

CENTRAL ADMINISTRATIVE TRIBUNAL
BENCH AT MUMBAI

ORIGINAL APPLICATION No. 716/1996

Date of Decision: 23.9.96

Shri J. M. Dumasia,

Petitioner/s

Shri V. D. Surve,

Advocate for the
Petitioner/s

V/s.

Union of India & Another,

Respondent/s

Shri V. S. Masurkar,


Advocate for the
Respondent/s

CORAM:

Hon'ble Shri B. S. HEGDE, MEMBER (J).

~~Hon'ble Shri~~

- (1) To be referred to the Reporter or not ?
- (2) Whether it needs to be circulated to other Benches of the Tribunal ?


(B. S. HEGDE)
MEMBER (J).

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO.: 716 OF 1996.

Dated this 23rd the _____ day of September 1996.

CORAM : HON'BLE SHRI B. S. HEGDE, MEMBER (J).

Shri J. M. Dumasia,
Flat No. 5, Bella Vista,
Cadell Road,
Mahim,
BOMBAY - 400 016.

...

Applicant

(By Advocate Shri V.D. Surve)

VERSUS

Union Of India through
Estate Manager,
Old C.G.O. Building Annexe,
3rd floor, New Marine Lines,
BOMBAY - 400 020.

2. The Estate Officer,
appointed under Sec. 3 of
Public Premises Act, 1971
having his office at
Old C.G.O. Bldg. Annexe,
New Marine Lines,
BOMBAY - 400 020.

...

Respondents.

(By Advocate Shri V.S. Masurkar).

: ORDER :

! PER.: SHRI B. S. HEGDE, MEMBER (J) !

1. Heard the arguments of Shri V.D. Survey for the applicant and Shri V. S. Masurkar for the respondents.

2. The short point for consideration is, whether the applicant is entitled to continue in the premises in which he is in occupation despite the fact that he has retired from service. The applicant is occupying the flat no. 5 at Bella Vista, Cadell Road, Mahim, Bombay, which is a requisition premises by the respondents i.e. Government of

India. In this O.A., the applicant challenges the order of eviction dated 25.05.1995 against which he preferred an appeal before the Principal Judge of the City Civil Court, Bombay and this appeal was dismissed on 02.02.1996. The applicant then approached the High Court in its Writ Jurisdiction. The High Court dismissed the writ petition on the ground that the allotment of houses and the condition under which allotments in favour of Government servants are made and are cancelled, are all service matters connected with service conditions and gave permission to the applicant to move the Tribunal for necessary relief. Against the order of the High Court, the applicant preferred an O.A. on 19.07.1996 seeking stay in the operation of the order dated 25.05.1995 issued by the Estate Office and the order dated 02.02.1996 passed by the Principal Judge of the City Civil Court, Bombay.

3. On perusal of the records, I find that the applicant was working as a Supervisor in the office of the Director of Audits, Scientific Department, Ballard Estate, Bombay and retired from service on 30.11.1991. Initially, he wanted the flat to be regularised in the name of his wife after his retirement. Though he made representations to the competent authorities, the same has not been regularised in her name, who is also a Government employee. She also retired from Government service on 31.01.1994. After the retirement of the applicant and after the permissible period was over, since the applicant did not vacate the said premises, the Estate Officer was performed

to issue notice for vacation of the premises. It is noticed that the Director of Estates, Government of India, New Delhi, also took a decision to hand over the said property to the bonafide owners and thereby, some time was given to the applicant to seek alternate accomodation. It is also noticed that the applicant has not been paying the licence fee to the respondents after the date of retirement i.e. 30.11.1991. The contention of the applicant is that, no bills were submitted to the applicant after 30.11.1991 and he has been occupying the premises without paying any rent till now. His further contention is that the said premises was in dilapidated condition and for repairing he has spent nearly Rs. 8,000/- before the riots of 1992 and after the riots he spent nearly Rs. 62,000/- for repairs, etc. He also contends that the Landlord had given an oral understanding to accept the applicant as direct tenant and would regularise the tenancy in his name, etc. The applicant also requested the Respondents department to reimburse the cost of repairs incurred by him but no action has been taken.

4. From the above pleadings it is clear that the Government of India is required to regularise the said premises in favour of the Landlord and if the applicant wants the tenancy of the Landlord, that is the matter entirely to be determined by the Small Cause Court and not for the Tribunal to go into the matter. The main contention of the applicant is that the Landlord had given an oral understanding that he would regularise his tenancy in his name but this issue is required to be dealt with in a different forum. In this

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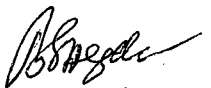
connection, the Learned Counsel for the respondents drew my attention to the recent decision of the Supreme Court in Life Insurance Corporation Of India V/s. Shiva Prasad Tripathi and Others [1996 SCC (L&S)659] where a similar issue was raised and the Supreme Court has observed in the following manner while interpreting Section 10 of the Public Premises Act, which reads as follows :

"10. Save as aotherwise expressly provided in this Act, every order made by an Estate Officer or Appellate Officer under this Act shall be final and shall not be called in question in any original suit, application or execution proceeding and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act."

The question of tenancy pertains to property, which plea was adjudicable before a Court or a competent authority and that Court or authority could issue an injunction or an interim direction, and no bar could be erected to stop it towards the grant thereof. It is in these circumstances that the High Court directed that the Judge, Small Cause Court, shall adjudicate on the question of tenancy when raised by the respondents in the suit and such court, in that event, would be able to issue any interim order or injunction which the respondent may be found entitled to. A suit for injunction to negate the orders of those two authorities stood barred under Section 10. The legislative mandate was that the Court by order cannot obstruct the execution of the order passed by the Estate Officer and the Appellate Authority. The court's power, otherwise, to adjudicate on the question whether a person was a tenant or

in no way, has been taken away by Section 10, etc.

4. In the light of the above, the ratio laid down by the Apex Court would squarely apply to the facts of the present case and in our view, since the applicant and his wife retired from Government service as back as 1991 and 1994 respectively, they ~~does~~ not have any locus-standi to continue in the premises. Accordingly, I do not find any merit in the O.A. and the same is dismissed. It is open to the respondents to take appropriate steps in getting the applicant vacated and hand over the premises to the original landlord, as the case may be. No order as to costs.


(B. S. HEGDE)
MEMBER (J).

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GULESTAN BLDG.NO.6, PRESCOT RD, 4TH FLR,
MUMBAI - 400 001.

M.P.No.825/96 in Original Application
No.716/96.

DATED THIS 21st DAY OF NOVEMBER, 1996.

CORAM : Hon'ble Shri B. S. Hegde, Member (J).

J.M.Dumasia,
Flat No.5, Bella Vista,
Cadell Road,
Mahim, Bombay - 400 016.

... Applicant.

By Advocate Shri V.D.Surve.

v/s.

1. The Union of India, through
Estate Manager,
Old C.G.O. Bldg. Annexe,
3rd Floor, New Marine Lines,
Bombay - 400 020.
2. The Estate Officer, appointed
Under Sec.3 of Public Premises
Act 1971 having his office at
Old C.G.O. Bldg, Annexe,
New Marine Lines,
Bombay - 400 020.

... Respondents.

By Advocate Shri V.S.Masurkar.

I O R D E R I

[Per Shri B. S. Hegde, Member (J)]

Heard Shri V.D.Surve for Applicant and
Shri V.S.Masurkar for Respondents.

Applicant has file MP-825/96 seeking permission to continue to stay in the premises at Flat No.5, Bella Vista, Mahim. It was made clear vide judgement dated 23/9/96 of this Tribunal and in view of the Supreme Court reference made therein that the applicant and his wife retired in 1991 and 1994 and they do not have any locus-standi to continue in the premises.

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In the circumstances, I do not find any merit in the MP and the same is dismissed. MP-825/96 stands dismissed.

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(B. S. HEGDE)
MEMBER (J)

abp.