

+ W.P.(C)No.550/2009Date of Decision : 29th July, 2010

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RATTAN LAL

..... Petitioner

Through : Mr. V. Venkatraman, Adv.

versus

UOI & ORS.

..... Respondents

Through : Mr. Ankur Chhibber, Adv.

CORAM :-**HON'BLE MS. JUSTICE GITA MITTAL****HON'BLE MR. JUSTICE J.R. MIDHA**

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| 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 |

GITA MITTAL, J. (Oral)

1. The petitioner assails order dated 23rd September, 2008 issued by the Deputy Inspector General of Police purporting to be the calculation of damages imposed upon the petitioner for unauthorized use and occupation of the public premises being in the nature of a Government family quarter bearing No.29, Block-8, Type-II, Jharoda Kalan, Delhi between the period 1st June, 1993 till 8th April, 2008 for a sum of Rs.7,89,475/-. The challenge by the petitioner is premised on a basic contention that the calculations have been effected in violation of the specific orders dated 3rd September, 2008 passed in WP(C)No.1114/1996 which had been earlier filed by the

petitioner.

2. The dispute is in a narrow compass. It is not disputed that the petitioner who is an employee of Central Reserve Police Force ('CRPF' hereafter) was posted at Group Centre, Delhi on 2nd February, 1986 and was allotted the said quarter on 21st October, 1987. The petitioner came to be transferred out of Delhi on 13th September, 1990 whereupon he was permitted extension of retention of the said quarter which continued up to 31st May, 1993.

3. On account of the petitioner's failure to vacate the premises, the respondents issued the notice dated 23rd August, 1993 calling upon him to vacate the premises. Upon his failure to vacate the premises, the respondents treated him as if he was in unauthorized occupation of the public premises and imposed damages for continued use and occupation.

4. In this background, the petitioner had earlier filed a writ petition in this court being WP(C)No.1114/1996 praying for quashing of the order whereby he was directed to vacate the said quarter as well as imposition of damages and the recovery for the continued unauthorized use and occupation of the said quarter. The petitioner in this case had placed reliance on an order dated 14th August, 2008 passed in respect of a person who was similarly situated as the petitioner.

5. The facts leading to the present proceedings before us may be summed up as follows:-

(i) The petitioner was originally allotted the public

premises and came into possession lawfully. The respondents had also granted extension of continued occupation by the petitioner on three occasions.

- (ii) The petitioner assailed the order declaring him an unauthorized occupant as well as imposition of recovery of damages, by way of WP(C)No.1114/1996, and an interim order dated 18th March, 1996 was passed in his favour directing stay of eviction and recovery till the next date of hearing. This interim order was continued till final disposal of the writ petition on 3rd September, 2008.
- (iii) At no point of time was any effort made by the respondents to seek vacation of the interim order or modification of violation thereof.
- (iv) The petitioner has claimed to have continued in occupation of the premises under the shield and protection of the interim order dated 18th March, 1996.

6. During the pendency of WP(C)No.1114/1996, the petitioner came to be posted in and out of Delhi on several occasions. The respondents have set out the following postings details of the petitioner in their counter affidavit which are not disputed:-

Unit	From	To	Location
67 Bn	29.9.90	13.10.94	Srinagar/Sikkim
55Bn	24.10.94	4.7.2000	Abohar (Punjab) 1994

			Srinagar 1995 – 2.1997 Lalbasha (Jaipur) 3.97 – 7.2000
88(M) Bn	5.7.2000	30.9.2004	Delhi
55 Bn	5.10.2004	4.8.2005	Srinagar
GC, Delhi	5.8.2005	30.9.2007	Delhi

7. So far as the period in question is concerned, the petitioner was posted with 88 (M) Battalion of the CRPF at Delhi between 5th July, 2000 and 30th September, 2004 and with the Group Centre, Delhi between 5th August, 2005 and 30th September, 2007. From the above, it would appear that for the further remaining period, the petitioner continued to occupy the said public premises even though he was not posted at Delhi.

8. Our attention is drawn to the order passed by this Court in a similar case titled ***Ram Kala Yadav widow of late Sh. R.S. Yadav vs. Union of India and Others*** wherein Smt. Ram Kala Yadav was similarly placed as the petitioner. While disputing a challenge to the order declaring as a unauthorized occupant and imposing damages against occupancy of Government accommodation which have been allotted to her husband, this Court had passed aforenoticed order dated 11th September, 2008 holding as follows:-

“In our considered view, the material fact is that undisputedly the petitioner was entitled to a government accommodation from the CRPF whether from one pool or the other. The fact that on the posting of the petitioner to a different assignment though in the same area, the petitioner would have been entitled to an accommodation from a different pool should not result in damages being imposed on the petitioner and more so when the matter is now 14 years old.

The delay in disposal of the matter has been occasioned by the negligence on the part of the respondents in producing the relevant policy despite repeated directions of the Court when the matter was being taken up for final disposal at the contemporaneous period of time. The failure on the part of the respondents in not producing the relevant policy resulted in admission of the matter and the interim orders being confirmed.”

9. After these observations, the court was of the view that ends of justice would be met if no recovery is made from the petitioner as she had occupied the pool accommodation during the tenure of her services with the respondents. It was observed that in as much as, if this accommodation had not been allotted, some other pool accommodation would have been allotted to her. The court also held that the petitioner had not claimed house rent allowance during this period of time.

10. So far as the instant case is also concerned, the respondents have stated that on account of the petitioner's occupation of the Government accommodation, no house rent allowance has been advanced or paid to the petitioner.

11. Placing reliance on the orders passed in the WP(C)No.1447/1996, the petitioner's earlier writ petition was disposed of by an order dated 3rd September, 2008 directing as follows:-

“We have moulded the relief appropriately in the other matter and it is agreed that the same course of action be followed in the present case in terms whereof though, on the one hand, the petitioner would be liable to pay damages for use and occupation of the quarter for the period when he was not entitled to keep the quarter,

simultaneously credit would be given to the petitioner for the HRA admissible to him for the same period. In case some net amount is still due from the petitioner, it will be adjusted against the retiral benefits of the petitioner which are said not to have been still paid.”

12. The impugned order dated 23rd September, 2008 has been issued by the respondents in purported compliance of the order dated 3rd September, 2008 passed by this Court in the petitioner’s earlier writ petition. Mr. Venkatraman, learned counsel appearing for the petitioner has vehemently urged that the order raising a demand of Rs.7,89,475/- towards the damages on the plea of unauthorized occupation of the allotted premises by the petitioner is wholly unwarranted, arbitrary and illegal. It is further contended that the respondents have illegally failed to give benefit to the petitioner on the issues which have been noted by this court in the judgment dated 11th September, 2008 and the petitioner was entitled to the same relief and benefit. On instructions from Mr. Rattan Lal who is present in court, it is submitted by Mr. Venkatraman, learned counsel for the petitioner that in case the respondents accept the entitlement of the petitioner to occupy Government premises for the period between 5th July, 2000 till 30th September, 2004 and 5th August, 2005 till 30th September, 2007 when he remained posted at Delhi, the petitioner would not press the writ petition in respect of the remaining claim.

13. We have considered the submissions made by learned counsel on both sides. Just as in the case of **Ram Kala Yadav**,

it cannot be disputed that the petitioner was entitled to allotment and occupation of public premises for the period he remained in service. The question to be considered is as to whether the occupation at Delhi could be considered as valid occupancy even though the petitioner was admittedly posted to the unit located outside Delhi. In as much as Mr. Venkatraman, learned counsel for the petitioner is confining the prayer before us to the period for which the petitioner remained at Delhi, this question may not really detain us any further. However, so far as the period when the petitioner remained posted at Delhi is concerned there could be no manner of dispute that the petitioner was entitled to allotment of pool accommodation. It is of course not necessary that he would have been allotted the very quarter which he had continued to occupy but certainly it remains a fact that the petitioner continued to be in Government service and that the respondents may very well have considered petitioner's request for allotment of a quarter favourably.

14. We have also noticed hereinabove that by an interim order dated 18th March, 1996 passed in WP(C)No.1114/1996, this Court had stayed eviction and recovery of damages by the respondents. The respondents neither sought modification nor vacation of the interim order and also did not serve any further notice calling upon the petitioner to vacate the premises. The respondents also did not make any application seeking clarification of the charges which they could levy or recover

from the petitioner. In addition thereto the respondents have adjusted their claim of recovery of charges for the continued use and occupation by the petitioner against the amounts which the petitioner would have otherwise been entitled to as house rent allowance. In this background, there is merit in the petitioner's plea with regard to the period when he was posted at Delhi. In taking this view, we are supported by the observations of the Court in the judgment dated 11th September, 2008 passed in **Ram Kala Yadav's** case (Supra) as well.

15. The petitioner has superannuated on 30th September, 2007 and has handed over vacant possession of the quarter in April, 2008.

16. In view of the above, we issue the following directions:-

- (i) The respondents shall be entitled to claim damages for unauthorized use and occupation of the subject quarter only between the period 29th September, 1990 till 4th July, 2000 and 5th October, 2004 till 4th August, 2005. For this period, the respondents would be entitled to adjust the said damages against the petitioner's entitlement and claim for house rent allowance. The petitioner shall not be entitled to payment of any house rent allowance in view of his occupation of the Government accommodation for the period between 5th July, 2000 to 30th September, 2004 and 5th August, 2005

till 30th September, 2007.

- (ii) The respondents shall be entitled to levy and recovery of normal licence fee for the subject premises from the period 1st October, 2007 till 9th April, 2008. The respondents shall be entitled to adjust this amount as well against the arrears of house rent allowance which is lying with the respondents.
- (iii) The computation in terms of the order passed today shall be effected and communicated to the petitioner within a period of four weeks from today.
- (iv) The arrears of the amounts which are due and payable by the respondents to the petitioner after effecting the above calculation and adjustment shall be forwarded within a period of eight weeks from today.

17. This writ petition is allowed to the aforementioned facts.

18. DASTI to the parties.

GITA MITTAL, J

J.R. MIDHA, J

JULY 29, 2010

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