

(2006) 02 DEL CK 0168
In the Delhi High Court
Case No : LPA 1667-69 of 2005

Union of India (UOI) and Others

APPELLANT

Vs

Ganeshi Bai

RESPONDENT

Date of Decision : 01-02-2006

Acts Referred:

Public Premises (Eviction of Unauthorised Occupants) Act, 1971 — Section 4, 5

Citation : (2006) 87 DRJ 601

Hon'ble Judges : Markandeya Katju, C.J.; Madan B. Lokur, J

Bench : Division Bench

Advocate : Rekha Palli, for the Appellant; B. Kishan, for the Respondent

Final Decision : Allowed

Judgement

Markandeya Katju, C.J.—This Writ Appeal has been filed against the judgment of the learned Single Judge dated 21.07.2005 by which he has allowed the Writ Petition.

2. Heard learned counsels for the parties and perused the record.

3. The facts of the case have been set out in detail in the impugned judgment of the learned Single Judge and hence we are not repeating the same except where necessary.

4. The petitioner is working as "Safaiwali" in Base Hospital, Delhi Cantt., and has been residing in government residence bearing No.61/8, M.H. Lines, Delhi Cantt., Delhi till 26.9.2003, which was allotted in the name of the petitioner by the respondent No.2, the Station Commander, Station Headquarters, Ministry of defense, Delhi Cantonment, by virtue of the petitioner being in Central Government service.

5. The petitioner was provided with the amenity of Electricity in the said premises with a separate meter. An allegation was made against her of misusing the electricity meter provided to her, which resulted in the cancellation of

allotment in respect of the premises in question with effect from 2.6.2003. It is alleged that she was not given a show-cause notice before the cancellation. The petitioner was then issued a show-cause notice u/s 4 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 dated 14.06.2003. Thereafter an Eviction Order was passed by the Estate Officer u/s 5 of the Public Premises Act, 1971 on 28.06.2003 vide Annexure P2. The petitioner filed an appeal before the Distt. Judge, Annexure P3 which was rejected on 22.9.2003 vide Annexure P4. Thereafter it is alleged that she has been evicted from the said government quarter on 29.09.2003.

6. By means of the Writ Petition she prayed for quashing of the cancellation of her allotment order and quashing of the Eviction Order and restoration of possession of the said accommodation to her or to give alternate accommodation.

7. A counter-affidavit was filed in the Writ Petition and we have perused the same.

8. In para 2 of the counter-affidavit it is stated that the petitioner was found illegally supplying electricity to near by Jhuggi Jhopri clusters from the said public premises during a surprise check on 02.06.2003. This illegal action of the petitioner was in contravention to Rule 17 of SRO 308/1978 dated 17.10.1978, which regulates the allotment of residences to the civilians in defense Services. Accordingly, allotment of the said public premises to the petitioner was cancelled and the petitioner was directed to vacate the said premises. She was given a show cause notice before cancelling her allotment, and she was present in person. However, she neither filed her reply nor led any evidence to rebut the allegation leveled against her regarding supply of electricity to the JJ Colony. After hearing the petitioner, the Estate Officer vide Order dated 28.6.2003 directed the petitioner to vacate the said premises. Her appeal against that order was dismissed by the learned ADJ. The said premises has been allotted to someone else.

9. Learned Single Judge in Para 13 of his judgment held that the Estate Officer has not given a proper hearing to the Writ Petitioner, in our opinion, this view is not correct. In this connection, it may be mentioned that by the show-cause notice dated 14.06.2003 the petitioner was asked to appear before the Estate Officer on 21.6.2003. However, she failed to appear and the case was adjourned to 28.06.2003. As stated in para 4 of the counter-affidavit the petitioner did appear before the Estate Officer on 28.06.2003 but only pleaded for pardon without filing any reply to the allegations or leading any evidence in her defense. Thus, it is not correct that opportunity of hearing was not given to the petitioner. The learned Single Judge in his impugned judgment has observed that the order of the Estate Officer dated 28.06.2003 has proceeded on a confession made by the petitioner, which she has denied. The learned Single Judge further observed that there is every possibility that the order had already been prepared by 28.6.2003 and only the formality of passing it in the presence of the petitioner was complied with. In our opinion, these are only surmises and conjectures of

the learned Single Judge, which cannot be sustained, as there is not material in support of the same. There is no reason to disbelieve the Estate Officer or the averment in the counter affidavit that the petitioner confessed to her guilt. There is nothing to show that the order dated 28.06.2003 had been prepared before hand.

10. We see no reason to disbelieve the averments in the counter-affidavit that the petitioner was found illegally supplying electricity to JJ clusters. Such an act cannot be condoned by misplaced sympathy.

11. A writ lies when there is error of law apparent on the face of the record. There was no such error of law in the orders of the Estate Officer or Appellate Authority.

12. For the reasons given above, the impugned judgment of the learned Single Judge is set aside and the Writ petition is dismissed.