

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

Date of decision: 8th August, 2011

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W.P.(C) 11063/2006

J.P. YADAV

..... Petitioner

Through: Mr. A.S. Singh for Mr. R.V. Sinha,
Adv.

Versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. B.V. Niren, CGSC for R-1.

AND

W.P.(C) 5754/2010

J.P. YADAV

..... Petitioner

Through: Mr. A.S. Singh for Mr. R.V. Sinha,
Adv.

Versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. B.V. Niren, CGSC for R-1.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. Whether reporters of Local papers may
be allowed to see the judgment? Not necessary.
2. To be referred to the reporter or not? Not necessary.
3. Whether the judgment should be reported
in the Digest? Not necessary.

RAJIV SAHAJ ENDLAW, J.

1. W.P.(C) 11063/2006 was filed impugning the order/judgment dated 18th May, 2006 of the Addl. District Judge dismissing the appeal under Section 9 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (PP Act) of the petitioner against the order of the Estate Officer of eviction of the petitioner from the government accommodation allotted to the petitioner by virtue of his employment as Operator, Telecommunication with the Ministry of Finance, for the reason of subletting. Notice of the petition was issued and vide interim order dated 17th July, 2006 dispossession of the petitioner from the government accommodation stayed. However on 18th April, 2009 it was informed that the petitioner had vacated the said government accommodation on 20th February, 2009. *Rule* was issued in the petition. Counter affidavit has been filed by the respondents. no.1 to 4. No rejoinder has been filed by the petitioner.

2. W.P.(C) 5754/2010 was preferred impugning the demand contained in the letters dated 8th September, 2009 and 10th May, 2010 of the Directorate of Estates demanding a sum of ₹7,07,874/- on account of

licence fee/damages for occupation of the aforesaid quarter and to restrain the respondents from initiating any coercive action for recovery of the said amounts till final adjudication of W.P.(C) 11063/2006. Notice of the said petition was also issued and vide interim order dated 31st August, 2010 the demand stayed. Counter affidavit has been filed by the respondents and to which rejoinder has been filed by the petitioner.

3. The counsels for the parties have been heard.

4. As far as the challenge to the judgment of the Addl. District Judge dismissing the appeal of the petitioner against the order of the Estate Officer of eviction of the petitioner from government accommodation is concerned, the allotment of the government accommodation in favour of the petitioner was cancelled for the reason of the petitioner having been found to have unauthorizedly and illegally sublet the same. The Estate Officer found the petitioner to have sublet the premises to one Ms. Manju Mehra and her husband Mr. Mayank Mehra. The said Ms. Manju Mehra was admittedly found in the premises at the time of surprise inspection thereof. The said Ms. Manju Mehra and Mr. Mayank Mehra are admittedly not related to the petitioner. The Estate Officer as well as the Addl. District

Judge have found the petitioner to have taken a shifting stand with respect to the presence of the said Ms. Manju Mehra and Mr. Mayank Mehra in the premises and have further found that the petitioner had been unable to prove that he and his family members as claimed by him, were in occupation, control and possession of the government accommodation. It was held that though the petitioner had obtained a CGHS card of a dispensary near the government accommodation but without the name of any of his family members therein. It was similarly held that the petitioner though had produced a cooking gas connection in his name at the address of the government accommodation but the same had been obtained after the proceedings had commenced. Both, the Estate Officer as well as the Addl. District Judge thus concluded that the petitioner had unauthorizedly and illegally sublet the government accommodation and was thus liable for eviction.

5. Though the petitioner has already delivered possession of the premises but the challenge to the order of the Addl. District Judge has still to be adjudicated since the petitioner in W.P.(C)5754/2010 is impugning the demand for damages solely for the reason of pendency of the challenge

to the order of eviction.

6. The legislature has not provided any further appeal against the order of the Addl. District Judge deciding the appeal against the order of the Estate Officer. The order of the Addl. District Judge is thus final but for the power of this Court of judicial review. However the said power of judicial review under Article 226 of the Constitution of India cannot be converted into an appellate power. Thus findings of fact as the finding of subletting in the present case is, are generally not interfered with unless shown to be perverse i.e. without any material on record and/or such which no reasonable person could have reached.

7. The finding of the Estate Officer and of the Addl. District Judge in the present case on the basis of the admitted presence of Ms. Manju Mehra and Mr. Mayank Mehra in the government accommodation during the surprise inspection, their admittedly being not related to the petitioner and the explanation of the petitioner qua them being different at different times are possible findings of fact and which cannot be said to be perverse. The counsel for the petitioner even otherwise has been unable to show that the said finding is without any basis whatsoever. The transactions as of

subletting of government accommodation are generally transactions under a cloak and/or secretive and have to be gauged from the circumstances. No document or proof of subletting is generally available. The pleas as taken by the petitioner in this writ petition have already been examined by the Addl. District Judge and cannot be revisited in exercise of powers of judicial review. Thus the challenge to the order of eviction fails and W.P.(C)11063/2006 is dismissed.

8. As far as the challenge in W.P.(C) 5754/2010 is concerned, the amount of ₹7,07,874/- demanded from the petitioner is not only towards arrears of licence fee but damages as well. The respondent has however along with its counter affidavit not filed any order of the Estate Officer in a proceeding under Section 7 of the PP Act determining the said damages. The demand for the said amount is thus found to be but a claim of the Directorate of Estates on the petitioner but which claim at least in so far as for damages is concerned, the petitioner has had no opportunity to meet. Once the petitioner is controverting the damages claimed from him, the PP Act provides for assessment thereof under Section 7(2) of the Act and which assessment is not found to have been done in the present case.

9. W.P.(C) 5754/2010 therefore has to be allowed to the extent of holding that since the petitioner is disputing the claim of the respondent Directorate of Estate for damages, the damages due from the petitioner for unauthorized occupation of the government accommodation have to be assessed by the Estate Officer under Section 7(2) of the Act and relegating the respondents to the said assessment. It is however clarified that till the said assessment, the respondents shall be entitled to withhold the dues of the petitioner if the petitioner is superannuating or otherwise leaving the employment.

10. The petitions are therefore disposed of. No order as to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

AUGUST 8 , 2011

PP..

(corrected and released on 24th August, 2011).