

(2002) 05 RAJ CK 0116
In the Rajasthan High Court
Case No : Civil Writ Petition No. 3847 of 1992

Ganga Singh and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 20-05-2002

Acts Referred:

Rajasthan Civil Services (Project Allowance and Concession in Project Areas) Rules, 1975 — Rule 8

Citation : (2003) 3 RLW 1513 : (2002) 5 WLC 948 : (2002) 5 WLN 670

Hon'ble Judges : Sunil Kumar Garg, J

Bench : Single Bench

Advocate : Mahesh Bora, for the Appellant; B.C. Mehta, for the Respondent

Final Decision : Allowed

Judgement

Garg, J.—This writ petition under Article 226 of the Constitution of India has been filed by the petitioners on 22.7.1992 against the respondents with the prayer that by an appropriate writ, order or direction, the respondents be directed not to recover the penal rent from the petitioners and the order dated 18.6.1992 (Annex.5) passed by the Executive Engineer, Division-1, Mahi Dam, Banswara be quashed.

2. It arises in the following circumstances:

The petitioners are working with the respondents for the last more than 15 years. The petitioners applied for allotment of VI Type Houses through applications to the respondent No. 3 Executive Engineer, Division-1 Mahi Dam, Banswara. Thereafter, the petitioners requested the respondent No. 3 Executive Engineer many times for allotment of houses and the respondents used to give assurance that house will be allotted to them as soon as the same were made available. However, some houses were allotted to the persons junior to the petitioners and, therefore, the petitioners approached the concerned authorities and upon this, the Executive Engineer (respondent No. 3) verbally told the

petitioners that if there were any vacant houses, the same could be occupied by them and in due course, those houses would be allotted to them. Thereafter, the petitioners informed the respondents that there were certain damaged houses and they further asked the respondents to get them repaired and allot them and upon this, the respondents told the petitioners to occupy these houses and get them repaired with their own money and on the said assurance, the petitioners occupied the houses mentioned in para 10 of the writ petition.

When the petitioners started living in these houses, the respondents lodged FIR against the petitioners and challan was also filed and the respondents also issued charge-sheets against the petitioners on the ground that they were unauthorised occupants of the said houses and the departmental enquiries are still going on. However, in the meanwhile, the respondents issued letters to the petitioners for recovery of the penal rent and the letter which was given to the petitioner No. 1 Ganga Singh is Annex.3 and the general order is Annex.5 dated 18.6.1992 and the said order Annex.5 dated 18.6.1992 has been challenged in this writ petition contending that the enquiries are pending against the petitioners and no rent was fixed for the houses in question and the petitioners were entitled for rent free accommodation as per Rule 8 of the Rajasthan Civil Services (Project Allowance and Concession in Project Area) Rules, 1975 (hereinafter referred to as the "the Rules of 1975") and, therefore, in these circumstances, charging of penal rent was beyond the jurisdiction of the respondents and thus, per se illegal and, therefore, order Annex.5 dated 18.6.1992 directing recovery of penal rent from the petitioners cannot be sustained and it should be set aside.

A reply to the writ petition was filed by the the respondents on 1.2.1993 and the main contention of the respondents is that the petitioners are unauthorised occupants and the respondents are fully authorised under the law to charge penal rent from the petitioners since the petitioners are unauthorised occupants as they occupied the houses in question without allotment in their favour. Hence, this petition be dismissed.

3. I have heard the learned counsel for the petitioners and the learned counsel for the respondents and gone through the materials available on record.

4. There is no dispute on the point that the petitioners were entitled to rent free accommodation as per Rule 8 of the Rules of 1975. However, rent free accommodation was not made available to the petitioners by the respondents, but on one pretext or the other, as the case may be, the petitioners occupied the houses lying vacant and for that, they are facing enquiries as well as criminal proceedings in the Court of Law.

5. Apart from this, the petitioners were further asked to pay penal rent for unauthorisedly occupying the houses in question without allotment in their favour and this aspect has been challenged in this writ petition.

6. The question for consideration is whether in absence of rent fixed, can penal rent be charged from the petitioners for the houses, which were occupied by

them without allotment in their favour and for that the petitioners are already facing departmental enquiries and criminal proceedings before the Court of Law.

7. It may be stated here that in mortgage debt, stipulation as to payment of compound interest in case of default is penal meaning thereby before a penal rent is charged, there should be fixation or determination of rent to be paid and in default of payment of rent, penal rent can be charged. In other words, fixation or determination of rent must be a condition precedent for charging penal rent.

8. In the present case, since the petitioners were entitled to rent free accommodation, no rent was fixed or in other words, when the petitioners occupied the houses in question, no rent was fixed or determined and, therefore, in these circumstances, in my considered opinion, the order of charging penal rent without fixing the basic rent is per se illegal and cannot be sustained, as the fixation of rent is a condition precedent for charging penal rent.

9. The respondents placed reliance on the Notification dated 3.11.1980 (Annex.R/3) issued by the Secretary, General Administration Department, Jaipur. A perusal of the said Notification Annex.R/3 shows that penal rent was to be charged from those persons, who do not vacate the houses and during their stay, they were paying rent as per scheduled fixed or as per type of quarters which they were occupying and on the basis of that rent, penalty was imposed and that was termed as penal rent. In the present case, this aspect is missing as the rent for the houses in question was not fixed and, therefore, Notification Annex.R/3 would not be helpful to the respondents.

10. For the reasons stated above, the order Annex.5 dated 18.6.1992 passed by the respondent No. 3 Executive Engineer directing recovery of penal rent from the petitioners is liable to be set aside and this writ petition deserves to be allowed.

Accordingly, this writ petition filed by the petitioners is allowed and the order dated 18.6.1992 (Annex.5) passed by the respondent No. 3 Executive Engineer, Division-I, Mahi Dam, Banswara directing recovery of penal rent from the petitioners is set aside and the respondents are directed not to charge penal rent from the petitioners. It is, however, made clear that the respondents are free to take any disciplinary as well as legal action against the petitioners in any manner and this order would not come in their way at all.