

(2008) 02 GUJ CK 0054

In the Gujarat High Court

Case No : Letters Patent Appeal No. 368 of 2007 in Special Civil Application No. 2494 of 1996 and Civil Application No. 4630 of 2007 in Letters Patent Appeal No. 368 of 2007

V.N. Solanki

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 06-02-2008

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2008) 3 GLH 110

Hon'ble Judges : R.M. Doshit, J;K.M. Thaker, J

Bench : Division Bench

Advocate : D.P. Vora, for the Appellant; M.L. Shah, Asst. Government Pleader for Respondent 1, for the Respondent

Final Decision : Dismissed

Judgement

R.M. Doshit, J.—Heard the learned advocates.

2. This Appeal preferred under Clause 15 of the Letters Patent arises from the judgment and order dated 8th November, 2006 passed by the learned Single Judge in above Special Civil Application No. 2494 of 1996. The appellant before this Court is the writ petitioner, a retired employee of the State Government.

3. The appellant was appointed as Assistant Lecturer in L.D. Engineering College, Ahmedabad, a Government college, in the year 1972. Pursuant to his employment, in the year 1973 he was allocated residential quarter No. 39/4 in the Government Colony known as SL Colony. By Resolution dated 18th February, 1975, the State Government proposed a scheme for disposing of the residential quarters in the SH and SL Colony on the basis of higher purchase to the Government servants in occupation of such quarters as on 22nd June, 1972. The occupants of the said quarters who were not benefited under the said higher purchase scheme demanded that the residential quarters in their possession be allocated to them on higher purchase basis. The said request was turned down

by the State Government. Feeling aggrieved, the appellant and such other occupants preferred Special Civil Application No. 980 of 1980 and other writ petitions before this Court under Article 226 of the Constitution of India. Pending the said writ petitions, interim relief was granted against the dispossession of the writ petitioners. The said writ petitions came to be dismissed on 7th November, 1987. Feeling aggrieved, the said writ petitioners preferred appeals before the Hon''ble Supreme Court. Pending the said appeals, by order dated 18th April, 1988, protection against dispossession was granted as under:

Pending the hearing and final disposal by this court of the appeal above mentioned, status-quo obtaining between the parties herein on this the 18th day of April, 1988, with regard to the possession of the flats shall continue and whosoever is in possession shall continue to remain in possession and there shall be no further allotment.

4. The said appeals came to be dismissed by the Hon''ble Supreme Court on 14th December, 1994. The Hon''ble Supreme Court held that, Though some of them managed to remain in possession, they cannot claim right to allotment under hire purchase scheme. Therefore, the High Courts has rightly considered that when category (iii) employees were excluded on the ground that they shifted their residence from Pahari to Gandhinagar, the same parity should be applied to category (vi) employees who have been transferred from the capital to the districts.

5. In these circumstances, we do not find any illegality in excluding employees of categories (iii) and (vi) for allotment under higher purchase scheme; Thus, the claim of the appellant for allotment of the quarter under the higher purchase scheme came to be rejected. Nevertheless, the appellant has continued to occupy the said quarter till the date.

6. Pending proceedings before the Hon''ble Supreme Court, in the year 1990, the appellant came to be transferred from Ahmedabad to Government Engineering College at Morbi. Ordinarily, on his transfer out of Ahmedabad, the appellant would be required to vacate the residential quarter allotted to him at Ahmedabad but as the interim order made by the Hon''ble Supreme Court was operating, he continued to occupy the said residential quarter. After his re-transfer to Ahmedabad in the year 1996, he did not make formal application for allotment of a residential quarter. He continued to possess and occupy the same quarter till he retired from service in the year 2004 and even till today.

7. By order dated 19th March, 1996 the State Government directed that since his transfer to Morbi, the appellant was in illegal occupation of the residential quarter at Ahmedabad. He was, therefore, required to pay rent at the market rate of Rs. 800/- per month. For the period from 15th March, 1990 to 29th February, 1996 such rent was calculated to be Rs. 57,200/-. It was further directed that monthly rent of Rs. 800/- be recovered from the appellant till he continued to occupy the said quarter. Feeling aggrieved, the appellant preferred above Special Civil

Application No. 2494 of 1996 under Article 226 of the Constitution. We are informed that pending the writ petition, there was a stay against recovery of market rent pursuant to the impugned order dated 19th March, 1996. The said writ petition has been dismissed by the impugned judgment dated 8th November, 2006. Therefore, the present Appeal.

8. Mr. Vora has appeared for the appellant. He has submitted that the learned Single Judge has erred in not considering the interim order made by the Hon''ble Supreme Court pending the appeals before it. As the appellant had continued in possession of the residential quarter at Ahmedabad under the protection granted by the court, he cannot be said to be in unauthorized occupation of that quarter. Nor can he be asked to pay rent higher than the nominal rent, which he was required to pay under the terms and conditions of the allotment of the quarter.

9. The learned Single Judge has noted that while the appellant continued to occupy the residential quarter at Ahmedabad, he also claimed House Rent Allowance at Morbi. Further, after his transfer from Morbi to Ahmedabad in 1996 he did not pay even the nominal rent of Rs. 89/- but a sum of Rs. 50/- was deducted from his salary.

10. We are unable to accept the arguments advanced by Mr. Vora. It should be noted that though the Court had granted protection against dispossession, no order was made in respect of the rent payable. Further, the said protection also came to be vacated on 14th December, 1994 when the appeal preferred by the petitioner was dismissed by the Hon''ble Supreme Court. We are, therefore, of the opinion that the appellant was required to pay rent in accordance with the rules so long as he continued to occupy the Government quarter. True, while in service at Ahmedabad, he was supposed to pay nominal rent which was Rs. 88.60 ps. However, once he was transferred out of Ahmedabad, if he continued to occupy the residential quarter at Ahmedabad, he was required to pay rent at economic/market rate under the existing Government policy reflected in the Government resolution dated 5th June, 1975 as modified from time to time.

11. It is not in dispute that the State Government allocates residential quarters to its servants on rent, on the agreed terms and conditions, at nominal rate. Under the said terms and conditions, the concerned servant is permitted to occupy the residential quarter allotted to him so long as he is in Government service at that place. In other words, when such servant is transferred to another place or his service is terminated on account of superannuation, discharge or on disciplinary grounds, he is supposed to vacate the quarter allotted to him. His continued occupation of the concerned quarter thereafter would be illegal. However, more often than not, the Government servants continue to occupy quarter in their possession, without the permission of the concerned authority. To meet such a situation, the State Government has under its resolution dated 5th June, 1975, as modified from time to time, resolved to recover rent at economic/market rate for continued possession of the Government quarter after the authorized period. We have noticed that though the Hon''ble Supreme Court had

protected the appellants before it against dispossession, no order was made in respect of the rent payable by the occupants of the concerned quarters. In our opinion, in absence of a specific order made in respect of rent, the terms and conditions of allocation of quarter shall prevail. The appellant was liable to continue to pay nominal rent while he was serving at Ahmedabad and the rent at market rate since he was transferred to Morbi. The impugned order dated 11th March, 1996 made by the State Government for recovery of rent at the market rate from the appellant for the period from 15th March, 1990 to 29th February, 1996 and further till he continued to occupy the said quarter is in consonance with the existing policy of the State Government. The same has rightly been upheld by the learned Single Judge.

12. For the aforesaid reasons, the Appeal is dismissed in limine. Civil Application stands disposed of.