

(2012) 01 DEL CK 0557

In the Delhi High Court

Case No : Writ Petition (C) No. 253 of 2011, CM. Application No. 459 of 2011

Pala Singh Tanck

APPELLANT

Vs

Union of India and Another

RESPONDENT

Date of Decision : 11-01-2012

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2012) 3 AD 119

Hon'ble Judges : Sunil Gaur, J

Bench : Single Bench

Advocate : R.V. Sinha, for the Appellant; Sachin Datta, CGSC and Mr. Abhimanyu Kumar, for the Respondent

Final Decision : Dismissed

Judgement

Sunil Gaur, J.—Refusal to regularize allotment of Government Accommodation No. 401 in Minto Road Hostel, New Delhi in the name of the petitioner by virtue of his employment with the Government as Additional Statistical Advisor, is assailed by invoking Article 226 of Constitution of India. Impugned Communication of 12th November, 2009 (Annexure P-1) discloses that since the petitioner upon his re-posting back to Delhi had not joined within the permissible time of one year from the date of his being relieved from Delhi, therefore, for the period beyond eight months, petitioner was charged licence fee of the accommodation in question at the market rent and was asked to vacate this Government Accommodation forthwith. Petitioner's request for regularization of aforesaid Government Accommodation was specifically declined by the Respondent vide Communication of 22nd February, 2010 (Annexure P-2) being impermissible under the relevant Allotment Rules. Aforesaid Communication Annexure P-1 and Annexure P-2 are assailed being arbitrary and discriminatory, alleging that Respondents have been exercising their power of regularizing the Government accommodation on re-posting of officers even beyond one year of the transfer in other cases by invoking their power of relaxation. Few instances

are cited in paragraph no: 5 (xiv) of the writ petition to highlight that the Respondents are adopting a policy of pick and choose. Petitioner claims parity with similarly placed person, i.e., Mr. Sarvesh Kumar and relies upon RTI information of 3rd December, 2010 (Annexure P-9) to substantiate his claim.

2. Reliance has been also placed by the petitioner's counsel upon precedents (Annexure P-10) whereby directions have been issued by a coordinate Bench of this Court to regularize the Government Accommodation in favour of similarly situated persons.

3. According to the petitioner, quashing of the Eviction Order of 1st June, 2010 (Annexure P-3) passed by the Estate Officer upheld by the Appellate Authority vide impugned order of 25th October, 2010 is the consequential relief which is sought in this petition by invoking Article 227 of the Constitution of India. Since the Appellate Authority in the impugned order of 25th October, 2010 has refused to go into the plea of discrimination in proceedings under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, therefore, in this writ petition, the main relief sought is of quashing the refusal to regularize petitioner's stay in this Government Accommodation being arbitrary.

4. After having heard learned counsel for the parties and upon perusal of the impugned Communication (Ex.P-2), impugned order of 25th October, 2010 and material on record, in the first instance, I proceed to deal with the main relief sought in this petition.

5. Petitioner's application seeking regularization of his stay in this Government Accommodation is of 1st June, 2000, and the subsequent application for the same relief made by the petitioner to the first Respondent is of 6th April, 2010. Even after passing of Eviction Order of 1st June, 2010 (Annexure P-3), petitioner had made Representation of 9th December, 2010 to the Respondents specifically seeking parity with Mr. Sarvesh Kumar by relying upon the RTI information (Annexure P-9).

6. A bare perusal of the RTI information (Annexure P-9) reveals that it was the medical ground which had persuaded the Respondents to relax the relevant Allotment Rules in extending the stay of Government Official - Mr. Sarvesh Kumar for the period of six months and since re-posting of Mr. Sarvesh Kumar was within five months, therefore his stay in the Government Accommodation was regularized. The relevant Allotment Rules governing the case of the petitioner would be the Office Memorandum of 31st July, 2000 providing for regularization of allotment of residences on re-posting at the last place of posting, and not the Office Memorandum of 10th August, 2010 on the afore-noted subject. However, Office Memorandum of 31st July, 2000 on the subject mandates that allotment of Government accommodation can be regularized upon re-posting on payment of double of the normal licence fee within the permissible period of one year. For the period of over stay beyond one year, the concerned Government official becomes unauthorized occupant and is thus liable to be

evicted and to pay damages for the over stay i.e., license fee at the market rent. No doubt, as per Allotment Rule SR 317-B-25 of the Respondent, the Government may for the reasons to be recorded in writing, relax all or any of the provisions of the Rules of allotment of Government Accommodation in case of any Officer or residence or Class of Officers or type of residences.

7. Now it becomes relevant to have a look at petitioner's Application of 1st June, 2000 seeking regularization of his stay in this Government Accommodation. A bare perusal of the aforesaid Application reveals that the petitioner had sought to justify his over stay in this Government Accommodation by pleading that his children were studying in Delhi and their academic study was completed in June, 2007 and that his wife was also in Government Service in Delhi and was not availing of House Rent Allowance and the petitioner had paid the license fee for this Government Accommodation and that petitioner is in correspondence with the Respondents. Even in the subsequent Application of 6th April, 2010 seeking regularization of his stay in this Government Accommodation, petitioner had not pleaded any new fact entitling him to seek relaxation of Allotment Rules for the period of his over stay beyond one year in this Government Accommodation.

8. After passing of the Eviction Order of 1st June, 2010 (Annexure P-3) by the Estate Officer, petitioner in the Representation of 9th December, 2010 had raised the plea of discrimination and had sought parity with aforesaid Mr. Sarvesh Kumar by relying upon RTI information (Annexure P-9) but had not brought out any new fact which could have entitled the petitioner to claim relaxation of Allotment Rule SR 317-B-25.

9. As already noted above, the relaxation granted to Mr. Sarvesh Kumar, as is evident from the RTI information (Annexure P-9), is on the medical ground and so, the petitioner cannot claim parity with aforesaid Mr. Sarvesh Kumar as no justifiable ground has been put forth by the petitioner entitling him to seek the relaxation of Allotment Rule SR 317-B-25. In this view of the matter, reliance placed by the petitioner's counsel upon the precedents (Annexure P-10) is of no avail. It is so said, because it stands revealed from the Orders passed by a coordinate Bench of this Court in W.P.(C) No. 3163/2003 titled as J.P.S. Rana Vs. Union of India & Ors., decided on 1st September, 2008; W.P.(C) No. 3257/2003 titled as Banveer Singh Panwar Vs. UOI & Ors., decided on 1st September, 2008 and in W.P.(C) No. 3278/ 2003 titled as Ram Kumar Vs. UOI & Ors., decided on 1st September, 2010 that upon the concession of Respondent's counsel, directions for regularization of the Government Accommodation in favour of the aforesaid persons was passed. Therefore, aforesaid orders cannot be treated as precedents applicable to the case of the petitioner herein.

10. Reliance place by petitioner's counsel upon decision in Jaswant Singh Vs. UOI & Ors., 2009 (159) DLT 596 is of no avail as Allotment Rules were not subject matter of consideration therein and direction issued was to regularize as per applicable Rules. In the short synopsis filed by the petitioner, apart from the List of Dates, the legal submissions advanced are of non- regularization of

Government Accommodation occupied by the petitioner being arbitrary and discriminatory and this aspect has been already dealt with, hereinabove. Reference made to the decision in R.D. Sagar Vs. Union of India, 1998 (47) DRJ (DB) 783 by the petitioner is out of context as in the aforesaid decision direction to re-consider, while exercising discretion under SR 317-B-25 was issued in view of the fact that alternate Accommodation was not made available to the petitioner at the transferred placed. So far as reference to the decision of this Court in Union of India Vs. Gulam Nabi Azad and Others, is concerned, it is found that the same is of no relevance to the case in hand. Nothing else was urged by the petitioner's counsel to show as to how the impugned order of 22nd February, 2010 (Annexure P-2) refusing regularization of petitioner's over stay in this Government Accommodation is arbitrary or discriminatory. Since petitioner has failed to make out plausible ground for relaxing the relevant Allotment Rules of the year 2000 and to claim parity with aforesaid Mr. Sarvesh Kumar, therefore refusal to regularize the petitioner's over stay in this Government Accommodation vide Annexure P-2 is held to be justified.

11. As there is no challenge to the relevant Allotment Rules, i.e., Office Memorandum of 31st July, 2000, and upon finding that the petitioner is not entitled to the main relief, no fault can be found with the impugned order of 25th October, 2010 of the Appellate Authority holding that the plea of discrimination cannot be gone into in proceedings under Public Premises (Eviction of Unauthorised Occupants) Act, 1971. Finding of the Appellate Authority of cancellation of allotment in favour of the petitioner being in consonance with the Allotment Rules is well justified in law and it calls for no interference while invoking jurisdiction of this Court under Article 227 of the Constitution of India, as there is no patent or palpable error in the impugned order of 25th October, 2010 of the Appellate Authority.

12. In the light of the aforesaid narration, this petition fails on both the counts, i.e., no case is made out for invoking jurisdiction of this Court under Article 226 of Constitution of India to assail the Order (Annexure P-2) refusing to regularize petitioner's over stay in this Government Accommodation and challenge to the Eviction Order of 1st June, 2010 (Annexure P-3) and the impugned order of the Appellate Authority upholding it, being without substance, thus failing to make out a case to invoke Article 227 of the Constitution of India. This petition is accordingly dismissed with no orders as to costs. Consequently, pending application also stands disposed of as infructuous.