
(2010) 04 DEL CK 0351
In the Delhi High Court
Case No : WP (C) 8934 of 2003

Tirlok Singh

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 26-04-2010

Acts Referred:

Constitution of India, 1950 — Article 226
Public Premises (Eviction of Unauthorised Occupants) Act, 1971 — Section 7
Public Premises (Eviction of Unauthorised Occupants) Rules, 1971 — Rule 8

Citation : (2010) 04 DEL CK 0351

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : R.K. Saini, for the Appellant; Jatan Singh and Sudeep Sudan and Chetan Lokur, for Viraj R. Datar, for R-2, for the Respondent

Final Decision : Allowed

Judgement

Rajiv Sahai Endlaw, J.—The petitioner was employed and working as a Senior Gestetner Operator, Grade-I in this Court. The petitioner was allotted and occupying the official accommodation at Sadiq Nagar, New Delhi. The petitioner met with an accident which seriously injured him. The petitioner as such sought voluntary retirement and also sought compassionate appointment in this Court for his son. The said request of the petitioner was accepted and while granting compassionate appointment to the son of the petitioner, the petitioner was voluntarily retired from service. The son of the petitioner immediately on joining applied for allotment of Government accommodation/regularization of the allotment of the aforesaid house in Sadiq Nagar earlier allotted in the name of the petitioner, in his own name. Though the Directorate of Estates sanctioned ad hoc allotment of government accommodation to the son of the petitioner but no actual allotment was made. In the circumstances, the petitioner and his son continued to occupy the aforesaid house at Sadiq Nagar earlier allotted to the petitioner. It is the admitted position that the son of the petitioner was not being paid HRA since he was occupying government accommodation earlier allotted to

the petitioner.

2. The Directorate of Estates nevertheless asked the petitioner to pay market rent for overstaying in the accommodation earlier allotted to him. Another accommodation at Sadiq Nagar was allotted to the son of the petitioner after about 1/1 1/2 years. However, the Directorate of Estates demanded payment from the petitioner of Rs. 87,191/- for overstaying in the accommodation allotted to him, as a precondition for delivering the possession of the accommodation allotted to the son of the petitioner. It is the case of the petitioner that he had no option but to pay the said amount. The petitioner immediately thereafter filed this writ petition seeking refund of the said sum of Rs. 87,191/-.

3. Notice of the petition was issued to the respondents and Rule was issued on 9th February, 2004. The respondent No. 1 has filed a counter affidavit in which it is stated that the sum of Rs. 87,191/- was demanded and recovered from the petitioner in accordance with the rules, for overstaying in the accommodation inspite his voluntary retirement. The petitioner has in the petition given an instance of another employee who was allowed to continue in the accommodation allotted to him till the regularization of the allotment in the name of his son. The respondent No. 1 has sought to distinguish that case by contending that in the present case there was undue delay on behalf of the petitioner and his son.

4. On 20th January, 2010 the counsel for the respondent No. 1 sought time to take instructions as to whether the respondent No. 1 was prepared to either pay HRA to the son of the petitioner for relevant period or to waive the market rent charged from the petitioner. However, in spite of several opportunities thereafter, the counsel for the respondent No. 1 states that no instructions have been received in this regard.

5. Compassionate appointment was sought and granted to the petitioner. Ordinarily on such compassionate appointment, there should have been no delay in allotment of alternate accommodation to the son of the petitioner or in changing/regularizing the allotment of the accommodation from the name of the petitioner to the name of his son. There is absolutely no explanation whatsoever as to why the respondent No. 1 took 1/1 1/2 years in allotting accommodation to the son of the petitioner. Immediately after such allotment, the petitioner and his son shifted to the new accommodation. Though the respondent No. 1 has in the counter affidavit pleaded delay on the part of the petitioner and/or his son but no particulars in support of the said plea have been given. Else from a reading of the events, as set out in the petition and which are not disputed, no case of delay is made out.

6. This Court is of the opinion that the respondents cannot on the one hand withhold the HRA of the son of the petitioner for the reason of his occupying the government accommodation allotted to his father and at the same time seek to recover market rent from the petitioner for overstaying in the accommodation. It

was the duty of the respondent No. 1 to provide alternate accommodation immediately and for their own delay they cannot penalize the petitioner and his son. The action of the respondent No. 1 of insisting upon the petitioner paying the said market rent before the delivery of possession of the accommodation allotted to the son of the petitioner is also found to be arbitrary.

7. Though ordinarily this Court in the exercise of the writ jurisdiction would not direct payment of amounts but since in the present case the amount which is sought to be recovered is found to have been received by the respondent No. 1 by arm twisting the petitioner, this Court does not deem it expedient to relegate the petitioner to the remedy of filing a civil suit to recover the amount in question. The Supreme Court in *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*, *Union of India (UOI) and Others Vs. R. Reddappa and Another*, and *Ramesh Chandra Sankla Etc. Vs. Vikram Cement Etc.*, has held 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. It was held that the Constitution does not place any fetters on the exercise of the extraordinary jurisdiction of the High Courts under Article 226. 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 the injustice is found to have been done. It was yet further held that the restrictions on the exercise of power, self imposed or statutory then 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 refund of the licence fee at market rate which the petitioner was made to pay by arm twisting is directed, injustice would be done to the petitioner and his son. The counsel for the petitioner has assured that the son of the petitioner has not made and will not made any claim for the HRA not paid to him for that period.

8. There is another aspect of the matter. Though the claim of the respondent No. 1 is that the petitioner was in unauthorized occupation of the government accommodation allotted to him but the monies which were demanded from the petitioner and recovered in the manner aforesaid from him were assessed not by the Estate Officer in accordance with provisions of the Public Premises (Eviction of Unauthorised Occupants) Act 1971 but calculated in accordance with the so called "Rules". Section 7 of the Public Premises Act provides that where any person is, or has been in unauthorized occupation of any public premises, the Estate Officer having regard to such principles of assessment of damages as may be prescribed may assess the damages on account of the use and occupation of such premises and require that person to pay the damages within such time as may be prescribed. Once the Public Premises Act has prescribed the mode in which the damages for unauthorized occupation are to be assessed and recovered, they are to be assessed and recovered in that manner/mode only and

in no other. The assessment u/s 7 of the Act is a judicial/quasi judicial function. Rule 8 of the Rules framed in the Public Premises Act lay down the guidelines in this regard.

9. This Court on 5th March, 2010 had put the said question to the counsel for the respondent No. 1 and directed him to address on this aspect. No arguments to the contrary have been addressed. From the documents filed, it is not disclosed that any assessment as required to be done was done by the Estate Officer before making the demand for the aforesaid amount from the petitioner. This Court in Yugal Kishore v. Delhi Jal Board 140(2007) DLT 375, relying on an earlier unreported judgment of this Court held that without taking recourse to the provisions of the Public Premises Act the damages for unauthorized occupation could not have been levied unilaterally without affording any opportunity. The amount coercively recovered from the petitioner is thus found to be illegal for this reason also.

10. I have also considered whether the respondent No. 1 should be directed to pay interest to the petitioner on the amount from the date of the illegal recovery till the date of refund. However, I refrain from levying any interest in the hope that the parties would allow the matter to rest and not take it further.

11. The petition is therefore allowed. The respondent No. 1 is directed to refund to the petitioner the sum of Rs. 87,191/- recovered from the petitioner, within six weeks hereof failing which the said amount shall incur simple interest at 10% per annum till the date of payment/refund. In the circumstances, the parties are also left to bear their own costs.