
(1995) 09 GUJ CK 0034

In the Gujarat High Court

Case No : Special Civil Application No's. 4443 and 4901 of 1995

Pathan Sardarkhan Hathikhan and Others

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 08-09-1995

Acts Referred:

Citation : (1996) 2 GLR 9

Hon'ble Judges : M.R. Calla, J

Bench : Single Bench

Judgement

M.R. Calla, J.—There are four petitioners in Special Civil Application No. 4443 of 1995 and one practitioner in Special Civil Application No. 4901 of 1995. All the five petitioners are Constables and have retained Government allotted quarters even after their transfers, which were made in the years 1989, 1990 and 1991. Both the petitions raise common questions of facts and law and, therefore, both these petitions are decided by the common judgment and order as under.

2. Rule had been issued in these cases and today the matters were taken up for final hearing on the request of both sides.

3. The petitioners herein could retain the Government allotted quarters at the place wherefrom they have been transferred for a period of two months on the economic rent and, thereafter, the rent to be paid at the market rate determined by the Government. Although the learned Counsel appearing for the respondent No. 4 Mr. Chhatrapati has submitted that after the expiry of two months they are unauthorized occupants in the respective quarters and are liable to be evicted, the learned Counsel for the petitioners has raised the grievance that they have not been allotted quarters at their new place of posting and, therefore, they were authorized to retain the quarters at the place wherefrom they have been transferred. The learned Counsel for the respondent No. 4 submitted that the quarters could not be allotted to them at their new place of posting as none of the petitioners ever applied for allotment of such quarters at the new place of posting.

4. These petitions were filed when the orders dated 1-5-1995 and 26-5-1995 were issued whereby the petitioners were called upon to pay the monthly rent of the quarters retained by them at the rate of Rs. 800/- at market rate instead of the rent of Rs. 228/- P.M. and it has been submitted by the learned Counsel for the petitioners that the rent at the rate of Rs. 800/- could not be recovered from the petitioners for any period prior to 1-5-1995 or 26-5-1995 because that would amount to increasing the rent retrospectively from Rs. 228/- P.M. to Rs. 800/- P.M. and it has been submitted by him that even for the period subsequent to 1-5-1995 or 26-5-1995, the petitioners, who are only Constables in the Police Department, cannot be made to pay exorbitant rent at the rate of Rs. 800/-. The learned Counsel for the respondent No. 4 has invited the reply, which has been filed under the signatures of Mohan Jha, District Superintendent of Police, Mehsana, according to which the recoveries were to be made from the five petitioners by computing the rent at the rate of Rs. 800/- P.M. from the date it was increased to aforesaid rate of Rs. 800/- P.M. as under :

1. Pathan Sardarkhan Rs. 33,942/- Hathikhan 2. Mahesh Ramji Dodiya Rs. 38,912/- 3. Patel flesh Gordhan Rs. 38,451/- 4. Rameshji Rajuji Vihol Rs. 40,846/- 5. Devidas Pooia Patel Rs. 45,440/-

It has been further submitted by Mr. Chhatrapati that the revised rate of the rent, i.e., Rs. 800/- P.M. as was prescribed by the Government Resolution dated 30-10-1990, was made effective from 1-1-1991 and in case the petitioners have chosen to retain the quarters as unauthorized occupants, apart from eviction, they are liable to pay the rent at the market rate of Rs. 800/- P.M. which, according to the learned Counsel for the petitioners, is highly excessive and exorbitant and in no case the petitioners will be able to pay the amount sought to be recovered as have been ordered against them on the basis of the orders dated 1-5-1995 and 26-5-1995 based on the earlier Government Resolution dated 30-10-1990, which according to the petitioners was never made known to them. The learned Counsel for the respondent No. 4 has also placed reliance on two unreported decisions of this Court, copies of which have been annexed with the affidaviting reply filed by the District Superintendent of Police, Mehsana.

5. I have considered the facts of present case in entirety and have also considered the submissions made on behalf of both the sides. It appears that after the transfers, the petitioners had to retain the quarters because they were not allotted quarters at the new place of posting and the learned, Counsel for the petitioners has submitted that even if they would have applied, the quarters could not be allotted to them as the quarters were not available at the new place of posting. It is not also true that such facilities with regard to the Government accommodation, which are extended to the Government servants, must be coterminous with their stay at a particular place of posting and in these matters such employees cannot have any enforceable right either as to retain the quarters or not to pay the rent at the market rate. However, in the present set of facts, the facts cannot be lost sight of that the housing is a serious problem,

which is faced by the employees and it is also matter of common knowledge that even the highly placed officers and other functionaries at the helm of affairs retain the Government accommodations even after they lay down their offices and continue to stay therein for number of years, sometimes even without paying due amount of rent at the market rate. Here is a case of five petitioners, who are employees at very lower echelon and it may be really difficult for them now to pay the amount of rent as has been sought to be recovered to the tune of Rs. 30,000/- to Rs. 45,000/- each or even the monthly rent at the rate of Rs. 800/-. The learned Counsel for the petitioners submitted that the petitioners would now make an application for allotment of the quarters at the new place of posting and in case they are found to be entitled for the allotment of quarters at their new place of posting according to the prescribed procedure, they may be allotted such quarters at their new place of posting and till then they may be allowed to retain the present quarters. It has also been pointed out that one of the petitioners, who had been transferred from Visnagar, has now been transferred back to Visnagar and he is staying in the same quarters.

6. In this facts and circumstances of the case, keeping in view the rank of petitioners, who are Constables, the hardship faced by them and the housing problem, I deem it appropriate to issue the following directions to strike a balance and to render substantial justice between the parties :

1. The petitioners herein would make applications for allotment of the quarters at the new places of posting within a period of two weeks;

2. Pending the allotment of quarters to these petitioners at their respective new place of posting in accordance with the rules and the procedure prescribed for that purpose, the petitioners shall be allowed to retain the quarters, which they are occupying subject to the conditions that :

(i) the petitioners would pay the monthly rent at the rate of Rs. 228/- + the amount of House Rent Allowance, which they are getting as part of their monthly pay;

(ii) apart from and in addition to the amount of monthly rent already paid or which was due to be paid at the rate of Rs. 228/- P.M., the petitioners shall also pay from 1-1-1991 against the rent the amount of monthly House Rent Allowance, which they received every month from 1-1-1991. For the purpose of the period from 1-1-1991 to August, 1995 the amount which they have received as House Rent Allowance has to be paid to the Government either in lump sum or in instalments as may be permitted by the respondents-authorities on the request of the petitioners.

3. The petitioners should vacate these quarters retained by them immediately after quarters are allotted to them at their new place of posting.

4. In case the petitioners deposit the amount of House-Rent Allowance received by them after 1.1.1991 upto August 1995, in lump sum or in instalment, as

stated above, the recovery shall not be effected from them to the tune of amounts which have been mentioned in the affidavit-in-reply filed on behalf of the respondents and should they fail to deposit the amount, i.e., House Rent Allowance due after 1.1.1991 upto August 1995, as above, it will be open for the respondent to proceed against these petitioners for eviction or for the recovery in accordance with the Resolution dated 30.10.1990, i.e., at the rate of Rs. 800/- P.M. as determined under the Government Resolution, as aforesaid.

5. The petitioners herein will be at liberty to challenge the rates of the rent mentioned in the Government Resolution dated 30-10-1990 to be excessive and disproportionate by way of filing a separate petition, as the same is not under challenge in the present petition.

6. If the petitioners abide by the directions given hereinabove, the impugned orders dated 1-5-1995 and 26-5-1995 shall not be enforced against them and in case of their failure to do so, the Government will be at liberty to proceed against them on the basis of the Government Resolution dated 30-10-1990 read with the impugned orders dated 1-5-1995 and 26-5-1995.

7. These Special Civil Applications accordingly stand disposed. Rule is hereby discharged in both the matters. No order as to costs.

8. The learned Counsel for the respondent No. 4 made a request that the operation of this order may be stayed for a period of 15 days. The request is declined.

9. Order accordingly.