

Kanhaya Lal Vs. House Allotment Committee, Chandigarh Administration and ors.

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Court : Punjab and Haryana

Decided On : Jul-30-1997

Reported in : (1997)117PLR381

Judge : N.K. Kapoor and; K.K. Srivastava, JJ.

Acts : Government Residences (Chandigarh Administration Pool) Allotment Rules, 1972 - Rules 2 and 12(3); Public Premises (Eviction of Unauthorised Occupants) Act, 1971

Appeal No. : Civil Writ Petition No. 14816 of 1991

Appellant : Kanhaya Lal

Respondent : House Allotment Committee, Chandigarh Administration and ors.

Advocate for Def. : Ashok Aggarwal, Sr. Adv. and; Devinder Singh, Adv.

Advocate for Pet/Ap. : S.A. Sharma, Adv.

Disposition : Petition dismissed

Judgement :

K.K. Srivastava, J.

1. This is a writ petition filed under Article 226 and 227 of the Constitution of India filed by Kanhaya Lal-petitioner, who seeks the quashing of orders dated 11.3.1991 (Annexure P2) and dated 22.3.1991 (An-nexure P5) passed by the Secretary and Chairman, House Allotment Committee, Chandigarh Administration, Chandigarh, respectively. Petitioner-Kanhaya Lal was working as a peon in the Animal Husbandry Department, Chandigarh, when he was allotted house No. 13-JE/2247, Sector 28-C, Chandigarh. The said allotment was made about 23 years prior to the filing of the writ petition, i.e. sometimes in the year 1968. The petitioner was later on transferred to the office of the Milk Commissioner, Punjab, Chandigarh, which had its milk plant in the state of Punjab. Respondent No.2/Secretary, House Allotment Committee, Chandigarh, sent letter memo No. A-4/90 dated 11.3.1991, communicating the petitioner about the cancellation of the allotment of the house aforesaid with effect from 29.11.1983 by virtue of Section SR-317-AM-12(3) of the House Allotment Rules, as amended from time to time. The petitioner was advised to handover the possession of the premises aforesaid immediately to the maintenance authorities of the concerned sector, i.e. Sector 28-C, failing which he was to be dispossessed from the premises under the law. He was also asked to pay licence fee equal to market-rent determined by the Government from time to time for the period of unauthorised possession from the date of cancellation till the actual handing over of the vacant possession of the said premises. The copies of this letter were forwarded for information and necessary action to the Senior Accounts Officer (Rents) the S.D.E. Mtco. Sub-Divn. No. III and the L.A.O./S.D.M. (Estate Officer under the PP Act). Chandigarh with the request to start eviction proceedings against the petitioner to get the house aforesaid vacated. The Chairman, House Allotment Committee/respondent No.1 passed order (Annexure P5) dated 22.3.1991, prescribing the rates of penal rent as also of the licence fee w.e.f. 13.1991 from all unauthorised occupants of the Government residences beyond the period permissible under the rules. This order was passed in suppression of the earlier office memo. No. A6/91/59-60 dated 12.3.1991. This order further mentioned that the said decision shall be applicable to those occupants of Government houses whose allotment is cancelled or deemed to have been cancelled under any of the provisions of Government Residences (Chandigarh Administration Pool Allotment) Rules, 1972. The Estate Officer

passed order of eviction on 13.5.1991 under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 and the same was delivered to the petitioner on 16.5.1991 . The petitioner filed an appeal against the order of eviction before the District Judge, Chandigarh. During the pendency of the said appeal, record of the Estate Officer was requisitioned and it was pointed out to the petitioner that the allotment of the aforesaid house had been cancelled by the Secretary, House Allotment Committee, Chandigarh, on the ground that the petitioner had permanently been absorbed in the service of Milk Project, Mohali. The petitioner denied the said fact and filed his affidavit dated 29.5.1992 in appeal before the District Judge. The petitioner deposed, inter alia, that he was never absorbed permanently or temporarily in the service of Milk Project, Mohali, which comes under Milk Union, Ropar, in the year 1983 or prior or after that, The copy of the affidavit aforesaid was annexed as PI with the writ petition. It has further been alleged that respondent No.3/Managing Director, Punjab State Co-operative Milk Producer Federation Limited, who is employer of the petitioner started deducting house rent from the salary of the petitioner at the rate of Rs.652/- per month with effect from May, 1991, whereas prior to the said date, the house rent was being deducted @ Rs.185/- per month. In support of his allegation, the petitioner annexed copies of salary slips for the month of April and May, 1991, as Annexures P3 and P4 respectively. On enquiry from the office of respondent No.3, petitioner learnt that the penal rent/licence fee equivalent to the market rent was being deducted from his salary as per the impugned order dated 27.3.1991 issued by respondent No.1, treating the petitioner as unauthorised occupant of the said house. The penal rent/licence fee is detailed in the order Annexure P5. A legal notice dated 4.6.1991 was served by the petitioner through his counsel, praying that the order charging penal rent @ Rs.652/- per month be withdrawn. The petitioner alleged that despite service of the legal notice, respondent No.3 was continuing to deduct the same from his* salary since May, 1991. The amount deducted from his salary towards the house rent at the penal rate, it is averred, is still lying with respondent No. 2 and has not been deposited with the Chandigarh Administration. The main contention of the petitioner while attacking the impugned orders is that these (Annexures P2 and P5) have been passed without affording an opportunity of hearing to him. It is alleged that respondent No.2 had no jurisdiction to cancel

the allotment of the said house as the same was allotted to the petitioner by the House Allotment Committee, U.T. Chandigarh. It is further alleged that respondent No.2 could not cancel the allotment of the house with retrospective effect, i.e. with effect from 29.11.1983, which is illegal and arbitrary.

2. Respondents No.1 and 2 filed a joint written statement, wherein it was alleged that the petitioner was absorbed in the Punjab Dairy Development Corporation (in short to be referred as 'the PDDC') under the Milk Project, Chandigarh, w.e.f. 29.11.1983 permanently and the same is an in-eligible office. Therefore, the petitioner is an unauthorised occupant of the Government house aforesaid from the date had been absorbed permanently in the said Corporation. It was mentioned that a notice of personal hearing was issued by the Estate Officer under the Public Premises Act to the petitioner prior to the passing of the order of eviction dated 13.5.1991. The respondents have further contended that the petitioner being an unauthorised occupant of the said house is liable to pay the rent at the rate of Rs.185/- per month, as per instructions dated 22.3.1991 issued by the Chandigarh Administration. It was further contended that the penal rent at the aforesaid rates of Rs.185/- and Rs.652/- has been charged rightly. The respondents have defended the impugned orders (Annexures P2 and P5) being legal, just, constitutional and in accordance with law on the grounds that no opportunity of hearing required to be given to the petitioner prior to the passing of the said orders. It was further alleged that as per Allotment Rules, 1972, the allotment of the house is deemed to have been cancelled w.e.f. the date the petitioner became unauthorised occupant of the house, w.e.f. 28.11.1983 when he was absorbed permanent in the PDDC and the allotment of the house was rightly cancelled by respondent No.2. It is further alleged that the order Annexure P5 has been issued by the competent authority in accordance with law.

3. We have heard learned counsel for the petitioner and respondents and have gone through the record.

4. Undisputedly, house No. 13-JE/2247, Sector 28-C, Chandigarh, was allotted by the House Allotment Committee, Chandigarh, to the petitioner who at that time was working as peon in the Animal Husbandry Department, Chandigarh, which is

an eligible office. As per the averments made in the petition, the petitioner was transferred in the office of the Milk Commissioner, Punjab, Chandigarh. The Punjab Government incorporated the PDDC limited in the year 1966 and the Milk Plants of the Punjab Government were transferred to the PDDC. The concerned employees, including the petitioner, were sent to the PDDC where they were permanently absorbed. In the year 1979, the Punjab Government incorporated the Punjab State Cooperative Milk Producers Federation Limited (respondent No.3) and in the year 1982-83 the milk plants of the PDDC were handed over to respondent No.3. The employees of the PDDC including the petitioner were permanently absorbed by respondent No. 3 and since then, the petitioner is working at Chandigarh with respondent No.3. It has been further averred in para 5 of the petition that the petitioner is continuously posted at Chandigarh for the last about 23 years. It will, thus, appear from the averments made in the petition that the petitioner was permanently absorbed by respondent No.3 sometime in the year 1982-83. The impugned order (Annexure P2) mentions the date of permanent absorption of the petitioner in the Milk Project, Mohali, as 29.11.1983. The petitioner has controverted this date of his permanent absorption. In the affidavit, copy of which is Annexed P-I, filed in the Court of the District Judge, Chandigarh, in the appeal filed against the eviction order, petitioner denied about his being absorbed permanently in the Milk Project, which runs counter to the averments made in the petition and further deposed that he remained posted throughout at Chandigarh.

5. The Government Residences (Chandigarh Administration Pool) Allotment ..Rules, 1972, which came into force w.e.f. 1/2.2.1973, (hereinafter referred to as 'the Rules'), define the words 'eligible office', vide Rule 2(e) as under :-

'Eligible office' means an office of the Government of Punjab, the Government of Haryana at Chandigarh Administration located in Chandigarh, the staff of which has been declared by the Chandigarh Administration to be eligible for accommodation under these rules.'

Once the petitioner left the Department of Animal Husbandry and got permanently absorbed in the PDDC and the Punjab State Co-operative Milk Producers

Federation Ltd. (respondent No.3), he ceased to be entitled for retaining the house allotted to him by the Chandigarh Administration. Rule 2, Sub-rule (0) of the rule reads as under: -

'Transfer' means transfer from Chandigarh to any other place is from an eligible office to an ineligible office in Chandigarh.

Provided that Government servants who are in occupation of Chandigarh Administration Pool accommodation at the time of proceeding on foreign service with State owned autonomous bodies or public undertakings in Chandigarh, shall be allowed to continue in occupation of the accommodation on payment of licence fee at market, as may be determined by the Government from time to time, as long as they retain lien on a post in an eligible office.'

A perusal of the proviso to Rule 2(o) will categorically show that the State owned autonomous bodies or public undertakings in Chandigarh are not treated as eligible offices. An employees retaining his lien on a post in an eligible office, during his posting in the State owned autonomous bodies or public undertakings in Chandigarh is entitled to occupy the Government residence in Chandigarh. As soon as the petitioner lost his lien on the post in the eligible office in Chandigarh, by virtue of his being permanently absorbed in the aforesaid State owned autonomous bodies or public under takings in Chandigarh, his occupation of the Government residence in Chandigarh belonging to Chandigarh Administration was rendered unauthorised. Consequently, the possession and occupation of the aforesaid accommodation by the petitioner after his being permanently absorbed in PDDC or the Punjab State Cooperative Milk Producers Federation Ltd. (respondent No.3) w.e.f. 29.11.1983 would become unauthorised and his allotment of the said accommodation was liable to be cancelled.

6. Learned counsel for the appellant submitted that no opportunity of hearing was afforded to the petitioner prior to the cancellation of the allotment order by respondent No.2 Shri Ashok Aggarwal, learned standing counsel for respondents No.1 and 2 pointed out that under the rules. It was the duty of the petitioner himself to vacate the said accommodation soon after being absorbed permanently in the ineligible office. He made reference to Rule 12 of the rules, which, inter alia,

provides that an allotment shall be effective from the date on which it is accepted by the Government servant and shall remain in force until:-

(a) the expiry of the concessional period mentioned in column 2 of the Table given in Sub-rule (2).

(b) it is cancelled or is deemed to have been cancelled under these rules, or it is surrendered by the Government servant. (Rule 12(i))

Rule 12(2) lays down:-

'A residence allotted to a Government servant may, subject to Sub-rule (3), be retained on the happening of any of the events specified in column 1 of the Table below for the period specified in the corresponding entry in column 2 thereof, provided that the residence is required for the bonafide use of the Government servant or members of his family :- Events Permissible period for retention of the residence.(1)

(2)

(1 to 3 not relevant)	4. Transfer to an ineligible office in Chandigarh. Two months-----	(5	to	13	not relevant)
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Rule 12(3) of the rules provides :-

'Where a residence is retained under Sub-rule (2) the allotment shall be deemed to have been cancelled on the expiry of the admissible concessional period unless immediately on the expiry thereof the Government servant resumes duty in an eligible office in the Chandigarh.'

The other Sub-rules (4) and (5) of Rule 12 are not relevant for the purposes of this case.

7. It is, thus, evident that after the expiry of a period of two months of transfer to an ineligible office in Chandigarh, i.e. the date on which the petitioner was permanently absorbed on a post in an ineligible office in Chandigarh and lost his lien on a post in the eligible office in office in Chandigarh, he was duly bound to

vacate the accommodation and his allotment was deemed to have been cancelled under Rule 12(3) of the rules. These rules do not provide for affording any opportunity of hearing before the competent authority before proceeding to cancel the allotment order. We do not find any merit in the submissions of learned counsel for the appellant and are of the considered view that the impugned order (Annexure P2) is quite valid and legal.

8. As regards the impugned order (Annexure P5) the same was issued by the Chairman, House Allotment Committees, Chandigarh Administration, Chandigarh., in exercise of the powers conferred under Rule SR-317-Am-23 of the Government Residence (Chandigarh Administration Pool) Allotment Rules, 1972 and the rates of Penal rent/licence fee were revised w.e.f. 1.3.1991. The penal rent/licence fee is chargeable from the unauthorised occupants of the Government accommodation in Chandigarh. There are no grounds mentioned in the writ petition to challenge the validity of the said order (Annexure P5). The learned counsel for the appellant has not been able to show as to how the impugned order (Annexure P5) was invalid, illegal and liable to be quashed.

Accordingly, the writ petition lacks merit and is dismissed.

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