

State of W. B. And Others

Vs

Sultan Singh

Civil Appeal No. ... of 1996

(Kuldip Singh, Faizanuddin JJ)

16.02.1996

ORDER

1. Special leave granted.

2. Sultan Singh (IPS), respondent in the appeal herein, was posted in Calcutta. A government quarter was allotted to him. It is not disputed that he was transferred out of Calcutta on 11-2-1991. It is the case of the appellant that Sultan Singh continued to occupy the flat in Calcutta till 28-6-1995. He was asked to pay penal rent for the period he was occupying the flat in Calcutta allegedly in violation of the West Bengal Government Premises (Regulation of Occupancy) Act, 1984 (the Act). The relevant Sections 11 and 15 are as under :

"11. Termination of licence. - (1) Every licence in respect of a government premises shall, subject to the provisions of sub-section (2), stand automatically terminated upon -

(i) the death of the licensee, or

(ii) the expiry of the period of validity of the licence, or

(iii) the cessation of the licensee's employment under the State Government by reason of his retirement, resignation, discharge or dismissal or by any other reason, or

(iv) the licensee ceasing to hold any specified post under the State Government by reason of his transfer from any such post or by any other reason :

Provided that for the purposes of this section a person shall not be deemed to have ceased to hold any post by proceeding on leave, or on being suspended, from that post, if he does not accept any other employment during the period of his leave or suspension.

(2) A licence in respect of a government premises may be terminated, by order, by the competent authority in accordance with the terms and conditions of the licence :

Provided that no such order shall be made without giving the licensee an opportunity of being heard.

(3) An appeal shall lie to the appellate authority against an order made under sub-section (2), or an order of the competent authority refusing to renew a licence, within

fifteen days from the date of communication of the order to the licensee.

(4) The decision of the appellate authority on such order shall, subject to the provisions of Section 23, be final.

* * *##

15. Compensation payable for unlawful occupation. - (1) Where any person has occupied any government premises in violation of any of the provisions of this Act, he shall be liable to pay as compensation such amount, not exceeding the market rental value of the premises assessed in the prescribed manner, as the competent authority may, by order, determine after giving such person an opportunity of being heard.

(2) Where any damage beyond normal wear and tear has been caused to any government premises while in the occupation of any person, such person shall be liable to pay for the repair of such damage such compensation not exceeding the cost of repair, as may be determined by order, by the competent authority, after giving him an opportunity of being heard.

(3) An appeal shall lie to the appellate authority against every order of the competent authority made under sub-section (1) or sub-section (2) within fifteen days from the date of communication of the order to the appellate authority.

(4) The decision of the appellate authority on such order shall, subject to the provisions of Section 23, be final."

3. The respondent challenged the demand by way of a writ petition before the High Court. A learned Single Judge quashed the demand. The Division Bench in appeal upheld the judgment of the learned Single Judge.

4. We have heard learned counsel for the parties. We are of the view that the High Court was not justified in quashing the demand on the ground that the Government did not charge penal rent from other officers who were similarly situated. The High Court further held that the State Government did not follow any uniform policy.

5. We are of the view that the High Court fell into patent error. In the face of the mandatory provisions of the Act, the Government have no option in the matter. In the absence of any power to relax under the Act, the Government is bound to follow the provisions contained in the Act. We, therefore, allow this appeal and set aside the judgment of the learned Single Judge and also of the Division Bench. We direct the State of West Bengal and all officers concerned who have to deal with the cases falling under the Act to comply with the provisions of the Act meticulously and strictly. In case any of the provisions are to be relaxed in case of any officer, that shall be done by giving reasons and by a speaking order. We give liberty to Sultan Singh to make a representation before the authorities concerned under the Act. The authorities shall consider the case of the respondent in a fair and just manner. The representation shall be decided within two months. The respondent shall pay the amount determined by the authorities under the Act within one month thereafter. No costs.