

**(2007) 01 DEL CK 0171**  
**In the Delhi High Court**  
**Case No : Writ Petition (C) 597 of 1998**

K.N. Bahuguna

APPELLANT

Vs

C.S.I.R. and Another

RESPONDENT

---

**Date of Decision :** 09-01-2007

**Acts Referred:**

Constitution of India, 1950 — Article 226, 32

**Citation :** (2007) 138 DLT 110

**Hon'ble Judges :** Mukul Mudgal, J;Aruna Suresh, J

**Bench :** Division Bench

**Advocate :** Party-in-Person, for the Appellant; V.K. Shali, for the Respondent

**Final Decision :** Dismissed

---

## Judgement

Mukul Mudgal, J.—This writ petition challenges the order dated 27th November, 1997 disposing of OA filed by the respondent No. 2 Council for Scientific and Industrial Research (CSIR) who was the applicant before the Tribunal which passed the impugned order the operative portion of which reads as follows:

Under the circumstance this OA succeeds and is allowed to this extent that respondent is held to be liable to pay applicant's penal license fee for unauthorized retention of the premises in question @ Rs. 2000/- p.m. w.e.f. 1.3.90 to 10.11.1993. Applicants are permitted to adjust the aforesaid dues against the gratuity and pensionary amount admissible to respondent and release the balance to him within 1 month from the date of receipt of a copy of this judgment. If any dues from respondent still remain recoverable thereafter, it will be open to applicants to recover the same in accordance with law.

2. The petitioner who appears in person sought to challenge the above order on the ground that this order was not warranted under the provisions of CSIR Rules and for this purpose he relied on the judgment of the Hon'ble Supreme Court in Union of India (UOI) Vs. Rasila Ram and Others, . While placing reliance on the aforesaid judgment, the petitioner has contended that the proceedings before

the CAT could not have been resorted to by the respondent No2. CSIR /employer in view of the aforesaid position of law. We have gone through the judgment of the Hon'ble Supreme Court cited by the petitioner and found that this related to competence of the Tribunal questioning the legality of order passed by competent authority under Public Premises (Eviction of Unauthorized Occupants), Act, 1971. This judgment, Therefore, has, no direct bearing on the issue before us.

3. The learned Counsel for the respondent relied on two judgments of the Hon'ble Supreme Court in Union of India v. Sisir Kumar Deb 1999 SCC 781 and Union of India and Ors. v. Shiv Charan , to contend that the recovery of the penal rent can even be effected from the terminal dues payable to the respondent and accordingly said that the impugned order did not warrant interference.

4. Without going into the merits of the case, it is worthwhile noting that the petitioner was working as Senior Stenographer with the respondent No. 2 CSIR. He sought and secured voluntary retirement on 1st November 1989 and as per the then prevailing Rule 11 (1) of the CSIR Rules was entitled to occupy the said official accommodation after voluntary retirement for four months and would have thus been required to vacate the said premises on 28.2.1990. The respondent had secured the possession of the said premises on 10.11.1993 while the petitioner contended that he vacated the premises on 31.3.1993 and the said fact has been affirmed by the learned Counsel for the respondent No. 2 CSIR. The petitioner stayed on the premises for the period of more than three years when his entitlement to stay on the said premises was over. Thus, the petitioner remained as an unauthorized occupant on the said official premises depriving the other entitled officials to use the same. The petitioner has laid considerable stress on the fact that his retiral benefits were wrongly withheld by the respondent No. 2. In case, this is so, it will be open to the petitioner to avail appropriate remedy in accordance with law.

5. The petitioner submitted that the only remedy open to the respondent was to file a civil suit for recovery of the possession of the premises from the petitioner and the resort to the provisions of the CAT to evict the petitioner was not warranted in law. However, even if we assume that the petitioner is right in contending that the order of the CAT was not warranted, we are of the view that the conduct of the petitioner does not entitle him to avail the discretionary relief under Article 226 of the Constitution of India.

6. The petitioner has offered no Explanation for his overstay for more than 3 years in the premises in which period according to the respondent the petitioner started his practice of law from the official premises allotted to the petitioner. He stated that he sought extensions which indisputably were not granted to him. Thus, the petitioner who is now a practicing lawyer has sought refuge of the process of law so as to legitimate his illegal occupation of official premises for three years. It is a settled position of law that Article 226 of the Constitution affords a discretionary remedy and this writ Court is not bound to interfere with

every erroneous order challenged before it as was held by the Hon''ble Supreme Court in Chandra Singh v. State of Rajasthan and Ors. (2003) 6 SCC 565. The relevant paragraph of the said judgment reads as follows:

---43. Issuance of a writ of certiorari is a discretionary remedy. (See Champalal Binani Vs. The Commissioner of Income Tax, West Bengal and Others, ). The High Court and consequently this Court while exercising their extraordinary jurisdiction under Article 226 or 32 of the Constitution of India may not strike down an illegal order although it would be lawful to do so. In a given case, the High Court or this Court may refuse to extend the benefit of a discretionary relief to the applicant.----

7. We are thus of the view that the facts of the present case and the respondent's conduct in illegally occupying official accommodation for a period of more than three years does not merit interference under the writ jurisdiction of this Court.

8. Accordingly, the writ petition is dismissed and stands disposed of along with the pending applications.