

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **W.P.(C) 2384/2002**

Date of decision : 14.09.2009

IN THE MATTER OF :

RAMESH MASSAND

..... Petitioner

Through: Mr. R.K. Saini, Advocate with
petitioner in person.

versus

DIRECTOR OF ESTATES & ORS.

..... Respondents

Through: Mr. Abhishek Aggarwal, Advocate for
Mr. Jatan Singh, Advocate

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*** HON'BLE MS.JUSTICE HIMA KOHLI**

1. Whether Reporters of Local papers may be allowed to see the Judgment? No.
2. To be referred to the Reporter or not? No.
3. Whether the judgment should be reported in the Digest? No.

HIMA KOHLI, J. (ORAL)

1. The present writ petition is directed against the order dated 18.03.2002 passed by the learned ADJ in an appeal preferred by the petitioner under Section 9 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (hereinafter referred to as '**the Act**'), against the

order dated 26.07.2001 passed by the Estate Officer, holding the petitioner to be an unauthorized occupant and directing him to vacate the premises in question. By the impugned order, the learned ADJ dismissed the appeal of the petitioner and upheld the order of the Estate Officer. Aggrieved by the aforesaid dismissal order, the petitioner has preferred the present writ petition.

2. Briefly stated, the facts of the case are that on 18.05.1985, the petitioner, being a Government servant, was allotted a flat on the ground floor, bearing No. D-I/7, Lodhi Colony, New Delhi. It is the case of the petitioner that besides the main residential premises, a servant quarter was also allotted to the petitioner. In this regard, reliance is placed upon the occupation report of the Central Public Works Department (CPWD), enclosed as Annexure P-2 to the writ petition, which refers not only to the main house, but also to a servant quarter, handed over to the petitioner. In the year 2000, a notice dated 30.08.2000 was issued by respondent No. 1 to the petitioner calling upon him to hand over the vacant portion of the servant quarter, on the ground that the same was in his possession unauthorisedly. The petitioner replied to the aforesaid notice vide letter dated 21.09.2000, intimating respondent No.1 that the servant quarter in question was attached to the main residential premises and was allotted to him from the

very beginning. However, the respondent No.1 was not satisfied with the reply of the petitioner and issued him a notice dated 27.09.2000, cancelling the allotment of not only the servant quarter, but the residential premises as well, w.e.f. 15.09.2000. Thereafter, the respondent No.1 filed a petition before respondent No.2, for eviction of the public premises. A notice under Section 4 of the Act was issued to the petitioner by respondent No. 2/Estate Officer on 29.09.2000. The petitioner replied to the said notice and contested the petition, preferred by respondent No. 1. After permitting the parties to adduce evidence, arguments were addressed before the Estate Officer, who passed an eviction order dated 26.07.2001, holding the petitioner to be an unauthorized occupant and calling upon him to vacate the public premises within 15 days from the date of publication of the order.

3. Aggrieved by the aforesaid order, the petitioner preferred an appeal under Section 9 of the Act before the Appellate Authority, which was dismissed by the impugned order dated 18.03.2002, thus compelling the petitioner to file the present writ petition. Vide order dated 16.04.2002, notice was issued in the writ petition and dispossession of the petitioner from the premises in question was stayed. The said order was made absolute on 01.11.2002 when *Rule* was issued in the writ petition.

4. Counsel for the petitioner submits that while passing the impugned order dated 18.03.2002, the learned ADJ erred in observing that the petitioner had "somehow" taken possession of the servant quarter claiming it to be attached with the quarter allotted to him. The petitioner is also aggrieved by the findings in the impugned order to the effect that it was disputed by the respondents that the servant quarter was allotted alongwith the main residential premises to the petitioner. Counsel for the petitioner states that the aforesaid findings are contrary to the evidence on the record. He draws the attention of this Court to the order of the Estate Officer, wherein the deposition made by Shri S.B. Shukla, AE, CPWD, was taken note of and it was recorded that the aforesaid witness had stated that the servant quarter was allotted to the respondent (petitioner herein).

5. A perusal of the order of the Estate Officer dated 26.07.2001 bears out the aforesaid contention of the counsel for the petitioner. In fact, the order dated 26.07.2001 reveals that the aforesaid witness, who appeared on behalf of the respondent No.1, had produced the relevant records before the Estate Officer to establish that the servant quarter was allotted to the petitioner. Therefore, the observation made in the impugned order dated 18.03.2002 to the effect that the petitioner had "somehow" taken possession of the servant quarter is contrary to the records produced

before the Estate Officer. Similarly, the observation made in the appellate order to the effect that it was disputed by the respondent No.1 that the servant quarter was allotted alongwith the main residential premises to the petitioner, is contrary to the aforesaid observations made by the Estate Officer in his order dated 26.07.2001.

6. The other contention raised on behalf of the petitioner is that without admitting that the petitioner had unauthorisedly occupied the servant quarter in question, at best, the respondent could have initiated action against the petitioner to evict him from the servant quarter in question but not from the residential quarter, which was legally allotted to the petitioner and was being occupied by him with the permission of the respondents. He states that the notice dated 29.09.2000 issued by the Estate Officer in respect of the entire premises in question was therefore illegal and was liable to be set aside on account non-application of mind and for the reason that the respondent No. 1 had at no point of time held the petitioner to be in unauthorized occupation of the entire premises. It is, therefore, stated that even the notice of cancellation of the premises in question dated 27.09.2000, issued by respondent No. 1, was bad in law as it was not the case of the respondent No.1 while issuing the notice dated 30.08.2000, that the petitioner was in 'unauthorized occupation' of the

residential premises in question.

7. The aforesaid submission of the counsel for the petitioner is borne out by a perusal of the notice dated 30.08.2000 issued by respondent No. 1 to the petitioner. The subject matter of the said notice refers to "unauthorized occupation of servant quarter meant for Type IV Quarter in D1 Block, Lodhi Colony". The respondent could not have expanded the scope of the proceedings under the Act to include the entire residential premises in question allotted to the petitioner, when there was no challenge to the occupation thereof by the petitioner. At best, the respondent could have initiated action against the petitioner limited to his occupation of the servant quarter which as per respondent No.1, was unauthorized. Even then, the case for unauthorized occupation of the servant quarter is not established against the petitioner in the light of the evidence on the record, particularly, the deposition of Shri S.B. Shukla, AE, CPWD, as also the Occupation Report dated 18.05.1985 (Annexure P-2), which has remained uncontested by the respondents.

8. The aforesaid position as brought out from the documents on the record as also the observation of the Estate Officer in his order dated 26.7.2001, is not denied on behalf of the respondents. Counsel for the

respondents has not been able to point out any document on the record to establish a case to the contrary, or to establish the fact that while occupying the residential quarter allotted to him by the CPWD, the petitioner forcibly took possession of the servant quarter in question.

9. In view of the aforesaid facts and circumstances and the evidence on the record, the impugned order dated 18.03.2002 cannot be sustained. As a result, the writ petition is allowed and the eviction order dated 26.07.2001 and the appellate order dated 18.03.2002 are set aside.

HIMA KOHLI,J

SEPTEMBER 14, 2009
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