

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (Art. 227) No.140 of 2017

Order reserved on: 20-2-2017

Order delivered on: 27-2-2017

Surendra Tiwari, S/o Late Ram Raksha Tiwari, aged 62 years, R/o
Qt.No.1-B/47, SECL Vishrampur, P.S. Vishrampur, Tah. Surajpur,
District Surajpur (C.G.)

(Appellant)
---- Petitioner

Versus

1. The Regional Protection Officer, Office of Chief General Manager,
South Eastern Coalfields Limited, Vishrampur, Police Station &
Tah. Vishrampur, District Surajpur (C.G.)
2. D.K. Singh, Estate Officer, SECL, Vishrampur, Police Station &
Tahsil Vishrampur, District Surajpur (C.G.)

---- Respondents

For Petitioner: Mr. Devershi Thakur, Advocate.
For Respondents: Mr. K.K. Shrivastava, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

C.A.V. Order

1. The petitioner herein worked with the respondent South Eastern Coalfields Limited (SECL) in its Bishrampur colliery and he was allotted quarter No.1-B/47 during his employment. He stood retired from SECL on 30-6-2010, but did not vacate the premises even after his retirement and he was served with a notice to vacate the allotted quarter, however, he did not vacate the same even after receipt of notice leading to serving of notice under Section 4(2) of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (for short, 'the Act of 1971'). Pursuant to the notice, the petitioner appeared through his advocate and also filed his reply,

but on the date of evidence, neither he nor his counsel appeared and ex parte evidence was recorded and the case was fixed on 16-5-2014 for arguments and ultimately, order under Section 5 of the Act of 1971 was passed holding him to be the unauthorised occupant and directing his eviction. Feeling aggrieved against the order of eviction, he preferred appeal before the District Judge, Surajpur under Section 9 of the Act of 1971.

2. By the impugned order, the learned District Judge considered the appeal of the petitioner herein and held that the petitioner is no longer in employment and ceased to be workman and further held that he is unauthorised occupant and thereby affirmed the order passed by the learned Estate Officer directing eviction of the petitioner. Now, by way of this writ petition under Article 227 of the Constitution of India, the petitioner challenges the order passed by the learned District Judge holding him to be unauthorised occupant on the ground that the same is unsustainable and bad in law.
3. Mr. Devershi Thakur, learned counsel for the petitioner, would submit that the order passed by the learned District Judge is without jurisdiction and without authority of law, as the learned District Judge has not completed ten years in the said District as a District Judge, therefore, he was not entitled to hear the appeal under Section 9 of the Act of 1971. Secondly, the petitioner has raised industrial dispute and his dispute is pending consideration with the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur and till his dispute is decided, he cannot be evicted.
4. Mr. K.K. Shrivastava, learned counsel for the respondents/SECL

would support the impugned order.

5. I have heard learned counsel for the parties and perused the order impugned.
6. The petitioner was allotted SECL quarter and he retired from SECL on 30-6-2010 and is still continuing in the SECL quarter by not vacating the same. He was served with show cause notice, he appeared personally and through advocate and filed reply, but thereafter not participated in the enquiry and on 27-5-2014, the Estate Office exercising the powers under Section 5 (1) of the Act of 1971 has passed the order of eviction recording reasons and holding that he is satisfied that the petitioner is unauthorised occupant of public premises and he is liable to be evicted which has been affirmed in appeal by the learned District Judge.
7. In the proceeding for eviction initiated under Section 4 of the Act of 1971, the only point for enquiry is as to whether the person concerned is unauthorised occupant and nothing more. The Estate Officer has clearly recorded a finding that the petitioner is unauthorised occupant of public premises and therefore he is liable to be evicted.
8. The Delhi High Court in the matter of **Hardwari Lal Verma v. The Estate Officer and others**¹ has clearly held that a Government servant who has been allotted a quarter is nothing more than a licensee; that license can be cancelled at any time. It may be that cancellation of this license in a given set of circumstances may infringe some service rule or some obligation to provide a quarter

1 AIR 1977 Delhi 268

to the Government servant concerned. If the cancellation is invalid or illegal or contrary to any rule of law, it will be open to challenge in appropriate proceedings.

9. The aforesaid case squarely applies to the facts of the present case, as the petitioner having been allotted a Government quarter stood retired way back on 30-6-2010 and therefore he is clearly an unauthorised occupant and the Estate Officer is satisfied that the petitioner is unauthorised occupant and deserves to be evicted. (See The Indian bank, Bangalore v. M/s. Blae and Central (P) Ltd. and others².)

10. The next question raised by the petitioner is that the appellate authority is not qualified and thereby not empowered to hear the appeal in terms of Section 9 of the Act of 1971.

11. Section 9 of the Act of 1971 states as under: -

“9. Appeals.—(1) An appeal shall lie from every order of the estate officer made in respect of any public premises under Section 5 or Section 5-B or Section 5-C or Section 7 to an appellate officer who shall be the district judge of the district in which the public premises are situate or such other judicial officer in that district of not less than ten years' standing as the district judge may designate in this behalf.”

12. A careful reading of the Act of 1971 would show that the appellate authority must be the District Judge of the district in which the public premises are situate or such other judicial officer in that district of not less than ten years' standing as the District Judge may designate in this behalf.

13. Thus, Section 9 (1) of the Act of 1971 is in two parts, first part is

that the appellate officer can be the District Judge of the district in which the public premises are situate and second part is, such other judicial officer in that district of not less than ten years' standing and to whom the District Judge has designated to hear the appeal.

14. In the present case, the appellate officer who has heard the appeal is the District Judge herself. Therefore, the petitioner's contention that the judicial officer must be of ten years' standing in that district is clearly merit-less. The appeal has been heard and decided by the learned District Judge and it has not been designated to any other Additional District Judge who has not been a judicial officer for not less than ten years.

15. The learned District Judge has clearly recorded a finding that a retired SECL servant is not entitled to raise an industrial dispute. This finding is a finding of fact based on evidence available on record. I do not find any illegality or jurisdictional error in the said finding.

16. Thus, all the points raised by the petitioner fail and the learned District Judge is absolutely justified in dismissing the appeal. The writ petition deserves to be and is accordingly dismissed. No order as to costs.

Sd/-
(Sanjay K. Agrawal)
Judge