
(2010) 01 DEL CK 0142

In the Delhi High Court

Case No : Writ Petition (C) 1845 of 2008

Union of India (UOI) and Others

APPELLANT

Vs

Ashwini Kumar Nim

RESPONDENT

Date of Decision : 21-01-2010

Acts Referred:

Citation : (2010) 01 DEL CK 0142

Hon'ble Judges : Sanjiv Khanna, J

Bench : Single Bench

Advocate : Jasbir Kaur, for the Appellant; Diwan Singh Chauhan, for the Respondent

Judgement

Sanjiv Khanna, J.—The proceedings for recovery of damages were initiated before the Estate Officer against the original allottee-Mr. Rama Nand and Mr. Ashwini Kumar Nim. It was alleged that Mr. Rama Nand had sublet the property No. 3A, Vasant Vihar, New Delhi and was receiving consideration in form of rent from Mr. Ashwini Kumar Nim.

2. The Estate Officer, however, dismissed the proceedings against Mr. Rama Nand and passed an order against Mr. Ashwini Kumar Nim directing him to pay Rs. 1,48,444/- as damages on account of unauthorized occupation of the property.

3. Mr. Ashwini Kumar Nim had filed an appeal before the learned Additional District Judge. Learned Additional District Judge has allowed the said appeal vide order dated 11th April, 2007. In this order, learned Additional District Judge has noticed that the charge of subletting was undisputed as Mr. Ashwini Kumar Nim had admitted that he was sharing the said premises with Mr. Rama Nand but had alleged that Mr. Rama Nand had cheated him by representing that he had obtained permission from the department. Mr. Ashwini Kumar Nim had further alleged that he had paid Rs. 5,000/- per month to Mr. Rama Nand.

4. Learned Additional District Judge has referred to SR No. 317-B-20(3), which stipulates that the officer, who sublets his residence shall do so at his own risk

and responsibility and shall be liable to pay licence fee and damages caused to the residence, etc. Reference is also made to the Government order dated 4th August, 1987 issued by the Ministry of Urban Development, Directorate of Estates stipulating claim/penalties for subletting of government accommodation and subsequent order of the Government of India dated 26th August, 1999, which stipulates that a government officer, who sublets the residence allotted to him will be liable to pay enhanced licence fee or damages ten times the normal licence fee. It further stipulates that the Government servant will be declared ineligible for allotment of residential accommodation and disciplinary proceedings for imposition of major penalty will be initiated against him.

5. Thus, it is clear from the aforesaid office orders that the original allottee is personally responsible to pay enhanced licence fee and damages, etc. and is liable to be declared ineligible for allotment of residential government accommodation for his remaining service.

6. Learned Additional District Judge in the impugned order has noticed that notices were issued to Mr. Rama Nand to appear before the Estate Officer as he had failed to pay arrears of licence fee/damages and he was called upon to show cause why Rs. 1,48,444/- should not be recovered from him. Notices were initially not issued to the respondent Mr. Ashwini Kumar Nim. In paragraphs 4.4 and 4.5 of the impugned order, it is recorded as under:

4.4 But so far as other liability as to payment of penal rent/damage rent is concerned, it is seen from the Estate Officer's record that as Sh. Rama Nand had failed to pay the arrears of licence fee/damage rent, the department requested the Estate Officer to initiate proceedings u/s 7 PP Act against Sh. Rama Nand. On receipt of department's request, the Estate Officer initiated the proceedings for recovery of damages under 7 PP Act against Sh. Rama Nand after recording his satisfaction as under:

...Copy of letter.... Dated 3.2.200(sic) from the Directorate of Estates to the effect that on cancellation of allotment of public premises 3-A, Vasant Vihar, New Delhi, w.e.f. 18.03.2004 and arrears amounting of Rs. 1,48,444/- are outstanding against Sh./Smt. Rama Nand as damage.... I am prima facie satisfied that...these amount arrears due as damages for the period of unauthorized occupation of the said premises.

It is further noted from the Estate Officer's record that notice dated 27.3.2006 under Sub-section (3) of Section 7 of PP Act was issued to Sh. Rama Nand, calling upon him to show cause as to why an order for recovery of damages amounting of Rs. 1,48,444/-, be not passed against him. Sh. Rama Nand was also directed to appear before the Estate Officer on 20.4.2006. It is further seen that subsequent notices dated 22.5.2006, 26.6.2006 and dated nil for 24.8.2006, also were issued to Sh. Rama Nand only. Thereafter, the matter was transferred to another Estate Officer. The said Estate Officer issued fresh show cause notice dated 22.8.2006 to Sh. Rama Nand as well as to the appellant herein, for

14.9.2006. There is nothing on record to show as to how and why subsequent notice was issued to the appellant also.

It is further observed that Sh. Rama Nand neither appeared before Estate Officer nor did he file any reply. The appellant herein, in response to the above said notice, had appeared before the Estate Officer on 14.9.2006 and had sought time to file objections. The matter was then adjourned to 05.10.2006 and thereafter to 09.11.2006 and to 07.12.2006. The appellant had filed written submissions before the Estate Officer, vide his letter dated 25.10.2006, pleading inter alia, that Sh. Rama Nand has cheated the appellant as well as the Department for pecuniary gain. Therefore, Sh. Rama Nand only is fully responsible u/s 7(2) PP Act.

4.5 I have also perused the impugned order. It is seen that the Estate Officer has observed that:

...Shri Rama Nand (allottee) did not bother to attend the hearing but Shri Ashwani Kumar Nim who has been impleaded as Opposite Party No. 2 responded and submitted detailed objections to the applicant's contention. The applicant's representative furnished replies to the objections of the Opposite Party and both were taken on record.

7. Learned Additional District Judge has stated that the Estate Officer has not dealt with the objections raised by Mr. Ashwini Kumar Nim in the reply filed before him and has not given any findings on the contentions and allegations made. It is held that the Estate Officer has passed the order in a mechanical manner. The learned Additional District Judge has also noticed that though initially proceedings for recovery of damages were initiated only against Mr. Rama Nand but subsequently notice was issued to Mr. Ashwini Kumar Nim but ultimately no order of recovery of damages was passed against the actual allottee. The Estate Officer has not specifically given any reason why he is not passing any order against the original allottee. Accordingly, the order passed by the Estate Officer has been set aside but with liberty to the petitioner to initiate appropriate action against the allottee for recovery of damages as per law. The impugned order is justified and requires no interference. It is clarified that in case the petitioner initiates appropriate proceedings against the original allottee, they will be at liberty to also make the respondent-Mr. Ashwini Kumar Nim a party to the said proceedings and make claim against him.

With the aforesaid clarification, the writ petition is disposed of.