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IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 15251/2022 & CM APPL. 47230/2022, CM APPL.
10757/2023

DIVA SINGH

..... Petitioner

Through: Mr. V. K. Garg, Sr. Adv. with
Mr. Anant Vats, Mr. Parv Garg,
Mr. K.S. Rekhi, Mr. Utsav Garg,
Mr. Pawan Kulshrestha,
Advocates (M:9711903476)

versus

THE ESTATE OFFICER

..... Respondent

Through: Mr. Ankit Raj, Sr. Panel Adv. for
UOI, Mr. Kr. Shashank Shekher,
Mr. Jitender Tripathi, Advocates
(M:9968368407,email:adv.ankit.
mail@gmail.com)

CORAM:**HON'BLE MS. JUSTICE MINI PUSHKARNA****J U D G M E N T****04.07.2023****MINI PUSHKARNA, J.**

1. The present petition has been filed challenging the impugned judgment dated 07.10.2022 passed by the learned Principle District and Sessions Judge, Patiala House Courts in PPA No. 13/2020. By the impugned judgment, appeal of the petitioner under Section 9 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (PP Act) was dismissed. Thus, eviction order dated 27.07.2020 passed by the learned Estate Officer under Section 5(1) of the PP Act was upheld.
2. The petitioner was a member of the Income Tax Appellate Tribunal (ITAT), having superannuated on 24.04.2023.



3. Facts in brief, as emerging from the petition are that while being in service, upon her transfer to Delhi from Kolkata, petitioner had been allotted official residential accommodation at C-1/2, Tilak Lane, New Delhi. She continued to occupy the said premises. Thereafter, on 30.01.2017 the petitioner was transferred from the Delhi Bench of ITAT to Chandigarh Bench of ITAT. She was thus allowed two months' time as retention period of the aforesaid residential accommodation by the appropriate authority on 27.01.2017.

4. Prior to expiry of the two months period on 30.03.2017, the petitioner was granted permission to retain the official accommodation for 6 months w.e.f. 30.03.2017 upto 29.09.2017 upon payment of usual licence fee. Hence, the competent authority permitted the petitioner to retain the official accommodation up to 30.09.2017 upon payment of usual licence fees, which was duly paid in advance.

5. However, on 10.07.2017, 50 days prior to the expiry of authorised period of retention, i.e., 30.09.2017, there was a change of headquarters of the petitioner from Chandigarh to Delhi. Thus, as per the case put forward by the petitioner, petitioner was re-transferred from the Chandigarh Bench of ITAT to Delhi Bench of ITAT, within the permissible period of retention, as a consequence of change of her headquarters by the appropriate authority. It is submitted that change of headquarter is recognised as a mode of transfer as per the Rules, Regulations, Policy and Government Orders, including Rule 54 of the Central Government General Pool Residential Accommodation Rules, 2017 (GPRA Rules).



6. On behalf of petitioner, reliance has been placed upon Fundamental Rule (FR) 45, Supplementary Rules (SR) 59 and 60 in respect of allotment of government residences to Central Government officials.

7. It is, thus, the case on behalf of the petitioner that in terms of the provisions of the aforesaid Rules including Rule 54 of GPRA, the petitioner became entitled to regularisation of the allotment on re-transfer on 10.07.2017 from Chandigarh Bench of ITAT to Delhi Bench of ITAT. It is contended that from 10.07.2017, she will be deemed to be holding the post of Member ITAT in Delhi, though she continued to discharge her official duties as per the directions of the competent authority, i.e., the President of ITAT, all over India including Delhi.

8. Since the petitioner did not vacate the premises in question, she was served with a Show Cause Notice under Section 4(1) of the PP Act on 20.12.2017. Subsequently, learned Estate Officer passed an eviction order dated 26.02.2018 under Section 5(1) of the PP Act holding the petitioner herein to be in unauthorised occupation of the public premises. The same was challenged by the petitioner in an appeal under Section 9 of the PP Act before the learned District and Sessions Judge, New Delhi District in *PPA No.12/2018*. By judgment dated 30.05.2020, the learned District and Sessions Judge allowed the appeal thereby remanding back the case to the Estate Officer with direction to take into account the relevant Rules and pass a fresh order after giving opportunity of being heard to the petitioner.

9. It is the case on behalf of the petitioner that on remand of the



proceedings to the learned Estate Officer, she requested for some time to file reply due to the lock down conditions owing to Covid – 19 pandemic situation, through authorised representative, as the entire record was not available. The matter was, thereafter, adjourned to 14.07.2020 by the Estate Officer.

10. The husband of the petitioner/her authorised representative was unable to attend the hearing on 14.07.2020, as he did not have the relevant records. He and other family members were unwell and were in self-isolation. Subsequently, hearing notice was sent to the petitioner for hearing on 17.07.2020, which was never received by the petitioner. The notice was sent to the petitioner on email being divasingh@hotmail.com. However, no notice was sent on the actual email Id of the petitioner being divasinh@hotmail.com. Consequently, being unaware of the hearing fixed for 17.07.2020, nobody attended the hearing before the Estate Officer on behalf of the petitioner.

11. As per the record, the Estate Officer sent a notice dated 17.07.2020 to the petitioner's wrong email Id and also through a Process Server, directing the petitioner to appear on 20.07.2020 for personal hearing. This notice was pasted on the gate of the petitioner.

12. Thus, by letter dated 20.07.2020, husband of the petitioner sent letter to the Estate Officer through his associate requesting for adjournment for two weeks.

13. Since the petitioner's husband was suffering from fever and had other symptoms, the petitioner and her husband undertook Covid – 19 (RT PCR) Test, which report was delivered on 23.07.2020 confirming that the husband of the petitioner was Covid – 19 positive.



Consequently, the petitioner and her husband were not permitted to leave their residence from 24.07.2020 till 6th-7th August 2020, as per the order of the District Magistrate, New Delhi. They were directed to follow Govt. of NCT of Delhi guidelines for home isolation from 24.07.2020 till 07.08.2020.

14. However, the learned Estate Officer passed eviction order on 27.07.2020, without affording opportunity of hearing to the petitioner through her authorised representative. Thus, appeal being *PPA No.13/2020* was filed before the District and Sessions Judge, New Delhi. However, by the impugned judgment dated 07.10.2022, appeal filed on behalf of the petitioner was dismissed and eviction order passed by the learned Estate Officer dated 27.07.2020 was upheld. Thus, the present writ petition has been filed.

15. On behalf of the petitioner it is contended that the order passed by the learned District Judge has been passed without appreciating that the eviction order dated 27.07.2020 was passed by the learned Estate Officer in gross violation of the Principles of Natural Justice. The matter was decided by the learned Estate Officer without giving any opportunity of hearing to the petitioner, which was totally ignored by the learned District Judge.

16. Further, it is submitted that the learned District Judge as well as the learned Estate Officer failed to take into account the relevant particulars and the Rules at the time of passing the impugned orders. None of the relevant and material documents referred and relied upon by the petitioner were considered by the learned District Judge as well as the Estate Officer. Thus, it is prayed that the impugned order be set



aside and the matter be remanded back to the Estate Officer to decide the same on merits after considering the relevant evidence.

17. Per contra, on behalf of the respondent, it is submitted that the judgment dated 07.10.2022 passed by the Id. District Judge has rightly upheld the eviction order dated 27.07.2020 passed by the Estate Officer in respect of the premises being unauthorizedly occupied by the petitioner herein. It is submitted that the present case is not that of re-transfer, therefore, the petitioner was not entitled to retain the occupied premises beyond 29.09.2017. It is further submitted that Rule 54 of the GPRA Rules will not be available to the petitioner since the said Rule contemplates that the allottee should have been posted back and joined duty at the station, where such allottee has been allowed to retain the accommodation. It is contended that the petitioner was never posted back to Delhi. Only her headquarters had been declared, and not even changed.

18. It is further submitted that the contention that during her tenure between 10.07.2017 till date, the petitioner has held Benches in different places in the country, including Delhi, Mumbai, etc. is misleading because holding of Benches at different places as per the Roster is an outcome of discharge of the functions of the ITAT President on the administrative side.

19. It is the contention on behalf of the respondents that Principles of Natural Justice have been duly followed. The Estate Officer had granted sufficient opportunities to the petitioner. However, the petitioner chose not to file any reply and delayed the proceedings as noted in the detailed order dated 27.07.2020. On 14.07.2020 no one



appeared in the proceedings on behalf of the petitioner. She was allowed another opportunity and hearing notice was issued to appear on 17.07.2020. However, the petitioner chose not to appear. She was allowed final opportunity to appear on 20.07.2020 and issued hearing notice to her official email Id. Further, a copy was delivered by the Process Server at her allotted residence, which was pasted at the conspicuous part of the premises in question in due compliance of Section 5 of the PP Act. The petitioner neither appeared nor filed any documents in support of her submissions.

20. It is further submitted that there is no infirmity or illegality in the order passed by the Estate Officer or passed by the Id. District Judge.

21. I have heard Id. Counsels for the parties and have perused the record.

22. The documents on record show that vide order dated 13.05.2020 passed by the Id. District Judge, the first eviction order passed against the petitioner herein was set aside and the matter was remanded back to the Estate Officer for hearing afresh, as it was held that the Id. Estate Officer had passed the order mechanically without going into the facts and circumstances of the case.

23. Upon remand, the Id. Estate Officer took up the matter for hearing on 05.06.2020, when Sh. Devendra Singh, husband of the petitioner herein appeared on behalf of the petitioner, being her authorised representative. On 05.06.2020, time was sought from the Id. Estate Officer to file reply on behalf of the petitioner and matter was adjourned for 14.07.2020.



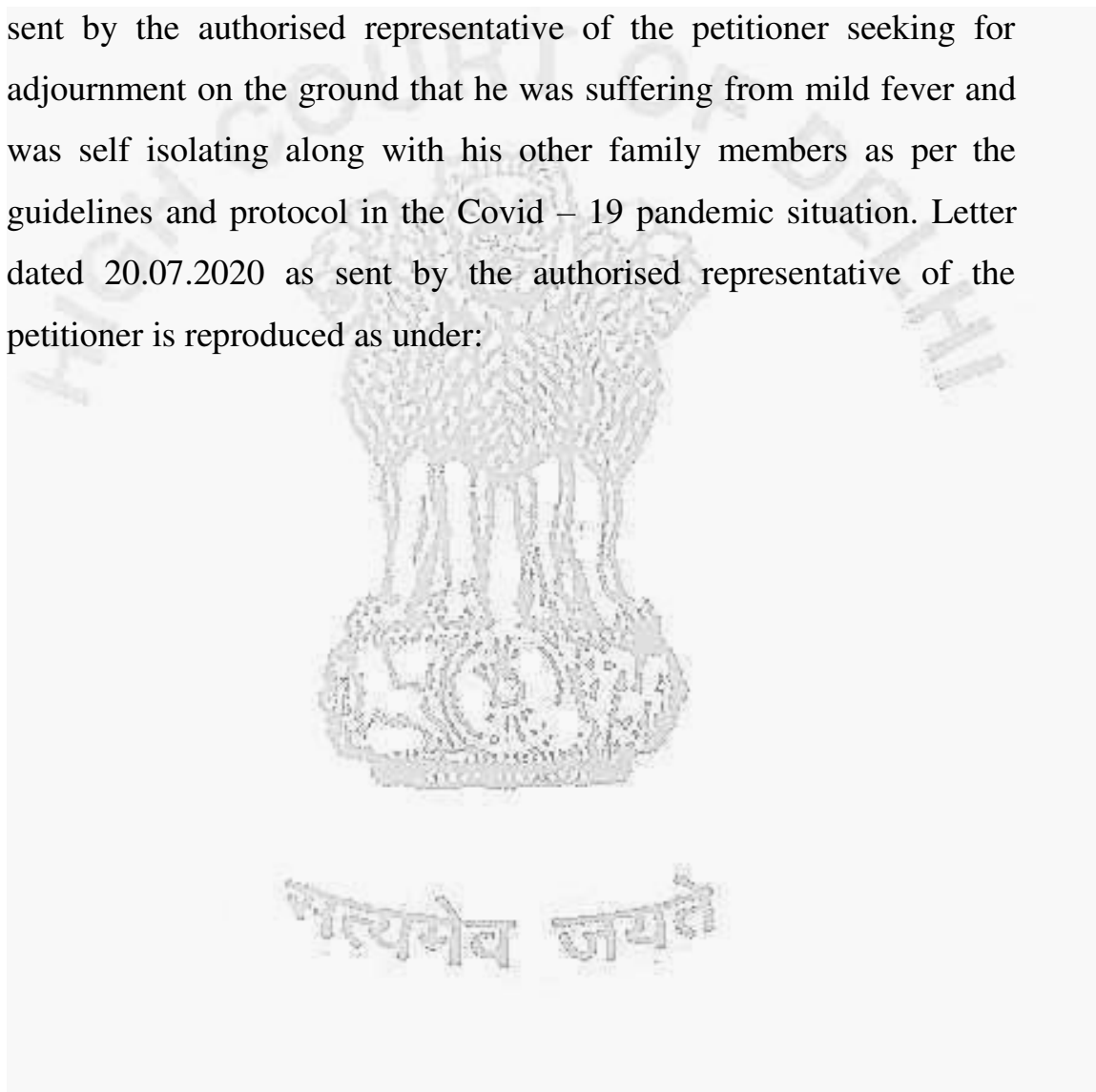
24. None appeared for the petitioner on 14.07.2020. As per the order passed by the Id. Estate Officer dated 27.07.2020, the petitioner was allowed another opportunity and issued hearing notice to appear on 17.07.2020. The order dated 27.07.2020 passed by the Id. Estate Officer records that the notice was sent to the email of the petitioner viz. divasingh@hotmail.com and that she was provided an opportunity to join the proceedings on virtual hearing. Since the petitioner did not join the virtual hearing and did not appear, she was allowed another final opportunity to appear on 20.07.2020 and issued hearing notice through her emails and a copy was delivered by Process Server at her residence. Letter was sent on behalf of the petitioner by her authorised representative that he was unable to attend the hearing on 20.07.2020, as he was unwell with mild temperature and was self isolating along with other family members in their residence. Two weeks' time was sought on behalf of the petitioner. However, the Id. Estate Officer proceeded to decide the matter and passed eviction order dated 27.07.2020 against the petitioner, without granting any further opportunity to the petitioner.

25. Eviction order dated 27.07.2020 passed by the Id. Estate Officer clearly shows that when there was no appearance on behalf of the petitioner on 14.07.2020, a purported notice was sent to the petitioner for hearing on 17.07.2020 at email viz. divasingh@hotmail.com. However, facts on record show that the aforesaid email was wrong as the correct email of the petitioner was divasinh@hotmail.com. Thus, it is clear that as far as notice for appearance on 17.07.2020 is concerned, the same was never served upon the petitioner, as it was



sent on a wrong email address.

26. Subsequently, the Ld. Estate Officer sent another notice for appearance on 20.07.2020, which was duly received by the petitioner. Upon receipt of the said notice, an application dated 20.07.2020 was sent by the authorised representative of the petitioner seeking for adjournment on the ground that he was suffering from mild fever and was self isolating along with his other family members as per the guidelines and protocol in the Covid – 19 pandemic situation. Letter dated 20.07.2020 as sent by the authorised representative of the petitioner is reproduced as under:





DEVENDRA SINGH ADVOCATE
430, M.C.Setalvad Lawyer's Chambers,
Supreme Court of India
Bhagwan Dass Raod, New Delhi -110001
Tel: (011)23070430, Mobile No. 9810141145

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ANNEXURE-P-13

Dated: 20/07/2020

To

The Estate Officer
Directorate of Estate
Room No. 538
'C' Wing, Nirman Bhawan
New Delhi

Sub: Letter for adjournment of hearing of the matter under Public
Premises (Eviction of Unauthorised Occupants) Act, 1971

Ref: C-1/02, Tilak Marg, New Delhi

Sir

I had appeared in the above matter and sought time to make submissions and a letter of authorization. I am unable to attend the hearing and submit an appropriate reply due to supervening circumstances existing in the present and existing situation. I have been unwell with mild temperature along with my family members and hence, preferred to self isolate ourselves at home in view of the guidelines being prescribed during the present "Covid - 19".

In the circumstances, the undersigned is unable to personally appeared before this learned authority for the reason as stated above.

It is therefore requested that the hearing of the matter may kindly be adjourned for 2 weeks in the above circumstances and also in the interest of justice.

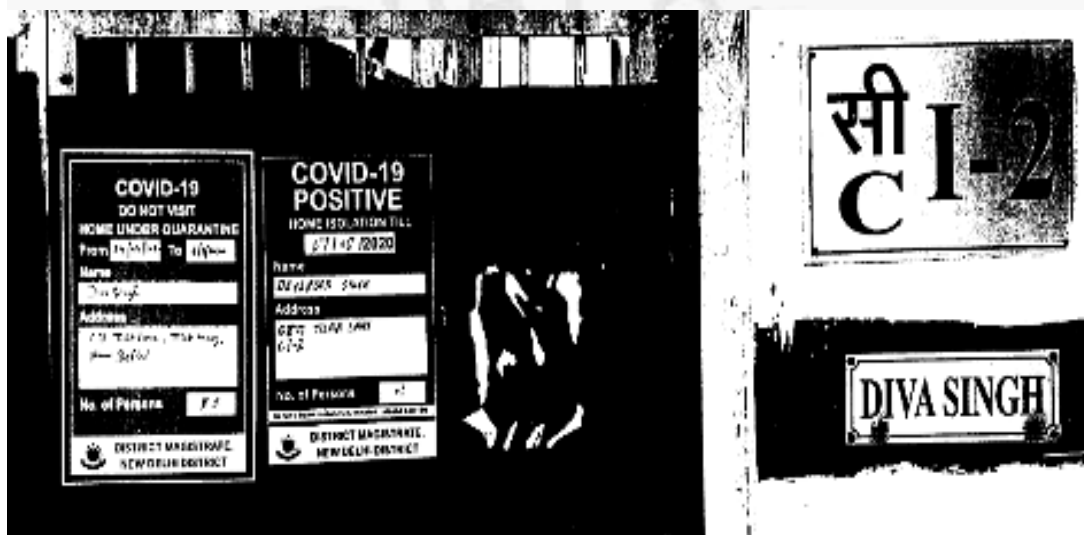
Sd/-
Devendra Singh
Authorised Representative

Enclosure:
Copy of Authorization

27. However, despite receipt of the aforesaid letter, the Id. Estate Officer passed the eviction order dated 27.07.2020 without granting any further opportunity to the petitioner to either appear through her authorised representative or to file the requisite documents on her behalf. As per documents on record, the authorised representative of the petitioner, i.e., her husband, Mr. Devendra Singh, got himself tested for Covid - 19 on 22.07.2020 and a report dated 23.07.2020 was issued by the laboratory showing him as Covid positive. Pursuant to the aforesaid, the authorised representative of the petitioner along



with other family members, which included the petitioner, were directed for home quarantine and self isolation from 24.07.2020 to 07.08.2020. The notice issued by the District Magistrate, New Delhi District as pasted outside the residence of the petitioner is reproduced as below:



28. Perusal of the aforesaid clearly shows that the authorised representative of the petitioner was suffering from Covid – 19 symptoms and had fever during the material time. Thus, there was no appearance on behalf of the petitioner when the matter was listed for hearing on 14.07.2020. The petitioner did not get any notice for the hearing on 17.07.2020, as the notice for the said date was sent on a wrong email address, as noted above. Further, when the matter was listed again by the Estate Officer on 20.07.2020, an application was duly sent by the authorised representative/husband of the petitioner intimating about his condition being suffering from fever and self isolating at his residence along with other family members. Thus, by



application dated 20.07.2020, time of two weeks was sought on behalf of the petitioner. Documents on record further show that the husband/authorised representative of the petitioner tested as Covid – 19 positive as per the report dated 23.07.2020, for which the sample was collected on 22.07.2020. The authorised representative/husband of the petitioner along with other family members along with petitioner herein was under home quarantine and self isolation during this period as per the protocol for the Covid – 19.

29. During the period of July 2020, the Covid – 19 pandemic was at its peak, with the first wave of the pandemic raging through different parts of the country. Delhi was affected adversely during this period. Further, documents on record clearly show that the family of the petitioner was also suffering the Covid – 19 infection in the first wave in July 2020. Thus, the non-appearance on behalf of the petitioner on 14.07.2020 and subsequent application dated 20.07.2020 for adjournment, is totally justified. The Id. Estate Officer acted in haste and listed the matter on short dates despite the prevailing grave situation of the pandemic. The Id. Estate Officer totally ignored the application on behalf of the petitioner that her family was suffering from the symptoms at that point of time and was self isolating. Without giving weightage to the genuine request on behalf of the petitioner, the Id. Estate Officer without giving any opportunity to the petitioner for hearing or for filing requisite documents, proceeded to pass eviction order against the petitioner. This action on part of the Id. Estate Officer cannot be countenanced. This is especially so in view of the fact that when people were suffering from Covid - 19, it impacted



the people gravely not only physically but also mentally. Therefore, the conduct of the Id. Estate Officer in proceeding in such a hasty manner during the period when the pandemic was at its peak and ignoring the request of the petitioner for adjournment on this account, is totally unjustified.

30. The whole purpose of remanding the matter to the Id. Estate Officer for hearing the matter afresh by order dated 13.05.2020 passed by the Id. District Judge, was defeated by passing of the eviction order dated 27.07.2020 by the Id. Estate Officer upon remand. The said eviction order dated 27.07.2020 was passed by the Id. Estate Officer without hearing the petitioner or perusing the documents on behalf of the petitioner, as the petitioner was unable to file the requisite documents in view of the prevailing circumstances at that point of time. This aspect was completely ignored by the Id. District Judge while passing the impugned judgment dated 07.10.2022.

31. It has been held time and again by the courts that Principles of Natural Justice which include opportunity of hearing to parties, is not an empty formality. Fairness and substantive justice demands that opportunity of proper hearing is granted to the parties. A duty is imposed upon judicial and quasi-judicial bodies to act in a fair manner by giving proper opportunity to all the parties. It is one of the pillars of the Rule of Law that proper opportunity of hearing is accorded to the respective parties in order to give equitable and fair opportunity to all.

32. In view of the aforesaid, the eviction order dated 27.07.2020 passed by the Id. Estate Officer and the impugned judgment dated



07.10.2022 passed by the Id. District Judge in *PPA No.13/2020*, cannot be sustained. Accordingly, the eviction order dated 27.07.2020 passed by the Id. Estate Officer and judgment dated 07.10.2022 passed by the Id. District Judge in *PPA No.13/2020* are set aside. The matter is remanded back to the Id. Estate Officer to proceed with the matter afresh, after giving opportunity to the petitioner herein to file requisite reply and documents. The Id. Estate Officer is directed to decide the matter after giving due opportunity of hearing to both the parties.

33. Since the petitioner has already superannuated in the interregnum on 24.04.2023, it is directed that the petitioner shall forthwith vacate the premises, if already not so vacated. It is further directed that the petitioner shall pay upto date licence fees for the period for which she has occupied the premises, if already not paid, which shall be subject to the outcome of the proceedings before the Id. Estate Officer.

34. It is clarified that nothing contained in this order be construed as expression on the merit of the present case. The Id. Estate Officer is directed to decide the matter on its merits as to whether the occupation of the petitioner after 30.09.2017 was authorised or not, and pass appropriate directions accordingly.

35. The present writ petition is disposed of with the aforesaid directions.

**(MINI PUSHKARNA)
JUDGE**



JULY 04, 2023

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