

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP-14430-2014 (O&M)
Date of decision : 01.07.2015

Justice N.K. Sud (Retd.)

...petitioner

Versus

State of Haryana and others

...respondents

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Akshay Bhan, Sr. Advocate,
with Mr. Rohit Sud, Advocate,
for the petitioner.

Mr. A.K. Chaudhary, Deputy Advocate General, Haryana.

Mr. Sanjiv Ghai, Advocate,
for respondent Nos.2, 4 to 6.

JITENDRA CHAUHAN, J.

Challenge in this writ petition is to the action of respondents No.2, 4, 5 and 6 in seeking to recover penal rent from the petitioner for his alleged overstay in House No. 233, Sector 16, Chandigarh.

The petitioner is a former Judge of this Court. He had retired on 15.01.2006. Thereafter on 16.01.2006, he was appointed as the Lokayukta for the State of Haryana under the provisions of the Haryana Lokayukta Act, 2002, for a fixed term of five years . As per the provisions of the said Act, his terms of appointment were the same as applicable to a sitting Judge of this Court. As per the terms of his appointment, the State of Haryana was to provide appropriate

accommodation to the petitioner for his residence. According to the petitioner, the House Allotment Committee of Chandigarh Administration, vide order dated 10.02.2006 (Annexure P-4), earmarked House No.5/233, Sector 16, Chandigarh, for the residence of Lokayukta, Haryana, for his residence. This order was passed on account of some correspondence between the Chief Secretary, Haryana, and the Chandigarh Administration, as is evident from the endorsement No.(i). Thus, this house is stated to have been allotted to the State of Haryana and not to the petitioner specifically by name. The possession of this house was handed over to the officials of the Haryana Government in the office of the Lokayukta who in turn had handed over the possession to the petitioner for his residence. The petitioner has emphasized that he had never sought any accommodation from the Chandigarh Administration as it was the obligation of the State of Haryana.

The petitioner completed his term of five years on 15.01.2011. However, as per the guidelines applicable to the sitting Judges of this Court, he was entitled to retain the official residence for a further period of 60 days, which could be further extended by another 30 days by the Hon'ble Chief Justice, in exceptional circumstances. Accordingly, the petitioner was required to vacate the official residence by 16.03.2011. According to the petitioner, he vacated the said house on 15.03.2011 and intimation to that effect was sent to the Home Secretary, Chandigarh Administration, vide letter dated 16.03.2011

(Annexure P-5). Copies of the said letter were also endorsed to the Secretary, House Allotment Committee, Chandigarh Administration and the Secretary in the office of the Lokayukta, Haryana.

The petitioner has further stated that after the earlier round of litigation, his pension including arrears was released in May 2013, but the other retiral benefits such as gratuity etc. were not being paid. He, therefore, requested the Lokayukta, Haryana, to have the same released. In response, the petitioner received copies of letters 06.11.2012 and 04.01.2013 whereby the Lokayukta, Haryana, had taken up this matter with the Chief Secretary, Haryana and the Principal Accountant General (A&E), Haryana. Since no action appeared to have been taken on these letters, the petitioner, made personal enquiries and found to his dismay that the retiral benefits were not being released as the Assistant Controller (F&A), Rents, UT Chandigarh Administration, had raised a demand of Rs. 4,13,718/- against the petitioner on account of Licence Fee and interest thereon, on account of unauthorized retention of House No.233, Sector 16, Chandigarh, after his retirement from 16.01.2011 to 23.06.2011. According to the petitioner, as the possession of the said house had been given to him by the officials of the State of Haryana in the Lokayukta's office and not by the officials of the Chandigarh Administration, he had handed back the possession to the officials in the Lokayukta's office. This position was explained to the Assistant Controller (F&A) Rents, Chandigarh Administration, vide letters dated

06.03.2012 and 28.05.2013 (Annexure P-8). However, without dealing with any of the specific issues raised by the petitioner, the Assistant Controller (F&A), Chandigarh Administration, persisted with his claim for recovery of licence fee and interest thereon for the alleged unauthorized possession of House No.233, Sector 16, Chandigarh, by the petitioner from 16.01.2011 to 23.06.2011.

It is in the above factual background that the present writ petition has been filed.

Short reply on behalf of respondent No. 3 dated 21.08.2014 was filed in which it was conceded that the petitioner could have retained the possession of the house in question till 15.03.2011, i.e. two months after the date of retirement, but the same had been vacated by the petitioner on 23.06.2011. The above claim has been controverted by the petitioner in his replication dated 16.01.2015, vide which he has placed on record several letters requesting for issuance of NOC with respect to House No.233, Sector 16, Chandigarh, dated 16.03.2011, 20.04.2011 and 16.05.2011 addressed to the Assistant Executive Engineer, Electricity Operations Sub Division, Sector 15, Chandigarh; the Home Secretary Chandigarh Administration; the Secretary, House Allotment Committee, Chandigarh Administration; and the Sub Divisional Engineer, M.C. Public Health Sub Division No.17, Sector 9, Chandigarh; pointing out that no action was being taken on his earlier letters dated 16.03.2011 when he had vacated the house No.233, Sector 16, Chandigarh. Copies of all these letters were endorsed to the

Secretary in the office of the Lokayukta. Thus, it is evident that the Secretary Lokayukta was informed that the petitioner had vacated the house on 15.03.2011. None of these letters were controverted by the Secretary of the Lokayukta. He has also placed on record 'No Dues Certificates' dated 26.05.2011 (Annexure P-15) in respect of reading of the electricity/water meters dated 21.04.2011/28.04.2011 to show that if he had he occupied the house till 22.06.2011, these could not have been issued. In order to further falsify the claim of respondent No. 3 that the house was occupied by the petitioner up to 22.06.2011, he has placed on record letter dated 24.03.2011 (Annexure P-16) whereby Shri Kartar Chand, Assistant, Office of the Lokayukta, Haryana, had taken possession of the items of furniture, PBX System, Cell Phone, Laptop, Computer, Curtains etc. which had been provided to the petitioner for Office and out of his Furnishing Allowance on 25.03.2011. According to the petitioner, this clearly showed that that the house had been vacated before that date.

In the light of the above averments made in the replication, vide order dated 20.01.2015, the respondent No.3 was asked to produce in Court the basis on which it had been stated that the house had been vacated on 22.06.2011 and not on 15.03.2011.

In response, an additional affidavit dated 19.05.2015 on behalf of respondent No. 3 has been filed through Sri Ram Niwas, Under Secretary, in the office of the Lokayukta Haryana, wherein, it has been stated that final bills of water and electricity charges had been

presented by Late Shri S.S.Rana, the then Reader to the Lokayukta, Haryana, on 23.06.2011, to Shri Kartar Chand, Assistant, who had handed over the possession of the house on the same day to the UT Administration. It has also been stated that licence fee for the period 16.01.2011 to 15.03.2011 had duly been deposited by respondent No.3, and the Assistant Controller (Rents), Chandigarh Administration had been requested to exclude the said period from the period of overstay. However, no response is stated to have been received to this request. The additional affidavit is silent about the receipt issued by Shri Kartar Chand, on 25.03.2015, about taking the possession of items of furnishing etc.

Short written statement dated 21.01.2015 has also been filed on behalf of respondent Nos. 2, 4, 5 and 6. It has been stated that since a copy of the order dated 10.02.2006 (Annexure P-4) earmarking House No. 233, Sector 16, Chandigarh, for the residence of the Lokayukta, Haryana was also endorsed to the petitioner, the allotment of the house in question was to the petitioner. It is further submitted that in response to the petitioner's letter dated 20.04.2011 asking for NOC, he was, vide letter dated 09.05.2011, informed that the physical/paper possession of the house in question had to be made to the Inspector, Maintenance Booth, Sector 16, after clearance from Electricity and Public Health officials. It has been claimed that actual possession of the house had been handed over to the concerned inspector on 23.06.2011. Further rules have been cited for the purpose

of calculation of licence fee for overstay.

I have heard learned counsel for the parties and carefully perused the record with their able assistance.

Admittedly, the petitioner was appointed by the State of Haryana as the Lokayukta, Haryana, under the provisions of the Haryana Lokayukta Act, 2002. It stands settled that the terms and conditions of his appointment were the same as applicable to a sitting Judge of this Court. It was obligatory upon the State of Haryana to provide official accommodation to the petitioner. It was only at the instance of the Haryana Government that the House Allotment Committee, U.T. Chandigarh, passed the order dated 10.02.2006 (Annexure P-4), thereby, earmarking House No.5/233, Sector 16, Chandigarh, for the residence of the Lokayukta, Haryana. The petitioner never approached the Chandigarh Administration for allotment of any house to him. Thus, the question of treating order dated 10.02.2006 as order of allotment to the petitioner does not arise. The submission of the respondent Nos. 2, 4, 5 & 6 that since a copy of the order dated 10.02.2006 had also been endorsed to the petitioner, it should be treated as allotment to him, is misconceived. The respondent No. 3 has, in para No. 2 of his short reply dated 21.08.2014, conceded that in pursuance to the order dated 10.02.2006, Shri S.S. Rana, an official in the office of the Lokayukta, had taken possession of the said house on 26.05.2006. Thus, it becomes amply clear that the petitioner had neither applied for allotment of the said house to the Chandigarh

Administration nor had he been handed over possession of the said house by them. It was the Government of Haryana which had applied for the accommodation and had received its possession through its official in the Lokayukta's office. Thus, it was the Government of Haryana which had put the petitioner in possession of the said house. In this view of the matter, the respondent No.2, 4, 5 & 6 can possibly have no claim against the petitioner. Their claim, if any, has to be against the Government of Haryana.

The next question pertains to the determination of the period under which the house in question remained under occupation of the petitioner as Lokayukta. It is to be noticed that a number of letters dated 16.03.2011, 20.04.2011 and 16.05.2011, for issuance of NOC with respect to the said house, have been placed on record whereby the petitioner had informed various authorities, including the Secretary in the Lokayukta's office, that he had vacated the house in question on 15.03.2011. None of the authorities in their response has controverted this claim. In fact, the petitioner was only required to intimate the officials of respondent No.3 about the vacation of house, which he had done by endorsing a copy of his letter dated 16.03.2011 (Annexure P-3). The petitioner has also placed on record letter dated 24.03.2011 which shows that Shri Kartar Chand, an Assistant in the office of the Lokayukta, had taken possession of items of furniture, curtains, PBX System, Inverter, Cell Phone computer etc. on 25.03.2011. This clearly shows that the house in question could not have been in occupation by

the petitioner beyond that date. It is pertinent to note that no receipt had been obtained from the petitioner about the possession of the house. Thus, the petitioner was also not required to obtain any such receipt from the officials of the Lokayukta. In fact, on receipt of the copy of petitioner's letter dated 16.03.2011, the officials in the office of Lokayukta's office ought to have proceeded to restore the possession of the house back to the Chandigarh Administration. Unfortunately, the concerned officials failed to take the necessary steps and now, in order to cover up their lapse, an attempt is being made to shift the liability for inaction of the respondent upon the petitioner.

Accordingly, it is held that there was no unauthorized occupation on part of the petitioner.

In view of the above discussion, the present petition is allowed and the impugned letters dated 29.05.2014 (Annexure P-11) and 11.07.2014 (Annexure P-12), issued by the respondents, are hereby quashed.

However, respondent Nos.2, 4 to 6, are at liberty to avail the legal remedy available to them against respondent Nos.1 and 3, to claim the penal rent, if any.

01.07.2015
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(JITENDRA CHAUHAN)
JUDGE

Note : Whether to be referred to Reporter : Yes