

(1996) 10 DEL CK 0073

In the Delhi High Court

Case No : Civil Writ Petition No. 3148 of 1995

B.B. Asthana

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 07-10-1996

Acts Referred:

Gratuity Act, 1972 — Section 13
Pensions Act, 1871 — Section 11

Citation : (1996) 5 AD 362 : (1997) 65 DLT 86

Hon'ble Judges : Chander Mohan Nayar, J

Bench : Single Bench

Advocate : N.L. Bareja and Rajeev Sharma, for the Appellant;

Judgement

C.M. Nayar, J.

(1) The present petition is directed against the respondents" for quashing the orders dated January 14,1993 and consequential orders dated April 7, 1993, May 25, 1993, July 2, 1993, August 16, 1993 and September 21,1993 pertaining to the rent bills which were charged as damages with effect from August 1, 1992 in respect of accommodation No. 341, Dhaula Kuan, New Delhi.

(2) The petitioner is a former Army Officer and he was posted at Delhi on February 1,1991 and consequent upon such posting he was allotted accommodation bearing No. 341, Dhaula Kuan, Part-II, New Delhi on medical grounds on July 24,1991. The petitioner thereafter was posted to Field Area in July, 1992 and became entitled to separated family (SF) Government accommodation in Delhi Cantonment in terms of Special Army Order (SAO) 10/S/ 86 for which he applied and was placed in priority 1 waiting list With seniority with effect from July 20, 1992 for allotment of Sf accommodation. The Communication dated September 30, 1992 reads as follows:

"1.Ref Stn Hq Hisar letter No. 265/Q1 dt. 5 Sep. 92. 2. The name of IC-23116H Lt. Col. B.B. Asthana, of your unit has been entered in the priority I waiting

roster for allotment of Sf Accn. in Pratap Chowk, Delhi Cantt. He will be allotted Sf Accn. in his own turn. 3. The Offr's seniority has been fixed w.e.f. 20 July 1992."

Pending allotment of this accommodation, petitioner while posted in Field Area, it was alleged, was entitled to retain married accommodation at old duty station on normal rent as per the prevalent rules. The petitioner gave "No Objection" to the hired accommodation and requested respondent No. 2 on February 10, 1993 to allot him the hired accommodation close to Army Hospital on medical grounds, since the accommodation in Dhaula Kuan, Part-11 had also been allotted to him on similar grounds. It is argued that respondent No. 2 neither offered nor allotted any hired accommodation to the petitioner prior to October 13, 1993 nor initiated any action under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (hereinafter referred to as the Act") for eviction from the premises and for recovery of damages in accordance with law. The petitioner was allotted hired accommodation in Noida on October 13, 1993 which he continued to occupy till he retired from service on March 3, 1994. The accommodation in the defense pool which the petitioner had earlier occupied was also vacated by him on October 25, 1993. The respondents claimed a sum of Rs. 99,045.00 for damages from the petitioner for the period August 1,,1992 to September 30, 1993 and out of this amount Rs. 44,935.00 have been recovered from the pay and allowances of the petitioner from August, 1992 to January, 1994, Rs. 51.595.00 have been recovered from. Gratuity and Rs. 2515.00 from the pension accruing to the petitioner as a result of his superannuation. These facts are not disputed by the respondents.

(3) The petitioner submitted his representation dated November 18, 1993 for refund of the damages/rent which was rejected. The learned Counsel for the petitioner has made the following submissions :

(A)that the respondents did not initiate any proceedings under the Act and, Therefore, were debarred from making any recovery of damages from the petitioner without due process of law; (b) the Administrative/Quartering Officer had no authority or power to order recovery of damages/rent from the pension or gratuity payable to the petitioner and this recovery is clearly in violation of Section 11 of the Pension Act and Section 13 of the Gratuity Act (c) the petitioner is discriminated as no recovery has been made from the other officers similarly situated.

(4) I have heard learned Counsel for the parties. The recovery was clearly made by orders passed by the Administrative/Quartering Officer and this will be indicated from the communications dated November 9, 1992 and December 16, 1992 respectively. This is evident from reading of the order passed on January 14, 1993 filed as Annexure "E" to the counter affidavit of respondents 1 and 2. The admitted fact, Therefore, is that no proceedings took place under the Act and no damages were determined and assessed by the Authority nominated under the Act. Reference is made to Rule 87 of the Accommodation Rules, issued

by the Ministry of defense which reads as follows:

"DAMAGES Rent 87. When an officer is in unauthorised occupation of defense Pool accommodation (regular/hostel/hired), the rent to be charged is at damages rate in accordance with the provision contained in Government of India, Ministry of defense letter No. B/68628/ Q3 (B-i) / 2450/D (Q&C) dated 27 May, 1988 as amended vide Corrigendum No. B/68628/ Q3 (B-i) / 2667 / D (Q&C) dated 11, June, 91 copies placed at Annexures Viii & Ix, respectively. The rent at damages rate as per these order is Rs. 40 per sq. mtr. of the living area in respect of type "A" to "D" (type I to IV) and Rs. 45.00 per Sq. mtr. of the living area in respect of type "E" and above (type V and above) including Hostel accommodation. In addition, garden charges and other charges, as are applicable will also be recovered."

(5) This Rule will indicate the mode of recovery of damages from the officers who do not vacate the accommodation within the prescribed period. Annexure Viii to these Rules contains a letter dated May 27, 1988 issued by the Government of India, Ministry of defense reiterating the fact that the proper Authority to pass orders for recovery of damages is the one as nominated under the Act. Reference can be made to paragraph 2(d) of this communication which reads as follows :

"(D)The rate of damages as above would be the rate to be charged from unauthorised occupant and if he/she is not agreeable to pay it, the damages to be recovered from him/her will have to be pleaded before the Estate Officer in terms of Rule 8 of the Public Premises (Eviction of Unauthorised Occupants) Rules, 1971."

(6) The learned Counsel for the respondents, on specific instructions, has very fairly stated that the proceedings under the Act did not take place before the Authority nominated under the Act in terms of the provisions as referred to above. The damages were only determined by the Administrative/Quartering Officer who had no authority in law to levy damages for unauthorised occupation of the premises against the petitioner. In this view of the matter it will not be necessary for this Court to deal with any other contentions as raised in the petition. The impugned demand is hereby quashed for the reasons as indicated above as the Authority levying damages is not the Authority under the provisions of law. This will not, however, debar the respondents to take steps as may be permissible in law. The writ petition is, accordingly, allowed. Rule is made absolute. The petitioner shall, Therefore, be entitled to consequential relief as a result of order passed in this petition. The amount which will accrue to the petitioner as a result of quashing of the impugned demand shall be given to him within four weeks from today.