

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

Judgment Reserved on October 09, 2013

Judgment Delivered on October 11, 2013

+ **W.P.(C) 4273/2013**

NORTH DELHI MUNICIPAL CORPORATION Petitioner

Represented by: Ms.Prabhasahay Kaur, Advocate

versus

KAMLA SINGH

..... Respondent

Represented by: Mr.Survesh Bisaria, Advocate
with Mr.Prakash Chandra Sharma,
Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE V.KAMESWAR RAO

V.KAMESWAR RAO, J.

1. The North Delhi Municipal Corporation impugns the order dated May 07, 2013 of the Central Administrative Tribunal passed in Original Application No.337/2013, whereby the Tribunal has allowed the said Original Application directing the petitioner herein to release the arrears of Dearness Allowance in pension along with interest after adjusting the normal license fee.

2. The respondent retired from the petitioner organization on June 30, 1997 as Junior Labour Officer. He was in occupation of Municipal Flat No.154, Neemri Colony, Delhi – 110035, which was allotted to him on May 18, 1992. The Neemri Colony (Phase-II) Association of which respondent was also a member filed certain cases which ultimately

culminated by the order of the Supreme Court dated October 20, 2000 in Civil Appeal No.17492. The Supreme Court dismissed the Special Leave Petition granting time to the members of the association, which was binding on the respondent being similarly placed upto April 30, 2001. The said date was extended till July 31, 2001.

3. In terms of order of the Supreme Court the respondent gave an undertaking that he would vacate the flat in question in terms of the time granted by the Supreme Court.

4. Regrettably the respondent failed to vacate the flat. He was forcibly evicted by the petitioner only on May 14, 2007. Suffice would it be to state here that his non vacation of the flat was in total violation of the undertaking given in terms of order of the Supreme Court.

5. Be that as it may, on July 11, 2012 a notice was issued to the respondent by the petitioner seeking Standard License Fee/Damage Charges for the period he remained unauthorized occupant in the flat in question.

4. According to the learned counsel for the petitioner an employee on retirement is entitled to retain the flat in question for a period of 4 months from the date of retirement. According to her the employee would be entitled to Standard License Fee/Damage Charges on the expiry of the said period. By the order dated July 11, 2012 the petitioner claimed 50% SLP/Damage Charges of ₹5,57,569/-, which comes to ₹2,78,785/-.

5. It is this action which has been challenged by the respondent before the Tribunal on the ground that he is entitled to pay only the normal license fee and not the SLF/Damage Charges as being claimed by the petitioner.

6. The Tribunal has allowed the claim of the respondent directing the petitioner to release the Dearness Allowance in pension which was not paid to the respondent on the ground that he was occupying the flat in question with interest after adjusting the normal license fee, if any due from May 15, 2007 till the date of actual payment.

7. Ms.Prabahasahay Kaur, learned counsel appearing for the petitioner would submit that the respondent was in violation of the undertaking given pursuant to the orders of the Supreme Court. He was forcefully evicted from the flat in question on May 14, 2007, which means that for ten long years the petitioner remained in occupation of the flat in question. According to her, more needy persons were denied the benefit of the residential accommodation. She would further submit that the license fee is required to be claimed by the petitioner in accordance with the rules. Moreover a very compassionate view has been taken by the petitioner corporation by waiving of 50% of damage charges as could have been claimed by the petitioner under the rules. She relies upon the judgments in support of her contentions reported as (2005) 5 SCC 245 Secretary, ONGC Ltd. & Another vs. V.U.Warrier, Civil Appeal No.4064/2004 S.D.Bandi vs. Divisional Traffic Officer, KSRTC & Ors. decided on July 05, 2013, Writ Petition (Civil) No.187/2009 K.L.Ahuja vs. The Director General CSIR & Anr. decided on December 21, 2009 and 138 (2007) DLT 110 (DB) K.N.Bahuguna vs. C.S.I.R & Anr.

8. On the other hand Mr.Survesh Bisaria, learned counsel for the respondent would rely upon the order of the learned Single Judge of this Court to submit that this Court on equitable consideration had in a writ petition by similarly placed persons had directed to pay only Standard License Fee, that is required to be paid for the quarters. He would also

plead discrimination inasmuch as in many cases the petitioner had released the Dearness Allowance even though the employees continue to occupy the quarters.

9. We agree with the submission of Ms.Prabhasahay Kaur that the respondent was in violation of the undertaking given pursuant to the order of the Supreme Court. There was no justifiable reason for him to continue to occupy the flat in question even after July 31, 2001. It is noted that he voluntarily not vacated the quarter but was forcefully evicted, which means, he would have continue to occupy the quarter if not forcibly evicted. His occupation in the quarter had denied a more needy employee to get an accommodation from the petitioner. Surely it is a case where the respondent had committed contempt of order of the Supreme Court. In so far as order of the learned Single Judge of this Court in Writ Petition No.2132/2007 dated April 23, 2007 is concerned, we only note that the respondent was not a party in the said writ petition. In any case when he continued to occupy the flat and enjoy the benefit of the same even after he was required to vacate the same on July 31, 2001 he is required to pay the License Fee in terms of the rules which is SLF/Damage Charges. The respondent cannot be allowed to take advantage of his own wrong. Besides the learned Single Judge has not noted the effect of the undertaking given to the Supreme Court.

10. Further the petitioner had reduced the charges by 50% instead of claiming the full amount.

11. We see no infirmity in such a claim by the petitioner.

12. The order of the Tribunal more particularly in para No.16 wherein the Tribunal has shifted the onus of evicting the respondent on the petitioner is uncalled for. The respondent was required to vacate the

quarter on July 31, 2001. Having not done that, the consequences must flow, which are in nature of SLF/Damage Charges as being claimed by the petitioner.

13. We set aside the order of the Tribunal and direct the petitioner to claim the amount in question i.e. ₹2,78,785/- from the respondent with interest @ 9% per annum from the date it became due till today by adjusting from the arrears of Dearness Allowance due to the respondent by calculating the dues with interest of 9% from the date it was due till the date of actual payment and pay the balance to the respondent. If a further amount has to be claimed from the respondent, the petitioner would intimate the respondent in that regard within a period of 4 weeks and the respondent accordingly satisfy the said claim within 4 weeks thereafter.

14. We dismiss the Original Application filed by the respondent.

15. The writ petition accordingly stands disposed of as allowed in terms of the above.

16. No costs.

(V.KAMESWAR RAO)
JUDGE

(PRADEEP NANDRAJOG)
JUDGE

OCTOBER 11, 2013
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