

\$~6

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

%

**Date of Decision: 31<sup>st</sup> October, 2017**

+ W.P.(C) 10492/2016 & CM No.41143/2016

ESTATE OFFICER AND ANR.

..... Petitioners

Through: Mr. Vivek Goyal CGSC with Mr.  
Harvesh Kumar, Astd. Director and  
Mr. Umesh Kumar, ASO.

versus

BEENA RANI

..... Respondent

Through: Mr. Rohit Sharma, Adv.

**CORAM:**

**HON'BLE MR. JUSTICE J.R. MIDHA**

### **J U D G M E N T**

1. The petitioners have challenged the judgment dated 27<sup>th</sup> February, 2016 whereby the learned District Judge has allowed the respondent's appeal against the eviction order dated 13<sup>th</sup> July, 2015 passed by the Estate Officer.

2. The respondent, working as a Private Secretary in the Department of Revenue, Ministry of Finance, Govt. of India, has been allotted government quarter No.8, Block No.124, Sector-1, M.B. Road, New Delhi.

3. On 14<sup>th</sup> April, 2012, an inspection was carried out in respect of the aforesaid quarter when the respondent was not there. At the time of the inspection, Pushpa Rawat was present in the house. It is alleged that Pushpa Rawat claimed herself to be a tenant. Suspecting sub-letting, show cause notice dated 12<sup>th</sup> June, 2012 was issued to the respondent to show cause why

the allotment be not cancelled. The respondent replied to the show cause stating that she was in the office at the time of inspection and her friend and some guests were present in the quarter and her brother was entertaining them. The respondent also submitted the photocopy of her Voter ID card as well as photocopy of report card of Ayush Rawat, son of Pushpa Rawat as a proof that Pushpa Rawat was not residing in the subject premises. On 11<sup>th</sup> January, 2013, the respondent's allotment was cancelled against which the respondent preferred an appeal before the Appellant Authority which was rejected on 08<sup>th</sup> May, 2014. The proceedings under the Public Premises Act, 1971 were initiated against the respondent which resulted in the eviction order dated 13<sup>th</sup> July, 2015. The respondent preferred an appeal before the District Judge which was allowed.

4. The learned District Judge drew an adverse inference against the petitioner for not cross-examining the defence witness, Ms. Nutan Baskey. The findings of the learned District Judge are reproduced here under:-

*“On a consideration of the entire available record and rival pleas submitted, it is essential to observe that the defence witness of the appellant herein Smt. Nutan Baskey, the immediate neighbor of the appellant has not been cross examined by the department despite ample opportunities granted and her statement to the effect that the premises were not sublet by the appellant thus has remained unchallenged. The observations made in the order to the effect that the statement made by Smt. Nutan Baskey has no relevance as they did not co-relate in the matter in the circumstances cannot be accepted in as much as the department despite having opportunity for cross examination of Smt. Nutan Baskey did not cross examine her, and furthermore, the inspection conducted by Sh. Ashok Kumar and Sh. Ravinder Gupta on 14.04.2012 by persons whose designation are also not mentioned in the inspection note dated 14.04.2012, which states to the effect that it was ‘suspected’ that person found at the spot*

*were tenants continues to remain under the realm of suspicion alone in as much as nothing prevented the department from examining Smt. Pushpa Rawat on oath in the proceedings before the Estate Officer and it cannot be over looked that had there been no bonafides in the presence of Smt. Pushpa Rawat, she would not have produced her election identity card showing the address different from that of the allotted accommodation.*

*Taking the totality of the circumstances of the case into account, it is held that apart from a mere suspicion that has been raised against the appellant of having sublet the public premises, the department has been unable to establish the said suspicion therein as the department has not chosen to cross examine the immediate neighbor of the appellant who was produced by the appellant in the witness box in support of her plea that she has not sublet the premises and thus the impugned order dated 13.07.2015 bearing No.EC/93/AD/LIT/2014TC- (Sub) and the cause notice dated 27.05.2014 bearing No.EC/93/AD/LIT/2014T-C-Subletting are set aside. The appeal PPA No.14/15 is thus allowed and records thereof be consigned to the Record Room."*

5. Learned counsel for the petitioner has produced the original record. Learned counsel for the petitioner heavily relies on the inspection report which records that Pushpa Rawat stated herself to be a tenant. Inspection report has been perused from the record produced. The entire inspection report except para 15 is filled up in English. Para-15 is filled up in Hindi and it appears to be in a different handwriting. Para-16 is written with different pen and in a different handwriting.

6. Learned counsel for the petitioners submits that the non cross-examining of defence witness is of no consequence. The respondent produced her neighbour as a defence witness who deposed on oath that the respondent is staying in the allotted accommodation and it has not been sublet. The statement dated 24<sup>th</sup> November, 2013 of the defence witness is reproduced hereunder:-

*“Statement of Smt. Nutam Baskey W/o Late Jonathan Baskey,  
R/o 124/9, Sec-I, Pushp Vihar, N. Delhi.*

*On SA*

*I know Smt. Beena Rani since I shifted to my above house in 2010. I usually visit the house of Smt. Beena and she also visits my house occasionally. I have never seen anybody in the house of Beena. I have no idea whether any relative comes to her house. I have seen the brother and sister of Smt. Beena. Since the date I have shifted to my house I have noticed that Smt. Beena resides there in her house. To my knowledge Smt. Beena has not given his house on rent. I have seen the statement given by me on 29/9/2014 and same is Ex. as mark ‘A’. I am giving this statement without any coercion or influence.”*

7. This Court is of the view that there is no infirmity in the impugned order passed by the learned District Judge. The writ petition as well as pending application are, therefore, dismissed.

**OCTOBER 31, 2017**  
ak

**J.R. MIDHA, J.**

भारतमेव जयते