

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION (L) NO. 529 OF 2015

Smt. Swati Anil Sawant

...Petitioner

Versus

**The Municipal Corporation of Greater
Mumbai & Ors.**

...Respondents

Mr. Madhav Jamdar, for the Petitioner.

Mr. Anil Singh, Senior Advocate, a/w Ms. K.H. Mastakar, for the
Respondent/BMC.

**CORAM : A.A. SAYED, J.
PRONOUNCED ON : 20TH APRIL 2016**

JUDGMENT :

1. By this Petition under Article 226 of the Constitution the Petitioner has impugned the order dated 28 January 2015 passed by the Respondent No. 3-Assistant Municipal Commissioner (Estate) of the Respondent Corporation, whereby the representation of the Petitioner seeking conversion of the allotment of staff quarters to her from leave and licence basis to that of tenancy, came to be rejected. The impugned order was passed by the Assistant Commissioner,

pursuant to the order dated 28 November 2014 in Writ Petition No. 1892 of 2014 of learned Single Judge of this Court directing the Assistant Commissioner to take a fresh decision after following principles of natural justice.

2. A brief narration of facts would be necessary to bring out how the matter had proceeded leading to the passing of the impugned order. The Petitioner was appointed as a clerk with the Respondent Corporation in the year 1964. She retired on account of superannuation on 1 July 2003 as Superintendent (Court) in the Legal Department of the Respondent Corporation. Prior to her retirement, on or about 10 April 2003, she submitted an Application to Respondent No. 2-Commissioner of the Respondent Corporation for conversion of the staff quarters occupied by her on leave and licence, to that of tenancy. The staff quarters occupied by her was allotted to her by the Respondent-Corporation while in service on her representation that her husband who was working in the Bombay Port Trust (BPT) and staying in the service quarters provided to him and after his retirement, BPT has started eviction proceedings against him and also charging heavy penal rent. In her further representation

she had stated that her husband was ill and suffering from Hemiparisis. The Municipal Commissioner as a special case allotted a staff quarter to the Petitioner out of turn, despite the pending Applications of other staff who were senior and who were on the wait-list. She was initially allotted a staff quarter at Maratha Compound of an area of 307 sq.ft. Thereafter, she was allotted a bigger size staff quarter of 375 sq.ft. at Room No. 2, Ground Floor, G-10, Shahu Nagar, where she is presently residing. In her representation dated 10 April 2003 requesting for conversion of staff quarters from leave and licence to tenancy basis, the Petitioner gave two instances of allotment which according to her, were converted to tenancy basis.

3. A Notice dated 22nd August 2003 pursuant to initiation of inquiry proceeding (Enquiry No. GN/28 of 2005) was served on the Petitioner alleging that she was in unauthorised occupation of the staff quarters and to show cause against proposed eviction and failure to pay arrears of penal rent. The Petitioner filed her Written Statement. On 27 March 2006 an order was passed by the Enquiry Officer in the aforesaid Enquiry No. GN/28 of 2005 interalia directing the Petitioner to vacate the staff quarter within one month.

Aggrieved by order dated 27 March 2006 passed by the Enquiry Officer, the Petitioner filed Misc. Appeal No. 47 of 2006 in the Bombay City Civil Court at Bombay. On 17 May 2006 the Principal Judge of the City Civil Court dismissed the Petitioner's Appeal and granted time to the Petitioner to vacate staff quarters till 29 July 2006 and directed her to pay arrears of compensation. The Petitioner challenged the order dated 27 March 2006 of the Enquiry Officer and order dated 17 May 2006 of the City Civil Court by way of Writ Petition No. 2172 of 2006. By order dated 28 August 2006 passed by the Division Bench of this Court, the Writ Petition was disposed of and the Joint Municipal Commissioner was directed to consider the case of the Petitioner in the like manner as was considered in the case of other service tenancies in the building and if the Petitioner fell in the same criteria, then the Petitioner be granted the benefit 'according to law'. The Division Bench further directed that till such decision is taken and for a period of four weeks thereafter if the order be adverse, the Petitioner shall not be evicted provided the Petitioner pays a licence fees which due and payable 'according to law'. Pursuant to the aforesaid order dated 28 August 2006 of the Division Bench of this Court, the Petitioner filed a detailed representation dated 16 October 2006 for conversion of the staff

quarters occupied by her from leave and licence to tenancy basis and also sought adjustment of alleged excess rent paid by her to the Respondent Corporation. According to the Petitioner, by a communication dated 19 March 2008 of the Assistant Commissioner, she got knowledge about order dated 25 April 2007 passed by the Joint Commissioner (Improvement) rejecting her representation. In the meanwhile, the Respondent Corporation had initiated a fresh enquiry under Section 105B of the M.M.C. Act. An eviction order came to be passed, against which the Petitioner filed Misc.Appeal before the City Civil Court which was allowed on technical ground and the eviction order was set aside and liberty was granted to the Respondents to initiate fresh enquiry. On 8 October 2013 the Respondent Corporation issued a Notice to the Petitioner pursuant to a fresh Enquiry No. GN/31 of 2013 being initiated in view of the liberty granted by the City Civil Court.

4. The Petitioner thereafter preferred Writ Petition No. 232 of 2014 challenging the order dated 25 April 2007 referred to in the letter dated 19 March 2008 and the consequent order passed under Section 105B of the M.M.C. Act on 8 August 2013 of the Joint

Commissioner (Improvement). On 9 May 2014, learned Single Judge of this Court passed an order in the said Writ Petition No.232 of 2014 setting aside the order dated 25 April 2007 (referred to in the said letter dated 19 March 2008) and directed the Assistant Commissioner to reconsider the Petitioner's case and pass reasoned order on the issues directed by the Division Bench in the order dated 28 August 2006 and till such decision is taken and for a period of four weeks thereafter, no coercive action be taken. Pursuant to the order passed by the learned Single Judge of this Court dated 9 May 2014, the Assistant Commissioner passed an order on 3 July 2014 rejecting the representation of the Petitioner for conversion of staff quarters from leave and licence to tenancy basis and also called upon her to pay the arrears of rent/compensation. The said order dated 3 July 2014 of the Assistant Commissioner was challenged by the Petitioner by way of Writ Petition No. 1892 of 2014.

5. In the meanwhile, the Enquiry Officer passed an order of eviction on 19 September 2014 in Enquiry No. GN/31 of 2013 and also called upon the Petitioner to pay the arrears of rent/compensation. The Petitioner filed an Misc.Appeal No. 28 of

2014 in the City Civil Court challenging the said order dated 19 September 2014 which is stated to be pending.

6. On 28 November 2014 learned Single Judge of this Court passed an order in Writ Petition No. 1892 of 2014 setting aside the order dated 3 July 2014 of the Assistant Commissioner and directed the Assistant Commissioner to decide the representation of the Petitioner dated 10 April 2003 and 16 October 2006 afresh on merits after following principles of natural justice and affording a personal hearing to the Petitioner and by giving the Petitioner the material relied upon by the Assistant Commissioner. The learned Single Judge directed that the order of eviction dated 19 September 2014 which was challenged in Misc.Appeal No. 28 of 2014 (against which Appeal was pending before the City Civil Court at Bombay) shall not be enforced till the fresh orders passed by the Assistant Commissioner.

7. Pursuant to the aforesaid order dated 28th November 2014 of learned Single Judge of this Court, the Assistant Commissioner passed the order dated 28 January 2015 rejecting the representation of the Petitioner for conversion of staff quarters from

leave and licence basis to tenancy basis. The said order further directed recovery of arrears of rent/compensation from the Petitioner. It is this order dated 28 January 2015 which is the subject matter of challenge in the present Petition.

8. I have heard learned Counsel for the Petitioner and learned Senior Counsel for the Respondents.

9. In the impugned order dated 28 January 2015 the Assistant Commissioner has concluded as under :-

- “1. The Petitioner was allotted a staff quarter as a special case by the Municipal Commissioner in view of the impending eviction action which was being taken by the Bombay Port Trust against her husband who was ill.*
- 2. The Petitioner had given an undertaking that she will vacate this staff quarter within three months of her retirement from the municipal service. Hence, clearance was obtained by her to release her retiring dues. She received most of her dues like Gratuity, Commutation of pension, N.C.PF. Monthly pension balance leave salary etc. However she has not vacated staff quarter. Petitioner has also executed Leave and Licences Agreement.*
- 3. The Petitioner was working as Superintendent (Court)*

in the Legal Department of the MCGM and is she is very much aware to rules & regulations regarding allotment of staff quarter.

- 4. The MCGM has more than one lakh thirty thousand employees and many of them do not have their own house. Their services are required by the MCGM and hence quarters are allotted preferably near the place of work so as to provide efficient and effective civic services to the citizens of the city.*
- 5. There is a waiting list of about 4000 employees who are to be allotted staff quarters. They can not get staff quarters unless the retiring employees vacate and handover their quarters to the MCGM.*
- 6. MCGM has made a policy that the staff quarters will not be allowed to be converted in to ownership basis even in the case of redevelopment of the municipal properties as mentioned above.*
- 7. The Section 92 of the MMC Act 1888 do not allow the Municipal Commissioner to dispose of any property of the corporation below the market rate of the asset.*
- 8. It seems that the earlier sanctions given by the then Municipal Commissioners/Joint Municipal Commissioner (Improvement) were given due to some specific reasons in each cases as are explained above in three cases but these cases are more of exceptional*

nature and can not be used as precedents for pressing similar demands.

- 9. The Petitioner has retained this tenement for over 11 years after her retirement and thus liable to pay the penal rent of Rs. 28,67,330/- to MCGM as per the calculations done by the Administrative Officer G/North ward.*
- 10. There is no question of law involved in this case as was claimed by the Petitioner and she could not submit the same during or after the hearing.*
- 11. MCGM will be facing acute shortage of staff quarters, since many MCGM buildings are being declared as dilapidated and proposed for demolition, by the empaneled structural auditors in view of a drive taken by the MCGM to evaluate the status of its buildings.*
- 12. The claim cannot be entertained on the basis of the principle of Parity or equality also as the cases which were approved earlier were approved by the then Municipal Commissioner long back in view of specific reasons. These cases may be considered as an exception. After 2001, no tenement is converted into ownership or tenancy. The representation of the Petitioner is liable to be rejected as she has no right to ask for conversion of tenement into tenancy or to occupy illegality.*
- 13. If the claim of Petitioner is accepted it will open flood*

gates for similar demands by other employees of the MCGM who have either applied for it or already are fighting legal cases against MCGM in various Courts.

- 14. The two cases of Smt. Vinita Toraskar & Smt. Apartna Parab brought to the notice during hearing on 31st December 2014 about transfer of tenancy basis, is not true.*

ORDER

In view of my conclusions above, existing policy of the MCGM, provisions of the MMC Act 1888 and in view of larger public interest the request of the Petitioner is hereby rejected.

The Petitioner is hereby directed to pay the arrears of rent of Rs. 28,67,330/- to the MCGM and vacate the tenement within four weeks of receipt of this order. The order will be pasted at Petitioners tenement, speed post communication and served on Petitioner in person by the Administrative Officer (Estate), G/North ward.

As per the Hon'ble High Court's direction this order will not be acted upon for a period of four weeks from the date of communication to the Petitioner.

Assistant Commissioner (Estate)”

10. Having perused the impugned order and considering the facts and circumstances of the case, in my view, the impugned order does not warrant any interference. It is at the outset noticed that the Petitioner has retired on superannuation as far back as on 1 July 2003. On her representation, she was allotted staff quarter as a special case by the Municipal Corporation in view of the fact that her husband was ill and suffering from Hemiparisis and the staff quarters which was allotted to the Petitioner's husband who was working in Bombay Port Trust, was required to be surrendered after his retirement. The staff quarter was allotted to her out of turn, despite the fact that the Applications of other staff of the Respondent Corporation, who were senior to her and were on the waiting list awaiting allotment. At the time of allotment of this staff quarter, she had given an undertaking dated 17 May 2003 to the effect that she would vacate the staff quarter within three months of her retirement from Municipal service. The Petitioner was at the time of her retirement working as Superintendent (Court) in the Legal Department of the Respondent Corporation and was conscious of the effect of the undertaking given by her. The undertaking dated 17 May 2003 states as follows :-

“I, Smt. Swati Anil Sawant, Supdt. (Courts) hereby undertake to vacate the quarter allotted to me by the Municipal Corporation of Greater Bombay within 3 months from the date of receipt of my N.C.P.F. Amount.”

11. Clause 6 of the leave and licence Agreement dated 28 April 1992 executed by the Petitioner reads as under:

“The licence shall terminate on my leaving or retiring from Municipal service or on my being discharged or dismissed from Municipal service.”

It cannot be disputed that the aforesaid leave and licence Agreement on her retirement on 1 July 2003, stands terminated.

12. Despite her retirement on 1 July 2003, the Petitioner has continued to occupy the staff quarter merely by taking benefit of the order of the Division Bench of this Court on 28 August 2006, whereby it was observed by the Division Bench of this Court that

“If the Petitioner falls in the same criteria, then to give the Petitioners the benefit ‘according to law.’ Till such time the decision is taken and for a period of four weeks thereafter if the order be adverse, the Petitioner not to be evicted, provided the Petitioner pays the licence fees

which are due and payable 'according to law'.

(emphasis supplied)

13. It is admitted position that there was no policy of the Respondent Corporation to convert the staff quarter given on leave and licence basis to the employees of Respondent Corporation to tenancy basis. Even assuming in a couple of instances, this has been done by the Corporation that can at the highest be termed as an aberration or irregularity or illegality. Article 14 of the Constitution speaks about equality before law or equal protection of the laws. That equality cannot extend to any irregularity or illegality. That is the reason why the Division Bench has used the words 'according to law'. The Petitioner does not have any vested right to seek conversion of the staff quarters to tenancy basis which was allotted to her on leave and licence basis.

14. The learned Senior Counsel on behalf of the Municipal Corporation pointed out that the Corporation has more than 3,00,000 employees and the quarters are allotted to employees for providing efficient service for public. There are about 4,000 employees on the waiting list who needed staff quarter and unless the retired employees vacate and handover the quarter to the

Corporation, it is not possible to allot them staff quarters as the staff quarters are insufficient as compared to the employees who require the same and the continuation of the occupation of the staff quarter by the Petitioner even after her retirement would mean depriving another deserving employee's occupation of the staff quarter.

15. It would be apposite to reproduce the observations of this Court in Ramachandra K. Paralikar Vs. The Municipal Corporation of Greater Bombay & Ors.¹. They read as follows :-

“4. *It is not in dispute that every year thousands of municipal employees retire from municipal service and the employees who are occupying quarters allotted to them while they are in service are required to vacate the quarters. The Corporation has got a long waiting list of employees who are in dire need of accommodation while in service and the persons on waiting list cannot secure accommodation because the retired employee decline to vacate the premises.*

Section 105B of the Corporation Act enables the Commissioner to serve notice upon the person in unauthorised occupation and recover vacant possession after holding an enquiry.

1 Writ Petition No. 118 of 1983

7. *With this background it is now necessary to examine whether the Petitioners are entitled to any relief in these proceedings. Shri. Dharmadhikari, learned Counsel appearing on behalf of the Petitioners, very fairly and rightly stated at the outset that the Petitioners are not pressing the contention about validity of provisions of Section 105-B of the Corporation Act. The learned Counsel pointed out that the validity of the section enabling the Commissioner to adopt eviction proceedings has already been upheld and it is therefore not possible to seek a declaration in that respect or to seek a permanent injunction restraining the Corporation from adopting any eviction proceedings. Shri. Dharmadhikari also submitted that it is not possible to seek relief that the Corporation should convert the premises occupied by the retired employees on ownership basis on the assurance of formation of co-operative societies. The learned Counsel stated that it is impossible for the retired employees to purchase premises and more so when several quarters in the building are occupied by employees still in service and who had no desire to join such society. The only thrust of the submission of Shri. Dharmadhikari is that the premises occupied by the retired employees should be given to them on permanent tenancy basis or the Petitioners should be provided with alternate accommodation by the Corporation. The learned Counsel urged that in respect of the premises*

constructed under Budget 'A' category the Corporation has allotted certain quarters to non-employees. It was also contended that the premises have been given on permanent lease to some of the retired employees or even to outsiders and Corporators or senior officers and therefore there is no reason to discriminate between those allottees and the retired employees. Shri Dharmadhikari also submitted that it is the bounden duty of the Corporation to provide alternate accommodation to the retired employees who have carved the Corporation faithfully for number of years. A faint suggestion was made that if illegal encroachments upon the municipal lands are protected, then there is no rational why are retired employees should not be given protection in respect of the quarters allotted to them while in service.

It is impossible to accede to the submission of the learned Counsel. It is unfortunate that retired employees claim right in the premises when the tenements are allotted on leave and licence basis while the person is in service and on clear undertaking that the premises will be vacated on the employees ceasing to be in service. In several returns filed on behalf of the Corporation it is made clear that it is impossible for the Corporation to provide alternate accommodation to all the retired employees. If such a writ is issued then the Corporation would have to be wound up because the entire budget

would be spent over construction of tenements for retired employees. The Corporation has lakh of employees and every year thousands of them retire and if every retired employee is to be provided with alternate accommodation, then the Corporation cannot do any other work or business except constructing houses for the employees. Surely the Petitioners cannot expect such a writ directing the Corporation to provide accommodation to all the retired employees. Shri. Dharmadhikari submitted that if not to all the retired employees then at least to the Petitioners who have approached the Court should be provided with alternate accommodation. The submission cannot be accepted. It is not permissible to give direction to the Corporation to provide alternate accommodation to only those employees who have come to the Court. Such an order would be entirely discriminatory. It is required to be borne in mind that the Municipal Corporation allotted quarters to employees as a welfare scheme and there is no obligation under the Corporation not to provide accommodation to the employees. The accommodation is given so as to enable the employees to discharge their duties in a fruitful manner. In case the allottees stick to the premises even after ceasing to be in service that would made mockery of the scheme of allotting quarters to the employees who are in service. It would also cause grave hardship to the employees who are still in service

and are waiting for securing accommodation for over several years.

8. Realising the futility in claiming that the retired employees should not be evicted without providing for alternate accommodation, Shri. Dharmadhikari submitted that the Corporation had shown favour in several cases while permitting the retired employees to occupy the tenements on permanent tenancy basis. The learned Counsel also contended that some of the former Corporators or their relations were provided with accommodation on permanent tenancy basis. The expression 'permanent tenancy basis' is misconceived, because in respect of the premises of the Corporation the provisions of the Rent Act are not applicable. In the return filed on behalf of the Corporation. It is admitted that premises are granted to some of the persons on lease, but it is claimed that such allotment is made in peculiar circumstances. It is pointed out that the contention that the allotment is made to favour certain employees, councilors or officers is not correct. The allotment is made as it is found in some cases that the allottee is required to be assisted in certain peculiar circumstances. In case an employee dies while in service, then his family members cannot be thrown out suddenly as that would be extremely harsh. The allotment is also required to be made when the premises of such allottees are taken over by the

Corporation for carrying out various schemes under the Corporation Act. Then the person is dishoused then the Corporation provides for accommodation. It is undoubtedly true that some of the Corporators have secured possession of the premises of the Corporation, but such allotment even if irregular cannot create a right in favour of the retired employees. Surely, the Petitioners cannot claim that because the Corporation had acted contrary to rules in some cases, a writ of mandamus should be issued that Corporation should carry such illegalities in respect of all retired employees. Such a writ is entirely impermissible. Shri. Dharmadhikari invited my attention to the cases of wrongful allotment with reference to various paragraphs of the Petition. The Corporation has given explanation in respect of these allotments, but even assuming that the explanation is not satisfactory, that would not entitle the Petitioners to claim that such irregularities should be committed in respect of quarters in their occupation. In my judgment, the Petitioners are not entitled to any relief.

9. *It is required to be stated that another Petition, being Writ Petition No. 1303 of 1984 was filed by eleven retired employees claiming that Gilder Lane building, in which the present Petitioners are residing, should be sold for forming co-operative housing society. The Petition was summarily dismissed by Justice Mrs. Manohar, but*

in appeal that order was set aside and the Petition was admitted only because the present Petition is pending. In my judgment, the Petitioners have no legal right whatsoever to remain in the quarters, nor can compel the Corporation to sell the quarters to them or to grant permanent lease or to provide for alternate accommodation. The Petitioners are liable to be evicted as unauthorised occupants after they cease to be in service. Though the Petitioners have retired several years before, the Petitioners are holding to the quarters by claiming diverse alternate reliefs. The injunction granted in favour of the Petitioners in the year 1983 has prevented the Corporation from commencing or adopting proceedings under Section 105-B of the Corporation Act against such retired employees. The Petitioners having failed to establish any right to secure any of the reliefs, the Petition must fail.

10. *Accordingly, rule is discharged with costs.”*

16. In somewhat similar case in **Gulam M.C. Pathan Vs. Municipal Corporation of Greater Mumbai & Ors.**², this Court has observed as follows :-

“The transfer of service tenancy into regular tenancy would fall within the policy decision of the Respondent

2 WP 1963 of 2012

therefore, the Respondent cannot be compelled by an order of the Court in changing the tenancy even if at some point of time in the past the Respondent had permitted the transfer.”

17. For the reasons stated above, in my view, the impugned order does not warrant any interference and the representation of the Petitioner has been rightly rejected by the Respondent No.3-Assistant Municipal Commissioner. The Petition is accordingly dismissed. There shall be no order as to costs. The Misc.Appeal No. 28 of 2014 is expedited and shall be decided on its own merits and in accordance with law and without being influenced by this order or earlier orders within a period of three months from the date a copy of this order is placed before the City Civil Court at Bombay. Pending the Misc. Appeal, the order passed by the Assistant Commissioner which is impugned in the Misc. Appeal, shall not be enforced.

[A.A. SAYED, J.]