

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9312 OF 2019
(Corrected as per order dated 16th November 2021)

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Sudarshan Yesudas Maisa
Age : 61 Years, Occ.: Retired,
Residing at Flat No. A-9/3,
P and T Colony, Vakola,
Near Military Camp, Santacruz (E),
Mumbai-29

...Petitioner

vs.

1) Estate Officer,
Bharat Sanchar Nigam Limited,
General Manager (HR Administration),
Maharashtra Telecom Circle, 3rd Floor,
A Wing, Administrative Building,
Juhu Road, Santacruz (W),
Mumbai-54.
2) General Manager (HR Administration),
Maharashtra Telecom Circle, 3rd Floor,
A Wing, Administrative Building,
Juhu Road, Santacruz (W),
Mumbai-54.

...Respondents

Mr.Kishor Patil a/w. Mr. Pratik Rahade for petitioner.
Mr. Sachin Chavan for respondent nos. 1 and 2.

CORAM : N. J. JAMADAR, JJ.
DATE : JUNE 25, 2021
(THROUGH VIDEO CONFERENCE)

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and, with the consent of the learned counsels for the parties, heard finally at the stage of admission.

2. The challenge in this petition is to the judgment and order dated 13th August 2019, passed by the learned Principal Judge, City Civil Court, Bombay, in Miscellaneous Appeal No. 100 of 2017, whereby the appeal preferred by the petitioner under section 9 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 ('the Act, 1971') came to be dismissed.

3. The background facts leading to this petition can be stated, in brief, as under :-

(a) The petitioner was an employee of Bharat Sanchar Nigam Limited. The petitioner was allotted a residential accommodation bearing No.A-9/3, Type III, P and T Colony, Vakola, Santacruz (E), Mumbai – 400 029 ('the subject premises'). The petitioner superannuated on 29th February 2016. Upon the request of the petitioner, he was allowed to retain the subject premises upto 31st October 2016, the maximum permissible period (eight months) under the Policy.

(b) The petitioner did not vacate the premises despite the expiry of extended period. Hence, by the eviction order, dated 6th September 2017 passed in exercise of the

powers under sub-section (1) of section 5 of the Act, 1971, the petitioner was directed to vacate the subject premises within 15 days. Being aggrieved, the petitioner preferred an appeal under section 9 of the Act, 1971.

(c) By the impugned order, the learned Principal Judge, City Civil Court, Bombay, was persuaded to dismiss the appeal. The principal ground urged before the Appellate Court as well as this Court is that the order of eviction was not preceded by a notice. Nor an effective opportunity of hearing was provided to the petitioner before passing the eviction order dated 6th September 2017.

(d) The learned Principal Judge was not persuaded to accede to the submissions on behalf of the petitioner as the petitioner had already ceased to be in the employment of Bharat Sanchar Nigam Limited and even the maximum permissible retention period had elapsed. Thus, the petitioner had no right to seek retention of the subject premises.

4. Mr. Patil, the learned counsel for the petitioner would urge

that the aforesaid approach of the Appellate Court is not legally sustainable. As a matter of fact, no notice was issued to the petitioner under section 4 of the Act, 1971 and the Eviction Order under section 5(1) of the Act, 1971 was passed straightaway. The fact that the petitioner superannuated could not have been construed to deprive the petitioner of an effective opportunity of hearing in consonance with the statutory provisions and principles of natural justice, urged Mr. Patil.

5. The learned counsel for the respondents, on the other hand, supported the impugned order. It was urged that the orders, whereby the retention was granted to the petitioner, specifically provided that after the expiry of the extended period stipulated therein, the petitioner would vacate the subject premises on his own. Since the petitioner has retired long back, there is no semblance of right in the petitioner to continue to occupy the subject premises, for any reason whatsoever.

6. Indubitably, the petitioner has ceased to be in the employment of Bharat Sanchar Nigam Limited with effect from 29th February 2016. He was granted the privilege to retain the subject premises for eight months, the maximum permissible under the Policy. The

learned Principal Judge considered the challenge on the ground of want of notice. But in the backdrop of the aforesaid facts, which stare in the face, found that the said challenge did not merit acceptance.

7. The aforesaid approach of the learned Principal Judge does not seem to be unjustifiable. Having superannuated in the year 2016 and enjoyed the maximum period of retention post retirement, the petitioner cannot be permitted to raise a grievance that the order of eviction was passed without giving notice under section 4 of the Act, 1971 or providing an effective opportunity of hearing. In any event, the petitioner is not entitled to retain the official quarter having superannuated, more than four years ago.

8. In the aforesaid view of the matter, in exercise of extraordinary jurisdiction, no interference is warranted in the impugned order. Hence, the petition deserves to be dismissed.

9. Thus, the following order :

O R D E R

The petition stands dismissed.

Rule discharged.

No costs.

(N. J. JAMADAR, J.)