IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

228 **CWP-15972-2004(O&M)**
Date of Decision: 1.3.2018

ROHIT SHARMA **....PETITIONER**

VS

THE REGISTRAR COOPERATIVE SOCIETIES PUNJAB AND OTHERS

....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AJAY TEWARI

Present: Mr.K.S.Kang , Advocate
for the petitioner.

Mr. Suvir Sehgal, Sr. Standing Counsel with
Mr. P.S.Kanwar, Advocate and
Mr. Tarun Walia, Advocate
for the respondents.

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AJAY TEWARI, J.(Oral)

By this petition the petitioner had originally prayed that orders Anexures P-2 and P-4 evicting the petitioner from the House No.1534, Sector-20 B, Chandigarh be quashed and the respondents be directed to transfer the allotment of that house to him.

Brief facts of the case are that the father of the petitioner was working as Superintendent Grade-II in the office of the Registrar Cooperative Societies Punjab at Chandigarh and had been allotted the house No. 1534, Sector-20 B, Chandigarh by the respondent. He died in service on 26.12.2002 and the petitioner and his family were entitled to retain the house for one year on normal rent. After the completion of that one year that allotment was cancelled and the impugned orders were passed. During the pendency of this petition the petitioner was allotted another government house and the following order was passed on 29.2.2016:-

> "*Prayer of learned counsel for the applicant-petitioner is that the Chandigarh Administration be directed to take the possession of the house from the petitioner, in which he was staying after the death of his father on 26.12.2002. However, it shall be subject to determination to the rights of the parties regarding payment of rent/penal rent in the pending writ petition.*
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> *After hearing learned counsel for the parties, the present CM is allowed to the extent that the applicant-petitioner is permitted to handover the possession of the house to the competent authority, however, the same shall be subject to final decision in the writ petition, pertaining to the rent/penal rent payable by the petitioner for the period he remained in the possession of the premises.*
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> *CM stands disposed of."*

The relevant rules are Rule 4 and 11 which are quoted here in below:-

"4. ***Employees owning houses to be ineligible for allotment under these Rules,*** *S.R.-317-A.M.4.—(1) No employee shall be eligible for allotment of Government residence under these rules if he or his spouse or any of his dependant children owns a house at Chandigarh, or at the adjoining urban estates of Panchkula or Mohali, unless he is willing to pay double the normal licence fee:*

Provided that this rule shall not apply to the employees living in the earmarked residences.

(2) If on the coming into force of these rules, an employee already in occupation of Government residence, his spouse or any of this dependant children, owns a house at Chandigarh or the adjoining urban estates of

Panchkula or Mohali, he shall surrender the Government residence in his occupation within a period of two months. However, he will have the option to retain the same on the payment of double the normal licence fee.

(3) Where an employee to whom sub-rule (2) is applicable does not surrender the Government residence as required, he shall be liable to pay damages for use and occupation of the residence equal to double the normal licence fee from the date on which he is required to surrender the Government residence.

(4) Where after a Government residence has been allotted to an employee, he or his spouse or any of his dependant children constructs or otherwise becomes the owner of a house at Chandigarh or at the adjoining urban estates of Panchkula or Mohali shall notify the fact to the Secretary within a period of four weeks from the date on which he or such member becomes the owner of the house or completes the construction thereof and he shall, thereafter, be governed by the provisions of sub-rules (1) to (4).

***Explanation**: A person shall be deemed to become the owner of a house, in the case of a newly constructed house, as from the date the Estate Officer concerned gives a certificate of completion in relation to the house or the date of actual occupation of the house, whichever his earlier.*

***11. Out of Turn Allotment** S.R.-317-AM-11.-(1) The House Allotment Committee may allot a house on out of turn basis in the following cases:*

[(a) Allotment of residence to the member of the family of deceased Government employee:

(i) When a Government employee in occupation of a Government residence dies while in service, accommodation may be allotted to his spouse, family

comprising of dependent or a son, or an unmarried daughter on compassionate ground, subject to fulfillment of other prescribed conditions including that of nor owning a house in Union Territory, Chandigarh, Mohali or Panchkula.

(ii) Thus, if a Government employee dies in harness and was living in a Government accommodation, his family comprising of dependent would be allowed to retain the same house as prescribed below. However, if the deceased was working in department which has its own pool of houses, the house would be allotted to be retained from that pool only.

(iii) That if the deceased was working at Chandigarh but he and his family were not living in Chandigarh, no claim shall be entertained.

(iv) If the allottee expired during retention period, no claim shall be entertained.

(v) Provided that if the allotee was allowed retention after transfer outside Chandigarh and expired during retention period, no claim shall be entertained.

(vi) That if the deceased was residing in earmarked house, his/her family will have to vacate the earmarked house and a general category house will be allotted to the family as per his/her entitlement.

(vii) Provided that if the deceased is working elsewhere and living at Chandigarh, no claim shall be entertained.

(viii) If within three years of the death of the allottee, kin get a Government job then the kin shall be allotted house of his entitled category though on out of turn basis:

Provided that such accommodation shall not be higher than the type to *which such member of the family of the deceased is entitled:*

Provided further that such member of the family of the deceased applying for allotment under this sub-rule shall not be allotted accommodation of a type higher than the type already in occupation of the deceased even though the applicant may be entitled to such higher type.]

[(aa) Allotment of residence to the member of the family of Government employee retiring on medical grounds:

When a Government employee in occupation of a Government residence, retires on medical ground, before the age of 55 years, his/her member of the family who is already in Government service got employment on compassionate grounds on account of such retirement shall also be entitled to the allotment of Government accommodation of the entitled category under the aforementioned rules.]

(b) Allotment of residence to spouse of Government employee on his transfer out of Chandigarh:

When a Government employee in occupation of Government accommodation is transferred outside Chandigarh, the same residence may be transferred in the name of his spouse subject to the condition that the spouse is working in an eligible office and is entitled to the same type of accommodation. However, in case the spouse is not entitled to the same type he/she may be allotted a residence of his/her entitlement:

Provided further that such spouse shall not be allotted accommodation under this sub-rule of a type higher than the type already in occupation of the transferred employee even though the applicant may be entitled to such higher type.

(c) Allotment of residence to spouse on retirement of Government employee:

When a Government employee in occupation of government accommodation retires, the same residence may be transferred in the name of the spouse subject to the condition that such spouse is working in an eligible office and is entitled to the said type of accommodation. However, in case the spouse is not entitled to the said type he/she may be made an allotment as per his/her entitlement:

Provided that such spouse shall not be allotted accommodation under this sub-rule of a type higher than the type already in occupation of the retiree even though the applicant may be entitled to such higher type.

(d) Allotment of residence to Government employee vacating earmarked house:

When a Government employee in occupation of earmarked accommodation of the General Pool ceases to hold the post for which the said accommodation is earmarked, he shall be allotted a house of his entitled category under this sub-rule subject to the condition that the employee continues to be posted at Chandigarh, Panchkula or Mohali [except the District Leval Offices or those offices which are not State level offices at Panchkula or Mohali]:

Provided that if the house of entitled category is not available, he shall be allotted a house of category below entitlement.

(e) Allotment of a residence to a government employee due to functional requirements:

A government employee working in the Chandigarh

Administration in its various departments on a key post may be allotted a residence of the entitled category under this sub-rule due to functional requirements of the post:

Provided that if the house of the entitled category is not available then a house of the next below category may be allotted:

Provided further that the Government employee owning house in Chandigarh, Mohali and Panchkula in his own name or in the name of his spouse or any of his dependent children shall not be entitled for allotment of residence under this sub-rule.

(f) Allotment of a residence to a Government employee in exceptional circumstances of hardship or in public interest"

A Government employee of an eligible office may, for the reasons to be recorded in writing, be allotted a residence of one category below entitlement under this sub-rule in exceptional circumstances of hardship or in public interest:

Provided that the Government employee owning house in Chandigarh, Mohali and Panchkula in his own name or in the name of his spouse or any of his dependent children shall not be entitled for allotment of residence under this sub-rule.

[(g) Allotment of Residences to a Government employee on transfer to States of Jammu and Kashmir, Assam, Meghalaya, Nagaland, Tripura, Arunachal Pradesh and Mizoram and Union Territories of Andaman and Nicobar Islands and Lakshadweep.

A Government employee of an eligible office, already in occupation of Chandigarh Administration General Pool house of his entitled *category at the time of allotment and not on the date of his transfer to State of Jammu and Kashmir, Assam, Meghalaya, Nagaland, Tripura, Arunachal Pradesh, Mizoram and Union Territories of Andaman and Nicobar Islands and Lakshadweep shall be allotted accommodation of one type below the type of accommodation in his occupation, in the same or nearby locality, in case the officers request for allotment of alternative accommodation.]*

[(2) Notwithstanding anything contained in these rules, not more than 10% of the houses allotted in a year under clauses (e) and (f), shall be allotted on out of turn basis. This limit shall, however, be not applicable in respect of out of turn allotments under clauses (a) to (d) of sub rule(1).]"

Rule 4 is the general rule which lays down that employees owning houses cannot occupy government houses unless they are ready to pay down the license fee while Rule 11 deals with out of turn allotment of government houses. Counsel for the petitioner has argued that Rule 4 overrides Rule 11 while counsel for the respondents has argued that Rule 11 is an exception to Rule 4. In my opinion, the argument of both the learned counsel have to be taken with a pinch of salt. The essential anomaly which to my mind has to be resolved in this case is contained in Rule 11. This Rule deals with different situations where out of turn allotment of government accommodation can be made. Sub rule ('a') and ('aa') envisage out of turn allotment to kin of such government servants who may have died in service or who may have been retired on medical grounds. Clause 'b' talks of out of turn allotment of residence in the case of transfer, Clause 'd' in the case of a government employee who is vacating an ear marked house, Clause 'c' to allotment of residence to spouse on retirement and so on to 'g'. However, the absolute bar on non consideration in the event of owning of a residential house is only for those out of turn allottees who fall in classes 'a' and 'aa' has not been incorporated for the other categories. To my mind, this is arbitrary. Once there is a provision for out of turn allotment of government accommodation further classification between them reveals no object. There is no reason why an employee-dependent of a retired government employee who owns a private house is entitled to retain the old house by way of out of turn allotment while the employee dependent of a government employee who died in harness and similarly owns a house is completely barred.

In the circumstances, this classification between different kinds of employees who are entitled to seek out of turn accommodation has no nexus with any object. It has therefore to be held that this bar which is applicable only to those employees who come in sub Rule 'a' and 'aa' of Rule 11 cannot be extended and even those employees who come within these categories have to be considered under Rule 4.

Resultantly, the petition as now surviving is allowed and the recovery of penal rent is set aside.

Since the main case has been decided, the pending C.M, if any, also stand disposed of.

1.3.2018 **(AJAY TEWARI)**
anuradha **JUDGE**

Whether speaking/reasoned - Yes/No

Whether reportable - Yes/No