

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.**

WRIT PETITION (LODGING) NO.164 OF 2020

Rajwant Kaur ... Petitioner

Vs

Union of India & another ... Respondents

Mr.Manoj Shirsat i/b Nitin B. Patil for the Petitioner

Mr.Anil Singh, Additional Solicitor General, with Mr.D.P. Singh for Respondents

Col.Nitin Bhawar, Adm.Comdt. HQ MG & G Area – present

Major Preeti Misra, O/C Legal Cell, HQ MG & G Area – present

**CORAM: S.C. DHARMADHIKARI &
R.I. CHAGLA, JJ.**

DATED: JANUARY 20, 2020

P.C.:

1. Not on Board. Mentioned, taken on Production Board.
2. By this petition under Article 226 of the Constitution of India, the petitioner is seeking to quash and set aside a notice, copy of which is at Exhibit G to the petition.

Vishwanath
S. Sherla

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signed by
Vishwanath S.
Sherla
Date:
2020.01.22
16:07:32
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3. On the previous occasion, we had, after a perusal of the Writ Petition and the notice, enquired with the Counsel for the petitioner as to whether the petitioner will abide by this notice and the requisition therein.

4. The petition was placed today to enable the petitioner's advocate to take instructions.

5. The petitioner has been residing in an accommodation made available by the Defence authorities and particularly, by the Army at Mumbai.

6. There is a dispute between herself and her husband, who is employed in the Defence force. Being an Army man, he was allotted the Army Residential Quarters. It was to enable the Army to utilise his services more effectively and properly and that is why this accommodation to the Army officer posted in Mumbai.

7. As the husband of the petitioner, the Army Officer has been transferred to Mathura in the State of Uttar Pradesh and would be allotted a residential quarter for his occupation, the petitioner has been called upon to vacate the residential quarter at Mumbai.

8. The notice says that the husband of the petitioner is entitled to married accommodation at his new station and the responsibility to provide accommodation to the family rests with the husband and not with the Defence forces/authorities.

9. The petitioner's husband has submitted an affidavit dated 24.9.2019 that he is ready to provide Government married accommodation to his wife at Mathura or provide her House Rent Allowance as per service norms.

10. The notice was necessitated because the petitioner refuses to vacate the premises although she has no right, title or interest therein.

11. We had indicated to the petitioner's advocate that it would not be possible to pass an order directing the respondents to initiate an elaborate process in terms of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971, for that would mean those waiting in queue, after their posting in Mumbai, would be deprived of a residential quarter.

12. It means the petitioner continues to occupy the service quarter at Mumbai without any right, title and interest vesting in

her. After her husband has reported for duty at Mathura and he is entitled to residential accommodation there, all the more, we were not inclined to grant any accommodation to the petitioner.

13. The petitioner's Counsel would pray for time till 30.6.2020 to vacate the quarter. We do not think that we should allow the petitioner to hold on the residential quarter merely because she is either defending or has initiated proceedings against her husband at the Family Court at Mumbai. She can always seek such relief, as is permissible under the Family Courts Act and the personal law applicable to her, from her husband so that she is able to reside in Mumbai till the proceedings are on. We do not think that the Army authorities should be dragged into such a dispute nor we allow the petitioner to do so.

14. In the circumstances, while we dismiss the Writ Petition, we direct that till 31.3.2020, the petitioner should not be evicted from the residential quarters occupied by her provided she executes an undertaking, within one week from today, in favour of the Army/respondent before us, that she would vacate the premises on or before 31.3.2020, that she will not induct any third party therein and that she will not use it contrary to the rules and regulations

applicable to the allotment of such service quarters. We are not granting any further time to the petitioner simply because her husband and she must sort out their problems in accordance with law. The petition is dismissed.

(R.I. CHAGLA, J.)

(S.C. DHARMADHIKARI, J.)