

A

STATE OF ORISSA & ORS. ETC.

v.

SADASIVA MOHANTY

OCTOBER 25, 1996

B

[K. RAMASWAMY AND S.P. KURDUKAR, JJ.]

*Service Law :*

C

*Orissa Service Code—Rules 2(ii), 11,104—Allotment of Govt. residence—Employees retiring—Continued to occupy the houses—Penal rent for overstay—Power of Government to levy—Upheld—Where the rules are not made applicable Govt. is devoid of power to levy penal rents for overstay—Government servants to pay penal rent beyond the period permitted by the order of competent authority or High Court—High Court to consider each case only on exceptional circumstances for giving directions to permit a Government servant beyond prescribed period.*

D

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 14534 of 1996 etc. etc.

E

From the Judgment and Order dated 7.1.1993 of the Orissa Administrative Tribunal at Bhubneswar in O.A. No. 927 of 1992

P.N. Misra for the Appellants.

K.N. Tripathi, Janaranjan Das, K. Vishwanathan and K.V. Venkataraman for the Respondents.

F

The following Order of the Court was delivered :

Leave granted.

We have heard learned counsel on both sides.

G

These appeals by special leave arise from the order of the Central Administrative Tribunal, Bhubaneswar made on 25.5.1992 in OA No. 1549/90 and batch.

H

The admitted position is that all the respondents are Government servants. They were allotted Government houses in Bhubaneswar and

Cuttack during their tenure of office as Government servants. On their retirement, they did not vacate the premises, though their allotments have been cancelled. Consequently, the Government had charged them with penal rents of 5 times the standard rent prescribed under the Orissa Service Code. When they challenged the levy in the Tribunal, it held that the Government have no power to assess damages by way of penalty in excess of one time standard rent. Therefore, the order passed by the Government is not valid in law. Mr. P.N. Misra, learned counsel for the State, contends that the view taken by the Tribunal is contrary to Rule 11 of the Orissa Service Code, (for short, the 'Code') which contemplates that a Government servant, after retirement, if he over-stays beyond the maximum period of four months as provided under the Rules, is required to pay penal rate of rent at the rate of 5 times the standard rent charged for the period of occupation of the quarter beyond four months. Therefore, the view taken by the Tribunal is not correct in law.

Mr. Janaranjan Das, learned counsel appearing for the respondents relying upon Appendix to the rules, contends that the Government have prescribed the procedure for allotment of the house and for utilisation, the Government servants are required to pay standard rent fixed for the house. In other words, there is no power to fix five times the standard rent for overstay.

The question, therefore, is: whether the Tribunal's view is correct in law? It is seen that under Rule 104 of the Rules, the Government have reserved its power to regulate the allotment of the houses, subject to the terms and conditions, as may be regulated under the instructions issued in furtherance thereof by the Government. Rule 11 deals with allotment of the house to the officers either owned by the Government or leased by the Government, as the case may be, Rule 2(ii) provides, by general or special order, for fixing fee in excess of what is prescribed in clause (b) referred to earlier. Clause (6) provides that where the Government servant does not vacate the residence, after cancellation of the allotment, the Government is empowered to collect penal rent. For that, procedure has been laid down by the proceedings of the Government dated December 12, 1986. Therein Clause (2) adumbrates that a Government servant who cannot vacate the quarters, for genuine reasons of health or other absolutely compelling reasons, may retain the quarter for a further period of one month only, with the prior written permission of the Director of Estates on advance

- A payment of standard rent Fixed for the quarter. In other words, the Government servant after retirement/transfer is required to vacate the quarter except for genuine reasons with prior written permission of the Director of Estates. He shall be entitled to retain the quarter only for a period of one month that too on paying in advance the standard rent.
- B Clause (5) envisages that a Government servant after retirement may be allowed to retain the quarter occupied by him for a maximum period of four months as provided in the Rule of the Code on advance payment of normal rent for four months. But his DCRG will be released only after he vacates the Government quarter. Rent at the rate of five times the standard rent will also be charged for the period of occupation of the quarter beyond
- C four months.

Thus, it could be seen that a Government servant, after he ceases to be the Government servant, is required to vacate the premises after the expiry of four months, subject to his paying the standard rent as prescribed under Clause (5). If he overstays beyond four months, he shall be charged the rent at the rate of five times the standard rent prescribed under the Rules. Appendix to the Rules relied upon by Mr. Janaranjan Das, has no bearing to these cases. Therein, where a Government servant is having a house but fraudulently has obtained allotment of the house, the Government is entitled to have him dispossessed in accordance with the Rules but he is required to pay only the standard rent. While he was in possession of the out-house of the allotted house and lets it out and without permission of the Estate Officer, he is required to pay the standard rent prescribed for the house which was allotted to him and for the out-house as well. That would indicate that it was required to deal with special circumstances. But in general circumstances, Appendix to Rule 11 is of little assistance to the Government servant who overstays after four months. The Tribunal, therefore, was wholly illegal in its conclusion that the Government is not entitled to levy penal rents, after the expiry of four months.

- G In regard to appeal arising out of SLP (C) No. 14606/94 filed against the order of the Tribunal in OA No.2078/92 dated 18.11.1993, the admitted position is that the respondent was staying in a Government quarter at Karanjia. It is seen that the above regulation referred to earlier relate to the quarter allotted to the Government servant in Cuttack and Bhubaneswar. Under these circumstances, the levy prescribed by special order for
- H payment of the penal rents in excess of the prescribed limit to the houses

occupied or owned by the Government at Cuttack and Bhubneshwar, the Government thereby, has denied itself any power to charge penal rentals to buildings owned or occupied by the Government in other places unless rules or general directions are issued. The Tribunal, therefore, was right in respect of that case only. But in all other cases, the order passed by the competent authority has become final. The Government is devoid of power to levy penal rents for the overstay. Even in respect of the cases where the Government servant overstays beyond the period permitted by the High Court, the Government servants are required to pay penal rent beyond the period permitted by the order passed by the competent authority or by the High Court, as the case may be. The High Court requires to consider each case only on exceptional circumstances for giving directions to permit a Government servant beyond prescribed period. The object is to enable the Government servants on transfer or waiting for allotment to be entitled to be provided with accommodation.

The appeals are accordingly allowed to the above extent, but, in the circumstances, without costs.

G.N.

Appeals allowed.