

(2010) 12 DEL CK 0197

In the Delhi High Court

Case No : Writ Petition (C) No. 7418 of 2007

Shri Dharam Raj

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 20-12-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Public Premises (Eviction of Unauthorised Occupants) Act, 1971 — Section 4, 9

Citation : (2010) 12 DEL CK 0197

Hon'ble Judges : Kailash Gambhir, J

Bench : Single Bench

Advocate : J.M. Bari, for the Appellant; A.S. Singh, for the Respondent

Final Decision : Allowed

Judgement

Kailash Gambhir, J.

1 By this petition filed under Article 226 of the Constitution of India, the Petitioner seeks to challenge the eviction order dated 25.7.2006 passed by the Estate Officer and the order dated 25.8.2007, passed by the learned ADJ, Delhi, thereby dismissing the appeal filed by the Petitioner.

2 Brief facts of the case relevant for deciding the present petition are that the Petitioner by virtue of being an employee in the Department of Chemicals and Petrochemicals was allotted a government accommodation bearing No. Sec-1/17/14, M.B Road, New Delhi. That on an inspection carried out on 20.1.2006, one Dharamendara Kumar, nephew of the Petitioner, was found in the occupation of the said premises and hence suspecting that the premises were sublet by the Petitioner, a show cause notice dated 19.4.2006 was served on him and vide order dated 27.4.2006 a cancellation order was passed. Consequently an eviction order dated 25.7.2006 was passed against which the Petitioner preferred an appeal u/s 9 of the Public Premises Act which vide judgment and decree dated 25.8.2007 was dismissed. Feeling aggrieved with the above two

orders, the Petitioner has preferred the present petition.

3 Pursuant to order dated 16.12.2010, counsel for the Petitioner has produced affidavit of the Petitioner along with supporting documents. Same are taken on record.

4. Based on the said documents on affidavit, counsel for the Petitioner submits that the same would go to show that the Petitioner along with his family was in continuous occupation and possession of the Government quarter in question. Counsel also submits that the Petitioner was never served with any show cause notice by the Estate Officer and therefore the proceedings before the Estate Officer were held ex-parte against him. Counsel also submits that the appellate court failed to appreciate the correct import of Explanation to "Sub-letting" under S.R. 317-B-2 and Annexure II of the said Rule. The contention of the counsel for the Petitioner is that as per the said Rule, accommodation can be shared by any allottee with close relations and the family of the nephew of the Petitioner who was found in possession of the said Government quarter at the time of the inspection falls in the definition of close relations as given in Annexure-II of S.R. 317-B-2.

5. Mr. A.S. Singh, learned Counsel for the Respondent, on the other hand, submits that despite service of notice by pasting and affixation, the Petitioner did not choose to appear before the Estate Officer and therefore, there was no option left with the Estate Officer but to proceed ex-parte against the Petitioner. Counsel also submits that the Petitioner never challenged the cancellation order dated 27.4.2006 passed by the Asstt. Director of Estates. Counsel also submits that after the said inspection, the Petitioner himself had appeared before the Dy. Director (Enquiry) and during the enquiry, the Petitioner had admitted the fact that wife of his nephew impersonated herself as that of Petitioner's wife and therefore the said version of the Petitioner before the Dy. Director (Enquiry) was sufficient enough to prove the fact that he had sublet the entire quarter in favour of his nephew, who was residing there along with his family. Counsel thus states that the said Rule cited by the counsel for the Petitioner would not come to the rescue of the Petitioner as the Petitioner being a government employee was required to take prior permission before allowing any of his relatives to stay in the government quarter which was allotted in his favour.

6. I have heard learned Counsel for the parties.

7. The Petitioner was allotted a government accommodation bearing quarter No. 17/14, M.B. Road, New Delhi, by virtue of his employment with the Department of Chemicals and Petrochemicals, New Delhi. The said quarter was inspected by the concerned inspecting staff of the Director of Estate on 20.1.2006, and during the inspection one Mr. Dharmendra Kumar and Mr. Balwant Singh were found in occupation of the said government accommodation. Due to the presence of these strange persons in the said quarter, the inspecting team suspected that the quarter has been sublet by the Petitioner in favour of Mr. Dharmendra Kumar.

The inspecting team also arrived at the said conclusion on account of the fact that the persons found in occupation of the said quarter could not give any convincing reply to disclose the official designation of the Petitioner. Based on the said inspection report, the allotment of the said quarter in favour of the Petitioner was cancelled vide cancellation order dated 27.4.2006. After the said cancellation order, show cause notice u/s 4 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 was issued against the Petitioner and since the Petitioner failed to appear before the Estate Officer, therefore an eviction order dated 25.7.2006 was passed against the Petitioner. The said order dated 25.7.2006 was challenged by the Petitioner u/s 9 of the P.P. Act and vide order dated 25.8.2007, the said appeal of the Petitioner was dismissed by the learned Additional District Judge. Feeling aggrieved with both the said orders, the Petitioner has preferred the present petition.

8. The entire genesis based on which the Respondent had cancelled the allotment of the Govt. Quarter under the occupation of the Petitioner was the inspection report. This inspection by the concerned staff of the Directorate of Estates was carried out on 20.1.2006 at 3.30 P.M. when one person Mr. Dharmendra Kumar was found in occupation of the said Government quarter. In column No. (B) 4 of the said inspection report, names of Mrs. Yasoda, wife of the Petitioner, Balwant Singh, brother and one Mr. Tarun, son of the Petitioner have been disclosed. The relationship of Mr. Dharmendra Kumar was disclosed as nephew of the Petitioner. So far the name of Mrs. Yasoda disclosed in the said sub-para 4 of the para (B) of the inspection report is concerned, the stand taken by the Petitioner before the Dy. Director (Enquiry) was that the wife of Balwant Singh impersonated herself as wife of the Petitioner, while in fact she was Sumitra (Bhabi) of the Petitioner. The said inspection report being the sole basis of suspecting the persons found in occupation of the said government quarter as sublettees, therefore, the precise question to be gone into by the courts below was that as to whether on the date of the inspection i.e. 20.1.2006, the Petitioner himself was in occupation of the said government quarter or he had unauthorizedly sublet the said quarter or any portion thereof to any third party. The third person in the inspection report who was found to be in occupation of the said Government quarter was none else but Dharmendra Kumar who disclosed his relation as nephew of the Petitioner. As per Explanation to rule (I) "Sub-letting" of S.R. 317-B-2 of Allotment of Government Residences (General Pool in Delhi) Rules, 1963, any sharing of accommodation by an allottee with close relations shall not be deemed to be a case of sub-letting and the relation "nephew" duly finds mention in Annexure-II of S.R. 317-B. For better appreciation, these rules are reproduced as under:

ALLOTMENT OF GOVERNMENT RESIDENCES

(GENERAL POOL IN DELHI) RULES, 1963

S.R.317-B-2. In these rules, unless the context otherwise requires ----

(a)

(b)

....

(I) "Sub-letting" includes sharing of accommodation by an allottee with another person with or without payment of licence fee by such person;

EXPLANATION.---- Any sharing of accommodation by an allottee with close relations shall not be deemed to be sub-letting.

....

ANNEXURE-II

Ministry of Urban Development (Directorate of Estates) Note regarding provisions in the Allotment of Government Residences (General Pool in Delhi) Rules relating to subletting/sharing of Government accommodation and penalties that can be imposed.

1. Provisions relating to subletting/sharing of accommodation Subletting includes sharing of accommodation by an allottee with another person, with or without payment of licence fee by the such other person. However, any sharing of accommodation by an allottee with close relations shall not be deemed to be subletting.

The following relations will be treated as close relations:

(i) Father, Mother, Brothers, Sisters, Grandfather and Grandmother and Grandsons and Granddaughters.

(ii) Uncles, Aunts, First Cousins, Nephews, Nieces directly related by blood to allottee.

(iii)

9. Apparently, the learned appellate court failed to take into consideration the said Rules at the time of deciding the appeal preferred by the Petitioner. It is not in dispute that Mr. Tarun, son of the Petitioner, was also found in occupation of the said government quarter and his presence certainly shows that the entire accommodation was not sublet by the Petitioner in favour of his nephew and the same was being shared by the Petitioner. The presence of the nephew Dharmendra Kumar, in the said Government quarter thus would not amount to subletting the premises in terms of Explanation to rule (I) of S.R. 317-B-2 and Annexure-II of the said Rule. So far the alleged disclosure of the Petitioner before the Dy. Director (Enquiry) that his wife Yasoda was not present in the premises at the time of the inspection and in fact Sumitra (Bhabi) was present who might have impersonated herself as Yasoda is concerned, the said impersonation cannot be attached much significance as during the inspection out of nervousness the lady might have disclosed her wrong identity. Once the

temporary sharing is permissible in favour of the relatives as envisaged in Annexure-II of the S.R. 317-B, therefore, the Petitioner was well within his right to allow his nephew to share the quarter allotted to him for a temporary period. It is not the case of the Respondent that said alleged sublettee Dharmendra Kumar continued to remain in possession of the said Government quarter beyond the permissible period. No second inspection was carried out by the Respondent, and therefore, in these circumstances, the Petitioner cannot be held to have sublet the said government quarter in favour of any unauthorized person.

10. In the light of the above discussion, the impugned orders dated 25.7.2006 and 25.8.2007 passed by the courts below are set aside.

11. The present petition is accordingly allowed.