

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

WRIT PETITION NO. 1925 OF 2012

**SANTOSH
SUBHASH
KULKARNI**

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SANTOSH SUBHASH
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Date: 2023.03.23
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Vijaya Baban Jadhav

...Petitioner

Versus

Municipal Corporation of Greater Mumbai

...Respondent

Mr. Shilpan Gaonkar, a/w Akshay Mohite, i/b Mr. Arvind
Taral, for the Petitioner.

Mr. A. Y. Sakhare, Senior Advocate a/w Dhruti Kapadia and
R. Y. Sirsikar, for the MCGM/Respondent.

CORAM: N. J. JAMADAR, J.

DATED : 21st MARCH, 2023

Oral Order:-

1. Heard the learned Counsel for the parties.
2. The challenge in this petition is to an order dated 21st January, 2011 passed by the Enquiry Officer in Enquiry No.GS/45 of 2010 and the order passed by the learned Judge, City Civil Court, Mumbai, in Misc. Appeal No.74 of 2011.
3. Petitioner No.1 is a widow of Mr. Baban Jadhav, a deceased employee of Municipal Corporation, the respondent No.1. Baban retired from service of respondent No.1 in 1994. Late Baban was allotted a staff quarter i.e. Room No.120, 141 Tenements, Opp. Geeta Cinema, Worli, Mumbai.

4. Petitioner No.2 Santosh is the son of late Baban Jadhav. Petitioner No.2 also an employee of respondent No.1 and joined the service in the year 1997.

5. Petitioner No.2 prayed for allotment of the aforesaid staff quarter, which was allotted to his deceased father. It seems the said request came to be rejected.

6. In the meanwhile, the proceedings were initiated for eviction of petitioner No.1 from the staff quarter. A notice was issued to petitioner No.1 to vacate the staff quarter on 25th May, 2009. Eventually, the Inquiry Officer passed an order on 21st January, 2011.

7. Being aggrieved petitioner No.1 filed an appeal being Misc. Appeal No.74 of 2021. By a judgment and order dated 25th January, 2012 the appeal came to be dismissed and the order passed by the Enquiry Officer dated 21st January, 2011 was affirmed.

8. During the pendency of this petition, a number of orders have been passed. In one of such orders dated 18th January, 2023, this Court directed the Municipal Corporation to file a detailed affidavit as to how the Corporation has dealt with other unauthorised occupants. Post such affidavit, a further order came to be passed on 24th January, 2023.

9. Having regard to the situation, which obtains as of today, and the status of petitioner No.2, who is in occupation of the staff quarter, along with petitioner No.1, an old widow of Late Baban, the Court suggested to the petitioners as to whether the petitioners were willing to pay the licence fee and bring back the amount which has been paid to petitioner No.2 by way of House Rent Allowance (HRA) and file an undertaking that petitioner No.2 as well as petitioner No.1 and all the occupants of the staff quarter would vacate the staff quarter post retirement of petitioner No.2 on 1st May, 2028.

10. The petitioners have shown willingness to bring back the HRA amount and pay the licence fee and also vacate the staff quarter. An affidavit is filed by petitioner No.2 – Santosh.

Paragraphs 1 to 4 of the affidavit read as under:

“1. I am the Petitioner No.2 in the present writ petition. I am filing the present Affidavit pursuant to the hearing held on 8.3.2023.

2. Subject to allotment of service quarter being Room No.120, Building No.141 to me till me being in service with Respondent No.1, I agree and undertake to pay the total amount of Rs.12,34,299/- as stated by the Respondent No.1 in the Chart handed over during the hearing on 8.3.2023, in the manner stated below. The said Chart is annexed and marked as “Exhibit-A” hereto for reference.

3. I agree and undertake to make the payment in the following manner:

Sr. No.	Date Within Two Weeks	Installment amount (INR) 1,00,000
1.	15.04.2023	37,810
2.	15.05.2023	37,810

3.	15.06.2023	37,810
4.	15.07.2023	37,810
5.	15.08.2023	37,810
6.	15.09.2023	37,810
7.	15.10.2023	37,810
8.	15.11.2023	37,810
9.	15.12.2023	37,810
10.	15.01.2024	37,810
11.	15.02.2024	37,810
12.	15.03.2024	37,810
13.	15.04.2024	37,810
14.	15.05.2024	37,810
15.	15.06.2024	37,810
16.	15.07.2024	37,810
17.	15.08.2024	37,810
18.	15.09.2024	37,810
19.	15.10.2024	37,810
20.	15.11.2024	37,810
21.	15.12.2024	37,810
22.	15.01.2025	37,810
23.	15.02.2025	37,810
24.	15.03.2025	37,810
25.	15.04.2025	37,810
26.	15.05.2025	37,810
27.	15.06.2025	37,810
28.	15.07.2025	37,810
29.	15.08.2025	37,810
30.	15.09.2025	37,810
	Total	12,34,300

4. I agree and undertake to vacate the said Room No.120 upon completion of my service with Respondent No.1”

11. Mr. Sakhare, the learned Senior Advocate for respondent No.1, submits that respondent No.1 is agreeable to allow petitioner No.2 to occupy the staff quarter as an employee of

respondent No.1 provided petitioner No.2 and all the adult members in the family, who are residing with the petitioners, file an undertaking that they all will vacate the staff quarter within three months of the scheduled date of superannuation of petitioner No.2 i.e. 1st May, 2028.

12. Having considered the submissions and the assertions in the affidavit, the Court considers it expedient to dispose of the petition by allowing the petitioners to occupy the staff quarter till the superannuation of petitioner No.2 as petitioner No.2 satisfies the essential criteria of being an employee of respondent No.1. It will, however, be necessary to put certain conditions so that the interest of respondent No.1 is also adequately protected.

13. Hence, the following order:

: O R D E R :

- (i)** Petitioner Nos.1 and 2 are permitted to occupy the staff quarter till superannuation of petitioner No.2 subject to payment of the licence fee.
- (ii)** Petitioner Nos.1 and 2 and all the adult members in the family of petitioner No.2, who are residing in the staff quarter, shall file an undertaking to vacate the staff quarter within three months from the date of superannuation of petitioner No.2 i.e. 1st May, 2028.

- (iii) Petitioner No.2 shall pay the amount of Rs.12,34,300/-, as computed by respondent No.1, in accordance with Schedule in the table, extracted above.
- (iv) From 15th April, 2023, out of the monthly installment of Rs.37,810/- agreed to be paid, respondent No.1 is permitted to deduct a sum of Rs.20,000/- from the monthly salary payable to petitioner No.2 and the balance amount of Rs.17,810/- per month shall be deposited by petitioner No.2 with the Municipal Corporation, respondent No. 1.
- (v) Petitioner No.2 shall also file an undertaking in this Court that he will pay the amount of Rs.17,810/- every month from the month April, 2023 till September, 2025.
- (vi) Such undertakings be filed within a period of one week from today and copies of the undertakings be furnished to the respondents.
- (vii) In the event of default in payment of five installments of Rs.17,810/-, per month, respondent No.1 shall be entitled to recover the entire amount of Rs.37,810/- from the salary payable to petitioner No.2.

(viii) It is clarified that this order is passed in the peculiar facts of the case and the personal attributes of petitioner Nos. 1 and 2.

[N. J. JAMADAR, J.]