

**Gaje Singh Vs. Union of India and ors.**

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**Court :** Allahabad

**Decided On :** Nov-02-2001

**Reported in :** 2001(1)AWC31; (2002)1UPLBEC56

**Judge :** R.R. Yadav, J.

**Acts :** Public Premises (Eviction of Unauthorised Occupants) Act, 1971 - Sections 7(3) and 9; [Constitution of India](#) - Articles 226 and 227

**Appeal No. :** C.M.W.P. No. 34397 of 2001

**Appellant :** Gaje Singh

**Respondent :** Union of India and ors.

**Advocate for Def. :** S.N. Srivastava, S.C.

**Advocate for Pet/Ap. :** A.D. Prabhakar, Adv.

**Disposition :** Petition dismissed

**Judgement :**

**R.R. Yadav, J.**

1. By way of filing the instant writ petition, the petitioner questions the legality and validity of the order dated 23.2.2001. Annexure-5 to the writ petition, passed by the Estate Officer, Controller of Defence Accounts (Army) Meerut, respondent No. 3

as well as the order dated 12.10.2001 passed by the Additional District Judge Court No. XI, Meerut in Misc. Appeal No. 118 of 2001, Gaje Singh v. Union of India and Ors., a copy whereof is filed and marked as Annexure-9 to the writ petition, whereby the petitioner is to pay Rs. 1,33,301 for unauthorised use and occupation of premises No. D.A.D. Quarter No. B-1/1, Lekhanagar, Meerut Cantt. after his retirement from the post of Section Officer.

2. The facts averred in the writ petition revealed that the petitioner was in service of the Union of India and was posted as Section Officer at the Controller of Defence Accounts (Army) Meerut Cantt. and was allotted the premises mentioned hereinabove in the preceding paragraph as an employee of the Department. It is further revealed from the averments made in the writ petition that the petitioner's retirement was proposed by the Department treating his date of birth to be 27.3.1927 against which he filed a Civil Misc. Writ Petition No. 29481 of 1985 before this Court which was allowed and according to the decision rendered by this Court, he was ordered to retire from his service with effect from 30.11.1985.

3. Although admittedly the petitioner retired from his service on 30.11.1985 but he continued to remain in unauthorized occupation of the allotted premises upto 8.7.1998 for which registered notice under Sub-section (3) of Section 7 of Public Premises (Eviction of Unauthorized Occupants) Act, 1971, was sent to him but after service of the registered notice, the petitioner did not file any objection or produce any evidence before Estate Officer respondent No. 3, hence respondent No. 3 has no alternative except to pass the impugned order on 23.2.2001, a copy whereof is filed and marked as Annexure-5 to the writ petition.

4. Aggrieved against the order dated 23.2.2001, Annexure-5 to the writ petition, passed by respondent No. 3, the petitioner preferred an appeal under Section 9 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971, before the District Judge, which was transferred for disposal in accordance with law before the learned Additional District Judge. The learned Addl. District Judge, after analytical discussion of the materials available on record with reference to the relevant law on the subject dismissed the appeal on 12.10.2001, against which the present petition has been preferred.

5. At the outset, I am hastened to observe that the filing of the writ petition before this Court under Article 226/227 should not be taken as an easy access with an oblique motive to abuse the process of the Court. To my mind, the scope of Article 226/227 of the Constitution is to save citizenry from vagaries and irrational decisions of either of the State or its instrumentalities with an avowed object to advance justice between citizen and State and its instrumentalities and vice-versa. It is observed that this Court under its extraordinary equitable jurisdiction cannot afford to erase justice in the name of correcting error or law without better and deeper understanding whether injustice has crept into a particular case due to erroneous interpretation of law. He, who seeks justice and equity by invoking extraordinary equitable jurisdiction of this Court under Article 226/227 of the Constitution, is to demonstrate before this Court that he is prepared and willing to do justice with his adversary.

6. With the aforesaid introspection, now I propose to deal with the arguments advanced by the learned counsel for the petitioner.

7. The learned counsel for the petitioner Sri A. D. Prabhakar submitted that the petitioner is aggrieved by the order of recovery of arrears of rent and damages at market rate of the official accommodation allotted to him while he was in service. It is urged by him that the petitioner was not served with any notice as envisaged under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971. Alternatively, it is contended by the learned counsel for the petitioner that even if notice is taken to be served upon him, he has not been afforded reasonable opportunity of being heard. It is submitted by the learned counsel for the petitioner that respondent No. 3 who passed the impugned order as Estate Officer, was officiating on the post of Controller of Defence Account, hence he has no jurisdiction to pass the impugned order, Annexure-5 to the writ petition. The bottom line argument of the learned counsel for the petitioner before this Court is that the appellate court instead of deciding the aforesaid arguments raised on behalf of the petitioner itself, it ought to have remanded the case to respondent No. 3 to decide the same in accordance with law.

8. I have given my thoughtful anxious consideration to the aforesaid arguments raised by the learned counsel for the petitioner. It is to be noticed that except bottom line argument, other arguments were advanced before the appellate court and the appellate court after analytical discussion of the material available on record with reference to law dismissed the appeal. The learned first appellate court has given cogent and convincing reasons in support of its order dated 12.10.2001 (Annexure-9 to the writ petition), with which I am at one. The extraordinary equitable jurisdiction of this Court cannot be invoked to erase justice in the name of correcting the error of law on pure academic basis having no bearing on merit of the case. I am of the view that mere illegality is not a ground for interference under Article 226/227 of the Constitution provided this Court is objectively satisfied that by the impugned order material justice has been done between the parties. In my considered opinion, the very purpose of the extraordinary equitable jurisdiction conferred under Article 226/227 of the Constitution is that no citizen should be subjected to injustice by violating the law either by the State or its instrumentalities and vice versa. This extraordinary equitable jurisdiction is to be exercised on recognized lines evolved by the courts of law, but not as appeal or revision.

9. Here in the present case, admittedly the petitioner retired from his service on 30.11.1985 but he did not vacate the official premises allotted to him by the Department up till 8.7.1998 depriving his successor in office for more than thirteen years of official accommodation for which his successor was entitled. To my mind, interference with orders impugned (Annexures 5 and 9 to the writ petition), petition passed by respondent No. 3 and affirmed by learned Addl. District Judge in appeal, would tantamount to travesty of justice leading to grotesque result of indiscipline amongst the employees of the Department,

10. In feeble voice, the learned counsel for the petitioner conceded that notice under sub-section (3) of Section 7 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971, even if presumed to have been served upon the petitioner, even then he was entitled to be afforded reasonable opportunity of being heard giving him sufficient time to file explanation and adduce evidence in support of his case. The aforesaid alternative argument of the learned counsel for the petitioner is not acceptable to me for the simple reason that since the petitioner

has no valid defence to put forth before the Estate Officer - respondent No. 3, therefore, he conveniently avoided to give explanation to the notice served upon him under Sub-section (3) of Section 7 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971, and avoided to adduce evidence with oblique motive to raise the same in appeal.

11. A close scrutiny of the order impugned passed by the appellate court reveals that all the arguments which are being raised before this Court except bottom line argument were raised before it. and the appellate court has rejected the aforesaid arguments after analytical discussion on points of law and fact.

12. As regards bottom line argument of the learned counsel for the petitioner to the effect that the appellate court instead of deciding the appeal between the parties on merits ought to have remanded the case to the Estate Officer for decision in accordance with law. is not acceptable to me and it is hereby repelled for the reasons stated hereinabove in the preceding paragraph of this order. I am objectively satisfied that by impugned order (Annexure-9 to the writ petition) material justice has been done between the parties. The argument raised by the learned counsel for the petitioner on this score is of purely academic nature having no bearing on the merit of the case, hence not acceptable to me in writ jurisdiction under Article 227 of the Constitution.

13. After dictation of the order in Court, learned counsel for the petitioner Sri A.D. Prabhakar stated that the petitioner is a retired employee and it would not be possible for him to deposit such huge amount at a time. He made a request that payment may be ordered to be made in instalments.

14. Taking the humanitarian consideration into account since the petitioner is a retired Government employee, therefore. I find it just and appropriate to direct the petitioner to deposit half of the amount of damages within a period of one month from today and the remaining amount in two equal instalments at the interval of six months.

15. With the aforesaid observation, the instant writ petition is hereby dismissed summarily at admission stage.

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