

\$~24

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

%

Judgment dated: 6th September, 2016.

+ W.P.(C) 7870/2016
SURESH

..... Petitioner

Through : Mr. A.K. Tripathi, Advocate.

versus

THE NDMC

..... Respondent

Through : Ms. Kanika Agnihotri, Mr.Karan
Minocha, Advocates.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE I.S.MEHTA

G.S.SISTANI, J (ORAL)

CM No. 32581/2016 (Exemption)

Exemption allowed, subject to all just exceptions.

This application stands disposed of accordingly.

W.P.(C) 7870/2016 & CM No. 32580/2016

1. Challenge in this writ petition is to the order dated 23rd August, 2016 passed by the Central Administrative Tribunal (hereinafter referred to as 'the Tribunal'), by which the OA filed by the petitioner has been dismissed, taking into account the judgment of the Supreme Court of India in the case of *Union of India v. Rasila Ram and others* reported in (2001) 10 SCC 623. The OA has been dismissed as being non maintainable before the Tribunal based on the premise that challenge was to the order of the Estate Officer

passed under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971.

2. Learned counsel for the petitioner submits that the order under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 has been passed against the father of the petitioner and not against the petitioner. The father of the petitioner has already challenged the order by filing an appeal before the District Judge.

3. Counsel submits that the OA No. 2726/2016 filed by the applicant/petitioner sought relief to regularize the NDMC Quarter No. 205, Valmiki Sadan, New Delhi 110001 in the name of the petitioner after the retirement of his father and to quash the eviction order passed by the Estate Officer.

4. It is stated that the father of the petitioner retired as a Pump Driver in the New Delhi Municipal Council (NDMC)/respondent and he was allotted NDMC Quarter No. 205, Valmiki Sadan, New Delhi and lived therein for over 25 years. A request was made by the petitioner that since the respondent herein had regularized the quarters in favour of various other similarly placed persons on compassionate grounds, therefore, the petitioner should also be granted the benefit as the petitioner is working as R.M.R. (Regular Muster Roll) employee with the respondent/NDMC.

5. Counsel for the petitioner submits that the Tribunal has mis-directed itself and dismissed the OA as being not maintainable, whereas the petitioner only prayed for parity with the similarly situated persons in respect of granting Quarters on compassionate grounds.

6. Learned counsel for the respondent submits that the father of the petitioner was also employed and during the course of his employment, he was provided a Quarter, which has not been vacated even after his retirement.

7. We have heard learned counsel for the parties. Although, the OA, a copy of which has been placed on record is not as clear, as it could have been, but a reading of the OA would show that the petitioner has primarily complained of discrimination as stated in para 5.2 of the grounds.

8. In para 4.5 and 8.2 of the petition, the petitioner has complained of discrimination and stated that the similarly situated persons have been granted Quarters on compassionate grounds.

9. Having regard to the nature of the OA, in our view, the judgment in the case of **Rasila Ram** (supra), relied upon by the Tribunal to dismiss the OA, is not applicable as the challenge is not made by the petitioner to the proceedings initiated against him under the PP Act. Even otherwise, the proceedings were initiated against the father of the petitioner and not against the petitioner.

10. Accordingly, the order of the Tribunal is set aside. The matter is remanded back to the Tribunal. Meanwhile, we direct the NDMC to file an affidavit answering the allegations made by the petitioner with regard to discrimination. Respondent shall consider the case of the petitioner in accordance with law and file appropriate affidavit before the Tribunal.

11. The parties are directed to appear before the Tribunal on 27th September, 2016, by which date, the affidavit would be filed.

12. The present writ petition stands disposed of in the above terms.

Dasti.

G.S.SISTANI
(JUDGE)

I.S. MEHTA
(JUDGE)

SEPTEMBER 06, 2016

j

