

(2010) 09 DEL CK 0368

In the Delhi High Court

Case No : Writ Petition (C) No. 5336 of 2008

Syed Azhar Ahmed

APPELLANT

Vs

Northern Railways and Others

RESPONDENT

Date of Decision : 21-09-2010

Acts Referred:

Constitution of India, 1950 — Article 226, 309
Oil and Natural Gas Commission (Death, Retirement and Terminal Gratuity) Act, 1969 — Section 32(1)
Oil and Natural Gas Commission (Death, Retirement and Terminal Gratuity) Regulations, 1969 — Regulation 5
Public Premises (Eviction of Unauthorised Occupants) Act, 1971 — Section 2, 4, 7, 7(1), 7(2)

Citation : (2010) 174 DLT 306 : (2010) 119 DRJ 184 : (2011) 1 RCR(Rent) 289

Hon'ble Judges : Kailash Gambhir, J

Bench : Single Bench

Advocate : Rajat Aneja, for the Appellant; J.K. Singh, for the Respondent

Judgement

Kailash Gambhir, J.—By this petition filed under Article 226 of the Constitution of India, the petitioner seeks quashing of the letter dated 7.9.2006 issued by the respondents whereby a sum of Rs. 4,60,430/- was imposed on the petitioner towards damages/rent w.e.f 25.5.2004 to 31.7.2006.

2. Brief facts of the case relevant for deciding the present petition are that the petitioner is an employee of the Railway Protection Force under the respondent since 1982 and on 16.9.1996 he was posted at New Delhi and was allotted a Type III quarter bearing No. L-5, Delhi Sarai Rohilla Station Area, New Delhi on 1.5.1997. Thereafter he was transferred to the Railway Coach Factory at Kapurthala, Punjab but his family stayed back in Delhi in the said quarter and the petitioner sought to retain the said quarter for a period of one year. After making several representations, the respondent passed an order dated 7.9.2006 imposing a sum of Rs. 4,60,730/- as damages from rent to be recovered from the salary of the petitioner. After making a representation, the respondent again

on 18.10.2006 passed an order that a sum of Rs. 6000/- would be deducted each month from the salary of the petitioner. Thereafter the petitioner was again transferred to Delhi and consequently he vacated and handed over the physical possession of the said quarter on 19.11.2007 to the respondent. Thereafter, the respondent on 23.1.2008 allotted the same quarter to the petitioner. However feeling aggrieved with the imposition of the huge amount of damages, the petitioner has preferred the present petition seeking quashing of the letter dated 7.9.2006.

3. Mr. Rajat Aneja, counsel appearing for the petitioner at the very outset submits that the respondent has not initiated any proceedings against the petitioner under the provisions of the Public Premises Act for the recovery of damages in question. In support of his arguments, counsel for the petitioner has placed reliance on the judgment of the Apex Court in N.D. Thandani (Dead) by Lrs. Vs. Arnavaz Rustom Printer and Another, .

4. Opposing the present petition, counsel for the respondent, on the other hand, in response to this argument submits that under the policy formulated by the respondent steps for the recovery and damages can be straightway initiated without even resorting to the provisions of the Public Premises Act. In support of his argument, counsel for the respondent has placed reliance on the judgment of the Apex Court in Secretary, O.N.G.C. Ltd. and Another Vs. V.U. Warriar,

5. I have heard Id. counsel for the parties at considerable length on the limited issue as to whether the respondent can proceed to recover the arrears of damages from the petitioner for overstaying in the said quarter after his transfer to the Railway Coach Factory, Kapurthala without adhering to the provisions of Section 7 of the Public Premises Act, 1971.

6. In the present petition, the petitioner has sought directions to quash the letter dated 07.09.2006 issued by the respondents whereby demand for a sum of Rs. 4,60,430/- was raised towards damages for overstaying in Quarter No. L-5, Delhi Sarai Rohilla Station Area, New Delhi for the period w.e.f. 25.05.2004 to 31.07.2006. The petitioner has given some justification for overstaying in the said premises while the respondent has raised serious disputes on the reasons advanced by the counsel for the petitioner for his over stay. Without taking into consideration the contentions raised by both the parties on the factual matrix of the case, this Court is of the view that this writ petition can be disposed of on the short ground as to whether the respondent could proceed to recover damages without taking recourse to the provisions of the Public Premises Act, 1971. The contention raised by the counsel for the respondent is that under the policy of the Railways, the respondent is competent to deduct the amount of damages from the salary or other benefits of its employees. Counsel also submits that under Article 309 of the Constitution of India, the said policy framed by the Railways has a statutory force. Counsel for the respondent, however, has not placed on record any such statutory rule to satisfy this Court whereunder the respondent/Railways could take steps to recover the rent/damages from its

employees. It is true that the Railways, like any other employer, has every right to recover the damages from its employees who over stay in the premises either on account of their transfer or retirement or for any other purpose but the precise question arising in the present petition is that whether the respondent without resorting to the provisions of the Public Premises Act could straightway recover the damages by deducting it from the salary of the petitioner. Counsel for the respondent has not brought forth any specific regulation in this regard framed by the Railways under which the respondent can proceed to recover the said damages. So far the case of Secretary ONGC (Supra) cited by the counsel for the respondent is concerned, the ONGC had framed regulations deriving its power u/s 32 (1) of the ONGC Act and the regulations were referred to as the Oil and Natural Gas Commission (Death, Retirement and Terminal Gratuity) Regulations, 1969 and referring to the said regulations, the Apex Court held that the said regulations were statutory in nature and were therefore enforceable in the court of law. Regulation 5 of the said regulations provides for recovery of dues of the Commission and in the face of the said regulations, the Apex Court took a view that the Commission has a right to effect recovery of its dues from any officer without his consent from gratuity. So far the facts of the present case are concerned, the respondent has not placed on record any such statutory regulation which can give the right or power to the respondent to recover the damages straightway without taking recourse to the Public Premises Act. The respondent has not disputed the fact that so far the eviction in such a case is concerned, the only remedy available to the respondent is to proceed under the Public Premises Act 1971, but for the recovery of damages the stand of the respondent is that it can straightaway deduct the same from the salary of the employee. However, I do not find any rationality in the said stand taken by the respondent. Once the remedy has been provided by the legislature under a particular statute then recourse should have been taken by the respondent under the said statute instead of devising its own procedure to recover the rent/damages. It is quite strange that for seeking eviction the stand of the respondent is that the provisions of the Public Premises Act would be applicable but when it comes to the recovery of damages, the stand of the respondent is contrary that the provisions of the Public Premises Act would not be applicable. The argument of the counsel for the respondent is thus misconceived and devoid of any merit and thus merits outright rejection. It is not in dispute that the petitioner being an employee of the respondent was occupying the public premises and therefore was liable to pay the dues for overstaying. The respondent has every right to proceed against the petitioner under the said Act for the recovery of damages in terms of Section 7 of the Public Premises Act. Section 7 of the Public Premises Act is reproduced as under:

7. Power to require payment of rent or damages in respect of public premises.
(1) Where any person is in arrears of rent payable in respect of any public premises, the estate officer may, by order, require that person to pay the same within such time and in such instalments as may be specified in the order.

(2) Where any person is, or has at any time been, in unauthorised occupation of any public premises, the estate officer may, having regard to such principles of assessment of damages as may be prescribed, assess the damages on account of the use and occupation of such premises and may, by order, require that person to pay the damages within such time and in such instalments as may be specified in the order.

3*[(2A) While making an order under Sub-section (1) or Sub-section (2), the estate officer may direct that the arrears of rent or, as the case may be, damages shall be payable together with simple interest at such rate as may be prescribed, not being a rate exceeding the current rate of interest within the meaning of the Interest Act, 1978 (14 of 1978)]

(3) No order under Sub-section (1) or Sub-section (2) shall be made against any person until after the issue of a notice in writing to the person calling upon him to show cause within such time as may be specified in the notice, why such order should not be made, and until his objections, if any, and any evidence he may produce in support of the same, have been considered by the estate officer.

7. It is to be evinced from the above provision that the petitioner is required to be proceeded u/s 7(1) if the petitioner was in authorized occupation or u/s 7(2) if he was in unauthorized occupation. In either event, Sub-section (3) provides that no order can be passed under Sub-section (1) or Sub-section (2) unless and until a notice in writing is issued to the person concerned calling upon him to show cause as to why an order under the aforesaid Section 7(1) and 7(2) ought not to be made.

8. Although in some of the letters, the respondent has taken a stand that for vacating the said premises they will proceed against the petitioner under the Public Premises Act and for recovery of damages they can deduct the same from his salary. No doubt those letters were written by the respondent at the time when the petitioner was occupying the said quarter in question but now the petitioner is not in occupation of the said quarter as he has already handed over the possession of the premises on 19.11.2007. The mandate of Section 7 of the Public Premises Act is quite explicit as where in case a person is in arrears of rent or damages payable by him in respect of any public premises, the Estate Officer may pass an order requiring that person to pay the same within such time as may be specified in that order. It would be relevant to refer to the judgment of this Court in the case of Yugal Kishore v. Delhi Jal Board (2007) 140 DLT 374 where after taking note of the scheme of the act it was held that:

9. A comprehensive procedure has been prescribed under the Act for eviction of unauthorised occupants from public premises and for incidental matters including recovery of rent/damages in respect of public premises. Unauthorised occupation has been defined in Section 2(g) of the Act to mean occupation of public premises by any person without any authority and includes the continuance in occupation by any person of the public premises after the authority under which

he was allowed to occupy the premises in question has expired. The Estate Officers are empowered to issue show cause notice to the unauthorized occupants as per the provision of Section 4 of the said Act and after considering the reply and after personal hearing, if any, the Estate Officer is empowered to take possession of the public premises. He is further empowered to order for payment of rent or damages in respect of premises under unauthorized occupation as per the provision of Section 7 of the said Act. Admittedly, the provisions of the Act were not invoked by the respondent before raising a demand on the petitioner, and deducting a sum of Rs. 20,237.70/- from his retiral benefits.

10. Reliance has rightly been placed by the counsel for the petitioner on the judgment rendered by this Court in the case of *Kanhaiya Lal Yadav (supra)*, wherein it has been held as under:

Aggrieved by the order passed by the respondent on 21.09.1992 for recovery of license fee/damages, the petitioner has filed the present petition. At the outset it has been contended by counsel for the petitioner that the Executive Engineer had no authority in law to compute damages and it could only be computed pursuant to application of the provisions of Public Premises (Eviction of Unauthorised Occupants) Act pursuant to Section 7 thereof. However, learned Counsel for the respondent has contended that as per the fundamental rules respondent was liable to recover damages. There is no dispute about the proposition of law that as per fundamental rules respondent could have recovered damages if they could have found that the petitioner was in unauthorised occupation of the premises, which was given to him when he was in service. For determination and adjudication it was imperative on the part of the respondent to have served the petitioner with a show cause notice as to why he be not declared unauthorised occupant in the premises u/s 4 of the Public Premises (Eviction of Unauthorised Occupants) Act and thereafter Section 7 of the Act empowers the Estate Officer to calculate damages. Respondent having not taken recourse to either Section 4 or Section 7 of Public Premises (Eviction of Unauthorised Occupants) Act would not have levied damages unilaterally without affording any opportunity to the petitioner in accordance with law.

11. In light of the fact that in the present case neither any notice was issued to petitioner u/s 4 of the Act nor was any notice to show cause issued to him u/s 7 of the Act before deducting the said amount of alleged damages from the retiral dues of the petitioner, such an act of the respondent in levying damages on the petitioner unilaterally, without affording him an opportunity of hearing, and without taking recourse to the provisions of the Act cannot be sustained.

In the facts of the present case as well no proceedings had been initiated by the respondent against the petitioner under the Public Premises Act although a specific amount was quoted by the respondent towards the recovery of damages in terms of its policy.

9. Taking into consideration the aforesaid legal position and the arguments advanced by both the counsel for the parties, this Court is of the considered view that without taking recourse to the Public Premises Act, the action of the respondent in recovering the said damages from the salary of the petitioner is illegal and therefore the impugned order dated 07.09.2006 is hereby set aside. However, the respondent will be at liberty to proceed against the petitioner to recover the said damages under the Public Premises Act and if such proceedings are initiated by the respondent against the petitioner then it is directed that the Estate Officer shall decide the proceedings so initiated expeditiously within a period of six months from the date of appearance of the petitioner in the said case.

10. With the above directions, the petition is disposed of.