

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) No.11497/2009 and CM No. 11277/2009

Judgment delivered on: 08.12.2010

S.K. Sood

..... Petitioner

Through: Mr. Rajesh Yadav, Adv.

Versus

The Central Public Works
Department & Anr.

..... Respondents

Through: Mr. B.V. Niren, CGSC

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR,

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

KAILASH GAMBHIR, J. Oral:

1. By this petition filed under Article 226 of the Constitution of India, the petitioner seeks to set aside the judgment and decree dated 16.7.2008 passed by the court of the learned Addl. District Judge whereby the appeal under section 9 of The Public Premises Act, 1971 was dismissed.

2. Brief facts of the case relevant for deciding the present petition are that the petitioner joined the respondent as a Junior Engineer (Civil) and while working in Delhi was transferred to Jaipur on 21.9.2004 and then to Border Fencing Division at Bikaner on 12.4.2005 which is a hard station. Meanwhile the petitioner retained his government accommodation at New Delhi bearing Flat No.2, Type IV, Netaji Nagar, New Delhi and thus a show cause notice dated 30.3.2005 was served upon the respondent and consequently an eviction order dated 11.4.2005 was passed against the petitioner. Thereafter the petitioner preferred an appeal against the said order which vide judgment and decree dated 16.7.2008 was dismissed. Feeling aggrieved with the same, the petitioner filed the present petition.

3. Mr. Rajesh Yadav, counsel appearing for the petitioner has placed reliance on the office memorandum dated 10.5.1996 to contend that under the said office memorandum the petitioner could retain the Government accommodation after his posting in Border Fencing Division and the said office memorandum nowhere states that such Government accommodation necessarily should have been allotted at the place of his last posting. Counsel further submits that since the petitioner was not entitled to any accommodation at the place of his last posting i.e. Jaipur as he was already in possession of an accommodation in Delhi which was allotted in his favour at the time of his posting at Delhi as per his entitlement therefore, giving a true meaning and correct interpretation to the language of the office memorandum dated 1st May, 2002, the petitioner was entitled to retain the Delhi accommodation for a period of 8 months. Counsel further submits that the show cause notice was served upon the petitioner even prior to the expiry of 8 months concession period, which was allowed to the

petitioner under the FR 45 A. The contention of counsel for the petitioner is that the show cause notice was sent to the petitioner on 30th March, 2005 while 8 months concessional period had expired on 20th May, 2005. Counsel thus states that the said show cause notice served by the respondent was void ab initio and consequently proceedings held before the learned Estate Officer and before the Appellate Court based on the said show cause notice dated 30th March, 2005 became nullity in the eyes of law. Counsel further submits that no notice as envisaged under Section 7 was served on the petitioner by the respondent, therefore, no damages can be claimed by the respondent from the petitioner.

4. Mr. B.V. Niren, Standing Counsel appearing for the respondent, on the other hand submits that in terms of the office memorandum dated 1st May, 2002, the concession of retention of Government accommodation on the posting of an employee to Border Fencing Projects could be entertained only when such Government accommodation under retention was at the last place of posting. The contention of counsel for

the respondent is that the petitioner was transferred to Central Division No. 1, CPWD Jaipur vide orders dated 24th June, 2002 and was relieved from his duties vide orders dated 11th June, 2004 from Delhi and then from Jaipur the petitioner was relieved to join the Border Fencing Division-2, CPWD, Bikaner on 12.4.2005 and 8 months concessional period granted to the petitioner expired on 10.2.2005. The submission of counsel for the respondent is that after the expiry of the said retention period of 8 months the petitioner had no right to retain the said accommodation further and in terms of the said office memorandum dated 1st May, 2002 the petitioner was not entitled to retain the Government accommodation because his last place of posting was at Jaipur, which was admittedly not a hard station.

5. I have heard learned counsel for the parties at considerable length and gone through the records.

6. The main concern raised by the present petitioner herein is that if the status of the petitioner with regard to the Government accommodation for the relevant period, is

treated as that of an unauthorized occupant then he would become liable to pay damages and if occupation of the petitioner is accepted as that of an authorized occupant, then he would be liable to pay at the most twice the amount of normal licence fee. It is not in dispute that the petitioner had joined the Border Fencing Division of the respondent on 12.4.2005, which is a hard station and as per the policy of the respondent an employee posted at Border Fencing Division can retain the Government accommodation as per his entitlement but subject, however to the condition that the said allotment of the Government accommodation is at the last place of posting of such an employee. In the facts of the present case, the petitioner was not allotted any accommodation at Jaipur, which was his last place of posting immediately prior to his posting at Bikaner. The petitioner was allowed to retain the said Government accommodation at Delhi for a period of 8 months period as per his request and the said 8 months period expired on 20.5.2005. The respondent has already accepted the plea of the petitioner to

calculate the 8 months period of retention w.e.f. 21.9.2004 and as per the policy of the Government the petitioner was legally not entitled to retain the said accommodation for any further period. The contention of counsel for the petitioner that the office memorandum dated 1st May, 2002 makes him eligible for retention of the Government accommodation on payment of double the normal licence fee, is totally devoid of any merit as the language of the said office memorandum is quite explicit and unequivocally states that the concession of retention of Government accommodation in respect of Border Fencing Projects relates to the accommodation at the last place of posting upto 31st March, 2005. Last place of posting of the petitioner indisputably was at Jaipur and not at Delhi and the petitioner was thus not clearly entitled to retain the said Government accommodation at Delhi and the period of retention, which was granted to him at his request, was for a period of 8 months. The interpretation of the said office memorandum as canvassed by the counsel for the petitioner cannot be comprehended or accepted as such an

interpretation would defeat the very intendment and purpose of the policy of the Government in not extending the concession of the retention of the Government accommodation unless the same is at the last place of posting.

7. Dealing with the other contention of counsel for the petitioner that the show cause notice issued by the respondent under Section 4 of the Public Premises Act was null and void, I find this contention of counsel for the petitioner equally devoid of any force. In any event of the matter, the petitioner was in unauthorized occupation of the said Government accommodation on the date of issuance of the show cause notice dated 30th March, 2005 and, therefore, the said show cause notice cannot be termed as illegal or without any cause of action. It is an undeniable fact that the petitioner was relieved by the respondent vide office order dated 11.6.2004 but since the said order was challenged by the petitioner before the Central Administrative Tribunal and it is pursuant to the orders passed by CAT that the respondent vide office order dated 7th January, 2006

implemented the orders of the learned CAT to treat the petitioner relieved from Delhi from 21.9.2004 instead of 11th June, 2004. The learned Appellate Court has already observed that the subsequent change in the relieving date would give benefit to the petitioner of retention of the said Government accommodation for a period of 8 months to be reckoned from 21.9.2004 instead of 11.6.2004. To this extent the respondent has also not taken any adverse stand. Clearly the said show cause notice dated 30th March, 2005 was issued by the respondent taking the relieving period of the petitioner w.e.f. 11th June, 2004 and, therefore, under no circumstances the said show cause notice can be treated as null and void.

8. In the light of the above discussion, this Court does not find any illegality or infirmity in the orders passed by the both the Courts below. The petitioner has been rightly treated as an unauthorized occupant of the Government accommodation i.e. bearing address as Flat No. 2, Type -IV, Enquiry Office, Netaji Nagar, New Delhi, for the period w.e.f. 21.5.2005 till 31st July, 2006.

9. Hence, there is no merit in the present petition and the same is hereby dismissed.

December 08, 2010

rkr

KAILASH GAMBHIR, J