

CWP-13050-2009 (O&M)

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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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CWP-13050-2009 (O&M)

Decided on : 20.09.2017

Dr. Suman Sharma

.....Petitioner

Versus

State of Punjab and others

...Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present: Mr. D.S.Patwalia, Senior Advocate with
Mr. Gaurav Rana, Advocate
for the petitioner.

Mr. H.S.Sitta, AAG, Punjab.

Mr. Suvir Sehgal, Sr. Standing Counsel with
Mr. Tarun Walia, Advocate and
Mr. Akshay Sethi, Advocate and

AJAY TEWARI, J. (Oral)

By this petition the petitioner has challenged the imposition of penal rent. It is the contention of learned Senior Counsel for the petitioner that in any case within 1 year of her transfer the petitioner had again become entitled for the allotment of the house and on this score she has made numerous representations and at least on one occasion by document Annexure P-5 on 12.3.2008, the Secretary House Allotment Committee had directed her to appear in his office for regularization/revival of her allotment but instead of

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acting thereon then the impugned order (Annexure P-9) on 13.7.2009 was passed whereby it was directed that she would be liable to pay penal rent. In these circumstances, no penal rent could be charged from the petitioner. The contention of the Sr. Standing Counsel appearing for UT Chandigarh Administration is that under (Chandigarh Administration General Pool) Allotment Rules-1996 there is now no scope for discretion. These Rules have completely objectivised all the issues related to allotment of government house to employees and once that is so the letter Annexure P-5 can give no right to the petitioner. Therefore, the petitioner has to be levied full penal rent. He has relied upon the judgment passed in *CWP No. 11133 of 2001 (O&M)* in the matter of *Prem Singh v. UT, Chandigarh* wherein the Court in Para 8 held as follows:

“I do not think that principles of natural justice should be stretched so far to make occupation lawful till the elastic reaches breaking point. When there is a duty and an obligation on Government servant to vacate Government accommodation on repatriation then it cannot be held as an absolute rule that market rent or penal rent should not follow except upon a notice duly served which penal rent is statutorily provided for, for not relinquishing the allotment made from the general pool or for that matter from any government accommodation. There were other Government servants in the queue to be allotted Government accommodation in a war of attrition on public property meant for housing employees of Government.”

Similarly, in Para 12 of the judgment it was held as follows:

The stand of the Chandigarh Administration is not incorrect when

they state that the petitioner has misused Government property by retaining the quarter in his unauthorized possession. In view of the terms and conditions of the allotment letter, no notice was required to be issued or served because its terms were known to the petitioner with eyes wide open. The petitioner never approached the department in this connection rather he remained at large since he stood repatriated from Chandigarh Police to his parent State. As a matter of fact, the office memorandum dated March 30, 1965 (supra) deals with cases of transfer from one station to another, then officer may be allowed to retain the residence, free of rent for the period of first 15 days and thereafter on payment of rent under F.R. 45-A but not exceeding two months from the date of handing over the charge. The other events are death and resignation from service, dismissal, removal or retirement where incumbent can retain residence for a period of one month, free of rent. Even this is hedged in for bona fide use of the officer or his family as the case may be and the residence can be conveniently spared by the competent authority. The OM does not deal with cases of repatriation which is albeit the weakest of the situations obtaining with hardly any foothold left in the allotted quarter. Delay in taking action by the Estate Officer is not to be read in favour of the petitioner. The petitioner even filed a Civil Miscellaneous Application No.23974 of 2001 praying for extension of time for vacating Government accommodation praying for extension up to March 31, 2002 which was rendered infructuous on the undertaking given at the motion hearing to vacate the house within one month. The application was rendered infructuous. The question which survived was about his liability to pay the arrears which liability is held against the petitioner in the above terms as reasoned in this order.

In my considered opinion, the arguments of both the counsel are two extreme. No doubt as Mr. Suvir Sehgal, Sr. Standing Counsel states the letter Annexure P-5 does not create any right to the petitioner for revival of the

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house yet, it cannot also be lost sight of that this letter does equivocate the position of the petitioner. As has been pointed by Mr. Suvir Sehgal, Sr. Standing Counsel, the Secretary House Allotment Committee did not have the jurisdiction even to consider the case of the petitioner but he did assume that jurisdiction and the petitioner cannot therefore be held to be liable to pay the entire amount of penal rent.

In view of these peculiar facts and circumstances of the case the amount of penal rent is adjudged to be 50% of the total amount till the vacation of the house. Let that amount now paid within a period of 1 month failing which the petitioner would have to pay the same with interest 8% per annum. The amount already deposited obviously would be set off.

20.9.2017
anuradha

(AJAY TEWARI)
JUDGE

Whether speaking/reasoned	-	Yes/No
Whether reportable	-	Yes/No