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

% **Date of decision: 29<sup>th</sup> August, 2018**

+ **W.P.(C) 1044/2018 & CM No. 4364/2018 (stay)**

**BARKHA RAM**

**.... Petitioner**

Through: Mr. R. V. Sinha, Mr. A. S. Singh,  
Mr. Amit Sinha, Advs.

Versus

**UNION OF INDIA AND ORS.**

**.... Respondents**

Through: Mr. Rajesh Gogna, CGSC, Mr.  
Akhilesh Kumar, Mr. Harvesh Kumar,  
AD for R-1 to 4.

**CORAM:**

**HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW**

1. This petition under Article 227 of the Constitution of India impugns the order [dated 11<sup>th</sup> January, 2018 in PPA No. 296/2016 of the Court of District Judge, New Delhi acting as Appellate Officer under Section 9 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (PP Act)] of dismissal of appeal preferred by the petitioner against the order [No. EC/09/AD/LIT/2016/T-1(Sub) dated 29<sup>th</sup> August, 2016 of the respondent No. 4 Estate Officer, Directorate of Estates] of eviction of the petitioner from quarter No. E-195, Moti Bagh, New Delhi allotted to the petitioner by virtue of his employment as Multi-Tasking Staff in the Ministry of External Affairs, New Delhi.

2. This petition came up first before this Court on 5<sup>th</sup> February, 2018 when notice thereof was ordered to be issued and coercive action restrained.

3. The record of the District Judge requisitioned in this Court has been received and the counsels have been heard.
4. The counsel for the respondents has in Court also shown the record of the proceedings before the respondent No. 4/ Estate Officer.
5. On receipt of reports that the General Pool Residential Accommodation being quarter No. 195, Block-E, Moti Bagh, New Delhi allotted to the petitioner had been sublet by the petitioner to some unauthorized persons in contravention of provisions contained in SR 317-B-20 of the Allotment of Government Residences (General Pool in Delhi) Rules, 1963, an inspection of the said premises was carried out on 5<sup>th</sup> September, 2014 at 13:25 hours and Smt. Surinder Kaur, who claimed to be the wife of the petitioner and Smt. Reena, who claimed to be the wife of the son of the petitioner, were found in the premises. Suspecting subletting of the quarter by the petitioner, notice to show cause dated 29<sup>th</sup> September, 2014 was issued to the petitioner and in response to which Smt. Samta Rani, wife of Ajay Kumar, claiming to be the daughter-in-law of the petitioner, appeared before the Deputy Director of Estate, but did not produce any documents. The said Smt. Samta Rani claimed to be staying in the quarter aforesaid along with her mother-in-law Surinder Kaur, her husband Ajay Kumar and Azad, another son of the petitioner, and Ekta, daughter of the petitioner. However, the said Samta Rani could not establish her relationship as daughter-in-law with the petitioner and could not explain the presence found during inspection, of Reena. Though further opportunities were given to the petitioner to prove that the petitioner and his family members were residing in the premises, but no such documents were produced.

6. Accordingly, vide order dated 9<sup>th</sup> March, 2015 of the Assistant Director of Estates, the allotment of the aforesaid quarter in favour of the petitioner was cancelled.

7. The petitioner preferred an appeal against the order of cancellation of allotment, to the Director of Estates, but the said appeal was also dismissed on 7<sup>th</sup> September, 2015, reasoning that the petitioner, on being granted opportunity of hearing had appeared along with one lady whom the petitioner claimed to be his relative, but even before the Appellate Authority, the relationship of the said lady, who was claimed to be Smt. Samta Rani, daughter-in-law of the petitioner, could not be established. The petitioner, before the Appellate Authority also, inspite of opportunities, could not produce Smt. Reena, who was found in the quarter at the time of inspection. The petitioner claimed before the Appellate Authority, that Smt. Reena was his son's wife but further stated that she was not staying with the petitioner. Though fresh opportunities to produce Smt. Reena were given, but the petitioner did not produce Smt. Reena. The Appellate Authority thus upheld the order dated 9<sup>th</sup> March, 2015 of the Assistant Director of Estates, of cancellation of allotment in favour of the petitioner.

8. Thereafter, notice under Section 4 of the PP Act was issued to the petitioner by the respondent no.4 Estate Officer.

9. The petitioner, though initially appeared before the Estate Officer through Smt. Afsha Yadav, thereafter failed to appear.

10. The counsel for the petitioner, on enquiry states that Smt. Afsha Yadav is the resident of Quarter No.153, Block-E, Moti Bagh and further states that the said Smt. Afsha Yadav has also given in writing that the petitioner has throughout been residing in the quarter aforesaid.

11. The respondent no.4 Estate Officer, vide order dated 29<sup>th</sup> August, 2016, ordered eviction of the petitioner, reasoning (i) that Smt. Samta Rani, who claimed to be the daughter-in-law of the petitioner, could not establish her relationship with the petitioner; (ii) though the petitioner had claimed Smt. Reena found during the inspection to be his daughter-in-law, but could not produce her also; (iii) Smt. Reena found in the premises at the time of inspection had also signed the inspection report; (iv) that Notices issued by the respondent no.4 Estate Officer to the petitioner, on as many as three occasions, of hearing before the Estate Officer, were also returned with signatures in acknowledgment of receipt, of Reena; (v) that the petitioner did not attend any of the hearings; and, (vi) the petitioner did not file any documents. Resultantly, expressing satisfaction of subletting of the quarter aforesaid by the petitioner, the order of eviction under Section 5 of the PP Act was passed.

12. The learned District Judge has dismissed the appeal preferred by the petitioner, reasoning (i) that it was not disputed by the petitioner in appeal also, that inspection of the premises was carried out; (ii) that the petitioner in his appeal dated 13<sup>th</sup> April, 2015 to the Director of Estates had claimed that he was himself residing in the premises at the time of inspection and was also present in the quarter along with his wife and family at the time of inspection; (iii) that the said statement was obviously false as neither was the presence of the petitioner recorded in the inspection report nor was the inspection report signed by the petitioner; on the contrary it was signed by Smt. Reena; (iv) that the lady, who at the time of inspection had claimed to be Smt. Surinder Kaur, did not appear; (v) that Smt. Samta Rani who claimed to be the daughter-in-law of the petitioner could also not explain the

presence of Smt. Reena at the time of inspection and could not show any document to prove her own relationship with the petitioner; (vi) though the petitioner, before the Estate Officer had filed copies of Election Identity cards of all his family members, including his wife Smt. Surinder Kaur, sons Ajay Kumar and Azad and daughter Ekta, but all the said documents were dated 1<sup>st</sup> January, 2015 i.e. of after the inspection and after the issuance of show cause notice; (vii) that the signatures of the lady, who claimed to be Smt. Samta Rani, appeared to be similar to that on the inspection report of Smt. Reena; (viii) that Smt. Samta Rani also could not show any documents in proof of her residence at the said quarter; (ix) that the petitioner, though had claimed that Smt. Reena was his son's wife but was not staying with her, had expressed difficulty in producing Smt. Reena or even getting her signatures; (x) that the stand taken by the petitioner before the District Judge, that no person by the name of Smt. Reena was found in the premises at the time of inspection, was contrary to the stand taken by the petitioner before the Director of Estates; (xi) that notices dated 20<sup>th</sup> January, 2016, 26<sup>th</sup> February, 2016 and 1<sup>st</sup> April, 2016 issued to the petitioner at the address of the said quarter by the respondent no.4 Estate Officer, for hearing on 25<sup>th</sup> February, 2016, 23<sup>rd</sup> March, 2016 and 28<sup>th</sup> April, 2016, respectively were also returned with signatures in acknowledgment of receipt thereof, of Smt. Reena; (xii) the said Smt. Reena, as per report of the process server also on the said notices, had identified herself as "*bahu* of the allottee"; (xiii) the petitioner had failed to explain that if Smt. Reena was receiving the notices at the address of the said quarter, why was the petitioner unable to produce her; and, (xiv) at a subsequent stage, the petitioner had changed his stand and stated that he did not have any family member by the name of Reena.

13. I may notice, that the petitioner, before the District Judge argued that it was a case of ‘partial subletting’ and not ‘full subletting’. It is however not the case of the petitioner, that Allotment of Government Residence Rules aforesaid permit partial subletting. The learned District Judge thus held that there was no merit in the contention of the petitioner, that the cancellation of allotment of quarter aforesaid in his favour on account of subletting, was arbitrary.

14. A perusal of the record of the Estate Officer shows, (i) that the petitioner was given ample opportunity, not only before effecting cancellation of the quarter but even before the Appellate Authority as well as before the Estate Officer; (ii) that the electricity, water and gas bills at the address of the said premises, though were in the name of the petitioner, but could not have been in the name of any other person and did not prove the presence/residence of the petitioner and his family members in the quarter; (iii) moreover the said bills also were of 30<sup>th</sup> June, 2015, 26<sup>th</sup> February, 2015 and 2<sup>nd</sup> March, 2016 i.e. all after the date of inspection and issuance of show cause notice; (iv) though the petitioner had also filed copy of the CGHS cards of his wife, son and daughter, but the same did not bear any address; (v) the wedding card of the son of the petitioner filed by the petitioner mentioned the address of the petitioner as that of village Bilha, district Panchkula; (vi) though the petitioner had also produced a copy of passbook of his account with Syndicate Bank at the address of the quarter aforesaid but the same did not prove that the petitioner and his family members were residing in the said quarter; and, (vii) there was no merit in the contention of the petitioner of the notice under Section 4 of the PP Act being defective.

15. The counsel for the petitioner, on enquiry whether the petitioner is present in the Court, states that the petitioner is posted at Islamabad and continues to be posted there. Though the counsel for the petitioner, on enquiry as to when the petitioner was posted at Islamabad states that it was in the year 2014 but is unable to give the date. The counsel for the respondents states that the petitioner joined duty at Islamabad on 11<sup>th</sup> September, 2014 i.e. after six days of the inspection.

16. The counsel for the respondent has argued that the petitioner, though was in Delhi on the date of inspection, but was not found in the quarter.

17. I may in this regard notice, that it is not the case of the petitioner that the officials who carried out the inspection or the officials of the Directorate of Estates who cancelled the allotment of the quarter in favour of the petitioner, were/are inimical to the petitioner or acted with any *mala fide* motives. In the absence of the same, the presumption is of the officials of the Directorate of Estates having carried out their duties.

18. The counsel for the petitioner has also argued that the wife, sons and daughter-in-law of the petitioner are residing in the premises and there was no person by the name of Reena present at the premises at the time of inspection. It is further contended that once Smt. Surinder Kaur was also found present in the quarter at the time of inspection and the said Smt. Surinder Kaur is the wife of the petitioner, in any case no case of subletting is made out.

19. I am unable to agree. Though one of the ladies present in the premises disclosed her name to be Smt. Surinder Kaur but there is nothing to show that the lady who disclosed her name to be Smt. Surinder Kaur at the time of inspection was indeed wife of the petitioner.

20. Notice can be taken of the fact that such transactions of subletting of government accommodation are shrouded in secrecy and neither the government employee nor the sublettee are interested in being caught and/or allotment being cancelled and thus, from the mere fact of the one of the ladies found present in the quarter at the time of inspection disclosing her name to be Smt. Surinder Kaur, which is the name of the wife of the petitioner, it does not follow that the wife of the petitioner was present in the premises.

21. The counsel for the petitioner has also referred to paras 9 and 11 of *Union of India Vs. Sunil Dutt* (2010) 167 DLT 42, paras 8 & 9 of *Dharam Raj Vs. Union of India* 2010 SCC OnLine Del 4502, paras 39 to 43 of *S.N. Mukherjee Vs. Union of India* (1990) 4 SCC 594 and to para 4 of *Estate Officer Vs. Beena Rani* 2017 SCC OnLine Del 11552. However, the need to discuss in detail each of the said judgments is not felt as the law enunciated in each case is in the facts thereof. It cannot also be forgotten that the legislature in its wisdom has deemed it appropriate to enact PP Act to deal with the cases of removal of unauthorised occupants of public premises, rather than leaving the said disputes to be adjudicated in Civil Courts. The reason was obvious. The procedure of the Civil Courts and the time taken in adjudication of disputes is long. It was felt that if unauthorised occupants continue in occupation of public premises, it would be prejudicial to the public at large.

22. I may also notice, that India is a land of scarcities. Not all government employees, though entitled to, are able to get allotment in their favour and have to wait for long, some even up to close to their superannuation. Allowing one of the government employees to, inspite of having not used the

accommodation for the purpose of residence of self and family, for which it is allotted, having made it a source of earning, to continue in possession of the premises, is always to the prejudice of other employees who are in the queue for allotment of the said accommodation. Challenge to *vires* of the PP Act, including on the ground of discrimination, was negated.

23. In the light of the aforesaid, if the Courts when approached in writ jurisdiction, were to apply the same test as in original suits or in first appeals or second appeals under the CPC, would be doing disservice to the purpose for which PP Act was enacted. One of the reasons given for upholding the *vires* of the PP Act was the availability of the remedy of appeal to the highest judicial officer in the district. No further remedy has been provided in the PP Act against the decision of the District Judge. However, the constitutional remedy of a writ petition remains open. The said remedy cannot be converted into remedy of an appeal under the CPC. Once it is found that sufficient opportunity has been given and reasons have been given in the decisions taken by the Estate Officer under the PP Act and by the District Judge acting as Appellate Officer, this Court cannot apply the test as of a Civil Court.

24. Applying the aforesaid test and perusal of the record shows that due opportunity of hearing at each and every stage i.e. before cancellation, before the Estate Officer and before the District Judge has been given to the petitioner.

25. On the basis of material produced/not produced by the petitioner at each of the said stages, each of the authorities has taken a well-reasoned decision.

26. Once that is so, the limited scope of enquiry while exercising the jurisdiction under Article 227 of the Constitution of India does not entitle the petitioner to any interference by this Court in the orders impugned.

27. There is thus no merit in the petition.

28. Dismissed.

29. At this stage, the counsel for the petitioner, under instructions from one lady stated to be the wife of the petitioner and another person, who on enquiry has disclosed his name as Deep Chand, s/o Kherati Lal, r/o 195, Block-E, Moti Bagh, Delhi, states that the petitioner be granted two months' time to vacate the aforesaid premises. On enquiry, it is further stated that the petitioner is willing to give an undertaking to this Court to so vacate the premises.

30. The person who has disclosed his name to be Deep Chand, has in proof of his identity, handed over his Driving Licence and from which his parentage and address aforesaid has been noted. On enquiry, it is stated that the said Deep Chand is the nephew of the petitioner.

31. It is quite obvious from the Driving Licence of the said Deep Chand, that as per the said Driving Licence, he is also residing in the premises and a case of subletting is clearly made out. A photocopy of the Driving Licence has been kept on record and the original returned.

32. The petitioner through Advocate and his wife Smt. Surinder Kaur undertakes to this Court to handover vacant peaceful physical possession of the quarter no.195, Block-E, Moti Bagh-I, Delhi to the respondent on or before 30<sup>th</sup> October, 2018.

33. The undertaking is accepted and the petitioner and his wife are bound thereby and cautioned of consequences of breach of undertaking given to the Court.

34. In the light of the aforesaid, while dismissing this petition, it is ordered that the order of eviction be not executed till 30<sup>th</sup> October, 2018. However, if the petitioner does not so vacate the premises, the respondents, besides initiating proceedings for breach of undertaking given to the Court against the petitioner and his wife, shall also be entitled to forthwith evict the petitioner.

35. It is however made clear that the aforesaid will have no bearing on proceedings under Section 7 of the PP Act against the petitioner.

36. The present is also found to be a fit case for the Departmental Authority of the petitioner to consider initiation of appropriate disciplinary proceedings against the petitioner for the conduct aforesaid of the petitioner. Necessary decision in this regard be taken within six weeks of today.

No costs.

**RAJIV SAHAI ENDLAW, J.**

**AUGUST 29, 2018**  
SR..