

(2013) 10 KAR CK 0211

In the Karnataka High Court

Case No : Writ Petition No. 29226 of 2011 (GM-RES)

Rajesh M.

APPELLANT

Vs

Executive Engineer, Assistant Executive Engineer, No. 1,
P.W.D. Harbour and Interior Water Transportation Department
and The President and Deputy Commissioner, Government
Quarters Allotment Committee

RESPONDENT

Date of Decision : 22-10-2013

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2013) 10 KAR CK 0211

Hon'ble Judges : V. Suri Appa Rao, J

Bench : Single Bench

Advocate : H. Ashok Kumar, for the Appellant; Shweta Krishnappa, HCGP, for the Respondent

Final Decision : Disposed Off

Judgement

V. Suri Appa Rao, J.—This writ petition is filed under Articles 226 and 227 of the Constitution of India to issue a writ or any other order to quash the letter dated 12.07.2011 issued by respondent No. 1 vide Annexure-G. Petitioner is working in Judicial Department as Second Division Assistant. When he was working in the Court of District and Session Judge Mangalore, he applied for the Government accommodation for his stay as he or his family members not having owned house in Mangalore. Respondent No. 3 allotted the Government quarters No. R.S.H. No. 112 situated at Oorva store Mangalore, the same has been occupied by the petitioner in the month of July 1999 after fulfilling all the requirements. On the request of the petitioner, respondent No. 3 renewed the Government quarters to the petitioner vide his office proceedings dated 23.01.2006 at Annexure-A. The petitioner has been transferred from District Court Mangalore to the Civil Judge and JMFC Court Mangalore. Thereafter, in the middle of the academic year 2009-2010, the petitioner has been promoted as First Division Assistant, transferred and posted to the Civil Judge and JMFC, Court Moodbedri

and he reported to his duty at new station on 01.06.2009. The petitioner therefore applied for permission to retain the Government quarters till the end of academic year 2009-2010 and he was permitted to retain the quarters till 31.03.2010 and he was given strict instructions to vacate the quarters in the month of April 2010. When the petitioner was about to shift the family to Moodbedri, the petitioner was again transferred from Civil Judge Court Moodbidri to the Civil Judge court Sullia and the petitioner reported the duty at Sullia Civil Court on 01.07.2010. The petitioner thereafter approached the Principal District and Sessions Judge Mangalore, and requested for transfer to Mangalore as no suitable accommodation was available at Sullia, having no other remedy retained the quarters beyond the permitted period from 01.05.2010 to 30.06.2011.

2. On 27.04.2011, respondent No. 2 addressed a letter to the petitioner stating that the Government quarters No. 112 was not vacated even after expiry of permitted period, so that the penal rent has been fixed at 5 times of normal rent as per K.C.S.R.s rules and he was directed to make payments of revised rates of rent till vacating the quarters. Petitioner thereafter submitted representation dated 14.05.2011 seeking dispensation of penal rent, as his retention of quarters was beyond his control and no other remedy was available to him. On 28.05.2011, respondent No. 1 addressed a letter to the petitioner stating that the representation dated 14.05.2011 has been rejected and he was directed to remit the total penal rent of Rs. 61,850/- covering the period from 01.05.2010 to the end of April 2011. The petitioner thereafter submitted another representation dated 29.06.2011 seeking relaxation of penal rent for the reasons stated therein and vacated the Government quarters No. 112 on 25.06.2011. On 05.07.2011, respondent No. 2 addressed a letter to respondent No. 1 stating that Government quarters No. 112 situated at Oorva Store Mangalore occupied by the petitioner has been vacated on 25.06.2011 and also submitted no dues certificate in respect of Electricity, water, rent and licence fee etc., and recommended for return of security deposit vide Annexure-F. The petitioner therefore aggrieved by the letter dated 12.07.2011 issued by respondent No. 1 directing him to pay penal rents, filed this writ petition.

3. Respondent No. 1 filed statement of objections contending that the writ petition filed by the petitioner is not maintainable. It is further contended that the petitioner was allowed to stay till 31.03.2010 at nominal licence fee in connection with education of his children due to his transfer from one place to another in the middle of the academic year. According to the rule 30(3) of Allotment of Government Building to use residencies of Government Servants and Levy of Licence Fee Rules 2002 (for short "the Rules"), if a Government servant is transferred from one place to another, he shall be allowed to retain the residence free of licence fee, for a period of 15 days and thereafter with payment of usual licence fee under Rule 10, but for not exceeding 2 months from the date of handing over the charge. In view of the provision of Clause 26 and Rule 30 Clause 5, the petitioner is to pay penal licence fee. It is further contended that there is no provision in the rules to reduce the licence fee for the quarters

bearing No. 112. The petitioner is therefore liable to pay the amount and the writ petition is not maintainable.

4. Learned counsel for the petitioner submits that respondent No. 2 issued a letter dated 05.07.2011 to respondent No. 1 stating that the petitioner vacated the quarters on 25.06.2011 and submitted no dues certificate in respect of electricity, water, rent and licence fee. Therefore, question of paying penal licence fee does not arise in view of the no dues certificate issued by respondent No. 2. When the petitioner approached respondent No. 1 for return of the security deposit of Rs. 500/-, he was asked to pay penal licence fee.

5. Per contra, learned Government Pleader contended that as per Allotment of Government Building to use residencies of Government Servants and Levy of Licence Fee Rules 2002, the petitioner is liable to pay 5 times of the licence fee, if he fails to vacate the premises within three months. As the petitioner was in unauthorized occupation for a period from 01.05.2010 to 30.09.2010, the petitioner is liable to pay penal licence fee at 5 times as per Rule 29 and 30 of the Rules 2002. Therefore, the writ petition is not maintainable under law and the petitioner is not entitled for any relief sought for.

6. In the writ petition itself the petitioner has admitted that he was allotted Government quarters No. 112 and he was in the occupation of the same till 25.06.2011 though he was transferred from Mangalore to other place. Respondent No. 1 granted extension of time to continue in the same quarters till 30.04.2010. His further request to continue in the same quarters was rejected by respondent No. 1 and admittedly, the petitioner ought to have vacated the premises when there are specific provisions in the Rules for law of the penal licence for occupation of the premises beyond the period allowed by respondent No. 1, but he did not choose to vacate the premises by the end of 30.04.2010 and he continued to stay in the same quarters till 25.06.2011. By following the Rule 29 and 30, respondent No. 1 rightly calculated the penal fee at 5 times of the licence fee and issued demand notice dated 12.07.2011 directing the petitioner to pay penal licence fee for his unauthorized occupation of the government quarters.

7. Rule 30(5)(c) clearly indicates that if the occupant does not vacate the quarters within the specified time, three times the usual licence fee may be recovered for the first three months beyond the specified period.

8. Clause (e) reads as under:

for periods of occupation exceeding three months, five times the usual licence fee shall be charged and deducted out of the pay of the official or recovered otherwise than from pay as the case may be.

9. Therefore, by invoking the provision of rule 30, respondent No 1 rightly calculated licence fee penalty. The petitioner therefore bound to pay amount covered by the letter dated 12.07.2011. As the petitioner is working as Senior

Division Clerk, he is directed to pay licence fee as per demand notice dated 12.07.2011 in 25 equal installments commencing from the month of December 2013.

The writ petition is disposed of accordingly.