
(2013) 05 DEL CK 0476

Delhi High Court

Case No: Writ Petition (C) No. 1325 of 1996

Yogender Pal Singh
and Another

APPELLANT

Vs

Govt. of National
Capital Territory of
Delhi and Another

RESPONDENT

Date of Decision: May 6, 2013

Acts Referred:

Constitution of India, 1950 " Article 14#Public Premises (Eviction of Unauthorised Occupants)
Act, 1971 " Section 9

Citation: (2013) 05 DEL CK 0476

Hon'ble Judges: Valmiki J Mehta, J

Bench: Single Bench

Advocate: Vishal Singh, for the Appellant; Arun Birbal, Advocate for Respondent No. 1 and Ms.
Sana Ansari, Advocate, for the Respondent

Judgement

Valmiki J Mehta, J.

This writ petition is filed by two petitioners. Petitioner No. 1 is the son and petitioner No. 2 is the father. Prayer in the

writ petition is to regularize the allotment of quarter No. 1488, Type-II quarter, Gulabi Bagh, Delhi in the name of petitioner No. 1 inasmuch as the

quarter was allotted to the petitioner No. 2 during the period of his employment with the respondent No. 1/Government of NCT of Delhi and

petitioner No. 2 has since retired. Petitioner No. 1 is an employee of Delhi Police viz. the Central Government i.e. not of respondent No. 1. This is

really a case of blatant abuse of process of law in view of the discussion given below.
Petitioner"s case admittedly is that petitioner No. 1 was

appointed as a Constable in the Delhi Police on 1.5.1990. The petitioner No. 1"s father retired on 31.1.1994. Petitioner No. 1 at that time had not

even been allotted any quarter by his employer/Central Government/Delhi Police.
Petitioner No. 1 had made representations for allotment of a

quarter to him by the Central Government and which request was firstly made in May, 1993. Request was thereafter made in February, 1994. Till

this stage, petitioner No. 1 only sought allotment of a government quarter and which becomes clear from Annexures PI to Annexure P-III filed

with the writ petition. Obviously, since the father of the petitioner No. 1 thereafter retired, petitioner No. 1 sought to get allotted and regularized

the quarter at Gulabi Bagh to him which was allotted in the name of petitioner No. 2. Petitioner No. 2 for this purpose relies upon the letter of the

Government of NCT of Delhi dated 5.1.1995 (Annexure P-VI) as also another letter dated 24.4.1995 of the Deputy Commissioner of Police to

the respondent No. 1. Both the letters dated 5.1.1995 and 24.4.1995 talk of inter pool exchange of accommodation viz. quarter to Central

Government/Delhi Police from the Government of NCT of Delhi which had allotted the quarter at Gulabi Bagh to the petitioner No. 2. No decision

seems to have been taken on the representations of the petitioners for inter pool exchange of allotment and regularization of the quarter allotted to

the petitioner No. 2 in the name of petitioner No. 1 and therefore the present writ petition came to be filed.

2. It be noted that in view of refusal of the petitioner No. 1 to vacate the quarter allotted to him by the respondent No. 1 at Gulabi Bagh,

proceedings were initiated under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971. The Estate Officer passed an order of

eviction against the father/petitioner No. 2 herein. This order was carried by the petitioner No. 2 in appeal to the court of Addl. District Judge

(ADJ) u/s 9 of the said Act. The appeal was dismissed by a detailed judgment dated 20.2.1996. In the said judgment dated 20.2.1996, two

aspects are brought out. First aspect is that there is no policy of inter pool accommodation and as per Rule 20 of the Delhi Administration

Allotment of Government Premises (General Pool) Rules, 1977, the question of regularization of the quarter allotted to petitioner No. 2 would only

arise if petitioner No. 1 was also the employee of the respondent No. 1, but the petitioner No. 1 was not an employee of the respondent No. 1 but

of the Delhi Police/Central Government. The second aspect which is adverted to and dealt with in the judgment dated 20.2.1996 is that it was not

disputed by the petitioner No. 2 herein before the ADJ hearing the appeal that the premises at Gulabi Bagh occupied by the petitioner No. 2 was

Type-II accommodation and the petitioner No. 1 at that relevant point of time would only be entitled to Type-I accommodation. This final

judgment dated 20.2.1996 is sought to be frustrated by filing of the present writ petition in April, 1996.

3. Before me, counsel for the petitioners has urged the following grounds:-

(i) There was a policy of the Central Government and the Government of NCT of Delhi which is reflected in the office memorandum dated

3.11.1993 allowing inter pool exchange of accommodation and therefore petitioner No. 1 became entitled to allotment and regularization of the

quarter which was allotted to petitioner no. 2. I may note that only in the interest of justice I have permitted the petitioners to refer to this office

memorandum dated 3.11.1993 inasmuch as neither this document is filed on record of this case nor is there any ground raised specifically on the

basis of this memorandum.

(ii) The respondent No. 1 and the Central Government have been regularly allowing different employees to take benefit of inter pool exchange of

accommodation and the petitioners should not be therefore discriminated against.

(iii) The judgment of the learned ADJ cannot stand against the petitioner No. 1 because actually the petitioner No. 1 was not entitled to allotment

of Type-II accommodation and which is the type of accommodation which the petitioner No. 2 was holding.

4. So far as first aspect is concerned, counsel for the petitioners relies upon para 2(c) of the memorandum dated 3.11.1993 and which reads as

under:-

2. In the light of the recent experience, the matter was discussed with the Secretary (Land & Bldg.) Delhi Administration and after a careful

scrutiny of all the cases which had come to light, it was decided that inter-pool exchange may be permitted in the following cases:

(a) xxxx xxxx xxxx

(b) xxxx xxxx xxxx

(c) Wherever such one to one exchange is of the same type of it may be allowed with the mutual consent of Secretary (Land & Bldg.), Delhi

Administration and Director of Estates. Similar inter-pool exchange may also be permitted with the consent of Vice Chairman DDA in cases where

the exchange of general pool with DDA is involved. Whenever the exchange not in the same type the proposal may be decided on merits after

getting the view of Secretary (Land & Bldg.)/Vice-Chairman DDA with the approval of the Joint Secretary/Addl. Secretary.

5. In my opinion, the para 2(c) has no application to the facts of the present case because this para specifically refers to exchange of same type of

accommodation i.e. the Central Government must give to the Government of NCT of Delhi the same accommodation which the Delhi Government

allots and regularizes in favour of an employee of the Central Government/Delhi Police. There is absolutely nothing on record to show that the

petitioner No. 1 at the time when he asked for allotment or at the time of retirement of the father was entitled to type-II accommodation and which

the petitioner No. 2 had by virtue of his services with the respondent No. 1. This ground of petitioner No. 1 being entitled to Type-II

accommodation has to be specifically urged with reference to facts and specific rules because by mere oral arguments there cannot be an alleged

entitlement of the petitioner No. 1 to type-II accommodation in the year 1994. Not only that, the father of the petitioner No. 1 is also a party to

this petition as petitioner No. 2, and the judgment of learned ADJ dated 20.2.1996 is clearly res judicata against petitioner No. 2 because the said

judgment holds by an admission of the petitioner No. 2 that the petitioner No. 1 was not entitled to type-II accommodation and which type of

accommodation was in possession of the petitioner No. 2 as an employee of the respondent No. 1. I therefore hold that para 2(c) of the

memorandum dated 3.11.1993 can have no application so far as the facts of the present case inasmuch as the petitioners have neither pleaded nor

have established on record entitlement of petitioner No. 1 to type-II accommodation.

6. The aforesaid discussion will also take care of the third issue argued on behalf of the petitioners that petitioner No. 1 is entitled to type-II

accommodation, and which argument is also accordingly rejected.

7. That leaves us with the second argument urged on behalf of the petitioners that various persons have been given the benefit of inter pool

exchange of accommodation and therefore the petitioners should not be discriminated against. There are two flaws in this argument which is urged.

The first flaw is that inter pool exchange of government accommodation can only be in the light of relevant office memorandum/circulars and not de

hors the same. As already stated above, there does not arise an issue of petitioners being discriminated against because the quarter allotted to the

petitioner No. 2 was type-II accommodation, and the petitioner No. 1 therefore cannot claim discrimination because petitioner No. 1 was not

entitled to type-II accommodation at the time when the petitioner No. 2 retired on 31.1.1994. The second flaw in the argument which is urged on

behalf of the petitioners is that Article 14 being a positive concept cannot be used for claiming equality with an illegality which may be allegedly

committed. If there is any illegality committed, and assuming it to be so that illegality cannot help the petitioners for this Court to pass an order to

illegally allot and regularize the type-II quarter to the petitioner No. 1 although the petitioner No. 1 is not entitled to such an accommodation. In

view of the above, there is no merit in the petition, which is accordingly dismissed, leaving the parties to bear their own costs. I may clarify that it

will be open to the respondent No. 1 to seek and claim damages for illegal use and occupation of the quarter No. 1488, Type-II quarter, Gulabi

Bagh, Delhi from both the petitioners. It will also be open to the respondent No. 2 to take such departmental action as it thinks fit against the

petitioner No. 1 for illegally holding on to government accommodation.