IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. .24425 OF 2020

Digambar Kanhar	…..	***Petitioner***
		Mr. Ranjit Mohanty, Advocate
	-versus-	
State of Odisha and others	….	***Opp. Parties***
		Mr. Suvashishi Pattanaik, Additional Government Advocate

CORAM:
JUSTICE K.R. MOHAPATRA

ORDER

22.07.2022

Order No.

13. 1. This matter is taken up through Hybrid mode.

2. Petitioner in this writ petition seeks to assail the order dated 4th January, 2019 (Annexure-2) canceling allotment of Qrs. No.13 located at ITD Colony, Phulbani Sahi (near Shiv temple), Phulbani, order dated 20th June, 2010 (Annexure-3 series) rejecting his explanation and directing him to vacate the said quarters immediately (within seven days) failing which market rent was proposed to be charged from the date of cancellation of the allotment, order dated 13th July, 2020 (Annexure-5) imposing penal/market rent and also the order dated 20th August, 2020 (Annexure-8) passed by the Project Administrator, ITDA, Phulbani dismissing his application.

3. Mr. Mohanty, learned counsel for the Petitioner submits that the Petitioner was allotted with Qrs. No.13 at ITDA Colony, Phulbani Sahi (near Shiv temple), Phulbani vide order No.1758 dated 7th August, 2014 (Annexure-1) by the Project Administrator, ITDA Phulbani-Opposite Party No.3. However,

the said allotment was cancelled vide order No.9 dated 4th January, 2019 (Annexure-2) of the Opposite Party No.3. Petitioner submitted his grievance petition to retain the said quarters pursuant to Annexure-2, which was rejected and the Petitioner was directed to vacate the aforesaid quarters within seven days vide order dated 10th June, 2020 (Annexure-3 series).

3.1 Since the Petitioner did not vacate the said quarters, Opposite Party No.3, vide order dated 20th June, 2020 (Annexure-3 series) rejected his explanation and directed him to vacate the quarters within 7 days failing which market rent was proposed to be charged from him. As the order was passed during pandemic of COVID-19, the Petitioner verbally requested to retain the said quarters till the normalcy is restored. But without considering the same Opposite Party No.3, vide order dated 13th July, 2020 (Annexure-5 series) imposed penal rent on the Petitioner.

3.2 However, the Petitioner assaying the said order dated 13th July, 2020 filed W.P.(C) No.16458 of 2020 before this Court and the same was disposed of vide order dated 20th July, 2020 directing the Petitioner to approach Opposite Party No.3 for reconsideration of his case and till disposal of such representation, status quo with regard to occupation of the quarters in question was directed to be maintained.

3.3 Although pursuant to the direction of this Court, the Opposite Party No.3 took up the matter, but without considering the case of the Petitioner in its proper perspective, rejected his claim vide order dared 20th August, 2020 (Annexure-8). Hence, this writ petition has been filed.

4. Mr. Mohanty, learned counsel for the Petitioner submits that the Government in Finance Department, vide notification dated 15th December, 2010 (Annexure-9), clearly stipulates as under;-

> *"xx xx xx*
>
> *4. All the Group-D (Class-IV) employees working under State Government shall pay concessional Licence Fee at the rate of Rs.70/- per month for the lowest type of Government Quarters and Rs.100/- per month for a type above that.*
>
> *5. Allotment of Quarters should as far as practicable be made on the basis of the eligibility of the officers according to their pay range as mentioned in the above statement. If for any reason an employee is allotted with a Quarters which is of a higher/lower type than his eligible pay range, the Licence Fe shall be the flat rate of the quarters which is under his occupation.*
>
> *xx xx xx*
>
> *10. (i) Any officer in occupation of Government quarters, if transferred from his Station can retain the Government quarters for one month from the date of relief on payment of Flat Licence Fee and subsequent two months on payment of Standard Licence Fee. For retentions of quarters beyond 3 (three) months of transfer the allottee shall pay 5 (five) times of Standard Licence Fee.*
>
> *(ii) That any officer, who is transferred from his Station after 1st August of the year will be permitted to retain the quarters till the 31st May provided he represents for same and there is no administrative inconvenience. For the relation of the quarters for the 1st four months, he shall pay Flat Licence Fee and for the remaining period Standard Licence Fee. Retaining of the quarters beyond this period will be treated as unauthorized and the allottee shall be charged five times of Standard Licence Fee of the quarters followed with eviction proceedings as per rules in force.*
>
> *(iii) If the officer, to whom a Government residential building is allotted, dies, retires, resigns or is dismissed, discharged or removed from service, the provision of Rule 107 of the Orissa Service Code shall be followed.*

> *(a) Provided that where a Government employee on retirement is allowed to reain the quarters occupied by him for a maximum period of four months as per Rule 107-A of the Orissa Service Code he shall have to pay in advance the Flat Licence Fee for the said period.*
>
> *(b) The Licence Fee at the rate of five times of Standard Licence Fee shall be charged for the period of occupation of the quarters beyond the permissible period followed with eviction proceedings as per rules in force."*

It is, therefore, submitted that the Petitioner is not liable to pay market rent for retention of the quarter in question, as directed to be paid under Annexure-5 series. Hence, he prays for setting aside the penal/market rent imposed upon the Petitioner. The Petitioner has already vacated the quarters in question since 2020.

5. Mr. Pattnaik, learned AGA, referring to counter affidavit filed by Opposite Party No.3, submits that the writ petition is not maintainable in view of multiple prayers made therein. On calculation, the penal/market rent is determined to be Rs.1,64,090/-. He, however, submits that the Petitioner was also allotted Qrs. No.8 located at Nadikhandi Sahi, Phulbani after cancellation of the allotment of quarters in question. It is his contention that Opposite Party No.3 pursuant to direction of this Court in W.P.(C) No.16458 of 2020 has taken care of and considered the grievance of the Petitioner and has passed the order under Annexure-8 rejecting his claim. Hence, this Court should not interfere in the writ petition.

6. Taking into consideration the submissions of learned counsel for the parties, this Court finds that while passing the impugned order under Annexure-8, the Project Administrator, ITDA, Phulbani has not taken into consideration the notification of the Government in Finance Department under

Annexure-9. In that view of the matter, the case of the Petitioner requires fresh consideration.

7. Accordingly, this Court, without expressing any opinion on the merit of the case of the Petitioner, disposes of the same with a direction to the Project Administrator, ITDA, Phulbani-Opposite Party No.3 to take a decision keeping in mind the Finance Department notification dated 15th December, 2010. It is made clear that this Court has not expressed any opinion on the applicability of the said notification under Annexure-9 to the case of Petitioner.

8. It is submitted by learned counsel for the Petitioner that some amount has already been recovered from the salary of the Petitioner towards penal/market rent. Be that as it may, the said recovery, if any, shall be subject to the decision to be taken by the Opposite Party No.3.

9. The writ petition is allowed to the aforesaid extent. Consequently, the CONTC No.5979 of 2020 is also dropped accordingly.

10. Interim order dated 28th September, 2020 passed in IA No.10961 of 2020 stands vacated.

Issue urgent certified copy of the order on proper application.

(K.R. Mohapatra)
Judge

s.s.satapathy