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AMITABH KUMAR AND ANR.

v.

DIRECTOR OF ESTATES AND ANR.

FEBRUARY 3, 1997

B

[K. RAMASWAMY AND G.T. NANAVATI, JJ.]

C

Allotment of Government quarters—Father, a government servant, taking voluntary retirement—Extension of time of retention of quarter—Expiry of—Unauthorised occupation—Penal rent—Charging of—Entitlement of son to ad-hoc allotment—Altogether a different matter—Does not make any difference and under the rules the father is liable to pay penal rent for the period of unauthorised occupation.

D

CIVIL APPELLATE JURISDICTION : Special Leave Petition (C)
No. 3338 of 1997.

From the Judgment and Order dated 28.8.96 of the Central Administrative Tribunal, New Delhi in O.A. No. 132 of 1996.

Mahabir Singh for the Petitioners.

E

The following Order of the Court was delivered :

Delay condoned.

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The second petitioner, admittedly, has retired from service. Before his retirement, the first petitioner, his son had applied for allotment of the house in substitution of the father. Undoubtedly, the allotment could not be made within the time asked for. Initially, the Department extended time, as sought for four months but on expiry thereof, he did not vacate the premises. Consequently, the order of extension was withdrawn. As a result, the first petitioner remained unauthorisedly in occupation for which he was directed to pay penal rentals. The petitioners have questioned the correctness of the orders in the Tribunal. The Tribunal in the impugned order dated August 28, 1996 dismissed the O.A. 132/96.

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Shri Mahabir Singh, learned counsel for the petitioners, contends that the 2nd petitioner is eligible to apply for allotment in substitution of his father. Since the issue of allotment to which he is eligible was not

determined for long and the delay was on the part of the respondent-Government, the penal rentals cannot be imposed upon them. We find no force in the contention. It is seen that the *ad hoc* allotment rules issued in Memo No. 12035 dated November 9, 1987, Item No. (ii) deals with *ad hoc* allotment to the dependent of officer who seeks voluntary retirement. It provides that dependent of an officer who seeks voluntary retirement would also be eligible for *ad hoc* allotment subject to the fulfilment of the other prescribed conditions given in the orders regarding *ad hoc* allotment/regularisation on retirement of Government servants. Item No. (viii) postulates date of regularisation and provides that "the date of regularisation should be from the date of cancellation in case the eligible dependent is already in Government service and is entitled for regularisation and not from the date of issue of the orders which was the practice being followed till now". In other words, even if the allottee is in possession of Government accommodation, it may be regularised. However, the Government employee who is in unauthorised occupation is required to pay penal rentals. It is contended that since the father was to retire and his son was and is entitled to the *ad hoc* allotment, adjudication of the application made by the petitioner No. 2 could not be charged. We find no force in the contention. It is seen that the entitlement to which the son is eligible is different from the entitlement to which the father was eligible. Therefore, the mere fact that the application had been made for *ad hoc* allotment on the basis of the fact that the son was in Government service, does not make any difference. Obviously, the first petitioner was in unauthorised occupation, as a consequence, under the rules he is required to pay the penal rentals. Under these circumstances, we find no force in the contention and the Tribunal's order does not warrant interference. Two months time is granted from today for payment of penal rentals.

The special leave petition is accordingly dismissed.

G.N.

Petition dismissed.