

(2018) 10 DEL CK 0298

In the Delhi High Court

Case No : Civil Writ Petition No.11823 OF 2016

Lic Of India

APPELLANT

Vs

Ajeet Kumar

RESPONDENT

Date of Decision : 09-10-2018

Acts Referred:

Public Premises (Eviction of Unauthorized Occupants) Act, 1971 — Section 7, 9
Constitution of India, 1950 — Article 226, 227

Citation : (2018) 10 DEL CK 0298

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Final Decision : Dipped Off

Judgement

RAJIV SAHAI ENDLAW, J

1. This petition under Articles 226 and 227 of the Constitution of India impugns the order [dated 23rd July, 2016 in RCA No.84/2016 (Old No.05/14) of

the District Judge, Delhi acting as the Appellate Officer under Section 9 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (PP

Act)] allowing the appeal preferred by the respondent against the order [dated 30th December, 2013 of the Estate Officer of the petitioner in exercise

of powers under Section 7 of the Act] assessing damages payable by the respondent for unauthorised occupation of Flat No.J-11, Jeevan Sarita

Colony, Dilshad Garden, Delhi for the period from September, 2010 to January, 2013.

2. This petition came up first before this Court on 20th December, 2016 when notice thereof was ordered to be issued. The counsel for the respondent

has been appearing.

3. Today, Mr. Prabhat Kumar, Advocate appears and seeks adjournment on the

ground that Mr. Pankaj Kumar, Advocate for the respondent has gone to his native place.

4. This is no ground for adjournment.

5. The counsel for the petitioner has been heard.

6. Mr. Prabhat Kumar, Advocate has declined to argue.

7. The undisputed position is, (i) that the respondent was/is in employment with the petitioner and while posted at Delhi, by virtue of his employment, was allotted the aforesaid premises; (ii) the respondent, w.e.f. 29 th February, 2008, was transferred to Chamba Branch under Shimla Division of the petitioner and on 16th September, 2010 transferred to Kathua Branch under Srinagar Division of the petitioner; (iii) that the respondent retained the accommodation aforesaid and continued to pay licence fee therefor @ Rs.206.88p per month and paid the said licence fee till January, 2013; (iv) the petitioner was not provided any accommodation and not paid any House Rent Allowance when posted at Chamba and Kathua; (v) however on 6th August, 2012, the petitioner demanded enhanced licence fee of Rs.3,888.40p per month from September, 2010 to October, 2010 and @ Rs.4,137.60p per month w.e.f. November, 2010 to January, 2013 for continued occupation of the aforesaid accommodation by the family of the respondent and which occupation was termed as 'unauthorised'; and, (vi) the respondent vacated the aforesaid accommodation on 28th January, 2013.

8. Clause (f) of Rule 7.3.1. of the Rules of Manual of the Estate Department of the petitioner is as under:-

'(f) Considering the hardships required to be faced by the officers posted in North Eastern Region (i.e. Assam, Manipur, Tripura, Arunachal Pradesh, Nagaland and Mizoram), Shimla and Srinagar, these officers are allowed to retain staff quarters at the old headquarters at normal license fee in case he wants to retain his family at the old headquarters till he is re-transferred from North Eastern Regions, Shimla or Srinagar. In addition he will be allowed staff quarters or leased accommodation if staff quarters are not available at the place of posting on North Eastern Regions, Shimla and Srinagar.'

9. It was the contention of the respondent that because Chamba and Kathua, to which he was transferred, were falling in Shimla and Srinagar

Division of the petitioner, he was under the Rule aforesaid entitled to retain the accommodation at the place of his last posting i.e. at Delhi and it is for

this reason only that no demand for unauthorised occupation was also made till 6th August, 2012.

10. The Estate Officer however, on an interpretation of the aforesaid Rule, held that the Rule applied only to regions of Shimla and Srinagar and not to the Division of Shimla and Srinagar. It was also held that Chamba and Kathua did not fall under the political or geographical regions of Shimla and Srinagar and were separate districts.

11. The learned District Judge has allowed the appeal, reasoning (i) that the Estate Officer, in his order had referred to the "region" of Shimla

and Srinagar; (ii) "region" means an area of a country or world having particular characteristics; (iii) thus, region of Shimla and Srinagar would

include places around Shimla and Srinagar having similar characteristics; (iv) in the seven States of North Eastern Region referred to in the Rules

aforesaid, the names of cities have not been mentioned; (v) similarly, there was no need for the reason to mention the cities or places situated in the

region of Shimla and Srinagar; (vi) both Chamba and Kathua are situated in the States of Himachal Pradesh and Jammu & Kashmir where Shimla

and Srinagar are situated; (vii) hardships and hassles faced by officials in the cities of Shimla and Srinagar are also faced in Chamba and Kathua; (viii)

it would not be fair just and appropriate to deny the benefit of the Rule aforesaid to those officers who are posted at Chamba and Kathua when this

facility is available to those posted in Shimla and Srinagar; (ix) the petitioner, at no time prior to 6th August, 2012 informed the respondent that the

respondent was not entitled to allow his family to continue living in the accommodation; and, (x) the petitioner had also not disputed the averments of

the respondent that others similarly situated as him had been permitted to allow their families to continue in occupation of official accommodation.

12. On enquiry, the counsel for the petitioner states that the total impact of the decision of the Estate Officer which has been upset by the learned

District Judge is Rs.1,19,492/-.

13. In the facts and circumstances aforesaid, I am not inclined to interfere in exercise of writ jurisdiction with the reasons given by the District Judge,

irrespective of the correctness thereof. In fact I have enquired from the counsel

for the petitioner as to how Chamba and Kathua can be said to be easier postings than Shimla and Srinagar. My personal experience informs me that Chamba and Kathua would be harder postings than in the capital cities of Shimla and Srinagar in the States, where all facilities are available and which have far better connectivity and access than Chamba and Kathua.

14. It has further been enquired from the counsel for the petitioner, whether the petitioner has considered having a relook at the Rule.

15. The counsel for the petitioner states that he had at the time of filing of this petition only advised the petitioner so but is not aware of the outcome.

16. In view of the prevailing circumstances, it is deemed appropriate to dispose of this petition with the following directions:-

(i) The petitioner LIC of India to, within three months of today, re-consider the Rule aforesaid and to take a decision whether the benefit thereof has

to be extended to any other place.

(ii) The petition is dismissed but the said dismissal be not treated as a merger of the order of the District Judge in the order of this Court and be not

treated as a precedent.

No costs.