

\$~3

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

+ W.P.(C) 7233/2013 and CM NO.15561/2013 (stay)

NAVAL SINGH Petitioner

Through: Mr. Saurabh, Advocate

versus

GOVT. OF NCT OF DELHI Respondent

Through: Ms. Anjana Gosain, Advocate with Mr.
Prem Kumar, UDC, CPWD

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

%

10.02.2015

1. By this petition, a challenge is laid to order dated 27.08.2013. The petitioner is aggrieved by the said order whereby, he has been directed to vacate and hand over vacant possession of the quarter in issue i.e., Flat No.T-2/Block-36, Type-I, Kalyan Vas, New Delhi (in short the flat).

1.1 The petitioner by virtue of the impugned order was given 60 days from the date of its issue to vacate the flat, failing which, he was forewarned that eviction proceedings will be initiated against him under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (in short the PP Act).

2. A perusal of the order would show that this order came to be passed, based on an inspection carried out by the officials of the PWD Department. The order is demonstrative of the fact that, the officials, had prior information with regard to the aforementioned flat having been, purportedly, sub-let by the petitioner. The impugned order, goes on to

record that, when officials of the PWD Department visited the said flat, on 09.11.2012, they met with the son of the petitioner, one, Mr. Ravish, and his wife Ms Geeta, and their children. It is noted in the impugned order that the said members of the petitioner's family appear to have informed the officer concerned, that the petitioner, was residing at Princess Park and was not residing in the said flat.

2.1 Accordingly, a show cause notice dated 28.12.2012 was issued to the petitioner seeking his explanation with regard to the charge of sub-letting.

2.2 The petitioner appears to have responded to the said show cause notice, vide a reply dated 04.01.2013. There is no dispute that, a personal hearing in the matter was also accorded to the petitioner.

3. I may only note that, after the issuance of the impugned order, which the petitioner says that he received only on 08.09.2013, a representation was made to the respondent on 23.10.2013.

4. Being aggrieved by the impugned order, the instant writ petition has been filed under Article 226 of the Constitution.

5. Pleadings in the matter are complete.

6. The learned counsel for the petitioner asserts that the petitioner continues to reside in the aforementioned flat alongwith his extended family, which includes his son and daughter-in-law. This in fact is also the stand taken by the petitioner in his reply dated 04.01.2013. The learned counsel for the petitioner says that the fact, that the petitioner, resided with his extended family in the aforementioned flat cannot be construed as sub-letting.

7. Ms. Gosain, who appears for the respondent relies upon the

impugned order to advance her submissions. It is her contention that since, the inspection, revealed that the petitioner, was not residing in the aforementioned flat, the charge of sub-letting was established.

8. A perusal of the order would show that the respondents have come to the conclusion, which is that the charge of sub-letting, as levelled, has been established, due to the fact that the petitioner did not take prior permission of the PWD, with regard to his son being housed in the said flat.

9. Having regard to the findings returned in the impugned order, according to me, what is required to be ascertained by the respondents was, as follows :-

(i). Whether or not the petitioner actually continued to stay in the aforementioned flat as against what was ascertained during the inspection i.e., Princess Park.

(ii). Whether the mere fact that extended members of his family were found on the day of the inspection in the aforementioned flat would constitute sub-letting.

(iii). Even if, the son and daughter-in-law had decided to live on a long term basis with the petitioner, whether that would require prior permission of PWD.

10. I have not been shown any provision of the allotment rules which requires the allottee to seek permission of PWD before housing, the members of their extended family, in the official accommodation.

11. In these circumstances, the impugned order is set aside. The respondents will carry out a fresh enquiry in the matter. The petitioner will also be at liberty to produce relevant evidence in support of his stand.

Opportunity for this purpose will be granted by the respondents. If no other evidence is available, the petitioner will be at liberty to file an affidavit on oath, declaring the exact position.

12. With the aforesaid observations in place, the captioned petition and the pending application are disposed of.

RAJIV SHAKDHER, J

FEBRUARY 10, 2015

yg