

(2017) 10 DEL CK 0432
In the Delhi High Court
Case No : MAC. Appeal No. 187 Of 2015

Oriental Insurance Co. Ltd

APPELLANT

Vs

Vijay Rawat & Ors

RESPONDENT

Date of Decision : 11-10-2017

Acts Referred:

Code Of Civil Procedure, 1908 — Order 41 Rule 27(1)(b)

Citation : (2017) 10 DEL CK 0432

Hon'ble Judges : J.R. Midha, J

Bench : Single Bench

Advocate : A.K. Soni, Divij Kumar

Judgement

V. Kameswar Rao, J

CM No.36571/2017 (direction)

This is an application filed by the petitioner for filing lengthy list of dates. The application is allowed and disposed of. The list of dates as filed is taken on record.

W.P.(C) 8942/2017

1. The present has been filed by the petitioner with the following prayers:

â??In view of the above facts and circumstances it is most respectfully prayed that this Honâ??ble Court be pleased to:

i) Strike down / quash, Rule / Instruction 7 (C), 14E) and 14 F) of the Allotment of Resident-Instructions dated 5.12.2011 of the Respondent ONGC;

ii) Direct the Respondent no.2 to provide, all the recoveries (with interest) wrongfully made by the Respondent, from the salary of the Petitioner and;

iii) Direct the Respondent ONGC to provide to the Petitioner, HRA from the time of transfer of the Petitioner to Uran, Mumbai till today and

thereafter.

iv) Pass such other or further order(s) as this Honâ??ble Court may deem fit and proper in the facts and circumstances.â??

2. The petitioner is an employee of an Oil Natural Gas Corporation (ONGC). He was allotted a Flat No.B-26 7th Floor, ONGC Housing Complex

Sector-39, Noida. The petitionerâ??s license with respect to the said flat was cancelled on account of the petitioner being transferred by the

employer to Navi Mumbai. Petitioner submitted the surrender letter of the licensed premises to the employer on May 29, 2015 without actually handing

over the possession because as per the case of the petitioner his estranged wife was refusing to hand over the possession of the premises to him or to

the employer directly. The employer was deducting the license fee from the salary Â of the petitioner. The petitioner challenged the said action of the

ONGC in a Writ Petition being W.P. (C) 6357/2016. The same was decided on February 02, 2017 on the following terms:

â??6. In view of the above, this writ petition is based on no legal cause of action inasmuch as there is no law or rule of the employer/organization by

which the licence or charges for use and occupation fee cease to be paid merely on handing over of nominal possession without handing over actual

vacant physical possession. Petitioner will be liable therefore to pay licence fee or any other charges payable to the employer as per its rules to the

respondent No.2 till actual physical possession of the licenced premises is received back by the employer/respondent No.2. In view of the facts of the

present case I further direct that wife of petitioner Ms. Sakshi will be given a notice of one month from today to vacate the licenced premises

inasmuch as Ms. Sakshi has already had more than around one and half years time to vacate the premises which has not been vacated, and after

expiry of one month from today, the respondents along with petitioner can approach the concerned police authorities who will provide police

assistance, and the respondents will not use more than reasonable force than which is necessary so that the licenced premises being Flat No.B-26, 7th

Floor, ONGC Housing Complex, Sector-39, Noida-201301 are got vacated by the respondent No.2 and actual physical vacant possession thereof is

received by respondent No.2 from whoever is in possession of the aforesaid licenced premises.â??

3. The above said order was taken in appeal by the estranged wife of the petitioner as well as by the petitioner himself. In so far as the appeal being

LPA 147/2017 of the estranged wife was concerned, the impugned order was not interfered by the Appellate Court except the time for vacating the

flat was extended by a period of 15 days. The Division Bench also observed that the ONGC will be entitled to charge rental for the period of 15 days

in accordance with law from the original licensee.

4. Insofar as the appeal being 160/2017 filed by the petitioner herein, was concerned the same was withdrawn by the Counsel appearing for the

petitioner stating that he would like to challenge the rule relating to the penal rent and rate of penal rent.

5. It is the submission of the learned counsel for the petitioner that the petitioner is within his right to challenge the vires of the rule regulating penal

rent, and if succeeded the petitioner shall be entitled to the refund of the penal rent charged by the ONGC. In this regard he would rely upon the

following judgments of the Supreme Court in the cases of Nand Kishore Vs. State of Punjab, (1995) 6 SCC 614 and Mahendra Lal Jaini Vs. State of

Uttar Pradesh and Others AIR 1963 SC 1019

6. I am unable to accept the aforesaid submission made by the learned counsel for the petitioner for the simple reason that the judgment dated

February 2, 2017 of the Single Judge in Writ Petition No.6357/2016 has attained finality, wherein the Single Judge has also held that the petitioner is

liable to pay licence fee or any other charges to the ONGC as per its rules till actual physical possession is received back by the ONGC. Even the

Division Bench in its order dated March 1, 2017 in LPA 147/2017 has observed that the ONGC will be entitled to charge rental for the fifteen days

period allowed by the Court in favour of the estranged wife of the petitioner in accordance with law. The orders would reveal that even the aspect of

payment of license fee as per rules has been settled by the Court. The issue cannot be reopened on the ground that the vires of the rule(s) has been

challenged. In other words assuming such a challenge is permissible still no relief can be granted to the petitioner in view of the fact that the writ

petition filed by the petitioner has been dismissed which has put stamp of approval on the issue of recovery of penal rent by the ONGC. The challenge

to vires of the rule(s) shall be mere academic. The reliance placed by the learned

counsel for the petitioner on the judgment of the Supreme Court in the case of Nand Kishore (supra) is concerned the same shall not be applicable in the facts of this case inasmuch as the issue with regard to compulsory retirement of the petitioner in that case had not attained finality as the order of the High Court was also challenged by the petitioner therein before the Supreme Court and the Supreme Court had set aside the compulsory retirement as rule 5.32, which governed compulsory retirement was held to be void in view of the judgment of the Supreme Court in the case of Gurudev Singh Siddhu vs. State of Punjab 1964 (7) SCR 587. Suffice to state, there is no such declaration in the case in hand. Insofar as the reliance placed by the learned counsel for the petitioner on the judgment of Mahendra Lal (supra) to contend that the Doctrine of eclipse would not apply to post Constitutional Laws which are governed by Article 13 (2) which contemplates that any law made in contravention of the fundamental rights shall be void is not appealing for the same reason as already stated above. I do not see any merit in the petition. The same is dismissed.

CM No.36570/2017 (stay)

Dismissed as infructuous.