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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment reserved on : 17.01.2017.

Judgment delivered on : 20.01.2017.

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W.P.(C) 5671/2016 & C.M. No.24373/2016

RAJ PAL

..... Petitioner

Through Mr.Mukesh Anand, Adv.

versus

UNION OF INDIA THROUGH ESTATE OFFICER

..... Respondent

Through Mr.Ripu Daman Bhardwaj, CGSC,
.T.P.Singh and Mr. Sahaj Garg,
Advocates for UOI.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J.

1 The petitioner before this Court is Raj Pal. He is the owner of Government Quarter No. S-4/876, R.K. Puram, New Delhi. He is stated to be working as Assistant Compiler in the Ministry of Home Affairs, Government of India. He was allotted the aforementioned accommodation by the Government of India. He is still occupying the said property.

2 The petitioner is aggrieved by the order passed by the learned District Judge dated 12.05.2016 which had endorsed the findings returned by the Estate Officer dated 17.07.2015 vide which the petitioner had been directed to vacate the aforementioned quarter.

3 The impugned order (12.05.2016) had held that pursuant to an inspection carried out on 10.11.2012, it had revealed that the original allottee had sub-let this quarter; he was not the occupant of the quarter at the time of the aforementioned inspection. Since this was a violation of the Rules under which quarter had been allotted to him, a notice under Section 4 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (hereinafter referred to as the said Act) was served upon the petitioner. After evidence had been led before the Estate Officer, an order had been passed by the Estate Officer under Section 5 of the said Act. The appeal filed by the petitioner under Section 9 of the said Act stood dismissed by the impugned order.

4 Learned counsel for the petitioner submits that the impugned order is based on surmises and conjectures; the main reason for holding out that the petitioner had sub-let the quarter was for the reason that at the time of inspection, one Vikas was found occupying the Government quarter and

although he had introduced himself as the son of the allottee yet the signatures taken on that inspection report did not match with the signatures of Vikas when he appeared before the Court to append his signatures. This non-matching of the signature had led the Estate Officer to draw a conclusion that this Vikas was an impersonator; he was not the son of the petitioner. Another reason which had led the Appellate Court to hold that the findings of the Estate Officer were correct was for the reason that when Vikas was asked as to where he was working, he stated that his work shop is in Madan Gir whereas his business card filed before the Court revealed his car shop center was at Masood Pur, Vasant Kunj. This also reflects upon the dubious status of Vikas. The telephone number provided by the occupant/occupier (purported to be Vikas) was also different from the telephone number of the actual Vikas. Vikas had disclosed the name of his mother as Munni Devi where the CGHS card of the applicant shows that his wife is Beena Devi and not Munni Devi. It was for all the aforementioned reasons that the learned District Judge as also the Estate Officer had held that the petitioner is an illegal occupant in the said quarter; it was a case of sub-letting.

5 Learned counsel for the petitioner submits that this finding is wholly

erroneous and illegal. He has drawn attention of this Court to the driving license of Vikas wherein the signatures of Vikas appear on the said document. Submission of the learned counsel for the petitioner is that a scrutiny of this signature of Vikas (on this document) clearly shows that the manner of appending these signatures (by Vikas) matches the signature given by the person who had signed the inspection report. His further submission is that although the alleged Vikas (present at the time of inspection) had stated that he was working in a shop at Madan Gir and the business card of Vikas (in Court) evidenced that he has a shop at Masood Pur yet doing the work of car dealing and Madan Gir and Masood Pur being at a distance of 3-4 kilometers; the work at Masood Pur had also made Vikas to visit shop at Madan Gir and this was in connection with his car dealing business. On the third count, the submission of the learned counsel for the petitioner is that the name disclosed by the petitioner of his mother as Munni Devi is similar to the sound Beena Devi and it was probably due to a mistake in hearing that the name of Munni Devi was noted as the wife of petitioner whereas her real name is Beena Devi. Additional submission of the petitioner being that the gas consumer card number mentioned in the inspection report i.e. B.P. No.10008934 is number of the petitioner himself;

moreover the mobile number mentioned in column 13 (9958123884) is also the mobile number of the petitioner and had Vikas been a sub-lettee and not the son of the petitioner, he would not have known the mobile number of the petitioner.

6 These arguments have been countered. Learned counsel for the respondent submits that a fact finding has been returned by the two courts below and this Court in its writ jurisdiction may not re-appreciate these fact findings. It is pointed out that the order suffers from no infirmity. He has placed reliance upon a judgment of another Bench of this Court in 2003 (66) DRJ 509 Sohan Lal Vs. Union of India and Others as also a judgment of the Apex Court passed in Civil Appeal No.5879/2007 New India Assurance Company Ltd. Vs. Nusli Neville Wadia and Another. Submission being that a plain readings of Section 6 of the said Act shows that the entire burden is upon the sub-lettee; it was for the petitioner to have proved that it is not a case of sub-letting which he has failed to do.

7 Arguments have been heard. Record has been perused.

8 This Court notes that the impugned order is premised on the submissions which have already been noted supra. The impugned order in the first instance had noted that in the inspection report (10.11.2012), the

signatures of the occupant Vikas had been appended in the last column. A perusal of this signature by the naked eye when matched with the signatures appended of Vikas on the driving license shows that both the signatures match; they do not appear to be mis-matched. The manner in which 'V' has been written followed by 'K' where there is a dis-jointer in the alphabet as also the continuation of the last alphabet 'S' does appear to be similar in both the two documents. The driving license is dated 21.11.2005; it is valid up to 20.11.2025. This driving license was in existence prior in time to the inspection. It is also not the case of the respondent that this driving license is fabricated. Thus this Court notes that the signatures of Vikas as appearing in the inspection report may not have matched the signatures of Vikas in Court yet this by itself could not have been a conclusive reason to hold that these persons are two different persons especially when this Court notes that the signatures of Vikas appearing on his driving license (a document in existence prior to the date of inspection) do match. If the signatures of the same person on three documents are examined and two documents match and two do not match, it would not be correct on the part of the Department to arrive at a conclusion that this is an established case of sub-letting.

9 Record of the Department has been requisitioned. It has been perused.

Note-II has been highlighted. In the course of inquiry, it had been noted that the allottee had appeared before the Deputy Director on 01.08.2013 and had appended his signatures for the purpose of verification; the Inquiry Officer has noted that the signatures of Vikas do not tally with the signatures given by the purported imposter in the inspection report. These specimen signatures of Vikas taken before the Inquiry Officer have been perused. They no doubt do not match with the signatures given in the inspector report but at the cost of repetition, there are three signatures which are before this Court and which when scrutinized by the naked eye, show that two signatures of Vikas match with one another and two do not. This Court notes that the impugned order has been largely premised on the signatures of Vikas. Benefit of doubt has to be given on this score to the allottee. This Court notes that the impugned order has largely been premised on these signatures of Vikas.

10 The other corroborative evidence which has been noted by the Department relate to other informations which were purported to have been disclosed by Vikas in this inspection report. In this inspection report, he had in column 10 disclosed that he works in a shop at Madan Gir. The business card produced before the Estate Officer disclosed that he was working at a

shop in Masood Pur and doing business of car dealing. This fact finding has been recorded by the two courts below. The submission of the learned counsel for the petitioner that Madan Gir and Masood Pur are at a distance of 3-4 kilometers and the car dealing work which Vikas was carrying out from the shop at Masood Pur also made him to travel to shops in Madan Gir is an argument which cannot be overlooked especially keeping in view the fact that admittedly the said Vikas was working at a shop and moreover the distance of Madan Gir and Masood Pur is also not really far.

11 The person found at the spot (allegedly Vikas) had disclosed the name of his mother as Munni Devi whereas her real name was Beena Devi. The submission that this could be a case of mis-hearing is noted and for which this Court is of the view that a benefit of doubt be accorded to the petitioner.

12 This Court also notes that the gas consumer number disclosed in column 9 (B.P. No.10008934) was of the original allottee namely Raj Pal. The mobile number disclosed in column No. 13 by the said Vikas was also the mobile phone number of Raj Pal; meaning thereby that if a stranger was found at the spot, he could not have known the mobile number of the original allottee and this submission of the learned counsel for the petitioner has force.

13 This Court notes that a verbatim conclusion arrived at by the two courts below. A harsh punishment has been imposed upon the petitioner; unless and until, it was conclusively established by the Department that it is a clear case of subletting, the petitioner could not have been asked to vacate the premises. This Court notes that the findings of the Estate Officer which have been endorsed by the impugned order do not make out a clear case of sub-letting. The preponderance of probabilities had not been weighed by the courts below correctly; evidence has not been appreciated in the correct perspective. This Court is of the view that a clear case of sub-letting was not made out; impugned order is perverse.

14 The judgments relied upon by the learned counsel for the petitioner would have no application to the facts of the instant case. There were positive fact findings returned in those cases. In the instant case, the findings endorsed in the impugned order are parrot like recitation of the order passed by the Estate Officer. Although it is true that before the Estate Officer, the driving license of Vikas was not made available yet the fact that it has been brought on record before this Court and the same not having been challenged as a fabricated document, this Court is of the view that cognizance of the document has to be taken and noting the above narration, the impugned order

is set aside.

15 Writ petition disposed of.

16 Record of the Department be returned.

INDERMEET KAUR, J

JANUARY 20, 2017

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