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Central Administrative Tribunal
Principal Bench

O.A.No.1131/2002

Hon'ble Shri Shanker Raju, Member(J)

New Delhi, this the 19th day of May, 2003

Mahendra Kumar Sharma
s/o Sh. Chirajni Lal Sharma
Sub Post Master Shamshabad Agra
(Under Suspension).
r/o 3/11 GPO Compound
Agra (UP). ... Applicant

(By Advocate: Sh. D.P.Sharma)

Vs.

1. Union of India through
the Secretary
Ministry of Communication
Department of Posts
New Delhi.
2. The Asstt. Director of Postal Services.
O/o The Post Master General
Agra Region, Agra.
3. The Senior Supdt. Post Office
Agra Division, Agra.
4. The Senior Post Master
Head Post Office
Agra - 1. ... Respondents

(By Advocate: Sh. S.Mohd. Arif)

O R D E R(Oral)

By Shri Shanker Raju, M(J):

Applicant has been alleged to have unauthorizedly occupied the Government accommodation. An order has been passed by respondents', i.e., Estate Officer cancelling the accommodation and asking the applicant to vacate the accommodation.

2. By an order dated 11.7.2001, on the order passed by SSPO on 15.2.1999, damage rent has been ordered to be recovered and consequent upon this recovery has been commenced initially from the pay for the month of July, 1999 and thereafter he made several representations but the same remained without any

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consequence, the aforesaid recovery has been challenged in a Civil Suit No.65/2001 before the Civil Court, where by an order dated 18.8.2001 having observed that the Civil Court has no jurisdiction, liberty has been given to the applicant to approach this Court. Hence the present OA.

3. Applicant has drawn my attention to an order passed by the Additional District Judge, Agra in Appeal No.135/2001, decided on 17.10.2002 whereby the cancellation order regarding eviction dated 8.8.2001 has been set-aside with liberty to the respondents to afford an opportunity to applicant. In pursuance thereof, a notice under Section 4 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (hereinafter called as P.P.Act, 1971), has been issued.

4. Shri D.P.Sharma, learned counsel for applicant has stated that the recovery has been ordered not by the Estate Officer but by the SSPO, and moreover, relying upon FR 45, note 12, it is contended that the recovery of damage rent is to be allowed only if the proceedings under P.P.Act have been finalised within 15 days after vacation of the premisses. In this conspectus, it is stated that as the earlier eviction order is void and ab-initio and does not exist any recovery made is liable to be set-aside.

5. On the other hand, Shri S.Mohd. Arif, learned counsel for respondents, took a preliminary objection as to the jurisdiction of this Court to entertain the grievance in the light of the decision in Union of India v. Rasila Ram & Others, JT 2000(10) SC 503 and further contended that as the recovery has been effected in pursuance of eviction order, remedy

lies to applicant in an appropriate forum.

6. I have carefully considered the rival contentions of the parties and perused the material on record.

7. In so far as the jurisdiction issue is concerned, as the recovery has been ordered by the SSPO not by the Estate Officer, this Court has jurisdiction and decision in Rasila Ram's case supra would have no application in the facts and circumstances of the present case. As the eviction order of applicant has cease to exist, quashed in an appeal by the District Judge, any recovery in pursuance of the same is also liable to the set-aside.

8. In terms of FR 45-A where it is stipulated that on finalisation of proceedings, i.e., an appeal before the District Judge, can be effected after giving 15 days time. Having regard to the aforesaid, as the aforesaid rule has not been followed, recovery cannot be sustained.

9. In the light of the above, OA is partly allowed. Impugned orders are quashed and set-aside. Respondents are directed to restore to applicant the recovered damage rent within a period of three months from the date of receipt of a copy of this order. However, this shall not preclude the respondents to act in accordance with law in the light of the notice dated 30.1.2003. No costs.

S. Raju

(Shanker Raju)
Member(J)

/rao/