
(2012) 10 DEL CK 0064
In the Delhi High Court
Case No : Writ Petition (C) 8633 of 2003

Brig. M.B. Anand

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 05-10-2012

Acts Referred:

Public Premises (Eviction of Unauthorised Occupants) Act, 1971 — Section 9

Citation : (2012) 10 DEL CK 0064

Hon'ble Judges : Sunil Gaur, J

Bench : Single Bench

Advocate : R.K. Saini and Mr. Vikram Saini, for the Appellant; Satya Saharawat, Advocate for Mr. Ankur Chhibber, Advocate for R-1/UOI, for the Respondent

Judgement

Sunil Gaur

1. Vide impugned order of 26th August 2003, petitioner's statutory appeal u/s 9 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 stands dismissed being hopelessly barred by time and on merits as well, by holding that the order of Estate Officer was reasoned one. It is disclosed in the impugned order (Annexure P-30) that petitioner was allotted MEO hired accommodation at Rajouri Garden, New Delhi vide letter of 14th June, 1999 but petitioner had failed to shift to the said accommodation. Still, petitioner was allotted another accommodation at Carriappa Vihar in Delhi Cantt., as per his entitlement but he had refused to take it. At the hearing, learned counsel for petitioner had contended that on 25th June, 1999 petitioner was transferred to Kargil and thus became entitled to Priority-I accommodation i.e. separated family accommodation within Delhi Cantt. and so petitioner had legitimately refused the family accommodation offered to petitioner at Rajouri Garden, New Delhi, which was outside Delhi Cantt. and thereafter due to the entitlement of the petitioner, he was allotted a separated family accommodation within the Delhi Cantt. at Carriappa Vihar on 14th February, 2000.

2. According to learned counsel for petitioner, the reason for not shifting to the

allotted accommodation at Carriappa Vihar was that petitioner's department had sent a recommendation (Annexure P-13B) to respondents on 24th February, 2000 to permit petitioner to retain the existing accommodation to avoid undue hardship and the said request was never rejected by respondents and so Estate Officer's order of 12th February, 2000 (Annexure P-13) evicting petitioner from premises in question and order of 26th May, 2001 (Annexure P-21) imposing damage rent (henceforth referred as "eviction and damages order") upon petitioner is unwarranted.

3. On behalf of respondents, it was urged that overall conduct of petitioner clearly shows that default is on the part of petitioner and it is so apparent from the fact that he did not deliberately inform the Station Head Quarters at Delhi Cantt. about change of his posting, which he was required to inform within a week as per Army Orders and that petitioner had Priority-II and not Priority-I for allotment of Separate Family Accommodation and thus, the impugned order ought not to be interfered with, as it does not suffer from any illegality or infirmity.

4. Respective contentions advanced by both sides have been duly considered to find out if there is any palpable error in the impugned order. Thereupon, it transpires that though there was a considerable delay in filing the appeal, but the same stands sufficiently explained by sequence of events, as hereinafter referred to. Against "eviction and damages order", petitioner had preferred a Representation before the higher authorities to seek stay of recovery of damage rent, which was entertained and as per Communication/Signal of 7th August, 2001 (Annexure-23) it was stayed but soon thereafter, i.e. on 11th August, 2001, vide another Communication /Signal (Annexure -24) the stay was vacated. Thereafter, petitioner had also sought review of "eviction and damages order" passed by Estate Officer, which was declined by him on 12th November, 2001.

5. The explanation furnished by petitioner for the delay is that he was not informed by respondents that an appeal lay to District Judge against "eviction and damages order", as by then he had already vacated premises No. 109, Pratap Chowk, Delhi Cantt, New Delhi (hereinafter referred to as the "premises in question"). After receiving a recovery notice, petitioner purportedly took legal advice and then had preferred statutory appeal and so petitioner's ignorance of right to appeal seems to be bonafide. The aforesaid version appears to be quite probable, as petitioner along with the appeal had not preferred any application seeking condonation of delay, still petitioner's appeal was entertained and has been dismissed vide impugned order being barred by time and on merits as well.

6. In the aforementioned background, dismissal of petitioner's appeal as time barred by the Appellate Authority is found to be not justified. On merits, Appellate Authority in the impugned order has made passing reference to adequate opportunity being afforded to petitioner and of his refusing to accept another accommodation to which petitioner was entitled but Appellate Authority has failed to consider that there was a recommendation of 24th February, 2000

(Annexure P-13 B) from the authority concerned to Station Head Quarters, Delhi Cantt. to permit petitioner to retain the premises in question instead of asking petitioner to shift to another equivalent accommodation at Carriappa Vihar in Delhi Cantt.. Therefore, charging of damage rent for the period after 24th February, 2000 i.e. when the recommendation (Annexure P-13B) was made, is clearly unjustified as the said recommendation (Annexure P-13B) was never declined. Even respondent's counter is silent on this aspect. However, for the period prior to 24th February, 2000 till 1st July, 1999, imposition of damage rent is found to be justified due to the defaults as pointed out by the respondents in their counter affidavit, to which there is no worthwhile challenge. The defaults as pointed out in the counter affidavit, appear to be material one, which speak for themselves to justify imposition of damage rent from 1st July, 1999 till 24th February, 2000, which are as under:

c) The NAC submitted by offr was not in order due to following:

i) NAC was submitted on 8th April, 1999 i.e. almost five months after posing out whereas the same would have been submitted within two months.

ii) Offr applied for accommodation on 11th March, 1999 whereas he should have applied within 7 days of posting to Shimla.

iii) The NAC does not cover period w.e.f. 10th Oct., 1998 to 10th March, 1999.

d) Even after the offr was allotted hired accommodation on NAC basis which the Stn. HQ could have refused as the NAC was not in order, the offr failed to shift.

e) The offr's contention that he was posted throughout in fd during the period in question is not correct. On 14th Jun '99 while he was allotted alt hired accommodation he was still serving in peace stn. i.e. Shimla. He has been declared unauthorized occupant w.e.f. 24th Jun'99 and on that day also he was still posted in Shimla.

f) On subsequent movement of offr to fd he was not entitled to retain the accommodation occupied by him unauthorizedly. He should have vacated the accommodation and applied fresh for SF accommodation for consideration of allotment as per waiting list. Even then the offr could not have been allotted SF accommodation within the Cantt being priority II case as he had moved to fd from stn other than Delhi.

g) The offr, therefore, defaulted by way of continuous occupation of SF accommodation while being posted to peace stn without valid authority.

h) Due legal process was followed while deciding the offr's case and adequate opportunities were given to the offr to represent his case in EO's court.

i) The dept. and the EO showed consideration to the offr by way of:

i) Allotting him alt accommodation in Cariappa Vihar in Feb, 2000 even though he was a priority II case and was not entitled accommodation within the cantt.

ii) Accepting this NAC from Stn. HQ Shimla which was otherwise not correct as per rules.

iii) Allotting him alt hired accommodation based on the NAC which otherwise could have been refused.

7. Upon considering this matter in its correct perspective, "eviction and damages order" of 26th May, 2001 (Annexure P-21) is partially quashed to the extent of imposing damage rent for the period from 24th February, 2000 till 22nd November, 2001 when the premises in question was vacated by petitioner, as retention of subject premises by petitioner was justified because shifting to equivalent accommodation in Delhi Cantt. itself was quite unnecessary in the background of this case. Consequentially, impugned order of Appellate Authority dismissing the appeal in toto, is set aside and "eviction and damages order" of 26th May, 2001 is maintained to the extent that it imposes damage rent for the period from 1st July, 1999 till 23rd February, 2000. Respondents are at liberty to recalculate the damage rent in terms of this decision and to recover it, if outstanding. To the extent as aforesaid, this petition is allowed while directing the respondents/authorities concerned to ensure that such like "eviction and damages order" must carry a note that a statutory appeal lies to District Judge within twelve days. No costs.