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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
+ **LPA 372/2016 & CM No.21975/2016**

*Judgment pronounced on : 08 November, 2016*

COL T.K.CHATTERJEE .....Appellant  
Through : Mr. G. Tushar Rao with Mr.Mayank  
Sharma, Advocates.

Versus  
UNION OF INDIA & ORS. ....Respondents  
Through : Ms. Barkha Babbar with Ms. Dipanjali  
Tyagi, Advocates For UOI

**CORAM**  
**HON'BLE THE CHIEF JUSTICE**  
**HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL**

**SANGITA DHINGRA SEHGAL, J.**

1. The present Letters Patent Appeal has been filed seeking to challenge the order of the learned Single Judge dated 30.03.2016 in W.P.(C) 2610/2014 dismissing the writ petition with directions to the appellant to pay damages on account of unauthorized occupation of the Ministry of Defence Pool Accommodation No. D-II/B-48, Moti Bagh.

2. The brief facts as observed by the writ petition are as follows:

*" i) that the petitioner joined Indian Army on 18<sup>th</sup> December, 1984 and was in the year 2001 allotted the accommodation at Moti Bagh since he was then serving at the Headquarter of the Ministry of Defence at Delhi;*

*ii) that the petitioner on 8<sup>th</sup> 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 9<sup>th</sup> May, 2008 to retain the same only for two months i.e. till 8<sup>th</sup> July, 2008;*

*iii) that the petitioner on 2<sup>nd</sup> June, 2008 also sought separate family accommodation and was informed vide letter dated 6<sup>th</sup> 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 12<sup>th</sup> October, 2009 allotted separate family accommodation at 15/296, Cariappa Vihar but continued to reside at accommodation aforesaid at Moti Bagh till 18<sup>th</sup> July, 2011 when he vacated the same;*

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

3. The learned Single Judge dismissed the writ petition holding as under:

*"12. No merit also is found in the contention that the respondent no.2 Estate Officer had no material before him on 27<sup>th</sup> 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 8<sup>th</sup> July, 2008 only and the occupation of the petitioner thereafter was ipso facto unauthorized. Similarly, the deduction even if any of the license fee from the salary of the petitioner cannot overrule*

*the express order dated 9<sup>th</sup> May, 2008 rejecting request of the petitioner to retain the accommodation and allowing him to retain the same till 8<sup>th</sup> 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 equitable relief. The other disputes before the Armed Forces Tribunal also have no bearing on the present controversy"*

4. Aggrieved by the order passed by the learned Single Judge who found no merit in the writ petition the appellant preferred the present appeal.
5. Assailing the impugned judgment, Mr. G. Tushar Rao, the learned counsel for the appellant contended that the appellant was entitled to retain the accommodation in question as per Rule 61 of the General Rules and Instructions for allotment of Married Accommodation from the Defence Pool which provides for the facility of retention of accommodation available when the child goes to Class X or XII.
6. Learned counsel for the appellant further contended that as per Rule 62 of General Rules and Instructions for allotment of Married Accommodation from the Defence Pool, the appellant was posted in the field area and applied for allotment for Separate Family Accommodation and thus was permitted to retain the hired accommodation till the allotment.
7. Learned counsel for the appellant further contended that the appellant applied for the allotment of Separate Family Accommodation

(SFA) and hence the occupation of the earlier house by the family members of the appellant could not be termed as "unauthorized occupation" until the allotment of SFA.

8. Learned Counsel for the appellant argued that the provisions of Public Premises Act, 1971 stipulated that the arrears were to be recovered as arrears of land revenue and not to be recovered through the appellant by way of deduction of salary, thus the respondents illegally commenced deduction from the salary of the appellant.

9. On the converse, Ms. Barkha Babbar learned counsel for the respondent urged before this court that the appeal lacked merit and that the appellant had failed to bring on record any document as prescribed under Rule 61 of General Rules and Instructions for allotment of Married Accommodation from the Defence Pool and the learned Single Judge has rightly held that the said rule was not applicable to the case of the appellant.

10. It was further contended by the learned counsel for the respondent that in terms of Rule 62 of General Rules and Instructions for allotment of Married Accommodation from the Defence Pool, the appellant could not have retained the premises in question for more than two months i.e. on or before 08.07.2008 and vide letter dated 07.05.2008, the appellant himself admitted to the said fact.

11. To substantiate her arguments, the learned counsel for the respondent relied upon the judgement of the Apex Court in ***Wazir Chand VS. Union Of India and Others*** reported in (2001) 6 SCC 596 wherein it was held that appellant having unauthorizedly occupied the government quarters was liable to pay the penal rent in accordance with rules and,

thereof, there is no illegality in those dues being adjusted against the death-cum-retirement dues of the appellant. The counsel further relied upon the judgement of Hon'ble Supreme Court in *Secretary, ONGC LTD. And Another Vs. V.U Warriar* reported in (2005) 5 SCC 24 which held that penal rent could be charged for not vacating the quarters and ignoring the warning by the Commission.

12. We have heard learned counsel for the parties and have perused the material available on record.

13. At the outset, we deem it appropriate to reproduce the relevant Rules involved in the present appeal, which reads as under :

***"Retention of Accommodation for Second Academic Year***

*"61. Under normal circumstances, the rules do not provide retention of Defence Pool accommodation for the second academic year. However, genuine cases of hardship may be considered by the Government provided the following conditions are fulfilled:-*

*a) The facility of retention of accommodation for the second academic year will be available only where the child goes to class X or XII. This will not be admissible in the case of college going children.*

*b) The curriculum at the new duty station school is not available/ taught which the child of the officer is studying. Certificate to this effect will be produced by the officer from the competent education authority of the new duty station.*

*c) No hostel facilities are available at Delhi where the child is studying. Certificate to this effect from the principal of the school will be produced.*

*d) Retention for the second academic year will be permitted, only in respect of one child.*

*e) The officer will be required to shift to alternate hired accommodation for the second academic year in case of occupation of regular/3-4/ roomed hostel accommodation.*

*f) The rental facility for retention during second academic year will be equivalent to the rent ceiling prescribed for hiring a house at Delhi for the rank of the officer seeking such retention.*

*g) Application for retention for the second academic year should come from the officer immediately on his posting out to new duty station after verifying the chances of admitting his children in a school at the new duty station."*

***Officer posted to field area***

*"62. ...(b) On allotment of separated family accommodation by the concerned station hqrs, the officer should vacate the defence pool accommodation under intimation to CAO's Office. Failure to move to separated family accommodation will result in charging of rent at damage rates besides facing eviction proceedings under PPE Act...."*

14. Perusal of the application dated 07.05.2008 by the appellant shows that he had requested for a clearance in his favour and stated the requisite particulars. Para 1 Sub-para (e), (f) and para 2 of the particulars stated as under:

*"(e) I intend to vacate the accommodation on 31 MARCH 2009.*

*(OR)*

*(f) As I am posted to a peace station, I intend to retain the accommodation on NAC or on Children Education Grounds and the ground will be intimated within 2 months.*

*xxxxx*

***2. I am aware that on my posting to a field area. I have to vacate the MOD Pool accn within 2 months and in all other cases within 10 days w.e.f. the date of SOS except with specific sanction by the CAO's Office for further retention as authorized in the rules, failing which I am liable to be***

***charged damages rent w.e.f. date of SOS and eviction proceedings under the Rules."***

15. In response to the letter dated 07.05.2008, the appellant was informed on 09.05.2008 that MOD Pool accommodation No. D-II/ B-48, Moti Bagh-I was not permissible under the Rules. However, his request of retention was considered for a period of 2 months only upto 08.07.2008. Para 5 of the letter reads as under:

***"Accordingly, on being SOS of Army SQ w.e.f. 08 May 2008 on your posting to HQ 5 Min Div FS Sec in operational area, you are eligible to retain the MOD Pool Accn No. D-II / B-48, Moti Bagh-I for a period of two months from the date of SOS i.e. upto 08th Jul 2008. For further retention of MOD Pool accn due to Non-Availability of SF Accn, you are required to shift to an alternative hired accn before expiry of the stipulated period of two months i.e. by 08th Jul 2008. In case failure you are liable to the charged damages rent for unauthorized occupation of MOD Pool Accn w.e.f. 09 Jul 2008 besides eviction. You are requested to contact the Quartering Officer, CAO's Office for taking over alternative hired accn before the expiry of two months i.e. by 08th Jul 2008."***

16. On close scrutiny of the material placed on record, it is clear that the appellant could have retained the accommodation D-II/B-48, Moti Bagh, New Delhi for the education of his children, if the children happened to be in class X or XII subject to the fulfilling the conditions promptly provided under the Rule 61 of the MOD Pool Accommodation Rules. Otherwise, under Rule 62 of the MoD Pool Accommodation Rules, an officer was required to vacate the Defence Pool

Accommodation and move to Separate Family Accommodation. The appellant was permitted to stay in the Defence Pool Accommodation for two months i.e. till 08.07.2008. The appellant was allotted Separate Family Accommodation No. 15/296, Cariappa Vihar on 12.10.2009 but he failed to vacate the premises in question within the stipulated period i.e. on 08.07.2008 and vacated the same only on 18.07.2011. Undoubtedly, the Defence Pool Accommodation was retained by the appellant without any valid sanction for which he is liable to pay the damages for the said period i.e. 09.07.2008 to 18.07.2011.

17. Admittedly, if the allottee retained the government accommodation beyond the retention period permitted to him/her by the Directorate of Estates, he/she will be liable to pay the licence fee at damages rates for the period of unauthorised occupation and thus, the Government may initiate recovery proceedings against the allottee under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971.

18. Resultantly, we do not find any justifiable reason to interfere with the order under appeal.

19. The appeal is accordingly dismissed.

**CM No.21975/2016**

In view of the above order, the present application is rendered infructuous.

**SANGITA DHINGRA SEHGAL, J.**

**CHIEF JUSTICE**

**NOVEMBER 08, 2016**

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