

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6389 OF 2012
WITH
INTERIM APPLICATION NO.15924 OF 2023
IN
WRIT PETITION NO.6389 OF 2012

Muktar Shaikhhlal MohammedApplicant/Petitioner
V/S
The State of Maharashtra & Ors.Respondents

WITH
WRIT PETITION NO.6457 OF 2012

Sushma R. BharatiPetitioner
V/S
Executive Engineer,
Presidency Division & Ors.Respondents

WITH
WRIT PETITION NO.6466 OF 2012

Sharada Dnyaneshwar KordePetitioner
V/S
Executive Engineer,
Presidency Division & Ors.Respondents

WITH
WRIT PETITION NO.6458 OF 2012

Meena Sandeep TawadePetitioner
V/S
Executive Engineer,
Presidency Division & Ors.Respondents

WITH
WRIT PETITION NO.6455 OF 2012

Kishori Kishor Raut

...Petitioner

V/S

Executive Engineer,
Presidency Division & Ors.

...Respondents

WITH

WRIT PETITION NO.6470 OF 2012

Gururaj B. Pawar

...Petitioner

V/S

Executive Engineer,
Presidency Division & Ors.

...Respondents

WITH

WRIT PETITION NO.6467 OF 2012

Ramesh Ravaji Parab

...Petitioner

V/S

Executive Engineer,
Presidency Division & Ors.

...Respondents

WITH

WRIT PETITION NO.6465 OF 2012

Yashwant Shyamrao Shewale

...Petitioner

V/S

Executive Engineer,
Presidency Division & Ors.

...Respondents

WITH

WRIT PETITION NO.6464 OF 2012

Lata Nayakwadi

...Petitioner

V/S

Executive Engineer,
Presidency Division & Ors.

...Respondents

WITH

WRIT PETITION NO.6463 OF 2012

Nanda Devidas Kamble

....Petitioner

V/S

Executive Engineer,
Presidency Division & Ors.

....Respondents

WITH

WRIT PETITION NO.6462 OF 2012

Suresh Atmaram Shinde

....Petitioner

V/S

Executive Engineer,
Presidency Division & Ors.

....Respondents

WITH

WRIT PETITION NO.6461 OF 2012

Gangadevi Bambalal Kanojia
through C.A. Ramkishor B. Kanojia

....Petitioner

V/S

Executive Engineer,
Presidency Division & Ors.

....Respondents

WITH

WRIT PETITION NO.6460 OF 2012

Gangadevi Bambalal Kanojia

....Petitioner

V/S

Executive Engineer,
Presidency Division & Ors.

....Respondents

WITH

WRIT PETITION NO.6469 OF 2012

WITH

INTERIM APPLICATION NO.20317 OF 2022

IN

WRIT PETITION NO.6469 OF 2012

Bhanu Jangu Chaube
V/S
Executive Engineer,
Presidency Division & Ors.

...Petitioner/Applicant

...Respondents

WITH
WRIT PETITION NO.6459 OF 2012

Sumita S. Shetty
V/S
Executive Engineer,
Presidency Division & Ors.

...Petitioner

...Respondents

...

Mr. Niranjana Shimpi for the Applicant/Petitioner in WP 6389 of 2012 and IA 15924 of 2023.

Mr. Abhay D. Parab with Mr. Digvijay Rane for the Petitioner/s in connected WPs.

Mr. A.Y. Sakhare, Senior Advocate with Mr. P.P. Kakade, GP, Mr. M.M. Pable, AGP for Respondent Nos.1 to 3/State.

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CORAM : SANDEEP V. MARNE, J.
DATE : DECEMBER 01, 2023.

P.C.:

1 In these Writ Petitions, Petitioners have challenged the orders passed by the Competent Authority under provisions of the Bombay Government Premises (Eviction) Act, 1955 (**the Act**). The Competent Authority, by passing orders under provisions of sections 4 and 5 of the Act has directed eviction of the Petitioners from the premises in their occupation located in the building known as 'Majestic Amdar Niwas' situated at Colaba, Mumbai. The Petitioners unsuccessfully challenged

the eviction orders before the City Civil Court which has dismissed the Miscellaneous Appeals filed by the Petitioners. Aggrieved by the decision of the City Civil Court, the present Petitions are filed.

2 Perusal of the order passed by the Competent Authority would indicate that while directing eviction of the Petitioners, the Competent Authority has made certain observations in favour of the Petitioners with regard to their right to re-occupy/re-allotment of premises in the newly constructed building. In this regard following observations made by the Competent Authority would be relevant:

"दोन्ही पक्षकारांनी दाखल केलेली लेखी निवेदने, कागदपत्रे व तोंडी युक्तीवादाचे अवलोकन केले असता, आमदार निवास ईमारतीस 100 वर्षे पूर्ण झाल्याने तीचे स्ट्रक्चरल ऑडीट केले असता, सदर ईमारत रहाण्यास अयोग्य व ईमारतीचे बीम तसेच अन्य भाग कमकुवत झालेला असून ईमारत दुरुस्ती करणे गरजेचे आहे असे कळविण्यात आले आहे. यास्तव ईमारतीत जीवीत हानी होऊ नये म्हणून ईमारत पुर्ण दुरुस्ती करणेसाठी प्रतिवादी यांच्या ताब्यातील स्टॉल निष्कासीत करणेसाठी उपरोक्त निष्कासन प्रस्ताव दाखल केला असल्याचे कारण वादी कार्यालयातर्फे नमूद करण्यात आलेले आहे. हंयामध्ये दोन्ही पक्षकारांमध्ये कुठल्याही प्रकारचे दुमत नाही. परंतु प्रतिवादी हे उपरोक्त स्टॉल हा सुमारे 25 वर्षांहून अधिक कालावधीपासून चालवित असल्याने सदर स्टॉल हा त्यांचे उपजीवीकेचे साधन झालेला आहे. ही बाबदेखील दुर्लक्षित करणे उचित होणार नाही. तसेच वादी कार्यालयाने ईमारत दुरुस्तीचे कारणास्तव प्रतिवादी यांचा सुमारे 25 वर्षांहून चालू असलेला करारनामा डिसेंबर 2010 पासून पुढे वाढविला नाही असे या न्यायालयात स्पष्ट केलेले आहे. त्यावर प्रतिवादी यांनी त्याच ईमारतीतील अन्य स्टॉलला वादी कार्यालयातर्फे निष्कासन कारवाई सुरू करण्यात आली नसल्याचे या न्यायालयात सुनावणी दरम्यान लेखी विचारणा करून त्यांचेबाबतीत एक न्याय व अन्य स्टॉल ज्यास पुढील 25 वर्षे करारनामा मुदतवाढ दिली जाते. असा एकाच ईमारतीतील दोन स्टॉलबाबत दुजाभाव झालेबाबत जाब

विचारणा केली होती. परंतु वादी कार्यालयामार्फत सदर बाबींवर कुठल्याही प्रकारचे अभिमत वा उत्तर दाखल झालेले नाही. यास्तव प्रतिवादी यांनी उपस्थित केलेल्या मुद्यावर नैसर्गिक न्यायाचे दृष्टीकोनातून विचार करण्याची आवश्यकता असल्याची माझी धारणा झालेली आहे.

तथापि प्रतिवादी यांनी सुनावणी दरम्यान झालेल्या युक्तीवादात तसेच लेखी निवेदनात ईमारत दुरुस्तीसाठी वादी कार्यालयास योग्य ते सहकार्य करण्यासाठी ताब्यातील स्टॉल स्वतःहून रिक्त करित असल्याचे कळवून भविष्यात जेव्हा ईमारत दुरुस्तीचे काम पूर्ण होईल तेव्हा वादी कार्यालयाने आमच्या उदरनिर्वाहासाठी आम्हाला स्टॉल परत मिळावा अशी विनंती प्रतिवादी यांनी या न्यायालयास केलेली आहे. त्यामुळे प्रतिवादी हे वादी कार्यालयाकडून वरिल उल्लेख केल्याप्रमाणे दुर्जाभाव होउनसुद्धा ताब्यातील स्टॉल स्वतःहून रिक्त करणेस व स्टॉलचे थकीत भाडे भरणे करण्याची तयारी दर्शवितात. यास्तव वादी कार्यालयानेही प्रतिवादी यांच्या भविष्यात जेव्हा ईमारत दुरुस्तीचे काम पूर्ण होईल तेव्हा आमच्या उदरनिर्वाहासाठी आम्हाला स्टॉल परत मिळावा. या विनंतीवर सकारात्मक बाजूने विचार करणे गरजेचे आहे. अशी माझी खात्री झालेली आहे.”

3 Thus the Competent Authority has taken into consideration the request made by the Petitioners for re-allotment of the premises upon completion of construction of the building. The Competent Authority has found some merit in the request made by the Petitioners and has directed that the request of the Petitioners is required to be considered positively.

4 Even the City Civil Court, in its order has made following observations in para 17 which reads thus:

“17. I have perused the impugned order passed by the competent Authority carefully. The competent authority has fairly considered

that the appellant is in occupation of the premises since more than 25 years. It is also said that once the repair work is over, the Administrative Authority can consider the allotment of the premises to the appellant upon his paying the entire arrears. However the competent authority as well as this appellate court have no administrative power to direct the Government to extend the leave and licence agreements with the appellant. The aspect of permitting the appellant to continue the scheduled premises in view of the fact that he has been running the pand-bidi stall from the scheduled premises since more than 40 years, is not within the purview of the competent Authority or this appellate Court. It is certainly within the ambit of consideration of the Administrative Authority. I therefore do not find anything perverse arbitrary or illegal in the impugned order. Hence point no.2 is answered in the negative.”

5 Thus, both Competent Authority as well as City Civil Court were apparently of the view that the issue of grant of alternate premises in the reconstructed building was not within their purview.

6 Mr. Sakhare, the learned Senior Advocate appearing for the Respondents, after taking instructions, would fairly submit that if Petitioners vacate the premises in their occupation, the Competent Authority would consider the request made by the Petitioners for allotment of alternate premises in the reconstructed building on its own merits.

7 Mr. Shimpi and Mr. Parab, the learned counsels appearing for the Petitioners would submit that Petitioners are being given discriminatory treatment. They would highlight case of **Sanjay B. Shete vs. The Executive Engineer, PWD & Ors., (Writ Petition No.7206 of 2016)** i.e. Sahakari

Bhandar which was being operated inside the building Majestic Amdar Niwas. They would submit that in case of *Sahakari Bhandar* (supra), the Respondents have filed Consent Terms agreeing to allot premises to them in the reconstructed building. They would submit that similar assurance is not being given to the Petitioners. My attention is also drawn to the various other documents in support of the contention that the Respondents were actually agreeable to extend the lease of Petitioners for further period of 25 years but such decision was not taken only on account of the fact that the building Majestic Amdar Niwas was required to be demolished. They would further submit that in the meeting that took place in the year 2020-21 issue of granting similar benefit to Petitioners on par *with Sahakari Bhandar* (supra) was also discussed. In my view all these points are required to be highlighted by the Petitioners while making a request to the Competent Authority for allotment of premises in the reconstructed building.

8 Mr. Shimpi and Mr. Parab would further submit that on account of construction of tin fencing around the building, the business activities of all the Petitioners have already halted and that most of them are not carrying out any business in the premises in their occupation. Both the learned Counsels would submit that all Petitioners shall vacate premises in their respective occupation within a period of two weeks from today. The statement is recorded and accepted.

9 Petitioners shall make representation to the Competent Authority within a period of four weeks from today for allotment of premises in the

reconstructed building. Upon receipt of such representation, the Competent Authority shall consider the same in view of findings recorded by the Competent Authority and the City Civil Court and also by taking into consideration the documents relied upon by the Petitioners. The decision on the representation shall be communicated to each of the Petitioners. In the event the decision is adverse to the Petitioners, all remedies of the Petitioners to challenge such decision are kept open.

10 In view of the above arrangement, nothing further needs to be decided in the present Petitions. Since the Petitioners have agreed to vacate the premises in their occupation, the correctness of orders passed by the City Civil Court and the Competent Authority need not be examined.

11 Needless to state that in the event of failure on the part of the Petitioners to vacate the premises within the time stipulated, it shall be open to the Respondents to take necessary steps for their eviction.

12 With the above directions the Writ Petitions are disposed of.

13 In view of the disposal of the Writ Petitions, Interim Applications do not survive and the same are disposed of accordingly.

(SANDEEP V. MARNE, J.)