

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Date of decision: 4th July, 2018**
+ **W.P.(C) 218/2017**
GAJENDRA KUMAR JHA **Petitioner**
Through: Mr. Sanjay Kumar, Adv.
Versus

UNION OF INDIA & ORS **Respondents**
Through: Ms. Suparna Srivastava, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

CM No.25964/2018 (of respondents for vacation of interim order)

1. The counsel for the petitioner appears on advance notice and on enquiry states that he is ready to argue the writ petition today itself.
2. In view of the same, this application is infructuous and is disposed of.

W.P.(C) 218/2017 & CM No.1021/2017 (for stay)

3. This petition under Article 226 of the Constitution of India impugns the order [dated 9th June, 2015 of the Deputy Inspector General of Police, Central Reserve Police Force (CRPF), New Delhi, acting in exercise of powers under Section 5(1) of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971] of eviction of the petitioner (now stated to be holding the post of Assistant Commandant in CRPF) from the quarter allotted to him in Jyoti Kunj Housing Complex, Dwarka, New Delhi and levying damages for unauthorised use and occupation thereof.

4. Notice of the petition was issued and vide order dated 10th January, 2017, the operation of the impugned order was stayed and which interim order has continued till date.
5. The respondents have filed counter affidavit and to which a rejoinder has been filed by the petitioner.
6. The impugned order directed eviction of the petitioner within fifteen days thereof. This petition came up first before this Court on 10th January, 2017.
7. The counsel for the petitioner, on enquiry states that the petitioner, till date is in occupation of the said quarter. On enquiry as to why this petition has been preferred after a delay of nearly one and a half years, the counsel for the petitioner states that the petitioner did not file the petition earlier because the damages levied, inspite of the order, were not being recovered from the petitioner and this petition was filed immediately when the damages were recovered.
8. The aforesaid shows that the petitioner was not aggrieved from the order of eviction / levy of damages and is aggrieved only from the recovery of damages. However, in this petition the challenge is made to the order of eviction and levy of damages and which challenge is liable to be rejected on the principles of acquiescence, waiver and laches alone. However, since the counsel for the petitioner has been heard on the merits of order of eviction / levy of damages also, finding with respect thereto also are being rendered in this order.
9. I have also asked the counsel for the respondents as to why the respondents, inspite of the petitioner having not vacated the

accommodation within fifteen days granted to him vide order dated 9th June, 2015, did not execute the order of eviction.

10. The counsel for the respondents states that the order was not executed owing to there being a large number of other cases with respect to Jyoti Kunj Housing Complex, Dwarka.

11. However, there was no stay of the order of eviction. Pendency of other cases is no reason for the respondents to not execute the order of eviction immediately, inspite of there being no challenge thereto.

12. It needs to be highlighted, that such inaction on the part of the respondents, in executing the orders of eviction, is always at the cost and prejudice of others in queue for the said accommodation and the respondents ought to take note of the said matter in the said perspective and in future ensure that the orders of eviction, in the absence of any stay thereof, are executed forthwith.

13. The gravamen of the case of the petitioner is, (i) that the petitioner was allotted the aforesaid quarter on 21st November, 2008 while he was posted at 126 Battalion, CRPF, New Delhi; (ii) that the petitioner was transferred out of Delhi and remained on duty from 18th June, 2012 to 30th June, 2016 in 174 Battalion, Left Wing Extremist (LWE), Jharkhand; (iii) that as per the Guidelines No.A.II-4/2016-Adm-I-DA-4 dated 19th January, 2015 issued by the Directorate General, CRPF, for allotment and occupation of family quarters at Jyoti Kunj Complex, Dwarka, New Delhi modified vide Guidelines No.A.II-4/2016-Adm-I-DA.4 dated 14th September, 2016, a CRPF personnel/officer posted in Jammu & Kashmir (J&K), North East (NE) and LWE affected areas/districts (except State Capitals), could retain the aforesaid quarter

till the time of his said posting; (iv) that under the aforesaid Guidelines, inspite of the petitioner being posted outside Delhi, the family of the petitioner was entitled to continue in occupation of the aforesaid quarter and so continued in occupation thereof; (v) that the petitioner was again transferred to Delhi and joined his duties with effect from 1st July, 2016 at the office of Commandant-122 Battalion, CRPF, Andheria More, Mehrauli, Delhi; (vi) that since the petitioner has been transferred back to Delhi, he is entitled to continue in occupation of the accommodation to which his family was entitled till he was posted out, as aforesaid; (vii) hence, the order of eviction, levy of damages and recovery of damages from the petitioner is bad.

14. The counsel for the petitioner, in his arguments, has drawn attention to the judgment dated 25th February, 2015 of the Division Bench of this Court in W.P.(C) No.1824/2015 titled ***Neraj Kumar Singh Vs. Union of India*** and has contended that the petitioner is fully covered by the said judgment.

15. A perusal of the said judgment however shows the challenge therein to be to the Guidelines dated 19th January, 2015 supra which permitted the family of a personnel/officer to occupy the accommodation for a period of three years only, extendable by one year. The Division Bench of this Court held that the Guidelines allowing the family to retain the accommodation for maximum of four years only, inspite of the personnel/officer continuing to be so posted out for more than four years and thereby compelling the family of the personnel/officer to shift out of the accommodation to another accommodation to be provided to the family, was arbitrary.

16. However I am unable to understand as to how the aforesaid judgment can have applicability to the present controversy. The respondents, after the aforesaid judgment, have indeed modified their Guidelines, as aforesaid vide Office Order dated 14th September, 2016 supra. It is also not as if the petitioner remains posted out of Delhi. The petitioner has admittedly been posted back to Delhi.

17. The right which the petitioner is asserting in the present case is, to, on being posted at Delhi, occupy accommodation which he was allotted during his earlier posting at Delhi and in which his family was allowed, vide Guidelines aforesaid, to continue during the time of his posting outside Delhi.

18. I have asked the counsel for the petitioner as to under which Rule, the petitioner, who is admittedly not the owner of the quarter and who was merely allotted the same under the Rules of the respondents and by virtue of the employment of the petitioner with the respondent, can, even if has to face inconvenience in moving out of the aforesaid quarter to another quarter which may be allotted to him or to join the queue of personnel/officers waiting for the quarter, can claim any right, as is being done. It has thus been asked from the counsel for the petitioner, whether there is any Rule which permits the petitioner to, so during his second posting to Delhi, continue in the accommodation allotted to him during his earlier posting in Delhi.

19. The petitioner, as aforesaid, has no right otherwise to the quarter aforesaid. The right, if any of the petitioner to the quarter can only be under the Rules of the respondents governing the allotment, occupation and continuance in occupation of the said quarter. The Courts cannot, on

their own evaluation of human needs and inconvenience, start laying down Rules in individual cases, as to who should continue in occupation of the said quarters. Merely on the ground of sympathy towards the petitioner, others in the queue for allotment of accommodation and who are not before this Court, cannot be prejudiced. The counsel for the petitioner also, on enquiry whether it is his case that there is no other personnel/officer of the respondents in queue for allotment of the quarter aforesaid, has fairly stated that he cannot say so and there are other personnel/officer in queue for allotment of the quarter in occupation of petitioner.

20. The counsel for the petitioner has however drawn attention to another judgment dated 19th July, 2016 of the Division Bench of this Court in connected petitions being W.P.(C) No.9280/2015 titled ***N.M. Marenmai Vs. Union of India***, W.P.(C) No.10689/2015 titled ***Chaman Lal Vs. Union of India*** and W.P.(C) No.9648/2015 titled ***Mahesh Kumar Meena Vs. Union of India*** and particularly to the penultimate paragraph 7 thereof as under:

“7. Under the circumstances instant writ petitions have to be allowed for the reason one of the three petitioners has been posted back at Delhi and would be entitled to family accommodation at Delhi. Prior to his posting in Delhi he was entitled to retain the accommodation at Delhi. Two petitioners are entitled to retain the family accommodation at Delhi.”

21. I have perused the aforesaid judgment *in toto* and do not find any discussion in any of the earlier paragraphs of the judgment qua the right of the petitioners therein to, on being posted back to Delhi, continue in

the same accommodations which were allotted to them during their earlier postings to Delhi and which their families were allowed to continue in occupation of for the reason of being posted out, as aforesaid. In para 2 of the judgment, it is only mentioned that petitioner Mahesh Kumar Meena was posted in Manipur but was subsequently “deputed for duties in Delhi where he continues to work till date”. Though the counsel for the petitioner also refers to para 3 of the judgment but the same is also not found to be germane to the said aspect. There is neither any discussion of facts on the aspect of the personnel/officer, after posting back to Delhi, being entitled to continue in the same accommodation nor any reasoning given. The said judgment thus does not constitute a precedent on the said aspect and the counsel for the petitioner is not entitled to take any benefit thereof. Rather, it is found that the Division Bench in the aforesaid judgment merely reproduced the relevant portions of its earlier judgment in *Neraj Kumar Singh* supra.

22. The counsel for the petitioner has not shown any other Rule which permits the petitioner to, on being posted back to Delhi, retain the accommodation earlier allotted to him.

23. The counsel for the respondents draws attention to para 4 of CM No.25964/2018 supra where it is pleaded that “the petitioner, on account of being transferred to Delhi, has the choice of either sanction of HRA or applying for allotment of government accommodation in the respective group centres where sufficient government quarters are available. It is reiterated that the Jyoti Kunj Complex in Dwarka has limited quarters i.e. 816 Nos. of Type-I family quarters whereas against these 450

Officers/ORs are on the waiting list (including major part from LWE, NE & J&K region) for allotment of Type-I quarter. If the concerned officer does not vacate his allotted quarter after availing/enjoying family quarters as per the guidelines/rules, then the personnel who are in waiting list since long may not be able to avail the facility of government accommodation at Jyoti Kunj, Dwarka during their entire service span”.

24. As aforesaid, in the absence of any entitlement under the Rules, the petitioner, on the grounds of equity, cannot be granted any relief.

25. There is thus no merit in the petition, which is dismissed.

26. The counsel for the petitioner, at this stage, states that the petitioner be permitted to continue in the accommodation till March, 2019.

27. The petitioner having already overstayed in the quarter for two years cannot be granted such indulgence which, as aforesaid, will be at the cost of some other personnel/officer and to whom this Court cannot turn a blind eye merely because they are not before the Court. It is always open to the petitioner to, in accordance with the Rules, either avail HRA or apply for another accommodation.

28. It is made clear that the respondents shall be entitled to recover further dues from the petitioner till the date of eviction of the petitioner for the period of unauthorised occupation.

29. The date of 17th August, 2018 is cancelled.

No costs.

RAJIV SAHAI ENDLAW, J.

JULY 4, 2018/‘bs’..