

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

% **Date of decision: 19th September, 2018**

+ **W.P.(C) 9743/2018 & CM No.37952/2018 (for stay).**

P. B. DAVID

..... Petitioner

Through: Dr. Amit George, Mr. Saurabh
Bhargavan, Ms. Shweta Sharma and
Mr. Khoda Apa, Advs.

versus

THE ESTATE OFFICER AND ANR.

..... Respondents

Through: Mr. Akshay Makhija, CGSC and Mr.
Aditya Goyal, Adv. and Mr. Harvesh
Kumar, Asstt. Director, NDMC.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

CM No.37954/2018 (for condonation of delay of 38 days in re-filing the appeal).

1. For the reasons stated, the delay in re-filing is condoned.
2. The application stands disposed of.

W.P.(C) 9743/2018 & CM No.37952/2018 (for stay).

3. This petition under Articles 226 & 227 of the Constitution of India impugns the order [dated 7th July, 2018 in PPA No.07/2017 of the Court of the Additional District Judge-009 (Central) acting as Appellate Officer under Section 9 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (PP Act)] of dismissal of appeal preferred by the petitioner against the order [dated 2nd March, 2017 under Section 5 of the PP Act of the respondent no.1 Estate Officer] of eviction of the petitioner from Quarter No.C-1/119, Dev Nagar, Type-C, New Delhi.
4. This petition came up first before this Court on 17th September, 2018 when the counsel for the petitioner informed (i) that the eviction of the

petitioner had been ordered on the ground of subletting by the petitioner of the accommodation allotted to the petitioner by virtue of his employment, for residence of the petitioner and his family members; (ii) that the petitioner has superannuated on 31st July, 2018 but under the Rules is entitled to retain the accommodation for a period of six months; (iii) the petitioner requires time till 31st December, 2018 to vacate, as the marriage of the daughter of the petitioner is scheduled to take place in December, 2018 and the petitioner otherwise is not intending to stay on in Delhi, for the petitioner to arrange for alternate accommodation at Delhi; and, (iv) that though the petitioner is willing to vacate the premises as aforesaid by 31st December, 2018 but it is necessary for the petitioner to challenge the order of eviction under Section 5 as the respondents may also initiate proceedings against the petitioner under Section 7 of the PP Act.

5. Though the counsel for the respondents appeared on advance notice on 17th September, 2018 but was unable to state whether there was any Rule entitling the petitioner to retain possession for a period of six months after superannuation and whether the proceedings under Section 7 of the PP Act had been initiated or whether there was any proposal therefor. Accordingly, further hearing was adjourned to today to enable the counsel for the respondents to obtain instructions and to get the complete record of proceedings.

6. The counsel for the respondents, under instructions today states that there is indeed a Rule under which superannuated employees are entitled to retain the allotted accommodation for a period of six months on the same licence fee as was being charged during the period of their employment with the Government. It is also stated that though till now no proceedings under

Section 7 of the PP Act have been initiated but there is a proposal to initiate the said proceedings.

7. On enquiry whether proceedings under Section 7 of the PP Act can be initiated after superannuation and whether not the principle as applicable to disciplinary proceedings would apply, it is stated that Section 7 proceedings can be so initiated.

8. The counsels have been heard to elucidate whether any interference is required in exercise of jurisdiction under Article 227 of the Constitution of India with the impugned orders.

9. The undisputed position is, (i) that the petitioner by virtue of his employment with the Government of India was allotted Type-III, Quarter No.102 on the First Floor in Block-13 of Dev Nagar, New Delhi on 7th May, 2003; however on 27th April, 2015 the petitioner was allotted Type-III, Quarter No.119 on First Floor of Block-C-1 in Dev Nagar; it is explained that the block in which the earlier quarter was situated had been declared as dangerous and all occupants of the said block were allotted alternative accommodation. (the enquiry of subletting by the petitioner of Quarter No.102 in Block-13 was underway since 2013 and it is inexplicable that if it was so, why the petitioner was allotted alternate quarter on 27th April, 2015); (ii) vide order dated 21st August, 2015, on proof that the petitioner had not been residing in the accommodation aforesaid and had sublet the same to some unauthorised persons in contravention of the provisions contained in SR317-B-20 of the Allotment of Government Residences (General Pool in Delhi) Rules, 1963, the allotment aforesaid was cancelled; (iii) the proceedings under Section 4 of the PP Act for eviction of the petitioner were commenced on account of subletting by the petitioner of quarter on the

barsati i.e. terrace above the first floor of Block-13, Dev Nagar, New Delhi; and, (iv) the said quarter on the terrace above the first floor was not allotted to the petitioner (the counsel for the respondent has no instructions whether the construction of the said quarter on the terrace above the first floor is authorised or unauthorised and if unauthorised in what circumstances it was lying vacant); (it is not the case that the petitioner had raised construction of the said quarter on the terrace above the first floor of the quarter allotted to him).

10. That being the admitted position, I have enquired from the counsel for the respondents, whether the allotment of Government residences under the Allotment of Government Residences (General Pool in Delhi) Rules aforesaid can be cancelled on account of the allottee of the quarter having let out another public premises which were never allotted to him and which may have just been lying vacant.

11. The counsel for the respondents has no instructions on the same.

12. The counsel for the respondents however states that the petitioner indulged in 'misuse' by so subletting the quarter on the terrace above the first floor.

13. However it is not shown that the said misuse also is actionable under the Allotment of Government Residences (General Pool in Delhi) Rules aforesaid.

14. It is else not in dispute that the petitioner has been residing in the quarter allotted to him.

15. The next question is, whether there is any evidence of the petitioner collecting any amount from the persons who are admittedly found in occupation of the quarter on the terrace above the first floor.

16. The counsel for the respondents has drawn attention to the letter dated 31st July, 2013 of the petitioner to Deputy Director of Estates. However a perusal of the said letter also does not show the admission if any of the petitioner of having permitted the quarter on the terrace above the first floor to be occupied or of the petitioner charging any amount from the occupant thereof. All that the petitioner stated in the said letter is that the said terrace above the first floor was unauthorizedly occupied in May, 2012 when the petitioner had gone to his hometown and the petitioner subsequently learnt that the occupants had criminal antecedents and the petitioner, in the year 2013, on learning so complained against the occupants.

17. The counsel for the respondents, from another communication of the petitioner in his own file, states that the petitioner therein claimed unauthorised occupation to have taken place in the year 2007. It is argued that the stand of the petitioner is inconsistent in this regard. It is further stated that the petitioner in the said communication also stated that he was collecting electricity charges from the unauthorised occupants on the quarter on the terrace above the first floor and disputes between the petitioner and the said unauthorised occupants arose in November, 2012 when the said occupants stopped paying electricity charges. On enquiry, it is informed that as per the photographs on the file of the counsel for the respondents, quarter on the terrace above the first floor is installed with a sub meter.

18. The counsel for the respondents has also drawn attention to a Notice dated 7th May, 2013 under Section 107/111 of the Code of Criminal Procedure, 1973 (Cr.PC) of the Court of Special Executive Magistrate in a proceeding under Section 107/150 of the Cr.PC recording that it was the stand of the occupants that the petitioner was collecting rent from them.

19. It is however not as if the Special Executive Magistrate had recorded the statement of the said occupants or that the said statement was subjected to cross-examination by the petitioner. The respondent no.1 Estate Officer also did not examine the said occupants.

20. In my opinion the aforesaid notice recording the stand taken by the occupants, of the quarter on the terrace above the first floor, of the petitioner collecting rent from them, cannot bind the petitioner.

21. No other evidence on the basis of which it has been held by the respondent no.1 Estate Officer that it is the petitioner who inducted persons into the quarter on the terrace above the first floor or was collecting rent from them, has been shown.

22. The aforesaid documents at best show that the petitioner, inspite of coming to know of the trespass of the quarter on the terrace above the first floor, did not take any action and rather allowed the occupants to remain.

23. However it is not shown as to how the same would amount to a ground for cancellation of allotment in favour of the petitioner of the first floor quarter or of eviction, as a consequence thereto.

24. Though the possibility of the petitioner having inducted the occupants found in the accommodation on the terrace above the first floor quarter allotted to the petitioner and even collecting rent and user charges from them cannot be ruled out in the circumstances aforesaid but on such possibilities and without there being any material on record, this Court cannot in exercise of jurisdiction under Article 227 allow the impugned orders to stand specially when no Rule providing for eviction of allotted accommodation on such ground is cited.

25. The petition thus succeeds. The order of the District Judge of

dismissal of appeal as well as the order of the respondent no.1 Estate Officer of eviction of the petitioner are set aside. However in the circumstances, the counsel for the petitioner has been asked whether the petitioner is willing to give an undertaking to this Court to vacate the premises now in his occupation to the respondents, on or before 31st December, 2018 and to pay licence charges therefor till the month of occupation.

26. The counsel for the petitioner replies in the affirmative.

27. The petitioner, as identified by the counsel, undertakes to this Court to handover vacant peaceful physical possession of the Government accommodation now in his occupation to the respondents on or before 31st December, 2018 and to, till the month of occupation thereof, pay use and occupation and electricity/water charges thereof as per Rules, to the respondents.

28. It is made clear that nothing contained in this order shall come in the way of any disciplinary proceedings already initiated or if intended to be initiated against the petitioner, being so continued or initiated.

The petition is disposed of.

RAJIV SAHAI ENDLAW, J

SEPTEMBER 19, 2018

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