

\$~15

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 9155/2017 & CM 37454/2017**

HOSHIAR SINGH KATOCH

..... Petitioner

Through Mr Rajat Navet, Advocate.

versus

DEPUTY DIRECTOR (E) & ORS

..... Respondents

Through Mr Praveen Kumar Jain, Advocate with
Mr Kmal Pandey, Advocate and Ms Amita Gupta,
Dy. Director of Estate.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **31.10.2017**

1. The petitioner has filed the present petition, *inter alia*, praying as under:-

“Issue an appropriate Writ, Order and/or Direction, directing the Respondent No.1 to stay the operation of Cancellation Order dated 01.08.2017 issued to the Petitioner, till the appeal of the Petitioner re-filed through proper channel i.e. High Court of Delhi, taken up for hearing by the Director of Estates, Directorate of Estates and heard and decided.”

2. The petitioner is employed as a Class IV employee with this Court and was allotted quarter No. J-307, Kasturba Nagar, New Delhi and was handed over the physical possession of the said premises on 21.01.2016.

3. Officials of the Directorate of Estates conducted the inspection of the aforesaid premises on 08.11.2016. Thereafter, a Show Cause Notice dated 22.05.2017 was issued to the petitioner calling upon him to show cause as to

why “(a) The allotment of the above mentioned government residence may not be cancelled in your name; (b) You should not be declared ineligible for allotment of government residential accommodation for the remaining period of your service; (c) You should not be charged damages from, the date of inspection of allotment; and (d) you should not be debarred from sharing the government residence for a specified in future as may be decided.”

4. The petitioner was also given an opportunity to appear before the Deputy Director of Estate along with all the evidence in original such as ration card, covers of registered letters, savings bank account pass book, certificates from education institutions where his children were studying, etc. Admittedly, the petitioner filed his reply and also appeared before the concerned Authority. He submitted the CGHS Card, Aadhaar Card and copies of Saving Bank Account. It is stated that the petitioner’s daughter is only two years old and, therefore, there was no possibility of submitting any certificate from any educational institution in that regard.

5. Despite submitting the aforesaid documents, the respondents passed the order dated 01.08.2017, cancelling the allotment of the accommodation given to the petitioner. The petitioner further apprehends that the respondent no.1 would take steps for evicting the petitioner and therefore, had approached this Court. Respondent no.1 has also passed a speaking order dated 21.07.2017. The same has not been placed on record but Mr Navet, the learned counsel for the petitioner has handed over a copy of the same and the same is taken on record.

6. By an order dated 22.05.2017, respondents were directed to produce the relevant record and material on the basis of which respondent no.1 had

concluded that the petitioner had sublet the premises.

7. In compliance with the aforesaid order, Mr Jain, the learned counsel for respondent no.1 has today produced the relevant file. He also referred to the order dated 21.07.2017, wherein the reasons for evicting the petitioners have been stated.

8. A bare perusal of the said order indicates that at the time of inspection on 08.11.2016, one Smt Prem Lata was found at the premises; she has also signed the inspection form. In the order dated 21.07.2017, it is stated that the said Smt Prem Lata had identified herself as the wife of the petitioner during the inspection and had also provided her mobile number. However, she had not shown any ID/Document to establish her relationship with the petitioner.

9. The petitioner had explained that Smt Prem Lata was the cousin of the petitioner's wife. Mr Navet states that she is a very close friend of the petitioner's wife and, therefore, was referred to as a sister although, she is not related in that way. The petitioner has also informed that Smt Prem Lata had come for her treatment to Delhi. It is seen that since the petitioner could not establish any definite relationship with Smt Prem Lata and further Smt Prem Lata is stated to have identified herself as the wife of the occupant, the respondents came to the conclusion that the premises had been sublet by the petitioner.

10. Mr Navet, learned counsel appearing for the petitioner contends that the petitioner has a two year old child who was present at the premises and Smt Prem Lata was only looking after the said child as she could not have been left alone.

11. He has also referred to the inspection report which indicates that the

inspection team had clearly recorded that they had found members of the petitioner family. The relevant entries in the inspection report reads as under:-

4.	Whether, any other member of allottee's Family is found. If so, details.	Yes
5.	Number of other families found residing in the quarter and their particulars including their place of residence:	Smt Prem Lata (wife)
	xxxxxx	xxxxxx
13.	Does the Inspection Team suspect that the quarter is under subletting?	Sub letted"

12. Apart from the above inspection report, there is no material whatsoever available with the respondents to conclude that the petitioner had sublet the said premises. A plain reading of the inspection report indicates that the inspection team had found that the family members of the petitioner were present during inspection. But the inspection team has not recorded any details of such member(s). Entry no. 4 in the survey form requires the survey team to record whether family members of the allottee were found in the premises and record their details. The entry at serial no.5 of the survey form is for recording "number of other families found residing in the quarter". In other words if the inspection team found persons, who did not belong to the allottees family, at the premises, the details of such persons were required to be recorded against entry no.5. The inspecting team had recorded the name of one Smt Prem Lata against entry no.5.

13. In view of the above, there is no material to doubt or to reject the petitioner's contention that his child was also present at the premises during

the inspection. The fact that the inspecting team has unequivocally recorded that family members of the petitioner were present during inspection, also supports the stand of the petitioner.

14. The petitioner stoutly disputes that Smt Prem Lata had identified herself as the petitioner's wife. The fact that the word wife appears in the brackets against the name of Smt Prem lata may not be of much relevance. It is also noted that she has signed her name in Hindi.

15. In this view, this Court does not find there is sufficient material on record which could lead to the conclusion that the petitioner had sublet the premises.

16. Mr Jain had earnestly contended that the order was an appealable one and the petitioner has also filed an appeal against the order dated 01.08.2017. He further states that the next date of hearing fixed is 01.11.2017 before the Directorate of Estates. He also points out that the petitioner's prayer is limited to stay the operation of the Cancellation Order dated 01.08.2017 till the Petitioner's appeal is re-filed through proper channel.

17. The contention that the petitioner has an alternate remedy by way of an appeal, is merited. The counsel for the respondents is also correct in pointing out that the petitioner's prayer in the present petition is limited. However, this Court has independently examined the controversy at some length and has also perused the records available with the respondents. It is also not in dispute that respondents do not have any material other than the inspection report which has been produced before this Court (and is annexed as Annexure-P2). The report, as observed hereinbefore, is insufficient to conclude that the petitioner had sublet the premises. In the circumstances,

this Court is of the view that it may not be apposite to relegate the petitioner to pursue his appellate remedies.

18. In view of the above, the orders dated 01.08.2017 and 21.07.2017 are set aside. The matter is remanded to respondent no.1 to consider afresh. Since the principal controversy revolves around presence of Smt Prem Lata at the flat allotted to the petitioner, the petitioner shall file copies of the relevant documents to establish Smt Prem Lata's identity and her residence at the material time; such documents may include the Aadhar card of Smt. Prem Lata, her bank accounts, voter's identity card, passport etc. The said documents along with the affidavit of the petitioner will be filed within a period of four weeks. Respondent no.1 shall consider the same and pass a speaking order after affording the petitioner a further opportunity to be heard. The respondents are also not precluded from gathering further material to establish that the petitioner had sublet the premises. Needless to mention that if any such material is relied upon by the respondents, the petitioner would be given an opportunity to explain/controvert the same.

19. The petition along with the pending application is disposed of with the aforesaid directions.

VIBHU BAKHRU, J

OCTOBER 31, 2017

pkv