
(2013) 05 DEL CK 0132
In the Delhi High Court
Case No : Writ Petition (C) 6292 of 2007

Joginder Singh

APPELLANT

Vs

U.O.I. and Others

RESPONDENT

Date of Decision : 06-05-2013

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2013) 05 DEL CK 0132

Hon'ble Judges : V.K. Jain, J

Bench : Single Bench

Advocate : Vinod Kumar with Mr. Suresh C. Sati and Mr. Nand Kishore, for the Appellant; R.V. Sinha with Mr. A.S. Singh, Advocates for Respondent No. 1/UOI, for the Respondent

Judgement

V.K. Jain, J.—The petitioner before this Court was working as a Pump Operator with CPWD when he was allotted Govt. quarter No. 24(Type-II) at Lodhi Road Complex, vide Office Order dated 3.9.1992, issued by the Executive Engineer (E), Electrical Division No. X, CPWD, Sadiq Nagar, New Delhi. Vide Order dated 26.9.1992 issued by the same Executive Engineer, the aforesaid Flat No. 24(Type-II), Lodhi Road Complex, New Delhi, was exchanged with Flat No. 2125, Lodhi Road Complex, New Delhi. Since then, the petitioner is in possession of the Flat No. 2125 in Lodhi Road Complex. Vide Office Memorandum dated 18.8.2006, the allotment in respect of Flat No. 2125 in Lodhi Road Complex made by the Executive Engineer of CPWD was cancelled by Assistant Director of Estates, on the ground that the said flat had been allotted for Electrical Enquiry Office but was being used for the purpose of residence. The said Order also shows that notice was issued to the occupants of the said flat directing him to produce the copy of the Allotment Letter issued in his favour by the Directorate of Estates, but he did not appear in compliance of the said notice nor did he produce any authorization from the Directorate of estates entitling him to occupy the aforesaid flat.

2. Pursuant to cancellation of the allotment, proceedings against the petitioner were instituted under the provisions of Public Premises (Eviction and Unauthorized Occupants) Act, 1971. Vide Order dated 9.3.2007, the Estate Officer passed an Order for eviction of the aforesaid flat within 15 days from the date of publication of the order. The Eviction Order passed by the Estate Officer was challenged by the petitioner by way of an appeal before the learned Additional District Judge, Delhi. Vide impugned judgment dated 16.8.2007, the appeal filed by the petitioner was dismissed by the learned Additional District Judge. Being aggrieved from the said order, the petitioner is before this Court by way of this writ petition.

3. In its counter affidavit, the respondent/Directorate of Estates has stated that Qtr. No. 2125, Lodhi Road Complex was under the use of CPWD for its Enquiry Office and it came to the notice of the Directorate of Estates that it was being used as a residential quarter by the petitioner. A notice was, therefore, issued to the petitioner, requiring him to furnish the copy of the Allotment Letter, if any, issued to him in respect of the aforesaid flat by Directorate of Estates, which is the only authority competent to make allotment of accommodation for residential purposes of the employees, but no such letter could be produced by the petitioner. It is further stated in the counter affidavit that CPWD is responsible only for watch and ward and maintenance of general pool accommodation and, therefore, the Allotment Letter issued by its Executive Engineer has no legal sanctity.

4. It would, thus, be seen that the case of the respondent/Directorate of Estates is that the flat in question was allotted to CPWD only for being used as its Enquiry Office and could not have been allotted by it to its employees for being used as a residential quarter. The learned counsel for the petitioner submits that no document has been placed on record by the respondent to show that the aforesaid flat was allotted to CPWD for being used as an Enquiry Office and since the onus of proving that CPWD was not competent to allot the aforesaid flat for being used as a residential quarter by the petitioner is upon the respondent/Directorate of Estates, it has failed to discharge the said onus. Shri Sinha, on the other hand, submits that a perusal of the order passed by the Directorate of Estates cancelling the allotment itself show that the aforesaid flat was allotted to CPWD for being used as an Enquiry Office and, therefore, it could not have been allotted to the petitioner for being used as a residential quarter. That apart, a perusal of the order passed by the learned Additional District Judge would show that the learned Additional District Judge summoned the record and after going through the record, recorded the following observations:-

4.1 It is observed from the record that in receipt of a complaint to the effect that the said quarter given to CPWD for running Electrical Inquiry was being misused, the matter was taken up with CPWD and an inquiry was held in the matter. From the letter of Executive Engineer (Vig.)-X, to Ministry of Urban Development and Poverty Alleviation, dated 1.11.2006, it is revealed that the said quarter was

given to CPWD for running Electrical Inquiry Office in 1981. Shri Ld. Malhotra, the then Executive Engineer. (1). Electrical Division, X, CPWD instead of using the said quarter for Electrical Inquiry Office for the residents/occupants of the Lodhi Road Complex and P.V. Hostel, allotted the said quarter for residence to Prithul Kumar, Khalasi, vide no. 1(2)/ECD-V/91/523 dated 16.9.1991. The said allotment was purely on temporary basis. Subsequently, the appellant was allotted the quarter by Shri Charan Das, the then Executive Engineer (1). Electrical Division-X vide letter no. 10(1)/F-2/ED-X/1767 dated 26.9.1992.

5. I am in agreement with Shri R.V. Sinha, learned counsel appearing for the respondent/UOI, that the finding of fact recorded by the learned Additional District Judge cannot be disturbed in a writ petition filed under Article 226 of the Constitution, unless the finding is based on no material and/or is a perverse finding in the sense that no reasonable person acted on the basis of the material available to it could have recorded such finding. Since the learned Additional District Judge, in his order dated 16.8.2007 has referred to a letter dated 1.11.2006 written by the Executive Engineer (Vigilance-X) to the Ministry of Urban Development, it is quite clear that the view taken by the learned Additional District Judge was based upon the aforesaid letter. He found, on a perusal of the said letter, that flat in question was given to CPWD for running a Electrical Enquiry Office in the year 1981. Therefore, I find no merit in the contention of Mr. Vinod Kumar, learned counsel for the petitioner that there was no material available before the learned Additional District Judge to record a finding that the aforesaid quarter was allotted to CPWD for running an Electrical Enquiry Office.

6. In view of the finding of fact recorded by the learned Additional District Judge on the basis of the record available before him, there is no escape from the conclusion that the flat in question was placed at the disposal of CPWD for the purpose of being used as an Electrical Enquiry Office. In the absence of any authorization to this effect from the Directorate of Estates, the Executive Engineer of CPWD could not have exchanged the aforesaid flat with Flat No. 24 in Lodhi Road Complex so that the flat in question could be used for a residential purpose. The Directorate of Estates, therefore, was fully justified in cancelling the aforesaid allotment on the ground that it was meant to be used for being used as an Enquiry Office and could not have been used as a residential quarter. For the reasons stated hereinabove, I find no fault with the view taken by the learned Additional District Judge in dismissing the appeal filed by the petitioner. However, since the petitioner was occupying the aforesaid flat on the strength of the allotment made by the Executive Engineer, CPWD till the time it came to be cancelled by CPWD, vide order dated 18.8.2006, he, in my view, will not be required to pay any damages for use and occupation of the aforesaid flat upto 18.8.2006 though he would be required to pay the licence fee applicable to the flat. Thereafter, the petitioner would be required to pay such damages as are assessed by the Estate Officer in this regard in accordance with law, after giving adequate opportunity of hearing to the petitioner.

The writ petition stands disposed of.