

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

% **Date of decision: 6th July, 2018**

+ **W.P.(C) 2422/2017 & CM No.10448/2017 (for stay)**

CHAMAN LAL

..... Petitioner

Through: Mr. Sanjay, Adv.

Versus

DELHI JAL BOARD AND ORS

..... Respondents

Through: Mr. Vilash Rampal,
Administrative Officer and Mr.
Ram Swarup, Section Officer,
DBJ.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. This petition under Article 227 of the Constitution of India impugns the order [dated 27th January, 2017 in PPA No.49/2016 of the Court of District & Sessions Judge, South-East, Saket Court, New Delhi] of dismissal of appeal under Section 9 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (PP Act) filed by the petitioner against the order dated 21st October, 2016 of the Estate Officer of the respondent Delhi Jal Board (DJB) of eviction of the petitioner from Quarter No.37, Type-II, Okhla, Sewage Disposal Works, New Delhi.

2. The petition came up first before this Court on 17th March, 2017 when the counsel for the petitioner stated (i) that the petitioner is an erstwhile employee of DJB having retired from service on 31st May, 2014; (ii) that on the medical grounds of the wife of the petitioner, the petitioner was allowed to retain the government quarter aforesaid allotted to him by virtue of employment, for a period of four months

with effect from 1st June, 2014 to 30th September, 2014; and, (iii) that the petitioner may be allowed another eight months to retain the quarter.

3. Though this Court, on 17th March, 2017 also was not in agreement with the proposal of the petitioner but perhaps, to grant some time, notice of the petition was issued and opportunity given to the respondent to file counter affidavit.

4. The matter was thereafter adjourned from time to time and counter affidavit has been filed by the respondents and to which rejoinder has been filed by the petitioner.

5. Today morning, the counsel for the petitioner unilaterally mentioned the matter for adjournment and which was declined.

6. Now, when the matter is called on its turn, the counsel for the petitioner states that the wife of the petitioner is suffering from Colon Cancer and the petitioner is unable to vacate the quarter and the petition be adjourned.

7. Finding that the petitioner has already overstayed in the quarter by over four years, the adjournment sought is declined.

8. The counsel for the petitioner has argued (a) that the petitioner has paid the penal charges for occupation of the quarter till date; (b) that over 200 government quarters are either lying vacant or are being permitted to be misused and unauthorisedly let out and no action is being taken thereagainst; (c) that Mr. Shekhar Kumar, who as an Estate Officer, passed the order of eviction of the petitioner, was not validly appointed as the Estate Officer and nothing has been shown to prove that his appointment as a Gazetted Officer was notified.

9. I have perused the order of the District Judge acting as the Appellate Authority under Section 9 of the PP Act.

10. The order dated 21st October, 2016 supra of the eviction of the petitioner records (i) that the petitioner herein was working as Oil Man in DJB and the quarter aforesaid was allotted to him by virtue of his employment; (ii) that the petitioner retired from the said employment on 31st May, 2014 on attaining the age of superannuation; (iii) that after retirement, the petitioner was granted retention w.e.f. 1st June, 2014 to 30th September, 2014; (iv) that on the request of the petitioner, further four months retention till 31st January, 2015 was granted with the direction to vacate the premises by 31st January, 2015 and hand over possession to DJB; it was also directed that allotment will automatically be cancelled from 1st February, 2015 if the petitioner failed to vacate the quarter even after expiry of the time granted till 31st January, 2015 and that after expiry of the said period, damages @ 40 times the normal licence fee per month shall also be levied and recovered; (v) that the petitioner has not vacated the quarter even after 31st January, 2015; (vi) that notices dated 20th February, 2015 and 18th March, 2016 were issued and the notice dated 18th March, 2016 was served on the petitioner on the same day; (vii) that the petitioner still neither vacated the premises nor submitted any reply; (viii) that the petitioner however on 21st July, 2015 filed a petition before the Estate Officer and notice whereof was issued; (ix) that the petitioner attended the Court of the Estate Officer on 8th October, 2015, when copy of the petition under Section 5 of the PP Act was served on him; (x) that the petitioner, on 19th November, 2015, 14th January, 2016, 28th April,

2016 and 1st September, 2016 repeatedly sought time to file written statement but did not file; (xi) that the inference was that the petitioner had nothing to show and was merely buying time; (xii) that both parties were directed to file evidence on 15th September, 2016; (xiii) that though DJB filed affidavit of evidence, the petitioner did not file any evidence either; (xiv) that on 29th September, 2016, both parties were heard and the petitioner also submitted written arguments; (xv) that the petitioner, in his written arguments pleaded (a) that his wife was ill; (b) that other quarters had also been unauthorisedly occupied; (c) that as and when the wife of the petitioner becomes fit, he will vacate the premises; (d) that his *bona fide* was apparent from his regular payment of penal charges; (xvi) that the petitioner, on medical grounds could not be granted any more retention period under the Rules and had already been granted the maximum retention period; (xvii) that therefore the argument of making payment of penal charges could not entitle the petitioner under the Rules to continue in the premises. Accordingly, in exercise of powers under Section 5(1) of the PP Act, the order of eviction was passed.

11. A perusal of the impugned order of the District Judge, exercising powers as Appellate Authority under the PP Act, shows the contention of the petitioner to be that he was not given sufficient opportunity of hearing and the order was passed mechanically and that other quarters were also unauthorisedly occupied. The impugned order records that the petitioner, during arguments, only pleaded that he be granted time to vacate the premises.

12. The District Judge, in the impugned order has also recorded that on request of the petitioner, several adjournments were granted to him.

13. The District Judge, finding no merit in the appeal, dismissed the same.

14. As would be evident from the above, the petitioner before this Court also on 17th March, 2017 sought eight months' time to vacate the premises. The said time of eight months expired in November, 2017. The petitioner, inspite thereof had not vacated the premises and is today again seeking adjournment. It is quite obvious that the petitioner has been exploiting the process of law, taking advantage of the respondent DJB, inspite of there being no order of stay of eviction of the petitioner, having not executed the order of eviction.

15. In fact, I have enquired from Mr. Vilash Rampal, Administrative Officer (Land & Estate), DJB, who is appearing for the respondent DJB, as to why DJB had not executed the order of eviction. Such lethargy on the part of the officers of DJB obviously is not in public interest. Mr. Vilash Rampal, Administrative Officer (Land & Estate), DJB has been asked to convey to his superiors that in future, if this Court finds the public officials to be acting in such lethargic manner and not performing the duties, for performance of which they have been appointed, action shall be initiated against them.

16. As far as the contention of the petitioner, for this Court to take a sympathetic stand for the reason of ailment of the wife of the petitioner, is concerned, this Court though also exercising equitable jurisdiction, is a Court of law and cannot act contrary to law or Rules. The counsel for the petitioner has not shown any Rule which entitles

the petitioner to continue in occupation of government accommodation allotted by virtue of employment indefinitely.

17. In the absence of any Rule, this Court, in the name of equity and in the name of being sympathetic, cannot show sympathy to the petitioner, ignoring the claims of all others, though entitled to accommodation by virtue of employment, are still in queue waiting for allotment of government accommodation.

18. No merit is found in the other grounds urged by the counsel for the petitioner which are but an afterthought and only after the prayer for adjournment or for time to vacate the premises has been rejected. A reading of the impugned judgment also does not show the petitioner to have urged that the person who has passed the order of eviction is not validly appointed as the Estate Officer. Rather, the petitioner is found to have participated in the proceedings before the Estate Officer and cannot now, after failing in all other tactics, challenge the very authority of the Estate Officer.

19. On a perusal of the record, it is found that the petitioner has been granted sufficient opportunity.

20. The counsel for the petitioner, interrupting the dictation has stated that the petitioner did not receive the notice dated 18th March, 2016 and that he was seeking adjournment to have listed an application under Section 340 of the Code of Criminal Procedure, 1973 (CrPC) before this Court.

21. The very fact that the petitioner has been granted the maximum period permissible under the Rules to vacate the premises and has been granted repeated opportunities, shows that the respondent DJB is

not being vindictive to the petitioner and has given sufficient latitude to the petitioner. Moreover, even if notice was not served, once the petitioner, under the law/Rules has lost the right to remain in occupation, all such grounds are of no avail.

22. The counsel for the petitioner had been otherwise also interrupting during the dictation and was asked to wait till dictation was completed. Now, he has been asked to state whatever else he wanted to state. He states (i) that Section 3 of the PP Act provides for appointment of Estate Officer; (ii) that Rule 4 of the Public Premises (Eviction of Unauthorised Occupants) Rules, 1971 provides for mode of service of notice by publication and which has not been done; (iii) that vide Resolution No.21013/1/2000-Pol.Im dated 30th May, 2002, Guidelines to prevent arbitrary use of powers to evict genuine tenants from public premises under the control of Public Sector Undertakings/Financial Institutions, have been framed; (iv) that under the Act, Rules and the Guidelines, it is essential that the order of eviction is passed by appropriate person.

23. No merit is found in the aforesaid contentions also. I reiterate that the petitioner, upon being found to have no right to continue in occupation, has lost all right to take such pleas merely to perpetuate his illegal occupation of the premises.

24. Mere payment of penal charges is of no avail inasmuch as the market value of the premises is much higher. The petitioner, if were to take any other premises on rent, would have to pay much higher rent and for this reason only is opting to pay penal charges. The possession of the premises would revert to DJB only and not to

anyone else and for this reason also, the arguments urged, are of no avail.

25. As far as the application under Section 340 of CrPC which the petitioner wants to get listed is concerned, the same will be considered on its merit, as and when listed.

26. There is thus no merit in this petition, which is dismissed.

27. The respondent DJB is now expected to forthwith execute the order of eviction of the petitioner.

A copy of this order be given *dasti*.

RAJIV SAHAI ENDLAW, J.

JULY 06, 2018

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