

(2013) 02 CAL CK 0091
In the Calcutta High Court
Case No : Writ Petition No. 23164 (W) of 2012

Bimalendu Mazumdar

APPELLANT

Vs

National Institute of Technology and Another

RESPONDENT

Date of Decision : 27-02-2013

Acts Referred:

Citation : (2013) 138 FLR 219

Hon'ble Judges : Ashoke Kumar Dasadhikari, J

Bench : Single Bench

Advocate : Abhijit Chakraborty, for the Appellant; M. Raja Sekhar, Narayan Thakur and Gourav Singh, for the Respondent

Final Decision : Disposed Off

Judgement

Ashoke Kumar Dasadhikari, J.—Learned Advocate for the writ petitioner submits that the writ petitioner vacated the quarter in the year 1991. However, the petitioner's previous wife is forcefully occupying the flat in question. The respondent authorities did not take possession intentionally but withhold the service benefits of the writ petitioner. He also submits that even in spite of giving information that the petitioner has surrendered the flat the respondent authorities have allowed the previous wife to stay in the flat. He again submits that a divorce was granted by an appropriate Court but subsequently, stay was granted by the appeal Court. The respondent authorities allowed the estranged wife of the writ petitioner to stay and occupy the Government premises, although, she is not an authorised occupant. He also submits that the respondent authorities are armed with provisions of law to remove an unauthorised occupant but no steps were taken to remove the estranged wife of the writ petitioner deliberately.

Learned Counsel for the respondent authorities submits that the flat was allotted to the writ petitioner but the flat is under occupation of the first wife of the writ petitioner since 1991. He submits that this Court should grant leave to take appropriate action against the unauthorised occupant being the first wife of the

writ petitioner. He then wanted to cite a judgment delivered by the Hon"ble Apex Court, although facts are different.

Considered the submissions made by the learned Counsel for the parties and on perusal of the materials on records, it is evident that the writ petitioner was allotted the flat which he surrendered in 1991 with an information that he is not willing to occupy the flat. However, any effort on the side of the petitioner to get the flat vacated, would attract penal consequences and it is not impossible that the petitioner may be subjected to criminal prosecution and he may also be put behind the bars. Even for this reason he may have to loose his job. Therefore, petitioner does not have any other alternative but to inform the authorities to take steps.

2. Moreover, the question is unauthorised occupancy by the person who was not allotted the flat, which is under no circumstances justifiable. Since it is a Government property and no person can occupy it unauthorisedly, it is for the respondent who are to take steps for vacating the flat. But in this case the respondents did not take any action although there are provisions of law for eviction of unauthorised occupant. The estranged wife has no right to occupy the flat when his husband had surrendered the flat in question. Further the wife also cannot claim any right of residence in a flat which the husband is not the owner.

3. Therefore, in my view, it is totally unfair on the part of the respondent authorities to keep silent for more than two decades even in spite of the fact that the writ petitioner has left the concerned premises in the year 1991 and by a communication latter the writ petitioner has informed the respondent authorities. The respondent authorities are, therefore, entitled to remove the wife of the writ petitioner from the flat in question, since the wife has no right to occupy the said premises.

4. This is a deliberate act on the side of the respondent authorities to allow the writ petitioner's estranged wife to occupy the flat illegally. Therefore, this conduct on the side of the respondent authorities cannot make the writ petitioner responsible for such unauthorised occupancy.

5. Accordingly, the respondent authorities ought to have released entire service benefits in favour of the writ petitioner, since the writ petitioner has already surrendered the flat and also left the premises in the year 1991. The respondent authorities have no right to withhold the service benefits as they have done most illegally and unfairly.

6. Therefore, I direct the concerned authority to release all retiral benefits in favour of the writ petitioner, which he is entitled to, within a period of four weeks from date of communication of this order and the learned Advocate on record is directed to inform the concerned authority through his letter accordingly. However, it is made clear that the respondent authorities are entitled to get the flat vacated forthwith.

7. The writ petition is, thus, disposed of. There will be, however, no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the learned Advocates for the parties.