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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11332 OF 2014

Additional Commissioner
Pimpri Chinchwad Municipal
Corporation and another

.. Petitioners

Vs.

Mr.Chandrakant Gopinath Sawant

.. Respondent

Mr.K.S.Bapat a/w Mr.G.H.Keluskar, Advocates for the Petitioners.

CORAM : R.G.KETKAR, J.

DATE : 20th February, 2015

P.C. :

. Heard Mr.K.S.Bapat, learned Counsel for the petitioners at length.

2. By this petition under Articles 226 & 227 of the Constitution of India, the petitioners have challenged the judgment and order dated 05/07/2014 passed by the learned In-charge Member, Industrial Court, Pune (for short 'Tribunal') below Exhibit U-2 in Complaint (ULP) No. 30 of 2014. By that order, the Tribunal issued injunction restraining the petitioners herein from evicting the respondent, hereinafter referred to as complainant, from the rooms allotted to him for residence, during pendency of the complaint.

3. In support of this petition, Mr.Bapat submitted that the complainant instituted complaint under section 28(1) read with Items

No. 9 & 10 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for short 'Act') interalia contending that he was appointed as a Resident Security Guard from 20/04/2007 and that he was given two rooms as a quarter for residence. It was contended that he was appointed in school No. 94 namely Prabodhankar Thakare Vidya Mandir Prathamik Shala by the Administrative Officer of the Municipal Corporation of city of Pimpri Chinchwad (for short 'Corporation') as a Resident Security Guard for night shift in pursuance of resolution passed by Corporation. In the meeting held on 03/10/2008, it was unanimously resolved that he may be made permanent as a security guard in that school. The complainant asserted that officers of the petitioners came on 05/02/2014 and 10/02/2014 asking him to vacate the quarter. The complainant, therefore, instituted complaint under the Act. Pending the complaint, he filed application under section 30 (2) of the Act praying for injunction restraining the petitioners from evicting him from two rooms allotted to him.

4. Mr.Bapat submitted that there is no relationship of employer and employee between the parties. The petitioner did not allot any quarter as alleged by him. On the other hand, the complainant forcibly occupied the quarter with the help of some Corporators. He submitted that on 19/11/2011, the General Body of Corporation passed Resolution No. 1216. It was resolved to increase

the honorarium from Rs.2,000/- to Rs.7,500/- and make payment of Rs.10,000/- as ex-gratia. In exercise of powers under section 451 of the Bombay Provincial Municipal Corporations Act, 1949, the State Government rescinded resolution on 25/03/2014. The complaint was instituted before the Industrial Court for implementing the resolutions passed by the Standing Committee and General Body of the Corporation. The Industrial Court directed the Corporation to give effect to the resolutions passed by the Standing Committee and General Body. The Industrial Court passed order on 11/10/2013 directing the Corporation to implement the resolutions. That order was challenged by the petitioners in this Court by instituting Writ Petition No. 1538 of 2014. By order dated 17/07/2014, this Court allowed the petition and set aside the order dated 11/10/2013 passed by the Industrial Court.

5. Mr.Bapat invited my attention to paragraph 4(B) of the complaint and submitted that the complainant did not produce appointment letter showing that he was appointed as a Resident Security Guard and that he was provided a service quarter. The letter of appointment does not show that he was allotted quarter as a condition of service. The complainant is a rank trespasser who has forcibly occupied two rooms with the help of some Corporators. Mr.Bapat submitted that complainant is continued in the employment in view of order passed by the Labour Court, Pune in Complaint (ULP)

No. 139 of 2008. He further submitted that perusal of the pleadings of the complaint shows that even all the ingredients laid down by the Apex Court in the case of *Maria Margarida Sequeira Fernandes Vs. Erasmo Jack De Sequeira*, **(2012) 5 Supreme Court Cases 370** have not been set out. In particular, he relied upon paragraphs 66 to 70 as also 95 & 96 thereof. He submitted that the complainant has no title to the rooms which are in his possession. The caretaker, watchman or servant can not acquire interest in the property irrespective of his long possession. The caretaker or servant has to give possession forthwith on demand. He, therefore, submitted that the impugned order deserves to be quashed and set aside.

6. I have considered the submissions advanced by Mr.Bapat. I have also perused the material on record. The short question is whether the Tribunal was justified in issuing injunction against the petitioners from evicting the complainant from the rooms allotted to him for residence, during the pendency of the complaint. In the complaint, it was specifically asserted by the complainant that he was appointed as a Resident Security Guard with effect from 20/04/2007 and till date of filing of the complaint, he has rendered continuous service. As he was appointed as a Resident Security Guard for night shift, he was also provided with a quarter in order to keep watch on the property of school. The complainant has produced on record the communication dated 19/04/2007 addressed by the Administrative

Officer of the Education Board of the Corporation to the Head Master of Shramik Nagar Prathamik Shala, Nigadi, Pune and reply dated 20/04/2007 given by the Head Master to the Administrative Officer. In the letter dated 19/04/2007, Head Master was called upon to shift the school to newly constructed building and at his level, he was directed to make arrangement for security measures. For that, Rs.2,000/- was sanctioned as honorarium. Perusal of the letter dated 20/04/2007 addressed by the Head Master shows that the complainant was appointed as a Resident Security Guard. Subsequently, by communication dated 08/10/2012 addressed by the Head Master to the Administrative Officer, it was also brought to his notice that the complainant is appointed with effect from 20/04/2007 as a Security Guard on payment of honorarium and that he is occupying two rooms in the school premises.

7. While deciding the interim application, the Industrial Court considered the documents on record and prima facie observed that the complainant is performing his duties as a Security Guard. Respondent No.2 appointed him as a Security Guard from 20/04/2007. The said appointment was not objected to by the petitioners. The proceedings book also shows that it was resolved that complainant was appointed as Resident Security Guard from 20/04/2007 and that he should be made permanent. The Tribunal also considered the letter dated 08/10/2012 addressed by the Head

Master of the school to the second petitioner herein informing him that the complainant was working from last 5 years and he is occupying two rooms in the school premises. In paragraph 4, the Tribunal, prima facie, observed that the complainant was appointed by the Head Master and the said fact was informed to the petitioner No.2 in 2007. The petitioners did not take any objection to that appointment. The very fact that the complainant is appointed as a Resident Security Guard per-supposes that he has to be there round the clock and therefore, he has been allotted two rooms. The Tribunal, therefore, prima facie, held that it cannot be said that the complainant was not working in the Corporation. It is also, prima facie, held that the rooms given to him have become the service condition. It is on that basis, the Tribunal issued injunction against the petitioners.

8. Mr.Bapat relied upon the decision of the Apex Court in the case of **Maria Margarida Sequeira Fernandes** (*supra*), and in particular, paragraphs 66 to 70 and 95 & 96 thereof to contend that the complainant did not make out necessary ingredients in the pleadings of the complaint for granting relief and that being a watchman or servant cannot acquire any interest in the property irrespective of his possession. The caretaker or servant has to give possession forthwith on demand.

9. In the present case, the Tribunal has, prima facie, held that the complainant was appointed as a Resident Security Guard in the year 2007 and till the date of filing of the complaint, he is continuously working. That apart, the Tribunal also, prima facie, held that he was allotted two rooms have become the service condition. The reliance placed on the decision of the Apex Court, therefore, does not advance the case of the petitioner.

10. In view thereof, no case is made out for interfering with the impugned order. Hence, petition fails and the same is dismissed.

11. Liberty is reserved to the petitioner to apply to the Tribunal for expeditious disposal of the complaint. If such application is made, the Tribunal will consider the same and pass appropriate orders.

(R.G.KETKAR, J.)