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- * **IN THE HIGH COURT OF DELHI AT NEW DELHI**
W.P.(C) 5191/2017 & CM No.22120/2017 (for stay).
MANOJ KUMAR TOMER Petitioner
Through: Mr. Gaurav Kumar Singh, Adv.
versus
DIRECTOR OF ESTATES,
DIRECTORATE OF ESTATES & ANR Respondents
Through: Mr. Akhilesh Kumar and Mr. Raghav
Nagar, Advs. for R-1&2.
- AND**
- + W.P.(C) 5648/2017 & CM No.23642/2017 (for stay).
BIJU K SAM Petitioner
Through: Mr. Gaurav Kumar Singh, Adv.
versus
DIRECTOR OF ESTATES AND ANR Respondents
Through: Mr. Akhilesh Kumar and Mr. Raghav
Nagar, Advs. for R-1&2.
- AND**
- W.P.(C) 7364/2017
SUKHDEV SINGH MANHAS Petitioner
Through: Mr. Gaurav Kumar Singh, Adv.
versus
DIRECTOR OF ESTATES,
DIRECTORATE OF ESTATES & ANR Respondents
Through: Mr. Akhilesh Kumar and Mr. Raghav
Nagar, Advs. for R-1&2.
- AND**
- W.P.(C) 8224/2017
LACHHAM SINGH BISHT Petitioner
Through: Mr. Gaurav Kumar Singh, Adv.
versus
DIRECTOR OF ESTATES
DIRECTORATE OF ESTATES AND ANR Respondents
Through: Mr. Anil Dabas, Adv. for R-1&2.
- AND**

W.P.(C) 8226/2017 & CM No.33823/2017 (for stay).

SAMPURANA NAND

..... Petitioner

Through: Mr. Gaurav Kumar Singh, Adv.

versus

DIRECTOR OF ESTATES

DIRECTORATE OF ESTATES AND ANR.

..... Respondents

Through: Mr. Anil Dabas, Adv. for R-1&2.

AND

W.P.(C) 8253/2017 & CM No.33977/2017 (for stay).

MANOJ KUMAR RAI

..... Petitioner

Through: Mr. Gaurav Kumar Singh, Adv.

versus

DIRECTOR OF ESTATES,

DIRECTORATE OF ESTATES & ANR

..... Respondents

Through: Mr. Akhilesh Kumar and Mr. Raghav
Nagar, Advs. for R-1&2.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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07.08.2018

1. These petitions, all under Article 227 of the Constitution of India, have been preferred by the personnel of Assam Rifles, who were on deputation in Delhi and were during the period of deputation provided accommodation at Delhi, impugning the show cause notices issued to each of the petitioners by the Directorate of Estates, New Delhi under Section 4 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (PP Act) with respect to the accommodation in their respective possession as well as the notices issued to them of cancellation of allotment of such accommodation and intimating the petitioners of their liability to pay damages for unauthorised use and occupation of the said accommodation.

2. The petitions were entertained and notices thereof issued and the

counsel for the respondents stated that the proceedings already initiated and pending before the Estate Officer, against each of the petitioners, shall be deferred.

3. Thereafter, each of the petitioners gave undertaking to this Court to handover vacant peaceful physical possession of the accommodation allotted to each of them, to the respondents, on or before 30th June, 2018. The said undertakings were accepted and the petitioners ordered to be bound therewith.

4. These petitions were however not disposed of, presumably owing to challenge therein being also to the demand for damages for unauthorised use and occupation.

5. These petitions came up before this Court last on 4th July, 2018 when it was informed that the petitioners, save the petitioners in W.P.(C) No.5648/2017 and W.P.(C) No.8253/2017, had in terms of their respective undertakings vacated the accommodation. Accordingly, notice to the petitioners in W.P.(C) No.5648/2017 and W.P.(C) No.8253/2017 to show cause as to why they should not be proceeded against for breach of undertaking given to this Court was issued and personal appearance of the petitioners in W.P.(C) No.5648/2017 and W.P.(C) No.8253/2017 before this Court for today was directed.

6. The petitioner in W.P.(C) No.5648/2017 who is serving as Deputy Commandant of Assam Rifles and posted at Shillong, Meghalaya is present and the counsel informs that the said petitioner has today morning vacated the accommodation and handed over possession thereof.

7. The counsel for respondents confirms.

8. For reason, explained by the petitioner in W.P.(C) No.5648/2017 present in person, the delay by the said petitioner in vacating the accommodation is condoned and the notice issued to the petitioner in W.P.(C) No.5648/2017 is discharged.

9. The counsel for the petitioners states that he was unable to contact the petitioner in W.P.(C) No.8253/2017. It is also stated that all the petitioners, including the petitioner in W.P.(C) No.8253/2017, are posted in forward area / North-East and are able to travel to Delhi only if granted leave. The counsel for the petitioners states that he will make fresh attempts to contact the petitioner in W.P.(C) No.8253/2017.

10. The petitioner in W.P.(C) No.5648/2017 is also requested to, while present in Delhi, make enquiries about the petitioner in W.P.(C) No.8253/2017 and inform the counsel.

11. I have enquired from the counsel for the petitioners as to what else remains in these petitions, save in W.P.(C) No.8253/2017.

12. The counsel for the petitioners states that the grievance of the petitioners with respect to the claim for damages for unauthorised use and occupation remains. It is stated that though the petitioners ceased to be on deputation in Delhi and were posted out as aforesaid but the families of the petitioners could not be shifted immediately and owing whereto the accommodation could not be surrendered. It is contended that the respondents are not treating the petitioners at par with personnel of Central Armed Police Forces (CAPF) and Central Para-Military Forces (CPMF), whose officials are not levied with damages as are being claimed from the petitioners.

13. The counsel for the respondents states that the petitioners cannot compare themselves with personnel of CAPF and CPMF who have their Headquarters at Delhi. It is contended that the petitioners are personnel of Assam Rifles which has its Headquarters at Meghalaya and the entitlement of the petitioners to accommodation for their family is from Assam Rifles and not from the Central Government Pool of Accommodation.

14. The counsel for the respondents, during the hearing, has also informed that no proceedings for recovering damages have been initiated against any of the petitioners as yet.

15. The counsel for the petitioners states that the petitioners have made a representation in this regard and which is also pending consideration.

16. I have enquired from the counsel for the respondents, whether not the respondents, before levying damages, will follow the procedure prescribed under Section 7 of the PP Act and how can the respondents, without following the said procedure, claim/recover such damages.

17. The counsel for the respondents also agrees.

18. I have further enquired from the counsel for the respondents, whether there is any possibility of the respondents, even prior thereto deducting the damages from the salaries and other emoluments of the petitioners.

19. The counsels for the respondents states that he is unable to make a statement to that effect.

20. I am of the view:-

- A. that, considering that the petitioners are personnel of Armed Forces, the concerned authority of the respondents entitled to take a decision on the representation made by the petitioners for

waiver of damages of which they have been intimated, should sympathetically consider the said representation and take a decision thereon within three months of today and intimate the said decision to the petitioners;

- B. the respondents, till such decision is taken, and without following the procedure prescribed in Section 7 of the PP Act, should not deduct the damages of which the petitioners were notified or damages for unauthorised occupation, from the salary/other emoluments of the petitioners;
- C. no other coercive action against the petitioners should also be taken till then; and,
- D. even if the Estate Officer of the respondents levies damages on the petitioners, before any coercive steps are taken, the petitioners should have an opportunity to exercise their statutory remedy thereagainst.

21. Accordingly, W.P.(C) 5191/2017, W.P.(C) 5648/2017, W.P.(C) 7364/2017, W.P.(C) 8224/2017 and W.P.(C) 8226/2017 are disposed of in terms of above.

22. List W.P.(C) No.8253/2017 on 30th August, 2018.

23. A copy of this order be given *dasti* to the counsel for the respondents to enable the counsel for the respondents to communicate the same to the respondents for compliance.

RAJIV SAHAI ENDLAW, J

AUGUST 07, 2018

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W.P.(C) 5191/2017, W.P.(C) 5648/2017, W.P.(C) 7364/2017, W.P.(C) 8224/2017, W.P.(C) 8226/2017, W.P.(C) 8253/2017

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