

(2010) 04 DEL CK 0076

In the Delhi High Court

Case No : Writ Petition (C) No. 12 of 1998

Shiv S. Sharma

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 09-04-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Public Premises (Eviction of Unauthorised Occupants) Act, 1971 — Section 4

Citation : (2010) 04 DEL CK 0076

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Ashwin Vaish, Vinod Kumar Pandey and Sanjeev Manchanda, for the Appellant; R.V. Sinha and R.N. Singh, for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Sahai Endlaw, J.—The petitioner preferred this writ petition for quashing the letter dated 29th October, 1997 of the Directorate of Estate of the Government of India rejecting the representation of the petitioner for retention of the government accommodation and calling upon the petitioner to vacate the government accommodation and demanding Rs. 5,92,992/- from the petitioner as damages for unauthorized occupation of the government accommodation. The petitioner also seeks quashing of the notice dated 10th December, 1997 issued by the Estate Officer of the Department of Estate to the petitioner u/s 4 of The Public Premises (Eviction of Unauthorized Occupants) Act, 1971.

2. The facts on which the petitioner seeks the relief are not in dispute. The petitioner after 33 years of service with the Government of India, retired on 31st August, 1991 as Director General, Doordarshan. The petitioner by virtue of his employment had been allotted government accommodation at D-II/99, Kaka Nagar, New Delhi and with respect whereto the letter/notice aforesaid had been issued. The petitioner during his tenure as the Director General, Doordarshan was meted out threats by certain organizations and was w.e.f. December, 1990

provided 'X' scale security by the Government of India. On 13th June, 1991 while the petitioner was on the way to his office from his home, he was ambushed and attacked by two terrorists who rained bullets on the car in which the petitioner was travelling. The driver of the car died in the said incident and the Personal Security Officer provided to the petitioner received ten bullet injuries. The petitioner also received three bullet injuries and out of which two bullets could not be extracted and remain embedded in the shoulder muscles of the petitioner. The Government of India immediately after the said incident upgraded the security provided to the petitioner first to 'Y' scale and then in August, 1991 i.e. shortly before his retirement, to 'Z' scale. The respondents in response to the directive of this Court filed an additional affidavit in which it is informed that though the petitioner retired on 31st August, 1991 but he continued to enjoy the 'Z' scale security till March, 1993 when after considering the threat perception to the petitioner his security was downgraded to 'Y' scale. It is further stated in the said additional affidavit that the security of the petitioner was thereafter downgraded to 'X' scale in September, 1994 and ultimately withdrawn in January, 1998.

3. It is the case of the petitioner and not controverted by the respondents that as a part of the aforesaid arrangements for security of the petitioner, the government accommodation at Kaka Nagar, New Delhi provided to the petitioner was fortified with grills, high walls, barbed wires and guards round the clock. Upon retirement of the petitioner on 31st August, 1991, the petitioner in accordance with the Rules became liable to vacate the aforesaid government accommodation and was entitled to retain the same at concessional rate for a period of four months only. However, the petitioner for the reason of the threat perception to himself and his family members requested the respondents to allow him to continue to reside in the government accommodation for security reasons. The petitioner was however informed that as per the policy the persons under threat perception could be allowed use of government accommodation only if they did not own any residence in Delhi. The petitioner was the owner of Flat No. D-3-E, DDA Flats, Munirka, New Delhi. The petitioner feeling secure in the government accommodation which as aforesaid had been fortified and feeling that he and his family members even with the security personnel provided, would be insecure in the DDA Flat, Munirka requested the government to allow him to continue in the government accommodation and offered to place his Munirka flat at the disposal of the Directorate of Estate for allowing the occupation thereof by the Directorate of Estate to any other official.

4. The Directorate of Estate vide its letter dated 26th February, 1992 informed the petitioner that it had been decided to allow the petitioner to retain the government accommodation at Kaka Nagar for a period of one year subject to his placing his DDA Munirka Flat at the disposal of the Directorate of Estate in lieu thereof. The petitioner accepted the said offer and the Directorate of Estate on 9th April, 1992 took possession of the DDA Munirka Flat of the petitioner. The petitioner was also made to sign an agreement with respect to his flat and which

the petitioner forwarded to the Directorate of Estate.

5. The petitioner on the expiry of the said one year represented that since he was still receiving threats, he should be permitted to retain the government accommodation for further time. However, the said representation of the petitioner was rejected on 28th February, 1994 and the petitioner was directed to vacate the government accommodation and to take over possession of his DDA Munirka Flat from the Directorate of Estate.

6. The petitioner continued to represent and ultimately the letter dated 29th October, 1997 (supra) was issued to the petitioner asking the petitioner to vacate and to pay Rs. 5,92,992/- as damages and proceedings under The Public Premises Act as aforesaid were initiated against the petitioner.

7. It was then that the petitioner filed the present petition and this Court vide ex parte order dated 19th January, 1998 issued Rule in the petition and also restrained the respondents from interfering with the petitioner's possession of the government accommodation at Kaka Nagar, New Delhi. The respondents filed CM No. 6269/1998 for vacation of the interim order.

8. On 15th April, 2002 when the matter was listed before this Court, the counsel for the petitioner stated that the petitioner will handover possession of the government accommodation at Kaka Nagar, New Delhi on or before 24th May, 2002 and the counsel for the respondents stated that the Directorate of Estate would accordingly hand over the possession of the DDA Munirka flat to the petitioner on or before 30th April, 2002. This Court directed the respondents to work out a reasonable quantum of damages which could be the basis for a settlement to be arrived at in respect of the damages to be paid by the petitioner to the respondents.

9. On 29th May, 2002 this Court was informed that the parties had exchanged possession of the two flats and they needed more time for settlement. It appears that when the petitioner took possession of the DDA Munirka flat from the Directorate of Estate he found that there were unpaid electricity and water bills thereof in excess of Rs. 4,00,000/- for the period when the said flat was in occupation of the Directorate of Estate and which electricity and water charges as per the agreement got signed from the petitioner with respect to the said flat were payable by the Directorate of Estate or the officer to whom the Directorate of Estate could have allotted the said flat. The petitioner applied to this Court for payment of the said amount of electricity and water charges. The counsel for the respondents controverted the said claim of the petitioner. However, this Court on 9th August, 2002, without prejudice to the rights and contentions of the parties, directed the respondents to deposit in this Court the amount of the electricity and water bills. The respondents however did not deposit the said amount. On the next date i.e. 11th December, 2002, the petitioner informed the Court that on his representation to the Delhi Jal Board and the Delhi Vidyut Board, they had agreed to reduce the said electricity and water bills from over Rs. 4,00,000/- to

Rs. 60,000/-. This Court accordingly directed the respondents to deposit the sum of Rs. 60,000/- in this Court without prejudice to the rights and contentions of the parties. The said amount was deposited and vide order dated 15th January, 2003, permitted to be withdrawn by the petitioner and withdrawn by the petitioner. Vide order dated 8th March, 2006, the respondents were directed to place before this Court the manner in which the security to protected persons is provided and the method of recovering damages from said persons in the case of government servants as well as non government servants. In response thereto an additional affidavit dated 4th May, 2006 has been filed stating that as per rules only ?Z+? security provided persons are entitled to be considered for retention/allotment of government accommodation on special licence fee and the Cabinet Committee on Accommodation only has the power to consider the question of exemption of dues, if the aggrieved person approaches through his nodal Ministry which in the case of the petitioner was Ministry of Information and Broadcasting. It was stated that the Directorate of Estate was itself unable to exempt/reduce the outstanding dues.

10. In view of the aforesaid affidavit, this Court on 7th August, 2007 permitted the petitioner to make a representation as aforesaid and the Cabinet Committee on Accommodation was directed to consider the said representation of the petitioner and to take a decision thereon within a period of eight weeks and to place the said decision before this Court. On subsequent dates, time was taken stating that the matter was still pending before the Cabinet Committee on Accommodation or to take instructions in that respect. Till date neither any decision is shown to have been taken nor has the same been placed before this Court. Today also the counsel for the respondents states that he will have to find out the status of the representation of the petitioner. This petition having remained pending for the last over 12 years, it is not deemed expedient to adjourn the matter any further and the counsel for the parties have been heard.

11. The only question surviving in this petition is the demand of the respondent Directorate of Estates from the petitioner of the sum of Rs. 5,92,992/- for unauthorized occupation of the government accommodation allotted to him. From the facts aforesaid, it transpires that the demand is for the period during which according to the respondents also there was a perception of threat to the petitioner inasmuch as the security continued to be provided to the petitioner till January, 1998. The case of the respondents is that the petitioner though under threat was not entitled to government accommodation because the scale in which the threat perception to the petitioner was placed was below ?Z+? category and threatened individuals of which category alone are entitled to government accommodation. The Cabinet Committee on Accommodation which alone is empowered to waive off the said demands against the petitioner has inspite of direction aforesaid of this Court chosen not to take the decision. Not only are they in defiance of the order of this Court but their conduct also shows that the said Committee finds it difficult to reject the request of the petitioner. In the aforesaid circumstances, it is upon this Court to determine as to whether the

petitioner in the facts aforesaid ought to be held liable for the aforesaid amount or not. The counsel for the petitioner of course has contended that the direction on 28th February, 1994 (supra) for vacating the government accommodation was of the Directorate of Estate only and without consultation with the Home Ministry, actually concerned with the threat perception. It is stated that the Home Ministry took a decision on the representation of the petitioner only after five years in or about the year 1997 and on this ground alone the demand against the petitioner is liable to be struck down. Per contra, the counsel for the respondents contends that the damages are levied under the Public Premises Act and the remedy of writ jurisdiction is not available and the petitioner ought to have preferred an appeal. No merit is found in the said contention of the counsel for the respondents. The nature of the controversy raised is not such as capable of adjudication in the appeal provided under the Public Premises Act.

12. In spite of the writ petition having remained pending in this Court for 12 years and in spite of direction of this Court, the respondents have not been able to show as to the basis of threat perception. Though undoubtedly the courts cannot foray in the said field which is purely in the domain of executive functions but what is worth mentioning is that the level/scale of perception is subjective. What an impartial person adjudicating with an objective view may perceive as a threat of a lesser level scale is bound to be a threat of higher level scale to the threatened person especially one who has faced an encounter of the aforesaid kind and in which he was shot at and of which two bullets remain buried in his body as a continuous reminder. The action of the petitioner therefore of wanting to continue in the protected/secure environment of government accommodation cannot thus be said to be motivated or mala fide.

13. The bullets faced by the petitioner was not a part of the duties of the petitioner as a Director General for which he was being paid. A defence personnel may in the course of his duties be expected to be met with bullets, but not a civil servant. There is no averment that the respondents Union of India being the employer of the petitioner has in any way compensated the petitioner for the same. In my view waiver, of the damages of less than Rs. 6,00,000/- even if in accordance with Rules of the Estate office, is the least compensation which the respondents can pay to the petitioner in this respect. The Union of India/State even otherwise owes a duty to the petitioner as a citizen to protect him. It cannot be denied that the right of the petitioner to expect security from the State was breached in the present case. The petitioner owing to the said breach came to the brink of death. The respondents ought to have shown consideration and regard for such a case and which unfortunately has not been done.

14. The Supreme Court recently in Union of India (UOI) and Another Vs. C.S. Sidhu, has commented with regret on the shabby manner in which the army-men of our country are being treated. It was commented that they bravely defend the country even at the cost of their lives and deserve a better and more humane treatment by the government authorities particularly in respect of their

emoluments, pension and other benefits. The same, in my view, applies equally to the petitioner in the present case also. It is not the case that the attack on the petitioner was out of any personal enmity. The attack on the petitioner was owing to the duties which he was performing as a government servant. Unless the government protects such officials, no other official would be willing to stick his neck out and is likely to compromise his official duties/functions for the fear of annoying those against whom the government offers no protection to the officials. The Supreme Court in *Navkiran Singh and Others Vs. State of Punjab* through Chief Secretary and Another, has held that no citizen of this country, much less Advocates who are protectors of human rights can be permitted to be kidnapped and eliminated. The State of Punjab in that case was directed to provide security to all those Advocates who genuinely apprehended danger to their lives from militants/anti-social elements of the state. It was further held that request for security recommended by the District Judge or the Registrar of the High Court was to be treated as genuine and to be considered sympathetically.

15. There is another aspect of the matter; as aforesaid, the petitioner, for the period for which damages are claimed from him had placed his own DDA flat at Munirka at the disposal of the Directorate of Estate. It is thus not as if the petitioner while on the one hand continuing to earn market rent from his own flat was illegally occupying the government accommodation and also claiming waiver of damages at the rate of market rent with respect thereto. Even though the respondent after the expiry of one year from the retirement of the petitioner had offered back the possession of the flat of the petitioner to the petitioner but the petitioner did not take it back and took it back only when he mentally felt secure to move in to the said flat. Munirka is a prime residential locality of Delhi and the petitioner could have earned handsome rent with respect to the said flat. However, the bona fides of the petitioner are amply borne out from the petitioner placing the said flat at the disposal of the Directorate of Estate for allotment to any other government official to whom the government accommodation of the petitioner could have been allotted and which the petitioner has also sacrificed for the sake of his security. I am conscious that this Court in *Suhaib Ilyasi Vs. Union of India (UOI) and Others* *Bhim Singh Vs. Union of India and Another*, and *Sh. Ashwini Kumar Chopra Vs. Union of India (UOI) and Others*, held that threat perception is to be perceived objectively and the person at his own asking and owing to his own perception of threat cannot be permitted to occupy the accommodation so provided to him if the competent authority has perceived the threat perception to have come down. But in none of the said cases, the said persons had placed their own accommodation at the disposal of Directorate of Estate. The facts of the present case thus stand out on their own and require this Court to do justice in the matter.

16. The Courts have held (reference in this regard may be made to *Shangrila Food Products Ltd. and another Vs. Life Insurance Corporation of India and another*, , *Dwarka Nath Vs. Income Tax Officer, Special Circle D-ward, Kanpur*

and Another, , Life Insurance Corporation of India and Others Vs. Smt. Asha Goel and Another, UOI v. R. Reddappa 1993(4) SCC 269 that Article 226 is couched in comprehensive phraseology and it ex-facie confers a wide power on the High Court to reach injustice wherever it is found. The High Court is empowered to mould the relief to meet the peculiar and complicated requirements of this country. The constitution does not place any fetters on the exercise of the extraordinary jurisdiction of the High Courts under Article 226. It is left to the discretion of the High Court. This Court can in exercise of such jurisdiction take cognizance of the entire facts and circumstances of the case and pass appropriate orders to give the parties complete and substantial justice. Once this Court is satisfied of injustice or arbitrariness, then the restrictions on the exercise of power, self imposed or statutory, stand removed and no rule or technicality on exercise of power can stand in the way of rendering justice. In the present case, it is found that unless the demand for damages from the petitioners is quashed, injustice would be done. Reference in this regard can also be made to Ramesh Chandra Sankla Etc. Vs. Vikram Cement Etc., where it was reiterated that Article 226 grants an extraordinary remedy which is essentially discretionary, although founded on legal injury and it is open for the Court exercising this flexible power, to pass such order as public interest dictates and equity projects. It was further held that courts of equity, are to grant relief in furtherance of public interest and in granting the relief, must balance interest and equity and mould the relief appropriately as per the demands of justice.

17. In the entirety of the facts of the present case, while holding that the petitioner ought not to be made liable for the damages of Rs. 5,92,992/- demanded from him, I at the same time feel that there is no justification for the petitioner to retain the sum of Rs. 60,000/- got paid to him under interim orders of this Court towards electricity and water charges of the DDA Munirka flat, for the time it was in the custody of the respondents. The respondents having offered possession of the Munirka flat to the petitioner and having not availed the amenity of electricity/water therein cannot be made liable for charges therefor. The present is a matter where both parties should call it quits. The petitioner is thus liable to return the sum of Rs. 60,000/- received from respondents under orders of this Court; since the petitioner has enjoyed the said monies now for the last several years, the petitioner also ought to pay interest thereon.

18. This petition is therefore disposed of by quashing the demand of the respondents from the petitioner of the sum of Rs. 5,92,992/- for unauthorized use of the Kaka Nagar accommodation and the petitioner is directed to within four weeks of today refund to the respondents the sum of Rs. 60,000/- received under interim orders of this Court, together with simple interest thereon at 7% per annum from the date of receipt of money and till the date of refund thereof.

The parties are left to bear their own costs.