Union of India and Another

Vs

Wing Commander R. R. Hingorani (Retd.)

Civil Appeal No. 4426 of 1986

(S. Natarajan, A. P. Sen JJ)

30.01.1987

JUDGMENT

SEN. J -

1. This appeal by special leave directed against the judgment and order of the Delhi High Court dated September 11, 1985 raises a question of frequent occurrence. The question is whether where a government servant retains accommodation allotted to him under SR 317-B-11 beyond the concessional period of two months permissible under sub-rule (2) thereof, the liability to pay damage equivalent to the market rent for the period of such unauthorized occupation under SR-317-B-22 is contingent upon the Directorate of rate of Estates serving a notice upon him that he would be liable to pay market rent for retention of such accommodation as held by the High Court.

2. Put very briefly, the essential facts are these. In the year 1968 the respondent who was then a Squadron leader in the Indian Air Force on being posted at the Headquarters, Western command, Palam, Cantonment, Delhi, applied on May 9, 1968 for allotment of accommodation in the Curzon Road Hostel, New Delhi. In the application for allotment he gave a declaration that he had read the Allotment of Government Residences (General Pool in Delhi) Rules, 1963 and the allotment made to him shall be subject to the said Rules, including the amendments made thereto. The Directorate of Estate by its order dated June 27, 1968 allotted Flat No. 806-B to the respondent in the Curzon Road Hostel on a rent of Rs. 161 per month, exclusive of electricity and water Charge. The respondent was transferred from Delhi to Chandigarh on June 11, 1970 and therefore the allotment of the flat to him stood automatically cancelled under sub-rule (3) of SR 317-B-11 after the concessional period of two months from the date of his transfer i.e. w.e.f. August 11, 1970. He however did not give any intimation of his transfer to the Directorate of Estates with the result that he continued in unauthorized occupation of the said flat for a period of nearly five years and was being charged the normal rent for that period. On February 28, 1975 the Estate officer having come to know about the transfer of the respondent from Delhi, the Directorate addressed a letter dated March 18, 1975 cancelling the allotment w.e.f. August 11, 1970 and intimating that he was in unauthorised occupation thereof. On the next day i.e. the 19th, the Directorate sent another letter asking the respondent to vacate the flat. On March 25, 1975 the respondent vacated the flat and handed over possession of the same to the Directorate of Estate. But he addressed a letter of even date by which he repudiated his liability to pay damages alleging that he was in unauthorised occupation, and further that under the said contract he was not liable to pay any damages.

3. It appears that there was some correspondence between the parties but the respondent disputed his liability to pay damages for the period of his unauthorised occupation. In consequence whereof, proceedings were initiated by the Estate Officer under Section 7 of the public Premises (Eviction of

Unauthorised Occupants) Act, 1971 to recover Rs. 38,811.17 as damages. The Estate officer duly served notices on the respondent under Section 7(3) of the act from time to time and the respondent appeared in the proceedings and contested the claim. Apparently, the respondent in the mean while made a representation to the Central Government. On such representation being made, the government on compassionate grounds reduced the amount to Rs. 20,482.78 and deducted the same on October 30, 1976 from out of the commuted pension payable to the respondent. On November 25, 1976 the respondent appeared and protested against the recovery of the amount of Rs. 20,482.78 from the commuted pension payable to him which, according to him, was contrary to Section 11 of the Pensions Act, 1871, by process of seizure and sequestration. The respondent complains that despite his repeated request, he was not given opportunity of a hearing and was informed that the matter was being examined in depth, and that the whole procedure was arbitrary and capricious.

4. The respondent filed a petition in the High Court under Article 226 of the Constitution challenging the action of the government in making a unilateral deduction of Rs. 20,482.78 towards recovery of damages from the commuted pension payable to him which, according to him, was contrary to Section 11 of the Pensions Act, 1871. The writ petition was allowed by a learned Single Judge by his judgment and order dated September 7, 1981 who held that although the allotment of the flat to the respondent stood cancelled in terms of sub-rule (3) of SR 317-B-11 w.e.f. August 11, 1970 i.e. after the concessional period of two months from the date of his transfer, the government was stopped from claiming the amount of Rs. 20,482.78 as damages equivalent to the market rent under SR 317-B-22 for the period from August 11, 1970 to March 25, 1975. In coming to that conclusion, the learned Single Judge held that the government not only knowingly allowed the respondent to continue in occupation till March 25, 1975 and charged him the normal rent of Rs. 161 per month presumable under its power or relaxation under SR 317-B25. Further, he held that the government having failed to serve the respondent with a notice that he would be liable to pay market rent for the period of such unauthorised occupation, the doctrine of promissory estoppel precluded the government from claiming damages equivalent to the market rent under SR 317-B-22 for the period in question. Aggrieved, the appellant preferred an appeal but a Division Bench by its judgment under appeal affirmed the decision of the learned Single Judge. It based its decision mainly on the terms of SR 317-B-22 which confer the power of relaxation on the government and held that since the government had not recovered the rent at the market rate as permissible under SR 317-B-22 w.e.f. August 11, 1970 and having knowingly allowed the respondent to retain the flat for the period in question, it must be presumed that the government had acted in exercise of its power of relaxation under SR 317-B-25.

5. In support of the appeal Shri G. Ramaswamy, learned Additional solicitor General mainly advanced two contentions. First of these is that where a government servant has retained the government accommodation allotted to him under SR 317-B-11 (1) beyond the concessional period of two months allowed under sub-rule (2) thereof, the liability to pay damages equal to the market rent for the period of his unauthorised occupation is not a contingent liability. It is urged that the High Court was in error in holding that the appellant was not entitled to deduct Rs. 20,482.78 from the commuted pension payable to the respondent because of the failure of the Directorate of Estates to serve the respondent with a notice after the allotment of the flat in question stood automatically cancelled w.e.f. August 11, 1970. Secondly, he submits that the construction placed by the High Court upon SR 317-B-22 was plainly erroneous. It is submitted that the High Court was wrong in assuming that there was some kind of estoppel operating against the government and in proceeding upon the basis that recovery of damages equivalent to the market rent for use and occupation for the period of unauthorised occupation was punitive in nature and therefore the court had power to grant relief against recovery of damages at that rate. These contentions must, in out opinion, prevail.

6. It would be convenient here to set out the relevant statutory provisions. Sub-section (2) of Section 7 of the public Premises (Eviction of Unauthorised Occupants) Act, 1971 invests the Estate Office with authority to direct the recovery of damages from any person who is, or has at any time been, in unauthorised occupation of any public premises, having regard to such principles of assessment of damages as may be prescribed. Rule 8 of the Public Premises (Eviction of Unauthorised Occupants) Rules, 1971 lays down the principles for assessment of such damages. Among other things, Rule 8(c) provides that in making assessment of damages for unauthorised use and occupation of any public premises, the Estate Officer shall take into consideration the rent that would have been released if the premises had been let on rent for the period of unauthorised occupation to a private person. Allotment of residential premises owned by government in Delhi is regulated by the Allotment of Government Residences (General Pool in Delhi) Rules, 1963. Sub-rule (1) of SR 317-B-11 provides inter alia that an allotment of such premises to a government officer shall continue in force until the expiry of the concessional period permissible under sub-rule (2) thereof after the officer ceases to be on duty in an eligible office in Delhi. Sub rule (2) of SR 317-B-11 provides that a residence allotted to an officer may, subject to sub rule (3), be retained on the happening of any of the events specified in column 1 of the Table underneath for the period specified in the corresponding entry in column 2 there under. The permissible period for retention of such premises in the event of transfer of the government officer to a place outside Delhi is a period of two months. SR 317-b-22 insofar as material provides as follows :

> Where, after an allotment has been cancelled or is deemed to be cancelled under any provision contained in these rules, the residence remains or has remained in occupation of the officer to whom it was allotted or of any person claiming through him, such officer shall be liable to pay damages for use and occupation of the residence, services, furnitures and garden charges, equal to the market license fee as may be determined by government from time to time.

7. It is difficulty to sustain the judgment of the High Court or the reasons therefor. The construction placed by the High Court on the two provisions contained in SR 317-B-22 and SR 317-B-25 is apparently erroneous. It is plain upon the terms of SR 317-B-22 that the liability to pay damages equal to the market rent beyond the concessional period is an absolute liability and not a contingent one. Both the learned single Judge as well as the Division Bench were clearly in error in subjecting the liability of a government officer to pay market rent for the period of unauthorised occupation to the fulfillment of the condition that the Director of Estates should serve him with a notice that in the event of his continuing in unauthorised occupation he would be liable to pay market rent. They were also in error in proceeding upon the wrongful assumption that since the government had not recovered the rent at the market rate as permissible under SR 317-B-22 and allowed the respondent to continue in unauthorised occupation for a period of nearly five years, it must be presumed that the government had relaxed the condition in favour of the respondent under SR 317-B-25. The view expressed by the High Court that there was a presumption of relaxation of the condition for payment of market rent under SR 317-B 22 due to inaction on the part of the government, is not at all correct. For a valid exercise of power of relaxation, the condition prerequisite under SR 317-B-25 is that the government may relax all or any of the provisions of the Rules in the case of any officer or residence or class of officers or types of residences, for reasons, to be recorded in writing. There was no question of any presumption arising for the relaxation which had to be by a specific order by the government for reasons to be recorded in writing. Nor was there a question of any promissory estoppel operating against the government in a matter of this kind.

8. In the facts and circumstances of the present case, the respondent had given a declaration in his

application for allotment that he had read the Allotment of Government Residences (General Pool in Delhi) Rules, 1963 and that the allotment made to him shall be subject to the said Rules as amended from time to time. According to sub rule (3) of SR 317-B-11 the allotment was to continue till the expiry of the concessional period of two months under sub-rule (2) thereof after June 11, 1970, the date of transfer and thereafter it would be deemed to have been cancelled. It is not disputed that the respondent continued to remain in occupation of the premises unauthorisedly from August 11, 1970 even after his transfer outside Delhi. He was not entitled to retain any accommodation either from the general pool or the defiance pool once he was transferred to a place outside Delhi. The respondent retained the flat in question at his own peril with full knowledge of the consequences. He was bound by the declaration to abide by the Allotment Rules and was clearly liable under SR 317-B22 to pay damages equal to the market rent for the period of his unauthorised occupation. Before an estoppel can arise, there must be first a representation of an existing fact distinct from a mere promise made by one party to the other; secondly that the other party believing it must have been induced to act on the faith of it and thirdly, that he must have so acted to his determinate. In this case, there, was no representation or conduct amounting to representation on the part of the government intended to induce the respondent to believe that he was permitted to occupy the flat in question on payment of normal rent or that he was induced to change his position on the faith of it. If there was any omission, it was on the part of the respondent in concealing the fact from the Director of Estates that he had been transferred to a place outside Delhi. There was clearly a duty on his part to disclose the fact to the authorities. There is nothing to show that he was misled by the government against whom he claims the estoppel. It is somewhat strange that the High Court should have spelled out that the respondent being a Squadron leader was an employee of the Central Government and therefore the Government of India to whom the Curzon Road Hostel belongs must have had knowledge of the fact of his transfer. The entire judgment of the High Court proceeds upon this wrongful assumption.

9. In the premises, it is difficult to sustain the judgment of the High Court and it has to be reversed. Nonetheless, the writ petition just still succeed for another reason. It is somewhat strange that the High Court should have failed to apply its mind to the most crucial question involved, namely, that the government was not competent to recover the amount of Rs. 20,482.78 alleged to be due and payable towards damages on account of unauthorised use and occupation of the flat from the commuted pension payable to the respondent which was clearly against the terms of Section 11 of the Pensions Act, 1871 which reads as follows :

> Exemption of pension from attachment, - No pension granted or continued by government on political considerations, or on account of past services or present infirmities or as a compassionate allowance, and no money due or to become due on account of any such pension or allowance, shall be liable to seizure, attachment or sequestration by process of any court at the instance of a creditor, for any demand against the pensioner, or in satisfaction of a decree or order of any such court.

According to its plain terms, Section 11, protects from attachment, seizure or sequestration pension or money due or to become due on account of any such pension. The words "money due or to become due on account of pension" by necessary implication mean money that has not yet been paid on account of pension or has not been received by the pensioner and therefore wide enough to include commuted pension. The controversy whether on commutation of pension the commuted pension becomes a capital sum or still retains the character of pension so long as it remains unpaid in the hands of the government, is not a new one till it was settled by the judgment of this Court in Union Of India v. Jyoti Chit Fund and Finance ((1976) 3 SCR 763 : (1976) 3 SCC 607 : (1976) 2

LLJ 69). We may briefly touch upon the earlier decisions on the question. In an English case, in Crawe v. Price ((1889) 58 LJ QB 215) it was held that money paid to a retired officer of His Majesty's force for the commutation of his pension does not retain its character as pension so as to prevent it form being taken in execution. On P. 217 of the report, Coleridge, CJ said :

> It is clear to me that commutation money stands on an entirely different ground from pension money, and that if an officer commutes his pension for a capital sum paid down, the rules which apply to pension money and make any assignment of it void, do not apply to his sum. (ED. : This quoted passage is however not found in (1889) 22 QBD 429 and this fact has been noticed in AIR 1941 Mad 207 (col.2) as well)

Following the dictum of Coleridge, C.J. Besley, C.J. and King, J. In Municipal Council, Sales v. B Gururajah Rao (ILR (1935) 58 Mad 469 : AIR 1935 Mad 249 : 157 IC 608) held that when pension or portion thereof is commuted, it ceases to be pension and becomes a capital sum. The question in that case was whether the commuted portion of the pension of a retired Subordinate Judge was income for purposes of assessment of professional tax under Section 354 of the Madras District Municipalities Act, 1920. The learned judges held that where pension is commuted there is no longer any periodical payment : the pensioner receives once and for all a lump sum in lieu of the periodical payments. The pension is changed into something else and becomes a capital sum. On that view they held that the sum received by the retired Subordinate judge in lieu of the portion of his pension when it was commuted was no longer pension and therefore not liable to pay a professional tax under under Section 354 of the Madras District Municipalities Act. That is to say, the commuted portion of the pension was not income for purposes of assessment of professional tax in a municipality. The question arose in a different form in C. Gopalachariar v. Deepchand Sowcar (AIR 1941 Mad 207 : (1940) 2 MLJ 782 : ILR 1941 Mad 393) and it was whether the commuted portion of the pension was not attachable in execution of a decree obtained by certain creditors in view of Section 11 of the pensions Act. Panduranga Row, J. interpreting Section 11 of the Act was of the opinion that not only the pension but any portion of it which is commuted came within the provisions of the section. He particularly referred to the words "money due or to become due on account of pension" appearing in Section 11 of the Act which, according to him would necessarily include the commuted portion of the pension. He observed that the phrase "on account of" is a phrase used in ordinary parlance and is certainly not a term of art which has acquired a definite or precise meaning in law. According to its ordinary connotation the phrase "on account of" means "by reason of" and he therefore queried :

> Now can it be said that the commuted portion of the pension is not money due on account of the pension ? Though the pension has been commuted, still can it be said that money due because of, or by reason of such commutation is not money due on account of the pension ?
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> He referred to Section 10 of the Act which provides for the mode of commutation and is part of Chapter III which is headed "Mode of Payment", and observed.

In other words, the commutation of pension is regarded as a mode of payment of pension. If so, can it be reasonably urged that payment of the commutation amount is not payment on account of the pension, though not of the pension itself, because after commutation it ceases to be pension ? I see no good reason why it should be deemed to be otherwise. No doubt money is due immediately under the commutation order, but the commutation order itself is on account of a pension which was commuted or a portion of the pension which was commuted. The intention behind the provisions of

Section 11, Pensions Act, is applicable to the commuted portion as well as to the uncommuted portion of the pension and the language of Section 11 does not appear to exclude from its protection the money that is due under a commutation order commuting a part of the pension.

10. In Hassmal Sangumal v. Diaromal Laloomal (AIR 1942 Sind 19 : ILR 1941 Kar 479 : 198 IC 630) Davis, C.J. speaking for a Division Bench referred to Gopalachariar case (AIR 1941 Mad 207 : (1940) 2 MLJ 782 : ILR 1941 Mad 393) and pointed out that it does not lay down that once a pension has been commuted and the money paid over to the pensioner, the exemption from attachment still continues, The learned Chief Justice went on to say that the words "money due or to become due" used in Section 11 must be necessary implication mean the money that has not yet been paid to the pensioner.

11. In Jyoti Chit Fund case ((1976) 3 SCR 763 : (1976) 3 SCC 607 : (1976) 2 LLJ 69) the court repelled the contention that since the civil servant had already retired, the provident fund amount, pension and other compulsory deposits which were in the hands of the government and payable to him had ceased to retain their character as such provident fund or pension under Sections 3 and 4 of the Provident Funds Act. 1925, Krishna Iyer, J. speaking for himself and Chandrachud, J. (as he then was) observed : (SCC p. 611, paras 11 and 12)

On first principles and on precedent, we are clear in our minds that these sums, if they are of the character set up by the Union of India, are beyond the reach of the court's power to attach. Section 2(a) of the Provident Funds act has also to be read in this connection to remove possible doubts because this definitional clause is of wide amplitude. Moreover, Section 60(1), Provisos (g) and '(k), leave no doubt on the point of non attachability. The matter is so plain that discussion is uncalled for.

We may state without fear of contradiction that provident fund amounts, pensions and other compulsory deposits covered by the provisions we have referred to, retain their character until they reach the hands of the employee. The reality of the protection is reduced to illusory formality if we accept the interpretation sought.

12. The learned Additional Solicitor General has very fairly brought to our notice circular No. F 7(28)E. V/53 dated August 25, 1985 issued by the Government of India, Ministry of Finance to the effect :

> When a pensioner refuses to pay government dues. - The failure or refusal of a pensioner to pay any amount owed by him to government cannot be said to be 'misconduct' within the meaning of Article 351 of the C.S.R. [Rule 8, C.C.S. (pension) Rules, 1972]. The possible way of recovering/demanding government dues from a retiring officer who refuses to agree in writing, to such dues being recovered from his pension is either to delay the final sanction of his pension for some time which will have the desired effect for persuading him to agree to recovery being made therefrom or take recourse to court of law.

It bears out the construction that the words "money due or to become due on account of pension" occurring in Section 11 of the pensions Act, 1871 includes the commuted portion of the pension payable to an employee after his retirement. It must accordingly be held that the government had no authority or power to unilaterally deduct the amount of Rs. 20,482.78 from the commuted pension payable to the respondent, contrary to Section 11 of the pensions Act, 1871.

13. For these reasons, the appeal succeeds and is allowed. The judgment and order of the High Court are set aside. We allow the writ petition filed by the respondent in the High Court and direct that a writ of mandamus be issued ordaining the Central Government to refund the amount of Rs. 20,482.78 deducted from the commuted pension paid to the respondent. The Government shall be at liberty to initiate proceedings under Section 7(2) read with Section 14 of the Public premises (Eviction of Unauthorised Occupants) Act, 1971 for recovery of Rs. 20,482.78 due on account of damages for unauthorised use and occupation of the flat in question from the respondent as arrears of land revenue, or have recourse to its remedy by way of a suit for recovery of damages.

14. Before parting with the case, we wish to add a few words. The government should consider the feasibility of dropping the proceedings for recovery of damages, if the respondent were to forego his claim for interest. In this case, the deduction of the amount of Rs. 20,482.78 from the commuted pension payable to the respondent was made as far back as October 30, 1976. Since then, 10 years have gone by. Even if interest were to be calculated at 9 per cent per annum, the interest alone would aggregate to more than Rs. 18,000. Since the government had the benefit of the money for all these years, it may not be worth while in pursing the matter any further.

15. There shall be no order as to costs.

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