

(2005) 08 AHC CK 0251
In the Allahabad High Court
Case No : C.M.W.P. No. 9227 of 2001

Sachchidanand Tiwari

APPELLANT

Vs

Commandant (Senior Security Commissioner), R.P.F. and
Others

RESPONDENT

Date of Decision : 04-08-2005

Acts Referred:

Public Premises (Eviction of Unauthorised Occupants) Act, 1971 — Section 3, 4
Railway Protection Force Rules, 1987 — Rule 120

Citation : (2005) 6 AWC 6087

Hon'ble Judges : Sunil Ambwani, J

Bench : Single Bench

Advocate : Satish Dwivedi and Suresh Chandra Dwivedi, for the Appellant;
Govind Saran, for the Respondent

Final Decision : Dismissed

Judgement

Sunil Ambwani, J.—Heard Sri Satish Dwivedi counsel for the. Petitioner and Sri Govind Saran for Respondents.

2. By means of this writ petition, the Petitioner has prayed for issuing a writ of certiorari, quashing the orders, if any, passed by the Respondents after summoning the same by which deductions and realisation of damages as damage rent is being made from the Petitioner from his monthly salary. He has further prayed for a writ of mandamus restraining Respondents not to deduct or realise the damage rent for less than half of the salary of the Petitioner except nominal charge of the accommodation under the law and to refund the amount which has been excessively realized from the Petitioner.

3. The facts giving rise to this petition are that on his posting as Constable in Railway Protection Force at District Allahabad, the Petitioner was allotted a Railway Quarter No. 37D Type I, Subedargunj, Allahabad. He completed the tenure of posting at Subedarganj. Allahabad and was transferred to Company No. 49/GMC, Kanpur, on 1.6.1993 and was spared on 17.3.1993. The Petitioner

did not vacate the accommodation allotted to him, nor made any request to continue to occupy the accommodation. He was transferred from Kanpur to Cash Guard at Allahabad on 15.4.1996 and thereafter he was transferred from Cash Guard Allahabad to Cash Guard Platoon Tundla on 14.9.1996. He was again transferred from Cash Guard Tundla to Allahabad on his own request on 25.4.2001. During this entire period he did not vacate the accommodation nor paid penal rent in accordance with the Rules for allotment. It is admitted between the parties that on his transfer back to Allahabad on his own request he has been re-allotted the same quarter on 25.4.2001. The dispute in the present case is thus confined only to the penal rent which was payable by the Petitioner from 13.7.1993 to 24.4.2001. The details of the assessment of penal rent have been given in paragraph 7 of the counter-affidavit. Out of total amount of arrears of damage rent of Rs. 1,20,595 an amount of Rs. 61,326 has been realized from the Petitioner and that the remaining amount of Rs. 59,269 is being realized from his salary w.e.f. January, 2003, @ Rs. 1,000 per month.

4. Learned Counsel for the Petitioner submits that no proceedings were taken for his eviction under Public Premises (Eviction of Unauthorized Occupants) Act, 1997, prior to the notice dated 28.2.2000 and that the Petitioner was never given an order to vacate the accommodation. He submits that the Petitioner and his family were in great difficulty as his wife was suffering from serious ailment for which she was treated in Railway Hospital and in the S.R.N. Hospital at Allahabad.

5. A perusal of the record shows that the Respondents did not take any steps to get the accommodation vacated from the Petitioner. The Respondents started recovering penal rent from the Petitioner after its assessment vide order dated 6.3.2000. Although it is alleged that the Petitioner had made representation there is nothing to show that the Petitioner had requested to continue in the accommodation prior to 16.2.2000 when he made his first representation.

6. The Court has been called upon to decide the rights of the Petitioner to occupy the residential accommodation allotted to him at the place of his posting and to consider the submission whether it was incumbent upon the department to give a notice to the Petitioner to show cause as to why he may not be evicted, and further to issue show cause notice before the penal rent was determined and imposed upon the Petitioner, and also whether in such case the only remedy for the department is to proceed for eviction and determination of penal rent under the Public Premises (Eviction of Unauthorized Occupants) Act, 1947.

7. Rule 120 of the Railway Protection Force Rules, 1987 made under Railway Protection Force Act, 1957 provides for maintenance and vacation of the of accommodation as follows:

120. Maintenance and vacation of residential accommodation:

120.1. If any residential accommodation is allotted to a member of the Force, he shall reside therein subject to such conditions and terms as may be specified by

he Chief Security Commissioner concerned and shall be responsible for maintaining it in a good state.

120.2. It shall be a condition of his service that he shall vacate the accommodation on his ceasing to be a member of the Force or on his transfer from that place or whenever an officer not below the rank of Security Commissioner, for reasons to be recorded in writing, finds it necessary and expedient for him to do so.

120.3. If any enrolled member of the Force who is required under Sub-rule (2) to vacate any premises fails to do so, such superior officer may after giving him an opportunity of being heard, direct any officer subordinate to him, with such assistance as may be necessary, to enter upon and open the premises and remove there from any person found therein and to take possession of the premises and deliver the same to any person specified in the order.

8. In the present case, the Petitioner has not enclosed the allotment letter by which the residential accommodation was allotted. It is, however, admitted in the pleadings that it was allotted to him as a member of the force by virtue of his posting at Allahabad. Rule 120.2 of the R.P.F. Rules, 1987 provides it to be a condition of service of the member of R.P.F. that he shall vacate the accommodation on his transfer from that place or on the orders to be passed by the Security Commissioner for reasons to be recorded in writing. The rules do not provide for any notice or order to be given to the member of Railway Protection Force to vacate the accommodation after he has been transferred. As soon as a person is transferred the allotment comes to an end and he is required to vacate the accommodation, unless he applies and the competent authority by an order passed allows him to occupy the same. The notice under Rule 120.3 is required to be given where member of the Railway Protection Force has been required by the Security Commissioner for reasons to be recorded in writing to vacate the accommodation. The order to vacate accommodation to a member of the force is required to be given only when he does not obey the orders of his superior officer to vacate the accommodation. In case of transfer this procedure is not required to be followed. Unless a member of the Force has requested for permission of the competent authority, i.e. Security Commissioner to continue to occupy the accommodation, after his transfer, he has no authority to retain the same. In such cases a person may be evicted from the accommodation after giving the simple notice informing him and giving him reasonable time to vacate the accommodation. It is not necessary for the department to proceed under the Public Premises (Eviction of Unauthorized Occupation) Act as the occupation becomes unauthorized under Rule 120.2 of the Railway Protection Force Rules, 1987. The burden of proof of unauthorized occupation in such cases cannot be fixed upon the department. A member of the Force occupying the accommodation in pursuance of allotment becomes an unauthorized occupant after he fails to vacate the same on his transfer, and in such case his occupation can only be protected by an order of the competent authority.

9. Once a person is found to be unauthorized occupant and does not vacate of his own, he is required to pay penal rent according to rules. In the present case, apart from raising a plea that the Petitioner's family was suffering and that no notice was given the Petitioner has not challenged the quantum of penal rent fixed by the Respondents. In fact more than half of the penal rent had already been recovered. There is no pleading that the penal rent is excessive or has not been fixed in accordance with the rules.

10. For the aforesaid reasons, I do not find any good ground to interfere in the matter. The Petitioner has been allotted the same accommodation on his transfer back to Allahabad on 25.4.2001. I find that the Respondents have been reasonable to the Petitioner, by recovering only Rs. 1,000 per month until the entire dues of penal rent are recovered.

11. The writ petition is accordingly dismissed with no order as to costs.