

(2012) 03 DEL CK 0540
In the Delhi High Court
Case No : Writ Petition (C) 1734 of 2012

Dev Dutt Sharma

APPELLANT

Vs

Municipal Corporation of Delhi and Another

RESPONDENT

Date of Decision : 28-03-2012

Acts Referred:

Public Premises (Eviction of Unauthorised Occupants) Act, 1971 — Section 7

Citation : (2012) 190 DLT 49

Hon'ble Judges : V.K. Jain, J; Badar Durrez Ahmed, J

Bench : Division Bench

Advocate : R.K. Saini and Mr. Vikram Saini, for the Appellant; Shankar Raju for MCD and Ms. Indrani Ghosh for GNCTD, for the Respondent

Judgement

Badar Durrez Ahmed

1. The petitioner is aggrieved by the order dated 21.07.2011 passed in TA No. 1327/2009, passed by the Central Administrative Tribunal, Principal Bench, New Delhi. The only issue in the present writ petition is with regard to the amount that is payable by the petitioner on account of his overstaying in the accommodation which had been provided to his wife who died on 10.10.1993. It is an admitted position that the petitioner had overstayed in the said premises and the same had been vacated only on 31.07.1998. It is also an admitted position that the petitioner was in unauthorized occupation of the said premises beyond the period which was permissible on account of death of an employee. The only issue that arises for consideration is what is the quantum of the damages that are liable to be paid by the petitioner for the unauthorized occupation of the said premises. Initially, the petitioner had approached this Court by way of a writ petition being WP(C) No. 5877/2001 which was disposed of by an order dated 21.05.2002. Primarily, in that writ petition, the petitioner had sought release of the terminal benefits of his deceased-wife and family pension. The learned counsel for the respondent at that point of time had raised the issue of illegal retention of the living quarters which had been allotted to the

wife of the petitioner beyond the period of authorized stay. In that context, a learned Single Judge of this Court by virtue of the said order dated 21.05.2002 had directed as under:-

Taking into consideration the aforesaid averments, in any case, the petitioner should have been entitled to the pensionary benefits in respect of his wife within a period of two months from the date of vacation of quarter. Thus the petitioner should have been released the benefits at least on or before 30th September, 1998. If any amount was due from the petitioner, the same could have been adjusted against the amount payable to the petitioner.

In view thereof, a direction is issued that the terminal benefits including family pension as per the rules and regulations of the respondent payable on the demise of the wife of the petitioner be now paid to the petitioner within a period of one month from today after making adjustments for the dues payable from the petitioner without interest. No interest is liable to be paid by the petitioner since the petitioner is not being granted any interest on the amount not paid to him till vacation of the quarter. The petitioner would however be entitled to interest @ 9% per annum from 1.10.1998 till the date of payment on the said amount. Interest will also be payable on the delayed amount of retiral benefits already paid to the petitioner including gratuity on the same basis from 1.10.1998 till date of payment. The petitioner will also execute the necessary documents as may be required.

2. Thereafter, the matter was taken in appeal by the petitioner herein by way of Letters Patent Appeal being LPA No. 606/2002 which was dismissed by an order dated 19.08.2002. The only issue raised before the Appellate Court was with regard to the quantum of interest. The petitioner had wanted 18% interest, whereas the learned Single Judge had only allowed 9% interest.

3. Thereafter, the petitioner filed another writ petition being WP(C) No. 8262/2006 in which the petitioner had challenged the act of deducting a sum of Rs 90,472/- as damages towards unauthorized occupation without following the procedure prescribed in the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 and, in particular, the provisions of Section 7 thereof. The writ petition got transferred to the Central Administrative Tribunal and was re-numbered as TA No. 1327/2009. The Tribunal has passed the impugned order in that Transfer Petition on 21.07.2011, wherein the Tribunal held that the matter had stood concluded by the High Court by virtue of its order dated 21.05.2002 in the earlier writ petition and, therefore, the Tribunal had nothing further to say.

4. We have heard the counsel for the parties at length on this issue. While it is true that the learned Single Judge of this Court had directed that an amount which was due from the petitioner could be adjusted while paying the terminal benefits in respect of the petitioner's wife, there had been no determination of the exact quantum of the amount payable for unauthorized occupation under the said Act.

5. It is now agreed between the parties that the amount that has been recovered shall be treated as an amount having been withheld and the same shall continue to be withheld till a final determination is made by the Estate Officer in terms of the procedure to be followed u/s 7 for determining the quantum of damages for unauthorized occupation. It is also clearly agreed by the petitioner that he shall not raise any plea of limitation when the question of determination of the quantum of damages is taken up by the Estate Officer, who, according to the respondent No. 1, shall initiate the proceedings u/s 7 of the said Act within a period of one month. We also hope that the proceedings will be concluded as expeditiously as possible and preferable within three months. No unnecessary adjournment would be taken by either of the parties.

6. If any amount is found to be refundable to the petitioner, that amount shall be refunded along with interest at the rate of 9% per annum from the date it was payable till the date of realization. On the other hand, if the computation of damages is more than the amount which had been withheld, the petitioner would be liable to pay interest in terms of the said Act. With the aforesaid directions, the writ petition is disposed of.