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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
LETTER PATENT APPEAL NO.265 OF 2010

Ankush Bhujangrao Hotkar ...Appellant
vs.
The Secretary, Home Department,
Mantralaya & another ...Respondents

Mr.Santosh Jagtap i/b Ms Kranti Kamble-Gaikwad for
the Appellant
Mr.Manish Pabale, AGP for the respondent

CORAM : A.S.OKA, &
G.S.KULKARNI, JJ.
DATE : DECEMBER 20, 2016

P.C.:

1 By this Letters Patent Appeal, the appellant has taken an exception to the Judgment and Order dated 4th January 2010 passed by the learned Single Judge in Writ Petition No.20 of 2010 filed by the present appellant. By the said order, the Writ petition was rejected. There is also a challenge to the order dated 13th April 2016 passed by the same learned Single Judge by which review petition filed by the appellant for the review of the order dated 4th January 2010 has been rejected.

2 Admittedly, the petitioner who was working as a Police Constable was allotted a residential tenement subject matter of this appeal as a service quarter. With effect from 13th March 2009, the appellant ceased to be in Government employment in view of the

fact that his request for voluntary retirement was accepted by the State Government.

3 A writ petition was filed by the petitioner before the learned Single Judge challenging the orders passed on 26th October 2009 and 26th November 2009 by the Commissioner of Police for Railways directing eviction of the appellant. One of the prayers made in the petition was for declaration that the appellant was a legal tenant of M/s.Sunil Builders.

4 The case made out in the petition before the learned Single Judge was that by executing an affidavit dated 4th April 1998, M/s.Sunil Builders accepted the appellant as his tenant.

5 The learned Single Judge by the impugned order passed in the Writ Petition held that as the tenement in question was allotted to the appellant as a service quarter, he cannot continue to occupy the same after he ceased to be in the employment.

6 While rejecting the review petition, the learned Single Judge observed that merely because another petition filed by one Shri Kharat is pending in the Apex Court, no relief can be granted to the appellant. The learned Single Judge also noted that the said Shri Kharat has filed a writ petition in this Court in which interim relief has been granted. The learned Single Judge observed that interim relief was granted in the said petition on

the basis of the case made out by the petitioner therein that he had entered into Lease Agreement with the respondent/Government and the issue was pending before the Apex Court as to whether the premises was taken on lease or requisition.

7 The learned counsel for the appellant submitted that the tenement in question was requisitioned by the Government and subsequently, M/s.Sunil Builders has acquired the building in which the tenement is situated and the said builder accepted that the petitioner is a tenant. He would, therefore, urge that the possession of the appellant ought to have been protected even after he has taken voluntary retirement.

8 We have considered the submissions. There is nothing placed on record to show that before the appellant ceased to be in the employment, the order of requisition of the tenement was set aside or cancelled. Therefore, the appellant cannot claim any right in respect of the said tenement. The entry of the appellant in the said tenement is by virtue of his employment as the tenement was allotted to him as a service quarter. Therefore, we find no error in the order dated 4th January 2010 passed by the learned Single Judge rejecting the petition filed by the appellant.

9 The petition for review was based on the interim order passed by the Division Bench in Writ Petition filed by one Shri Kharat. In paragraph 2

of the order dated 13th April 2010, the learned Single Judge rightly observed that the facts of the case in the writ petition, by Shri Kharat were completely different. In the said writ petition Shri Kharat was claiming on the basis of the Lease Agreement executed with the Government. In the present case, no such Lease Agreement was relied upon by the appellant. We find no error in rejecting the review petition.

10 We find no error in both the impugned orders. There is no merit in the Letters Patent Appeal and the same is dismissed.

11 We, however, make it clear that if the appellant has any remedy available in law against the owner of the building, he is free to adopt the said remedy.

11 After the Letters Patent Appeal was dismissed, the learned counsel for the appellant seeks continuation of ad-interim relief granted on 10th October 2016 in Civil Application No.66 of 2014. The said ad-interim relief will continue to operate for a period of eight weeks from today.

(G.S.KULKARNI,J.)

(A.S.OKA,J.)