

(2019) 10 CAT CK 0019

In the Central Administrative Tribunal

Case No : Original Application No. 2116 Of 2018

Satish ChAndra Verma

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 09-10-2019

Acts Referred:

Administrative Tribunals Act, 1985 — Section 3(q)(v)

Citation : (2019) 10 CAT CK 0019

Hon'ble Judges : Nita Chowdhury, Member (A)

Bench : Single Bench

Advocate : IH Syed, Sarim Naved, Akshay, Manish Lav Kumar, R.K. Jain, S.K. Tripathi, Gyanendra Singh

Final Decision : Dismissed

Judgement

1. Heard learned counsel for the parties at length.

2. By filing this OA, the applicant is seeking the following reliefs:-

"A) The Hon"ble Tribunal may be pleased to allow this petition.

B) The Hon"ble Tribunal may be pleased to quash and set aside the impugned letter dated 03.06.2016 by the Respondent No.2 on the basis of the impugned decision dated 20.05.2016 of the Respondent No.1 and to declare as void the impugned decision dated 20.5.2016 of the Respondent No. 1 (copy not supplied to the applicant), and further be pleased to quash and set aside the consequential impugned letter dated 21.07.2016 by the Respondent No. 2 as well as the subsequent consequential impugned letters dated 01.08.2016 and 08.08.2016 by the Respondent No.3;

C) The Hon"ble Tribunal may be pleased to direct the Respondents No. 1 to 3 to comply with para 2 (ix) of OM F. No. 11(2)/97-E.II(B) dated 22.07.1998 issued by Ministry of Finance, Department of Expenditure, Govt. of India, in respect of the applicant's allotted government accommodation at 701, New Samarpan

Tower, Gulbai Tekra, Ahmedabad;

D) The Hon"ble Tribunal may be pleased to grant any other and further reliefs, as the nature and circumstances of the present case may require in the interest of justice."

3. Brief facts of the case are that the applicant is a Member of IPS, Gujarat cadre and subsequently, he was posted at Ahmedabad as Joint Commissioner of Police (Traffic) in the year 2012 and he was allotted a residential Flat No.701 in Samarpan Tower, Gulbai Tekra, Ahmedabad. Thereafter on 7.4.2012, the applicant was transferred from the said post to the post of Principal, Police Training College (PTC), Junagarh and the charge of the said post was assumed by him on 18.5.2012. Thereafter during the period from 20.7.2012 to 23.6.2013, the applicant assisted the CBI at Gandhinagar Office in the investigation of a case popularly known as Ishrat Jahan Encounter case, as ordered by the Hon"ble High Court. Thereafter the applicant wrote a letter to respondent no.2 and no.3 on 25.6.2013 informing them that he had performed official duty as per the orders of the Hon"ble High Court at Ahmedabad till 23.6.2013. However, disregarding the aforesaid letter, respondent no.2 vide its letter held that his occupation of the said residential quarter was unauthorized beyond 12.6.2012 and cancelled the allotment of the said quarter.

3.1 Thereafter applicant replied to the respondent no.2 and informed him that the academic session of the applicant's daughter had already begun as on 23.6.2013 and that thus the applicant was authorized as per rules of the State Government to retain the said residential quarter till the end of session 2013-2014, i.e., till 31.5.2014.

3.2 Thereafter according to the applicant his name was sent by the Govt. of Gujarat, i.e., respondent no.1 in an offer list for central deputation. Accordingly, on 30.8.2014, he was relieved by the Govt. of Gujarat to join his deputation post under the Govt. of India as Central Vigilance Officer, North Eastern electric Power Corporation (NEEPCO), Shillong, Meghalaya. Applicant joined the said post on 8.10.2014.

3.3 Thereafter on 6.11.2015, respondent no.3 wrote a letter to respondent no.2 that the applicant's occupation of the said residential quarter beyond 12.6.2012 was unauthorized and that an amount of Rs.8,13,847/- was to be paid by the applicant by way of rent. The applicant vide his letter dated 8.1.2016 responded to the said letter stating that he was entitled to retain the residential accommodation at Ahmedabad since he was posted to North-Eastern Region of the country as per Govt. of India Rules. However, the applicant's occupation of the said Govt. accommodation was regularized till 31.5.2014 vide letter of the respondent no.2 dated 6.4.2016.

3.4 Thereafter on 5.5.2016, the applicant wrote to the Respondent no.2 for some clarification/modification of the rent mentioned as payable in letter dated 22.4.2016 by respondent no.3. Respondent no.2 vide letter dated 3.6.2016

informed the applicant that Accommodation Allotment Committee of the respondent no.1 had decided on 20.5.2016 to not authorize the applicant's occupation of the residential accommodation in Ahmedabad beyond 31.5.2014. Thereafter on 30.6.2016, the applicant wrote to the respondent no.2 for review of the decision taken on 20.5.2016 by respondent no.1. Thereafter on 5.7.2016, applicant relinquished the charge of CVO, NEEPCO, Shillong after Govt. of India transferred him to CRPF. On 18.7.2016, the applicant joined as IGP, CRPF, Tripura Sector, Agartala.

3.5 Thereafter on 21.7.2016, respondent no.2 wrote to the applicant to pay market rent, vacate the residential quarter and informing him that action under the Gujarat Public Premises (Eviction of Unauthorized Occupants) Act, 1972 would be taken. An eviction case was lodged on the same day by the respondent no.2 against the applicant being Eviction Case No.1/2016.

3.6 On 22.7.2016, notice was issued by the City Deputy Collector (West), Ahmedabad.

3.7 The applicant joined as IGP, CRPF, Tripura Sector at Agartala on 26.7.2016.

3.8 On 8.8.2016, the applicant filed Special Civil Application No.13735 of 2016 before the Hon"ble Gujarat High Court challenging the aforesaid impugned decision dated 20.5.2016 which was communicated to vide letter dated 3.6.2016 and 21.7.2016.

3.9 The applicant has also filed his reply in the said Eviction case on 8.8.2016. The City Deputy Collector (West, Ahmedabad, vide order dated 9.8.2016 rejected the reply submitted by the applicant and issued eviction order to be implemented within one month. Thereafter on 12.8.2016, the applicant was permitted to withdraw the said Special Civil Application by the Hon"ble Gujarat High Court with liberty to approach appropriate judicial forums for alternative remedies.

3.10 Thereafter on 16.8.2016, the applicant has filed Civil Appeal No.12/2016 before the City Civil Court at Ahmedabad against the said eviction order dated 9.8.2016 passed by the competent authority under the Gujarat Public Premises (Eviction of Unauthorized Occupants) Act, 1972.

3.11 Being aggrieved by the aforesaid decision dated 20.5.2016, the applicant has filed this OA, which was numbered as 340/2016, before the Guwahati Bench of this Tribunal on 25.8.2016. Subsequently, PT 122/2017 moved by the respondents for transferring of the OA 340/2016 before the Principal Bench of this Tribunal and this Tribunal vide Order dated 18.5.2017, allowed the said PT along with other PTs.

4. During the course of hearing, learned senior counsel for the applicant by referring to rejoinder filed on 3.10.2019 submitted that applicant vacated the said Govt. quarter on 23. 1.2018 and handed over possession to the R&B Department, Government of Gujarat. He also submitted that applicant has paid the rent till the month of January 2018 to the R&B Department, Govt. of Gujarat

and quarter vacation form dated 23.1.2018 is annexed with rejoinder. Counsel for the applicant submitted that as per OM dated 12035/4/77-Vol.VI dated 12.2.1984, as amended from time to time, the facility of retention of Government accommodation at the last station of posting by the Central Govt. employee posted in the North-Eastern Region and other specified territories and whose families continue to stay at that station is available. However, in partial modification of these orders, licence fees for the accommodation so retained will be recovered at the applicable normal rates in cases where the accommodation is below the type to which the employee is entitled to and at one and half times the applicable normal rates in cases where the entitled type of accommodation has been retained. The facility of retention of Govt. accommodation for a period of three years beyond the normal permissible period for retention of Government accommodation prescribed in the Rules.

4. On the other hand, learned senior counsel for the respondents opposed the adjudication of this OA by the CAT on the ground that the applicant has already been proceeded against under the provisions of Gujarat Public Premises (Eviction of Unauthorized Occupants) Act, 1972 and order in this matter was already passed on 9.8.2016 and the instant OA has been filed by the applicant on 1.9.2018, i.e., after the decision taken in this matter under Gujarat Public Premises (Eviction of Unauthorized Occupants) Act, 1972 supra. In support of his contention, learned counsel for the respondents placed reliance on the following decisions:-

- (1) Union of India vs. Rasila Ram and others, (2001) 10 SCC 623;
- (2) Hon"ble High Court of Karnataka in Union of India vs. Smt. D.N. Sarojadevi (W.P.(C) No.37536 to 37541/2013 (S-CAT);
- (3) Hon"ble High Court of Delhi in Babli & Another vs. Govt. of NCT of Delhi & Ors, 2001 (6) DRJ 788 (DB);
- (4) A.K. Kapoor vs. Ministry of Railways and others, 2013 in OA No.1705/2013 decided on 3.7.2013 by the CAT, PB, New Delhi.

4.1 Learned counsel for the respondents by referring to the said decisions submitted that law is well settled now that if proceedings under the PP Act is initiated against the employee and appropriate orders are passed, the remedy for such type of employee like the applicant lies as provided under the said Act and by no stretch of imagination the expression "any other matter" in Section 3(q)(v) of the Administrative Act would confer jurisdiction on the Tribunal to go into the legality of the order passed by the competent authority under the provisions of PP Act.

4.2 Counsel further submitted that aforesaid Order passed in Eviction Case No.1/6 dated 9.8.2016 by the competent authority was also challenged by the applicant before the City Civil Court at Ahmedabad by filing Civil Appeal No.12/2016 and the said appeal was also dismissed by the City Civil Court

at Ahmedabad vide Order dated 19.10.2016. The relevant portions of the said Order read as under:-

"(21) I have gone through the Office Memorandum issued by Central Government. It is true that Central Government employee is entitled, in case of his transfer to north eastern region, to retain government accommodation, if having at his last station, but the said Office Memorandum certainly would not help the appellant. The said provision is in respect of last posting. If we consider the facts as narrated by appellant, appellant was transferred as Principal, PTC, Junagadh, and he also took over charge of his new assignment. It transpires from pleadings, more particularly para-3.3 of appeal memo, that by virtue of order passed by Hon'ble High Court, he was relieved of his duties from Junagadh, but he remained and was continued as Principal, PTC, Junagadh, and his salary and allowances were continued to be drawn as Principal, PTC, Junagadh. By virtue of the order passed by Hon'ble High Court, he was spared from all duties of Principal, PTC, Junagadh, and as Office of CBI was situated at Gandhinagar, he was permitted to continue in the subject premises. Therefore, his last station of posting certainly was at Junagadh, and therefore, by virtue of this Office Memorandum, he is not entitled to retain the subject premises because his last station of posting was not at Gandhinagar or Ahmedabad.

(22) The respondents have produced certain documents along with list Ext.16. It is original record of eviction proceedings before the City Deputy Collector & Competent Authority, which contains allotment order dated 19/3/2012 issued by Superintending Engineer, Ahmedabad. It transpires from the said letter that the subject premises was allotted to appellant upon certain terms and conditions. Along with the said conditions, there is a letter of undertaking signed by appellant. It reveals that the said quarter was allotted to appellant on the condition, that in case of transfer of appellant, the allotment stands automatically cancelled and allottee has to vacate the premises and hand over possession to PWD. Appellant has also undertaken that in case of his transfer, he will vacate the premises and hand over possession to PWD. It is prima facie and it is an admitted fact that appellant is transferred from Ahmedabad to Junagadh on 19/5/2012 and therefore, according to the terms and conditions, after two months from the date of transfer, his occupancy in respect of said premises became unauthorised. Appellant was transferred in 2012 and till then he is enjoying possession of premises.

(23) It is argued by Mr.Saiyed that by letter dated 6/4/2016, the accommodation allotted to this appellant was regularised, for that some correspondence between the parties are required to refer. On 25/6/2013, this appellant wrote a letter to Executive Engineer and stated that he has performed official duty at Gandhinagar and therefore, his accommodation is official and authorised. On 6/1/2014, this respondent wrote a letter to appellant and stated that as you are transferred to Junagadh, your permission to retain quarter ends on 11/6/2012 and from 12/6/2012 you are an unauthorised occupant of the premises and therefore,

vacate it in ten days. On 13/1/2014 appellant wrote a letter to Superintending Engineer and stated that his daughter is studying in Std.IX in CBSE, Ahmedabad, and also as per rules, he is entitled to retain quarter till end of academic year. On 22/4/2015, respondent wrote a letter to appellant and asked appellant that on depositing a rent from 23/6/2013, his occupation in premises is regularised and also asked him to pay a normal rent. On 6/4/2016, Executive Engineer wrote a letter to appellant and stated that as you have served in CBI, Gandhinagar, in pursuance to the order passed by the Hon'ble High Court and as your child is studying at Ahmedabad, you are permitted to continue the said quarter on condition to deposit normal rent for that period. On 5/5/2016, this appellant wrote a letter to respondent that as I have transferred to north eastern region, I am entitled to retain quarter allotted to me in view of Office Memorandum declared by the Government of India, Home Department. On 3/6/2016, respondent wrote a letter to this appellant that considering the request from your end to retain quarter for educational cause, permission was granted up to 31/5/2014 and as decision taken by the Allotment Committee dated 20/5/2016, your permission stands end and therefore, vacate the premises immediately. On 30/6/2016, appellant wrote a letter to PWD and stated to reconsider his request in view of Office Memorandum declared by the Home Department, Government of India. On 21/7/2016, respondent wrote a letter to appellant and informed that he has not complied the letter dated 3/6/2016 and vacated the premises and further asked appellant to vacate the premises, otherwise respondent would be constrained to initiate eviction proceedings.

It appears from all these correspondence that appellant's request to retain quarter on the grounds of his official discharge of duties at Gandhinagar and also his request for his daughter's educational career are considered by the respondent. But after the said causes not remained in existence, he did remain in disputed premises. So, it is on record that all his difficulties are considered by the respondent. It is argued by Mr.Saiyed that notice under the Eviction Act does not contain demand of any rent and the order passed by the competent authority in respect of rent is bad in law. Order passed by the competent authority is not legal. Competent authority has passed an order in respect of rent and therefore, order passed by competent authority requires to be set aside. I do not agree with the arguments advanced by Mr.Saiyed because if we peruse the correspondence between the parties, it clearly emerges that before filing eviction proceedings, respondent has asked due rent from the appellant. So, opportunity to deposit rent is duly given to the appellant.

(24) It reveals from the reading of letters dated 22/4/2015 and 6/4/2016 that Executive Engineer has regularised appellant's stay in context of earlier demands by the department to vacate the premises. On 6/1/2014, Executive Engineer wrote a letter to this appellant and stated that you are transferred at Junagadh on 12/6/2012. Your permission to occupy premises stands ends on 11/6/2012. You are unauthorised and therefore, vacate within ten days. Letter dated 6/4/2012 by Executive Engineer does not create any sense that accommodation

of appellant stands regularised in pursuance to the letter dated 8/1/2016 written by appellant in which appellant claims entitlement to retain quarter under the Government of India rules, Ministry of Finance, Department of Expenditure, dated 22/7/1998.

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(28) On a plain reading, it appears that possession of appellant or accommodation of appellant is not regularised till further order. Meaning gathered from the said letter appears that the letter issued by respondent Department dated 6/1/2014 to vacate the premises declared as stands cancelled by Department with a condition to pay normal rent from 24/6/2013 to 31/5/2014. By this letter, respondent Department set aside cancellation of allotment and regularised in between stay of appellant in subject flat. The said letter does not infer anything in respect of regularisation of appellant's occupation. There was a correspondence between parties and earlier a notice to vacate premises was issued by Department. In the earlier correspondence, allotment of subject flat to appellant was declared as cancelled. By letter dated 6/4/2016, those orders are set aside by Department and regularised occupation of appellant of those periods and therefore also, it cannot be termed as occupation of appellant was regularised in pursuance of OM of Government of India.

(29) It is argued by learned advocate Mr.Saiyed that statutory notice does not contain recovery of any outstanding rent and competent authority passed an order in respect of rent fell due from appellant and therefore, notice is illegal and therefore, order of competent authority is bad in law. Notice dated 21/7/2016 under the Gujarat Public Premises (Eviction of Unauthorised Occupants) Act, 1972 does not appeal to be sought for due rent. It is only for eviction. But if we peruse letter dated 2/6/2016 issued by Executive Engineer to this appellant was informed that the permission granted to stay in the premises ends and also informed that appellant has to pay market rent from 1/6/2014 till the vacation of the premises. Vide letter dated 22/4/2015 it was informed to this appellant that he has to deposit Rs.26,160/- with the respondent.

(30) As a sequel to the above discussion, in the opinion of this Court, the appeal is devoid of merits and deserves to be dismissed. I, therefore, pass the following final order:-

ORDER

The appeal is hereby dismissed and accordingly stands disposed of."

Thereafter the applicant has also challenged the aforesaid order dated 19.10.2016 before the Hon"ble High Court ofGujarat at Ahmedabad vide Special Civil Application No.925/2017 and till date the same has been adjourned on 34 occasions and now listed for 9.10.2019.

4.3 Counsel further submitted that availing of multiple remedies further for the

same cause of action before various forums may be deprecated by this Tribunal. Counsel also submitted that both the authorities under Gujarat Public Premises (Eviction of Unauthorized Occupants) Act, 1972 and the City Civil Court, Ahmedabad (supra) have examined the self-same contentions raised by the applicant and held him liable to payment of market rent from 1.6.2014 till the vacation of the said Govt. accommodation.

4.4 Counsel further submitted that vacation of the said Govt. accommodation in 2018 does not absolve him of his liability to pay market rent for keeping the said Govt. accommodation in an unauthorized manner. Further, the applicant has paid only the minimum normal rent as calculated by him and not the higher amount he is required to pay as per rules. He further emphasized that the applicant ought to have vacated the premises in terms of Rules, undertaking given by 31.5.2014 and occupation of the said quarter on or after 1.6.2014 as held by the competent authority is his unauthorized occupation for which market rent is leviable as per rules.

5. After hearing the learned senior counsel for the parties at length and perusing the pleadings available on record, factual position of this matter shows that applicant has already agitated the issues which he is raising in this OA before various judicial forums and at present, the matter is pending adjudication before the Hon"ble High Court of Gujarat at Ahmedabad. In view of the same, we do not find any cause to adjudicate the present case before receiving of the final order of the Hon"ble High Court of Gujarat at Ahmedabad in Special Civil Application No.925/2017 and hence, the matter is adjourned sine die with liberty to either parties to re-agitate the same after receipt of the orders of the Hon"ble High Court of Gujarat, if they are so inclined, in accordance with law.