Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3791 OF 2024

Afzal Nasibdar Shaikh .. Petitioner

Versus

Estate Manager, Office of the Central Dairy Aarey & Ors. .. Respondents

....

- Mr. Ashwin Vasista i/by Prism Legal for Petitioner
- Mr. P.G. Sawant, AGP for Respondents

....

CORAM : MILIND N. JADHAV, J.

DATE : JULY 22, 2024

P. C.:

1. Heard Mr. Vasista, learned Advocate for Petitioner and Mr. Sawant, AGP for Respondents

2. On 08.07.2024 this Court passed the following order:-

"1. Not on Board. Mentioned. Taken on Board.

2. Heard Mr. Vasista, learned Advocate for Petitioner and Mr. Sawant, learned Advocate for Respondents – State.

3. Writ Petition assails the impugned judgment and order dated 11.04.2023 passed by the Competent Authority in Appeal filed under Section 9 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 which is appended at Exhibit "B" – page No.16 to the Writ Petition.

4. Mr. Vasista would immediately draw my attention to the operative part of the impugned judgment and would submit that the order of eviction stands fully complied with and the Writ Petitioner has already vacated the subject premises and handed it over to Respondent No.1 - Estate Officer. Necessary averments to that effect are made in paragraph No.xi – page No.9 of the Writ Petition. Possession receipt of handing over is appended at Exhibit "D" – page No.28 of the Writ Petition.

5. He would submit that there is also an order for payment of compensation which stood modified by the learned Appellate Court and in terms of operative clause No.3 of the impugned judgment, computation has been effected by Writ Petitioner @ of Rs.10/- per square feet per from

01.11.2019 to 10.11.2023 and infact upto 12.11.2023. He would submit that total computation of compensation as per the above order of the learned Appellate Court would come to Rs.1,04,370/-. He would next submit that substantial retirement benefits and funds of the Writ Petitioner have been withheld due to the aforesaid issue and non-vacating of the Suit premises. According to Writ Petitioner, an amount in excess of Rs.7 lakhs towards gratuity and another Rs.4 lakhs towards surrendered pension has been withheld by the employer. He would submit that Writ Petitioner is in dire need of funds and therefore would urge the Court that appropriate directions be passed to recover the amount of Rs.1,04,370/- out of the outstanding amounts held towards retirement benefit and hand over the balance amounts to the Writ Petitioner.

6. An arguable case has been made out by Mr. Vasista for issuance of notice. Respondent No.1 - Estate Manager as also learned AGP on behalf of Respondent Nos.2 and 3 are directed to take appropriate instructions on the aforesaid issue which has been noted by the Court. They shall inform the Court the precise amount of retirement benefits due and payable to the Writ Petitioner and they are also directed to compute the outstanding amount due and payable towards damages as per clause No.3 of the impugned judgment and confirm whether the same would add up to Rs.1,04,370/-. Once these figures are confirmed by the Respondents, appropriate order shall be passed.

7. Mr. Sawant, learned AGP at this stage enters appearance on behalf of Respondent No.1 – State. He is directed to speak to the concerned officer of Respondent Nos.1 and 2 and take appropriate instructions in this regard so that this Writ Petition can be disposed of after passing appropriate directions at the stage of admission on the next date.

8. Stand over to ***15th July, 2024****. To be placed under the caption "****First on Board****".*

2.1. As delineated in the above order, Mr. Sawant, learned AGP has placed before me a draft affidavit which he intends to file in this Court in compliance with the directions contained in the above order. He would submit that the said draft affidavit has been submitted to Mantralaya for approval and only after approval from Mantralaya, the same may be authenticated and filed in the Court within a period of three weeks from today. Considering the issue involved in the present case, protraction of any nature would be detrimental to the interest of the Petitioner. In that view of the matter, the draft affidavit is taken on record by me and marked **"Article X"** for identification. The reason to take the said draft affidavit on record are the two exhibit - annexures which are appended thereto. Those exhibits - annexures in fact answer the Court's queries which have been raised in paragraph No. 5 of the above delineated order.

3. There is a letter dated 29.03.2024 issued by the Assistant Director, Central Dairy, Aarey, *inter alia*, with respect to computation of the outstanding amount recoverable from the Petitioner as delineated in paragraph No. 5 in the aforesaid order. This was in view of the fact that the amount which has been suggested by the Petitioner to the extent of recovery of Rs. 1,04,370/- could not be accepted by the Court. Said letter dated 29.03.2024 addressed by the Assistant Director to the Accounts Officer, Central Dairy, Aarey shows computation of the details of the amounts which are recoverable from the Petitioner. Detailed computation is given in the said letter. According to employer, the amount which is recoverable is Rs 1,44,465/-.

4. It is also seen that the Petitioner employee is entitled to his retiement benefits. Such entitlement of the Petitioner is stated in paragraph Nos. 5 and 6 of the draft affidavit which has been placed on record. *Prima facie* , it is seen that according to Respondent -

employer, Petitioner would be entitled to the retirement benefits of Rs. 6,38,550/- towards gratuity amount and Rs. 9,695/- towards difference of dearness allowance and these two amounts have been withheld by the Respondent and have been deposited in the Reserve Bank of India as stated in the draft affidavit.

5. According to Petitioner and the Petition that has been filed before the Court, it is the case of the Petitioner that he is entitled to an amount in excess of Rs. 7 Lacs for gratuity alone. According to the Petitioner, said computation is computed and calculated by Petitioner on the basis of his last drawn pay at the time of his superannuation. That apart Respondent - employer has also agreed that Petitioner shall be entitled to the difference in dearness allowance which was due and payable to the Petitioner. However Petitioner has raised one more grievance which has been taken cognizance by this Court in paragraph No. 5 of the aforesaid order. As delineated therein, Petitioner claims to be entitled to an amount of Rs. 4 Lacs towards surrendered pension. In the draft affidavit which has been filed in so far as this amount is concerned, according to the employer an amount of Rs. 7,61,059/- has been credited into the Petitioner's bank account towards lumpsum pension. Appropriate letter to that effect is appended to the draft affidavit in reply which is dated 09.07.2024. It is admitted by Petitioner. I have perused the said letter and from the said letter, it is clear that after due endorsement of the Pension Office, an amount of Rs. 7,61,059/- has been deposited in the bank account of the Petitioner by the appropriate Authority. However if the Petitioner still has any grievance of any further entitlement apart from what is stated herein above, it shall be open to the Petitioner to make an appropriate Application to the concerned Competent Authority and if such Application is made, said Authority shall decide the same strictly in accordance with law and as expeditiously as possible and in any event within a period of four weeks form the date of such Application.

6. In view of the above, it is directed that the amount of Rs. 1,44,465/- shall be deducted by the Respondent employer from the amount which is withheld i.e. Rs. 6,38,550/- + Rs. 9,695/- which comes to Rs. 6,48,245/- and the balance amount of Rs. 5,03,780/- shall be paid over by the Respondent employer to the Petitioner immediately by considering a sever copy of this order.

7. Petitioner has made averment in the Petition that he has vacated the quarter belonging to the employer - State Government which he was occupying. In that view of the matter, when letter dated 29.03.2024 is perused, there is a disclaimer that Petitioner will have to visit the office of M/s. Adani Electricity with respect to the independent / individual separate meter which was allocated and given to him for the purpose of electricity in the said quarter and only after he pays the outstanding dues which if due and payable towards electricity charges and obtains "No Dues Certificate" and submits it to the Authority, it is only thereafter that the benefits shall be released to him.

8. In view of the above, direction is given that if the Petitioner is required to visit the office of M/s. Adani Electricity to obtain "No Dues Certificate" and make any such Application for "No Dues Certificate" after paying the outstanding dues, if any, M/s. Adani Electricity is directed by this Court to consider that Application forthwith and in any event within a period of one week from the date of such Application having been filed in the office of M/s. Adani Electricity and the concerned person in charge of M/s. Adani Electricity shall ensure that the "No Dues Certificate" is granted to the Petitioner on him paying any outstanding dues if they are due and payable. There shall be no dereliction on the part of M/s. Adani Electricity for granting the "No Due Certificate" to the Petitioner after he pays the outstanding dues, if any or otherwise.

9. Keeping all contentions of the Petitioner open in respect of further dues which the Petitioner may claim or desire to claim, present Writ Petition is allowed and disposed.

[MILIND N. JADHAV, J.]

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RAVINDRA MOHAN AMBERKAR
Digitally signed by RAVINDRA MOHAN AMBERKAR Date: 2024.07.22 17:44:45 +0530