
(2007) 04 DEL CK 0149

In the Delhi High Court

Case No : Writ Petition (C) No. 18750 of 2005

Yugal Kishore

APPELLANT

Vs

Delhi Jal Board

RESPONDENT

Date of Decision : 19-04-2007

Acts Referred:

Public Premises (Eviction of Unauthorised Occupants) Act, 1971 — Section 14, 2, 4, 7

Citation : (2007) 140 DLT 375 : (2007) 2 ILR Delhi 76

Hon'ble Judges : Hima Kohli, J

Bench : Single Bench

Advocate : Keshav V. Hegde, for the Appellant; Amita Pandey and D.K. Tiwari, for the Respondent

Final Decision : Disposed Off

Judgement

Hima Kohli, J.—The present petition has been filed by the petitioner praying inter alias for issuance of a writ, order or direction in the nature of mandamus commanding the respondent to refund an amount of Rs. 20,237.70/- , alleged to have been illegally recovered from the petitioner along with an interest @18% p.a., from his retiral benefits on account of damages assessed towards use and occupation of government accommodation.

2. Facts necessary for deciding the present petition are as follows. The petitioner joined the Delhi Water Supply and Sewage Disposal Undertaking, predecessor in interest of the respondent Delhi Jal Board, in the year 1956. The petitioner was allotted Quarter No. 111, Water Works No. 2, Chandrawal, Delhi for residence. The petitioner was due to retire on 30.4.1997, however, having failed to make any alternate arrangement, he made a representation to the respondent to permit him to stay in the aforesaid quarter after his retirement. The respondent vide Office Order No. 84 dated 12.05.1997, informed the petitioner that the Competent Authority had approved his request and allowed him to stay in the said premises till 31.08.1997, on payment of normal license fee. Thereafter vide letter dated 28.08.1997, the petitioner again requested the respondent to further

extend the time to vacate the quarter till 31.12.1997, but the said request was declined by the respondent not being permissible under the Rules. The petitioner vacated the said premises on 28.02.1998 and handed over the possession to the respondent. Meanwhile, the respondent vide letter dated 19.08.1998, intimated the petitioner that a sum of Rs. 20,237.70/- had been deducted from his retiral benefits, which action of the respondent the petitioner seeks to assail by way of the present petition.

3. It is the case of the petitioner that since negotiations for the marriage of the petitioner's daughter was at an advance stage, Therefore, he requested the respondent to extend the time to vacate the said premises till 31.12.1997, and having received no reply to the same, he deemed his request to have been allowed by the respondent. Learned Counsel for the petitioner contended that the action of the respondent in deducting the said amount as damages from the retiral dues of the petitioner, is absolutely arbitrary and unlawful in view of the fact that neither any notice of the alleged damaged was served upon the petitioner, nor any proceedings were initiated under the Public Premises Act (Eviction of Unauthorized Occupants) Act (hereinafter referred to as "the Act").

4. Learned Counsel for the petitioner stated that the case of the petitioner is squarely covered by the judgment dated 23.01.2001 rendered by a Single Judge of this Court in the case of Kanhaiya Lal Yadav v. M.C.D. and Ors. in WP (C) No. 5092/1998, wherein it was held that though there is no dispute about the proposition of law that as per fundamental rules, the respondent therein could have recovered damages if they found that the petitioner therein was in unauthorized occupation of the premises which were given to him when he was in service, but the respondent could not have levied damages unilaterally, without affording any opportunity to the petitioner in accordance with law.

5. Placing reliance on the aforesaid judgment, it was submitted by the counsel for the petitioner that the petitioner could not have been declared an unauthorized occupant, without issuing notice u/s 4 of the Act and without initiating proceedings under the Act. It was further submitted that no damages could be deducted from the retiral dues of the petitioner unless such alleged damages were quantified and assessed in accordance with the provision of Section 7 of the Act and a show cause notice to the said effect was issued.

6. On the contrary, learned Counsel for the respondent stated that necessary intimation regarding cancellation of government accommodation had been duly communicated to the petitioner vide office order dated 24.12.1997, and that merely because no reply was sent to the letter of the petitioner dated 28.08.1997, for extension of time, the same could not be deemed to be an automatic permission for extension of time to vacate the quarter till 31.12.1997. It was submitted that the action of the respondent in recovering the damages from the petitioner for not having vacated the said premises after 31.08.1997, was Therefore, neither arbitrary nor illegal. It was averred that the damages had been levied and recovered as per the Rules and there was no question of

refunding the same.

7. I have heard the counsels for both the parties and have perused the records, including the pleadings of the parties and the documents relied upon by them. It is pertinent to mention at the very outset that vide order dated 21.02.2007, an adjournment was granted at the request of the counsel for the respondent so as to allow her to obtain instructions from her client and produce the records relating to the petitioner, particularly the records of the proceedings, if any, initiated by the petitioner under the Act, before raising a demand of Rs. 20,237 on the petitioner towards recovery of licensee fee/damage charges against the government accommodation, stated to have been occupied by the petitioner unauthorisedly after 31.8.1997. However, the counsel for the respondent informed the Court under instructions from her client that no such proceedings were initiated under the Act against the petitioner before deducting the said amount from the retiral benefits of the petitioner.

8. The limited question that arises for consideration in this petition is that whether the entire proceedings with regard to deduction of the said amount from the retiral dues of the petitioner is vitiated on account of the same having been made unilaterally and without initiating any proceedings under the Act.

9. A comprehensive procedure has been prescribed under the Act for eviction of unauthorised occupants from public premises and for incidental matters including recovery of rent/damages in respect of public premises. Unauthorised occupation has been defined in Section 2(g) of the Act to mean occupation of public premises by any person without any authority and includes the continuance in occupation by any person of the public premises after the authority under which he was allowed to occupy the premises in question has expired. The Estate Officers are empowered to issue show cause notice to the unauthorized occupants as per the provision of Section 4 of the said Act and after considering the reply and after personal hearing, if any, the Estate Officer is empowered to take possession of the public premises. He is further empowered to order for payment of rent or damages in respect of premises under unauthorized occupation as per the provision of Section 7 of the said Act. Admittedly, the provisions of the Act were not invoked by the respondent before raising a demand on the petitioner, and deducting a sum of Rs. 20,237.70/- from his retiral benefits.

10. Reliance has rightly been placed by the counsel for the petitioner on the judgment rendered by this Court in the case of Kanhaiya Lal Yadav (supra), wherein it has been held as under:

Aggrieved by the order passed by the respondent on 21.09.1992 for recovery of license fee/damages, the petitioner has filed the present petition. At the outset it has been contended by counsel for the petitioner that the Executive Engineer had no authority in law to compute damages and it could only be computed pursuant to application of the provisions of Public Premises (Eviction of Unauthorised

Occupants) Act pursuant to Section 7 thereof. However, learned Counsel for the respondent has contended that as per the fundamental rules respondent was liable to recover damages. There is no dispute about the proposition of law that as per fundamental rules respondent could have recovered damages if they could have found that the petitioner was in unauthorised occupation of the premises, which was given to him when he was in service. For determination and adjudication it was imperative on the part of the respondent to have served the petitioner with a show cause notice as to why he be not declared unauthorised occupant in the premises u/s 4 of the Public Premises (Eviction of Unauthorised Occupants) Act and thereafter Section 7 of the Act empowers the Estate Officer to calculate damages. Respondent having not taken recourse to either Section 4 or Section 7 of Public Premises (Eviction of Unauthorised Occupants) Act would not have levied damages unilaterally without affording any opportunity to the petitioner in accordance with law.

11. In light of the fact that in the present case neither any notice was issued to petitioner u/s 4 of the Act nor was any notice to show cause issued to him u/s 7 of the Act before deducting the said amount of alleged damages from the retiral dues of the petitioner, such an act of the respondent in levying damages on the petitioner unilaterally, without affording him an opportunity of hearing, and without taking recourse to the provisions of the Act cannot be sustained. It is relevant to note here that even the order dated 24.12.1997 issued by the respondent to the petitioner called upon the petitioner to vacate the accommodation in question failing which he was warned that action would be initiated against him under the Act for eviction. Thus, it cannot be contended by the respondent that it was empowered to assess damages payable by the petitioner, unilaterally, without resorting to the provisions of the Act, as also recover the same, contrary to the provisions of Section 14 of the Act.

12. In this view of the matter, the letter of the respondent dated 19.08.1998, by which the petitioner was conveyed that a sum of Rs. 20,237.70/- was being deducted from his retiral benefits, is quashed. The respondent is directed to refund the aforesaid amount to the petitioner within four weeks. In case the said amount is not refunded within the aforesaid period, the respondent shall be liable to pay interest to the petitioner on the said amount at the rate of 8% p.a., till the amount is released to him. However, liberty is granted to the respondent to proceed against the petitioner in accordance with law and any deductions or recoveries towards damages/ penal rent, shall be made by the respondent only after appropriate orders are passed by the competent authority under the Act. The writ petition is disposed of accordingly. The parties are left to bear their own costs.