

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

The Hon'ble **JUSTICE BIBEK CHAUDHURI**

IA No.:CAN/1/2012 (Old No.:CAN/8439/2012)

In

WPA 7421 of 2012

Laxmi Kanta Patra

Vs.

Union of India & Ors.

For the petitioner: Mr. Gobinda Chaudhuri, Adv.,
Mr. Bikash Chowdhury, Adv.

Heard on: 24 July, 2023.

Judgment on: 04 August, 2023.

BIBEK CHAUDHURI, J. : –

1. The petitioner has filed an instant writ petition praying for issuance of writ in the nature of mandamus commanding the respondent to cancel, withdraw and/or rescind and/or quash the order of demand dated 18th November, 2011 issued by the Estate Manager and also commanding Foreign Trade Development Officer (FTDO), respondent No.4 herein not to release the alleged claim by the respondent No.2 from the salary or other monetary benefit of the petitioner.

2. Brief fact involved in the instant writ petition is as follows: the writ petitioner is a superannuated Group-D staff attached to the Foreign Trade Development Office controlled by the Union of India. He was allotted a Type II quarter being No.B-112 at Tollygunj Central Government Quarter

on 22nd November, 1996. The petitioner took possession of the said quarter on the date of allotment and stayed there till 6th March, 1998. On 9th February, 1998 the petitioner wrote a letter to the Estate Manager expressing his willingness to surrender and vacate the said quarter with effect from 28th February, 1998. On 5th March, 1998 the petitioner wrote a letter to the Junior Engineer (Electrical) CPWD, Tollygunj Central Government Quarter Type II, Room No.B Flat No.112 requesting him to furnish electricity bill upto the month of February, 1998. On or about 19th March, 1998 electric consumption bill in the month of December 1997, January, 1998 and February 1998 was issued in favour of the petitioner and he paid the entire electric bill and thereafter surrendered and vacated possession of the said flat to the authority. On 16th March, 1998, the Foreign Trade Development Officer issued a certificate in favour of the petitioner certifying that the petitioner have already paid house rent till February 1998 which was deducted from his salary bill. As the petitioner paid house rent as well as electricity bill, the Estate Manager issued “no demand certificate” in favour of the petitioner on 27th January, 2020. Thereafter the petitioner handed over vacant possession of the flat in question in favour of the respondents.

3. After a lapse of about two years and ten months, the Assistant Estate Manager wrote a letter dated 9th October, 2002 informing the petitioner that “no demand certificate” issued in favour of him was withdrawn on the ground that the petitioner has not vacated the said government accommodation. It is the grievance of the petitioner that when

the Estate Manager on examination of the entire record, electricity bill etc. paid by the petitioner in respect of the said flat issued “no demand certificate”, the Assistant Estate Manager who is below the rank of the Estate Manager cannot quash the “no demand certificate” issued in favour of the petitioner in the year 1998. It is also stated by the petitioner that after vacating the said quarter, civil security inspected the room on the same date and thereafter the said room was locked by the civil security and the petitioner delivered possession of the said flat putting his signature on the relevant register maintained by the CPWD. On 10th October, 2002 the Assistant Estate Manager demanded payment outstanding amount of Rs. 6,817/- in favour of the petitioner for his illegal occupation of the premises in question till November 2002 at the rate of Rs. 134 per month. On 18th January, 2003 the Estate officer issued a show-cause notice upon the petitioner stating, inter alia, that the petitioner had been continuing occupying the public premises, i.e. the said flat till 27th May, 2003 without payment of rent. He was directed to appear before the competent authority on 9th April, 2003. However on 18th June, 2003 the Estate Officer issued notice under Section 5(1) of the Public Premises (Eviction Unauthorized Occupation) at to the petitioner. It is also submitted by the petitioner that the respondent No.2 knew that the petitioner surrendered the quarter with effect from 6th March, 1998 on payment of all statutory dues. On 3rd March, 2003, Foreign Development Officer by a letter informed the respondent No.2 that he did not vacate the said flat and he is under obligation to pay outstanding license fee beyond

the said period. However on 10th October, 2003, the Assistant Estate Manager issued a notice to the Foreign Trade Development Officer (Administration) to direct the petitioner to pay a sum of Rs. 2,42,931/- towards the license fee for his unauthorized occupation till 27th August, 2003.

4. The Foreign Trade Officer in his office note clearly stated that the petitioner applied for surrendering the quarter in question on 9th, February, 1998 to the Estate Manager, Kolkata with effect from 1st March, 1998. Accordingly the said quarter was surrendered and vacated with effect from 6th March, 1998. The Estate Manager also issued “no demand certificate” in favour of the petitioner. Moreover, CPWD (Electrical) vide their certificate dated 19th March, 1998 also certified that there is nothing outstanding against the petitioner. Entire fact within the knowledge of the respondent No.2 but he demanded a huge sum of money towards arrear license fee with ill motive mala fide intention. The petitioner informed the entire facts by a letter date 16th March, 2006 to the Director General of Foreign Trade, Ministry of Commerce, New Delhi. The Foreign Trade Officer also supported the contention of the petitioner by a letter dated 16th June, 2008 to the Director General of Foreign Trade at New Delhi. Finally, the petitioner issued a letter through his learned Advocate demanding justice on 6th November, 2010. On 18th November, 2011, the Estate Manager issue the purported demand notice informing the Director General of Foreign Trade of non-payment of license fee and the government accommodation of the petitioner taken by forcefully evicting

him on 27th March, 2003. Therefore the petitioner is liable to pay market rent for his unauthorized occupation with effect from 17th March, 1998 to 27th August, 1998. In the said letter, the Estate Manager also proposed to initiate recovery proceeding against the petitioner to realize the said sum of Rs. 2,18,475/-.

5. Against the said order the petitioner moved the Central Administrative Tribunal for appropriate relief. The learned Tribunal by an order dated 22nd February, 2012 dismissed the application filed by the petitioner on the ground that it has no jurisdiction to entertain this matter.

6. I like to record at the outset that in respect of certificate of notice, the respondents are not represented. No accommodation was sought for on behalf of the respondent since the instant writ petition is pending from 2012, this Court is inclined to disposed of the instant writ petition on the basis of submission made by the learned Advocate for the petitioner.

7. The learned Advocate for the petitioner first draws my attention to a letter written by the petitioner on 9th February, 1998 to the Estate Manager stating, inter alia, that he no longer required to occupy government accommodation for dwelling purpose. As such he expressed his willingness to surrender the said quarter with effect from 28th February, 1998. The Foreign Trade Development Officer, respondent No.4 herein issued a certificate to the effect that the petitioner had no outstanding dues on 27th January, 2000. The Estate Manager issued “no demand certificate” in favour of the petitioner for his “ex occupation” of

government Flat No.B-112 Type II, Block-B, Tollygunj, Kolkata. In the said letter it is clearly mentioned by the Estate Manager that the petitioner was in occupation of the said flat on 22nd November, 1996 to 6th March, 1998. Subsequently on 9th October, 2002, the Estate Manager withdrew “no demand certificate” issued in the name of the petitioner, as he allegedly did not vacate the aforesaid government accommodation. The Assistant Estate Manager also informed the Foreign Development Trade Officer (Administration) to withdraw a sum of Rs. 6617/- towards the license fee for illegal occupation of government accommodation in the said flat. It appears from the record that the Estate Officer issued a notice directing the petitioner to show-cause under Section 5(1) and 4(2)(B)(i)(ii) of the Public Premises (Eviction of Unauthorized Occupants) Act 1974 directing him to show-cause as to why a order of eviction should not be made against the petitioner for his unauthorized occupation of the said flat during the period between 17th March, 1998 to 27th May, 2003. Subsequently on 18th June, 2003 the Estate Manager passed an order of eviction under Section 5(1) of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 directed the petitioner to vacate the flat in question. By a letter dated 10th October, 2003, the Assistant Estate Manager informed the Foreign Trade Development Officer (Administration) to take step to recover government dues of Rs.2,42,931/- from the salary/pension of the petitioner.

8. The learned Advocate for the petitioner has also submitted note-sheet of the Foreign Trade Development Officer wherein he clearly held

that the petitioner surrendered the said quarter with effect from 6th March, 1998 as evident from the “no demand certificate” issued by the Estate Manager in the month January 2000 certifying that nothing is dues against the petitioner more over CPWD (Electrical). Vide certificate dated 19th March, 1998 it was also certified that there is no outstanding dues against the petitioner. After vacating the quarter, the civil security department inspected the said quarter on the same day and after inspection, the said room was locked by the security civil and duly signed in their relevant register by the petitioner. It is also observed by respondent No.4 that the petitioner surrendered the said quarter with effect from 6th March, 1998. The respondent accordingly held that the penalty imposed against the petitioner by the Estate Manager is not at all correct and tenable under the law.

9. Dispute raised in the instant writ petition is to consider as to whether the petitioner vacated the government quarter which was allotted to him with effect from 1st March, 1998 or he was under illegal occupation till 27th August, 2003.

10. In support of the petitioner’s claim, he submitted “no demand certificate” issued by the Estate Manager. He also deposited entire electric bill till February 1998. The electrical authority of the CPWD issued a certificate that he had no dues towards consumption of electricity. From the report of the respondent No.4 it appears that the civil security department took delivery of possession of the said flat from the petitioner

and locked the door of the said flat. Thus, after March 1998 the said flat went under the control of the civil security department.

11. The respondents, on the other hand has failed to produce any document in support of their claim.

12. During the pendency of the instant writ petition the petitioner retired from his service and a sum of Rs.2,42,931/- was deducted from his retirement benefit.

13. Considering the documents filed by the petitioner in the instant writ petition this Court is of the view that the petitioner has been able to prove that he surrendered his government quarter with effect from 1st March, 1998. Therefore the notice of demand of Rs.2,18,478/- towards the arrear of license fee cannot claimed against him.

14. In view of the above discussion the notice dated 13th December, 2001 issued by the Foreign Trade Development Officer for recovery of a sum of Rs.2,18,478/- towards arrear of license fee including damages at market rate from the pension benefit of the petitioner is quashed.

15. The respondent authority especially the respondent No.4 is directed to repay the said amount to the petitioner if already taken from his pensioner benefit within 60 days from the date of communication of this order.

(Bibek Chaudhuri, J.)