

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH

Original Application No: 921/97

Date of Decision: 10<sup>th</sup> March 2000

Smt. Rambhabai Dadu Nyanirgune

Applicant.

Shri V.D. Surve

Advocate for  
Applicant.

Versus

Union of India and others

Respondent(s)

Shri V.S. Masurkar

Advocate for  
Respondent(s)

CORAM:

Hon'ble Shri. S.L. Jain, Member (J)

Hon'ble Shri.

- (1) To be referred to the Reporter or not? *no*
- (2) Whether it needs to be circulated to other Benches of the Tribunal? *no*
- (3) Library *yes*

*S.L. Jain*  
(S.L. Jain)  
Member (J)

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CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH, MUMBAI  
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ORIGINAL APPLICATION NO: 921/97  
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----- the 10<sup>th</sup> day of March, 2000 -----

CORAM: Hon'ble Shri S.L.Jain, Member (J)

Smt. Rambhabai Dadu Nyanirgune  
Residing at  
Bhinkutir, Buddha Nagar,  
P.V. Thorat Marg.,  
Govandi, Mumbai.

... Applicant.

By Advocate Shri V.D.Surve.

V/s.

1. The Union of India through  
Estate Manager,  
Old C.G.O. Building,  
Annexe, 3rd floor,  
New Marine Lines, Mumbai.

2. The General Manager,  
Naval Armament Depot  
Naval Dockyard Gungate,  
Behind Town Hall,  
Fort, Mumbai.

... Respondents.

By Advocate Shri V.S.Masurkar.'

O R D E R  
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¶ Per Shri S.L.Jain, Member (J) ¶

This is an application under Section 19 of the  
Administrative Tribunals Act 1985 for the following  
reliefs:

- (a) That it be declared that letter No. I(1132-B)/  
83-EMB dated 15.6.94 is illegal, bad in law  
and the same be quashed and set aside.
- (b) That it be declared that the letter No.  
07/AB/I-59-EMB dated 22.12.1994 issued by  
5.01.1995  
the Asstt. Estate Manager of the Respondent  
No. 1 is illegal, bad in law, null and void  
and the same be quashed and set aside.

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- (c) The Respondent No.2 be directed to release forthwith the final dues of the Applicant;
- (d) That the respondent No.2 be directed to pay the cost of this application;
- (e) That such and other and further reliefs as the nature and circumstances may require.

2. There is no dispute between the parties that when the applicant (now deceased - named Dadu Yesu Nyanirgune) was working with respondent No.2 at Naval Armament Depot, Gungate, Fort Mumbai as an " Arm Fitter" having ticket No. 49413 was allotted quarter No. 4307/118, S.M.Plot, Antop Hill Mumbai in or about 1983. On ground of insufficiency he applied for change of quarter to respondent No.1 and accordingly he was allotted quarter No. 2014/209 Type II, Kane Nagar, Antop Hill, Mumbai in or about 24.5.1983. The applicant received the impugned order Ex. A letter No. I/1132-B/ 83 -EMB dated 15.6.1994 and Ex. D - letter No. 07/AB/ I - 59 - EMB dated 22.12.1994/ 5.1.1995 issued by the Assistant Manager of Respondent No.1.

3. The grievance of the applicant is that he has vacated quarter No. 4307/118 S.M.Plot, Antop Hill soon after he received possession of the newly allotted quarter No. 2014/209 Type II Kane Nagar, Antop Hill, Mumbai. He has also vacated the said quarters on 12.8.1994 and 21.10.1994. Hence he is not liable to pay any licence fee at an enhanced rate.

4. The applicant has filed Misc. Appeal No. 21/95 which was decided on 26.7.1995 by the City Civil Court, Bombay, against which he preferred a writ petition No. 1599/95 before the High Court of Mumbai which

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was decided on 21.9.1995 by remanding the matter back to the Court with the direction that the appellate authority to decide the appeal on merit as early as possible and after the said order the said appeal was again decided on 3.12.1996 and it is held that appeal is not maintainable.

5. The applicant has pursued the remedy bonafide in a Court having no jurisdiction, hence an application is filed by the applicant to condone the delay in filing the OA. It is true that the said Misc. Appeal is decided on 3.12.1996 and the present OA is filed on 2.9.1997. About the said delay the learned counsel for the respondent argued that the applicant has no good cause for condoning the said period. The applicant is entitled to exclude the said period- the time spent in pursuing the remedy in City Civil Court Bombay - from the date of filing of the appeal to the date of the decision of the appeal i.e. from 25.1.1995 till 3.12.1996 and after excluding the said period, in my considered opinion, the OA is not delayed i.e. it is filed within one year. Hence the period bonafide spent in pursuing the said remedy, is condoned. The M.P. is allowed.

6. The respondent No.1 has mentioned in para 7 of the written statement as under:

" These respondents have therefore not initiated separate proceedings under Section 7 for recovery of damages."

7. The said pleading corresponds to the fact that in order in Misc. Appeal No.21/95 is as under:

"On going through Exhibit 'E', it is clear that the same is not an order under Section 7 of the

Public Premises (Eviction of Unauthorised Occupants) Act, and therefore, this appeal is not maintainable.

8. Thus the fact that there was no proceedings under Section 7 of the Public Premises (Eviction of Unauthorised Occupants) Act, Section 7 of the P.P. Act is as under:

(1) Where any person is in arrears of rent payable in respect of any public premises, the estate officer may, by order, require that person to pay the same within such time and in such instalments as may be specified in the order.

(2) Where any person is or has at any time been, in unauthorised occupation of any public premises, the estate officer may, having regard to such principles of assessment to damages as may be prescribed, assess the damages on account of the use and occupation of such premises and may, by order require that person to pay the damages within such time and in such instalments as may be specified in the order.

(2A) While making an order under sub-section (1) or sub-section (2) the estate officer may direct that the arrears of rent or, as the case may be, damages shall be payable together with simple interest at such rate as may be prescribed, not being a rate exceeding the current rate of interest within the meaning of the Interest Act, 1978.

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(3) No order under sub-section (1) or sub-section (2) shall be made against any person until after the issue for a notice in writing to the person calling upon him to show cause within such time as may be specified in the notice, why such order should not be made, and until his objections if any, and any evidence he may produce in support of the same, have been considered by the estate officer.

9. The procedure to be adopted by the Estate Officer is mentioned in sub-section (3) of Section 7 of the said Act. An order by the Estate Officer is appealable under Section 9 of the said Act and the jurisdiction exclusively rests with the Estate Officer and District Judge respectively.

10. In the above situation whether in fact the said quarter No. 4307/118 S.M. Plot Antop Hill Mumbai is vacated by the applicant or not, What is the effect of Respondent No.2's inspection report dated 24.1.1994, Whether supplementary Rules 317-B-12(1) and O.M. No. 12035(6)/88 POI II dated 4.10.1988 is applicable or not, properly interpreted or not, is entirely and exclusively in view of Section 15(d) of the said Act within the jurisdiction of the said authority, hence proper and only course left for this Tribunal is to restrain to make any comment on them.

11. In view of the above legal position, impugned order dated 15.6.1994 Exhibit D dated 22.12.1994 are only subject to decision in view of Section 7 of the Public Premises (Eviction of Unauthorised Occupants) Act 1971, hence no order as sought for can be made.

*S.N.M.*

12. Unfortunately during the pendency of the proceedings the applicant Dadu Yesu Nyanirgune expired on 7.9.1998 and his widow has been brought on record. In view of Section 13 of the Public Premises (Eviction of Unauthorised Occupants) Act 1971, the proceedings can be instituted against the legal heirs, amount can be recovered from them with limitation as prescribed under Section 13(2) of the Act, the legal heirs who can claim 'Gratuity' may be bound to pay the same, hence proceedings can be continued by the widow of said Dadu Yesu Nyanirgune.

13. After the death of the said Dadu Yesu Nyanirgune or even before his death the claim in respect of Gratuity is not processed by the respondent No.2 and no order is passed.

14. As no 'gratuity' is paid so far, but as the claim is not processed and now it requires to be processed keeping in view of Chapter IX of C.C.S. Pension Rules, hence the matter is left to be decided by the respondent No.2 with liberty to aggregate the matter if there subsists any grievance in this respect.

15. In the result, order Exhibit A-I(1132-B)/83-EMB dated 15.6.1994 and Exhibit D- 7/AB/I-59/94/ EMB dated 22.12.1994 are of intermediary nature, <sup>5.1.1995</sup> are to be considered in proceeding Under Section 7 of the Public Premises (Eviction of Unauthorised Occupants) Act 1971 by the Estate Officer which has exclusive jurisdiction under Section 15(d) of the said Act, claim regarding gratuity is neither processed during life time of the applicant Dadu Yesu Nyanirgune nor after his death in respect of his widow Rambhabai Dadu Nyanirgune, hence OA is disposed of with the following directions:-

Sd/-

- (1) In proceedings under Section 7 of the Public Premises (Eviction of Unauthorised Occupants) Act 1971, order Exhibit A - I(1132-B)/83-EMB dated 15.6.1994 and Exhibit D - 7/AB/I - 59/94/ EMB dated 22.12.1994 5.1.1995 alongwith the fact of vacating the quarters SR 317 - B- 12 (1), O.M. 12035(6)/88 - Pol.II dated 4.10.88 be considered in accordance with law.
- (2) Claim of gratuity be processed and if the applicant - Widow, Rambhabai Dadu Nyanirgune has any grievance in respect of direction mentioed at serial No. 1 and 2 as stated above, she may re-agigate the matter as per law.

No order as to costs.

*S.L. Jain*  
(S.L. Jain)  
Member (J)

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