

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.752 OF 2018

Prakash Laxman Damle ,)
Ashwamedh CHS, Room No.101,)
1st Floor, D.G.Mahajani Path, Sewree (W),)
Mumbai – 400 015)... Petitioner

Versus

1. Municipal Corporation for Greater Mumbai,)
Head Office, Opp. Chatrapati Shivaji)
Maharaj Terminus, Mahanagarpalika Marg,)
Mumbai – 400 001)

2.The Administrative Officer (Estates),)
Mumbai Municipal Corporation, F/South)
Ward Office, 2nd Floor, Parel,)
Mumbai – 400 012)

3.The Administrative Officer,)
Deputy Chief Engineer (Mech. & Elec.),)
Sewage Project, 2nd Floor, Engineering Hub)
Building, Dr. Annie Besant Road, Worli,)
Mumbai – 400 018)

4.The Deputy Chief Accountant (Provident Fund)
and Pension), Mahanagarpalika E-Ward Office,)
3rd Floor, Sakahali Street, Byculla,)
Mumbai – 400 008)... Respondents

Mr. Ashwin Shete with Mr. Prasad Sawant i/by Jayakar and Partners, for Petitioner.

Mr. Anoop Patil with Mr. Sagar Patil, for Respondents.

CORAM: AKIL KURESHI &

S.J. KATHAWALLA, JJ.

RESERVED ON : 13th JUNE, 2019

PRONOUNCED ON : 22nd OCTOBER, 2019

P.C. (PER S.J.KATHAWALLA, J.)

1. By consent of the parties, the present Writ Petition is taken up for final hearing.

2. The Petitioner – Prakash Laxman Damle, is a retired employee of the Respondent No.1 – Municipal Corporation for Greater Mumbai (**‘the Corporation’**, for short). Respondent Nos.2, 3 and 4 are the Officials of the Corporation. By the present Writ Petition, the Petitioner has sought the following reliefs :

(i) to quash and set aside, the letter dated 22nd May, 2017 (Exhibit L to the Writ Petition) and the letter dated 18th November, 2017 (Exhibit M to the Writ Petition) both issued by the Respondent No.3;

(ii) direct the Respondents to release and pay the retirement benefits amounting to Rs.16,98,543/- with interest thereon as this Court may deem fit, which amount is adjusted/recovered by the Corporation as per letter dated 18th

November, 2017 (Exhibit M to the Writ Petition);

(iii) to declare the circular dated 7th October, 2010 (Exhibit G to the Writ Petition) and the circular dated 13th January, 2012 (Exhibit H to the Writ Petition) to be ultra vires in law, void ab initio and to quash and set aside the same.

3. The facts which are relevant for deciding the present Writ Petition are briefly set out hereunder :

(i) On 11th October, 1976, the Petitioner was appointed as a Junior Engineer by the Respondent No.1-Corporation in its Mechanical/Electrical Department.

(ii) On 20th September, 2000, the Petitioner was allotted a staff quarter at C/2, Gulmohar Muni Housing Society, Ground Floor, D.G. Mahajani Road, Sewree, Mumbai – 400 015 (hereinafter referred to as **‘the staff quarter’**).

(iii) On 31st December, 2012, the Petitioner retired as Executive Engineer (Mechanical/Electrical) from the employment of the Respondent No.1-Corporation.

(iv) Six weeks prior to his retirement the Petitioner signed a consent letter form dated 16th November, 2012 in the presence of the Head of his Department giving an irrevocable power and authority to the Municipal

Corporation of Greater Mumbai to deduct from any money due to him by reason of his employment and also from money due to him from his subscriptions to the Municipal Provident Fund, the dues payable to the Corporation either by way of fine, penalty or otherwise.

(v) In addition to the consent letter form, the Petitioner on 21st November, 2012 i.e. five weeks before his retirement submitted an undertaking that he will vacate the premises within three months from the date on which he receives his provident fund dues.

(vi) According to the rules, the Petitioner was to vacate the staff quarter within three months from the date of his retirement. Since he retired on 31st December, 2012, he was required to vacate the staff quarter on or before 31st March, 2013. The Petitioner being aware of the fact that he will have to vacate the staff quarter on 1st April, 2013, submitted an application dated 16th January, 2013, addressed to the Municipal Commissioner-Mumbai, to permit him to extend his stay in the said staff quarter for a period of nine months i.e. from April 2013 to December 2013 on payment of Rs.10,450/- per month, as a special case.

(vii) The Administrative Officer (Accounts) (Estate) of the Corporation upon receipt of the letter from the Petitioner dated 16th January, 2012 wrote a

letter to the Petitioner dated 10th April, 2013 wherein he clarified that as per the order of the Municipal Commissioner dated 13th January, 2012, Circular bearing No.AC/Estate/20549/SA, is issued, which provides for payment of penal rent, in case any retired employee wishes to stay in the staff quarter beyond the period of three months from the date of retirement. By the said letter, the Petitioner was directed to convey his consent in writing at the earliest, to pay such penal rent.

(viii) The Petitioner not only failed to respond to the letter of the Corporation dated 10th April, 2013, but the Petitioner despite having applied for permission as a special case to extend his stay in the staff quarter only upto December 2013, continued to be in unauthorized occupation of the staff quarter upto 9th November, 2015.

(ix) Vide office order dated 14th February, 2013, the Petitioner was appointed as a Consultant in the Garden Department by the Corporation on payment of a consolidated sum of Rs.25,000/- per month. There is nothing on record to show that he was allowed to stay in the staff quarter during the contract period. In any event, though the contractual appointment of the Petitioner in the Garden Department came to an end on 16th September, 2013, the Petitioner continued to be in unauthorized occupation of the staff quarter

upto 9th November, 2015.

(x) The Circular dated 7th October, 2010 of the Corporation specifies the manner in which the penal rent should be calculated for the first three months after the expiry of a period of three months from the date of retirement of the employee. Despite the said circular dated 7th October, 2010, certain representations were received by the Office of the Municipal Commissioner, as a result of which the Circular dated 27th January, 2012 came to be sanctioned by the Respondent Authorities and published thereafter. The said circular dated 27th January, 2012 provides that if the retired employee fails to vacate the staff quarter even after passing of the subsequent three months during which the said employee has been charged penal rent as per circular dated 7th October, 2010, then in that case, the further monthly penal rent shall be calculated as per the circulars dated 7th October, 2010 and 27th January, 2012 and charged whichever is higher of the two circulars.

(xi) Based on the calculations arrived at in accordance with the policy circulars dated 7th October 2010 and 27th January, 2012, an amount of Rs.18,35,082/- was payable by the Petitioner to the Corporation towards penal rent.

(xii) On 31st March, 2017, the Corporation issued a letter to the

Petitioner and inter-alia enclosed therewith a detailed statement showing how the Corporation had arrived at the figure of Rs.18,35,082/- payable by the Petitioner towards rent/penal rent for use/unauthorized use of the staff quarter. From the said statement it can be seen that the Corporation has not charged penal rent during the entire period during which the Petitioner worked on contract basis i.e. upto September 2013 and also for a period of three months thereafter. The Corporation charged only an amount of Rs.3850/- that is, at the rate of Rs.550/- per month for the entire period during which the Petitioner worked on contract basis after his retirement. Again, even for a period of three months thereafter i.e. from October 2013 to December 2013 the Corporation did not charge any penal rent to the Petitioner. The penal rent was charged by the Corporation only for the period 1st January, 2014 to November 2015 (23 months) on the basis set out in the circulars.

(xiii) On 22nd May, 2017, the Petitioner received a letter from the Accounts Officer (Pension Department) of the Corporation (Exhibit L to the Writ Petition) informing the Petitioner that an amount aggregating to Rs.18,35,082/- is payable towards rent as well as penal rent for the periods set out therein and the same shall be recovered from the Petitioner's retirement benefits.

(xiv) The Corporation on 18th November, 2017 informed the Petitioner that an amount of Rs.16,98,543/- was recovered from the dues payable to the Petitioner by the Corporation and as regards the balance payment of Rs.1,36,539/-, the Petitioner should come and meet at the office of the Respondent No.1-Corporation.

(xv) The Petitioner has in the present Writ Petition, challenged the aforesaid action of the Respondents in the present Writ Petition and has claimed reliefs as set out in paragraph 2 above.

4. The Respondent-Corporation has filed its detailed Affidavit dated 9th August, 2018 dealing with the submissions of the Petitioner in the above Writ Petition.

5. The Learned Advocate appearing for the Petitioner has admitted that the Petitioner has before his retirement signed the consent letter and the undertaking dated 16th November, 2012 and 19th November, 2012 respectively. He has also admitted that the Petitioner had on 16th January, 2013 submitted an application to the Corporation to allow him as a special case to extend his stay for a period of nine months i.e. from 1st April, 2013 to 31st December, 2013. He admits that the Corporation by its letter dated 10th April, 2013 had informed the Petitioner that overstay in the staff quarter entails payment of penal rent

pursuant to the policy circular referred to therein, which is issued pursuant to the order of the Municipal Commissioner dated 31st January, 2012. It is also admitted that the Petitioner upon receipt of the said letter had not made any enquiry with the Corporation qua the order of the Commissioner or the policy circular issued pursuant to such order and as to what would be the penal rent payable for such overstay. It is admitted that despite receipt of the said letter, the Petitioner continued to stay in the staff quarter upto 9th November, 2015. However, the grievance of the Petitioner is that in response to his letter seeking extension, the Corporation has only stated in its letter that he can continue to reside in the said premises upon payment of penal rent, but did not mention as to what would be the penal rent. It is also submitted on behalf of the Petitioner that no show cause notice is issued to the Petitioner by the Corporation. It is also submitted that the circulars of the Corporation were issued by some officers and the same are ultra vires, void-ab-initio and bad-in-law. It is submitted that therefore the charging of penal rent and recovery of the same from the terminal dues of the Petitioner is arbitrary and illegal and the reliefs sought by the Petitioner in the Writ Petition ought to be granted.

6. The Learned Advocate appearing for the Corporation has relied upon the defence raised in the Affidavit-in-Reply and the facts set out in paragraph 2

herein-above and has submitted that the above Writ Petition deserves to be dismissed.

7. We have gone through the facts in the matter and the documents relied upon by the parties, we have also considered the submissions advanced by the Advocates for the parties. Admittedly, the Petitioner retired on 31st December, 2012 as Executive Engineer (Mechanical and Electrical) from the Respondent Corporation. About six weeks prior to his retirement i.e. on 16th November, 2012 the Petitioner signed / issued a consent letter form to his employer - Corporation, giving irrevocable power and authority to the Corporation to deduct from any money due to him by reason of his employment and also from the money due to him from his subscription to Municipal Provident Fund, dues payable to the Corporation by way of fine, penalty and otherwise, in any manner whatsoever. Again, about five weeks prior to his retirement i.e. on 21st November, 2012 the Petitioner gave a written undertaking that he will vacate the said premises within three months from receipt of his provident fund dues. As per the rules of the Corporation the staff quarters are required to be vacated within three months from the date of retirement. The Petitioner was to therefore vacate the staff quarters by 31st March, 2013. The Petitioner being aware of this fact submitted a written application dated 16th January, 2013 to the

Municipal Commissioner-Mumbai to permit him as a special case to extend his stay in the staff quarter from 1st April, 2013 upto 31st December, 2013 i.e. for a period of nine months. The Corporation sent its reply to the Petitioner dated 10th April, 2013 informing him that pursuant to the Order of the Municipal Commissioner dated 31st January, 2012, a Circular bearing No.AC/Estate/20549/SA is issued whereunder it is provided that if a retired employee of the Corporation wishes to extend his stay in the staff quarters beyond the period of three months from the date of retirement, then such employee will have to pay penal rent in accordance with the circular. Though the Petitioner was directed to convey his consent in writing to the payment of penal rent at the earliest, he did not do so. The Petitioner also did not raise any queries with the Corporation with regard to the quantum of penal rent payable or qua the order of the Municipal Commissioner or qua the Circular mentioned in the letter of the Corporation dated 10th April, 2013.

8. By Office order dated 14th February, 2013 the Petitioner was appointed as a Consultant in the Garden Department by the Corporation on a lumpsum payment of Rs.25,000/- per month. There is nothing on record to show that the Petitioner was allowed to continue his stay in the staff quarters during his contract employment, i.e. from February 2013 to September 2013. However,

though the Petitioner was earlier put to notice by a letter from the Corporation dated 10th April, 2013 that for stay beyond three months from the date of his retirement he will have to pay penal rent in accordance with the circular issued pursuant to the order of the Commissioner, the Petitioner did not vacate the staff quarter on 1st April, 2013 or until expiry of the extension sought by him i.e. December 2013 or even three months after his contract employment expired on 16th September, 2013, but vacated the same at his own whim and fancy on 9th November, 2015. On 31st March, 2017, the Corporation issued a letter to the Petitioner and inter-alia enclosed therewith a detailed statement showing how the Corporation had arrived at the figure of Rs.18,35,082/- payable by the Petitioner towards rent/penal rent for use/unauthorized use of the staff quarter. From the said statement it can be seen that the Corporation has not charged penal rent during the entire period during which the Petitioner worked on contract basis i.e. upto September 2013 and also for a period of three months thereafter. The Corporation charged only an amount of Rs.3850/- that is, at the rate of Rs.550/- per month for the entire period during which the Petitioner worked on contract basis after his retirement. Again, even for the period of three months thereafter i.e. from October 2013 to December 2013 the Corporation charged rent at the rate of Rs.550/- per month to the Petitioner.

The penal rent was charged by the Corporation only for the period 1st January, 2014 to November 2015 (23 months) on the basis set out in the circulars. It is only after the Petitioner was served with the letters dated 22nd May, 2017 and 18th November, 2017 informing him about the penal rent charged and further informing him that part of the penal rent is adjusted by the Corporation from his dues and called upon him to meet the officers of the Corporation qua the balance amount payable by him, that he has challenged the said deductions on grounds which are baseless and untenable namely that the amount of penal rent payable was not mentioned in the letter; that a show cause notice was not issued to him by the Corporation and that the circulars were *ultra vires, void ab-initio* and bad in law.

9. The Petitioner was made aware as far back as on 10th April, 2013, that he will have to pay penal rent for his extended stay as per the circular/s issued pursuant to the order of the Municipal Commissioner. By the said letter, he was called upon to convey his consent to pay penal rent in writing. The Petitioner did not convey his consent and also did not bother to make any enquiry with regard to the penal rent payable, or qua the order of the Commissioner or the circular issued with regard to payment of penal rent. It was always open to the Petitioner at that point of time to seek particulars with regard to the order and

circular referred to in the said letter dated 10th April, 2013 and the exact amount that he would be required to pay for his over stay in the staff quarter as per the circular. It was also open to the Petitioner not to extend his stay if according to him the penal rent was very high or to challenge the circular/s. Instead the Petitioner continued to occupy the staff quarter, not only upto December 2013 i.e. the period upto which he was seeking extension, but continued to occupy the same and failed to handover possession of the staff quarter upto 9th November, 2015. The Petitioner now cannot be heard to say that he was not conveyed the quantum of penal rent or that no show cause notice was issued to him by the Corporation, or that the circulars issued are *ultra vires*, *void ab initio* or bad in law and the Corporation cannot levy penal rent for his extended stay in the staff quarter. As stated earlier, though there is nothing on record to show that the Petitioner was allowed to retain his staff quarter during his appointment as a Consultant in the Garden Department on a consolidated salary of Rs.25,000/- per month, fortunately for the Petitioner the Municipal Corporation has not called upon him to pay any penal rent for the entire period of his contract employment from February 2013 to September 2013 and for a period of three months thereafter, but have charged penal rent only for the period 1st January, 2014 to November 2015 (23 months).

10. The Corporation has thousands of workers and as submitted on behalf of the Corporation, there are number of workers who are waiting in queue for allotment of a staff quarter. Most of the staff quarters are in very good areas/localities, the market rent of which is exorbitant. The employees like the Petitioner do not vacate the staff quarters even after retirement and continue to unauthorizedly use the same for a paltry sum thereby depriving the current employees who are entitled to and are awaiting allotment of a staff quarter since long. Penal rent is fixed by the Corporation not to get richer, but only to ensure that the same acts as a deterrent qua the erring ex-employees. However, an ex-employee like the Petitioner who has given written consent just before his retirement authorizing the Corporation to deduct any fine/penalty imposed by the Corporation from the dues payable to him by the Corporation and who is also put to notice that he will have to pay penal rent as per order/s / circular/s, refuse to pay penal rent when called upon to do so by raising grounds/contentions which are baseless and untenable.

11. In the case of *Wazir Chand V/s. Union of India and others*¹, it was contended on behalf of the Appellant that it was the bounden duty of the Union of India not to withhold the gratuity amount and, therefore, the appellant would

1 (2001) 6 SCC 596

be entitled to the said gratuity amount on the date of retirement, and that not having been paid, he is also entitled to interest thereon. The Supreme Court in its decision held that *“We are unable to accept this prayer of the appellant in the facts and circumstances of the present case. The appellant having unauthorisedly occupied the government quarters was liable to pay the penal rent in accordance with rules and therefore, there is no illegality in those dues being adjusted against the death-cum-retirement dues of the appellant. The appeals stand dismissed.”*

12. The Learned Advocate appearing for the Petitioner relied on the decision of the Division Bench of this Court, in the case of *V.U. Warriar V/s. Secretary, Oil and Natural Gas Commissioner*², wherein it is held that the retirement dues cannot be withheld even if the employee has remained in unauthorised occupation of employer’s accommodation and become liable to pay damages under the allotment rules for overstay. The employer has to pursue appropriate remedy in law. It appears that the Learned Advocate appearing for the Respondents has lost sight of the fact that the said decision was challenged before the Supreme Court and the same is set aside and decided by the Supreme Court in favour of ONGC Ltd.. in the case of *Secretary, ONGC Ltd. and another V/s. V.U. Warriar*³.

² 2002 SCC online Bom 169

³ (2005) 5 SCC 245

13. In view of the facts and circumstances of the present case, more particularly, the consent given by the Petitioner-employee six weeks before his retirement authorising the Corporation to deduct any fine, penalty payable by him from his retirement dues and further that the Corporation had put the Petitioner to notice as far back as on 10th April, 2013 that after a period of three months from the date of his retirement if he extends his stay in the staff quarter, he will have to pay penal rent as per the circular issued by the Corporation pursuant to the order of the Municipal Commissioner, we do not see any illegality in the action taken by the Municipal Corporation to recover its dues from the retirement benefits of the Petitioner and we see no reason to interfere with such decision. In the circumstances, the Writ Petition is dismissed.

(S.J.KATHAWALLA, J.)

(AKIL KURESHI, J.)