
(2007) 01 AHC CK 0082

Allahabad High Court

Case No: None

Ram Paras Tripathi

APPELLANT

Vs

The State of Uttar Pradesh

RESPONDENT

Date of Decision: Jan. 25, 2007

Acts Referred:

- Government of India Act, 1935 - Section 241, 247

Citation: (2007) 2 AWC 1698 : (2008) 2 UPLBEC 97

Hon'ble Judges: Sudhir Agarwal, J; S. Rafat Alam, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

S. Rafat Alam and Sudhir Agarwal, JJ.

This intra court appeal arises from the judgment dated 11.12.2006 of the Hon"ble Single Judge dismissing Civil Misc. Writ Petition No. 66565 of 2006 of the petitioner-appellant.

2. Heard Shri V.C. Mishra, learned Senior Counsel assisted by Sri Vivek Mishra, Advocate appearing for the appellant and Shri R.K. Tiwari, learned Standing Counsel.

3. The fact in brief, giving rise of the present litigation, are that the appellant was working as clerk in the Agricultural Department of the State of U.P. and was allotted a residential accommodation bearing No. D-73, Government Colony, Hussainabad, Jaunpur. He attained the age of superannuation on 31.12.2005 but thereafter he did not vacate the house within the period prescribed under the Rules. The District Magistrate, Jaunpur issued a letter dated 4.7.2006 directing him to vacate the accommodation in question and hand over the possession to the person whom it has been allotted after retirement of the appellant and also to pay the rent standard and penal, calculated as per the Rules being Rs. 6546/- up to June, 2006. Despite the said notice the appellant did not vacate the accommodation in question whereafter another letter was issued by the Officer-in-Charge, Nazarat, Collectorate, Jaunpur

directing the appellant to deposit Rs. 6546/- and vacate the house in question by handing over possession to the new allottee failing which action as per Rule shall be taken. The Additional District Magistrate (Finance and Revenue), after failure of the appellant in vacating the accommodation in question despite the said notice, issued another notice dated 2.12.2006 informing him that instead of depositing Rs. 6546/-, he has illegally deposited only Rs. 3128/- and also not vacated the accommodation in question despite shortage of residential accommodation to the employees working in the said district. He, therefore, directed the appellant to immediately vacate the accommodation and also deposit the rent of Rs. 14,053/-, which included the balance amount up to June, 2006 and further penal rent calculated for a period from the month of July, 2006 to November, 2006. Aggrieved by the aforesaid order dated 4.7.2006, 22.7.2006 and 2.12.2006 the appellant approached this Court in the aforesaid writ petition with the following reliefs:

(i) issue a writ, order or direction in the nature of Certiorari calling for the record and quashing the impugned orders dated 14.7.2006, 22.7.2006 and 2.12.2006, contained in annexures 4, 5 and 6 to the writ petition passed by respondent No. 2.

(ii) issue a writ, order or direction in the nature of Mandamus commanding the respondents not to eject the petitioner from premises in dispute provided he deposits three times higher rent which comes to Rs. 360/- + Rs. 45/- water charges further till he so desires to occupy the premises or till he dies, whichever is earlier.

(iii) issue any other suitable writ, order or direction as this Hon"ble Court may deem fit and proper in the facts and circumstances of the case.

(iv) Award cost of this petition in favour of the petitioner for which the petitioner as in duty bound shall every pray.

4. The Hon"ble Single Judge after hearing the learned Counsel for the parties and considering the relevant provisions found that the appellant after attaining the age of superannuation has no right to continue to occupy official accommodation and, therefore, dismissed the writ petition. Aggrieved, the appellant has come up in this appeal.

5. Shri V.C. Mishra, learned Senior Counsel heavily relied on Rule 18-A (5) (c) of the Financial Hand Book and submitted that even after retirement a government servant, has a right to continue in accommodation on payment of monthly penal rent as calculated thereunder and so long as he is inclined to pay such rent, he cannot be evicted or be asked to vacate the official residence. He submitted that the and Rules nowhere provides that a government servant A after retirement has to vacate the official accommodation even if he is inclined to pay such rent, as provided under the Rules. Elaborating the submission, he contended that in these days of severe housing problem the Rules permit and enable a government servant to retain an official accommodation even after retirement provided he pays rent in accordance with Rule 18-A (5) (c) and so long as such payment is made by the retired

government servant he cannot be said to be an illegal occupant of the official residence and cannot be asked to vacate the same.

6. We are unable to agree with the aforesaid submission.

7. The entire argument revolves round Rule 18-A (5) (c) and, in our view, the learned Counsel has erred in law in not reading the entire provision i.e. Rule 18-A (1) to (5) harmoniously. At this stage, we may notice that the U.P. Fundamental Rules published in the Financial Hand Book Vol. II Part II to IV have been made in exercise of powers u/s 241(2)(b) of the Government of India Act, 1935 (hereinafter referred to as "FR"). FR 45 deals with the allotment of residential accommodation of the government to its employees. It reads as under:

45. The principles governing the allotment to Government servants, for use by them as residences, of building owned or leased by the Government, or portions thereof, which the Government may make available for the purpose and the circumstances in which a Government servant shall be considered to be in occupation of a residence shall be regulated by such Rules and orders as may be issued by the Governor.

8. In exercise of powers under various provisions of FR, further rules have been made, which are termed as "Subsidiary Rules" (hereinafter referred to as "SR") published in Financial Hand Book Vol. II Part 3. Rule 1 thereof reads as under:

1. These rules may be called the Subsidiary Rules. They apply to all Government servants who are subject to the rules in Part 1 or Part II of this volume and are under the administrative control of the Governor. In the case of Secretary of State's officers, the application of these rules is subject to the provisions of Section 247 of the Act.

9. The subsidiary rules, which have been framed by the Governor under FR 45, are contained in Chapter IV Part 3 of the Financial Hand Book Vol. II to IV being SR 18 & 18-A to 18-J. It would be useful to reproduce SR 18 and 18-A, relevant for this case, as under:

18. When a building owned or leased by the Government or a portion thereof has been made available by the Government for use as a residence by a Government servant under their administrative control, such building or part of a building may be allotted to a post specified in the order of allotment for use as a residence by the incumbent of the post.

18-A. (1) The incumbent, whether permanent or temporary, of a post to which a residence has been allotted under Rule 18 shall be considered to be in occupation of the residence during the period of his incumbency unless the allotment is changed or suspended under these rules.

- (2) A Government servant shall not be considered to be in occupation of a residence only by reason of the fact that he shares it with another Government servant who is in occupation thereof.
- (3) A Government servant shall not be considered to be in occupation of a residence when he proceeds on leave unless the Government otherwise direct. But if he is permitted to prefix gazetted holidays to his leave or affix gazetted holiday to leave or joining time, he shall be considered to be in occupation of the residence for the period of the said holidays.
- (4) When a post is vacant, no one is liable for the rent of the residence allotted to it. In such cases it is not necessary to suspend the allotment of the residence to the post, but the officer who is in immediate administrative control of the post must communicate to the Accountant General the fact that the post is vacant and the period for which it will remain vacant.
- (5) (a) The incumbent of a post to which a residence is allotted shall vacate the residence occupied by him on his transfer before the expiry of the period of joining time (exclusive of journey time permissible to him). He may be permitted to occupy the residence in his occupation beyond the period of joining time as indicated above on payment of rent as follows:
- (i) normal rent under F.R. 45-A-IV(b) for one month from the date of transfer;
 - (ii) the standard rent of the residence for the next two months;
 - (iii) double the standard rent for the following two months; and
 - (iv) triple the standard rent for any subsequent period.
- (b) in case however, permission for continued occupation beyond joining time as referred to in sub-paragraph (a) - above, is not obtained or is not granted, the occupation will be unauthorised and the incumbent will be liable to action in accordance with the law on the subject.
- (c) (i) In the event of death or retirement from service the incumbent and/or his family, as the case may be, may remain in occupation of the residence after the date of death or retirement, for a period of one month at normal rent and thereafter for a period not exceeding three months at the standard rent of the residence.
- (ii) In the event of resignation, dismissal or removal from service, the incumbent and/or his family, as the case may be, may remain in occupation of the residence for a period of one month at normal rent from the date of resignation, dismissal or removal from service.
- (iii) Where the concession of rent-free quarter was enjoyed by the incumbent before the event of death, dismissal, removal or retirement from service, the same shall be admissible to him and/or his family, as the case may be, for a period of one month

from the date of death, dismissal, removal or retirement from service:

Provided that if the residence is occupied even beyond the period stipulated in Clause (i), (ii) and (iii) of sub-para (c) above the incumbent shall be required to pay triple the standard rent of the residence for any such period.

10. Rule 18 makes it clear that the allotment of Government accommodation is with reference to the post held by the Government servant. Rule 18-A (i) also clarify that the incumbent, whether permanent or temporary, of a post to which a residence has been allotted under Rule 18 shall be considered to be in occupation thereof during the period of his incumbency unless allotment is changed or suspended under the said Rules. Thus, the entitlement to occupy a Government accommodation is co-terminus with the incumbent holding the post i.e. till he holds the post or till the allotment is changed or suspended under the said Rules. SR 18-A(5)(c)(i) provides that in the case of death or retirement, the incumbent or his family, as the case may be, may remain in occupation of the residence for a period of one month at normal rent and thereafter for a period not exceeding three months at the standard rent of the residence. Therefore, the maximum period, which is permissible under the Rules, to a person, who has ceased to be th holder of the post on account of death or retirement, as the case may be, his family or himself can validly retain the house for a maximum period of four months and not beyond that. Clauses (II) and (III) of SR 18-A (5)(c) refers to certain contingencies namely where the incumbent ceases to hold the post on account of resignation, dismissal or removal or where for the aforesaid reasons he has ceased to hold the post though enjoying rent free accommodation and prescribe the maximum period, which such incumbent may lawfully occupy such accommodation. Proviso to Rule 18-A (5)(c) provides for a contingency where an incumbent despite staring & having ceased to hold the post on account of death, retirement, resignation, dismissal or removal and has also failed to vacate the premises in question during the period he has been permitted to occupy under SR 18-A (5)(c). In such a case it only provides the" quantum of rent i.e. penal rent, which such an incumbent is liable to pay, but does not validate or extend the period of occupation of official residence, which is separately dealt with under SR 18-A(5)(c)(i), (ii) and (iii). Shri Mishra seeks to read the proviso as an independent provision as if it has overriding effect over the entire provision and also in the manner so as to extend the period of occupation by the said Government servant. We do not find any reason or justification to read the aforesaid proviso in the manner as suggested. It is well settled that a statutory provision should be read harmoniously in its entirety and no part thereof shall be read in isolation. Particularly it should be read in such manner as not to render any other part thereof ineffective and redundant. In case the submission of learned Senior Counsel is accepted, it would result in nullifying the mandatory maximum period beyond which a Government servant, who has ceased to hold the post, can occupy the official residence and to treat it, as if it is an ordinary residential accommodation allotted to a person though he is not holding any post but merely

for the reason that at one point of time he was a Government servant, he can continue to retain such accommodation and pay rent, as provided in the said proviso. This would lead to absurdity inasmuch as even where a Government servant is dismissed or removed, he may also claim similar benefit of retention of a Government accommodation on payment of rent calculated under proviso to SR 18-A(5)(c) though there is no reason whatsoever to provide him official accommodation after his dismissal or removal or that too in the case of resignation. A judicial notice can be taken of the fact that available accommodations are not sufficient to meet the requirement of the serving Government servants, who are actually holding the post, and a large number of Government servants in service are waiting in queue for their turn to get official accommodation after it is vacated by the Government servant, who has ceased to hold the post or is transferred under the Rules. In these facts and circumstances, there is no justification even otherwise to read the aforesaid Rule in the manner as argued by Shri Mishra, learned Senior Counsel and thus rejected.

11. At this stage, Shri Mishra, learned Senior Counsel submitted that the appellant has no accommodation wherein he can shift immediately and the finding of the Hon"ble Single Judge that the appellant owns house in Kharka Colony, Pokhre is contrary to the record inasmuch as he has specifically pleaded that he has got no accommodation as above and hence in the facts and circumstances of the case, the appellant may be allowed some reasonable time to vacate the Government accommodation in question. He further, on instructions, from the appellant gives an undertaking before this Court by giving statement on behalf of the appellant that the appellant shall vacate the accommodation and give the possession of the vacant accommodation to the concerned authorities within a period of three months from today. He further submitted that he shall pay rent in accordance with the Rules for the period he has retained the government accommodation after his superannuation.

12. On the other hand, Shri R.K. Tiwari, learned Standing Counsel submitted that he has no objection to the aforesaid prayer provided the appellant deposits the entire arrear of rent as well as penal rent for the aforesaid three months within a period of three weeks and furnish an undertaking, in writing, before the District Magistrate.

13. Considering the submissions made before us, we provide that in the event the appellant moves an application before the District Magistrate with an undertaking along with the receipt of deposit of arrears of rent as well as rent as per proviso to SR 18-A (5) (c) for the next three months, he may pass necessary order permitting him to occupy the accommodation for a period of three months from today.

14. With the above order, this appeal stands dismissed.