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any right, inferences of subletting or parting with possession are obvious. This is based on well recognized principle that the landlord would be a stranger to any agreement between tenant and the third person. The third person is setting up independent title to the exclusion of the said tenant M/s Piyush Art Printers. Once it is so, it was rightly held that the ground of eviction that the suit property has been sublet is clearly established. There is no ground to take a different view from the learned trial Court and that of the learned Appellate Authority.

(22) For these reasons, the revision petition must fail and is consequently dismissed. The petitioners are granted one month time to vacate the demised property.

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**S.C.K.**

*Before Jawahar Lal Gupta & N.C. Khichi, JJ*

JAGAN NATH SHARMA & ANOTHER,—*Petitioners*

*versus*

CENTRAL ADMINISTRATIVE TRIBUNAL, CHANDIGARH &  
OTHERS,—*Respondents.*

C.W.P. No. 18195 of 1998

30th November, 1998

*Constitution of India, 1950—Arts. 14 & 226—Government Residences (Chandigarh Administration General Pool) Allotment Rules, 1996—Rls. 4(2) & 11 (c)—Allotment of Government Accommodation—Person in Govt. service cannot claim allotment to an accommodation allotted to his Govt. official father retiring from service—Allotment is not governed by a system of inheritance and son is not entitled to succeed to the house allotted to his father—Merely because in earlier cases such allotments had been made would not give rise to discrimination since an authority cannot be compelled to perpetuate an illegality—Merely because son has not claimed house rent allowance during the currency of the allotment to his father would not entitle him to out-of-turn allotment—Claim for out-of-turn allotment can be made in accordance with Rule 11 (c)—Concession of out-of-turn allotment made admissible to spouse not to son—The provision being based on policy in public interest is non-discriminatory and intra vires the Constitution—Vires of Rl. 4(2) also upheld.*

*Held that* the mere fact that his father (who had retired from service in April, 1997) had been allotted some accommodation could not mean that the petitioner was automatically entitled to continue in possession of the house. The allotment is not governed by a system of inheritance. The son is not entitled to succeed to the house which had been allotted to his father. An out of turn allotment from the father to the son, as claimed in this case would be contrary to the Rules.

(Para 8)

*Further held,* that a claim for out-of-turn allotment can be made only if it is in conformity with the rules but not otherwise. In the present case nothing has been pointed out to show that a person who does not draw the house rent allowance is entitled to claim the relief as prayed for in this writ petition.

(Para 11)

*Further held,* that a person who does not squander money and utilises it for the construction of a house is given an option. Under Rule 4(2), he can continue to stay in the Government accommodation but he has to pay double the rent or he can shift to his own house. This is perfectly just & fair.

(Para 14)

*Further held,* that the Administration has reserved a power to make an out-of-turn allotment in favour of the serving spouse. The reason is that the couple shall be able to continue to stay together in Govt. accommodation. If the Administration has chosen to extend the concession to only the spouse and not the son, we find no ground to intervene or to hold that Rule 11(c) is *ultra vires* the Constitution. There is nothing arbitrary or violative of Article 14 of the Constitution.

(Para 15)

A. K. Mittal, Advocate,—for the Petitioners.

## JUDGMENT

*Jawahar Lal Gupta, J. (Oral)*

(1) The petitioners are father and son. They approached the Central Administrative Tribunal (Chandigarh Bench) with a prayer that the Chandigarh Administration be directed to allot Govt. House No. 1548, Sector 20-B, Chandigarh, which was in occupation of petitioner No. 1 to petitioner No. 2. The Tribunal has rejected the claim

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on the ground that after the retirement of petitioner No. 1 on 30th April, 1997, his son did not have a right to the allotment of house under the Rules.

(2) Aggrieved by the order passed by the Tribunal, the petitioners have approached this court through the present writ petition. They pray that the order passed by the Tribunal be set aside and the Rules promulgated on 28th June, 1996 be declared *ultra vires* and that the dispossession of petitioner No. 2 be stayed.

(3) We have heard Mr. A. K. Mittal, learned counsel for the petitioners.

(4) It is contended that the action of the respondents in not transferring the house allotted to petitioner No. 1 to petitioner No. 2 suffers from the vice of discrimination inasmuch as various persons who were similarly situated have been allotted the houses. The instances have been given in paragraph No. 9 of the writ petition. Secondly, it has been contended that petitioner No. 2 had not drawn any house rent allowance since August, 1991 when he had joined the service. Thus, he is entitled to the allotment of the house. Thirdly, it has been contended that the provisions of Rules 4(2) and 11(c) are *ultra vires* the Constitution.

(5) The questions that arise for consideration are :—

- (i) Does the action of the Administration in not allotting the house which was in possession of petitioner No. 1 to petitioner No. 2 suffer from the vice of discrimination ?
- (ii) Is a person, who has not drawn the house rent allowance entitled to the allotment of a house out of turn ?
- (iii) Are the provisions of Rules 4(2) and 11(c) of Government Residences (Chandigarh Administration General Pool) Allotment Rules, 1996 *ultra vires* the Constitution ?

Re : (i)

(6) Petitioner No. 2 complains that the action of the respondents in not transferring the house which was in possession of his father to him is discriminatory. It is alleged that in the case of two persons i.e. Sandeep Sharma and Sunil Dutt, who were similarly placed, the Administration had made the allotment.

(7) It is the admitted position that the allotment of house is governed by the provisions of Rules framed by the Administration. It is

not disputed that the conditions of eligibility have been specifically laid down. It is also beyond dispute that the allotment is made in order of seniority. An out of turn allotment is permissible only if the conditions as stipulated in the Rules are fulfilled.

(8) In the present case, there is no provision which may entitle the petitioner No. 2 to claim an out of turn allotment. The mere fact that his father (who had retired from service in April, 1997) had been allotted some accommodation could not mean that the petitioner was automatically entitled to continue in possession of the house. The allotment is not governed by a system of inheritance. The son is not entitled to succeed to the house which had been allotted to his father. An out of turn allotment from the father to the son, as claimed in this case, would be contrary to the Rules. We cannot sustain the claim made by the petitioners.

(9) It may be that in certain cases which have been mentioned by the petitioners in paragraph 9, the authority has acted in violation of the Rules by making an out of turn allotment. Two wrongs never make a right. An illegal act of the Administration cannot confer any right on another citizen to claim that the illegality should be repeated or that a wrong should be perpetuated. This court, in exercise of its jurisdiction under Article 226 of the Constitution, shall not compel an authority to repeat an illegal act or to perpetuate an error. The Rule in this behalf has been clearly enunciated by their Lordships of the Supreme Court in *M/s Faridabad Ct. Scan Centre vs. D. G. Health Services and others* (1). The earlier view as pronounced in *Mediwell Hospital and Health Care Pvt. Ltd.* (2) was over-ruled. In view of this decision, the charge of discrimination as made by the petitioners cannot be sustained.

(10) The first question is accordingly answered against the petitioners.

*Re : (ii)*

(11) The learned counsel for the petitioners contended that the second petitioner has not claimed house rent allowance. It may be so. But the learned counsel is unable to refer to any provision in the Rules which may entitle petitioner No. 2 to claim an out of turn allotment on the basis that he had not drawn the house rent allowance. If the petitioner has voluntarily chosen not to draw the house rent allowance, he cannot claim a right to be allotted a house out of turn unless the rule specifically provides for it. May be that the petitioner was not

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(1) J.T. 1997 (8) S.C. 171

(2) J.T. 1997 (1) S.C. 270

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entitled to claim the house rent allowance as he was actually staying with his father without paying any rent. If in such a situation he did not claim the house rent allowance, he cannot say that the Government is bound to give the same house to him out of turn. A claim for out of turn allotment can be made only if it is in conformity with the rules but not otherwise. In the present case nothing has been pointed out to show that a person who does not draw the house rent allowance is entitled to claim the relief as prayed for in this writ petition.

(12) Resultantly, even the second argument as raised on behalf of the petitioners has to be rejected.

*Re : (iii)*

(13) It was contended that Rule 4(2) is *ultra vires* the Constitution. This provision is in the following terms :—

“4(2) If on the coming into force of these rules, an employee already in occupation of Government residence, his spouse or any of his dependent children, owns a house at Chandigarh or the adjoining urban estates of Panchkula or Mohali, he shall surrender the Government residence in his occupation within a period of two months. However, he will have the option to retain the same on the payment of double the normal licence fee”.

(14) Mr. Mittal submits that allowing a person who owns a house to continue in possession of Govt. accommodation is totally arbitrary and unfair. The argument is totally misconceived. A person who does not squander money and utilises it for the construction of a house, is given an option. Under the above provision he can continue to stay in the Government accommodation but he has to pay double the rent or he can shift to his own house. This is perfectly just and fair. A person who has lived an austere existence and has managed to build up a house so as to have some shelter in the evening of his life can either let out the house and retain the Government accommodation by paying double the rent or he can vacate the premises and shift to his own house. Basically, it is a question of policy. It is for the competent authority to take a view. However, legally we find no infirmity in the Rule which may call for any interference.

(15) Similar is the position with regard to the provision contained in Rule 11(c). This rule gives a discretion to the authority to make an out of turn allotment to the spouse of the retired employee. The obvious purpose is to provide shelter to the family. Mr. Mittal submits that a similar relief should have also been given to the son. We find no merit

in this contention. The Administration has chosen to extend the concession of out of turn allotment to the spouse and not to the son. The reason is obvious. The children when they grow up, get married and they sometimes leave their parents in the lurch. To meet such a situation, the Administration has reserved a power to make an out of turn allotment in favour of the serving spouse. The reason is that the couple shall be able to continue to stay together in Government accommodation. If the Administration has chosen to extend the concession to only the spouse and not the son, we find no ground to intervene or to hold that the provision is *ultra vires* the Constitution. There is nothing arbitrary or violative of Article 14 of the constitution.

(16) We may observe that there are people who are in service for a period longer than petitioner No. 2. Their rights cannot be stifled merely because the petitioner's father was in possession of a Government house. The second petitioner shall have to wait for his turn along with others who are in the queue earlier than him. The action of the Administration and the order passed by the Tribunal are justified. These call for no interference.

(17) No other point has been raised.

(18) In view of our answers to all the three questions, we find no merit in this writ petition.

(19) Resultantly, it is dismissed in limine.

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**R.N.R.**

*Before Jawahar Lal Gupta & K. S. Kumaran, JJ*

JASMER SINGH & OTHERS,—*Petitioners.*

*versus*

THE CHANDIGARH STATE COOPERATIVE BANK LTD. &  
ANOTHER,—*Respondents.*

C.W.P. No. 17994 of 1998

18th December, 1998

*Constitution of India, 1950—Arts. 14, 16 & 226/227—Termination of service—Petitioners appointed against various posts which were not sanctioned at the time of appointment—No proper selection process followed—Services terminated—Held, appointments being illegal were rightly terminated.*