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

+ **W.P.(C) 2175/2010**

HIRA BAHADUR

..... Petitioner

Through: Mr Kundan Kumar Lal, Advocate.

versus

GNCT OF DELHI AND ANR

..... Respondents

Through: Mr Varun Nischal, Advocate for R-1.
Mr Santosh Kumar Tripathi, ASC for
GNCTD/R-2.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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03.08.2017

VIBHU BAKHRU, J

1. The petitioner has filed the present petition impugning a demand of a sum of ₹3,65,341/- raised by respondent no.2 on account of re-assessment of licence fee as per market rent for overstaying in the accommodation allotted to the petitioner for the period 29.06.1999 to 14.12.2007.
2. Respondent no.2 states that the accommodation allotted to the petitioner (that is, Flat No. 645, Type-I, Kalyanvas, Delhi) was cancelled by an order dated 28.06.1999, however, the petitioner continued to occupy the same till 14.12.2007 and therefore is liable to pay market rent for the said period. The petitioner disputes the same and claims that no such order cancelling the allotment was communicated to him and the allegation that he had sub-let the premises was also dropped.

3. Briefly stated, the relevant facts necessary to address the present controversy are as under:-

3.1 The petitioner was appointed as a Chowkidar with respondent no.1, the Irrigation and Flood Control Department of Government of NCT of Delhi. After twenty years of service, the petitioner was allotted Flat No. 645, Type-I, Kalyanvas, Delhi (hereafter 'the Flat').

3.2 The petitioner states that his daughter-in-law committed suicide in the Flat in 1997 and the petitioner and other family members were implicated in a dowry death case. The petitioner was taken into custody and remained incarcerated for the period between May 1997 to February 2001. In the meanwhile, the petitioner was suspended from the service of respondent no.1.

3.3 The petitioner was acquitted on 12.02.2001 and was released from judicial custody. On his release, the petitioner returned to the Flat and continued to reside in the said flat till 14.12.2007.

3.4 The counter affidavit filed on behalf of respondent no.2 states that the allotment of the Flat in question was cancelled by an order dated 28.06.1999 as it was found during a survey conducted on 02.06.1999, that the Flat had been sub-let by the petitioner for pecuniary benefits.

3.5 The petitioner states that prior to vacating the Flat, the petitioner became aware that certain eviction proceedings had been instituted and he accordingly appeared before the concerned Estate Officer and the eviction proceedings were dropped on 08.05.2007. Thereafter, the petitioner applied

for 'No Objection Certificate' (NOC) from the Rent Recovery Cell of respondent no.2, which also granted a provisional certificate on 13.12.2007; that is, just prior to the petitioner evicting the flat.

3.6 Thereafter, the petitioner approached respondent no.2 for a final NOC and at that stage, he was informed of the pendency of the eviction proceedings. Subsequently, the petitioner, thereafter received notices for eviction proceedings: notice dated 19.03.2008 for a hearing scheduled on 24.03.2008 and a notice dated 22.10.2009 for a hearing scheduled on 29.10.2009.

3.7 The Estate Officer passed an order dated 29.10.2009 dropping the eviction proceedings since the petitioner had already vacated the Flat on 14.12.2007 and also furnished the certificate to the aforesaid effect to the Estate Officer.

3.8 The petitioner retired on 30.11.1999, however, his dues have been withheld on account of a demand communicated by respondent no.2 to respondent no.1 claiming that a sum of ₹3,65,341/- is due from the petitioner.

4. The learned counsel appearing for respondent no.2 submitted that the allotment in favour of the petitioner was cancelled by an order dated 28.06.1999 and therefore the calculation of licence fee based on market rent could not be faulted. On a pointed as to query whether there was any evidence to indicate that such order had been communicated to the petitioner, the learned counsel fairly conceded that no such evidence had been placed on record in this petition.

5. The learned counsel appearing for respondent no.1 states that the said respondent had withheld the dues of the petitioner only at the instance of respondent no.2, otherwise there was nothing in its record, which would indicate that any amount was recoverable from the petitioner.

6. The petitioner's contention that the order dated 28.06.1999 cancelling the allotment of the Flat in his favour was not communicated to him has to be accepted for several reasons. First of all, respondent no.2 has not been able to produce any documents that indicate that the said order had been communicated to the petitioner at any point of time. Admittedly, the petitioner was suspended from service on account of being detained in judicial custody pursuant to the criminal case instituted against him and his family. The respondents were thus aware that the petitioner was in judicial custody. There is also no material on record to indicate that any attempt was made by respondent no.2 to serve any notice or any order cancelling the allotment of the Flat to the petitioner while he was in judicial custody.

7. Secondly, the petitioner has produced his pass book for recovery of rent/licence fees, which indicates that respondent no.1 had been regularly collecting the normal licence fee from the petitioner. Concededly, respondent no.1 was also not aware of any eviction order against the petitioner and, therefore, had no occasion to demand the licence fee based on market rent.

8. Thirdly, the petitioner had, on becoming aware of the eviction proceedings, appeared before the Estate Officer on 08.05.2007 and on the following date, the Estate Officer had passed the following order :-

“This order will dispose off eviction proceedings pending under the Public Premises (Eviction of unauthorized Occupant) Act 1971 against Sh. Hira Bahadur, allottee of flat no. 645, Type-I, Kalyanvas, Delhi – 110091 for sub-letting the flat allotted to him. The case file pertaining to the case was received from Estate Office, Land & Building Department vide letter no. F.E.O./2004/288 dated 05.07.2004 after the appointment of ADMs as Estate officer.

For taking up the eviction proceedings, notices were issued to the allottee, Sh. Hira Bahadur, Allotment Cell, L&B and PWD. In the hearing, conducted on 30.03.2007, Sh. Hira Bahadur, Allottee, Sh. K.R. Meena, AE, PWD and Sh. Neeraj on behalf of the AHC (Allot. Cell), L&B were present.

Sh. K.R. Meena, AE, PWD stated that Sh. Hira Bahadur himself and his family members are residing in the flat.

In view of the circumstances & evidences placed on record and the latest position stated by A.E., PWD and the representative of the L & B, no further grounds exist to continue the eviction proceedings against the allottee, and therefore, the eviction proceedings is hereby DROPPED.”

9. The Estate Officer had issued a subsequent notice dated 25.08.2007 terming the order dated 08.05.2007 as an interim order and vacated the same. This is palpably erroneous as the order dated 08.05.2007 was not an interim order and thus could not be vacated as was sought to be done by the Estate Officer. However, be that as it may, the petitioner vacated the premises immediately thereafter, that is, on 14.12.2007. This was noted by the Estate Officer in his order dated 29.10.2009 and the eviction proceedings were once again dropped. The operative part of the said order reads as under:-

“For taking up the eviction proceedings, notice was issued to Sh. Hira Bahadur. In the hearing conducted on 29.10.2009, he submitted that eviction proceedings has already been dropped on 08.05.2007 by Sh. A.K. Kaushal, the then ADM/Estate Officer (East) and the said flat has been vacated by him on 14.12.2007. He submitted a certificate dated 06.07.2009 issued by J.E., CBM Sub. Divn. M-2332, PWD, Govt. of Delhi, Kalyanvas, Delhi -91 to this effect. He also added that no dues are pending against him and he is going to be retired on 30.11.2009 on superannuation.

In view of the circumstances and evidence placed on record, no further grounds exist to continue the eviction proceedings against the allottee and therefore, the eviction proceedings is hereby dropped.”

10. Petitioner claims that the order dated 25.08.2007 vacating the order dated 08.05.2007 was also not communicated to the petitioner.

11. Fourthly, the respondent no.2 had issued provisional clearance certificate to the petitioner. The petitioner was also not informed of any potential demand at that stage. Further, the petitioner was also not informed of the proceedings for ascertaining the market rent/damages in respect of occupation of the Flat.

12. For the aforesaid reasons, the demand raised on the petitioner for licence fee as per market rent is wholly unjustified and cannot be sustained. The order cancelling the allotment of the Flat was not communicated to the petitioner and further the proceedings initiated under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 had been dropped on two occasions. In view of the above, the petition is allowed and the demand of ₹3,65,341/- raised on the petitioner is set aside.

13. The respondents are directed to release all post-retirement benefits of the petitioner including arrears of pension and allowances, in accordance with law.

14. The parties are left to bear their own costs.

AUGUST 03, 2017
pkv

VIBHU BAKHRU, J

