

(2003) 07 GUJ CK 0052

In the Gujarat High Court

Case No : Special Civil Application No. 11260 of 2002

Union of India (UOI)

APPELLANT

Vs

Akhtarbegam

RESPONDENT

Date of Decision : 25-07-2003

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2003) 07 GUJ CK 0052

Hon'ble Judges : B.J. Shethna, J; Akshay H. Mehta, J

Bench : Division Bench

Advocate : M.G. Nagarkar, for Petitioner No. 1-2, for the Appellant; Jitendra Bharvad and B.G. Patani, for the Respondent

Final Decision : Dismissed

Judgement

B.J. Shethna, J.—Against the judgement and order dated 10.12.2001 passed by the Learned Central Administrative Tribunal, Ahmedabad (for short "the Tribunal") partly allowing Original Application No.585 of 1997, the petitioner - Union of India and the Divisional Railway Manager, Western Railways, Rajkot have filed this petition under Article 227 of the Constitution of India.

2. The husband of the respondent - Mrs. Akhtar Begam retired from service on 30.6.1983. He was given time to vacate the quarters upto 31.10.1983 but he did not vacate the same. Thereupon, he was declared to be in unauthorized possession of the quarter. By notice dated 28.3.1994, he was asked to vacate the quarter within 15 days, failing which penal rent was to be charged and proceeded under the Public Premises (Eviction of Unauthorized Occupants), Act. In spite of the notice, he did not vacate the quarter, therefore, the proceedings were initiated against him and the Estate Officer passed an order of forcible eviction on 9.11.1990. It was challenged by him before the City Civil Court, Ahmedabad in Appeal which was also dismissed on 4.4.1991. Ultimately, he vacated the quarter on 10.6.1992. Thus, for a period of almost 9 years, he remained in unauthorized occupation of the quarter for which penal rent of Rs. 95,568/- was

due against him. Thereafter, Shri Khan died in July, 1992 as stated by his widow Akhtar Begam who was personally present before the Court.

3. The Authority decided to adjust the amount of Rs. 24,648/- payable to the respondent towards the death-cum-retirement gratuity against the said penal rent and remaining amount of Rs. 70,921/- was sought to be recovered from the family pension of the respondent. Therefore, the said decision of the Authority was challenged by the respondent - Akhtar Begam before the Learned Tribunal by way of O.A.No.215 of 1995 wherein it was prayed that the amount of gratuity payable to her husband be released and appropriate directions be issued to the Authorities not to recover the penal rent from the family pension due and payable to her. However, the Learned Tribunal directed the respondent Akhtar Begam to approach the Authorities by way of representation. Accordingly, representation was made but the same was rejected on 30.6.1997.

4. Aggrieved of the aforesaid decision, the poor widow had to once again approach the Tribunal by way of O.A.No.585 of 1997 for quashing the decision of the Authority and to release the amount of gratuity with 18% interest p.a.. The Learned Tribunal by its impugned judgment and order dated 10.12.2001 allowed the said application and quashed the order dated 30.6.1997 passed by the Authority and directed the Authority to release the amount of gratuity and pay the same with 12% interest on it within 3 months from the date of the order. It also directed not to recover penal rent from the benefits payable to the widow. This order is challenged by the petitioners in this petition.

5. Both the Learned Counsel for the parties were absent. However, sole respondent - widow Akhtar Begam aged about 65 years was present. She has stated that she is not in a position to come again and again to the Court because of her old age and poor health. Today, with great difficulty, she has come to this Court with the help of her daughter Zeenat Ara. She requested this Court to decide the matter on merits. She has submitted before us that she is harassed after the death of her husband by the petitioners. Therefore, for once and all, the matter may be put to an end by deciding this petition on merits. Being Muslim, she cannot claim interest as per the command of the Holy Quran. Therefore, she submitted that part of the order awarding interest at the rate of 12% p.a. be set aside and the rest of the order be confirmed. We must state that Mr. Nagarkar for the petitioners was present in the Court but before the matter was called out, he left the Court and did not turn up because of the strike of the lawyers. But when other side, who was present in person, insisted for deciding the matter on merits, therefore, we have thought it fit to decide it on merits.

6. In absence of the Learned Counsel for the parties, we have gone through the impugned judgement and order passed by the Learned Tribunal partly allowing the petition of the respondent-original applicant and awarding interest at the rate of 12% p.a. Having carefully gone through the impugned judgement and order passed by the Learned Tribunal, we are of the considered opinion that the Learned Tribunal has not committed any jurisdictional error in partly allowing the

application and quashing and setting aside the impugned order dated 30.6.1997 withholding of Gratuity and recovery from other retirement dues and to release DCRG and other retirement dues withheld by them on account of damage rent and preventing recovery being made from the family pension of the respondent-original applicant and refunding the amount already recovered by them to the respondent-original applicant.

7. However, we are of the considered opinion that the permission granted by the Learned Tribunal in Para 12 of its order to take action for recovery of the damage rent from the respondent - original applicant under appropriate law through appropriate Forum, is required to be quashed as the respondent-applicant has let go 12% interest p.a. awarded by the Learned Tribunal on the amount of gratuity and other amount illegally recovered by the petitioners. Hence, the directions issued by the Learned Tribunal permitting the present petitioners to take action for recovery of damage rent from the applicant under appropriate law through appropriate forum is hereby quashed and set aside.

8. We must state that we would not have even interfered with 12% interest awarded by the Learned Tribunal in view of the judgement of the Honourable Supreme Court in case of Gorakhpur University Vs. Shitla Prasad Nagendra reported in AIR 2001 Supreme Court 2433. However, as stated earlier, the interest awarded at the rate of 12% p.a. by the Tribunal in favour of the respondent - applicant was not claimed and allowed to let go by the respondent - applicant, therefore, we are interfering with that part of the order passed by the Tribunal.

9. In view of the above discussion, this petition challenging the impugned judgement and order passed by the Learned Tribunal quashing and setting aside the impugned order dated 30.6.1997 passed by the Authority withdrawing Gratuity and directing the present petitioners to release DCRG and other retirement benefits wrongly withheld on account of damage rent and preventing the petitioners from recovering the amount of penal rent from family pension of the respondent-original applicant and directing them to refund the amount already recovered from the respondent - original applicant is hereby rejected. However, on the concession given by the respondent - original applicant, the part of the impugned judgement and award passed by the Learned Tribunal awarding interest at the rate of 12% on the amount of gratuity and other amount withheld by the petitioners is hereby quashed and set aside. As we have quashed and set aside the order, the part of the impugned order awarding interest at the rate of 12% p.a. to the respondent - applicant, therefore, permission granted by the Tribunal to the present petitioners to proceed against the respondent - applicant for recovering damage amount under the appropriate law through appropriate forum is hereby quashed and set aside. In view of the peculiar facts and circumstances of the case, it is directed that the chapter shall be treated as closed. Rule is made absolute to the aforesaid extent only with no order as to costs.