

D/L.8.
March 27, 2024.
MNS.

WPA No. 7135 of 2024

Shri Saheb Lal Jaiswara and another
Vs.
The Union of India and others

Mr. Shamnik Chatterjee,
Mr. Aditya Bikram Mahata,
Mr. Sahil Kabir

... for the petitioners.

Mr. Rabindranath Bag

...for the respondents.

1. Affidavit-of-service filed in Court today be kept on record.
2. Learned counsel for the petitioners submits that the petitioner no. 1 was an employee in the Gun & Shell Factory, a Government of India undertaking, upon being declared 100% unfit in July, 2022. He retired from such service on September 22, 2022.
3. The petitioner no. 2, the son of the petitioner no. 1, made a representation for compassionate appointment in place of his father. The same being kept pending, a writ petition was preferred by the petitioner no. 2, which culminated in a direction for such representation to be considered under the old policy.

4. However, since the respondent authorities were of the perception that the new policy should apply, an appeal was preferred against the same, which is now pending.
5. In the meantime, a claim has been made for occupation charges during the period from after the date on which petitioner no. 1 was declared unfit by the respondent authorities.
6. It is argued that since the petitioner no. 2 has already made a representation, which has been directed to be considered, if the same is considered and allowed, the claim of the respondents, if correct, can be adjusted with the salary of the petitioner no. 2.
7. Learned counsel for the respondents argues that already a proceeding has been initiated under Section 5 of the Public Premises (Eviction of Unauthorised Occupants Act, 1971 (in short "1971 Act") against the petitioners since the petitioners have overstayed after retirement from service of petitioner no. 1.
8. It is argued that the claim of occupation charges has been made in consonance with the existing law and regulations.
9. A comprehensive consideration of the arguments of the parties indicates clearly that there is at present subsisting an order of a co-

ordinate bench of this Court directing the respondents to consider the representation of the petitioner no. 2 for compassionate appointment. Since the respondent authorities have preferred an appeal against the same but have failed to obtain any interim order till date, the said order ought to have been complied with, which has not been done.

10. That apart, admittedly, the respondents have duly taken out a proceeding under Section 5 of the 1971 Act against the petitioners, thereby submitting to the jurisdiction of the authority as enumerated in the 1971 Act and to the jurisdiction of the said Act.

11. Since the claim now being made for occupation charges is associated with the claim for eviction under the 1971 Act, the only appropriate remedy open to the respondents is to take recourse to Section 7 of the 1971 Act.

12. Unless the said claim is adjudicated by the same forum, it cannot be the law that the respondents will be permitted to take coercive action thereon.

13. Accordingly, WPA No. 7135 of 2024 is disposed of by granting liberty to the respondents to make the claim of occupation charges against the petitioners, which has

been impugned herein, by way of taking proper recourse of Section 7 of the 1971 Act.

14.If so approached, the concerned Estate Officer shall decide the issue in accordance with law. No coercive step shall be taken on the said claim, except in due process of law.

15.It is further clarified that the respondents shall also be at liberty to act on the compassionate appointment representation of the petitioner no. 2, subject to the outcome of their pending appeal.

16.In the event the order of the learned Single Judge is sustained and if compassionate appointment is granted to the petitioner no. 2, it will also be open to the respondents to consider whether the claim of the respondents, if otherwise valid, can be adjusted with the salary of the petitioner no. 2.

17.However, it is made clear that the observations made above are tentative insofar as the contesting claim of the parties are concerned and it will be open to said for the fora where the matters are pending to decide all issues in accordance with law, independently and without being influenced in any manner by any of the observations made herein.

18. Since no affidavits have been directed, it is deemed that none of the allegations made in the writ petition are admitted by the respondents.

19. There will be no order as to costs.

20. Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)