

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

% **Date of decision: 16th August, 2018.**

+ **W.P.(C) 11029/2017 & CMs No.45098/2017 (for stay) & 5466/2018 (for condonation of 20 days delay in filing the appeal)**

AVINASH SRIVASTAVA **..... Petitioner**

Through: Ms. Gargee Dixit, Adv.

Versus

**ESTATE OFFICER, DIRECTORATE
OF ESTATES**

..... Respondent

Through: Mr. Rajesh Gogna and Mr. Akhilesh Kumar, Advs. with Mr. Harvesh Kumar, Assistant Director and Mr. Tilak Raj, ASO of DOE.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. This petition under Article 226 of the Constitution of India impugns the order [dated 23rd November, 2017 in PPA Appeal No.08/2017 of the Court of District Judge (HQs) acting as the Appellate Officer under Section 9 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (PP Act)] of dismissal of appeal preferred by the petitioner against the order dated 16th May, 2017 under Section 5 of the Act of the Estate Officer of eviction of the petitioner from Quarter No.191, Block-11, Dev Nagar, New Delhi.

2. The petition came up before this Court first on 12th December, 2017, when notice thereof was ordered to be issued, the record of the Estate Officer and Appellate Court requisitioned and coercive action against the

petitioner restrained; the petitioner as well as his wife were also directed to remain present in person on the next date of hearing. However, the order of the next date of hearing neither records the presence of the petitioner or his wife nor makes any reference to nor discloses that any enquiries were made from the petitioner or his wife. The respondent has filed a counter affidavit and to which a rejoinder has been filed in terms of order dated 7th May, 2018. The counsel for the petitioner has also filed his submissions in writing.

3. Ms. Gargee Dixit, counsel for the petitioner today conveniently states that her file has been lost and an adjournment be given.

4. The petitioner is enjoying stay of eviction from public premises, that too granted without even recording that there is any *prima facie* error in the order of the District Judge acting as the Appellate Officer, which has been conferred finality under the Act. The continuation of the said stay order and the resultant continuation of the possession of the petitioner of the public premises is obviously to the detriment of others. The petitioner was allotted the subject premises by virtue of his employment with the Government and for the purpose of his own residence. Judicial notice can be taken of the fact that there is scarcity of government accommodation and government employees have to wait for years for allotment thereof. If in these circumstances, those who are not even themselves residing in the government accommodation and have rather made it a source of earning, are allowed to continue with the same, the others in the queue for allotment of government accommodation will be deprived thereof and may even superannuate, without availing of such accommodation.

5. Moreover, the plea taken for adjournment does not inspire any confidence. Though Ms. Gargee Dixit, Advocate appears but intermittently also states that Mr. A.K. Pandey, Advocate has to argue and who has chosen not to appear. It is quite clear that Ms. Gargee Dixit, Advocate is only using the pretext of losing the file for seeking adjournment.

6. Option was given to Ms. Gargee Dixit, Advocate that adjournment can be granted by vacating the interim order. She has chosen to argue the petition.

7. The counsels have been heard and the record of the Estate Officer and the Appellate Court have been perused.

8. An inspection of the premises was carried out on 28th December, 2013 at 1243 PM. Rahul, Rita, Karishma and Samir were found in the premises. The petitioner was not found and the persons present did not show the Ration Card or the Central Government Health Scheme (CGHS) Card of the petitioner. However, gas meter in the name of the petitioner was found installed in the premises. Karishma and Samir described themselves as nephew and niece of the petitioner and disclosed themselves to be studying in Giri International School. Rahul also showed his Aadhaar Card showing his father's name to be Rajinder Prasad Thakur and his address as of the subject property.

9. On the basis thereof, after giving opportunity of hearing to petitioner, allotment in favour of petitioner of the aforesaid accommodation was cancelled and proceedings for eviction under the PP Act commenced by the Estate Officer.

10. The Estate Officer, vide order dated 16th May, 2017, ordered the eviction of the petitioner, reasoning (i) that the petitioner could not establish the relationship of the occupants found during the inspection of the premises with himself; (ii) that even the notice of hearing sent at the said address was received by Kumari Richa on 25th April, 2016; (iii) that none of the family members of the petitioner were found in the premises; (iv) that sub-letting was established and allotment in favour of the petitioner cancelled on 5th November, 2014; (v) that inspite of repeated opportunities given for three years before the Estate Officer, the petitioner had failed to present any defence except copy of the Syndicate Bank Account, EPIC Card, CGHS Card and Identity Card of the son of the petitioner signed by the Principal BGS International Public School.

11. The learned District Judge has dismissed the appeal preferred by the petitioner, recording (a) that it was the argument of the counsel for the petitioner (i) that Rita, whose presence was recorded during the inspection, was the wife of the petitioner; (ii) that the order of the Estate Officer is in violation of the principles of natural justice; (iii) that the health condition of the petitioner was not considered; (iv) that the petitioner and his wife both were suffering from ill-health and did not have any other accommodation in Delhi or elsewhere; (b) that mental illness is not a ground for non-appearance after receiving of the notice; (c) that as per SR 317 B-20 and SR 317 B-21 of the Allotment Rules, if the premises are found to be occupied by persons other than the family members of allottee, it is treated as misuse of the premises; (d) that the petitioner did not appear on 21st May, 2014 for which show cause notice was issued; (e) that though another show cause

notice dated 14th August, 2014 was given giving the date of 4th September, 2014, but the petitioner did not appear on that date also; (f) that it was in these circumstances that the cancellation order dated 5th November, 2014 was passed; (g) that even before the Estate Officer, the petitioner did not appear on each and every date of hearing; (h) that the petitioner had not shown any proof of relationship with Rahul Kumar or any of the other unauthorised occupants who were found present at the time of inspection.

12. The counsel for the respondent has drawn attention to the averments made in the present petition in para 3 thereof, which is as under:

“3. That in the February 2010 the petitioner was suffering from Schizophrenia and severe depression (mental illness) and was treated in Institute of Human Behavior and Allied Science (IHBAS), Dilshad Garden Delhi, and later he was being treated in the Psychiatric Department of the RML Hospital New-Delhi. The Doctor of the IHBAS vide his opinion dated 18/05/2013 advised the petitioner for constant vigilance on the him for 24 hrs. further his family member were advised to stay with the petitioner for 24 hrs and also to supervise the medication. Since the wife of the petitioner namely Smt. Rita Srivastava has been running her own Parlour in Dwarka and due to her engagement from since morning till late evening she was unable to spare her time on the regular basis on the petitioner. thus the wife of the petitioner requested the relatives and the friends of the petitioner to visit and stay for one or two weeks at the said quarter to look after the petitioner as well as her minor son namely Yashovarman in her absence. Thus Ms. Richa Srivastava D/o Sh. Rajiv Kumar Srivastava who is the niece of the petitioner started residing with the petitioner and his family member but occasionally she used to go to her native place in Bihar thus in her absence the wife of the petitioner requested to the close friend of the petitioner namely Sh. Rajender Prasad Thakur and his other family members including his son Rahul to extend the help. Thus Sh. Rajender

*Prasad Thakur and his son Rahul used to visit and stay in the said quarter for a short period of one to two weeks, during the year 2013. Whenever Ms. Richa Srivastava (niece of the petitioner) return from her native place to the said quarter, Sh. Rajender Prasad Thakur or his son Rahul after staying one or two weeks used to go to their home. Copy of the Medical records of the petitioner are enclosed herewith **Annexure P-3 (Colly).***”

13. Attention is also drawn to a representation dated 19th December, 2014 made by the petitioner against the order dated 5th November, 2014 of cancellation of accommodation and in which the petitioner stated as under:

“1. With my utmost faith in your authority, I pray to you with the following lines against the ibid order for your kind and sympathetic favourable action, please:-

(i) that I fell mentally ill with schizophrenia and severest depression in 2010. I was treated at Institute of Human Behaviour and Allied Science (IHBAS), Dilshad Garden (Shahadara). Later, I was shifted to Psychiatric Deptt, RML Hospital for treatment due to proximity of the Hospital to my residence.

(ii) that in May 2013, my condition further deteriorated. Even I attempted to commit suicide but fortunately was saved by my wife in time. Again I was brought back to IHBAS. Doctor at IHBAS advised my wife to keep constant vigilance on me and to stay male/female with me twenty four hours.

(iii) that since my wife is a working lady in private sector and we have a nuclear family, it became difficult for her to tackle me everyday. It is pertinent to mention here that my wife herself is a patient of high blood pressure and incurable Planta Psoriasis where abscesses are visible on her finger and foot.

(iv) that in this difficult situation she called one of my closed friend with his family to stay with us for doing house hold works, to take care of myself, to avoid theft as I was becoming a wanderer, aggressive and violent.

(v) that I was not mentally strong and my wife had no knowledge of rules and regulations established by Estates office, she could not inform of my friend's stayal with us on time to Estate office.

(vi) that I am still under treatment by noted psychiatrist Dr. Manish Guptra. My condition is improving and my friend has now gone.

(vii) that I am enclosing copy of my and my wife's medical prescriptions for your kind perusal. I am also enclosing copy of my EPIC card, copy of CGHS CARD and My son's school identity card indicating proof of my address."

14. It is the contention of the counsel for the respondent that from the aforesaid facts, a case of sub-letting has rightly been found by the Estate Officer and by the learned District Judge acting as the Appellate Officer.

15. Per contra, the counsel for the petitioner has argued (i) that the whole proceedings are only on the basis of inspection report; (ii) that once the presence of Rita, who is the wife of the petitioner, is recorded in the inspection report, the finding of sub-letting is obviously wrong; (iii) that Rita, wife of the petitioner, is running a beauty parlour at Dwarka and was thus unable to look after her husband and for this reason, others were called to the premises; (iv) that the reliance on the Aadhaar Card of Rahul, at the address of the accommodation is also wrong because there is nothing to

show that Rahul got issued the said Aadhaar Card at the address of the said accommodation with the permission of the petitioner.

16. The counsel for the respondent has contended that the lady present gave her name as Rita, knowing the name to be of the wife of the petitioner but was not the wife of the petitioner. It is contended, that for this reason only, the said lady refused to sign the inspection report and made Rahul sign the same.

17. I have enquired from the counsel for the petitioner (I) that if the need for calling others to the premises was felt owing to the illness of the petitioner, to look after the petitioner, and owing to the wife of the petitioner being required to be at her beauty parlour at Dwarka, why was the petitioner not present in the premises on the date of the inspection and to look after whom the persons found present were claimed to have been called to the premises; (II) similarly, if the wife of the petitioner was present herself on that date and was not at Dwarka, again, where was the need for having others to look after the petitioner; (III) what day of the week was 28th December, 2013, when the inspection was carried out and what was the closed day if any of the beauty parlour of the wife of the petitioner at Dwarka; (IV) whether the Rules regarding making of Aadhaar Card require the applicant to submit any proof of residence at the address at which Aadhaar Card is applied for and if so, what are those documents; (V) whether not it was for the petitioner to explain, as to how Rahul, who had been brought into the premises by the petitioner, had his Aadhaar Card at the address of the subject accommodation.

18. The counsel for the petitioner, again conveniently states she has no instructions.

19. Neither the petitioner nor the wife of the petitioner is present in the Court.

20. I have enquired from the counsel for the petitioner, as to who owns the premises in which the wife of the petitioner is running the parlour at Dwarka.

21. This time the counsel for the petitioner knows the answer and says that the wife of the petitioner is the owner of the said premises.

22. The same falsifies the stand taken before the Estate Officer, as found in the record of said proceedings, that the petitioner and his wife do not own any premises.

23. The counsel for the petitioner however conveniently does not know the address of the said premises at Dwarka. She also does not know whether the beauty parlour is in the whole premises or only part of the premises and if so, what use the remaining premises is being put to.

24. From the record of proceedings before the Estate Officer, it also transpires that BGS International Public School in which the son of the petitioner was then studying, is at Sector 5, Dwarka.

25. It is quite obvious that the petitioner has for the last four years, delayed his eviction, inspite of obviously being in unauthorised occupation of public premises. The petitioner is found to be abusing the process of the Court. None of the explanations given and reproduced above inspire any confidence. It is inexplicable, as to why the son of the petitioner, if residing

at Dev Nagar in the subject premises, would be admitted to a school in Dwarka. It also does not appear from the name of the school that the school is such, which has no alternative in the vicinity of Dev Nagar.

26. No error requiring interference in exercise of discretionary jurisdiction is found in the impugned judgment.

27. I have in fact asked the counsel for the respondent, whether any disciplinary/administrative action is taken against such government employees, for sub-letting government accommodation.

28. The counsel for the respondent states that the report of such employees is sent to disciplinary authority and has been sent in this case also but it is not known whether any action has been taken.

29. In my opinion, disciplinary action in accordance with applicable Rules should be initiated in such matters especially when the government employee is found to be abusing the process of law.

30. The counsel for the respondent to convey the said order to the appropriate authorities.

31. Dismissed.

32. The records requisitioned be returned forthwith.

RAJIV SAHAI ENDLAW, J.

AUGUST 16, 2018

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