

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8677 OF 2023

Yogesh Dilip Devre

....Petitioner

Versus

The State of Maharashtra & Ors.

....Respondents

Appearances :

Mr. Laxman Shivajirao Deshmukh, for Petitioner.

Mr. N. K. Rajpurohit, AGP for State.

CORAM : DHIRAJ SINGH THAKUR &
SANDEEP V. MARNE, JJ.

DATE : JULY 18, 2023.

JUDGMENT : (*Per – Sandeep V. Marne, J.*) :

Rule. Rule is made returnable forthwith. With the consent of parties petition is taken up for final hearing.

2. By this petition, Petitioner challenges order dated July 6, 2023 passed by the Maharashtra Administrative Tribunal (**Tribunal**) dismissing the Original Application No.785 of 2023. The Original Application was filed by the Petitioner challenging order dated April 25, 2023 and communication dated June 05, 2023 by which allotment of residential quarter in his favour is

cancelled and he has been directed to handover possession of the same. The Tribunal has dismissed the Original Application holding that issue involved therein does not fall within it's jurisdiction as the same has already been dealt with by City Civil Court, Mumbai.

3. Briefly stated, facts of the case are that Petitioner's father was employed in Aarey Dairy and was allotted residential accommodation bearing quarter No. FQ 10, Government Colony, Unit No.2, Central Warehouse, Aarey Milk Colony, Goregaon (East), Mumbai-400 065. The Petitioner's father was declared as surplus in the Dairy Department and was absorbed on the post of Peon in the General Administration Department, Mantralaya, Mumbai. He was permitted to occupy the same residential accommodation of Aarey Dairy. Petitioner's father died in harness on September 19, 2015. He submitted application for compassionate appointment on October 8, 2015. Same remained undecided. The family however continued to occupy the residential quarter under a hope that Petitioner would be appointed in service on compassionate ground.

4. By order dated March 01, 2021, Petitioner came to be appointed on compassionate ground on the post of 'Clerk-Typist' by the General Administration Department of the Government of Maharashtra. Upon his appointment, Petitioner continued in the occupation of quarter No. FQ 10.

5. The Estate Officer initiated eviction proceedings against Petitioner's mother under the provisions of the Bombay Public Premises (Eviction) Act, 1955 and issued Show Cause Notice dated July 8, 2021. Another notice was issued on the same date, calling her upon to show cause as

to why the compensation of Rs.30,09,265/- shall not be levied for unauthorised occupation of the quarter.

6. Petitioner submitted an application dated February 16, 2022, for transfer of allotment of quarter No. FQ 10 in his name in pursuance of his compassionate appointment.

7. The Estate Officer passed order dated March 03, 2022 directing eviction of Petitioner's mother from quarter No. FQ 10 and further determining penal rent of Rs. 36,11,133/-.

8. Petitioner challenged eviction order dated March 03, 2022 by filing Miscellaneous Appeal No. 0100011/2022 before the Principal Judge, City Civil and Sessions Court, Mumbai. An interim order dated April 11, 2022 came to be passed by the City Civil Court, Mumbai staying the eviction order on condition of Petitioner's mother depositing an amount of Rs. 9,00,000/- (Rs. 2 Lakhs within 10 days and Rs.7 Lakhs in two installments in 2 months to follow). It was directed that failure to deposit the amount would entail vacation of the interim order. It appears that Petitioner's mother failed to deposit amount as directed in the interim order dated April 11, 2022 allegedly on the ground that the pensionary benefits in respect of her husband were already lying with the Respondents.

9. In the meantime, Petitioner kept pursuing his request for transfer for allotment of quarter No. FQ 10 by submitting one more application dated July 7, 2022. By order dated June 23, 2022, the State Government granted approval for transfer of quarter No. FQ-10 in Petitioner's name subject to

condition of execution of affidavit to the effect that the order passed by the City Civil Court would be binding on Petitioner and her mother. It was further directed that since the Petitioner was in service since March 18, 2021, he would pay rent, electricity and water charges Accordingly, the Chief Executive Officer, Aarey passed order dated August 28, 2022 allotting residential quarter No. FQ-10 in the name of Petitioner with effect from March 18, 2021. The order further directed payment of amounts of Rs.440/- towards rent and Rs.185/- towards service charges to be deducted from his salary.

10. It appears that the Law Officer, Aarey brought to the notice of the State Government that the Petitioner's mother had violated interim order passed by the City Civil Court, Mumbai on April 11, 2022. Therefore, the State Government *suo moto* took up the matter and conducted the hearing on April 20, 2023. In pursuance of that hearing, the Principal Secretary, Department of Agricultural, Animal Husbandry, Dairy Development and Veterinaries passed order dated April 25, 2023 holding that the Government was oblivious about the interim order dated April 11, 2022 passed by the City Civil Court, Mumbai and that the said order was suppressed by Petitioner. It was therefore held that the Petitioner's conduct amounts to misrepresentation as well as is contemptuous and that therefore he is not entitled to any sympathy. The order therefore granted period of 15 days for deposit of Rs.9,00,000/- in the Court in pursuance of interim order dated April 11, 2022. It was further directed that failure on the part of Petitioner to deposit Rs.9,00,000/- within stipulated period, the possession of the quarter would be obtained from petitioner. It was further directed that the order of allotment

dated August 23, 2022 shall be deemed to have been cancelled. In pursuance of the order dated April 25, 2023 passed by the State Government, the Chief Executive Officer, Aarey issued communication dated June 5, 2023 directing Petitioner to deposit amount of Rs.9,00,000/- and to handover the possession of the quarter.

11. Shortly after issuance of communication dated June 5, 2023, City Civil Court, Mumbai decided Miscellaneous Appeal No.11 of 2022 by its judgment and order dated July 16, 2023, partly allowing the same. It recorded an undertaking of Petitioner's mother to vacate the quarter within a fortnight. The City Civil Court, Mumbai accordingly directed Petitioner's mother to vacate the quarter by June 30, 2023. The Court determined the amount of compensation at the rate of Rs.50/- per square feet with effect from December 20, 2015 till vacation thereof on a condition of Petitioner's mother vacating the same up to June 30, 2023. It was further directed that failure to vacate the quarter by June 30, 2023 would revise order of compensation earlier passed by the competent authority. The Petitioner's mother was granted time of 15 days to file an undertaking.

12. It appears that the Petitioner's mother has challenged the judgment and order dated June 16, 2023 by way of separate Writ Petition in this court, which is pending.

13. So far as order dated April 25, 2023 and communication dated June 5, 2023 is concerned, Petitioner approached the Maharashtra Administrative Tribunal by filing Original Application No.785 of 2023. The Tribunal however proceeded to dismiss the Original Application holding that

it could not entertain the Original Application in view of the order passed by the City Civil Court, Mumbai. The Petitioner has challenged the Tribunal's order dated July 06, 2023 in the present petition.

14. Appearing for the Petitioner, Mr. Deshmukh the learned counsel would submit that the Petitioner had not questioned the correctness of order passed by City Civil Court, Mumbai before the Tribunal. That he had merely challenged the order of cancellation of allotment of quarter before the Tribunal. That therefore the subject matter of Original Application was well within the jurisdiction of the Tribunal. He would further submit that the Petitioner has already been appointed on compassionate ground on March 18, 2021 and that he has been allotted the quarter retrospectively with effect from March 18, 2021. That Petitioner has been paying rent and other charges in respect of the quarter since March 18, 2021. That therefore there was no reason for the Respondents to cancel the valid order of allotment on the basis of interim order of the City Civil Court, Mumbai dated April 11, 2022. Mr. Deshmukh would further submit that, in any case, the City Civil Court's interim order dated April 11, 2022 no longer survives in view of the final judgment and order dated June 16, 2023. That the earlier directions to deposit amount of Rs.9,00,000/- was considering the outstanding demand of Rs.30,00,000/-, which now stands substantially reduced on account of final judgment and order dated July 16, 2023. That the period determined by the City Civil Court for payment of rent @ Rs. 50 per sq ft up to date of vacation of quarter is erroneous in the light of the fact Petitioner has already paid entire rent in respect of the quarter since March 18, 2021. That Petitioner and his family has been residing in the quarter for last several years and considering

Petitioner's entitlement to occupy the quarter, the Tribunal ought to have set aside the order dated April 25, 2023 by the City Civil Court.

15. Appearing for the Respondents, Mr. Rajpurohit the learned AGP would oppose the petition and support the order passed by the Tribunal. He would submit that Petitioner's mother violated interim order passed by the City Civil Court on April 11, 2022 and that therefore he was not entitled to transfer of allotment of quarter. That the order of allotment by the State Government and by Aarey Dairy was passed without knowledge of the fact that the Petitioner's mother had violated interim order of the City Civil Court. He would further submit that Petitioner's mother has already undertaken before the City Civil Court to vacate the premises before June 30, 2023 and that therefore the Tribunal could not have otherwise passed any order in Petitioner's favour which would run contrary to the order of the City Civil Court. He would pray for dismissal of the Petition.

16. Rival contentions of the parties now fall for our consideration.

17. Before we proceed to deal with merits of Petitioner's entitlement to occupy the quarter, we first deal with the issue of jurisdiction of the Tribunal to decide validity of Order dated April 25, 2023 and communication dated June 5, 2023. The Tribunal has held that it lacked jurisdiction to decide the issue and has arrived at a finding that it cannot entertain the Original Application as the dispute is to be entertained in the City Civil Court. The order passed by the Tribunal on July 6, 2023 reads thus-

“1. Heard Mr. L. S. Deshmukh, learned Advocate for the Applicant and Mr. A. j. Chougule, learned Presenting Officers for the Respondents.

2. Applicant challenges order dated 25.04.2023 issued by the Respondent No.1, Animal Husbandry and Dairy Development Fishery Department and also communication dated 05.06.2023. By order dated 25.04.2023 the Respondent has directed the Applicant to deposit the decretal amount of Rs.9 lakhs in the City Civil Court and if that decretal amount of 9 lakhs is not deposited in the City Civil Court then the Chief Executive Officer, Aarey is directed to take possession of the said service quarter and the allotment order dated 23.08.2022 in favour of the Applicant is to be treated as cancelled. Latter dated 05.06.2023 is issued by the CEO Aarey, Milk Dairy. It states that if the said amount is not deposited then the Applicant is directed to handover the possession of the service quarter to the Respondent within seven days. Hence, the Application is before the Court.

3. Learned P.O. for the Respondents has pointed out the order dated 16.06.2023 passed by the City Civil Court in M. A. No.11/2022. Asha Dilip Devre Versus Chief Executive Officer 7 Ors. In the said Appeal order of the Estate Officer dated 03.03.2022 regarding eviction order was challenged. The relevant portion of the order dated 16.06.2023 passed by the City Civil Court is reproduced as follows :

“2. The undertaking of the applicant to vacate the premises within 15 days from today is accepted.

3. The appellant to vacant the premises on or before June 2023. If the appellant fails to vacant the premises, the government is at liberty to execute the order of eviction as per law.

4. The appellant shall liable to pay compensation at the rate of Rs.50/- per square feet from 20.12.2015 till vacation. If she vacates the premises on or before 30th June 2023.”

4. In view of this order the passed by the City Civil Court, this Tribunal cannot entertain this matter as the dispute is to be entertained by the City Civil Court. This Tribunal has no jurisdiction as the City Civil Court is in seizure of this issue. Learned Advocate has

submitted that his arguments are to be heard. However, once I have arrived at conclusion that this Court has no jurisdiction to hear the matter as the City Civil Court is the proper forum to pass the order, I refuse to hear submissions of learned Advocate for the Applicant.

5. In view of above, O. A. stands dismissed.

18. The Tribunal has thus relied upon final judgment and order dated June 16, 2023 passed by the City Civil Court in Miscellaneous Civil Appeal No. 11 of 2022 for holding that it lacked jurisdiction. The appeal was filed by the Petitioner's mother challenging eviction order dated March 3, 2022. By that order, Petitioner's mother was sought to be evicted from quarter No. FQ10. However before passing of the eviction order dated March 03, 2022, Petitioner was already appointed in service on compassionate grounds on March 18, 2021. He had filed application dated February 16, 2022 for transfer of allotment of quarter in his name. By order dated August 23, 2022, the State Government granted approval for transfer of allotment of the quarter in the name of Petitioner with effect from March 18, 2021. Accordingly, the CEO, Aarey passed order dated August 29, 2022 transferring allotment of quarter in Petitioner's name with effect from March 18, 2021 with further directions to recover rent and other charges from Petitioner's salary with effect from March 18, 2021. Thus, allotment of quarter was transferred in the name of Petitioner despite being aware of the fact that eviction order was already passed against his mother on March 03, 2022. The order passed by the State Government dated August 23, 2022 also shows that the State Government was aware about the pendency of Miscellaneous Appeal No.11 of 2022 before the City Civil Court.

19. After transfer of allotment of the quarter in Petitioner's name, the matter was reopened *suo moto* by the State Government apparently at the behest of Law Officer of Aarey and an hearing was conducted on April 20, 2023 on the ground that the State Government was not aware about the order passed by the City Civil Court on April 11, 2022. Order dated April 25, 2023 has been passed which has the effect of cancellation of allotment of the quarter allotted to Petitioner. The order however directs compliance with City Civil Court's interim order dated April 11, 2022 by depositing amount of Rs.9,00,000/- in the Court within 15 days. The said order dated April 25, 2023 has been communicated to the Petitioner by CEO, Aarey by his communication dated June 05, 2023. Petitioner impugned order dated April 25, 2023 and communication dated June 05, 2023 before the Tribunal in Original Application No.785 of 2023. Thus, the issue that was raised before the Tribunal was whether the State Government and CEO, Aarey Dairy were justified in canceling allotment of quarter which was allotted in Petitioner's name by passing order dated April 25, 2023 and issuing communication dated June 05, 2023. Transfer of allotment in the name of Petitioner and its subsequent cancellation by order dated April 25, 2023 are not the subject matter of challenge before the City Civil Court in Miscellaneous Appeal No.11 of 2022. The challenge before the City Civil Court was confined to eviction order passed against Petitioner's mother on March 08, 2022 as well as demand of compensation amount. As observed above, after passing of order dated March 08, 2022, the State Government took a decision on August 23, 2022 to transfer allotment of quarter in Petitioner's name.

20. Thus, the issue of cancellation of allotment of quarter granted in favour of Petitioner was the subject matter of challenge before the Tribunal in Original Application No.785 of 2023. In our view therefore, the Tribunal erred in holding that the subject matter involved in Original Application No.785 of 2023 was to be decided by the City Civil Court. The challenge raised by the Petitioner to order dated April 25, 2023 and communication dated June 05, 2023 falls squarely in the jurisdiction of the Tribunal. We are therefore not in agreement with the view taken by the Tribunal that the Original Application was not within its jurisdiction.

21. Having held that the challenge raised to the order dated April 25, 2023 and communication dated June 05, 2023 fell within the jurisdiction of Tribunal, in ordinary course we would have remanded the Original Application No.785 of 2023 to the Tribunal for decision on merits. However, considering the peculiar facts and circumstances of the case and with a view to put an end to the entire controversy, we proceed to determine the validity of the order dated April 25, 2023, and communication dated June 05, 2023.

22. Petitioner has been appointed on compassionate grounds in government service with effect from March 18, 2021. Though allotment of residential quarter is not a right synonymous with appointment in government service, he became entitled to at least seek allotment of quarter consequent to his appointment. Since Petitioner and his family was already in occupation of quarter No. FQ-10 (which was earlier allotted in the name of his father), he applied for its retention and transfer of allotment in his name. Despite the knowledge of the fact that eviction order was already passed by the Estate

Officer on March 03, 2022 against Petitioner's mother with further directions to deposit amount of Rs.36,11,133/- towards compensation for family's unauthorised occupation, the State Government took a conscious decision to transfer allotment of the quarter in Petitioner's name on August 23, 2022. The order specifically refers to pendency of proceedings before City Civil Court relating to order of eviction and recovery of compensation. The State Government not only granted approval for transfer of allotment in Petitioner's name but decided to give retrospective effect to the allotment with effect from the date of appointment of Petitioner i.e. March 18, 2021. Accordingly, by order dated August 29, 2022 the quarter stood allotted in Petitioner's name with effect from March 18, 2021. The Petitioner is paying rent and other charges in respect quarter from March 18, 2021. Thus consequent to passing of Order dated August 29, 2022, Petitioner has been in authorized occupation of quarter no. FQ-10.

23. The only ground on which the allotment has been canceled by order dated April 25, 2023 is alleged suppression by petitioner about interim order dated April 11, 2022 passed by the City Civil Court. In our view, the State Government was in the knowledge of pendency of proceedings by City Civil Court at the time of granting approval for transfer of allotment on August 23, 2022. It was also aware about the arrears of compensation of Rs.36,85,831/-, which amount has specifically been reflected in the order dated August 23, 2022. Despite knowledge of the fact that compensation was to be recovered from Petitioner's mother and that proceedings in respect thereof were pending before City Civil Court, the State Government took a conscious decision to transfer allotment of quarter in Petitioner's name

retrospectively with effect from March 18, 2021. It was specifically stated in the order that the Petitioner should submit an undertaking on stamp paper of Rs.100/- that the order passed by the City Civil Court would be binding on him. Thus, the State Government was made aware about pendency of proceedings before the City Civil Court as well as amount of arrears of compensation. Therefore, the so-called disclosure made by the Law Officer of Aarey about failure on the part of Petitioner's mother to deposit amount of Rs. 9,00,000/- pursuant to City Civil Court's interim order could not have been a reason for cancellation of allotment of quarter in Petitioner's name.

24. The logic applied by the State Government behind cancelling allotment of quarter in Petitioner's name is that violation of interim order of City Civil Court entailed vacation of interim order thereby rendering occupation by quarter as unauthorised. That on the date of grant of approval for transfer of allotment on August 23, 2022, Petitioner's family was in unauthorised occupation of the quarter. However the point that is missed by the State Government here is the factum of Petitioner's appointment in the meantime on compassionate grounds on March 18, 2021. City Civil Court was not concerned with the issue of transfer of allotment of quarter in Petitioner's name in pursuance of his appointment. This was something which was required to be decided independently by the State Government. For deciding whether Petitioner could be granted allotment of quarter, proceedings pending before the City Civil Court were irrelevant. Which is a reason why, the allotment was made after noting and specifically mentioning factum of pendency of proceedings before the City Civil Court in the order dated August 23, 2022.

25. It is thus the State Government which kept two issues of payment of compensation by Petitioner's mother and transfer of allotment of quarter in Petitioner's name in two different compartments. Having done so, it was not open for the State Government to later take a *volte face* and contend that the two issues are interrelated. Therefore in our view, non-deposit of amount as per City Civil Court's direction could not have been the reason for cancellation of allotment of quarter in Petitioner's name.

26. Even otherwise there is change in circumstances with regard to liability to pay amount of compensation on account of final judgment and order dated June 16, 2023. The amount of compensation stands drastically reduced from Rs.150/- per sq. ft. to Rs.50/- per sq. ft. Furthermore, since allotment of quarter in Petitioner's name was done with effect from March 18, 2021, and the rent in respect thereof has been recovered from the Petitioner from March 18, 2021, the compensation, if any, would not be payable for the period from December 20, 2015 to March 17, 2021 at the rate determined by the City Civil Court (subject to pendency of Writ Petition filed before this Court). However, since the final judgment and order dated June 16, 2023 passed the City Civil Court is already subject matter of challenge in separate Writ Petition, we do not express any opinion about the exact liability of Petitioner's mother towards payment of compensation. Petitioner has submitted that the amount of terminal dues of his father are still lying with the Government from which the liability to pay compensation would be partly satisfied. He has further submitted that the balance amount, if any, can be recovered from his salary. It is for the State Government to take steps for

recovery of compensation for the period December 20, 2015 to March 17, 2021 and we express no opinion on the same.

27. We are determining the limited issue of cancellation of allotment made in Petitioner's name. In our view, the order dated April 25, 2023, cancelling allotment made in Petitioner's name is unsustainable. The order dated April 25, 2023 directs deposit of Rs.9,00,000/- within 15 days in pursuance of interim order dated April 11, 2022. However, since the interim order dated April 11, 2022 has merged into final judgment and order dated June 16, 2023, the liability to pay compensation would be governed by the final judgment and order dated June 16, 2023, subject to pendency of Writ Petition challenging the same.

28. Accordingly, the Writ Petition succeeds. The order dated July 6, 2023 passed by the Tribunal in Original Application No.785 of 2023 is set aside and Original Application filed by the Petitioner is partly allowed by setting aside the order dated April 25, 2023 and communication dated June 05, 2023. Petitioner shall be entitled to retain the quarter in accordance with the orders dated August 23, 2022 and August 29, 2022 on payment of usual rent and other charges. So far as the amount of compensation for the period from December 20, 2015 to March 17, 2021 is concerned, the issues in regard thereto are kept open. Writ Petition is accordingly partly allowed. There shall no order as to costs. Rule is made absolute in the above terms.

SANDEEP V. MARNE, J.

DHIRAJ SINGH THAKUR, J.