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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ W.P.(C) 6462/2018, CM No.24853/2018 (for stay) & CM No.41447/2018 (of the petitioner for placing on record additional documents).

KANWALJEET LAL

..... Petitioner

Through: Mr. Mohit Singh and Ms. Babita Sharma, Advs.

versus

UNION OF INDIA AND ANR.

..... Respondents

Through: Mr. Jagjit Singh and Mr. Preet Singh, Advs. for Railways.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **05.10.2018**

1. This petition under Article 226 of the Constitution of India is preferred against the order [dated 21st February, 2018 in PPA No.15/2017 of the Court of District Judge (HQs) acting as Appellate Officer under Section 9 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (PP Act) of dismissal as barred by time of the appeal preferred by the petitioner against *ex parte* order dated 27th April, 2017 of eviction of the petitioner from public premises allotted to him for residence by virtue of employment with the respondent/Ministry of Railway, Northern Railway (Railways), on the ground of the petitioner having sub-let the said accommodation.

2. The petition came up first before this Court on 1st June, 2018 when notice thereof was ordered to be issued.

3. On 2nd August, 2018, the counsel for the petitioner argued that the petitioner did not get any opportunity to produce documents in support of his defence before the Estate Officer and the petitioner also did not come to know of the eviction order and hence the delay in preferring the appeal. It was on 2nd August, 2018 enquired from the petitioner, what is there to show that the petitioner and his family members were residing in the accommodation. The counsel for the petitioner stated that the said documents had not been filed because he thought that the challenge in this petition is only on the aspect of limitation. Informing the counsel for the petitioner that this Court, in exercise of discretionary jurisdiction, will not decide in favour of the petitioner unless the petitioner makes out semblance of a case and will not allow the petitions on mere technicality, an opportunity was given to the petitioner to produce the documents and the counsel for the respondents was also requested to procure the records of the Estate Officer.

4. The petitioner has filed CM No.41447/2018 for placing on record additional documents along with additional documents.

5. The counsel for the respondents also has shown in the Court the proceedings before the Estate Officer.

6. The additional documents filed by the petitioner along with the application aforesaid comprise *inter alia* of (i) letter dated 16th December, 2012 of National Institute of Open Schooling addressed to the daughter of the petitioner at the address of the accommodation; (ii) Admit card for examination of the daughter of the petitioner issued by the National Institute

of Open Schooling in March-May-2013 showing the address of the daughter of the petitioner at the subject accommodation; (iii) First Information Report (FIR) No.48 dated 25th March, 2014 of PS Gulabi Bagh/Pratap Bagh dated 25th March, 2014 claimed to have been lodged by the wife of the petitioner and showing the address of the wife of the petitioner as of the subject accommodation; and, (iv) Identity card of N.Z.R.E. C.T.C. Society Ltd. in the name of the petitioner showing the address of the petitioner at the subject accommodation. The counsel for the petitioner states that the aforesaid documents show residence of the petitioner and his family members at the subject accommodation.

7. On enquiry, it is stated that the family of the petitioner comprises of his wife Sarita, one daughter Bhagyeshwari now aged 21-22 years and a son named Daneshwar aged 24 years, studying B Pharma in Himachal Pradesh; it is also informed that the daughter of the petitioner got married in the year 2016.

8. The file of the Estate Officer shows that inspection of the accommodation was carried out on 1st October, 2014 when accommodation was found to be 'partially sublet' to one Ashok and owing where to the allotment thereof in favour of the petitioner was cancelled on 1st December, 2014.

9. The counsel for the respondent Railways has also contended that from the file of the Estate Officer it is evident that the petitioner though was appearing before the Estate Officer in response to the notices issued of the proceedings under Section 5 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (PP Act) but subsequently stopped

appearing. It is also contended that it is evident from the file that the petitioner was throughout aware of the proceedings and intentionally did not appear therein. It is yet further argued that the learned District Judge also has vide impugned order dismissed the application of the petitioner for condonation of delay in filing the appeal under Section 9 of the PP Act for the reason of the petitioner having been found to be fully aware of the passing of the order of eviction by the Estate Officer and having chosen not to appeal thereagainst.

10. Though it cannot be said that the District Judge has erred in any manner in dismissing the application for condonation of delay in filing the appeal and resultantly the appeal, in as much as the counsel for the petitioner also is unable to rebut the reasons given by the District Judge, but only for the reason that the petitioner at least from the documents placed appears to be residing along with his family in the premises, it is deemed expedient subject however to payment of costs, to grant an opportunity to the petitioner to contest the proceedings before the Estate Officer. Since the petitioner was *ex parte* before the Estate Officer, it is felt that merely remanding the matter to the District Judge acting as Appellate Officer under Section 9 of the PP Act would not serve any purpose.

11. This petition is thus disposed of with the following directions:-

- (i) The petitioner to appear before the Estate Officer of the respondents on 11th October, 2018 along with the documents at 1500 hours.

- (ii) The Estate Officer will either record the evidence of the Railways or of the petitioner on the same day or fix another date for the said purpose.
- (iii) The petitioner shall appear on each and every date and participate in the proceedings before the Estate Officer.
- (iv) If the petitioner does not appear on any of the dates at the time given, the orders of the Estate Officer and the District Judge impugned in this petition shall stand and the respondent Railways shall be entitled to enforce the order of eviction.
- (v) However if the petitioner fully participates in the proceedings before the Estate Officer, the Estate Officer, on the basis of evidence if any and the reply/submissions if any, shall determine the matter afresh, definitely on or before 12th November, 2018.
- (vi) If the fresh decision of the Estate Officer is against the petitioner, the petitioner shall have remedies in accordance with law.
- (vii) Till the fresh decision if any of the Estate Officer, the order of eviction impugned in this petition be not enforced.

12. Needless to state that if a fresh order is passed, earlier order of the Estate Officer shall stand substituted.

13. The petitioner, for his defaults in appearance before the Estate Officer in the earlier round, to pay costs to the counsel for the respondent Railways of Rs.25,000/- on or before the first date of appearance before the Estate Officer.

14. The petition is disposed of.

15. File of the Estate Officer has been returned to the counsel for the respondent Railways.

RAJIV SAHAI ENDLAW, J

OCTOBER 05, 2018
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