

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

% **Date of order : 24th November 2022**

+ **W.P.(C) 16180/2022 & CM APPL. 50607/2022**

GAURAV BHARDWAJ AND ORS Petitioners

Through: Ms. Naina Pandey, Mr. Lave Kumar
Sharma and Mr. Manish Kumar
Gupta, Advocates

versus

UNION OF INDIA AND OTHERS Respondents

Through: Mr. Dev P. Bhardwaj, Central Govt.
Counsel for R-1 to R-3 with
Mr. Sartha Anand, Ms. Ankita
Gautam, Mr. Madhulack Bhardwaj,
Advocates along with Mr. Sahib
Gurdeep Singh, GP and Mr. Ashok,
Estate Officer
Mr. Udit Malik, ASC, GNCTD for R-
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CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

CM APPL. 50608/2022

Exemption allowed subject to just exceptions.

The application stands disposed of.

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1. The instant writ petition under Article 226 of the Constitution of India has been filed on behalf of the petitioners seeking *inter alia* the following

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reliefs:-

“I. Issue a writ(s)/order(s)/direction(s) in the nature of Mandamus against the Respondent Nos. 2 & 3 directing them to regularize the residential accommodation in favour of the Petitioner No.1 as per his Application dated 20.7.2022 and the earlier application dated 25.06.2018;

II. Issue a writ(s) / order(s)/direction(s) in the nature of Certiorari setting-aside the Communication dated 15.09.2022 (received in the Supreme Court of India, Admn. General Branch on 19.10.2022) passed by the Respondent No.2 herein;

III. Issue a writ(s)/order(s)/direction(s) in the nature of Certiorari setting-aside the Order No. 1248/MS/TMP/TBC/2018 dated 17.09.2018 passed by the Respondent No.2 herein.

IV. Issue a writ(s)/order(s) / direction(s) in the nature of Certiorari setting-aside the Recovery Order dated 09.10.2018 issued by the Respondent No.2 alongwith provisional rent assessment report;

V. Issue a writ(s) /order(s) / direction(s) in the nature of certiorari setting-aside the Eviction Order No. EC/74/AD/LIT/2018/T-II dated 12.10.2018 passed by the Respondent No.3;”

2. The petitioner no. 2, since deceased, was appointed with the Department of Delhi Police and was discharging his duties therein. The rest of the petitioners are his legal heirs. It is the case of the petitioners that petitioner no. 2 was eligible for allotment of rent-free unfurnished accommodation as per Rule 41 of the Central Reserve Police Force Rules, 1955 (hereinafter “CRPF Rules”) and was accordingly, allotted Quarter No. 1248, Type-II, M.S. Flat, Timarpur, Delhi, by the Delhi Police Head Quarters vide PHQ Order No. 3913-18/Allot. Cell/PHQ dated 29th May

1990. Thereafter, petitioner no. 2 was transferred on deputation to the office of respondent no. 5 and was accordingly, relieved from the Delhi Police on 21st April 1998. Subsequently, the petitioner no. 2 was repatriated to the Delhi Police on 1st August 2002 and relieved from the office of respondent no. 5. The petitioner no. 2 and his family members continued to stay in possession of the accommodation allotted to the petitioner no.2.

3. On 4th January 2018, a Show Cause Notice under Section 4(1) and 4 (2)(b) of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 was issued in the name of the petitioner no. 2 asking him to show cause as to why an eviction order should not be passed against him since he was occupying a public premises after cancellation of allotment. The petitioner no. 2 had replied to the said Show Cause Notice and also entered appearance when called upon by the respondent no. 3.

4. The petitioner thereafter took voluntary retirement from the office of Delhi Police on 4th August 2018.

5. Ultimately, vide order dated 16th July 2018, the respondent no. 4 cancelled the residential accommodation of the petitioner no. 2 and directed him to vacate the accommodation after a period of 4 months from the date of issue of the rejection order. Thereafter, the petitioner no. 1 applied for regularisation of General Pool Residential Accommodation to the respondent no. 2, however, the same came to be rejected vide order dated 17th September 2018.

6. Subsequent, thereto, an application dated 24th September 2018 was filed by petitioner no. 2 for reconsideration of the rejection by the

respondent no. 2, which came to be rejected vide order dated 11th October 2018.

7. The petitioner no. 2 also filed an application under the Right to Information Act, 2005 and applications to the Public Information Officer of the respondent no.2 for information on 27th September 2018 and again on 6th October 2018.

8. On 9th October 2018, petitioner no. 2 was called upon to deposit outstanding license fee/ damages to the tune of Rs. 28,95,636/-, for unauthorised occupation of residential accommodation.

9. Thereafter, on 12th October 2018, the respondent no. 2 passed the eviction order under Section 5(1) of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 directing the petitioner no. 2 to vacate the accommodation within 15 days from the date of the order.

10. Ultimately, vide order dated 15th September 2022, the application of the petitioner no. 1 for regularisation of government accommodation was rejected.

11. The petitioners, being aggrieved by the aforesaid rejection orders have approached this Court seeking setting aside of the said rejection orders and have also prayed for regularisation of the accommodation allotted to petitioner no. 2 in the favour of petitioner no. 1.

12. Learned counsel appearing on behalf of the petitioner submitted that the impugned order has been passed erroneously. It is submitted that the petitioner no. 2 replied to all the notices addressed to him and also appeared

before the concerned authorities communicating to them the circumstances of his case. It is further submitted that the petitioner no. 2 had also deposited the license fee of Rs. 41,232/- in the office of respondent no. 4 for the period of 1st August 2002-30th April 2018, as well as other requisite fees for carrying out the regularisation of his accommodation, however, still the accommodation in the name of the petitioner was not regularised.

13. It is also submitted that being a Junior Court Assistant in the Hon'ble Supreme Court, the petitioner no. 1 had also applied for regularisation of the residential accommodation allotted to his father, i.e. the petitioner no. 2, however, the applications/representations of the petitioner no. 1 were also rejected, despite the fact that he was sharing the accommodation with the petitioner no. 2 and is not drawing House Rent Allowance.

14. It is submitted that the reasons assigned by the respondent no.2 while passing the impugned order dated 12th October 2018 are wholly unsustainable in law. It is contended that the order has been passed in violation of the principles of natural justice because the respondent no.3 did not hear the petitioners before passing the said order and further, the Reply to the Show Cause Notice dated 4th January 2018 sent by the petitioner no. 2 was also not considered by the respondent no.3 before passing said order.

15. Learned counsel for the petitioner submitted that the respondent no. 2 never informed the petitioner no. 2 regarding cancellation of the residential accommodation. The respondent no.4 vide its Order dated 16th July 2018 has passed a contradictory Order wherein it has been intimated that the residential premises of petitioner no. 2 was cancelled upon his voluntary

retirement on 5th July 2018 and therefore, the petitioner no. 2 was allowed to retain the said premises for a period of 4 months, on payment of the normal license fee @ Rs.310/per month and thereafter, he was directed to vacate the same and handover the vacant possession to Delhi Police.

16. It is submitted that therefore, considering the erroneous and contradictory findings in the impugned order, the same is liable to be dismissed.

17. *Per Contra*, learned counsels appearing on behalf of the respondents have vehemently opposed the submissions made on behalf of the petitioners as well as the contentions raised against the impugned order in the petition. It is submitted that at all stages, communication was made to the petitioner no. 2 and the instant is not a case of violation of principles of natural justice.

18. It is further submitted that there is no illegality or error in the impugned order since it has been passed keeping in view that the petitioner no. 2 had left the services of the respondent no. 4 and hence, lost the entitlement to retain the accommodation as was observed in the impugned orders.

19. It is submitted that the instant petition is liable to be dismissed for being devoid of merit.

20. Heard learned counsel for the parties and perused the record.

21. I have perused the impugned orders dated 15th September 2022, 17th September 2018, 9th October 2018 and 12th October 2018 which the petitioner is seeking to be set aside.

22. While passing the impugned Eviction Order bearing No. EC/74/AD/LIT/2018/T-II dated 12th October 2018, the respondent no. 3, observed that the petitioner no. 2 was an unauthorised occupant of the accommodation in question. The concerned authority made the following observations in the said order:-

“You have been continuing to occupy public premises specified in the Schedule below even after its allotment in your favour stands cancelled w.e.f. 04.12.1998, due to non-receipt of License Fee, vide Directorate of Estates' letter No. MS/1248/TMP/TBC/2017 dated 06.09.2017. However, you have not vacated the premises till date. The show cause notice/hearing notice was issued to you for appearing on 15.02.2018 at 2.30 PM, which was duly served to you, through Registered Post on 08/01/2018. Hence, the service of notice is deemed complete. You failed to appear on 15.02.2018 and hence, the matter was adjourned for 27.03.2018. You appeared on 27.03.2018 and sought time to submit the license fee online. Hence, the request was allowed and the matter was adjourned for 26.04.2018. On 26.04.2018 and 22.05.2018, you reiterated the same and sought more time. On the next dates of hearing held on 26.06.2018 and 25.07.2018, you sought time to submit relevant documents for regularisation of the Government Accommodation in the name of your Son - Shri Gaurav, Junior Court Assistant working in the Supreme Court of India w.e.f. 12/01/2015. Your request was allowed and the hearing was adjourned to 28.08.2018. Since the Estate Officer was transferred, the hearing was further adjourned to 01.10.2018. But you failed to appear for hearing on 01.10.2018. And moreover your request for regularisation of the Quarter was not acceded to by the Directorate of Estates vide letter no.1248/MS/TMP/TBC/2018 dated 17.09.2018 and again vide letter dated 11.10.2018. As per the available records, you have not vacated the premises till date. You have overstayed in the premises for nearly 20 years and has not cleared the dues of the Department. The department has informed that you are in

unauthorised occupation since 05.12.1998. Even though sufficient opportunity has been given to you, you have not vacated the public premises so far. This shows that you have nothing to say in your defence. You have failed to prove that you are not in unauthorised occupation of the premises specified in the Schedule below.”

23. The petitioner no. 2, upon filing his application, was called to appear before the concerned authority on 15th February 2018 at a specific time, through the notice duly served upon the petitioner. The petitioner was given the opportunity to present his case by appearing before the concerned authority, yet he failed to appear on the first date of hearing. Thereafter, from the date of the second hearing and on a number of subsequent dates, the petitioner kept seeking time for furnishing license fee and for regularisation of government accommodation in the name of petitioner no. 1. Therefore, the petitioner on his own volition failed to appear and establish his claim before the respondent. Despite the same, when the application of the petitioner no. 2 was placed before the Directorate of Estates and was rejected vide letter dated 11th October 2018, the petitioner remained to be in the possession of the accommodation. Hence, the aforesaid order was passed. It is not the case that while passing the order, the concerned authority had violated the principles of natural justice. Moreover, the application of the petitioner no. 2 had already been rejected, despite which he did not vacate the premises. Therefore, this Court does not find any reason to set aside the Eviction Order, since, the petitioner no. 2 despite being given ample opportunity failed to establish his case for retaining the accommodation allotted to him while in services and rather remained in authorised occupation even after his application for regularisation was

cancelled.

24. The aforesaid observation was also made by the concerned authority considering the impugned communication dated 9th October 2018, vide which the following directions were given to the Deputy Commissioner of Police *qua* the case of the petitioner no. 2 and the following order was passed:-

“Reference this Directorate letter of even number 17.09.2018. In this connection it is informed that as per GAMS Records, an outstanding License Fee/Damages for a sum of Rs. 28,95,636/- (Rupees Twenty eight lakh ninety five thousand six hundred thirty six only) as on 08.10.2018 is due to be recovered from Shri Ramesh Kumar, Inspector posted in your organization. (copies enclosed). The damages occurred due to unauthorised occupancy of Govt accommodation and the same be calculated from 02.08.2002 (dated of cancellation) to ill date in respect of the Govt. Qtr. No. 1248, Block- MS, Timarpur, Delhi.

In view of the above, you are requested to take necessary action to recover the outstanding dues/damages from the pensionary benefits of individual as per rules as Shri Ramesh Kumar, Inspector has taken voluntary retirement on 04.07.2018 without clearance from Directorate of Estates.”

25. Therefore, after the cancellation of the accommodation, staying in the accommodation even for a single day, without any claim decided in favour of the petitioners, amounted to being in its unauthorised occupation. Hence, the petitioners were not only liable to vacate the residential accommodation after cancellation and the subsequent orders but were also liable to pay the damages for the time period for which the petitioner held the allotted accommodation unauthorisedly.

26. The petitioners have also assailed the order bearing No. 1248/MS/TMP/TBC/2018 dated 17th September 2018 whereby the application of petitioner no. 1 for regularization of the accommodation in question was rejected. The relevant portion of the order is reproduced hereunder:-

"I am directed to refer to your endorsement No. 8(3)/1793/2018/SCA(Genl) dated 28.07.2018 on the above cited subject and to say that as per Rules 53(b) of CG GPRA-2017 where the allottee has become ineligible for allotment of accommodation, due to any reason, on or before the date of his death or retirement, the facilities for regularization or allotment of alternate accommodation under rules 49, 50 & 51 shall not be admissible.

Shri Ramesh Kumar employee of Delhi Police repatriated from deputation from Intelligence Bureau in Aug 2002 and become ineligible for GPRA but kept the quarter in his possession unauthorizedly without informing this Directorate. Hence, since Shri Ramesh Kumar was not entitled for the said quarter, the same cannot be regularized in the name of his son Shri Gaurav Bhardwaj.

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In view of the above, Shri Ramesh Kumar is directed to vacate the above Govt. accommodation at the earliest to avoid further damages as per rules."

27. A perusal of the order reveals that the petitioner no. 2 became ineligible for the residential accommodation upon voluntary retirement without prior intimation and clearance. Therefore, at the very first instance when the petitioner no. 2 was not eligible for retaining the accommodation, the accommodation already stood cancelled and was to be vacated by the

petitioners, there remained no entitlement in favour of either of the petitioners to even retain the accommodation, let alone for seeking its regularization. Therefore, this Court does not find any reason to interfere with the impugned order.

28. The petitioners are also aggrieved by the order dated 15th September 2022, whereby *qua* the application of the petitioner no. 1 for regularisation of the residential accommodation allotted to the petitioner no. 2, compliance was sought of order of a Coordinate Bench of this Court in W.P. (C) 11793/2018 dated 16th July 2018. The observation regarding disentitlement of the petitioner no. 2 for GPRA was also reiterated. The relevant contents of the order are reproduced hereunder:-

“The undersigned is directed to say in compliance of direction dated 16.07.2022 of Hon'ble High court of Delhi in WP (C) 11793/2018, CM appl. 45643/2018, CM Appl. 14048/2019 & CM Appl. 9190/2021 Shir Gaurav Bhardwaj, Junior Court Assistant has filed an a fresh application for regularization.

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4. It is pertinent to mention that as per Rules 53(b) of CG GPRA -2017 (copy enclosed) where the allotted has become ineligible for allotment of accommodation, due to any reason, on or before the date of his death or retirement, the facilities for regularization or allotment of alternate accommodation under rules 49 (copy enclosed), rule 50 (copy enclosed) & rule 51 (copy enclosed) of CGGPRA 2017 shall not be admissible.

5. In the instant case, Shri Ramesh Kumar employee of Delhi Police repatriated from deputation from Intelligence Bureau in Aug 2002 and become ineligible for GPRA and kept the quarter in his possession unauthorizedly without information, hence regularization of said accommodation in the name of his son

will not be appropriate as per rules.

6. Shri Ramesh Kumar has taken Voluntary Retirement from Delhi Police w.e.f 04.07.2018 and the department has also not taken the clearance from Directorate of Estates which is mandatory for preparing pension papers.

7. In view of the above, it is inform you that the fresh application filed for regularization of Qtr. No. 1248, Type-II, multi Storey Flats, Timarpur, Delhi cannot be entertained, hence this application is rejected as per the Central Government General Pool Residential Accommodation rules 2017.”

29. As discussed in the foregoing paragraphs, and as is also evident from the contents of the order, that the petitioner no. 2 was retaining the accommodation even after cancellation of the same and despite the fact that the clear communication was made to the petitioners that they were not entitled to retain the accommodation through several notices and letters. Moreover, the several representations and applications filed by the petitioner no. 1 and 2 have been time and again considered on merits and rejected by the respective concerned authorities when the petitioners were found not to be entitled. Therefore, there is no error apparent on the face of record in the instant impugned order which makes it liable to be set aside.

30. Keeping in view the submissions on behalf of the parties, the contentions raised in the pleadings as well as the repeated observations of the respondents regarding the disentitlement of the petitioners to retain the accommodation, this Court finds that all the impugned orders have been passed after thorough examination into the facts and circumstances as well as the merits in the case of the petitioners. There is no illegal or perverse

finding in the impugned order which warrants interference of this Court.

31. Accordingly, the instant petition is dismissed for being devoid of merit.

32. Pending application, if any, also stand dismissed.

33. The order to be uploaded on the website forthwith.

(CHANDRA DHARI SINGH)
JUDGE

NOVEMBER 24, 2022
gs/ms



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