
(2018) 09 CAT CK 0138

In the Central Administrative Tribunal

Case No : Original Application No. 223 Of 2016

Amit

APPELLANT

Vs

Commissioner Of Income Tax And Ors

RESPONDENT

Date of Decision : 11-09-2018

Acts Referred:

Citation : (2018) 09 CAT CK 0138

Hon'ble Judges : Praveen Mahajan, Member (A)

Bench : Single Bench

Advocate : M.K. Bhardwaj, Gyanendra Singh

Final Decision : Disposed Of

Judgement

1. Brief facts of the current O.A. are that the father of the applicant was working with respondent No.1. He was allotted government accommodation No. I/543, Income Tax Colony, Pitampura, New Delhi. Unfortunately, father of the applicant expired on 25.05.1999 leaving behind his widow and children including the applicant herein. Having no other source of income, the applicant moved an application for compassionate appointment. On 17.06.2011, the respondent No.3 asked the applicant to show cause as to why an order of eviction should not be made against him. The applicant represented to the respondents on 28.06.2011 praying for a lenient view in the matter since there was no other earning member in the family. He also requested them to expedite his appointment on compassionate grounds.

2. The applicant was selected as MTS on 12.09.2013 by the respondents. He then made an application for transfer of the flat in his name, originally allotted to his father.

3. On 27.07.2015, the applicant was asked to surrender the flat in question and make payment of Rs.9,19,118/- towards damages for occupation of the said flat for the period from 04.05.1999 to 31.07.2015. On 04.08.2015, the applicant requested the respondents to recover the rent on normal rate in view his

financial condition. On 23.09.2015 he again requested the department for stay of eviction proceedings.

4. The applicant submits that after he joined the service in 2013, the respondents started deducting the HRA from his salary, thus indirectly implying that a deemed transfer/allotment has been made in his favour. The applicant further submits that the department did not take any action against him for about nine years (as mandated) as per O.M. No. 12035/3/2002-Pol.II dated 26.05.2013, wherein it is obligatory upon the respondents to take action in the case of unauthorized occupancy of the accommodation, without any delay.

5. Aggrieved by the action of the respondents, the applicant has filed the current O.A. seeking the following reliefs:-

"(a) Allow the Original Application filed by the Applicant and quash the impugned order No. CIT(Admn)/Infra/I-543/2015-16/11251 dated 23.12.2015 passed by the Respondent No.2 arising out of notice dated 17.6.2011 issued to the Applicant U/s 4(1) of the Public Premises (Eviction of un-authorized occupants) Act, 1971 by the Respondent No.3.

(b) The Respondents be directed to regularize the flat being H.No. 543, Income Tax Colony, Pitampura, New Delhi in the name of the Applicant.

(c) The Respondents be directed to charge normal licence fees from the Applicant for the period w.e.f. 04.05.1999 to 31.07.2011.

(d) Pass such further order or orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

6. In the counter, the respondents state that the applicant after the death of his father neither vacated the government accommodation nor sought retention of the same. On 27.07.2015, a notice u/s 4(1) of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 was issued to the applicant to surrender the government accommodation within 15 days of receipt of notice along with payment of damages of licence fee of Rs.9,19,118/- for the period 04.05.1999 to 31.07.2015. On 21.09.2015, an order of eviction u/s 5(1) of Public Premises (Eviction of Unauthorized Occupants) Act, 1971 was issued to the applicant with a direction to surrender the flat as the same cannot be regularized in his name as per rules.

7. The respondents submit that deduction of outstanding licence fee from his salary on monthly basis can be allowed only if 50% of outstanding dues are paid together by 10.10.2015. The balance 50% of dues can be recovered from his salary by way of deduction of 50% of salary on monthly basis, with interest @ 12% per annum.

8. Regarding request of the applicant for regularization of the flat in his name, it is mentioned that as per housing rules, the conditions for regularization of flat to eligible ward/spouse of the deceased allottee in case of appointment on

compassionate grounds are provided in O.M. No. 12031/1/2013-PI.II dated 16.02.2014 of Directorate of Estates, Ministry of Urban Development, GOI, stipulating that:-

"In case of compassionate appointment, where appointment has been approved by the concerned department and the name of spouse/ward has been under considered for three years for offering appointment due to non-availability of a clear vacancy and the prescribed committee has reviewed the certified his/her penurious condition at the end of the first and the second year, the accommodation may be regularized/allotted in the name of such a spouse/ward provided the appointment is secured within a period of three years after the death of the allottee and the accommodation in occupation has not been vacated."

The respondents further submit that the applicant was appointed after (almost) 14 years of the death of his father, hence his request for regularization of the flat cannot be acceded to. The family of the deceased did not file any application for extension of the government quarter beyond the normal retention period of one year or supplied any certificate certifying that the deceased allottee or his dependents do not own a house at the place of posting. The applicant with his family was occupying the government accommodation allotted to the deceased employee beyond the permitted period of two years and hence is liable to be evicted from the said premises as well as to pay the damages for the period beyond the permitted period of one year.

9. The respondents have relied on the decision of Hon'ble High Court of Delhi in LPA-370/2013 (G.R. Gupta Vs. Lok Sabha Secretariat) dated 29.11.2013 in which the following has been held:-

"Failure to the respondent to initiate eviction proceedings against the appellant does not confer any right upon the appellant to continue to occupy the Government accommodation."

They have also stated that Central Administrative Tribunal has no jurisdiction in the said matter.

10. I have gone through the facts of the case carefully. At the outset, it is clear that the applicant has been in unauthorized occupation of government accommodated allotted to his father since his death on 25.05.1999. It is equally true though that the respondents too woke up 16 years later to issue an eviction notice to the applicant to surrender the government accommodation and slapped him with a payment of licence fee of Rs. 9,19,118/- for over staying in the government accommodation.

11. The applicant has placed reliance on O.M. No. 12035/3/2002-Pol.II dated 26.05.2013, which mandates that the respondents must take urgent action against the unauthorized occupants of government accommodation. However, I agree that failure of the respondents to initiate the eviction proceedings against

the applicant does not confer an unfettered right upon the applicant to continue staying in the government accommodation, unauthorizedly. There is no denying the fact that action of the respondents, asking the applicant to vacate the government accommodation, is as per rules framed by Directorate of Estates, and does not become invalid on ground of delay in raising the demand.

12. The contention of the applicant that since the respondents started deducting HRA from the salary of the applicant implied that the quarter stood regularized in favour of the applicant is a wishful inference, not supported by any such order of the respondents.

13. At this belated stage, I do not think that the respondents are left with the discretion to waive or reduce the licence fee demanded from the applicant. The applicant has no option but to pay the damages of licence fee for the period from 04.05.1999 to 31.07.2011.

14. I must however point out that the respondents have been extremely lax in raising the damage charges from the applicant and took almost 16 years to confirm the demand of Rs.9,19,118/- for his over stay in government accommodation. Had they pointed it out earlier, the applicant would have moved out and perhaps chosen some affordable accommodation, rather than continuing to live in government accommodation. In view of the long delay on part of the respondents, the demand of interest on the outstanding licence fee would deeply burden the applicant. The respondents have conveniently chosen to make him a scapegoat for a fault, which is not entirely of his making. I therefore wave the interest component of the demand raised by the respondents.

15. Considering that the applicant is a low salaried employee, he may be allowed to pay 40% of the outstanding dues (instead of 50%) together. The balance 60% can be recovered from his salary, in easy installments, on monthly basis.

16. The applicant has no other means of livelihood except the government job which has been granted to him on compassionate grounds. By virtue of his government job, he is entitled to government accommodation. Hence, the respondents are directed to consider his case for allotment of government accommodation as per his entitlement. The O.A. is disposed of with these directions. No costs.