

PETITIONER:
BRIG.(RETD.) D.K.JETLEY

Vs.

RESPONDENT:
ARMY WELFARE HOUSING ORGANISATION & ANR.

DATE OF JUDGMENT 09/05/1995

BENCH:
SAHAI, R.M. (J)
BENCH:
SAHAI, R.M. (J)
AHMADI A.M. (CJ)
BHARUCHA S.P. (J)

CITATION:
1995 SCC Supl. (2) 738 JT 1995 (5) 135
1995 SCALE (3) 675

ACT:

HEADNOTE:

JUDGMENT:
THE 9TH DAY OF MAY, 1995

Present:

Hon'ble the Chief Justice
Hon'ble Mr. Justice R.M.Sahai
Hon'ble Mr. Justice S.P.Bharucha

Mr.Arun Jaitley, Mr.Shiv Dayal Shrivastava, Mr.S.K.Bagga,
Mr.M.N.Krishnamani and Mr.R.K.P.Shankardass, Sr.Advs.,
Ms.Nandini Gore, (Mr.R.Karanjawala,) Adv. for
Ms.M.Karanjawala,
Mr.A.K.Tewari, Ms.Tanuj Bagga, Mr.Seeraj Bagga,
Mrs.S.Bagga, Mr.Subhash Oberoi, Mr.A.K.Sinha, and Mr.Rishi
Kesh,
Advs.with them for the appearing parties.

J U D G M E N T

The following Judgment of the Court was delivered:

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 5460 OF 1995

[Arising out of SLP (C) No. 3255 of 1992]

Brig (Retd.) D.K. Jetley Appellant

vs.

Army Welfare Housing Organisation Respondents
& Anr.

WITH

[C.A. Nos. 5461 & 5462 of 1995 (Arising out of SLP (C) Nos.
4536 and 13450 of 1992 and C.P. No. 165 of 1992 with I.A.
No.3 in C.A. No. 4880 of 1991]

J U D G M E N T

R.M. Sahai, J.

Four senior officers occupying high ranking office in
the Army, now retired, are litigating for allotment of flats
in Som Vihar (R.K.Puram, New Delhi) for the last fifteen
years. How the controversy has arisen giving rise to four
appeals, two filed by Brig. Jetley, one by Lt. Col. Gupta

and one by the Union of India shall be narrated presently but they do not leave a very satisfactory impression. All these officers have been running from the lowest court in the hierarchy to the highest Court. And we are sorry to say so at times without disclosing correct facts. The Army Welfare Housing Organisation (AWHO) which has been established by the Union of India to construct houses for army personnel, both in service and retired too, has behaved casually, may be because the courts at different levels have been passing orders giving rise to conflicting claims raising hopes, of a flat in Som Vihar, in favour of each of the officer. How to adjust the equities? Fortunately, the AWHO now at the instance of this Court has filed affidavit which solves at least one problem that four flats are available. Who should get them and where is the only issue.

All these appeals and applications relate to allotment of flats in Som Vihar constructed by the AWHO. In 1979 the AWHO undertook to construct 422 flats in Som Vihar. It invited applications from the officers, both serving and retired, in 1979. 932 persons registered themselves. 21 flats were reserved for ex-army service personnel. For remaining 401 flats lots were drawn. Sri Jetley, Sri Dahiya and Sri Gupta were placed in the list of allotment at S1. No. 102, 146 and 346 respectively. Sri Jetley deposited a sum of Rs. 5100/- on 24th December, 1979 as an initial deposit for getting himself registered. He deposited another sum of Rs., 35,000/-, as required, beyond seventeen days. Since there was delay, he deposited interest at the rate of six per cent for delayed payment. It was accepted and he was allotted placement at No. 102 in the seniority list. Sometime in 1981 the AWHO took a decision that since the deposit was made beyond 17 days, the allotment in his favour was liable to be cancelled and his seniority was pushed down to 895. This was challenged by Sri Jetley and he filed a suit for declaration for correcting his seniority and allotment of flat No. J-306. The suit was dismissed on 10th October, 1986. After the dismissal of the suit the AWHO allotted Flat No. J-306 to another officer. Sri Jetley filed an appeal. It was allowed in 1988 and the order bringing down his seniority was declared to be illegal. But since by then the flat allotted to him had already been allotted in favour of another officer, the authorities were helpless in complying with the order, therefore, he filed another suit No. 66/90 for mandatory injunction for enforcement of decree. In this suit an order was passed on 16th January, 1990 by a Single Judge of the High Court restraining the AWHO from allotting Flat No. C-306 and Flat No. C-305 at R.K. Puram to anybody till further orders. On coming to know of this order, Sri Dahiya moved an application that he was allotted Flat No. F-305 and his placement in seniority was at S1. No. 146, therefore, the order directing that F-305 may be kept reserved may be recalled. This application was rejected on 9th May, 1991. Dahiya filed First Appeal against that order before the Division Bench and on 11th February, 1992 the impugned order was passed. It was observed by the Bench that this flat was allotted to Sri Dahiya in 1984 and he had paid the entire price but could not get possession due to restrain order passed against the AWHO in three different litigations for not delivering the possession of the flat to Sri Dahiya. The Bench observed that in two litigations Sri Dahiya was able to get the stay orders vacated and the appeal filed by Sri Jetley was the third litigation in which the stay order had been obtained without impleading Sri Dahiya. The Bench, therefore, was of the opinion that on consideration of the matter prima facie it

was satisfied that there was no impediment in way of AWHO in delivering possession of Flat No. F-305 to Shri Dahiya particularly because Flat No. C-306 had been kept reserved to be allotted to the rightful person whether Shri Jetley or anyone else who was found to be entitled. This order is subject-matter of Civil Appeal arising out of SLP (C) No. 4336 of 1992. passed an ex-parte order that if any allotment of flat was made it would expressly be subject to the result of the appeal and the allottee should be holding possession till then only as an agent of the Court. The order was modified on 15th May, 1992, after hearing counsel for both the parties, by directing that any allotment made in the meanwhile may be subject to the orders made in the Special Leave Petition. It may not be out of place to mention that in the written statement filed by the AWHO in Suit No. 66 of 1990 filed by Sri Jetley it was pointed out by the AWHO that the allotment of Sri Jetley was cancelled and he having been pushed down in the order of seniority and his suit having been dismissed, the AWHO allotted the flat in his name to another officer. The AWHO further pointed out that Flat No. F-305 was already allotted to Sri Dahiya in consequence of order passed in Writ Petition No. 610 of 1980, LPA No. 90/85 and judgment and decree in Suit No. 2850 of 1990. It was stated that Flat No. J-604 was reserved for Sri Gupta in Writ Petition No. 1520 of 1993 and Flat No. J-306 was reserved in Suit No. M-36/84 in favour of Sri Khandpur. The written statement further pointed out that the flat reserved in favour of Sri Jetley was allotted to one Col. I.P. Gaur when the suit filed by him was dismissed and no interim order was granted and the flat allotted to Col. Gupta was handed over to Col. Goswamy on 21.5.1986.

The appeal of Sri Gupta is directed against the direction given by the High Court on intervention of Sri Dahiya that Flat No. F-305 may be allotted to him. A little background of this litigation is necessary. A flat was allotted to Sri Gupta in Som Vihar. But the allotment was cancelled as the AWHO came to know that he was having another flat. This order was challenged by Sri Gupta in the High Court. In December, 1983 the High Court passed an order in presence of AWHO that one flat may be kept reserved for him in Som Vihar. The petition it appears was dismissed in 1985 for non-appearance of the learned counsel of Sri Gupta. He filed an application for recall of the order. It was allowed on 13th March, 1987. In respect of interim order, the Court observed that the order dated 15th December, 1983 shall stand revived provided the flat in the Som Vihar had not been allotted. Till then there was no difficulty but on 3.3.89 the High Court directed status quo to be maintained as regards Flat No. F-305 and Flat No. C-306. When Sri Dahiya came to know of it he applied for intervention claiming that in pursuance of the High Court's order an order had been made in his favour in respect of Flat No. F-305. The application was decided on 14th November, 1989 and AWHO was directed to handover possession to Sri Dahiya of Flat No. F-305. This direction was challenged by Sri Gupta in Civil Appeal No. 4880 of 1991. This appeal came to be disposed of on December 9, 1991 by this Court by an order which is extracted below:

"Special leave granted.

After hearing learned counsel for the parties and having regard to the facts and circumstances of the case and especially in view of the offer made by the Society, we direct that Flat No. C-306, Som Vihar, New Delhi, shall be kept

reserved and if the appellant succeeds in the proceedings before the High Court the same shall be allotted to him. This will, however, be subject to the deposit of the requisite amount by the appellant.

Appeal is accordingly disposed of. There will be no order as to costs.

The High Court is requested to dispose of the matter pending before it within three months from now".

When Sri Jetley and Sri Dahiya came to know of the order, they filed application for recall of the order whereas Sri Gupta has filed an application for taking proceedings in contempt against the officers of the AWHO.

On 13th November, 1994 Brig. Khandpur another officer filed an application for recall of order dated 9th December, 1991 passed in the appeal filed by Sri Gupta. It is claimed by him that the order was procured by concealing the real facts. It is alleged that Flat No. C-306 in Som Vihar had been reserved for him under the orders of the Court dated 28th January, 1985. He claims that this flat had been reserved for him and successive orders have been passed in his favour. It is claimed that the Suit No. 524/81 filed by him has been decreed on 1.10.1992 and the AWHO had been directed to handover possession of the aforesaid flat. Sri Khandpur has further pointed out that Flat Nos. J-306, C-306 and C-305 have been handed over to different officers by the AWHO subject to the decision of the court proceedings.

While these proceedings were going on the High Court on 22nd May, 1992 decided the writ petition of Sri Gupta on 22nd May, 1992 decided the writ petition of Sri Gupta against cancellation of allotment. It was held that the cancellation of the flat in favour of Sri Gupta on basis that he was holding another flat was contrary to the bye-law. This order has been challenged by the Union of India by way of Civil Appeal arising out of SLP (C) No. 13450 of 1992.

Thus there are four claimants for two flats in Som Vihar. Everyone claimed that he was entitled to these flats and placed reliance on order of one or the other Court passed in his favour. Before considering their claim few facts brought out by the AWHO may be noticed. When Sri Khandpur staked his claim few facts brought out by the AWHO may be noticed. When Sri Khandpur staked his claim for a flat on an award made in his favour the Secretary of AWHO by letter dated 16th February, 1988 replied that the award had not been made the rule of the court, therefore, Sri Khanpur was not entitled to stake his claim for Flat No. C-306. It was also pointed out that one Type V flat No. 1417 at second floor in Sector 37 at NOIDA was allotted to him and he had already paid a sum of Rs. 2,77,864/-. The letter further required him to deposit the balance of Rs. 10029/-. This flat, according to the affidavit filed by the AWHO, is still available.

When these appeals were heard earlier, the learned counsel for the AWHO was directed to ascertain if there were four flats available with the AWHO and if so, where An affidavit has been filed which indicates that two flats are available in Som Vihar (R.K. Puram, New Delhi), one in NOIDA (Ghaziabad, UP) and one which is likely to come up by November in Faridabad (Haryana). It is further averred that Flat No. F-305 is in possession of Sri Dahiya since 10th March, 1992. He is holding the possession as an agent of this Court. His seniority, according to the affidavit, the

seniority of Sri Jetley stands restored to 102 and Flat No. C-306 is still available. The affidavit further points out that since this Court by its order dated 9th December, 1991 had directed that Flat No. C-306 be kept reserved for Sri Gupta, he was requested to deposit the requisite amount, but the officer has not complied with the letter. It is stated that even though Sri Gupta is not entitled to any flat and the SLP against the order passed by the High Court setting aside the order of cancellation is pending in this Court, yet the Society was ready and willing to allot the officer an economy apartment having super area of about 1250 sq.ft. under construction at Sector 21-C, Faridabad, Haryana. In respect of Sri Khandpur, the affidavit points out that the Subordinate Judge vide order dated 6th January, 1988 set aside the arbitration award made in his favour on 11th June, 1981 and Sri Khandpur in the mean time on 1st January, 1982 had accepted the allotment of a Type V flat No. 1417 at Arun Vihar, NOIDA. The affidavit further points out that the officer in another Suit No. 425 of 1988 obtained an ex-parte order on 1st October, 1992 that he was entitled to a flat in P-1 series and that Flat No. C-306 be allotted to him. The affidavit points out that this officer is not entitled to this flat as in seniority of the Society he is below Sl. No. 972 and not within the zone of entitlement, i.e., Sl. No. 402.

The position that emerges from various proceedings and the affidavits filed on behalf of the AWHO is that the seniority of Sri Jetley at Sl. No. 102 was restored as far back as 1988 and that order has become final. Similarly, the seniority of Sri Dahiya at Sl. No. 146 has become final. The orders were obtained by Sri Gupta and Sri Khandpur after these dates from different courts. This was obviously under misapprehension of fact. If the courts would have been aware that the seniority of Sri Jetley and Sri Dahiya stands restored at Sl. Nos. 102 and 146 then probably these conflicting orders could not have been passed.

The cases of each individual officers may now be taken up. The allotment in favour of Sri Jetley was cancelled in 1981. This order was set aside in 1988. Whether the AWHO was justified or not in allotting Flat No. J-306 after dismissal of the suit in favour of a third party without waiting for the appeal which Sri Jetley had filed need not be gone into. Although we must express our disapproval of the manner and the hurry with which this flat was allotted after the decision of the suit and before filing of the appeal and its decision in July, 1988, however, the fact remains that this flat has been allotted to a third person. The question then is whether Sri Jetley was justified in procuring order from the court for reservation of flat No., C-306 and Flat No. F-305. These orders were passed in his favour in 1990. Since Flat No.C-306 was available and he was above all the claimants in allotment list the reservation of Flat No.C-306 was in accordance with law.

Taking up the case of Sri Gupta, it is clear that his allotment for a flat in Som Vihar was cancelled sometime in 1983. He challenged it before the High Court and an interim order was granted that one flat in Som Vihar shall be kept reserved for him. The order does not mention any flat number. His petition was dismissed in default. It was restored in 1987 and it was in 1989 only when he could secure an order directing AWHO to reserve Flat No. C-306 and Flat No. F-305. Neither flats were available. Flat No.F-305 had been allotted in favour of Sri Dahiya in 1985. And Flat No.C-306 in order of seniority after 1988 could be allotted to Sri Jetley. The orders were, therefore, passed on

misapprehension of fact and the moment it was brought to the notice of the court by Sri Dahiya the court recalled its order in respect of Flat No. F-305, and the order dated 9th December, 1991 in respect of Flat No. C-306 was again obtained from this Court without apprising it of the position that it was reserved for Sri Jetley. Therefore, in our opinion, Sri Gupta was not entitled to any of these flats.

As regards Sri Khandpur, the affidavit filed by the AWHO clarifies that there was no order in his favour in 1985 and the averments made by him in the application for intervention filed in the appeal of Sri Gupta did not disclose correct facts and the order passed in 1992 is not only ex-parte but without impleading either Sri Jetley in whose favour the flat was reserved or Sri Gupta who was laying claim to it. The order, therefore, does not create any right in his favour.

So far as Sri Dahiya is concerned, Flat No. 305 was allotted in his favour as far back as 1985. He has succeeded from every court in getting the interim order vacated. He is occupying this flat at present as an agent of this Court. In our opinion, his claim is well-founded. In the facts and circumstances mentioned above the appeal of Union of India need not be decided. The question of law raised by it on construction of bye law shall remain open.

For these reasons, the appeals, applications and the contempt petition are disposed of with following directions:

- 1(a) Flat No. F-305, Som Vihar, R.K. Puram, New Delhi shall be allotted to Sri Dahiya.
- (b) Flat No. C-306 shall be allotted to Sri Jetley.
- (c) Flat in Noida, Ghaziabad, shall be allotted to Sri Khandpur.
- (d) Flat at Faridabad shall be allotted to Sri Gupta.
2. The applications for intervention filed by different parties in different SLPs stand disposed of in the light of what has been stated above.
3. Contempt Petition No. 165 of 1992 shall stand dismissed.
4. All the writ petitions, suits pending between parties or between anyone of them and AWHO in this Court, High Court or any other court relating to allotment of flats in Som Vihar shall stand terminated. Parties shall bear their own costs.