibly dispossessed the Applicant by breaking lock and kept household belonging of the Applicant outside (which is evident from photograph at pages 30 and 31 of the P.B.).

9. As such, issue posed for consideration is whether the impugned notice dated 11.02.2019 is legal and the act of Respondent No.2 to take forcible possession of the quarter is sustainable in law. The answer is in 'emphatic negative' for the reasons herein after discussed.

10. At the very outset, it needs be noted that the facts as emerges and set out above are rather very disturbing and there was no consideration of the genuine difficulties put forth by the Applicant. It is really unfortunate to note that despite the request made by the Applicant to the concerned authorities to regularize the allotment of quarter, the same was not considered but on the contrary she was dispossessed forcibly without due process of law. There is no denying that the Applicant was on maternity leave from 20.04.2018 and delivered premature baby. She appears not fully conversant and aware about the conditions to be followed in allotment of quarter through E-Aawas Scheme. True, she had applied for the quarter online through E-Aawas Scheme but it being very first month of the initiation of E-Aawas Scheme, it is but natural that many of the employees were not completely conversant about the terms and conditions.

11. No doubt, as per the brochure submitted by the learned C.P.O, there is stipulation of cut-off date i.e. 27th for possession of the quarter whereas the Applicant had taken possession on 30.01.2019. Thus, there is a short delay of three days. She has explained on Affidavit that she was not aware of the cut-off date and, therefore, she could not take the possession before cut-off date. Even assuming for the moment that she was aware of the terms and conditions and failed to take possession before the cut-off date in that event also considering her difficulties highlighted in the representations, the allotment could have been regularized as it can be the case of mere irregularity and not illegality. For such irregularity, dispossession of a lady Police Naik who was on maternity leave is definitely not only arbitrary but inhuman too. After all she was not trespasser and possession was taken in view of the allotment by due process of law. It seems that because of non-observance of cut-off date, the entry of possession was not recorded in the system and, therefore, it was shown vacant in next monthly allotment and accordingly, shown allotted to one Mrs. Reshma Sutar. The E-Aawas System is definitely laudable from the point of transparency but at the same time there has to be some space for consideration of genuine human difficulties like present matter and there should be scope for remedial measures to rectify such irregularity so as to address genuine difficulties in appropriate manner. The concerned authorities should not have been oblivious of the plight and trauma of the Applicant and should have considered her representation for condoning three days delay in taking possession of the quarter. It is essential to have sense of empathy and

compassionate in deserving matter and executive should not function like algorithms always.

12. However, instead of considering genuine difficulties of the Applicant, the Respondent No.2 issued notice on 11.02.2019 and dispossessed the Applicant on the very next date, if the Applicant is trespasser or proven criminal. This definitely cannot be countenanced in the law. Needless to mention, even trespasser cannot be evicted without due process of law.

13. Now, turning to the legal aspect as rightly pointed out by the learned Advocate for the Applicant that the action of taking possession is without due process of law in as much as the Respondents failed to abide the provision of Bombay Government Premises (Eviction) Act, 1955. He has invited the Tribunal's attention to Section 31 of the Maharashtra Police Act which is as follows:-

“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 authorised by the State Government in this behalf thinks it necessary and expedient to require him to do so.*
- (2) *If any persons 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 there from any person found therein and to take possession of the premises and deliver the same to any person specified in the direction.”*

14. As such in view of the Section 31(2) of Maharashtra Police Act, there has to be authorization by the State Government for taking possession in the eventually covered in section 31(1) of the Maharashtra Police Act. In the present case, no such authorization by the State Government is forthcoming. Therefore, recourse ought to have been taken of the provision of the Bombay Government Premises (Eviction) Act, 1955. There is nothing on record to point out that police quarters are excluded from the definition of the Government premises defined in Section 2(b) of the Bombay Government Premises (Eviction) Act, 1955. As per provisions of this Act, the Competent Authority is defined u/s 3 of the Act and it is for the said Competent Authority to initiate the process of eviction. It is pertinent to note that the Bombay Government Premises (Eviction) Act, 1955 has been incorporated after enforcement of the Maharashtra Police Act, 1951 and there is no exclusion of police quarters from the definition of premises defined in Bombay Government Premises (Eviction) Act, 1955.

15. The submission advanced by the learned C.P.O. that since inception, the possession of the Applicant was illegal and, therefore, the Respondents were not supposed to follow the provisions of Bombay Government Premises (Eviction) Act, 1955 is totally misconceived. In fact, the possession of the Applicant cannot be said illegal or of trespasser and at the most it is mere irregularity. Apart if one accepts the submission advanced by the learned C.P.O. then it would be amounting to license to act illegally which is against

Rule of law in civilized society and in certain situation may even invite criminal liability.

16. At this juncture, it would be apposite to refer the judgment of this Tribunal rendered in **O.A.No.14/2012 (Prema Jiman V/s. Commissioner of Police) decided on 07.03.2012** as relied by the learned Advocate for the Applicant. It was the case, arising from similar situation about the eviction of Police Constable from quarter and notice issued by the Commissioner of Police for eviction was under challenge. The issue was whether the provisions of Bombay Government Premises (Eviction) Act, 1955 will prevail and this Tribunal has held that the notice issued by the Commissioner of Police is not sustainable in law. It has been further held that the provisions of Bombay Government Premises (Eviction) Act, 1955 applies to all Government premises and it does not exclude the premises belonging to police force.

17. In view of above, I have no hesitation to sum-up that the impugned notice dated 11.02.2019 is not sustainable in law. Consequently, forcible dispossession of the Applicant from the quarter being high-handed, arbitrary and illegal deserves to be quashed. It is, therefore, imperative to restore the possession of quarter to applicant to undo the wrong.

18. The necessary corollary of the aforesaid discussion leads me to sum-up that the Applicant is entitled to relief claimed and the O.A. deserves to be allowed. Hence, the following order.

ORDER

- (A) The Original Application is allowed.
- (B) The impugned notice dated 11.02.2019 is hereby quashed and set aside.
- (C) It is hereby declared that the action of dispossession of the Applicant from the quarter is illegal and hereby set aside.
- (D) The possession of the quarter No.A-11 be restored to the Applicant within two weeks from today.
- (C) On the restoration of quarter No.A-11, the Applicant should handover the temporary quarter allotted to her as stop gap arrangement during the pendency of this Application.
- (D) No order as to costs.

Sd/-

(A.P. KURHEKAR)
MEMBER (J)