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

+ LPA 687/2017

UNION OF INDIA

..... Appellant

Through: Mr. Anurag Ahluwalia, CGSC with
Ms. Nidhi Mohan Parashar, Adv.

versus

RAJ PAL

..... Respondent

Through: Mr. Mukesh Anand, Adv.

CORAM:

HON'BLE CHIEF JUSTICE

HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER

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20.08.2018

CM. No. 38361/2017 (for exemption)

Exemption allowed subject to all just exceptions.

Application stands disposed of.

CM. No. 38359/2017 (for delay)

This is an application filed by the applicant / appellant seeking 224 days delay in filing the appeal.

For the reasons, stated in the application, delay of 224 days in filing the appeal is condoned.

Application stands disposed of.

LPA 687/2017

1. In this appeal, the appellant Union of India, has challenged the order

dated January 20, 2017, passed by the learned Single Judge in W.P.(C) 5671/2016 and CM. No. 24373/2016 whereby the learned Single Judge has set aside the impugned order dated May 12, 2016 passed by the learned District Judge in an appeal filed by the respondent herein under the provisions of the Public Premises Act (Eviction of Unauthorized Occupants) Act, 1971 (P.P.Act, in short).

2. Some of the relevant facts are that respondent was allotted public premises being Quarter No. 876, Sector-IV, R.K. Puram, New Delhi by the Directorate of Estates, as he is an employee working with the Central Government. Upon a written complaint regarding misuse of the quarter allotted to the respondent by way of sub-letting, the quarter was inspected on November 10, 2012 and one person claiming to be the son of respondent, namely Vikas was present at the quarter. Pursuant thereto a show cause notice dated February 25, 2013 was issued to the respondent to show cause as to why the allotment in his name be not cancelled on account of sub-letting. On July 31, 2013, the respondent appeared before the Deputy Director (Enquiry) wherein he inter alia has stated that he was in office and his wife had gone to the house of her parents in Mehrauli and it was his son who was at the quarter during the inspection. On August, 1, 2013,

respondent appeared before the Deputy Director when the specimen signatures of his son was taken and compared with the signatures on the inspection report. It was found that the signatures did not tally. When this fact was brought to the notice of the respondent, he changed his stand and stated that his son had gone to the market and one Rahul was at home and he had impersonated his son. On November 25, 2013, the Assistant Director of Estates issued an order cancelling the allotment of the quarter to the respondent. The respondent filed an appeal against the said order on December 18, 2013. It is the case of the appellant that in the appeal respondent had stated that he along with his family members went to his native village on the death of his uncle and for security reasons he had kept his friend in the quarter. It is averred that the respondent again sent his appeal through proper channel and reiterated that he had not sublet the quarter. The appellate authority heard the appeal of the respondent on March 23, 2015, and dismissed the appeal.

3. Vide notice dated June 16, 2015, under Section 4 of P.P.Act, respondent was informed that despite allotment of quarter having been cancelled on November 25, 2013, he had unauthorizedly continued to occupy the same. The respondent was called upon to appear in person on

July 14, 2015 for personal hearing. The said notice was replied by the respondent vide letter dated July 20, 2015. The said show-cause notice resulted in order dated July 17, 2015 whereby the respondent was given 15 days time to vacate the quarter.

4. The respondent filed an appeal before the learned District and Sessions Judge, Patiala House Courts under Section 9 of the P.P.Act being no.PPA 59/2015 for setting aside the order dated July 17, 2015. The appeal of the respondent was rejected on May 12, 2016. On January 20, 2017, respondent was called upon to hand over the possession of the quarter. The respondent filed a writ petition being 5671/2016, in this Court, where in the impugned order was passed.

5. It is the submission of Mr. Anurag Ahluwalia, learned CGSC appearing for the appellant that the learned Single Judge has erred in allowing the writ petition and setting aside the order of the learned District and Sessions Judge dated June 12, 2015 by re-appreciating the evidence, which is impermissible. According to him, respondent employee had taken contradictory stand before the authorities as under:

1. **Stand on 01.08.2013 before Dy. Director (Enquiry)**
Allottee appeared before the undersigned on 01.08.2013 along with his son Vikash for signature verification. His signature

does not tally (tally) with the signature in IR. The undersigned has brought this to the notice of the allottee that the person in the quarter was not his son but impersonated himself to be the son of the allottee. Thereafter, allottee has changed his statement and stated that Rahul was in the quarter at the time of inspection, his son Vikash went to nearby market Munirka. Rahul impersonated himself as the son of the allottee.

2. **Stand in Appeals filed before Director of Estates-II**
Appeal dated 18.12.2013

I aggrieved against the Order, sir, during the period the which inquires was conducted and I went with family to my native place, i.e., (Village Kahani, Distt. Rohtak) for the death of my uncle, during the period, I take charge my quarter for one of my friend for security reason.”

Appeal through proper channel dated 27.10.2014

Sir, I am aggrieved with this order because during the period for which inquiries were conducted, I went with my family to my native place, i.e., Village Kahani, Distt. Rohtak due to the death in my uncle and I gave the charge of my quarter to one of my friends for security reasons.

3. **Stand in Appeal before the District Judge**

That the officials of the defendant came to the suit property and at that time the son's wife of the plaintiff / applicant were present and after making enquiry, the said officials left the spot, however, the son of the applicant / plaintiff told to the said

officials that the plaintiff and his wife has gone to attend some function in the relation.

4. Pleadings before the Writ Court

That on 10.11.2012, an inspection was carried out by the Department in respect of the above Govt. Quarter allotted to the petitioner and at that time, the son of the petitioner Vikas and his wife were present and after some enquiry regarding other family members, it was informed to them that the petitioner has gone to the office and their mother, i.e., wife of the petitioner has gone to attend some function in the relations.

6. Mr. Ahluwalia further states that the aforesaid shifting stands would clearly demonstrate, lack of bonafide on the part of the respondent. It shows he was not staying in the quarter and had sublet the same. Further, Mr. Ahluwalia contended, the comparison of the signatures on the driving licence with the signatures on the inspection report is clearly impermissible. What was required to be compared were the signatures on the inspection report and the specimen signatures taken during the proceedings by the Deputy Director and on a comparison, it is clear that the signatures did not tally. That apart, it is his submissions that Vikas (alleged son) could not even disclose the name of his mother. According to him, the person found available at the time of inspection has disclosed the name of wife of the

employee as Munni Devi whereas her real name is Bina Devi. According to him, the learned Single Judge also could not have set aside the finding of fact arrived at by two authorities below and set aside the order of eviction.

7. Mr. Mukesh Anand, learned counsel appearing for the respondent on the other hand would justify the order stating that the learned Single Judge has rightly compared the signatures on the driving licence with the other signatures on the inspection report. He also stated that there are other evidence like gas connection (BP No.) and the fact that Vikas has disclosed the mobile number of the respondent to show that the respondent had not sublet the quarter.

8. Having heard the learned counsel for the parties, it is clear that respondent had changed his stand from time to time, which has already been reflected above. That apart, learned Single Judge has primarily set aside the order on a comparison of the signatures of Vikas on his driving licence with that of signatures of alleged son on the inspection report. The comparison has to be of the specimen signatures of Vikas as taken during the proceedings and the one of alleged son as appended on the inspection report. During the course of hearing, we have compared the specimen signatures with the signatures on the inspection report and found that both the

signatures do not tally. That apart the Single Judge by reappreciating the evidence could not have overturn the finding of fact as arrived at / upheld by two authorities below, who clearly found that it is a case of subletting. Even the reference to the Gas connection (BP number) and the fact that the mobile number of the respondent was disclosed by the person found at the time of inspection cannot prove, that the quarter has not been sublet as the respondent may have allowed the continuance of the gas connection at the quarter while subletting and, the person found present at the quarter surely will have the knowledge of the mobile number of the person who has let out the quarter. By allowing the writ petition, the learned Single Judge has conferred upon herself a jurisdiction which was not vested in law. Accordingly, the appeal is allowed. The impugned order dated January 20, 2017 is set aside.

CM Nos. 38360/2017 & 7578/2018

Dismissed as infructuous.

CHIEF JUSTICE

V. KAMESWAR RAO, J

AUGUST 20, 2018/jg