

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

% **Date of decision: 17th September, 2018.**

+ **W.P.(C) No.5036/2017**

AWADESH KUMAR YADAV

..... Petitioner

Through: Mr. Sunil Mittal, Sr. Adv. with Mr.
Ravi Sharma, Mr. Dhruv Grover and
Ms. Aishwarya Anand, Advs.

Versus

**ESTATE OFFICER & ASSTT. DIRECTOR
OF ESTATES (LITIGATION)**

...Respondent

Through: Mr. Gaurang Kanth, Adv. with Mr.
Harvesh Panwar & Ms. Amita
Gupta, Dy. Directors, Directorate of
Estates.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. This petition under Article 226 of the Constitution of India has been preferred against the judgment [dated 2nd February, 2017 in CIS-PPA-08-2016 (CNR-DLST01-001806-2015) of District & Sessions Judge (South) exercising powers of an 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 17th July, 2015 in EC/262/AD/Lit/2015/T-II/Sub of the Estate Officer] of eviction of the petitioner from the accommodation allotted to the petitioner by virtue of his employment, on account of sub-letting thereof by the petitioner.

2. The petition first came up before this Court on 30th May, 2017 when eviction of the petitioner was restrained and notice of the petition issued. The said interim order has continued till now.

3. During the hearing on 8th August, 2018, it was enquired from the senior counsel for the petitioner as to what is there to show that the petitioner was / is in occupation of the premises since the date of allotment thereof. It was further enquired as to where the petitioner was residing prior to the said allotment, who are the members of the family of the petitioner since the date of allotment, what is their vocation / age and what is their recorded address with their respective employer/s / educational institution/s. The senior counsel for the petitioner stated that the petitioner was not present in the Court and the challenge in this petition was confined to the violation of the principles of natural justice. Observing that the petitioner having approached this Court in exercise of equitable jurisdiction, after exhausting the statutory remedy available, was not worthy of any equity if found to be abusing the process of the Court to perpetuate his unauthorized occupation of the premises, the petitioner was directed to file an affidavit on the said lines as well as on all other aspects which the petitioner may deem appropriate in this respect and to remain present in person on the next date of hearing.

4. On the next date of hearing i.e. 29th August, 2018, the senior counsel for the petitioner on instructions stated that the petitioner, to put a quietus to the matter, was willing to vacate the government accommodation in his possession and to deliver vacant peaceful physical possession thereof to the respondent within 30 days.

5. It was on 29th August, 2018 enquired, when the cancellation of allotment was effected. It was informed that cancellation of allotment of the government accommodation allotted to the petitioner was effected on

25th September, 2013. It was further enquired, whether any proceedings under Section 7 of the PP Act had been initiated. The answer was in the negative. It was thus observed in the order dated 29th August, 2018 that even if the petitioner was to so vacate the premises, the liability of the petitioner for damages for use and occupation of the premises for the last approximately five years would still remain.

6. The senior counsel for the petitioner, on instructions, on 29th August, 2018 stated that the petitioner was willing for a reasonable settlement qua damages also. It was however contended that the petitioner should not be disqualified from fresh allotment of government accommodation, if in the course of remaining service of about 20 to 25 years, becomes eligible therefor.

7. Directing the counsel for the respondent to obtain instructions, the proceedings were adjourned to today.

8. Today, the counsel for the respondent states that the respondent cannot make any concession that proceedings under Section 7 of the PP Act will not be initiated against the petitioner or that petitioner will remain eligible for fresh allotment or that disciplinary proceedings will not be initiated against the petitioner.

9. The senior counsel for the petitioner states that though the petitioner has of his own agreed to vacate the accommodation but this petition be heard in as much as if the petition succeeds, there will be no proceedings under Section 7 of the PP Act or disciplinary proceedings against the petitioner and the petitioner will also remain eligible for fresh allotment.

10. The statement aforesaid to vacate the accommodation is accepted and the petitioner ordered to be bound therewith and the counsels have been heard further on merits and the records perused.

11. Allotment of Quarter No.1337, Sector-7, M.B. Road, New Delhi in favour of the petitioner was cancelled vide order dated 25th September, 2013 of the Directorate of Estates, recording that (i) on receipt of complaint of sub-letting by the petitioner, the quarter was inspected on 8th May, 2012; (ii) Pinki Sharma, daughter of C.R. Sharma was found in occupation of the said quarter; she had no knowledge about the post and office address of the petitioner, except the name of the petitioner; she stated that Mr. C.R. Sharma, his wife Anita Sharma, herself and Soumen Sharma had been residing in the quarter; (iii) notice dated 5th June, 2012 to show cause was issued to the petitioner; (iv) the petitioner in his reply dated 5th July, 2012 stated that he had one school going child; though he had brought his wife and child to reside in the quarter but the child of the petitioner could not get admission into any school in the vicinity of the quarter, forcing the petitioner to send back his wife and child to his home town; however the wife and daughter of the petitioner, for the treatment of the daughter of the petitioner, were for the last three months residing in the quarter; that he had not sub-let the quarter; (v) though the petitioner in his reply dated 5th July, 2012 stated that his wife and daughter had been residing in the quarter for previous three months but during the inspection on 8th May, 2012 they were not found therein; (vi) the petitioner, during the hearing, on being asked about the persons who were found in the quarter at the time of inspection stated that they were the friends of his brother Yogesh and had come to

Delhi to visit the petitioner; (vii) however, the petitioner inspite of opportunities failed to produce the documents of identity of the persons found in the quarter at the time of inspection; (viii) the petitioner, on 24th June, 2013 submitted a fresh reply stating that he had no connection or acquaintance with Anita Sharma or Pinki Sharma and thus could not produce the documents of their identity; and, (ix) it was thus writ large that the petitioner had sub-let the quarter.

12. The departmental appeal of the petitioner against the order dated 25th September, 2013 of cancellation of allotment, was dismissed on 1st May, 2015.

13. On the petitioner failing to vacate the quarter inspite of cancellation of allotment thereof, the Directorate of Estates applied to the Estate Officer who issued notice under Section 4 of the PP Act and passed order dated 17th July, 2015, in exercise of powers under Section 5 of the PP Act, of eviction of the petitioner from the quarter.

14. The learned District Judge has dismissed the statutory appeal under Section 9 of the PP Act of the petitioner finding / observing / holding that (a) the only contention of the counsel for the petitioner was that the principles of natural justice had been violated; (b) however the counsel for the petitioner could not deny that the petitioner had been served notice to show cause before the allotment of quarter in his favour was cancelled and the petitioner was also served notice under Section 4 of the PP Act from the Estate Officer and had submitted his replies and made representations before both the foras; (c) the contention of the counsel for the petitioner was that because both the foras had decided against him, therefore the

proceedings were vitiated and there had been denial of fair hearing; (d) that the signatures along with mobile numbers of the persons found in occupation of the quarter at the time of inspection thereof on 8th May, 2012 belied the contention of the counsel for the petitioner that no inspection of the quarter had taken place; (e) the petitioner had not produced any documents to falsify any of the said contents of the inspection report; (f) the petitioner had failed to furnish any explanation of the presence of the persons found in occupation of the quarter at the time of inspection thereof; (g) the inspection report also had particulars of the PAN Card of Soumen Sharma found residing in the quarter and which Soumen Sharma had also signed the inspection report; (h) the documents produced by the petitioner before the Directorate of Estates, Estate Officer as well as the District Judge did not show residence of the petitioner and / or his family members in the quarter; and, (i) the Directorate of Estates was justified in cancelling the allotment of the quarter in favour of the petitioner and once the allotment stood cancelled, the petitioner ceased to have any right to continue in occupation of the quarter and the Estate Officer was thus justified in passing the order of eviction.

15. The senior counsel for the petitioner has before me also contended that the petitioner is not challenging on merits the orders of the Estate Officer or of the District Judge; the only argument is that the proceedings resulting in order of eviction of the petitioner have not been conducted as per the prescribed procedure. Copies of (i) Office Memorandum No.12035/23/2002-Pol.II dated 8th January, 2003 of Directorate of Estates titled "Procedure to conduct subletting inspections by the officials of the

Directorate of Estates and procedure to be adopted by Deciding authorities and Estate Officers”; (ii) “Guidelines in force for conducting the inspections of General Pool Residential Accommodation by officers of Ministry of Housing and Urban Affairs”; (iii) order dated 16th August, 2017 in W.P.(C) No.7007/2017 titled ***Shashi Bala Vs. Union of India***; and, (iv) ***G.R. Gupta Vs. Lok Sabha Secretariat*** 204 (2013) DLT 694 are handed over in support of the contention, of the requisite procedure having not been followed.

16. I am not impressed. The heart of the matter is, whether the petitioner sub-let the quarter allotted to him by virtue of his employment with the government. From what is narrated above and qua which no argument is urged, sub-letting has been established. Once sub-letting has been established, the argument, of prescribed procedure having not been followed, is of no avail. The prescribed procedure is only to ensure transparency in decision making and to ensure that no cancellation of allotment on such ground is affected where there is no sub-letting. However, once there is no doubt whatsoever that the petitioner has indeed indulged in sub-letting, the argument, of the procedure having been breached, is of no avail. The senior counsel for the petitioner, inspite of asking, has not been able to address how the petitioner has been prejudiced by breach, even if any of the procedure required to be followed. Rules and principles of natural justice are for *bona fide* litigants and not for persons who abuse the process of law, taking the shield of such principles and rules.

17. The petitioner, inspite of opportunity before this Court also, has avoided filing of the affidavit which the petitioner was called upon to file to

show that in fact the petitioner had not indulged in sub-letting. The petitioner has also failed to appear before this Court to enable this Court to put questions to the petitioner to satisfy itself whether the petitioner and his family members were residing in the quarter. The only inference from all the aforesaid is that there is no error in the orders impugning which this petition under Article 227 of the Constitution of India has been filed.

18. The jurisdiction under Article 227 of the Constitution of India cannot be converted into a second appellate jurisdiction. I have already, in earlier order dated 8th August, 2018, observed that the petitioner has approached this Court in equitable jurisdiction, after exhausting statutory remedy available and that equitable jurisdiction cannot be exercised in favour of the petitioner if the petitioner is not worthy of any equity and is only abusing the process of the Court.

19. The senior counsel for the petitioner, inspite of opportunity given therefor, has chosen not to satisfy this Court of the petitioner being in the right.

20. There is no merit in the petition.

Dismissed.

No costs.

RAJIV SAHAI ENDLAW, J.

SEPTEMBER 17, 2018

‘gsr’..

(Corrected and released on 26th October, 2018).