

(2019) 08 CAT CK 0050

In the Central Administrative Tribunal

Case No : Original Application No. 2349 Of 2018

Desh Raj

APPELLANT

Vs

Govt. Of NCTD Through And Ors

RESPONDENT

Date of Decision : 22-08-2019

Acts Referred:

Public Premises (Eviction Of Unauthorised Occupants) Act, 1971 — Section 5(1)

Citation : (2019) 08 CAT CK 0050

Hon'ble Judges : Nita Chowdhury, Member (A)

Bench : Single Bench

Advocate : Sachin Chauhan, Awanish Kumar

Final Decision : Allowed

Judgement

1. By filing this OA, the applicant is seeking the following reliefs:

8.1 To quash and set aside communication dated 11.05.2018 of EE (North Building Division), PWD whereby it is being directed to Executive Engineer (E), PWD Health Maintenance Electrical Division to imposed the recovery upon the applicant @55 times of license fee on account of unauthorized occupancy in Flat No. B-3 Sidhora Kalan for the period 04/2006 to 30.06.2012 (75 months x @ Rs. 143/), 07/12 to 06/2013 (12 months x @205 x 55 times) and 7/2013 to 12/2013 (7 months x @ Rs. 245/- x 55 times) at Annexure A-1, letter No. 12/AE(E)/HSW-3/PWDHMESD/DDUH/18-19/ 146 dated 23.05.2018 issued by AE (E), HSW-3, PWD at Annexure A-2, letter No. 54 (HSW3) A1/PWDEDSW/2018-19/932 dated 23.05.2018 issued by EE(E), PWD Health Maintenance Electrical Division, South West, Vikas Puri at Annexure A-3, and to further direct that respondents that no recovery in terms of the govt. accommodation (B-3, Staff Quarter, PWD) from period 04/2006 to 12/2013 be made from the applicant and to further direct that if any amount recovered in pursuance of impugned orders then the same be restored forthwith with all consequential benefits.

Or/and

(i) Any other relief which this Hon"ble Court deems fit and proper may also be awarded to the applicant.

2. Brief facts of the case are that the applicant, who was regularised as Asstt. Pump Operator w.e.f. 25.5.1987 and promoted as Pump Operator since 1997, was allotted the Govt. accommodation B-3, PWD Staff Quarters, Sidhora Kalan, Delhi-52 with due rules and procedures by the competent authority vide allotment letter dated 03.09.1997.

2.1 In the year 2006, one complaint was made by the applicant's uncle (Shyam Lal) with regard to misuse of govt. accommodation allotted to the applicant and the said complaint dated 06.09.2006 with covering letter dated 12/13.09.2006 was forwarded to the applicant for his reply. The applicant submitted his reply to the concerned authority vide his reply dated 27.09.2006 wherein he clearly stated that the said complaint is false and motivated and the person behind the complaint is of criminal record. The applicant further submitted in the said reply that he is residing in the said allotted Govt. accommodation with family and that his younger brother, who is mentally disturbed, is also residing alongwith his family. It is further stated that the applicant is taking good care of his brother's treatment and other family members. The applicant also annexed the documentary proof, e.g., govt. identity proof, election I-card, latest electricity bill and LIC policies alongwith the reply which amply proves that that he and his family is residing in the said Govt. accommodation.

2.2 Applicant further averred that subsequent to the aforesaid explanation given by him, he never received any communication in respect of the said Govt. accommodation from any of the respondents and the accommodation in question remained in rightful possession with him.

2.3 However, to the great surprise of the applicant, the respondent issued an order dated 21.06.2013 whereby the Govt. accommodation (B-3, Sidhora kalan) allotted to him had been cancelled with immediate effect. The said order has been issued after a gap of about 7 years from the date of explanation made by applicant in the year 2006.

2.4 The applicant made a representation dated 27.06.2013 whereby disputing the fact mentioned in order dated 21.06.2013 by clearly stating that the said Govt. accommodation is used by him and his family and there being no question of any D.E. against him.

2.5 The applicant received a Show Cause Notice dated 12.11.2013 that as to why the Govt. accommodation allotted to him be not cancelled and further the applicant is being called for Personal Hearing on 21.11.2013 at PWD Secretariat, 5th Level, B-Wing, Delhi Secretariat, IP Estate. The applicant sought two months" time for vacating the said Govt. accommodation to the authority i.e. Dy. Secty.II (PWD) and the applicant cleared all the dues in respect of said Govt. accommodation and vacated the same on 17.01.2014. The vacation report of Govt. accommodation in respect of B-3, Sidhora Kalan is annexed at page 56 of

the OA after taking no dues certificate from all the concerned authorities related to the aforesaid Govt. accommodation.

2.6 However, to the utter surprise of applicant, he received a letter No. 12/AE(E)/HSW-3/PWDHMESD/DDUH/18-19/146 dated 23.05.2018 issued by AE(E), HSW-3, PWD whereby referring to letter dated 18.05.2018 issued by A.E.(E) HSW-3, PWD HMESD, South West dated 11.05.2018, wherein it was stated that a recovery amounting to Rs. 8,19,500/- is to be made from applicant. An amount of Rs. 35,000/- from his salary bills from the month of 5/2018 by the respondents by reducing GPF deduction Rs. 40,000/- to Rs. 5,000/- per month and applicant is directed to deposit balance amount i.e. Rs. 7,84,500/- in Division Office within 15 days of issue of aforesaid letter. The details regarding recovery of licence fee arrear w.e.f. 04/2006 to 12/2013 for the period applicant was allegedly residing unauthorizedly in Flat No. B-3 Sidhora kalan Essential Services Flats, on the basis of letter received from office of Executive Engineer, North Building Division, PWD Western Yamuna Bank, Ring Road, Opp. ISBT Kashmere Gate, Delhi-06, are given as below:-

04/2006 to 06/2012

75 months X @ Rs. 143/- X 55 times

Rs. 5,89,875/-

07/2012 to 06/2013

12 months X @ Rs. 205/- X 55 times

Rs. 1,35,300/-

07/2013 to 12/2013

7 months X @ Rs. 245/- X 55 times

Rs. 94,325/-

Grand Total

Rs. 8,19,500/-

2.7 The applicant made a representation dated 30.05.2018 to the authority against the aforesaid recovery order dated 11.05.2018 and 23.05.2018. When neither any reply has yet been given by the respondents nor have stopped the alleged recovery, the applicant having no other option left, filed this OA seeking the reliefs as quoted above.

3. When this matter came up for admission, this Tribunal while issuing the notice to the respondents vide interim Order dated 5.6.2018 directed that no recovery shall be made from the applicant till the next date, i.e, 6.7.2018 and the said interim order is continuing till date.

4. Pursuant to notice, the respondents have filed their reply in which they have

stated that the applicant, who is presently working as Pump Operator, was employed w.e.f 22. 04.1996 instead of w.e.f. 1997. He was allotted Quarter No.B-3, Type-2 Enquiry Office, Sidhora kalan, Delhi, which was allotted to him on 03.09.1997. The said flat belonged to Essential Staff Quarter quota, which can be retained by the allottee till he remained attached to that enquiry/division. Vide letter no. 10(4)/PWD ED-VII/492 dated 24.02.2006, the applicant was relieved from PWD Electrical Division-VII and thereafter he joined M-151 PWD (Now HMed South West) on 24.02.2006 vide joining order No. 10/3/PWD E/EII/490 dt. 28.02.2006.

4.1 They also stated that on 17.05.2013, a surprise inspection was conducted wherein the flat allotted to applicant was found to be in possession of one Sh. Nandlal on rent, against the allotment rules of Govt. Accommodation. Thereafter, the applicant was given show cause notice. On receiving an unsatisfactory reply, the applicant's allotment was cancelled with immediate effect on 16.06.2013 and vide order dated 16.07.2013, the applicant while being declared an unauthorized occupant was asked to vacate the flat within 10 days. The said order was passed under Sub Section (1) of Section 5 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971.

4.2 Vide letter dated 29.07.2013 Executive Engineer (C), CBMD, M-322 (now North Bldg. Division), PWD wrote to Executive Engineer (E), PWD EMD M-151 (Now HMed South West) for recovery against the applicant @ market rate. Vide letter dated 21.11.2013 Executive Engineer (E), PWD EMD M-151 (Now HMed South West) wrote to Executive Engineer (C), CBMD, M-322 (Now North Bldg. Division), PWD regarding details of recovery. Ultimately vide letter dated 04.01.2014 Executive Engineer (C), CBMD, M-322 (Now North Bldg. Division), PWD while replying to Executive Engineer (E), PWD EMD M-151 (Now HMed South West) proposed recovery @ 55 times, of normal licence fees, (i.e. Rs. 8,19,500/-).

4.3 They further stated that the applicant was allotted the said flat for the period, he was attached to any of the division under PWD Electrical Circle-I (NCTD), New Delhi. On 24.02.2006, the applicant was transferred from PWD ED-VII to PWD Electrical Division M-151 PWD (Now HMed South West) which falls under other circle/division. Thus, he ought to have surrendered the same, but he didn't do it in violation of rules and allotment order. The averments qua frivolous complaint against the applicant by his uncle have no relevance to the matter at hand.

4.4 They further stated that the order of recovery is passed after following due process of law. In any event, the applicant was admittedly an unauthorized occupant of the said flat post his transfer and thus, is liable to pay the damage charges under relevant rules. It is stated that the recovery proceeding is not hit by limitation and thus, there is no question of laches on the part of the respondents. The applicant should not have used the said flat after his transfer to another division as it was against the terms of allotment. It may be noted that

the quarter allotted to applicant was essential staff quarter and not general pool accommodation quarter. The essential quarter is required to be vacated by the allottee immediately after relieving from the office/circle where he was posted in compliance of the allotment letter dated 03.09.1997. The emergency quarter is allotted for monitoring the emergency services of particular office/circle/building and as such the same needs to be vacated immediately after relieving and joining the other employee at his place to maintain the emergency service of the building intact. Moreover, during sudden inspection, the said flat was in possession of one Sh. Nandlal. It is evident from the inspection report dt. 17.05.2013 that Sh. Nandlal was a tenant in the said flat.

4.5 They also stated that there was no necessity to withdraw the order dated 23.05.2018 as the penalty imposed on the applicant is in accordance with the law and there is no violation of natural justice as admittedly the applicant was unauthorizedly occupying the said flat. It is well settled that not giving hearing where it would be an empty formality does not violate the principles of natural justice and thus, the impugned orders are legal.

4.6 They further emphasized that after his transfer in 2006, the applicant was unauthorizedly occupying the said flat from 04/2006 to 12/2013. May it be noted that he was to vacate the flat after relieving from the PWD Electrical Division VII and joining the O/o The Executive Engineer (E). M-151, PWD (Now HMed South West, PWD) on 24.02.2006 as per the condition of the allotment letter at Annexure-I of the counter reply. Moreover, the said flat was found to be in occupation of one Sh. Nandlal, who was a tenant. In this backdrop, it is submitted that the applicant on one hand had illegally not vacated the flat after his transfer to other division and on the other he had unjustly enriched himself by subletting it to one Sh. Nandlal. The fact of subletting came to knowledge of respondents during a sudden inspection.

4.7 The respondents also stated that lot of complaints were received regarding subletting of essential staff quarter by the allottees and giving the quarter on rent. In this regard, as per the telephonic instruction, surprise inspection was made by Shri Jai-Inder Sharma, Executive Engineer, Civil Building Maintenance Division M-321, PWD, Delhi on 17.5.2013, who submitted his report to Special Secretary, PWD, Delhi vide their letter No.(8)120)/CBMD M-321/PWD/DA/2013/1396-H dated 31.05.2013, intimating therein that some of the allottees of essential staff quarters are not residing/living in their flats, other families were found in their flats. In Flat No.B-3, Type-II allotted to the applicant, Shri Nandlal was found residing in that flat and it has been noticed that the said flat was given on rent to Shri Nandlal. Name of Shri Nandlal is also mentioned in FIR No. NIL dated 19.06.2013 which clearly states that the flat was sublet by the applicant and as such he is liable to pay the penalty to the respondents as per the office order of Govt. of NCT of Delhi.

4.8 They also stated that merely not drawing HRA would not entitle the applicant to unauthorizedly occupy the flat and sublet the same to someone for enriching

himself. In the said process, he had also caused loss to public exchequer.

4.9 Lastly, they stated that the instant OA is liable to be dismissed by this Tribunal.

5. Heard Shri Sachin Chauhan, learned counsel for the applicant and Shri Awanish Kumar, learned counsel for the respondents and also carefully perused the pleadings available on record.

6. Counsel for the applicant by referring the factual position as stated by the applicant in the OA submitted that the impugned orders are issued by the respondent abruptly that too after a gap of about 7 years from the date of explanation made by applicant in the year 2006 itself on the complaint made by his uncle on 6.9.2006 received by the respondents, which in turn was forwarded to the applicant vide letter dated 12/13.9.2016 for his explanation and the same was replied by the applicant vide his detailed reply dated 27.9.2016, i.e., much after his joining on transfer from PWD Electrical Division-VII to M-151 PWD (Now HMED South West) on 28.02.2006 and till 16.5.2013, the applicant had not received any communication in respect of the said Govt. accommodation from any respondents. It is only on the basis of inspection report submitted on 17.5.2013 in which it is stated that the said flat has been given on rent to one Shri Nandlal and his family, which was apprised by the Executive Engineer to Special Secretary, Public Works Department (Delhi Govt.) vide letter dated 31.5.2013 and consequently, eviction notice dated 10.6.2013 was issued to the applicant directing him to vacate the said premises within 10 days of the of publication of the said order and the allotment of the said premises was cancelled w.e.f. 21.6.2013 and not w.e.f. the year 2006 and the said accommodation was surrendered by the applicant on 17.1.2014 whereas the impugned order dated 11.5.2018 was passed just five months prior to the date of superannuation of the applicant. Counsel further submitted that applicant was not an unauthorized occupant of said Govt. accommodation for the period between 04/2016 and 12/2013 and thus the impugned orders are bad in law as the procedural infirmities which led to the continuance of the allotment of the said Govt. accommodation despite his transfer from PWD Electrical Division-7 to DAP Line, Vikas Puri cannot be a ground to pass the impugned order and thus the same are also arbitrary and illegal.

6.1 Counsel for the applicant also submitted that the fact that admittedly, since the applicant was not drawing HRA during the period from 04/2016 to 12/2013, proves that he was living in the said Govt. accommodation and thus he cannot be declared as unauthorized occupant of the said Govt. accommodation during the said period.

6.2 Counsel further submitted that the respondents have got no power to abruptly pass an order of recovery from the salary of the applicant that too diverting the amount of GPF without initiating or taking the consent of the applicant as the monthly contribution to GPF cannot be diverted towards the

recovery without following the due procedure and taking the consent of the applicant. Counsel further averred that applicant has made representation dated 27.6.2013 against the order of cancellation of Govt. accommodation w.e.f. 21.6.2013 and subsequently when show cause notice dated 12.11.2013 was issued to the applicant, he fairly surrendered the said Govt. accommodation on 17.1.2014. Counsel further submitted that once the vacation report with no dues is being issued then the question of having any dues remaining towards the said Govt. accommodation against the applicant does not arise at all.

6.3 Counsel also submitted that the applicant has never sublet the said Govt. accommodation and was used by him and his family including his brother. In this regard, the applicant relies upon the subletting clause, which reads as under:-

"Close relations:- The following relations will be treated as close relations:-

(i) Father, Mother, Brothers, Sisters, Grandfather, Grand mother, Grandsons, Grand daughters.

(ii) Uncles, Aunts, First Cousins, Nephews, Nieces, directly related by blood.

(iii) Father-in-law, Mother-in-law, Sister-in-law, Son-in law, Daughter-in-law and Brother-in-law.

(iv) Relationship established by legal adoption."

The brother of the applicant, who needs constant medical care, falls under the category of close relation as prescribed under rules. The applicant superannuated on 31.10.2018 and is having 40 years of qualifying service. The impugned orders put the applicant and his family members into financial difficulty that too at the end of his career, especially when he is just to superannuate. Counsel also urged that applicant has not been subjected to any disciplinary proceedings in respect of any allegation regarding the occupancy of aforesaid Govt. accommodation between the period from 04/2006 to 12/2013 and as such there is no finding of any guilt against the applicant regarding occupancy of the said Govt. accommodation and as such in the absence of the same, it is wrong to record in the impugned orders that the applicant was unauthorized occupant of the said Govt. accommodation and therefore, the impugned recovery is impermissible in law.

In support of his contention, learned counsel for the applicant placed reliance on DOP&T's OM dated 2.3.2016. The relevant extract of the same is reproduced below:-

"4. The Hon"ble Supreme Court while observing that it is not possible to postulate all situations of hardship which would govern employees on the issue of recovery, where payment have mistakenly been made by the employer, in excess of their entitlement has summarized the following few situations, wherein recoveries by the employers would be impermissible in law:-

(i) Recovery from employees belonging to Class-III and Class-IV service (or

Group "C" and Group "D" service).

(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery."

6.4 Counsel further urged that the case of the applicant is squarely covered with the aforesaid DOP&T's OM dated 2.3.2016, as the applicant is a Group "C" employee and going to superannuation on 31.10.2018 as also of the Hon"ble Supreme Court's judgment in the case of State of Punjab and others vs. Rafiq Masih in Civil Appeal No.11527/2014 decided on 18.12.2014.

6.5 Lastly counsel prayed that the impugned orders be quashed and the respondents be directed to release all withheld retiral dues to the applicant immediately as the amount already recovered from his salary or on any other heads.

7. On the other hand, counsel for the respondents reiterated the averments made by the respondents in their counter affidavit as noted above. Counsel for the respondents during the course of hearing placed reliance on the decision of this Tribunal in OA 4329/2013 (Smt. Daljeet Kaur vs. KVS and others) decided on 6.8.2014, especially para 12 of the said Order in support of the action of the respondents.

8. Having heard counsel for the parties and perusing the pleadings on record, it is observed that the impugned orders of recovery is based on two counts, firstly, when the applicant was transferred from PWD ED-VII to PWD Electrical Division M-131 PWD (Now HMed South West), which falls under other circle/division, the applicant ought to have surrendered the said Govt. accommodation in the year 2006 itself when he joined the other circle and as such he violated the rules of allotment of the said Govt. accommodation, as the said Govt. accommodation is one of the Essential Services Flats and the same is required to be vacated on transfer from the said division to any other division and secondly, on the basis of inspection report dated 17.5.2013 when they found that the Govt. accommodation in question was found to be in possession of one Sh. Nandlal on rent, against the allotment rules of Govt. Accommodation and thereafter, the applicant was given show cause notice and the allotment of the said Govt. accommodation was cancelled with immediate effect on 16.06.2013 and vide order dated 16.07.2013, the applicant while being declared an unauthorized occupant was asked to vacate the flat within 10 days. There is no denial of the fact that the applicant has surrendered the said Govt. accommodation vide vacation report dated 17.1.2014.

9. So far as the issue of retention of the said Govt. accommodation from April 2006 to December 2013 by the applicant is concerned, this fact was very much brought to the notice of the respondents vide complaint of Shri Shyam Lal dated 6.9.2006, which was also forwarded by them to the applicant vide letter dated 12/13.9.2006 to enable him to give his explanation, which was replied to by the applicant vide his reply dated 27.9.2006 but there is no averments in the counter

reply by the respondents what they had done thereafter upon receipt of the aforesaid reply from the applicant and at the most at that time, the respondents could have initiated the proceedings against the applicant for vacation of the said quarter. However, the reason for not taking action at an appropriate time in this regard has neither been brought on record nor the counsel, during the course of argument, has been able to throw some light on this aspect. Meaning thereby the respondents were well aware that in the said accommodation, besides the applicant and his family including his ailing brother, was living as the applicant is taking care of the treatment of his brother and further the respondents were also very well aware of the fact that applicant was transferred in February 2006 from the said Division and joined in March 2006 in another Division at the time when his reply was sought by the respondents. Despite the aforesaid factual position within the knowledge of the respondents, they had not chosen to take any action after receipt of the reply dated 27.9.2006 against the applicant. They have taken action only on the basis of inspection report dated 17.5.2013. There is no documentary proof on record that the said Nandlal was living in the said Govt. accommodation on rent, whereas on the other hand, it is the case of the applicant that his brother was living therein, who is suffering from depression and was being taken care of by the applicant and this fact was very much brought to the notice of the respondents by the applicant vide his reply to the aforesaid complaint dated 27.9.2006.

10. The reliance placed by the respondents on the aforesaid decision of this Tribunal is not directly relevant to the factual situation of this case and as such the same is distinguishable on facts. On the other hand, reliance placed by the applicant on the aforesaid OM dated 2.3.2016 as well as decision of the Apex Court in the case of Rafiq Masih (supra) is concerned, the same is not relevant as the show cause notice was issued well before his retirement on the basis of inspection report dated 17.5.2013.

11. Hence, having regard to the aforesaid factual position of this case, this Tribunal is of the considered opinion that from April 2006 till 16.5.2013, the applicant cannot be said to be an unauthorized occupant of the said Govt. accommodation as during the said period, he has neither claimed nor paid any HRA. So far as the period from 17.5.2013 to 17.1.2014 (i.e., the date when the inspection of the said Govt. accommodation was carried out and in the report it was found that only Nandlal and his family was residing in the said accommodation, till the vacation of the said Govt. accommodation pursuant to notice given by the respondents to the applicant, i.e., 17.1.2014) is concerned, the applicant is liable to pay the damage charges as applicable as per rules.

Accordingly, the impugned orders are quashed and the respondents are directed to proceed in this matter in terms of the observations made in this para. Further after adjustment of the admissible amount of damages charges, they are directed to release all the withheld retiral dues to the applicant. This exercise shall be completed within a period of three months from the date of receipt of a

certified copy of this Order.

12. In the result, the present OA is allowed in above terms. There shall be no order as to costs.