
(2012) 05 DEL CK 0178
In the Delhi High Court
Case No : Writ Petition (C) 9484 of 2007

Sunita

APPELLANT

Vs

Assistant Chie Of Air Staff (Works) and Another

RESPONDENT

Date of Decision : 02-05-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151

Citation : (2012) 4 AD 725 : (2013) 1 SCT 178

Hon'ble Judges : Sunil Gaur, J

Bench : Single Bench

Advocate : M.K. Bhardwaj, for the Appellant; Jatan Singh and Mr. Tushar Singh, for the Respondent

Judgement

Sunil Gaur, J.

W.P. (C) 9484/2007 & CM No. 3111/ 2009 (u/S 151 CPC)

1. The Estate Officer/ respondent No. 2, vide order of 29th August, 2006 (Annexure P-2 colly), has directed the petitioner to pay damages @ "7,944/- per month on account of unauthorized occupation of public premises i.e. Quarter No. K-67, in Civil Zone, Camera Complex, Subroto Park, Delhi Cantt., New Delhi (hereinafter referred to as the "subject premises"). Petitioner had represented against the order (Annexure P-2) to the first respondent, who had rejected petitioner's Representation vide communication of 30th August, 2006, while declining petitioner's request for retention of the subject premises by quoting example of Smt. Annamma Yotannan, Steno GD-II. In the order rejecting petitioner's Representation it was stated by respondents that the instance relied upon by the petitioner was a special case and it was not to be quoted as precedent. Petitioner had preferred statutory appeal against the order (Annexure P-2), which stands dismissed vide impugned order of 11th September, 2007 (Annexure P-1).

2. The factual position which is not in dispute stands noted in the impugned

order, in which the date from which the damages are to be recovered stands varied from 21st July, 2006 to 11th January, 2007.

3. At the hearing of this matter, petitioner's counsel had made a vain effort to rely upon a Circular of the year 1969, to assert that when the transfer is from one department to another department at the same station, then the civilian personnel of the respondent are permitted to retain the Government accommodation allotted to them at the old duty station.

4. When told that such plea cannot be raised for the first time in the writ proceedings, as it was neither urged before the Estate Officer nor before the Appellate Forum, learned counsel for the petitioner fairly did not press this submission.

5. The challenge to the impugned order (Annexure P-2) by learned counsel for the petitioner is on the ground that the above noted instance of Smt. Annamma Yotannan relied upon by the petitioner to allege discrimination has been noted in the impugned order but has not been dealt with.

6. The reference to the instance of Smt. Annamma Yotannan relied upon by petitioner is in paragraph No.-14 of the writ petition. The corresponding paragraph No. 14 of the counter filed by the respondent deals with the instance of Smt. Annamma Yotannan, relied upon by the petitioner. The stand of the respondent, as emerging from the counter on this aspect, is as under:-

In this regard it is brought out that CSDO is lodger unit of CAMERO complex for accommodation purpose. Married accommodation to officers and civilians on posted strength of CSDO is being allotted by Date of Estate, Nirman Bhawan/ CAO's pool as no accommodation has been built for them in this complex. As such quoting of example of Smt. Annamma Yotannan by the appellant shows that without knowing the facts, appellant is blaming the respondent no. 2 alleging the undue benefit in her case.

7. What distinguishes the case of the petitioner from that of Smt. Annamma Yotannan is that petitioner's posting was from AFCME to HQ WAC (U), AF, both located at Air Force Station, Subroto Park, New Delhi, whereas Smt. Annamma Yotannan was transferred from AFCME to CSDO. Since no accommodation was built up for CSDO in the CAMERO complex, therefore, as a special case Smt. Annamma Yotannan was allowed to retain the official accommodation. Undisputedly, petitioner is at the third position in the wait list for the government accommodation of her entitlement and so, she cannot claim parity with Smt. Annamma Yotannan.

8. Upon transfer of civilian employees from one station to another station, accommodation at old duty station can be retained for a maximum period of six months only. Petitioner is holding on to the subject premises since the year 2006. On merits, the impugned order (Annexure P-2) upholding the imposition of damages for unauthorized-occupation of the Government accommodation cannot

be faulted with. Finding no substance in this petition, I dismiss it, with no order as to costs. Interim order of 4th March, 2009 stands vacated. The writ petition and the pending application are disposed of as such.