Vinod Krishna Kaul, Indian Police Service (Retired)

Vs

Union of India and Others

Civil Appeal No. 10500 of 1995

(J. S. Verma, K. Venkataswami JJ)

23.11.1995

JUDGMENT

K. VENKATASWAMI, J. -

1. The appellant is aggrieved by the levy and collection of Rs. 8696.10 towards "excess licence fee" at market rates for government residence for the period January 1976 to May 1977 by deducting from the pay bill of the appellant. The appellant is now a retired IPS Officer. While he was in service, he was given government residence as per government rules. By notification dated 1-1-1976 issued by the Ministry of Works and Housing, New Delhi, certain amendments were introduced to the Allotment of Government Residence (General Pool), New Delhi Rules, 1963 (hereinafter referred to as the "Rules"). Clauses 3 and 4 are relevant which read as follows :

> "(3) If on the 1st day of January, 1976, an officer in occupation of government residence owns a house or any other member of his family owns a house, he shall surrender the government residence in his occupation.
>
> (4) Where an officer to whom sub-rule (3) is applicable does not surrender the government residence as required under that sub-rule, he shall be liable to pay damages for use and occupation of the residence, services, furniture and garden charges, equal to the market licence fee as may be determined by Government from time to time."

2. It is common ground that the appellant along with his brother became a joint owner of a house at Delhi on 1-4-1974. However, this newly constructed house of the appellant and his brother was let out to Dr. S. C. Basu and his wife Dr. (Mrs.) Ira Basu from 1-4-1974 under Section 21 of the Delhi Rent Act, 1958 for three years after getting the orders of the Additional Rent Controller, Delhi on a monthly rent of Rs. 2000 to be shared equally between the two owners. The respondents taking note of the fact that the appellant owns a house at Delhi called upon him to vacate the government residence as per clause 3 of the rules mentioned above. The appellant repeatedly pointed out his inability to surrender the government accommodation as he is only a joint owner and that house also was rented out long ago. But that was not accepted by the respondents and consequently the appellant was asked to pay damages for use and occupation as per clause 4 of the Rules. That is how the amount in dispute was deducted from the salary of the appellant for the period mentioned above.

3. Aggrieved by the deductions, initially the appellant moved this Court by filing a writ petition

under Article 32 of the Constitution challenging the validity of the amendments introduced by notification dated 1-1-1976. Subsequently, he withdraws that writ petition with liberty to file similar writ petition in the Delhi High Court. He thereafter moved the Delhi High Court challenging the amendment issued in the notification dated 1-1-1976 and the same was later on transferred to the Central Administrative Tribunal, New Delhi, which by the impugned order upheld the validity of the amendment and decline to interfere with the impugned collection towards damages for use and occupation for the said period. Hence this appeal by way of special leave.

4. From the paper-book, we find that except for 2 paragraphs out of 29 pages, the Tribunal has dealt with the contentions raised by the appellant regarding the constitutional validity of the amendment introduced in the Rules on 1-1-1976 in rest of the paragraphs. In this process, both the Tribunal as well as the appellant missed the main point.

5. We have noticed above that long before the amendment was introduced on 1-1-1976, the appellant along with his brother had sought and got the permission from the Additional Rent Controller, Delhi to let out the house for a limited period of 3 years from 1-4-1974. The order also shows that on the expiry of three years if the tenants did not vacate the premises, the landlords can filed application for eviction within 6 months of the expiry of three years' period. This order of the Rent Controller is placed at p. 72 of the paper-book.

6. From the above material, it will be clear that on 1-1-1976, the appellant was not in a position to move to his own house even assuming that he had sufficient accommodation and he can move as a joint owner into that house. That means he could not surrender government house and move to his house. Clause 3 of the Rules requires a government servant owning a house himself or in the name of any other "members of his family" as defined in the Rules to surrender the government residence in his occupation on coming into force of that Rule on 1-1-1976. Obviously, the rule can apply only to a government servant who not only owns the house but also has possession or right to immediate possession of that house to enable him to shift from government residence to that house. The rule cannot apply to a government officer who merely owns a house but does not have its possession or the right to its immediate possession because of its occupation by another person under a legal right which the government servant as an owner cannot override. Clause 3 was, therefore, not intended to apply to a government servant who neither had the occupation of a house owned by him nor the right to its immediate possession. The legal maxim lex non cogit ad impossibilia has to be borne in mind, i.e., the law does not compel a person to do the impossible. In the present case, in view of the subsisting lease in favour of the tenant, the commencement of the lease being prior to 1-1-1976 and the entire period in question being covered by the period of that lease, the provisions in clauses 3 and 4 could not be applied to the appellant, even if he is assumed to be the owner of the house for this purpose. Recovery of the higher rent/damages from the appellant in accordance with clauses 3 and 4, as aforesaid, is therefore not justified.

7. In the circumstances, we hold that the levy and collection of "excess licence fee" at the market rates amounting to Rs. 8696.10 is not sustainable and the appellant is entitled to get refund of the same. In the result, the appeal is allowed with costs.