



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2383 OF 2024

KAJECTAN SANTAN CARNEIRO
VERSUS
THE STATE OF ELECTRICITY DISTRIBUTION COMPANY LTD.
AND ANOTHER

Mr. Shaikh M. A. Jahagirdar, Advocate for the petitioner

CORAM : R. M. JOSHI, J.

DATE : 26th FEBRUARY, 2025

PER COURT :-

1. This petition takes exception to the judgment and order dated 16th March, 2023 passed in Regular Civil Appeal No. 203 of 2017 under Section 7 of the Bombay Government Premises (Eviction) Act, 1955 (for short 'the Act') confirming order passed by the Competent Authority under the said Act dated 26th May, 2017 in Eviction Case No. 4 of 2000, directing eviction of petitioner from the subject premises.

2. Parties are referred to as 'occupant' and 'MSEDCL' for the sake of convenience.

3. MSEDCL initiated proceedings being Eviction Case No. 4 of 2000 before the Competent Authority under the provision of the Act for seeking eviction of the occupant from the subject premises. It is the case of the MSEDCL that the occupant is brother of Felix Carneiro who was

employed with MSEDCL. He retired on 31st March, 1999. The subject premises was allotted to the Felix as a servant quarter. Prior thereto his father was occupying the said premises in the capacity of the employee and as a servant quarter. After retirement of Felix, he refused to hand over the possession of the subject premises. Felix filed suit through his brother before the Civil Court bearing R.C.S. No. 251 of 1999, 474 of 2005 and Special Civil Suit No. 107 of 2014 seeking reliefs in respect of the subject premises. In the said proceedings the Civil Court has held that the occupant has no right to hold the subject premises and that the subject premises was allotted to Felix i.e. a brother of the occupant as a servant quarter.

4. It is the case of the petitioner that his father was granted oral gift of the subject premises by American Maratha Mission and therefore he has become owner thereof. The Competent Authority under the Act passed order of eviction dated 26th May, 2017. Against the said order, appeal preferred under Section 7 of the Act before the District Court, Ahmednagar. Principal District Judge decided the said appeal by judgment dated 16th March, 2023 rejecting the same.

5. Learned counsel for the petitioner submits that the petitioner has raised objection with regard to the title and ownership of MSEDCL in respect of the subject premises. It is his contention that once such issue

is raised, the Estate Officer/ Competent Authority has no jurisdiction to issue notice under the Act and to evict the occupant. To support his submission he placed reliance on the judgment of Hon'ble Supreme Court in case of *Kaikhosrou (Chick) Kavasji Framji Vs. Union of India and Another (2019) 20 SCC 705*.

6. There is no dispute about the fact that the occupant is brother of Felix and son of Santan. Santan and Felix were employed with MSEDCL. Eviction proceeding are filed under the Act as the occupant unauthorizedly holding the possession of the subject premises.

7. When objection is raised by the occupant with regard to the maintainability of the proceedings under the Act on the ground that he has raised issue of the title and ownership of MSEDCL in respect of the subject premises, a reference needs to the judgment passed by Civil Court in R.C.S. No. 251 of 1999. The issue involved before the Civil Court was as to whether the plaintiff i.e. occupant herein was in lawful possession of the subject premises and whether the MSEDCL proves that Felix, brother of occupant was its employee and that till his retirement the subject premises was held by him other service quarter. While answering the said issues on the basis of evidence led before the Court following findings are recorded:-

“७. मी दावा मिळकतीच्या मालमत्तेच्या कार्डातील उतारा पाहिला

त्यामध्ये रू.५,४२,०००/- ला व्यवहाराद्वारे अहमदनगर इलेक्ट्रीक सप्लाय कंपनीकडून कार्यकारी अभियंता महाराष्ट्र राज्य विद्युत महामंडळ अहमदनगर यांनी जागा घेतलेली दिसून येते व दिनांक १९/९/१९९८ चा ७/१२ चा उतारा पाहता मालकाचे नाव एक्सीक्युटीव्ह इंजिनियर असे फेरफारच्या नोंदी नुसार दिसून येते.

८. मी वादी व प्रतिवादी यांच्या वकीलांचे सविस्तर म्हणणे ऐकले. सर्व्हे नं. ६६७८ यामध्ये अमेरिकन मराठी मिशन ला सरकारने भाड्याने जागा दिली होती. परंतु नंतर मालमत्तेच्या रजिस्टर्ड उता-यावरतील परत खरेदीने रू. ५,४२,०००/- अहमदनगर इलेक्ट्रीक सप्लाय कंपनीकडून कार्यकारी अभियंता महाराष्ट्र राज्य विद्युत महामंडळ अहमदनगर यांनी खरेदी केलेली दिसून येत आहे. या उलट प्रतिवादी नं. १ ने निशाणी ४२ ला दाव्यात दाखल केलेल्या साक्षीच्या शपथ पत्रानुसार फेलिक्स कार्निरो हे दिनांक ३१/३/१९६९ रोजी सेवा निवृत्त झाले व त्यांच्यासोबतच वादी हे राहात होते व हा दावा दिनांक ६/६/१९९९ रोजी म्हणजे वादीचे भाऊ फेलिक्स कार्निरो यांच्या सेवा निवृत्ती नंतर दाखल केलेले आहे. त्यामुळे वादीचा जागेवरील ताबा हा मालकी हक्काचा व कायदेशीर नाही असे शपथ पत्रात सांगितले. वादी त्यांच्या वडिलांना अमेरिकन मिशन ने तोंडी बक्षिसाने जागा दिली होती याला कागदोपत्री वा इतर पुरावा नाही त्यामुळे वादी हा दिनांक ७/६/१९९९ रोजी म्हणजेच दावा दाखल करण्याच्या तारखेला कायदेशीर रित्या ताबा आहे या गोष्टीला कायदेशीर अधिष्ठान नाही. त्यामुळे वादीचा पुरावा बिनतोड नाही. सर्व तोंडी व कागदोपत्री पुरावा पाहता असे स्पष्टपणे दिसते की वादीचे वडील सन १९५५ पर्यंत काही विशिष्ट अटीवर दावा मिळकत ताब्यात होती. वादीचे बंधू नोकरीत असतांना ते या जागेत ताब्यात होते व ते ही सध्या महाराष्ट्र राज्य विद्युत महामंडळ मध्ये नोकरीत असल्यामुळे तिच जागा त्यांना देण्यात आली. वादी एकीकडे वारसाहक्काने मिळकतीचा ताबा आहे असे म्हणतो तर त्यांचे बंधू नोकरीत असल्यामुळे त्यांना क्वॉर्टर दिली होती असे म्हणतो हे म्हणणे विसंगत आहे. म्हणून मी मुददा नं. १ सिध्द न केल्यामुळे त्याचे उत्तर नाही असे देत आहे.

१०. मुददा क्रमांक ३ :- प्रतिवादीच चे साक्षीदार यांनी निशाणी ४२ ला त्यांच्या साक्षीचे शपथपत्र सादर केले त्यामध्ये त्यांनी असे म्हटले की वादीचे वडील सन १९५५ साली मयत झाले त्यानंतर त्यांची इतर दोन मुले त्यापैकी फेलिक्स हा सुद्धा कंपनीत नोकरीत असल्याने त्यांच्या नावाने सदरचे क्वॉर्टर कर्मचारी म्हणून देण्यात आले. सन १९७१ मध्ये सदर कंपनीकडून शासनाने वीज मंडळाला संपूर्ण मिळकत वारण्याचे हक्क दिले. त्यांनी फेलिक्स

कार्निरो यांना दावा मिळकत ही कॉर्टर म्हणून राहण्यास दिली गेली व त्यानुसार नियमाप्रमाणे शासकीय भाडे कपात केली गेली. यामुळे सदर तोंडी व कागदोपत्री पुराव्यावरून व दिनांक २७/११/१९७५ च्या पत्रावरून त्यांनी हे मान्य केले की ते महाराष्ट्र राज्य विद्युत महामंडळ चे कर्मचारी आहेत व त्यांना त्या कॉर्टरमध्ये राहू शकतात. या सर्व गोष्टीवरून प्रतिवादीचा पुरावा बिनतोड वाटतो यामुळे वादीचा भाउ फेलिक्स कार्निरो ला महाराष्ट्र राज्य विद्युत महामंडळ चे कर्मचारी म्हणून ते कॉर्टर राहण्यास दिले होते व ते सेवा निवृत्तीपर्यंत त्या कॉर्टरमध्ये राहात होते त्यामुळे मुददा क्रमांक ३ हे सिद्ध केल्यामुळे त्याचे उत्तर होय असे दिले.’’

8. The Civil Court therefore has held that occupant has failed to prove that the subject premises was gifted by American Maratha Mission to his father. On the contrary findings are recorded by holding that the subject premises was purchased by MSEDCL and it cannot be allotted to Santan initially and then to Felix as a servant quarter, since they were employed with MSEDCL.

9. There is no dispute about the fact that this judgment passed of the Civil Court has not been challenged before the higher Court and as such it has attained finality. It is thereafter two other suits being R.C.S. No. 474 of 2005 and Special Civil Suit No. 107 of 2014 were filed by the occupant. These suits are also dismissed. For want of challenge to these judgments and decrees, these judgments have attained finality.

10. It is thus clear from the above record that the Competent Civil Court has held that the subject premises was allotted to the father and brother of the occupant as a servant quarter. Since, there is no

challenge to the said finding, the same is binding on the parties. In the light of this fact, the judgment in case of *Kaikhosrou (Chick) Kavasji Framji* (supra) does not come to the aid of the present petitioner. In the said case it was held that the Estate Officer will have no jurisdiction to issue notice when the occupant raises bonafide claim about his right over the premises. First of all herein this case the claim of the occupant is not bonafide and secondly, his claim is already rejected by the Competent Civil Court. In such circumstances question of the said issue being raised before Authority or even before any other Court for want of challenge to the judgment and decree passed in the above suit is not permissible.

11. There is sufficient evidence led by the MSEDCL in order to establish that the occupant is in unauthorized occupation of the subject premises. The Appellate Court has also rightly taken into account the material on record while dismissing the appeal. This Court therefore finds no perversity in the order passed by the Courts below. As a result of which, petition stands dismissed.

(R. M. JOSHI, J.)

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