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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

in A Set of 2A
982/95

O.A.NOS: 982/95 and 1004/95

Pronounced, this the 5th day of Sept 1996

CORAM: HON'BLE SHRI M.R.KOLHATKAR, MEMBER(A)

I. Raveendran P.N.

101, Bandra Customs House,
72, Chapel Road, Bandra(W),
Bombay - 400 050.

.. Applicant in
O.A. 982/95

By Advocate Shri D.V.Gangal
for Shri V.M.Bendre

-versus-

1. Union of India through
Secretary/Chairman,
Central Board of Excise,
and Customs, North Block
New Delhi.

2. Collector/Commissioner of
Customs(P), 11nd Floor,
Bombay Customs House,
Ballard Estate,
Bombay - 400 038.

3. Assistant Commissioner
(Admn.), M & P Wing,
100 Everest House,
Marine Lines,
Bombay - 400 002.

By Advocate Shri Sureshkumar
for Mr.M.I.Sethna.

.. Respondents in
O.A. 982/95

II. Vasudeo Ramchandra Jamkhindikar

102, Bandra Custom's House,
72, Chapel Road,
Opp.Carmel Church, Bandra(W)
Bombay - 400 050.

(By advocate Shri S.S.Karkera
for Shri M.D.Lonkar)

.. Applicant in
O.A. 1004/95

-versus-

1. Union of India through
Secretary,
Ministry of Finance,
New Delhi.

2. Commissioner of Customs
(Preventive)
New Customs House,
Ballard Pier,
Bombay - 400 038.

3. Assistant Commissioner(Admn.)
M & P Wing,
100 Everest House,
Marine Lines,
Bombay - 400 002.

(By Advocate Shri Suresh Kumar
for Mr. M.I. Sethna)

.. Respondents in
O.A. 1004/95

O R D E R

(Per M.R. Kolhatkar, Member(A))

In both these OAs the relief sought by applicants is in respect of eviction and penal rent in regard to quarters which are known as Bandra Customs House. Thus in order sheet of O.A. 982/95 on 24-8-95 a reference was made to a similar matter pending viz. O.A. 1004/95. In, O.A. 1004/95 sheet there is a reference in the order/dt. 16-11-95 to the connected matter, viz. O.A. 982/95. When then the matters were connected and came up for hearing on 15-7-1996 counsel for the applicant in O.A. 982/95 was busy in the other court. for applicant I, therefore, heard counsel in O.A. 1004/95 and also heard counsel for respondents and the matter was treated part-heard and came up for hearing on 16-7-1996. The learned counsel for the applicant in O.A. 982/95 at that stage prayed for reference of the matter to the Division Bench. This request for reference of the matter to the DB was opposed by counsel for the respondents. After hearing both the parties the reference of the matter to the DB was rejected. It was agreed that reasons for rejection would be recorded in the final order. Thereafter in O.A. 982/95 counsel for the applicant argued the matter on merit

and judgment was reserved.

2. The reason for/reference of the case to the DB was that unlike in the case of O.A. 1004/95, in O.A. 982/95 the applicant/had an filed/MP for amendment for taking additional grounds and this MP was allowed on 21-9-95. The main contention of the counsel for the applicant is that as per the/super added condition the applicant has to vacate the quarter on being transferred from M & P Wing. According to the counsel this condition is ultravires, unreasonable, discriminatory and in violation of Articles 14 and 16 of the Constitution. It is also ultravires of Department of Revenue and Company Law Allotment Rules, 1964; hence the superadded condition is void ab-initio. According to counsel he is raising an issue of constitutional interpretation and such a case can be disposed of only by a division bench and, therefore, the matter is required to be peremptorily transferred to division bench.

3. Counsel for the respondents pointed out that it was open to . . seek reference of the matter to the division bench when he filed/MP for amendment of pleadings/and when he was/fully aware of the nature of the pleadings. Now when the case is ripe for final hearing and a sister case has been heard and after hearing the counsel in sister case the matter remained part-heard by treating the two cases as bracketed case, it was not competent for counsel for the applicant to seek transfer of the matter to the division bench.

4. In this connection I refer to the notification issued by Chairman, C.A.T. in terms of powers conferred on him by sub-section (6) of Section 5 of the Administrative Tribunals Act, 1985 which authorises

all members of the C.A.T. to function as a Bench consisting of single Member subject to the procedure prescribed therein vide notification dt. 18-12-1991. that One aspect of the procedure is/it is open to either party to submit to the Single Member before the matter is taken up for admission or for final hearing, that it may be placed before a Bench of two Members. If such a request is made at the outset, the Single Member shall direct that the case be placed before an appropriate Bench of two members. It is further stated that once the case is taken up, no such request shall be entertained at any subsequent stage of the proceedings for admission or final hearing as the case may be.

5. I note that the O.A. first time came up for admission on 11-8-1995 when interim relief was granted. The matter ^{again} came up for admission on 24-8-95, 4-9-95, 18-9-95 and 21-9-95 and on 21-9-95 the O.A. was admitted and the interim relief was directed to be continued till the disposal of the O.A. On that very day the MP for amendment was also considered and was allowed. Thus O.A. was ripe for admission on 21-9-95 and it was open for the counsel for the applicant to make a request for transfer of the matter to the division bench. He did not make any such prayer. Thereafter the matter came up before the Single Bench on 25-1-96, 15-2-96, 21-3-96 and 13-6-96. On 25-1-96 counsel for the applicant was not available. On 15-2-96 an MP by applicant was filed/for taking documents on record. On 21-3-96 the matter was adjourned for want of time. On 13-6-96 the matter could not be heard and it was adjourned at the request of the counsel for the applicant.

Thus the matter was ripe for final hearing on 13-6-96 when it was open to the counsel for the applicant to make a prayer for reference of the matter to the division bench. He did not exercise that option. It may be noted that it is clearly stated in the notification that the request is to be made at the outset. This clause is not otiose. It has to be given full meaning and effect. Therefore, so far final hearing is concerned the request for reference of the matter to the division bench must be made on the first day when the case was ready after completion of pleadings for final hearing. It does not take in any subsequent date on which the counsel for the applicant chooses to move the application for reference. Since such a request was not moved on 13-6-96 the request moved on 16-7-96 cannot be treated as request made at the outset. This is the position apart from the fact that the matter was otherwise part-heard in relation to the matter being treated as a bracketed matter.

6. I next come to the question as to whether the case involves validity of any statutory provision or interpretation of any of the provisions of the Constitution, as prescribed in the Chairman,CAT's notification dt.18th December,1991 and which notification is reproduced as Appendix-1 to the CAT Rules of Practice,1993. No Supreme Court judgment has been cited before me. I, therefore, go by the words in the notification as they stand.

7. In this particular case what has been questioned is a condition inserted in allotment order which is stated to be in violation of the statutory rules framed under Article 309 viz. the Department of Revenue and Company Law Allotment Rules,1964. Therefore, validity of a statutory rule has not been challenged. Moreover mere allegation of discrimination can be made in relation

to any case. But merely because of such an allegation it cannot be said that ~~the~~ case involves interpretation of Constitution in relation to Article 14 because what the case involves is a decision on whether Article 14 is attracted to the facts of the particular case and constitutional provisions as such are not required to be interpreted. Therefore both in terms of Chairman CAT's notification as well as in terms of the pronouncements of the Supreme Court I hold that this case can be dealt with by a single bench and the prayer of the counsel for the applicant for reference of the matter to the division bench is rejected.

8. I may now proceed to consider the issues involved on merits in relation to the facts alleged. In both the OAs the applicants have challenged the notice of department asking them to vacate the quarter at Customs House, Bandra. In O.A. 1004/95 the first notice dt. 5-4-94 states that quarters at Bandra Custom House may be allotted only to officers who are posted at Versova Circle and he is therefore requested to vacate the quarters immediately, failing which disciplinary action may be taken against him. This has been followed by ^a further communication dt. 14-9-1994 and October, 1994 and the latest communication is dt. 25-7-95 in which he has been given 15 days' time to vacate the quarters. In the case of O.A. No.982/95 the applicant was given notice on 5-4-94, 26-8-94 and 25-7-95 in which he has been threatened with eviction with the help of police and lastly on 24-8-95 in which he has been informed that market rent will be charged. The applicants have challenged these orders directing them to vacate the quarters and also threatening them with levy of market rent on several grounds namely that respondents have exercised discrimination, that the respondents are trying to favour class-I officers and that the

notices have been issued to accommodate Class-I officers in Class-III staff quarters, that the respondents want to allot the quarter in question to a particular Class-I officer, that the respondents have followed a different policy in other circles etc. In my view, however, it is necessary to consider only two contentions of the applicants which are material. These contentions are firstly that no proceedings under PP Act have been taken against the applicants and without which admittedly have not been taken such proceedings neither the eviction can be effected nor the penal rent can be charged. Secondly the condition on which the respondents rely is not in accordance with the applicable rules and therefore the respondents cannot rely on that condition to make the applicants to vacate the quarters. This condition is to the following effect:

"This allotment is subject to the undertaking that he will vacate the quarter whenever he is transferred from the Bandra SGP/Port."

This condition is also required to be read with condition No.4 which reads as below :

"He/She shall abide by the Department of Revenue and Company Law Allotment Rules, 1964 under which this accommodation is allotted to him/her."

9. The respondents have opposed the OAs. According to them the quarters in question have specifically been constructed for officials and officers attached to the Customs House Bandra and that the applicants in both the cases were allotted quarters on 14-11-1986 in the case of applicant in O.A. 1004/95 and 29-10-90 in the case of applicant in O.A. 982/95, because they were eligible. The applicants had accepted the conditions of allotment order including the condition reproduced above;

and now the applicants go back on their earlier acceptance and question the conditions. According to the respondents the case of applicant in O.A. 982/95 is on a much weaker footing because the applicant in that case has been transferred to the Excise department and has no connection at all with the Bandra Collectorate or even with the Customs Department. Secondly the applicant in O.A. 982/95 had also informed the department vide his letter dt. 21-9-1994, Annexure A-7, that he is on the ^{for} look out/ alternative accommodation and no sooner an alternative accommodation is arranged he will vacate the present quarter. According to the respondents applicants and therefore both the applicant in O.A. 982/95 particularly cannot now challenge the notice asking the applicant to vacate the quarter or to pay the damage rent.

10. I have already observed that respondents have not been able to show that they had taken proceedings under PP Act for eviction of the applicants. Therefore, the notices asking them to vacate the quarter are liable to be quashed on this ground alone. However, the applicants have also raised a substantial question ~~as to~~ relating to the condition imposed on them to vacate the quarters on the transfer of the applicants from the BANDRA SGP/Port. This point is therefore required to be gone into. It appears that the quarters in possession of Ministry of Finance (Department of Revenue and Company Law) are allotted in terms of G.S.R. 1328 dt. 8th September, 1964 which is known as Department of Revenue and Company Law Allotment Rules, 1964. These rules are to be seen at Ex.4 of the O.A. 982/95. In these rules under the heading "Allotment" it is provided that A residence shall be allotted to a qualified officer eligible for each class of residence by the Head of the Department on the basis of application

in the order of seniority. It is further provided that, the head of the department may cancel the existing allotment of an officer and allot to him an alternative residence of the same class or in emergent circumstances an alternative residence of the class next below the class of residence in occupation of the officer, if the residence in occupation of the officer is required to be vacated vide SR 317-P-5 Rule 1 and 4. Thus it would be seen that in terms of rule an officer once allotted this quarter cannot be asked to vacate the quarter if he remains in the station unless an alternative accommodation is provided to him. There is an SR 317-P-7 which provides that whenever a suitable residence has been constructed or leased by the Government for the incumbents of certain specified posts at specified station or stations, the allotment thereof shall solely be governed under S.R. 311 to 317. From whatever the documents respondents have filed viz. the correspondence dt.13-6-80 regarding proposal for construction of Custom House cum Residential quarters at Bandra vide Ex.1 to the written statement in O.A. 982/95 and corresponding Exhibit in O.A.982/95 governed it is seen that the quarters in question should be ~~be~~ ^{Required to be} declared as by SR 317-P-7 i.e. they are quarters constructed for the incumbents of certain specified posts at specified station. The allotment of such quarters is required therefore to be governed by SR 311 to 317. SR 311 states that:

"When a building owned or leased by Government or a portion thereof has been made available by the Government for use as a residence by an officer under its administrative control, the competent authority may allot such building or part of a building to a post specified in the order of allotment for use as a residence by the incumbent of the post."

under the rule According to Govt. of India's order /the authority empowered to allot a residence to a post under S.R. 311, has the powers to cancel such allotment when the specific post ceases to exist or the functions of the post are so altered as not to require the incumbent of the post to live on Government premises, for the proper discharge of his official duties. S.R. 312 defines the term Occupation. S.R.313 deals with suspension of allotment of a residence, S.R.314 deals with sub-letting. S.R.315 deals with exchange of residence. S.R. 316 deals with permission to an officer during temporary absence to store his furniture etc. at his own risk and S.R. 317(2) states that Rules 311 to 316-A,both inclusive, shall not apply to any class of residence in respect of which rules, other than Rules 311 to 316-A made by the President under F.R. 45 are in force.

It is thus clear that to the extent the quarters in question are special quarters allotment to which is regulated under SR 311 to 317, the Rules called Department of Revenue and Company Law Allotment Rules,1964 would not apply to this quarters. The respondents, however, have tried to approbate and reprobate. What they have in terms stated is that the allotment is subject to Department of Revenue and Company Law/Rules,1964 ~~but~~ they have imposed a condition which is not in accordance with these rules viz. the allotment being subject to the undertaking that he vacate the quarter whenever he is transferred from Bandra SGP/Port. The respondents ~~will~~ have also not made a declaration that the Bandra quarters are the quarters to which SR 311 applies and therefore the Rules under FR viz. Department of Revenue and Company Law Allotment Rules do not apply thereto nor have the respondents purported to make allotment in terms of SR 311 to 316(A).

11. In this background I am required to hold that the allotments which were made to the applicants are in terms of Department of Revenue and Company Law Allotment Rules and the condition No.4 of the allotment order says so, in so many words. The condition that the allotment is subject to the undertaking that he will vacate the quarter whenever he is transferred from Bandra SGP/Port which is not in accordance with these rules viz. Department of Revenue and Company Law Allotment Rules, 1964 made under FR's is not therefore enforceable, and it was not open to the respondents to ask the applicants to vacate the quarters in a purported exercise to enforce the condition.

12. The OA's therefore are allowed and the impugned orders referred to at the beginning asking the applicants to vacate the quarters and to pay damage rent are quashed and set aside. It is declared that the respondents are allotted quarters in terms of Department of Revenue and Company Law Allotment Rules, 1964 and they are not liable to vacate the quarters ^{save for any breach of rules} so long as they remain in the same station and if they are asked to vacate the quarters the department is bound to allot alternative accommodation in terms of Rules. There will be no order as to costs.

M

(M.R. KOLHATKAR)
Member(A)

*True copy
Date 11/5/1987*