

Motiram Vs. State

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Court : Karnataka

Decided On : Mar-11-1985

Reported in : ILR1985KAR4151; 1986(1)KarLJ308

Judge : K.A. Swami, J.

Acts : Rental Housing Scheme (Revised) Rules, 1983 - Rules 6 and 10

Appeal No. : W.P. No. 3151 of 1985

Appellant : Motiram

Respondent : State

Advocate for Def. : Abdul Khadar, HCGP

Advocate for Pet/Ap. : K. Appa Rao, Adv.

Judgement :

ORDER

K.A. Swami, J.

1. The petitioner belongs to the cadre of Superintendent of Police. He was transferred to Bangalore from Mysore in the month or' October, 1983. On his transfer to Bangalore, a transit accommodation is allotted to him in JeevanBhimanagar in the Quarters bearing No. C. 70. Thereafter, he has now

been transferred to Gulbarga. Pursuant to that he has taken charge of his office at Gulbarga on 26-10-1984. On his transfer, he has made a representation before the State Government for retaining the quarters No. C. 70 at Jeevan Bhimanagar upto the end of April, 1985, on the ground that his children are attending the school at Bangalore and he having been transferred in the middle of the academic year, it will be difficult for the children to shift over to another school in the fag end of the academic year, hence, he has prayed for permitting him to continue to occupy the quarters in question till the end of April, 1985. This request has been rejected by the Government on the ground that the accommodation allotted to him is transit accommodation,, therefore, the benefit of academic year is not available to him as it is available only to regular allottees.

2. Sri. Appa Rao, Learned Counsel for the petitioner submits that Rule 10 of the Allotment of Government Quarters at Jeevana Bhimanagar Township, Vasanthanagar and Jayamahal Extension, Bangalore, under the Rental Housing Scheme (Revised) Rules, 1983 (hereinafter referred to as the Rules), as interpreted by this Court in W.P.12111/77 decided on 5-10-1982, Gore Khan - v. - District Surgeon and Ors., applies even to transit accommodation also. On the contrary, it is contended by Sri. Abdul Khader, Learned High Court Government Pleader, that regarding transit accommodation Rule-6 of the Rules is a complete code in itself and it governs the penal rent as well as vacation of the premises; therefore, Rule 10 of the Rules is not applicable to such accommodation in respect of the matters covered by Rule 6 ; that the decision of this Court in the aforesaid Writ Petition does not govern the present case.

3. Therefore, the question that arises for consideration is as to whether the present case is governed by Rule 6 or 10 of the Rules.

4. It is not in dispute that the accommodation that is allotted to the petitioner is transit accommodation. The petitioner has occupied it pursuant to the allotment made as transit accommodation. In such a case, it is Rule 6 of the Rules which governs. Rule 6 of the Rules is as follows :

'6(1) - Government officers / officials who come on transfer to Bangalore and who do not own houses in Bangalore either in their own name or in the names of their

wives or dependent children shall be eligible for allotment of transit accommodation. However, cases of Government servants who, ownhouses in Bangalore are not readily available for occupation for any reason, at the time of transfer of Government servants to Bangalore, shall also be considered on merits for allotment of transit accommodation.

(ii) The Public Works and Elec. Department shall maintain separately a waiting list of applicants for transit accommodation according to the dates of their registration. This allotment shall be at the discretion of the Committee and the normal rules for allotment will not apply for the allotment of transit accommodation.

(iii) Allotment of transit accommodation shall be for a maximum period of 6 months, within which time the allottee should make alternative arrangements of his own. In case such occupation exceeds six months, then penal rent as detailed below shall be leviable which under twocircumstances can be relaxed. Extension of stay beyond 6 months will not normally be granted, but even when agreed to by the Government under compelling circumstances, such extension shall be subject to the levy of penal rent. The rates of penal rent leviable for the period of overstay in transit accommodation beyond six months for those who own and those who do not own houses in Bangalore are as under :

A. Officers owning a house in Bangalore City in his/her name or in the name of any member of his family.

Penal rent

Total rent payable including Penal rent

i)

First 3 months of overstay

One month's rent

Twice the normal rent

ii)

Next 3 months of overstay

2 times the normal rent

3 times the normal rent

iii)

Thereafter

4 times the normal rent

5 times the normal rent

B. Officers who do not own a house in Bangalore City:

i)

First 3 months of overstay

1/2 times the normal rent

1 1/2 times the normal rent

ii)

Next 3 months of overstay

One month's normal rent

2 times the normal rent

iii)

Thereafter

2 times the normal rent

3 times the normal rent

All allottee who overstays beyond six months is liable to be evicted after requisite notice provided no extension of time is granted under Rule 6(iii) of the Rules.'

5. From the aforesaid rule, it is clear that the transit accommodation is intended only for six months and the stay for more than six months will not normally be extended and it will be extended only under the compelling circum-stances that too subject to the levy of penal rent for the period of overstay beyond 6 months. Of Course, the rate of penal rent differs from the occupant who owns a house at Bangalore and the one who does not own a house at Bangalore. This is clear from Rule 6 (iii) (A) and (B) reproduced above.

6. Rule 10 of the Rules provides that when the allottee in the occupation of the quarters, during the tenure of his occupation is transferred out of Bangalore in the middle of the academic term/year, the Government may grant permission for continued occupation till the end of the term/ academic year only, as the case may be at normal rent. If Rule 10 of the Rules is held to be applicable to the transit accommodation, the entire Rule 6 will be rendered nugatory, because the whole object of Rule 6 is to allot the transit accommodation only for six months and the allottee is required to vacate it on the expiry of six months. It is only under compelling circumstances, his stay is extended, that too on payment of penal rent. If Rule 10 is intended to apply to transit accommodation, Rule 6 would not have provided that under normal circumstances no extension is granted. In addition to this, if the other rules other than Rule 6 are applicable to transit accommodation, there would not have been separate provisions made for payment of penal rent in respect of the regular accommodation and transit accommodation. Therefore, Rule 10 of the Rules cannot be made applicable to transit accommodation. The transit accommodation is intended only for a period of six months. If Rule 10 is applied to transit accommodation, it will defeat the very object of Rule 6. Therefore, I am of the opinion that Rule 10 does not govern the present case. If that be so, the petitioner is not entitled to stay any more in the transit accommodation. As such, the respondents are entitled to evict him.

7. Further for the period of overstay, he has to pay penal rent according to the table provided in Rule 6 of the Rules. The contention of the petitioner is that even if Rule 6 is made applicable, the penal rent is not determined in accordance with Rule 6. It is a matter for the respondents to examine as such it is not necessary to examine this contention. According to the case of the petitioner, he does not own a house in Bangalore. If that be so, Table B of Rule 6 is applicable for determining penal rent. From the demand made, it is clear that it is not in conformity with Table-B of Rule 6 of the Rules.

8. The next question is whether the petitioner should be permitted to stay till the end of April, 1985 on paying penal rent. No doubt, I have held that the Government is right in informing the petitioner that benefit of Rule 10 is available only to regular allotment and not to transit accommodation. In view of the fact that the academic year is coming to a close by the end of April 1985, it is not possible for the petitioner to shift his children from one school to another. Therefore, having regard to this difficulty, and the possibility of his children losing one academic year, it is just and appropriate to direct the respondents to allow the petitioner to continue to occupy the premises in question till the end of April, 1985, of course subject to payment of penal rent as per Rule 6 of the Rules. Learned Counsel for the petitioner further submits that an undertaking on behalf of the petitioner may be placed on record that at the end of April, 1985, he will hand over the possession and key of the quarters in question to respondent-2 without driving the State Government to the necessity of initiating a proceeding for eviction.

9. Accordingly, this Petition is disposed of in the following terms.

(i) It is held that transit accommodation allotted to the petitioner is governed by Rule 6 of the Rules ;

(ii) The Respondents are directed to permit the petitioner to continue to occupy the quarter in question till the end of April, 1985 subject to payment of penal rent as per Rule 6 of the Rules :

(iii) The penal rent claimed by the Respondents be determined afresh under Rule 6 of the Rules and in the light of the observations made in this order. Until fresh

determination is made, the amount claimed shall not be recovered.

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