

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) No. 3670/2006

Judgment delivered on: 14.12.2010

Shri Rajinder Pal Chadha Petitioner.

Through: Ms. Sangeeta Jain, Adv.

Versus

Union of India & Anr. Respondent

Through: Mr. Atul Nanda, Adv.

CORAM:
HON'BLE MR. JUSTICE KAILASH GAMBHIR,

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| 1. Whether the Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. To be referred to Reporter or not? | Yes |
| 3. Whether the judgment should be reported in the Digest? | Yes |

KAILASH GAMBHIR, J. Oral:

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1. By this petition filed under Section 226 of the Constitution of India, the petitioner seeks quashing of the

eviction order dated 6.9.2003, passed by the learned Estate Officer and order dated 30.1.2006 passed by the Additional District Judge, Delhi whereby the appeal filed by the petitioner was dismissed.

2. Brief facts of the case relevant for deciding the present petition are that by virtue of being an employee of the Military Engineering Service, the petitioner was allotted a government accommodation bearing Quarter No. 109/3, (Type-III), Kabul lines, Delhi Cantt. That a surprise check was carried on 9.4.2002 and on the basis of the report of the said checking staff, a show cause notice under the Public Premises Act dated 14.9.2002 was served upon the petitioner and thereafter an eviction order dated 6.9.2003 was passed. Thereafter the petitioner filed an appeal against the said order which vide judgment and decree dated 30.1.2006 was dismissed. Feeling aggrieved by the same, the petitioner has preferred the present petition.

3. The main contention raised by the counsel for the petitioner is that the learned Estate Officer did not grant any

opportunity to the petitioner to lead his evidence so as to prove the fact that he was in authorized occupation of the said Government accommodation and hence the cancellation order passed by the respondent was per se illegal. Counsel for the petitioner has drawn attention of this court to the proceedings of the Estate officer from 2.11.2002 till 14.6.2003 to contend that on all these dates the Department had been seeking time to submit copy of the surprise check report and photographs of the site, but on none of these dates the said documents were placed by the Department before the Estate Officer. Counsel further submits that on 6.9.2009 the said documents were placed on record by the Department and based on the said documents, the Estate Officer in a great haste had passed the eviction order dated 6.9.2003. Counsel thus urges that neither the Department had adduced any evidence nor even the petitioner was granted any opportunity to rebut the evidence placed on record by the respondent in the form of inspection report. Counsel also submits that the allotment of the accommodation in occupation of the

petitioner was cancelled by the respondent on the ground that he had raised the unauthorized construction of a small room and also dumped kabari items in the said Government accommodation in contravention of Rule 16 & 17 of SRO 308/78. The contention of the counsel is that the petitioner was not given any opportunity to remove the said kabari items prior to the cancellation of his allotment and so far the allegation of unauthorized construction is concerned, the Department failed to point out as where such unauthorized construction of a small room was made by the petitioner. Counsel thus states that the order of the Department to cancel the allotment of the said Government accommodation was illegal. Counsel also submits that even in the notice served upon the petitioner under Section 4(1) & 4(2) (b) (ii) of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971, the ground taken was that the petitioner had dumped the kabari items and had also raised unauthorized construction of a small room. Counsel thus states that nowhere it was the case of the respondent that the

petitioner had sublet the premises in favour of some beauty parlour in the name of Ruby New Look's. Counsel thus submits that the learned Estate Officer had blatantly violated the principles of natural justice. Counsel also submits that the order of the appellate court is also illegal and perverse as the appellate court did not take care to notice the glaring illegalities committed by the Estate Officer. Counsel states that the petitioner had never taken a stand that he had committed a mistake and will not repeat it again and that the petitioner never tendered any apology for carrying out any unauthorized construction or dumping kabari items.

4. Opposing the present petition, Mr. Atul Nanda, learned counsel for the respondent/UOI submits that the Department had placed on record the inspection report along with the photographs and in the photographs not only kabari items are visible but even the respondent is seen present. The counsel thus supports both the orders passed by the learned courts below.

5. I have heard learned counsel for the parties.

6. The petitioner was an employee of Military Engineering Service (MES) as a key personnel and by virtue of his appointment with the said Department, he was allotted Government accommodation bearing House No. 109/3, Type-III, Kabul Lines, Delhi Cantt. The allotment was cancelled by the respondent vide cancellation order dated 6.9.2003 and the said cancellation was made by the respondent on the allegation that on a surprise check carried out by respondent no.1 on 9.4.2002, it was found that the petitioner had dumped the kabari items in the said quarter and had also raised unauthorized construction of a small room which as per the Department was in contravention of Rule 16 & 17 of SRO 308/78. Based on the said cancellation order, the Estate Officer had issued notice under Section 4(1) & 4(2) (b) (ii) of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971, thereby calling upon the petitioner to show cause as to why an order of eviction should not be made against him.

7. It is a settled legal position that the Estate Officer, while exercising jurisdiction, acts as a quasi judicial authority and not as an administrative functionary. Before passing an order of eviction under Section 5 of the Public Premises Act, the Estate Officer has to take into consideration the evidence adduced by both the parties and the materials placed on record and after granting personal hearing, if the Estate Officer is satisfied that the premises are under the unauthorized occupation of such a person, then an order under Section 5 of Public Premises Act shall be made by the Estate Officer. For better appreciation of facts, Section 5 of the Public Premises (Eviction of Unauthorized Occupant) Act is reproduced as under:

“5. Eviction of unauthorized occupants.

(1) If, after considering the cause, if any, shown by any person in pursuance of a notice under section 4 and 3[any evidence produced by him in support of the same and after personal hearing, if any, given under clause (b) of sub- section (2) of section 4], the estate officer is satisfied that the public premises are in unauthorised occupation, the estate officer may make an order of eviction, for reasons to be recorded therein, directing that the public premises shall be vacated, on such date as may be specified in the order, by all persons who may be in occupation thereof or any part thereof, and cause a copy of the order to be affixed on the outer door or some other conspicuous part of the public premises.

(2) If any person refuses or fails to comply with the order of eviction 2[on or before the date specified in the said order or within fifteen days of the date of its publication under sub-section (1), whichever is later,] the estate officer or any other officer duly authorised by the estate officer in this behalf 2[may, after the date so specified or after the expiry of the period aforesaid, whichever is later, evict that person] from, and take possession of, the public premises and may, for that purpose, use such force as may be necessary."

8. From the perusal of the proceedings of the Estate Officer, it is evident that the Estate Officer had blatantly violated the principles of natural justice as no opportunity of hearing was given to the petitioner to lead evidence so as to disprove the case of the respondent. The respondent had been seeking adjournments time and again to produce the inspection report and the photographs and the matter was being adjourned by the Estate Officer for the said purpose. However on one fine day i.e. on 6.9.2003, the respondent had placed on record the inspection report and the photographs and based on the same in great haste, the said eviction order was passed by the Estate Officer against the petitioner. Neither any evidence was adduced by the Department nor any opportunity of hearing was given by the Estate Officer to

the petitioner. It is not the case of the respondent that due opportunity was given to the petitioner and the same was not availed by the petitioner. In fact perusal of the record shows that not even a single opportunity was given by the Estate Officer to the petitioner to adduce evidence to show that his occupation in the said quarter was legal and authorized.

9. The rules of the Civil Procedure Code and the Evidence Act are strictly not applicable to the proceedings before the Estate officer and hence it becomes all the more imperative that the rules of natural justice, especially the rule of audi alteram partem, are abided by the Estate Officer. The Estate Officer is a creation of the statute and has to act within the confines of the law and not in a routine and obscure manner. The right to fair trial is the foundation of our justice delivery system and every person has the right to put his case before any adverse order is passed against him. It is also disheartening to note that the learned Appellate Court below has also upheld the order of the Estate Officer without looking into the illegalities committed by the Estate Officer. If the

courts are unable to enquire with the rigour expected in an appeal, the right to appeal is rendered nugatory. There may be urgency in evicting the persons occupying public premises illegally but that cannot take away the succour of rules of natural justice from any proceedings.

10. In view of the above position, this court finds that the order of the Estate Officer and that of the appellate court cannot sustain in the eyes of law. Consequently, both the orders passed by the courts below are set aside.

11. The present petition is allowed accordingly.

December 14, 2010
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KAILASH GAMBHIR, J