

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

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Date of decision: 30th March, 2016

+ W.P.(C) 2610/2014, CMs No.5414/2014 & 14900/2014 (both for stay) 2496/2015 & 3714/2015 (both u/S 151 CPC) & 12120/2015 (for direction)

LT. COL. T.K. CHATTERJEE

..... Petitioner

Through: Mr. G. Tushar Rao and Mr. Mayank Sharma, Advs. / Amicus Curiae with the petitioner in person.

Versus

UNION OF INDIA AND ORS

..... Respondents

Through: Ms. Barkha Babbar, Adv. for UOI

CORAM:-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J

1. The petition impugns the order dated 28th January, 2014 of the District Judge, New Delhi District exercising powers as an appellate authority under Section 9(1) of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (PP Act) of dismissal of appeal [PPA No.19/2013] preferred by the petitioner against the order dated 26th April, 2013 of the respondent no.2 Estate Officer under Sub-sections (2) and (2-A) of Section 7 of the PP Act directing the petitioner to pay the sum of Rs.9,04,069/- as damages on account of unauthorized occupation of the Ministry of Defence Pool

Accommodation No.D-II/B-48, Moti Bagh for the period from 9th July, 2008 to 18th July, 2011 at the rate of Rs.190/- per sq. mtr. i.e. Rs.24,890/- per month.

2. The petition came up before this Court first on 29th April, 2014 when since none appeared on behalf of the respondents inspite of advance copy, notice thereof was issued. Subsequently, the petitioner asked for and was permitted to file an additional affidavit and it was made clear that there was no interim order in favour of the petitioner and liberty was given to the respondents to file response to the said affidavit. The petitioner thereafter filed CM No.2496/2015 again seeking interim order on the ground that the respondents had commenced recovery of the aforesaid amount by making deductions from the salary of the petitioners. The said application came up before this Court on 13th February, 2015 and 23rd February, 2015 when finding that the petitioner was no longer represented by the advocate through whom petition was earlier filed, Mr. G. Tushar Rao, Advocate was requested to assist the Court on behalf of the petitioner and it was directed that till the next date of hearing, no recovery on account of damages / arrear of rent be made from the salary of the petitioner.

3. The petitioner also filed CM No.3714/2015 for a direction to the respondents to remit the salary deducted and to file the documents mentioned therein and CM No.12120/2015 impugning the order dated 28th January, 2014 impugning which the petition itself has been filed. The learned amicus curiae and the counsel for the respondents were heard on 14th July, 2015 and judgment reserved.

4. The undisputed facts are i) that the petitioner joined Indian Army on 18th December, 1984 and was in the year 2001 allotted the accommodation aforesaid at Moti Bagh since he was then serving at the Headquarter of the Ministry of Defence at Delhi; ii) that the petitioner on 8th May, 2008 was posted to Headquarter-05, Mountain Division, FS Section and though requested for retention of the aforesaid accommodation, but was granted permission vide letter dated 9th May, 2008 to retain the same only for two months i.e. till 8th July, 2008; iii) that the petitioner on 2nd June, 2008 also sought separate family accommodation and was informed vide letter dated 6th June, 2008 that his name was entered in the Priority-I Waiting Roster for allotment of such accommodation; iv) that though the petitioner was on 12th October, 2009 allotted separate family accommodation at 15/296, Cariappa Vihar but continued to reside at accommodation aforesaid at Moti Bagh till

18th July, 2011 when he vacated the same; v) that in the meanwhile the respondent no.2 Estate Officer issued show cause notice dated 27th March, 2009 under Section 4(1) and 4(2)(b)(ii) of the PP Act to the petitioner and in pursuance to the proceedings thereunder on 26th April, 2013 held that there was no authority produced by the petitioner permitting the petitioner to continue in the premises with effect from 9th July, 2008 to 18th July, 2011 and found the petitioner liable as aforesaid to pay Rs.9,04,069/- as damages for unauthorized use and occupation.

5. The learned amicus curiae i) contended that as per Rule 61 of the General Rules and Instructions for Allotment of Married Accommodation from the Defence Pool the facility of retention of accommodation is available where the child goes to Class X or XII and that the petitioner was entitled to retain the accommodation on the said ground; ii) drew attention to Rule 62 providing that officers posted to a field area are required to apply for allotment of separate family accommodation and permitted to retain the hired accommodation till the allotment thereof; iii) contended that the Estate Officer before issuing notice dated 27th March, 2009 under Section 4(2)(b)(ii) of the PP Act had no material before him on the basis of which he could have concluded that the petitioner was in unauthorized occupation and

thus the initiation of proceedings under the PP Act itself is bad; iv) highlighted that the notice was issued prior to even the separate family accommodation having been allotted to the petitioner; v) contended that though as per the order dated 26th April, 2013 supra of the respondent no.2 Estate Officer, the amounts were threatened to be recovered as an arrear of land revenue but were sought to be recovered by deduction from the salary of the petitioner; vi) contended that the invocation of PP Act is contrary to the letter dated 23rd December, 2005 of the Army Headquarters, New Delhi to Southern, Eastern, Western, Central & Northern Command headquarters; vii) contended that the license fee for the said accommodation was being regularly deducted from the salary of the petitioner who was a serving officer and the same itself is indicative of the occupation of the premises by the petitioner being not unauthorized; viii) contended that the petitioner has already suffered a lot of harassment by being embroiled in litigation; ix) drew attention to the order dated 12th March, 2015 of the Armed Forces Tribunal and to the order dated 23rd November, 2011 of the Supreme Court in SLP(C) No.9257/2007 filed by Union of India against the petitioner and copies whereof is annexed to CM No.12120/2015; and, x) contended that there are no rationale for the rate at which the damages have been claimed.

6. I may in this regard notice that it is not as if the learned District Judge in the impugned order has not dealt with the pleas of the petitioner. It was however held that the petitioner has not placed on record anything to prove that he was entitled to the benefit of Rule 61 and that even otherwise the Rule applicable to the petitioner was Rule 62 since the petitioner had been posted to a field area. It was also held that the petitioner despite having been allotted family accommodation on 12th October, 2009 did not shift thereto and that from the petitioner's own letter it was abundantly clear that he was required to vacate the pool accommodation within two months but continued in the accommodation fully aware of the consequences thereof.

7. The counsel for the respondents has drawn attention to the letter dated 9th May, 2008 of the Ministry of Defence to the petitioner qua the request of the petitioner to retain the Moti Bagh accommodation and informing the petitioner that the same was not permissible under the Rules and granting two months time only to the petitioner to vacate the same. Attention was then invited to the application dated 7th May, 2008 of the petitioner in which the petitioner had clearly admitted that he was aware that on his posting to field area, he had to vacate the Moti Bagh accommodation within two months and the he could not retain the same except with specific sanction

and that on his failure to do so, he was liable to be charged damage rent. Attention in this regard was also invited to para 10 of the reply affidavit filed by the respondents in response to the additional affidavit of the petitioner. It was also contended that the delay in allotment of separate family accommodation was also attributable to the petitioner not providing the documents requested from him.

8. The learned amicus curiae in rejoinder emphasized that the notice initiating the PP Act proceedings was issued even prior to the allotment of separate family accommodation.

9. I have considered the controversy.

10. Though the sympathy of the Courts is generally with defence personnel and on equity it may appear that the petitioner who admittedly during the period of his overstay was posted in a field area should not be charged damages for retaining the pool accommodation allotted to him when he was posted at New Delhi especially when it is not the case that anyone other than his family was in occupation thereof but this Court cannot at the same time forget that it cannot in individual cases, on such grounds, grant relief especially when granting such relief would be contrary to the Rules.

The remedy if any in this regard is for change of Rules. However before effecting such change, the Court will have to have a larger perspective. The Court, while considering the equity vis-à-vis one defence personnel, cannot be blind to the reality of shortage of accommodation for defence personnel posted at Delhi. It is not as if the question has only monetary considerations. If this Court were for equity considerations qua the petitioner and unmindful of others were to let go the petitioner from the amount which is due from him under the Rules, it may also have the effect of inculcating indiscipline which is essential, more in defence forces.

11. Considering the matter strictly as per the Rules, the petitioner has no case. All the contentions of the petitioner are negated by the letter dated 9th May, 2008 in response to the request of the petitioner for retaining the Moti Bagh accommodation. The petitioner was clearly told that he could not retain it beyond two months. The petitioner then did not challenge the same. If the petitioner felt that he was being wronged, the petitioner should have then taken up the said issue. However the petitioner shied away from doing so and continued in occupation of the premises in contravention / defiance of the said order dated 9th May, 2008. As aforesaid, such continued occupation of the petitioner must have been at the cost of denial of the said

accommodation to another officer eligible or entitled thereto. The petitioner cannot be permitted to urge the aforesaid grounds as an afterthought. The petitioner today cannot invoke Rule 61 supra.

12. No merit also is found in the contention that the respondent no.2 Estate Officer had no material before him on 27th March, 2009 to form an opinion of the petitioner being in unauthorized occupation. The petitioner, upon being transferred out of Delhi had been authorized to occupy the accommodation aforesaid till 8th July, 2008 only and the occupation of the petitioner thereafter was *ipso facto* unauthorized. Similarly, the deduction even if any of the licence fee from the salary of the petitioner cannot overrule the express order dated 9th May, 2008 rejecting request of the petitioner to retain the accommodation and allowing him to retain the same till 8th July, 2008 only. Yet further, the factum of initiation of proceedings under PP Act before allotment of separate family accommodation to the petitioner has no bearing as the petitioner had not been allowed to retain the Moti Bagh accommodation till then.

13. In fact, the conduct of the petitioner of, even after had been allotted separate family accommodation not shifting thereto disentitles the petitioner

from any equitable relief. The other disputes before the Armed Forces Tribunal also have no bearing on the present controversy.

14. That leaves only two contentions of the learned amicus curiae. One with respect to there being nothing to prove the rate of damages and the other with respect to the letter dated 23rd December, 2005 supra.

15. As far as the rate is concerned, the petitioner, in the show cause notice dated 29th November, 2011 preceding the order dated 26th April, 2013 was informed of the said rate at which he will be charged damages. It is not the case of the petitioner that he contested the said rate. Taking judicial notice of the prevalent rent in the locality also, the rate at which damages have been assessed cannot be said to be exorbitant or unnecessary. In fact, the counsel for the respondents in response to the said argument taken for the first time during the hearing has also handed over copies of various orders issued from time to time fixing the rate at which such damages have to be charged and therefrom it is apparent that the rate at which damages have been charged is in accordance with law.

16. The letter dated 23rd December, 2005 supra conveys the decision qua invocation of PP Act in the case of defence personnel in active service and

provides that prior to imposing damage rate of rent, the cases should be examined based on their merit and proper discretion should be applied on case to case basis. It is the contention of the learned amicus curiae that the case of the petitioner has not been examined thereunder. However a perusal of the reply filed by the respondent to CM No.2496/2015 shows that the matter was properly considered before initiating action and it thus cannot be said that the impugned action is in contravention. Mention in this regard may also to be made of dicta of Division Bench of this Court in *Life Insurance Corporation of India Vs. Damyanti Verma* 188 (2012) DLT 741 and *Indian Institute of Public Opinion Pvt. Ltd. Vs. Life Insurance Corporation of India* MANU/DE/2013/2012 SLP(C) 18564/2012 whereagainst was dismissed on 26th February, 2014 holding that government orders issued advising that PP Act should be invoked only against rank trespassers and not against those who have been lawfully inducted into the premises and are continuing in possession have been held to be not coming in the way of proceedings under the PP Act.

17. No merit is thus found in the writ petition.

18. Dismissed. No costs.

19. The Court expresses gratitude to Mr. G. Tushar Rao, Advocate for pro bono rendering valuable assistance to the Court.

RAJIV SAHAI ENDLAW, J

MARCH 30, 2016

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