

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6176 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

PRATAPJI MALUJI DABHI

Versus

CONTROLLER OF ACCOMODATION

Appearance:

MR VS MEHTA for Petitioner

Mr. B.Y.Mankad instructed by M/S MG DOSHIT & CO
for Respondents.

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 29/01/99

ORAL JUDGEMENT

This petition has been filed for a direction to the respondents to transfer quarter no. C/11/GT class IV colony, near Old Sachivalaya in the name of Pratapji Shivuji Vaghela, peon of Gujarat High Court and to quash the order no. GTC-11 dated 17.11.83 of the respondents.

2. The petitioner was working as a Chobdar in this Court and retired from service on 30.6.83. The petitioner was allotted rent free quarter by the Government order dated 24th July, 1961. Before the date of the retirement, the petitioner applied for transfer of this quarter in the name of Pratapji Shivuji Vaghela, who is the son-in-law of the petitioner. Under the rules, the petitioner was entitled to retain the possession of the quarter in question for a period of two months from the date of his retirement. An application was made by the petitioner to transfer the quarter in the name of his son-in-law who was also working as a peon in this Court, but that application was rejected on 11.10.83. The petitioner continued to send reminders and make further applications for allotment of that residential quarter in the name of his son-in-law who was also living with the petitioner in the same quarter, on the ground that one Mr. B.M.Parmar, a class IV employee of Public Works Department expired before retirement and his son-in-law who was living in the same quarter no. D-15 in which Mr. Parmar was residing in the same colony in which the petitioner's quarter was also situated, was allotted to his son-in-law Bhavsinh who was a chowkidar in the Civil Hospital, Ahmedabad. Similarly, the petitioner had also hoped that the quarter will be transferred in the name of his son-in-law who was residing with him at the relevant time. But that quarter was not transferred and allotted and the petitioner was never informed that the said quarter of the petitioner cannot be allotted to his son-in-law and he would be liable to pay rent at market rate or he will be forcibly vacated. At last on 7.6.96, the petitioner vacated that quarter. The petitioner received a letter dated 27.10.83 from the Executive Engineer, Roads and Buildings Department, Ahmedabad by which the petitioner was asked to pay market rent of the quarter in question at the rate of Rs. 606.45 ps. per month.

3. The learned advocate for the petitioner submitted that the petitioner was entitled to retain the possession of the quarter on the basis of the transfer order made in favour of Shivuji, son-in-law of B.M.Parmar a class IV employee residing in the same colony and therefore, the order rejecting the petitioner's prayer is discriminatory and is not sustainable in the eye of law. I have also heard the learned AGP Mr. Mankad for the respondents.

4. I have considered the contentions raised by the learned advocate for the petitioner. But in my

view, the contention of the petitioner's counsel is not sustainable in view of the fact that there is no material on record to show that the quarter of Mr. B.M.Parmar was allotted to his son-in-law who was residing with Mr. Parmar contrary to the resolution dated 29.1.66 at Annexure "B" wherein it is stated that the quarter can be allotted to son, daughter or daughter-in-law if any of them working as Government servant. No doubt, the quarter of Mr. Parmar was allotted to his son-in-law Bhavsinh contrary to the instructions contained in the said GR dated 29.1.66, but there is nothing on record to show that the quarter was allotted to Bhavsinh. It may be that the said quarter might have been allotted on humanitarian grounds by the Government or the department concerned, but that cannot be a precedent to allot the present quarter in favour of the petitioner's son-in-law.

5. Lastly, the learned counsel for the petitioner submitted that the petitioner is too old and is aged about 74 years and he is infirm and blind. He made bonafide attempts to retain the quarter in the name of his son-in-law in the manner the quarter of Mr. B.M.Parmar was allotted to his son-in-law Bhavsinh. As such, the action of the petitioner in retaining the quarter for 13 years and vacating the quarter on 7.6.96 was bonafide and furthermore, the petitioner's occupation was protected by the interim order dated 23rd December, 1983 passed by this Court and therefore, instead of market rate, rent should be recovered at economic rate from the petitioner.

6. I have carefully considered the submissions made on behalf of the petitioner and the second submission of the learned counsel for the petitioner requires to be considered on humanitarian grounds and that should not set a precedent in future. The petitioner being an old and aged about 74 years and is also blind and infirm and he retained the possession of this quarter under the protection given by this Court by an order dated 23.12.83 and that may be on the ground that similar quarter was allotted to the son-in-law of B M Parmar in the same colony by the Government. In the facts and circumstances, the case of the petitioner is required to be considered sympathetically.

7. In the peculiar facts and circumstances, the petition is allowed in part. The order/letter dated 27.10.83 of the Executive Engineer, Road and Building Department is quashed and set aside. The respondents are directed to recover rent at the economic rate from the petitioner for a period from 1.9.1983 to 7.6.96 instead

of market rent. The petition is allowed to the aforesaid extent only. Rule is made absolute accordingly with no order as to costs.

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