

**IN THE HIGH COURT OF DELHI AT NEW DELHI**

W.P. (C ) No. 4339/2004

Judgment delivered on: 05.10.2010

V.Gopinathan

..... Petitioner

Through: Dr.L.S.Chaudhary with Mr.Ajay  
Chaudhary, Advocates.

Versus

The Govt. of N.C.T. of Delhi & Ors. .... Respondents

Through: Mr.Nawal Kishore Jha,  
Advocate for Govt. of NCT of  
Delhi.

**CORAM:**  
**HON'BLE MR. JUSTICE KAILASH GAMBHIR,**

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| 1. Whether the Reporters of local papers may<br>be allowed to see the judgment? | No |
| 2. To be referred to Reporter or not?                                           | No |
| 3. Whether the judgment should be reported<br>in the Digest?                    | No |

**KAILASH GAMBHIR, J. Oral:**

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1. By this petition filed under Article 226 of the Constitution of India, the petitioner seeks to direct the respondent No.1 and 2 to issue a clearance certificate to the

petitioner in respect of Flat No.150, Type C, D.A Flats, Karkardooma, Delhi.

2. Brief facts of the case relevant for deciding the present petition are that the petitioner was allotted a Government accommodation being Flat No. 1618, Type A, Kalyan Vas, Delhi, but the same was declared dangerous for human habitation by the Chief Engineer of respondent no.1 & 2. Consequently, as an alternative accommodation, vide order dated 16.8.1988 bearing Flat No. 100 Type B, Kalyan Vas, Delhi was allotted to the petitioner. Thereafter another accommodation was allotted to the petitioner vide order dated 2.7.1999 bearing Flat No. 150 Type C, D.A Flats , Karkardooma, Delhi whose possession was taken by the petitioner on 13.7.1999. The petitioner however thereafter shifted in his own house and vacated the Flat No. 150 but was not given the Clearance Certificate despite making several representations. The petitioner is aggrieved as the respondents are continuously withholding the House Rent Allowance (HRA) and deducting the Licence Fee from the salary of the petitioner as he has not

been able to surrender his flat due to non-issuance of the clearance certificate. Therefore, the present petition.

3. Counsel for the petitioner submits that the petitioner had handed over the possession of the flat bearing No.100, Type B, Kalyan Vas, Delhi (hereafter referred to as Flat No.100) on 13.07.1999. Counsel further submits that the petitioner had approached the office of the respondent No.2 on 12.07.1999 requesting them to issue clearance certificate in respect of Flat No.100 and also take possession of the newly allotted Flat bearing No.150, Type-C, Delhi Administration Flats, Karkardooma, Delhi (hereafter referred to as Flat No.150). Counsel further submits that the petitioner could not surrender the earlier Flat No.100 for want of clearance certificate even after he had taken possession of Flat No.150. The contention of the counsel for the petitioner is that the petitioner had already written to the respondents to deliver possession of Flat No.100, but it was only on account of non-issuance of clearance certificate that the petitioner could not hand over the possession of the said Flat to the respondents. Counsel further submits that the respondents No.1 and 2 had issued clearance

certificate to the petitioner in respect of Flat No.100 only on 13.11.1999 and immediately thereafter the petitioner surrendered possession of the said flat and handed over the possession of the same to the concerned J.E. of the respondents on the same day. Counsel further submits that the petitioner had also submitted representation dated 29.01.2004 to the respondent No.2 with a request to issue a clearance certificate in respect of Flat No.150 as he had already vacated the said flat a day prior thereto and shifted to his own house, but again the petitioner could not surrender the possession of the said flat to the concerned J.E. of the respondents for want of issuance of necessary clearance certificate. Counsel further submits that the petitioner made various representations to respondent No.2 to issue clearance certificate, but to no avail. Such representations were made by the petitioner on 11.02.2004 and 12.02.2004. Counsel also submits that in the meanwhile, the respondent No.3 kept on withholding the H.R.A and at the same time kept on deducting license fee from the salary of the petitioner on account of the fact that the petitioner was not able to surrender his flat. Counsel thus

submits that it was obligatory on the part of the respondents to have issued the necessary clearance certificate to the petitioner in respect of Flat No.150, Type C, Delhi Administration Flats, Karkardooma, Delhi as on 01.02.2004.

4. I have learned counsel for the parties.

5. Counter affidavit in this case was filed by the respondents on 02.12.2004. In the said counter affidavit, the stand taken by the respondents is that the petitioner was allotted Flat No.100, Type B, Kalyan Vas, Delhi as an alternative accommodation on 10.08.1998 and at the request of the petitioner an alternative accommodation i.e. Flat No.150, Type C, Delhi Administration Flats, Karkardooma, Delhi was allotted to him on 03.11.1999. The respondents have also stated that the petitioner vacated the Flat No.100 on 03.11.1999 which flat in fact the petitioner should have vacated on 28.07.1999. The respondents have taken a stand that the petitioner kept on occupying two flats simultaneously during the period from 21.07.1999 to 03.11.1999 and therefore he was liable to pay damages amounting to Rs.7,304/- as per the rules applicable. It has also been stated by the respondents

in the counter affidavit that the clearance certificate could not be issued to the petitioner since the petitioner did not clear the said payment of Rs.7,304/- towards damages outstanding against him. The respondents have also stated that the petitioner did not vacate the Flat bearing No.150 before 15.10.2004 and also did not pay the damages of Rs.7,304/- as was outstanding against him.

6. The matter on behalf of the respondents was being contested through Ms.Geeta Luthra, Advocate, but on 10.03.2010 since nobody appeared on behalf of the respondents, therefore, Mr.Nazimi Waziri, Standing Counsel for the Govt. of NCT of Delhi had appeared, who stated that this matter will be assigned to some new Advocate as Ms.Geeta Luthra, Advocate by that time had been designated as a Senior Advocate. Nobody appeared on behalf of the respondents on the adjourned date i.e. 22.07.2010 and again notice was directed to be issued to the Standing Counsel. Despite service of the said notice, Standing Counsel for the respondents did not choose to appear today. The counsel for the petitioner was directed to look for the Standing Counsel or some Govt.

Counsel. Mr.Naval Kishore Jha, Advocate then entered appearance for the respondents.

7. It is quite evident that after filing of the counter affidavit, the respondents have not been appearing in this matter to contest the claim of the petitioner. The main grievance of the petitioner is that he made all efforts to hand over the possession of the Flat bearing No.150 immediately after 23.01.2004 and which infact was vacated by him on 28.01.2004. The petitioner has placed on record letters dated 29.01.2004 and 11.02.2004, but the petitioner has not placed on record any document to show that the said letters were received by the respondents. In any event of the matter, the respondents have not denied the receipt of these letters in their counter affidavit and nor the respondents have produced on record to show that the said letters were not received by the respondents.

8. Taking into consideration the aforesaid facts, it is assumed as being correct that the petitioner handed over the possession of the Flat bearing No.150, Type C, Delhi Administration Flats, Karkardooma, Delhi on 28.01.2004. The

respondents are accordingly directed to issue the necessary clearance certificate to the petitioner in respect of Flat bearing No.150, Type C, Delhi Administration Flats, Karkardooma, Delhi. The respondents are also directed to refund back the amount of damages deducted/adjusted by the respondents from the salary/other dues of the petitioner in respect of flat bearing No.150, Type C, Delhi Administration Flats, Karkardooma, Delhi from 29.01.2004 onwards. A decision in this regard shall be taken by the respondents within a period of two months from the date of this order.

9. With the above directions, the present writ petition stands disposed of.

**KAILASH GAMBHIR, J**

**October 05, 2010**

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