

D.A. No. 2548/93

D.A. No. 1977/94

New Delhi this the 3rd Day of August, 1995.

Hon'ble Sh. B.K. Singh, Member(A)

OA-2548/93

Shri Prabhati Ram,
S/o Sh. Makhan Lal,
R/o 64-B, D.C.M. Railway Colony,
Kishan Ganj,
Delhi.

Applicant

(through Sh. S.K. Sawhney, advocate)

versus

1. Union of Ind:
through General Manager,
Northern Railway,
Baroda House,
New Delhi.

2. Divl. Supdtg.Engineer(Estate),
Northern Railway,
D.R.M. Office, Chelmsford Road,
New Delhi.

Respondents

(through Sh. K.K. Patel, advocate)

OA-1977/94

Shri Puran Kumar,
S/o Sh. Prabhati Ram,
R/o 64-B, D.C.M. Railway Colony,
Kishan Ganj,
Delhi.

Applicant

(through Sh. Mahesh Srivastava, advocate)

versus

1. Union of India,
through General Manager,
Northern Railway,
Baroda House,
New Delhi.

2. Divl. Supdtg.Engineer(Estate),
Northern Railway,
D.R.M. Office, Chelmsford Road,
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Respondents

(through Sh. K.K. Patel, advocate)



ORDER

delivered by Hon'ble Sh. B.K. Singh, Member(A)

O.A.No.2548/93 and O.A.No.1977/94 deal with common facts and common issues of law. In O.A.No.2548/93 father is the applicant and in O.A.No.1977/94 the son is the applicant. The facts and legal issues in both the O.As. are the same and as such these are being disposed of by a common judgement.

This O.A. No. 2548/93 has been filed against the order of the Railway Administration for non-issue of passes. The applicant applied for issue of passes on 26.10.1992 but the respondents have neither issued the passes nor did they send any reply to his request. This is annexure-A of the paperbook.

The facts of the case are that the applicant retired from service on 31.10.1985. The applicant had filed another O.A.No.443/89 in which the Hon'ble Tribunal was pleased to direct the Railway Administration to pay the retiral benefits and also directed the applicant to vacate the accommodation which was allotted to him during the course of his employment. The applicant filed an appeal before the Addl. District Judge, Delhi in PPA No. 283/88 which is annexed with the reply as annexure-B. He admitted on oath before the Court of Sh. S.P. Sabharwal, Addl. District Judge, Delhi which is as follows:-

"I do not challenge the order of eviction passed U/S 5(1) of Public Premises (Eviction of Unauthorised Occupants) Act, 1971 dated 14.10.88 directing me to vacate Govt. Quarter bearing No.64/B, DCM Railway Colony, Opposite DCM Delhi on merits. However, on



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purely compassionate grounds I submit that time for vacation of Govt. Railway Quarter be extended upto 31.5.89. In this connection, I submit that my grand children are studying in a nearby school and their examinations are over in April, 1989, I hereby undertake to handover vacant and peaceful possession in respect to Railway Quarter to the concerned Railway Authority on or before 31.5.89. I further undertake to pay damages/charges as per Appeal filed by me be dismissed."

The order of the Addl. District Judge was that "the applicant would vacate the Railway quarter on or before 31.5.89 and respondents were directed to pay his dues before that day." The applicant filed O.A.No.443/89. He failed to obey the directions of the court and the present respondents preferred a contempt petition against the petitioner by filing CCP No.152/89 and this Hon'ble Court passed the following order:-

"An order was passed by this Tribunal on 17.3.89 directing the applicant to vacate Railway quarter on or before 31.5.89 and the respondents were directed to pay his dues before that date. It has been stated by the respondents that in response to court's orders, a cheque for Rs.18,900/- dated 23.5.89 drawn on the Reserve Bank of India was kept ready with the Cashier, but Shri Prabhati did not accept the same in spite of their best efforts. Shri Inderjit Sharma stated that the respondents (Shri Prabhati) has intentionally disobeyed orders of the Tribunal dated 17.3.89 and has committed contempt of court.

Issue notice to Shri Prabhati and also to his counsel, Shri B.S. Mainee, to file their reply within 10 days to the contempt proceedings against the applicant. In the meantime, Railways authorities are free to initiate such action as they deem fit for evicting the applicant from the Railway Quarter. The case to come up on 28.9.89."

A copy of the aforesaid order is also annexed as Annexure-C with the counter-reply.

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On 16.10.89, this Hon'ble Court had passed
the following order in CCP No.152/89:-

"This is a CCP filed by the respondents in OA 443 of 1989. No one present today for the petitioner/respondents (G.M., Northern Railways). The applicant, Shri Prabhati Ram, and his advocate Shri B.S. Mainee, present.

2. The applicant states that he was asked to come to the court on 2.6.1989 to take the cheque from the court, but no cheque was available in the court. The plea of Shri Prabhati Ram cannot be accepted any more. He was to vacate the quarter by 31.5.1989 and prima facie he is delaying vacating the same. He must vacate the quarter immediately and not later than 31.10.1989. In the meantime, he should collect the cheque from the respondents' office before that date. In case the applicant does not vacate the house by 31.10.89, the railway authorities may evict him by force.

3. As far as rent for the house for the period 1.6.89 onwards is concerned, the same would be deducted according to rules. A copy of the orders may be given to the applicant 'dasti'."

A copy of the above order is annexed as annexure-D with the reply.

This application filed by the applicant is clearly barred by principles of resjudicata. Since the question of retiral benefits and issue of passes are linked with the vacation of the quarter, Sections 138 & 190 of the Indian Railways Act gives the powers to Divl. Superintending Engineer (Estate) to initiate proceedings and to withhold gratuity and P.R. contributions and also to decline issue of passes till the house is vacated. The gratuity is kept in cash and they are not required to pay any interest on it.

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since they have to make the payment the moment house is vacated by a retiree. All other retiral benefits like G.P.Fund and Pension etc. have to be paid but the master circular issued by the Railways and the Act provides that the gratuity and P.R. contributions will not be released and passes will not be issued till the quarter is vacated. The relevant Sections 138 & 190 of the Indian Railways Act and instructions contained in the circulars to the effect that the gratuity and pension will be released only after deducting the normal rent/penal rent due to a retiree, Government servant have not been quashed by any court nor have these been declared ultravires. Recourse to Section 7 of the P.P.E. Act, 1971 is only an alternate procedure and can be adopted by the Railways, if they so choose to do. Since there are already provisions in the Railways Act to that effect, the P.P.E. Act, 1971 can also be applied as an alternative procedure to the Railways servants although they are not precluded from taking recourse to the provisions in the Railways Act and the various rules made thereunder. Since the matter has already been adjudicated by a court of competent jurisdiction which had allowed the applicant to remain in the house till 31.10.1989 and it also directed the Railway authorities to evict by force if he did not vacate the quarter on or before that day, the respondents are free to take recourse to Sections 4 & 5 of the P.P.E. Act, 1971 to evict the present applicant. The question of issue of passes is linked with the vacaton of the quarter and as such it was raised in the previous O.A.also.The applicant admits that he has

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received all retiral benefits. However, it is not known whether penal/market rent as per the undertaking given by him before Addl. District Judge and also as per orders of this Court have been realised or not by the respondents. The respondents were given liberty to charge penal/market rent beyond a period of 8 months since the house could be retained for four months on payment of normal licence fee and for another four months on payment of double the normal licence fee and the rest period will have to be treated as an unauthorised occupation and the market rent has to be charged on the basis of the undertaking given before Addl. District Judge and also as per orders of the Hon'ble Tribunal in the aforesaid O.A. (443/89) and the respondents were given the liberty to evict him by force if he did not vacate till then. This application does not lie being barred by the principles of resjudicata.

The resjudicata is not a technical principle but is a rule of law universally applicable in all courts provided the subject matter under dispute has already been adjudicated upon by a court of competent jurisdiction because the basic principle of resjudicata is that there must be an end to litigation and that it will not be in the interest of the State to incur expenditure on the same grievance again and again. As stated above, this application does not lie being barred by the principle of resjudicata. As regards OA-1977/94, it is surprising to find that there is not even a whisper of the undertaking given by the father of the applicant to

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the court of Addl. District Judge to pay market rent on the expiry of 8 months i.e. to pay normal licence fee for four months and double the licence fee for another four months and then to pay penal/market rent to the respondents for retention of the house. On that basis the previous O.A. filed in this Tribunal was decided in which the court passed the orders that he was allowed to retain the accommodation on payment of market rent till 31.10.89 and after that the respondents were given liberty to evict him by force. Order/judgement in the connected case of Puran Kumar, the son of the applicant has been obtained by misrepresentation/suppression of vital facts. Every order passed by a public authority in exercise of public powers in order to be valid has to be bonafide. As Lord Denning said in Lazarus Estates Ltd. Vs. Beasley (1956) 1 All E R 341 cited by the Hon'ble Supreme Court in Pratap Singh Vs. State of Punjab (AIR 1964 SC 72 Para-5), Employees' Welfare Association Vs. U.O.I. & Anr. (1989(4) SCC L&S 569), Express Newspapers Private Ltd. Vs. U.O.I. (1986(1) SCC 133 and also in AIR 1986 SC 872 Paras 115 to 125 "No judgement of a court, no order of a Minister, can be allowed to stand if it has been obtained by fraud." The Hon'ble Supreme Court in case of the Welcome Group has clearly laid down that if a person does not come with clean hands, he is not entitled to any relief sought by him.

In the instant case, the order of the court has been obtained by suppression of material facts. There is not even a whisper in the O.A. or in the



rejoinder filed by the son of the retiree that the case of the retiree has already been adjudicated upon and that he had given an undertaking in OA-443/89 decided by the court in which he was allowed to vacate the quarter by 31.10.89 and to pay the market rent beyond the period of eight months and the respondents had been given liberty to evict him by force if he did not vacate the quarter in question on or before 31.10.89. Surprisingly even in the rejoinder there is no mention about the appeal filed before the Addl. District Judge or to the O.A. filed before the Hon'ble Tribunal. It seems that the respondents also were enjoying their dogmatic slumber when the orders in the review application were being passed by the Hon'ble Court. O.A.No.1536/92 filed by the present applicant was decided on 24.12.93 and was dismissed by this Hon'ble Court. Thereafter the applicant preferred review application being review application No.30/94. This Hon'ble Court vide its judgement/order dt. 15.4.94 disposed of O.A.No.1536/92 gave direction to the respondents to reconsider the case of the applicant on merits and in accordance with law and in disregard of law that the application for allotment/regularisation is not maintainable on the ground that he had not taken permission of the Railway Authorities for sharing the accommodation with his father. When an affidavit was filed by the father of the present applicant before the Addl. District Judge, he had stated that his grand children are studying in the nearby school and their examinations were expected to be over in April, 1989. He sought permission to remain in that quarter till May, 1989

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and on that ground the learned Addl. District Judge had permitted him to retain the quarter till 31.10.1989. Subsequently in OA-443/89 he was permitted to retain the quarter till 31.10.89 and the respondents were given liberty to evict him by force if he did not vacate the quarter on or before 31.10.89. These facts of OA-2548/93 on the same subject on which there had been adjudication in OA-443/89 were suppressed in the present O.A. and a judgement was obtained and the court also exceeded its jurisdiction because it has no authority to relax or waive a rule framed by the respondents. The power of relaxation is given to the competent authority under the rules but that power also cannot be exercised by the competent authority unless there are cogent reasons to do so. The Hon'ble Supreme Court have held that such relaxation cannot be exercised on an arbitrary policy of pick and choose. The court, however, does not have the power to relax or waive a rule. That power vests with the Executive and this does not come within the domain of the courts. Secondly, the facts have been completely disputed by the respondents that the applicant from 1978 was living separately. It is a fact that he had been living with his father and has also been charging H.R.A. The rules prescribed for regularising of a quarter clearly lay down that the applicant should be sharing the accommodation with his father with the prior permission of the competent authority and that he should not be charging rent atleast for six months before the father retires. In the present case the respondents have proved that the applicant had been

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living with his father continuously from 1984 and had been charging rent all through. He had not taken the permission to share the accommodation with his father. The affidavit filed by the father before the Addl. District Judge clearly throws flood of light on the present application that he retained the house on account of the education of his grandchildren i.e. the children of the present applicant and this is a clear proof that these people had been living in that house right from 1978 onwards and the applicant had been charging rent also. All these facts have been enquired into by the respondents thoroughly and they have gone into depth to see that even an order obtained by fraud is complied with fully. They have examined the case of the applicant on merits in the light of the direction given by the court and have rejected his claim for regularisation. If the applicant has not come with clean hands, he cannot get any relief and as such the respondents are given full liberty to charge penal rent from father and son both right from the date the father became unauthorised occupant of the house i.e. after 8 months. The applicant would be liable to pay market rent and the respondents are free to take recourse to Section 7 of the P.P.E. Act, 1971 or to the provisions contained u/s 138 and 190 of Indian Railways Act. Since the applicant has not come with clean hands, the prayer for regularisation is rejected. The respondents are also given the liberty to evict him by force taking recourse to Sections 4 & 5 of the P.P.E. Act, 1971.

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I am further fortified in my view by a Full Bench decision in O.A.2684/93, OA 845/94, OA 449/94, OA 129/94 and OA 1445/94 decided on 29.5.95 in which it has been clearly laid down that no Railway quarter can be claimed as a matter of right and that the ward of retired or retiring railway employee who was living in Railway quarter alongwith retired or retiring Railway servant with the permission of the Railway Administration and had not been drawing H.R.A., cannot claim regularisation of that quarter in his name as a matter of right.

With the above observations, both the O.As. are dismissed but without any order as to costs. The previous orders passed in O.A.No.1536/92 delivered in review application dated 15.4.94 stand quashed and set aside since these were obtained by suppression of material facts leading to a fraud and obtaining a favourable judgement.

(B.K. Singh)

Member (A)

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