
(2002) 10 BOM CK 0077

In the Bombay High Court

Case No : Writ Petition No's. 3936 with 5983 of 2002

Union of India (UOI)

APPELLANT

Vs

R.K. Pathania

RESPONDENT

Date of Decision : 18-10-2002

Acts Referred:

Administrative Tribunals Act, 1985 — Section 14

Public Premises (Eviction of Unauthorised Occupants) Act, 1971 — Section 7

Citation : (2003) 1 ALLMR 239 : (2003) 3 BomCR 110 : (2003) 1 MhLj 516

Hon'ble Judges : Nishita Mhatre, J;H.L. Gokhale, J

Bench : Division Bench

Advocate : A.G. Rana and G.S. Kulkarni, in Writ Petition No. 3936 of 2002, Sanjay Jain and Supriya Dhaware, in Writ Petition No. 5983 of 2002, for the Appellant; Sanjay Jain and Supriya Dhaware, in Writ Petition No. 3936 of 2002, A.G. Rana, Senior Advocate and G.S. Kulkarni in Writ Petition No. 5983 of 2002, for the Respondent

Judgement

H.L. Gokhale, J.—The first Writ Petition, i.e., Writ Petition No. 3936 of 2002, is filed by Union of India against a Member of the Income Tax Settlement Commission. The second petition i.e., Writ Petition No. 5983 of 2002 is filed against Union of India by the same member (hereinafter referred to as "respondent"). Since both these petitions are concerning the same controversy viz., service quarters, both of them are being heard and decided together.

2. Mr. Rana, learned Senior Counsel, along with Mr. Kulkarni, learned Advocate, appears on behalf of Union of India and Mr. Jain appears for the respondent R. K. Pathania in both the matters. The writ petition No. 3936 of 2002 seeks to challenge the order dated 7-6-2002 passed by the Central Administrative Tribunal, Mumbai (hereinafter referred to as "C.A.T.") allowing the Original Application (O.A.) No. 448 of 2002 filed by the respondent. The second petition i.e. Writ Petition No. 5983 of 2002 also challenges a part of the same order dated 7-6-2002 and also the order dated 22-1-1998 passed by the Assistant Estate Manager of Union of India leading to the above Original Application before the

C.A.T. This petition was filed on 18-9-2002 but a copy thereof was given to the Counsel for the Union of India yesterday only. The Counsel for the Union of India has, therefore, proceeded on the basis of denial since writ petition No. 3936 of 2002 was to be heard forthwith as directed by the Apex Court. We would further like to add that during the course of hearing of these petitions, Mr. Jain tendered an amendment to the second petition. We have permitted the amendment so that his entire cause as perceived by him gets reflected in his petition.

3. The facts leading to these petitions are as follows :

The respondent has been in service of the Union of India (income tax Department) after retiring from the Armed Forces. He has been a Member of Income Tax Settlement Commission since December, 2001, prior where to, he was a Member of the Central Board of Direct Taxes. During that service, he was transferred from Mumbai to Delhi on 18-4-1995. He was required to vacate the premises then occupied by him, namely, the flat bearing No. E-35 situated in Hyderabad Estate, Nepean Sea Road, Mumbai. Under the relevant Rules, however, he was eligible to continue for a period of two months thereafter on a nominal rent. This was to facilitate appropriate arrangements for shifting and/or alternate accommodation. In the event, the person concerned remains in occupation of the particular flat thereafter also he is permitted to occupy the flat for further six months on compassionate ground though with a little higher rent.

4. As far as the Union of India is concerned, according to them, this period of eight months permissible for the respondent ended on 6-1-1996. The respondent, however, vacated the premises only on 17-5-1996. Occupation charges/damage rent was sought by the Union of India for this unauthorised continuation in occupation. The respondent carried that matter to the C.A.T. through Original Application No.608 of 1996. The C.A.T. exercised the jurisdiction under the Administrative Tribunals Act, 1985 and interfered with the order passed by the Estate Officer and directed the Estate Officer to hear the respondent once again and decide the appropriate amount. This order passed on Original Application No. 608 of 1996 was accepted by the Union of India and thereafter the respondent was heard by the officer concerned, i.e., one Shri N. G. Bhalerao, Assistant Estate Manager. He assessed the damages on the basis of the relevant rules and the recommendations of the C.P.W.D. Accordingly, depending upon the area of the flat, and the locality wherein it was located, namely, Nepean Sea Road, the monthly damage rent came to Rs. 53,489/-. The outstanding dues were accordingly, arrived at Rs. 2,34,395/-. The respondent, however, did not pay this amount as arrived at by the Assistant Estate Manager by his order dated 22-1-1998.

5. The respondent was subsequently transferred to Mumbai once again and on 14-2-2002, he was issued an allotment letter for a flat in Belvedere Mansion. That allotment order dated 14-2-2002, however, stated at the top of it that it was subject to the clearance of the licence fee dues. The then outstanding amount was informed to the petitioner by subsequent letter of the Assistant

Estate Manager dated 2-5-2002. The amount by that date came to Rs. 2,79,335/-.

6. Being aggrieved by this communication dated 2-5-2002 and also the earlier mentioned order dated 22-1-1998, the respondent filed another Original Application being O.A. No. 448 of 2002 before the C.A.T., again invoking the provisions of the Administrative Tribunals Act, 1985. In this O.A., he sought to set aside the communication dated 2-5-2002 vide prayer clause (a) and also a direction to issue the occupation slip. This O.A. came to be allowed by the order passed by the C.A.T. on 7-6-2002, which is challenged in this petition.

7. When this petition came up for hearing earlier before another Division Bench, the Division Bench sought to know as to how the damages were computed. An ad-interim stay was granted initially on 25-7-2002 but the same was subsequently declined by its order dated 8-8-2002. The petition was admitted, but Union of India was directed to comply with the order of C.A.T.

8. Being aggrieved by that order declining the interim relief Union of India carried the matter to the Apex Court. The Apex Court vide its order dated 23-9-2002 on the Petition for Special Leave to Appeal (Civil) bearing No. 16974 of 2002 directed this High Court to take up the hearing of the matter on 14-10-2002. The direction of the C.A.T. to deliver possession of the quarters to the respondent was stayed by the Apex Court. Accordingly, the writ petition No. 3936 of 2002 along with the cross petition No. 5983 of 2002 are being heard and decided with utmost priority. ,

9. Mr. Rana, learned Counsel for the petitioner, submitted that C.A.T. had no jurisdiction to look into this controversy relating to the public premises. A specific ground (g) has been raised in petition No. 3936 of 2002 that the matter clearly falls outside the purview of section 14 of the Administrative Tribunals Act, 1985. The submission of Mr. Rana was that the communication dated 2-5-2002 was based on the order of the Estate Manager dated 22-1-1998 and that order was clearly appealable under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (hereinafter referred to as the Public Premises Act). He pointed out that in fact in the impugned order, the C.A.T. has also accepted in paragraph 10 that the recovery of the disputed damage rent is a subject matter under the Public Premises Act. Mr. Rana, therefore, submitted that if that was so, the C.A.T. should not have passed the impugned order directing the Union of India to issue the occupation slip to the respondent.

10. Mr. Jain, learned Advocate for the respondent, on the other hand, submitted that it was a matter of service condition of the respondent to have this facility of accommodation. He drew our attention to the relevant rule of the Central Government. This rule SR-317-B-22 provides that an officer of a particular category and scale will be eligible for allotment of the residence of a particular type specified in the particular rule. Mr. Jain submitted that the definition of service matters under the Administrative Tribunals Act, 1985 was a wide

definition and the present dispute would squarely lie in the C.A.T. He submitted that in fact the C.A.T. had exercised this very jurisdiction earlier. The Union of India had accepted that decision and then arrived at the damage rent, though excessively.

11. Having heard both the Counsel, we have perused the definition of service matters u/s 3(q) of the Administrative Tribunals Act, 1985, which reads as follows:

(q) "service matters", in relation to a person, means all matters relating, to the conditions of his service in connection with the affairs of the Union or any State or of any local or other authority within the territory of India or under the control of the Government of India, or, as the case may be, of any corporation or society owned or controlled by the Government, as respects-

(i) remuneration (including allowances), pension and other retirement benefits;

(ii) tenure including confirmation, seniority, promotion, reversion, premature retirement and superannuation;

(iii) leave of any kind;

(iv) disciplinary matters; or

(v) any other matter whatsoever;

It is no doubt true that this is a wide definition and it covers all matters relating to the conditions of service of an employee. The question, however, is as to whether it was a condition of service of the respondent to get accommodation as a matter of right.

12. Mr. Jain drew our attention to another notification of the Central Government dated 19-5-2000 and the communication dated 14-9-1993 concerning the official accommodation for Vice-Chairman and Member of the Settlement Commission. The communication states that the members of this body are to be given government residential accommodation on a priority basis. Mr. Rana, however, maintained that this document as also SR-317-B-22 mentioned earlier do not make it a matter of right for the members of such a Settlement Commission to get accommodation. They undoubtedly are eligible to receive appropriate accommodation. They are to be given such accommodation with priority. But that does not mean a provision that they have to be given the accommodation even though they may be in arrears of occupation charges. Mr. Rana raised the question as to when such a person is in arrears of the occupation charges/damage rent, then also whether the Central Government is bound to provide accommodation to such a person. He submits that nobody can claim that this is a part of a condition of service of such high ranking officer. No prudent property owner would allow the tenant to re-enter his premises without clearing the arrears of occupancy charges and the same principle will apply even though Union of India is the property owner in our case.

13. We have carefully considered the rival submissions. Now, when we peruse the orders passed by the C.A.T., the very first paragraph of the order on O.A. No. 608 of 1996 states that common question had arisen for consideration of the C.A.T. as to whether in case of unauthorised occupation of government premises in the sense of government officers overstaying in the government quarters what should be the appropriate damage rent. Now if we see section 7 of the Public Premises Act, the power to require payment of rent or damages in respect of public premises vests with the Estate Officer and appeal therefrom lies to the District Judge u/s 9 of the said Act. Certainly, by implication this was a question outside the jurisdiction of the C.A.T. and vested with another authority. It is another matter that this first order is accepted by the Central Government and they have appointed an appropriate officer to hear and decide the damage rent. That by itself will not again confer the jurisdiction on the C.A.T. to repeat the same approach and continue to exercise the jurisdiction to challenge the order dated 22-1-1998 passed by the Estate Manager fixing the damage rent as also the subsequent communication raising the demand dated 2-5-2002. In our view, this was a matter which was squarely within the compass of the Public Premises Act. The payment of rent or damages in respect of public premises and appeal therefrom is an aspect which is squarely covered u/s 7 of that Act and that being so, the C.A.T. was clearly in error in exercising the jurisdiction which it did not have. The matter cannot be taken to C.A.T. by contending that providing quarters was a part of condition of service. As seen by us it is only a facility and not a matter of right to avail of the quarters and it is certainly not a condition of service to get quarters even when one is in arrears of occupation charges/damage rent.

14. Mr. Jain raised two more contentions. Firstly, he submitted that Mr. Bhalerao who decided the damage rent, was an Assistant Estate Manager and was not an Estate Officer, as required u/s 3 of the Public Premises Act r/w 3(b) thereon. As far as this submission is concerned, the only plea with respect to this grievance is said to be in ground (b) on page 21 of the cross writ petition filed by the respondent, namely, Writ Petition No. 5983 of 2002. This ground reads as follows:

"b) The order dated 22-1-1998 has been passed by the Assistant Estate Manager. The order passed by the Assistant Estate Manager is not appealable under the provision of Public Premises (Eviction of Unauthorised occupant) Act 1971."

This is not the same thing, as saying that Mr. Bhalerao, the officer who passed the order was not the Estate Officer. We have not been pointed out any document wherein this plea has been specifically raised. As such, we cannot permit it at the last moment.

15. Mr. Jain, appearing for the respondent in the first petition, submitted that the Central Government has to appoint an Estate Officer by a notification in the Official Gazette as required u/s 3 of the Public Premises Act. But then we do not find any such plea being raised in this petition and as stated earlier, since the petition is given across the bar to the Counsel for Union of India and since it is

sought to be heard along with another petition (which is made time bound by the Apex Court) the Counsel for the Union of India has proceeded on the basis of denial. We cannot, therefore, accept this submission which is not clearly raised in the cross petition that Mr. Bhalerao was not the Estate Officer as required under the law.

16. The second submission of Mr. Jain is that the damage rent charged by the Union of India is excessive and under the government communication dated 31-8-2001, wherein the allottee is reposted within a period of four months beyond permissible period of eight months, he is eligible to remain over there only on payment of double the normal licence fee and not the kind of damage rent which the Union of India has levied on the respondent. Mr. Rana, appearing for the Union of India on the other hand, submitted that this communication will not have any application inasmuch as what is relevant is that the actual date of transfer has to be seen and not the date on which the particular person joined at the place where he was transferred. Mr. Rana submitted that the damage rent for unauthorised occupation has to be paid. He drew our attention to the decision of the Apex Court in Shiv Sagar Tiwari Vs. Union of India and others, wherein the Apex Court was concerned, amongst others, with the question of waiver of penalty/damage for unauthorised occupation of government quarters. In para 71, the Court raised the question "Has the government any power to waive charges which have become payable as per Rules?" and in para 74, the Court observed thus:

"74. We will first deal with the reliance on FR 45-A-V(b) which permit waiver or reduction of the amount of "licence fee" to be recovered from any officer. This apparently would not take within its fold "penalty/damages:" reliable which becomes liable under the rules because of unauthorised occupation. When the aforesaid rule speaks of "licence fee," it refers to that fee which becomes chargeable on allotment of a Government quarter during the period of its valid occupation; and after deeming cancellation of the allotment what becomes payable is damages/penalty. FR 45-V(b) does not, therefore, permit waiver of penalty, according to us, despite strenuous submissions made by Shri Jain to the contrary."

In our view, the respondent may challenge this demand in an appeal before the forum under Public Premises Act if he is aggrieved. The C.A.T. had no jurisdiction to go into the legality of this question.

17. As far as the cross petition No. 5983 of 2002 is concerned, it seeks to challenge the order of the C.A.T. dated 7-6-2002 to the extent it holds that the question of damage rent was within jurisdiction of the authorities under the Public Premises Act. As stated by us in the order above, in our view, that part of this order is very much correct and, therefore, there is no substance in the second petition. As far as the challenge to the order of 22-1-1998 passed by Mr. Bhalerao is concerned, as pointed out by us above, it is an order u/s 7 of the Public Premises Act and an appeal is available against that order u/s 9 of that

Act. If the respondent is aggrieved by that order, he has to follow that appellate remedy.

18. In the circumstances, as far as the first petition that is Writ Petition No. 3936 of 2002 is concerned, we allow this petition and set aside the order passed by the C.A.T. directing the Union of India to issue the occupation slip to the respondent. As far as the second petition, namely, Writ Petition No. 5983 of 2002 is concerned, the same is dismissed.

19. We, however, note the submission of Mr. Jain that the rate at which the damage rent is charged requires examination. He submitted that because of the examination of children the overstay had become necessary and was in fact permitted. Mr. Rana, however, pointed out that it was not beyond the permissible period. It is stated on behalf of the Union of India that charging is on the basis of the Rules and it is as per the recommendations of the C.P.W.D. Mr. Jain, on instructions, has stated that to avail of the appellate remedy, and in the meanwhile to occupy the premises, if directed by the Court, the respondent will deposit with Union of India (to the extent not paid so far) the difference between Rs. 2,79,335/- and Rs. 2,34,395/- and the occupation slip may be issued to him on that amount being deposited. This is further with a rider that secondly every month the amount of Rs. 10,000/- may be deducted from the salary of the respondent and on filing such an undertaking, he be permitted to file the appeal under the Public Premises Act before the appellate authority. (The respondent has still to put in service of 18 months before he retires). He further stated that if directed by the Court, the third part of the balance amount will be paid by the respondent to Union of India in the event the decision goes against the respondent.

20. We accept the suggestion of Mr. Jain. It will be open to the respondent to file an appeal against the order of Mr. Bhalerao, Assistant Estate Manager, dated 22-1-1998 provided the appeal is filed within 30 days. Mr. Kulkarni fairly states on instructions that the plea on the basis of limitation will not be raised if the appeal is so filed within 30 days from today. We permit the respondent to deposit at the earliest the difference between Rs. 2,79,335/- and Rs. 2,34,395/- with Union of India (to the extent the balance is remaining unpaid). It is only on that amount being deposited and the respondent filing an affidavit containing an undertaking to this Court within one week from today (with a copy to Union of India) that he agrees to the deduction of Rs. 10,000/- per month by Union of India (and the amount to be transferred to the particular Estate Department towards this particular claim) that the occupation slip will be issued to the respondent. In addition, he will further state in the undertaking that the balance amount at the end of the decision by the appellate authority shall be paid by the respondent within four weeks thereafter (or may be deducted from the permissible portion of his retirement dues) subject to further remedies that would be available to him. Thus, we make it clear that only in the event the respondent files an undertaking as above within one week and only if he clears

the amount as stated above (i.e., Rs. 2,79,335 Rs. 2,34,395/-) to begin with, that the Union of India will issue the occupation slip.

21. The amount of Rs. 10,000/-per month will be deducted from the month in which the respondent is issued the occupation slip beginning from the salary paid in the subsequent month. In the event, the respondent does not file this undertaking within one week as stated above, the Union of India will not be bound to issue the occupation slip. In the event, the respondent succeeds in the appeal, the amount deposited will be adjusted as per the orders to be passed by the appellate Court.

22. Both the petitions stand disposed of in the above terms. Parties will bear their own costs.

Certified copy expedited.