

(2000) 07 GUJ CK 0084

In the Gujarat High Court

Case No : Special Civil Application No. 162 of 1991

Kariel Kunnancheri Shridharan

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 21-07-2000

Acts Referred:

Citation : (2001) 1 GLR 832

Hon'ble Judges : B.C. Patel, J

Bench : Single Bench

Advocate : Nikhil S. Kariel, for the Appellant; H.V. Chhatrapati, for the Respondent

Final Decision : Dismissed

Judgement

B.C. Patel, J.—The petitioner who was at the relevant time working as Police Sub-Inspector (Wireless) S.R.P. Gr. VIII, Nadiad has filed this petition under Article 226 of the Constitution of India for declaring orders Annexure I dated 7.4.1986, Annexure "N" dated 26.11.1986, Annexure "S" dated 22.2.1988 and Annexure Z/c dated 19.11.1990 as null and void and ineffective.

2. Petitioner, after completing his training in Wireless Operators Course, was appointed as Wireless Operator in January 1961. He was transferred from Kutch to Rajkot and then to Junagadh. In May 1978 the petitioner was transferred to Rajkot where he was allotted a rent free accommodation. It is stated in the petition by the petitioner that on 12th December 1980 the petitioner was allotted the quarter and he started staying in the said quarter from 29.1.1981. The petitioner was transferred to Surendranagar in October 1982. It is stated in paragraph 4(4) that an order of eviction was passed against the petitioner on 18.1.1983 but the petitioner was permitted to occupy the quarter. It is further stated therein that a fresh eviction order dated 3.11.1983 was passed against the petitioner and the petitioner requested the respondent No. 2 to permit him to continue in the said quarter till 30.11.1983. In paragraph 4(5), it is averred by the petitioner that on 7.12.1983, the petitioner was again transferred to Rajkot

Division. It is further stated that Additional Armed Unit issued a circular dated 8.9.1983 on behalf of the respondent No. 1 calling for information from the respondent No. 3 about the officers who had desire to continue their quarters at the old station. It is contended by the petitioner that he requested by letter dated 7.12.1983 for revocation of the eviction order. By letter dated 15.12.1983, the petitioner requested the respondent No. 2 to permit him to continue to occupy his old quarter. It is contended by the petitioner that he was entitled to a rent free accommodation and eventhough he was entitled to retain the said quarter at his old station of posting by virtue of circular dated 8.9.1983, the respondent No. 2 passed an order on 28.12.1983 for enforcement of the eviction order u/s 31(2) of the Bombay Police Act. The petitioner filed Regular Civil Suit No. 8 of 1984 against the respondents No. 1 and 2 in the Court of Civil Judge (SD), Rajkot for permanent injunction restraining them from enforcing the impugned eviction order dated 28.12.1983. The petitioner also filed an application for temporary injunction restraining the respondents No. 1 and 2 from dispossessing the petitioner and/or his family from the said quarter and from taking over the possession of the same and the trial Court granted status-quo. By virtue of the said order, the petitioner continued to occupy the said quarter. The respondents filed Written Statement in the said Civil Suit and it was pointed out that the petitioner was posted at Gondal and he was bound to stay at Gondal for 24 hours. It was also pointed out that if the Government could not provide the petitioner a rent free accommodation at Gondal, he would be entitled to get House Rent Allowance but he could not retain the quarter at Rajkot.

3. In paragraph 4 (9) of the petition, the petitioner has averred that the quarter required repairs being very old and hence by letter dated 14.9.1984, the petitioner requested the Deputy Executive Engineer to carry out necessary repairs in the said quarter. It is further averred in paragraph 4(10) of the petition that the Dy. Executive Engineer by his letter dated 18.9.1984 informed the respondent No. 2 that the quarter is beyond repairs and the same is not fit for habitation. The respondent No. 2 issued a memorandum dated 21.9.1984 declaring that the said quarter was not fit for habitation and was beyond repairs and it was liable to be condemned. It is also averred in the petition that the respondent No. 2 informed the Government Pleader, Rajkot City to inform the correct position to the Court in connection with the interim order passed by the Court in Regular Civil Suit No. 8 of 1984. It is further stated in paragraph 4 (11) that in view of the communication dated 21.9.1984 from the respondent No. 2, the Government Pleader had informed the Court about the said communication. Thereupon the petitioner gave an undertaking to the said Court on 15.4.1985 to vacate the said quarter. It is stated in the petition that he vacated the quarter on 12.5.1985. The petitioner also informed the Court on 12.5.1985 that as per the undertaking given by him on 15.4.85, he vacated the quarter and he was no more in occupation of the quarter.

4. In paragraph 4(13), it is averred by the petitioner that the respondent No. 2 passed an order dated 7.4.1986 for recovery of economic rent from the

petitioner at the rate of Rs. 595/- per month from 3.12.1982 till the date of handing over the vacant possession of the quarter. The petitioner made a representation dated 29.5.1986 to the respondent No. 2 requesting him to review the said order inasmuch as (i). the petitioner was permitted to occupy the quarter till 30.11.1983; (ii). from 3.11.1984, he was occupying the quarter by virtue of the order passed by the trial Court, and, (iii). by letter dated 21.9.1984, the quarter was declared unfit for habitation. As the petitioner did not receive any reply from the respondent No. 2, he again made a representation on 4.7.1986. It is further stated in the petition that on informing the Police Commissioner that he vacated the quarter, the Police Commissioner informed the petitioner by his letter dated 21.7.1986 to handover the possession of the said quarter and eventhough he came to Rajkot to deliver the key, it was not taken from him on the ground that "no due" certificate from G.E.B. was not produced by him. It is further stated in the petition that the petitioner could not get the "no due" certificate from GEB because the dues outstanding from the officer who had occupied the quarter earlier in the year 1980 were not paid. . In paragraph 4 (17), it is averred by the petitioner that the respondent No. 2 cancelled order dated 7.4.1986 and passed another order dated 26.11.1986 fixing an economic rent to be paid by the petitioner from 1.12.1983 to 14.11.1986, without giving any opportunity to the petitioner. The petitioner has stated that in pursuance of the order dated 26.11.1986 passed by the respondent No. 2, the respondent No. 4 passed an order dated 17.3.1987 for effecting recovery of the alleged dues, and he requested to postpone the recovery in pursuance of the order dated 17.3.1987 as he wanted to prefer an appeal against the order passed by the respondent No. 2. It is stated in the petition that his request was accepted. The petitioner filed an appeal on 15.4.1987, but ultimately the respondent No. 2 rejected the appeal of the petitioner by order dated 22.2.1988 without giving any reason. The petitioner wrote another letter dated 3.3.1988 to the respondent No. 3 requesting him to give personal hearing as the rent sought to be recovered from him by applying circular dated 22.10.1982 was not applicable to his case. In paragraph 4 (21), it is stated by the petitioner that he was deployed on 14.6.1988 for performing duties at Punjab and worked there till November 1988 and at his request he was sent back to Ahmedabad. The petitioner filed an appeal before the Additional Chief Secretary, Home Department on 7.1.1989 wherein a request was also made for personal hearing. In paragraph 4(22) of the petition, it is stated that in view of the rejection of his appeal by the Resp. No. 3, the respondent No. 4 passed an order dated 12.1.1989 for recovery of the dues in 68 instalments w.e.f. 1989. The petitioner requested the respondent No. 4 to suspend recovery in view of pendency of his appeal before the Additional Chief Secretary, Home Department but by order dated 2.3.89 respondent No. 4 directed to commence recovery with a rider that as and when the order from the Police Commissioner, Rajkot or D.G. & I.G.P. Gujarat State is received for not recovering the amount, the amount recovered would be refunded. As the petitioner did not receive any reply from the Additional Chief Secretary to his appeal dated 7.1.1989, the petitioner made an application dated 22.6.1989.

Thereafter the petitioner was again deployed to Punjab from 13.8.1989 to 13.12.1989. While the petitioner was in Punjab, he had received on 5.9.1989 a letter from the Home Department, Gandhinagar turning down his request made in his letter dated 7.1.1989. In paragraph 4(24) it is stated that the petitioner was informed by letter dated 9.1.1990 to remain present on 24.1.1990 for making personal representation before the Dy. I.G.P. (Communications), Ahmedabad in connection with his application dated 21.8.1989. The petitioner was heard and the Dy. I.G.P. (C) by his letter dated 14.2.90 sought from the Police Commissioner, Rajkot parawise comments on the application dated 7.1.1989. The Dy.I.G.P. (C) by order dated 19.11.1990 rejected his appeal on the ground that the petitioner had unauthorisedly kept the possession of the Government quarter, and hence the order for recovery of the rent as per government circular dated 22.10.1982 is just and proper.

5. In the aforesaid facts and circumstances, the petitioner has contended that the petitioner was entitled to rent free quarter and in lieu thereof he was entitled to H.R.A., and, therefore, the circular dated 22.10.1982 cannot be made applicable in his case.

6. In para 4(4) of the petition, the petitioner has made averments at two places that he was permitted to occupy the quarter by respondent No. 2, but has not placed any document on record to substantiate his say. In the petition, petitioner has made statements on oath that in view of the circular passed by the Government on 8.9.83 permitting the Government servants to retain their quarters at their old stations, petitioner being desirous of occupying his quarter at Rajkot which was his old station, he was entitled to do so. (para 4(28)). It is required to be emphasized that the circular has not been issued by the State Government but it is a communication addressed by the Special Chief Police Officer of Armed Units, Ahmedabad. The petitioner, therefore, is not right in saying that it is a circular issued by the State Government. Even that communication is only for forwarding names and not authorizing to occupy the quarter. Thus, the petitioner has no case at all.

7. In paragraph 4(5), he has come out with a circular inviting applications for retaining quarters which is not applicable in his case. However he has neither stated that he made an application nor has placed on record copy of application requesting the concerned authority to allow him to occupy the quarter.

8. In paragraph 4(6) he has stated that by letter dated 7.12.1983, vide Annexure "B", he requested to revoke the eviction order. Page 29 Annexure "B" is an order of transfer issued by Superintendent of Police on 2/11-12-1983.

9. The petitioner has come out with a version that in view of a circular at Annexure "A" as names were called from the officers who had desire to continue their quarters at the old station, he forwarded his application and, therefore, he was entitled, as a matter of right, to retain the quarter. It is required to be stated that Annexure "A" is not a circular, entitling employees to retain quarters. Only

names were to be forwarded and that too of the officers and employees working under the Commandant, National Defence Police Force, Gr. XI, Gandhinagar Camp, Nadiad and Gr. XIII Ghanteshwar Camp, Rajkot. It is not the petitioner's case that he was working under the Commandant, National Defence Police Force. Annexure "B" makes it clear that he was working under the Superintendent of Police, Wireless, Ahmedabad. Thus the claim of the petitioner that circular dated 22.10.1982 is not applicable to him is devoid of any merit.

10. The circular dated 22.10.1982, Annexure "O" makes it clear that in case of transfer, an employee can retain the quarter for a period of two months only. However, as mentioned in the circular and for the reasons stated therein, an employee can make an application for retaining the quarter and on application being granted for the period mentioned in the circular, the quarter can be retained. In the instant case, the petitioner has not made any application for retention of a quarter. When questioned, the learned advocate fairly stated that no application was made for retaining the quarter. Therefore, in view of unauthorized occupation of the quarter, the petitioner has to pay the amount of rent. Merely because the order of status-quo was passed by the Court, the applicant cannot urge that he is not liable to pay rent for that period. The petitioner ought to have seen that there is adjudication. If the Court, on merits, would have held in favour of the petitioner, then he would have been justified in urging before the authority. In view of Circular Annexure "O", the petitioner has to pay the rent.

11. This is a petition under Article 227 of the Constitution of India. Under the provisions contained in the Act and the rules, the action was taken by the appropriate authorities, against which the petitioner has also preferred an appeal, and thereafter a second appeal. By order dated 7.4.1986 Annexure "I" and order was passed to Recover economic rent from the petitioner at the rate of Rs. 595/- per month from 3.12.1982 till the date of handing over the vacant possession of the quarter. The petitioner who was working at Rajkot was transferred to Gondal. If he wanted to occupy the quarter then it was for him to apply to the competent authority for occupying the same for a period larger than what is mentioned in the resolution. As no application was submitted at any point of time prior thereto, it cannot be said that the order is bad. Even on 26.11.1986, the Commissioner of Police, Rajkot has passed a similar order. Resolution dated 22.10.1982 clearly indicates that the Government servants, if they want to retain government accommodation without permission, they have to pay economic rent. It was noticed by the Government that government servants continued to retain and occupy government accommodation unauthorisedly and did not vacate the quarter after their transfer, retirement death etc. with the result that the government servants who were eligible for allotment of government accommodation had to keep waiting for quite long time causing inconvenience and payment of extra cost for hiring private accommodation. From cities like Rajkot, if a person who has been transferred is not vacating the quarter, then a person coming in his place would not be in a

position to occupy the quarter and will be required to pay much more rent, resulting into inconvenience and hardship. In the instant case, the petitioner who was transferred to Gondal continued to keep his quarter at Rajkot, eventhough at Gondal he might have been in a position to get accommodation at a cheaper rate as compared to Rajkot. Thus, at the cost of persons who is transferred, others should not be asked to suffer. When a Government servant is transferred to a place outside the station (in the instant case Police Station), he can occupy the quarter for 2 months. In the instant case, for occupying the quarter for a longer period, no application was submitted at the relevant time. The order passed by the Inspector General of Police dated 19.11.1990 (Annexure Z/c) is in detail. It appears that Dy. Inspector General of Police has taken a view that if the Government servant is transferred, he can retain the quarter for two months after resuming duties at the place of transfer and thereafter if the Government employee desired to retain the quarter for a longer period, he can do so after obtaining prior permission. The petitioner did not handover the possession of the quarter as per the Rules on his transfer from Rajkot to Surendranagar and then to Gondal. He was getting House Rent Allowance from the Government and eventhough he was having his own house, he continued to occupy the quarter unauthorisedly. In view of these facts and situation the decision taken by the Deputy Inspector General of Police, Kutch cannot be said to be contrary to law.

12. The petitioner was transferred to Surendrangar in October 1982. Eviction order came to be passed on 18.1.1983. Inspite of this, it was stated before the Court that he was allowed to occupy the quarter .

13. It is also required to be noted that the petitioner was serving as Sub Inspector. Inspector of Police, Rajkot was called upon in connection with eviction letter dated 3.11.1983 on 17.12.1983. Though the officer was informed to take possession of the quarter immediately, the Inspector of Police did not take possession of the quarter. Therefore, Deputy Commissioner was required to observe in a letter that instructions issued by the superior officers are not implemented carefully. It seems that after this letter, Regular Civil Suit has been filed in the Court of Civil Judge, SD., Rajkot. These speaks a lot about the manner in which the petitioner retained possession of the quarter with him.

14. The petitioner approached the Civil Court in 1984 when the respondents were likely to take possession of the quarter. The petitioner obtained an order of status quo from the civil court and enjoyed the facility of quarter under the court's order knowing full well that at the time of transfer or after reporting for duty at the place of transfer, he has not made an application for extension of time for occupying the quarter. The petitioner being a police officer, the hardship caused by non-availability of accommodation in cities like Rajkot was known to him. Still he continued to retain the quarter as found by the respondent, eventhough he had his own house.

15. Trial Courts interference in cases of unauthorised occupancy of quarters is required to be depreciated. Strictly, as per resolutions, a quarter can be occupied

by the employee. By a resolution, Government has fixed norms for occupying the quarter. No one can be allowed to occupy the quarter in breach of a policy. The resolution clearly indicates that on application being made and on being satisfied, the competent authority may permit the employee to occupy the quarter even after transfer for a period that may be extended as per resolution. If an application is rejected, one has to vacate the quarter. The Court has to consider the rights of the persons who are transferred. An employee who is transferred to another place must vacate the quarter so as to facilitate the person who is brought in his place or a person who is transferred to the place or for the person waiting in queue. The court has to keep this aspect in mind. What about the hardship, inconvenience and loss in terms of money that may be required to be suffered by the person who becomes entitled to get the quarter. While entertaining the application seeking injunction against an order of vacating the quarter or seeking similar relief, the Court must not forget the rightful claimant who has been held entitled for allotment of a quarter or who is eligible to get the quarter. In the instant case, though the applicant did not give application to the competent authority for permitting him to occupy the quarter or the competent authority did not authorise him to occupy the quarter, the Court, by granting the relief, has allowed the petitioner to occupy the quarter for a period for which even competent authority had no power under resolution to allow the employee to occupy the quarter. The order of status quo passed by the trial Court cannot be said to be an order in accordance with law, but an order which can be said to be an arbitrary order or unjust, improper and without application of mind.

16. In the facts and circumstances of the case, and in view of the fact that no procedural defect is found, the petition is required to be rejected, and is hereby rejected. Rule is discharged. Interim relief granted earlier stands vacated forthwith. No order as to costs.