IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.956 OF 2010

Prakash R. Khandait
aged-60 years, Occ. Retired,
R/o: 31/1221, Manas Co-operative
Housing Society Limited, D. N. Nagar,
Andheri (West), Mumbai. ..Petitioner

vs.

1. Competent Authority -II, Mumbai
Housing and Area Development Board,
1st Floor, Griha Nirman Bhavan, MHADA,
Bandra (East), Mumbai – 400 051.

2. The Appellate Officer,
Maharashtra Housing & Area Development
Authority, 1st Floor, Griha Nirman Bhavan,
MHADA, Bandra (East), Mumbai – 400 051.

3. Estate Manager – II,
Maharashtra Housing & Area Development
Board, Griha Nirman Bhavan, Bandra, Mumbai.

4. Maharashtra Housing & Area Development
Authority, 1st Floor, Griha Nirman Bhavan,
MHADA, Bandra (East), Mumbai – 400 051.

5. Manas Cooperative Housing Society Limited
having address at D. N. Nagar,
Andheri (West), Mumbai – 400 053. ..Respondent

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Mr. Ranvir S. Shekhawat, Advocate for Petitioner.
Mr. P. G. Lad a/w. Aparna Kalathil, Sayli Apte and Priyanka Naik, Advocate for Respondent No.2, Advocate for Respondent / MHADA.

CORAM : C. V. BHADANG, J.

RESERVED ON: 20th DECEMBER, 2019

PRONOUNCED ON: 6th JANUARY, 2020

JUDGMENT:

1. The challenge in this petition is to the order dated 29/1/2010, passed by the Appellate Authority, Maharashtra Housing and Area Development Board (MHADA) in Appeal No.01/2007. By the impugned order while dismissing the appeal, filed by the petitioner, the Appellate Authority has confirmed the order dated 10/1/2007 passed by the first respondent in Eviction Case No.01/2006.

2. The brief facts are that the late wife of the petitioner Smt. Sarojini Prakash Khandait was in service of MHADA. On 13/5/1983, she was allotted tenement No.31/1221, Manas Co-Operative Housing Society Ltd., Andheri (West), Mumbai on a compensation at the rate of 10% of the emoluments and service charges, since house rent allowances (HRA) was not admissible to her.

3. On 6/4/1987, the allotment was modified as a tenanted accommodation by charging rent at the rate of Rs.132/- plus service charges of Rs.21/- per month.

4. It appears that on 16/8/1991, the third respondent came out with an ownership scheme whereby the occupants of the tenement in building No.31 (where the tenement of the petitioner's wife was situated) were allowed to be converted into ownership tenements. According to the petitioner, out of 40 tenements, 39 tenants were

granted the ownership rights. However, the petitioner's late wife was not granted such ownership rights on the ground that she was member of another co-operative society i.e. Shubham Karoti Co-operative Society. The wife of the petitioner expired on 25/4/1994. It appears that on 27/5/1994 the petitioner made an application for transferring the said premises in his name which was not accepted. However, the petitioner continued to occupy the premises from 1994 to 2002.

5. In the year 1999, third respondent issued a circular pertaining to the occupation of staff quarters by the family members of the employees of MHADA who have expired. It stipulated that in case of expiry of an employee, his family will be allowed to continue in the staff quarters for a period of three months, on the payment of usual rent. However, the subsequent occupation was chargeable at the rate of penal rent of Rs.10/- per sq. ft. per month.

6. In the year 2002, the petitioner received a notice calling upon him to pay penal rent of Rs.2,11,300/- calculated at the rate of Rs.10/- per sq. ft. per month from 25/7/1994 to 15/2/2002 and to hand over the possession of the said premises. The petitioner filed a reply on 14/3/2005. In the year 2006, eviction proceedings were initiated against the petitioner vide case No.01/2006 in which the petitioner filed a Written Statement. On 10/1/2007, the first respondent directed the eviction of the petitioner and recovery of penal rent which order has been confirmed by the Appellate Authority on 29/1/2010 which is subject matter of challenge in this petition.

7. I have heard Mr. Shekhavat, learned counsel for the petitioner and Mr. Lad, learned counsel for the respondents. Perused record.

8. Learned counsel for the petitioner has referred to the letter dated 6/4/1987 by which the late wife of the petitioner was allotted the said tenement. Reliance is placed on clause 5 of the said allotment letter in order to submit that in the event the employee ceases to be in the Board's employment, he/she will have to pay compensation at the rate of economic rent from that date till he/she vacates the premises. It is thus submitted that the respondent could not have charged penal rent at the rate of Rs.10/- per sq. ft. per month. Learned counsel has then referred to the resolution No.1938 dated 16/8/1991 to submit that there was a scheme floated for conversion of such tenements to ownership rights which was also applicable to the employees who have since retired. Learned counsel has then referred to the letter dated 21/8/1993 by which the Board has refused to extend the benefit of the said ownership scheme to the wife of the petitioner on the ground that she was a member in some other society namely Shubham Karoti Society. In short, in the submission of the learned counsel for the petitioner, the petitioner, and for the matter of that his late wife, lost the benefit of getting the ownership rights in respect of the tenement and has been saddled with the liability to pay penal rent. Learned counsel points out that the possession of the tenement has already been delivered and the only issue which now survives is about liability to pay the penal rent.

9. Mr. Lad, learned counsel for the respondents has supported the impugned order. It is submitted that clause 5 of the letter dated

6/4/1987 is not applicable as the late wife of the petitioner who was in the employment of the Board has since expired. It is submitted that after her expiry, the petitioner continued to occupy the premises from 1994 to 2002. It is submitted that the policy decision was taken in the year 1999 to allow the family members of the deceased employees of the board to continue to occupy the service tenements for a period of three months after which the occupants were liable to pay the penal rent. It is submitted that the scheme for conversion of such tenements to ownership rights is an independent issue and has no bearing on the unauthorised occupation of the petitioner of the suit tenement. It is submitted that the impugned order fastening the liability on the petitioner to pay penal rent needs to be confirmed.

10. I have considered the circumstances and the submissions made.

11. Clause 5 of the letter dated 6/4/1987 which is relevant for the purpose reads thus-

> "In case he/she ceases to be in the Board's employment, he/she shall have to pay the compensation at the rate of economic rent from that date till he/she vacates the premises."

It can thus be seen that the said clause would apply where the 'employee', concerned continues to stay in the service tenement after his/her retirement and in that case the retired employee will be required to pay compensation at the rate of economic rent from that date till the vacation of the premises.

This does not absolves even the retired employee from the liability to vacate the service tenement as early as possible. It is necessary to emphasis that the service tenement / accomodation is given to the employee as a service benefit which cannot continue after the retirement of the concerned employee. Here is the case where the employee i.e. wife of the petitioner expired in the year 1994. Thus, strictly speaking clause 5 of the allotment letter would not be applicable. The petitioner had made a representation to the Board on 27/5/1994 for allotment of the said tenement to him on rental basis which was not accepted by the Board. The petitioner still managed to continue in the tenement. The Board on the basis of the circular of the year 1999 sought recovery of the penal charges in addition to claiming the possession of the tenement. The record discloses that on 4/2/2010 the petitioner had undertaken to vacate the premises, subject to the condition that the Board issues a No Objection Certificate (NOC) in respect of the premises in Shubham Karoti Society. On behalf of third and fourth respondent, it was agreed that such NOC shall be issued. On 10/8/2010, this Court has recorded that in pursuance of the undertaking given, the petitioner has since vacated the premises in question after getting NOC in respect of the premises in Shubham Karoti Society. Thus, the issue in the present petition only pertains to the charging of the penal rent.

12. As noticed earlier, the reliance placed on clause 5 of the letter dated 6/4/1987, to my mind, is misplaced. Even so far as the contention that the petitioner was not allowed to convert the suit tenement to ownership basis, in pursuance of the resolution dated

16/8/1991, here again I find that this is an independent issue which has no bearing with the charge of the compensation at penal rate. In any event, the decision of the Board refusing to permit the conversion of the tenement to an ownership basis is not subject matter of challenge in the present petition. The Board has charged the penal rate on the basis of the circular of the year 1999. The validity of the said circular is also not in challenge in this petition. Sub-section 2 of section 67 of the Maharashtra Housing and Area Development Act (MHADA), 1976 ('Act' for short) authorises the Board to charge such compensation at penal rate. Thus, the concurrent finding recorded by the first respondent and the second respondent, to my mind, does not suffer from any infirmity so as to require interference in the exercise of the extraordinary or supervisory jurisdiction of this Court under Article 226 / 227 of the Constitution of India. The petition is without any merit and is accordingly dismissed with no order as to costs.

C.V. BHADANG, J.