

(2006) 03 DEL CK 0133
In the Delhi High Court
Case No : LPA 694 of 2003

P.K. Sharma and Another

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 03-03-2006

Acts Referred:

Allotment of Government Residences (General Pool in Delhi) Rules, 1963 — Rule 317B

Citation : (2006) 03 DEL CK 0133

Hon'ble Judges : Markandeya Katju, C.J.; Madan B. Lokur, J

Bench : Division Bench

Advocate : Party-in-Person, for the Appellant; Manwinder Arora and Maulik Nanavati, for the Respondent

Final Decision : Dismissed

Judgement

Markandeya Katju, C.J.—This writ appeal has been filed against the impugned judgment of the learned Single Judge dated 23.05.2003 by which he has dismissed the writ petition.

2. The Appellant No. 1 has appeared in person and argued on behalf of the appellants. We have heard the learned counsel for the Respondent-Union of India.

3. The facts of the case have been set out in detail in the impugned judgment of the learned Single Judge and hence we are not repeating the same except where necessary.

4. The petitioner No. 1 - P. K. Sharma was a government servant, who retired on 31.7.1994. The petitioner No. 2 - Rajiv Sharma is his son. Sh. P. K. Sharma was allotted a government accommodation bearing No. S-VIII/813, R. K. Puram, New Delhi, which is a Type-III accommodation. The petitioner No. 2 who is also a government servant was living along with his father, the petitioner No. 1. The allotment of government accommodation is governed by supplementary Rule 317-B, also known as the Allotment of Government Residence (General Pool in Delhi) Rules, 1963.

5. It is alleged in paragraph 4 of the writ petition that under SR 317 (B) 25, the President/Central Government is empowered to relax the rules and lay down the procedure for allotment of government accommodation to the government employees in relaxation of the rules to eligible dependents of a government employee in occupation of government accommodation at the time of the retirement/death of the said employee, vide Circular No. 12035(7)/79-POL, II, dated 1.5.1981. Copy of the said Circular is Annexure P1 to the writ petition.

6. It is alleged in paragraph 6 of the writ petition that the petitioner No. 2 was eligible for allotment of government accommodation of Type-III and thereby entitled for regularization of the aforesaid premises, which is also a Type - III accommodation, which was allotted to his father-petitioner No. 1. Hence he made an application to the Union Minister for Urban Development for transfer/regularization in his name on 30.12.1992 and after the retirement of his father on 31.7.1994. It is alleged that the said application was allowed on 1.9.94 with the remarks "may regularize". True copy of the said application dated 30.12.1992 along with the remarks is Annexure P2 of the writ petition.

7. It is alleged in paragraph 7 of the writ petition that as a result of the aforesaid order on the application of the petitioner No. 2, the office of the Respondent No. 2 vide letter dated 21.9.94 asked the petitioner No. 2 to apply for regularization of the said premises on the prescribed form along with the relevant documents. A true copy of the said letter is Annexure P3 to the writ petition. The application of the petitioner No. 2 for regularization in his name on the prescribed form along with the necessary documents was forwarded through proper channel to the office of the respondent No. 2 vide covering letter dated 27.9.94, Annexure P4 to the writ petition.

8. It is alleged in paragraph 11 of the writ petition that instead of regularizing the said premises in favor of the petitioner No. 2, the respondent No. 3, the Asstt. Director, Estate Officer, Directorate of Estates, Nirman Bhawan, New Delhi, sent a notice dated 25.8.1995 to the petitioner No. 1 claiming damages of Rs. 11,800/- for alleged overstay in the said premises with effect from 1.1.1995 to 31.7.1995 and asking him to make payment thereof within 15 days. True copy of the said notice is Annexure P7 to the writ petition. The petitioner No. 1 immediately gave a reply through his letter dated 8.9.1995 explaining that the case of regularization of the said premises in the name of his son was pending and Therefore, the demand for damages for overstay was illegal and unwarranted. It was alleged in the letter that the petitioner No. 1 was only liable to pay the arrears of rent for the aforesaid premises at the normal rate. However, no reply was received from respondent No. 2 and 3 to the said letter. Instead by letter dated 18.10.1995, the respondent No. 2 informed the petitioner No. 2 that in response to his request for regularization of the said premises which had earlier been allotted to his father, it has been decided to sanction ad hoc allotment of a Type-B (Type II) quarter in R. K. Puram or nearby areas to him subject to the condition that the arrears of rent if any pertaining to the said premises will be

recovered from him in advance in lump sum. A true copy of the said letter is Annexure P9.

9. It is alleged in paragraph 14 of the writ petition that the petitioner No. 2 was shocked and surprised to receive the said letter since his case was for regularization of the premises earlier allotted to his father which was Type-III accommodation, and the petitioner No. 2 was also entitled to Type III accommodation. Instead the respondent No. 2 and 3 were offering to allot him a quarter of Type-B (Type II). The petitioner alleged that under the Office Memorandum dated 1.5.1981 regularization of the same quarter in the name of the son/ daughter after the retirement of the father should be done if the son/ daughter is otherwise entitled to the same type of accommodation. It was alleged that in many instances that was done.

10. However, the respondents initiated eviction proceedings against the petitioner under the Public Premises Act, by issuing the show cause notice, to which the petitioner No. 2 gave a detailed reply vide letter dated 15.2.1996, Annexure P11 to the writ petition.

11. In the first week of March 1996, the petitioner No. 1 received a copy of the letter dated 23.2.1996 issued to the Accounts Officer by the Director of Estates asking him to recover damages totaling Rs. 31,270/- from the petitioner No. 1 for the period up to January 1996 on account of the alleged over-stay. A true copy of the said letter is Annexure P-12.

12. A counter affidavit was filed by the Deputy Director of Estate, New Delhi on behalf of the respondent and we have perused the same. It was stated therein that the petitioner No. 2 was offered allotment of Type-B quarter on 28.12.95, which was not accepted by him. Instead, the petitioner No. 2 has been insisting for regularization of the same Type-C quarter which had earlier been allotted to his father. It was stated in Paragraph 19 and 20 of the counter affidavit that no request for regularization of the Type-C is pending in the Directorate.

13. From the facts of the case, it appears that Sh. P. K. Sharma, petitioner No. 1 was allotted Type-C quarter and as he retired on 31.7.1994 he was allowed to retain the said quarter for four months as admissible under the rules, and he was granted four months further retention on medical grounds.

14. The petitioner No. 2 submitted his application to the Ministry of Urban Development, for transfer of the said quarter in his name. The Hon"ble Minister for Urban Development, on this application, endorsed "may regularize". However, the petitioner No. 2 was asked to submit his application in the prescribed form. On scrutiny of his application in the prescribed form it was noticed that the petitioner No. 2 had joined government service in June 1979, and he was working as Computer Operator in the Ministry of Human Affairs. The basic pay of petitioner No. 2 was Rs. 1530/- per month as on 1.10.1993, which was the crucial date for determining the entitlement for allotment of quarters under the allotment rules.

15. As per the Office Memorandum dated 1.5.1981, a government servant who was an eligible dependent / relation of a government servant is to be allotted accommodation one type below his/her entitlement. The basic pay of the petitioner No. 2 as on 1.10.1993 was Rs. 1530/-, which entitled him to Type-C accommodation, but he will get that when his turn comes. As per the Office Memorandum dated 1.5.1981, the petitioner No. 2 was entitled for out of turn allotment of a quarter one type below Type-C, i.e., Type-B which was offered to him, but he did not accept the same nor did he vacate the premises which had been allotted to his father. Accordingly eviction proceedings were initiated.

16. Sh. P. K. Sharma, the petitioner No. 1 requested the Secretary, Ministry of Urban Development for regularization of the said premises, i.e., Type-C in his sons name. This request was re-examined but rejected and a letter was sent to the petitioner No. 1 that he is occupying the quarters unauthorizedly and has neither vacated the same nor is paying damages for occupation. A huge amount has become due from 1.4.1994 onwards and the liability is increasing till the premises is vacated.

17. An additional affidavit was also filed by the respondent. It has been stated in paragraph 3 thereof that the running date of priority for Type-C accommodation is 30.11.1977, and the last allottee is Shri S. K. Kar Gupta, whose date of priority is 30.11.1977 from the General Pool. The petitioner No. 2 Shri Rajeev Sharma who is eligible for Type-C quarter has not applied for his entitlement type. Had he applied, his turn for allotment of Type-C accommodation would not have come since his date of priority is 20.6.979. Hence, he has to wait for his turn.

18. On the above facts, the learned Single Judge rightly held that the petitioner No. 2 is no doubt entitled for Type-C accommodation but that can be given to him only when his turn comes. As regards the prayer for out of turn allotment on the basis of the Office Memorandum dated 1.5.1981, paragraph 7 of the Office Memorandum clearly states that the applicant would be entitled for allotment one category below his entitlement, which in this case is Type-B accommodation. The petitioner No. 2 refused the offer of Type-B accommodation.

19. Thus, whether the petitioner No. 2 was claiming under the general rule contained in the allotment rules, or under the relaxation granted by the Office Memorandum dated 1.5.1981, he was in either case not entitled to retain the Type-C accommodation which had been allotted to his father. Hence the view taken by the learned Single Judge is correct. We also agree with the view taken by the learned Single Judge that the government has no power to waive charges for unauthorized occupation vide Shiv Sagar Tiwari Vs. Union of India and others, .

20. There is no force in this appeal. Hence it is dismissed.