

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO.1858 OF 2018**

Dalamal House Commercial Complex CHS and ors.... Petitioners

V/s

Shri S.R.Tiwari and ors.

... Respondents

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Mr.Nitin Vhatkar i/by Mr. G.S.Hiranandani for the Petitioners.

Mr.Mahesh Shukla for Respondent Nos.1 to 10.

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**CORAM : S.C.GUPTE, J.**

**DATE : JULY 17, 2018.**

**P.C. :**

1. Heard learned counsel for the parties. Rule. Rule taken up for hearing forthwith by consent of the parties.

2. This petition challenges an order passed by the Industrial Court at Mumbai in a complaint of unfair labour practice. The complainants were 10 employees of first respondent - society (the petitioners herein), all of whom were working either as security guards or liftmen. It was their case that they were working with the petitioner-society for many years. There was an agreement executed between the complainants and the society

on 25<sup>th</sup> August 2015, which was effective till 31<sup>st</sup> March 2018. The grievance of the complainants was that with effect from 1<sup>st</sup> May 2017, the society had engaged a security agency due to which the complainants were not getting any payment of overtime and the society was trying to terminate their services. The Industrial Court found in favour of the complainants purportedly on the basis that the petitioner-society was an 'industry' and the complainants were its 'workmen' within the meaning of Sections 2(j) and 2(s), respectively, of Industrial Disputes Act, 1947. The so-called industrial enterprise of the society was licences given by the society to mobile companies for setting up towers of communication, through which the society was earning licence fees or compensation.

3. This court in **M/s Shantivan-II Co-operative Housing Society Vs. Smt. Manjula Govind Mahida**<sup>1</sup>, has considered a similar controversy. The co-operative society in that case was alleged to be carrying on commercial activities through licensing of its terrace for erection of mobile towers. This court relying on the test laid down in **Banglore Water Supply and Sewerage**

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1 W.P.No.360 of 2007 dated 21 June 2018

**Board Vs. A. Rajappa and ors.**<sup>1</sup> held that if predominant nature of services undertaken by the co-operative society was to render services to its own members and the purported commercial activities were a mere adjunct to these services, the society could not be termed an industry. This Court in **M/s Shantivan-II Co-operative Housing society** observed that the case of **Somvihar Apartment Owners Housing Maintenance Society limited Vs. Workmen c/o Indian Engineering and General Mazdoor**<sup>2</sup>, on which reliance was placed by the complainants and the ratio of which was applied by the Industrial Court, has no application to such case.

4. Accordingly, the impugned order of Industrial Court suffers from a serious error of jurisdiction. Rule is accordingly made absolute and the petition is allowed. The complaint before the Industrial Court is quashed and set aside. No order as to costs. Though the petition is disposed of on the basis of law declared by this court, it is expected that the parties nevertheless would try and sit together and sort out the dispute of wages amicably.

( S.C.GUPTE, J. )

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1 1978(ii) SCC Page 213

2 (2002)9 SCC 652

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