

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

17
O.A.NO.167/2002

This, the 22nd day of October, 2002

Hon'ble Shri Shanker Raju, Member (J)

T.S.Sial
s/o late Shri Iqbal Singh Sial
r/o 38, Kotla Road, New Delhi-2

Presently working as Director
Military Secretary's Branch
Army HQ, South Block
New Delhi

...Applicant

(By Advocate: Shri A.K.Bhera)

VERSUS

1. Union of India
through
Secretary to the Govt. of India
Ministry of Urban Development & Employment
Nirman Bhawan, New Delhi-11
2. Director of Estates
Nirman Bhawan, New Delhi-11
3. Estate Officer
Director of Estates
Nirman Bhawan, New Delhi-11

...Respondents

(By Advocate: Ms. Rinchen Ongmu Bhutia)

O R D E R

By Shri Shanker Raju, Member(J):

Applicant in this OA impugns respondents' orders dated 14.8.2001, 29th/31st August, 2001 as well as proceedings under Section 4 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 vide order dated 21.12.2001.

2. By an order dated 12.7.2002, passed by this Tribunal, in view of the decision of the Apex Court in Union of India Vs. Rasila Ram, 2000(2) SCSLJ 429, the question of jurisdiction is to be decided first.

3. Applicant was allotted an accommodation, namely, House No.15, Fire Brigade Lane, New Delhi by the Director of Estates in the year 1990. Applicant was informed by the respondents through their letter dated 22.3.1999 that as House Nos.13, 15, 17 and 19 at Fire Brigade Lane were required for construction of Bharat Paryatan Bhawan and were required to be handed over to Department of Tourism. Applicant was advised to hand over the vacant possession of the House No.15 to CPWD immediately on allotment of alternate accommodation. Applicant subsequently was allotted an alternate accommodation No.38, Kotla Road which he occupied on 2.8.1999 and vacated the House No.15, Fire Brigade Lane on 3.8.1999.

4. Respondents by an order dated 26.7.2001 allotted an accommodation, i.e., Flat No.D-II/38, Moti Bagh, in lieu of premises No.38, Kotla Road, due to a policy decision ~~for~~^{for} redevelopment of Rouse Avenue Area. The aforesaid premises were required to be vacated in administrative exigency.

5. Applicant through representations, requested the respondents to allow him to keep the accommodation till the development activities started.

6. Applicant was allotted Flat No.D-II/301, Vinay Marg, New Delhi and his option was sought. Applicant preferred representation to the respondents which was turned down without passing a speaking order and later on proceedings under Public Premises (EUO) Act, 1971 ibid have been initiated and a show cause

notice under Section 4 of the Act *ibid* was served upon the applicant by the Estate Officer, giving rise to the present OA.

7. Shri A.K.Behera, learned counsel for applicant, at the outset, states, placing reliance on a decision of the Co-ordinate Bench in OA 1859/2001, *Shri Milap Chand v. Union of India & Ors.*, decided on 21.5.2002, to contend that unless the applicant is declared unauthorised occupant, and an order is passed to this effect under Section 5 of the Public Premises Act *ibid*, this Tribunal has jurisdiction to take cognizance as a service matter.

8. On merits, Shri Behera states that in so far as the other Flats at Kotla Road are concerned, High Court in a Writ Petition No. 4530/2001, decided on 30.7.2001, stayed the eviction and the petitioners occupying the House Nos.2, 3, 5, 7, 10, 12, 14, 16, 18 and 28, at Kotla Road, are still in occupation. Others who are in Govt. accommodation have not yet been served notices for vacation.

9. Shri Behera further states that House No.15, Fire Brigade Lane, New Delhi, which was vacated by the applicant, is not yet been demolished and construction of Bharat Paryatan Bhavan has not yet been started. It is further state that applicant has been discriminated as the others who are in possession of accommodation as Government servants are not at all affected. It is stated that alternate accommodation offered is not feasible as the same is adversely affecting the education of the son of the applicant.

10. It is further stated that as the applicant's allotment of Government accommodation No.38, Kotla Road is not yet been cancelled, the applicant cannot be treated as unauthorised occupant. It is stated that he is yet to be given an acceptance of the allotment of Flat No.D-II/301, Vinay Marg.

11. Shri Behera vehemently argued that as the Scheme for redevelopment of the Rouse Avenue Area is not yet been finalised, shifting of the applicant is premature and a decision is being taken not to demolish these Houses for the time being. As the applicant has already shifted from Rouse Avenue to Kotla Road, another shifting to Vinay Marg would be cumbersome and prejudicial to the applicant.

12. On the other hand, respondents' counsel Ms. Rinchen Ogmmu Bhutia denies the contentions and stated that as the proceedings have been started after holding the applicant as an unauthorised occupant under the Public Premises Act ibid, a notice under Section 4 of the Act ibid has already been served upon the applicant which is not responded to in view of the decision of the Apex Court in Rasila Ram's case supra as well as the Division Bench decision of the High Court of Delhi in Babli Bai & Another v. Union of India & Others, 2002(AW TIMES) 144 = 2002(3) SLR 733, the matter cannot be taken cognizance of by the Tribunal and it is the appropriate authority, under the P.P. Act ibid, alone is competent to adjudicate the

matter. It is stated that this Tribunal has no jurisdiction to deal with the issue as it is no more a service matter.

13. On merits as well, it is stated that for the project of redevelopment of Rouse Avenue Area, houses falling within the project are to be vacated for demolition. Applicant who is in possession of House No.38, Kotla Road, the same is to be vacated for demolition and a House of alternate accommodation has already been offered to the applicant, and is not responded by giving his consent.

14. As the redevelopment of project is of a public importance, the same is time bound. Due to non-cooperation and on account of non-vacation of the Government accommodation, the project has been delayed.

15. In so far as the Writ Petition before the High Court is concerned, the same has been filed by the Slum Dwellers residing there, and no case of any Government servant occupying the premisses is pending before the High Court and the respondents are not concerned with the houses of another pool like Lok Sabha Secretariat and other Departments.

16. Applicant in his rejoinder, reiterated his contentions in OA and further stated that the allottees in House Nos.1, 3, 5, 7, 10, 12, 14, 16, 18, and 28 are similarly situated and ^whave not vacated and no proceedings for vacation have ^wnot been taken against them.

17. I have carefully considered the rival contentions of the parties and perused the material on record. Unauthorised occupant is defined in Section 2(g) of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, which is as under

"unauthorised occupation", in relation to any public premises, means the occupation by any person of the public premises without authority for such occupation, and includes the continuance in occupation by any person of the public premises after the authority (whether by way of grant or any other mode of transfer) under which he was allowed to occupy the premises has expired or has been determined for any reason whatsoever."

18. Section 4 of the Act prescribes issuance of show cause notice after the Estate Officer opined that a person is an unauthorised occupation of any public premises, and for further passing of an order of eviction under Section 5 of the Act.

19. In Rasila Ram's case supra the following observations have been made by the Apex court:

"..... in order to have harmonious interpretation between Section 33 of the Administrative Tribunals Act and Section 51 of the P.P. Act, it would be proper that when a person is aggrieved against an order of cancellation by the administrative authority, he can approach the Tribunal at that stage if he is aggrieved by such orders after making necessary representations to the administrative authorities, but where proceedings have been started under the P.P. Act, it would be proper for the aggrieved employee to contest his case before the Estate Officer and may approach the Tribunal only after final orders have been passed by the Estate Officer under the P.P. Act. If the Government employee is aggrieved by the orders of the Estate Officer, he can approach the Tribunal at that stage, but if he chooses to file an appeal before the District Judge, he may not file any application before the Tribunal until completion of his case before any application before the Tribunal until completion of his case before the appellate authority (District Judge).
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20. The aforesaid ratio was relied upon in Babli Bai's case ibid and the High court of Delhi clearly observed that once the eviction proceedings was initiated under the P.P.Act, 1971, the Tribunal cannot assume jurisdiction and the remedy lies, under the P.P.Act, before the appropriate forum.

21. In so far as Milap Chand's case is concerned the Co-ordinate Bench of this Tribunal on the ground that no action has been initiated under the P.P.Act, in case of cancellation of accommodation on account of subletting, assumed the jurisdiction and disposed of the case.

22. If one has regard to the ratio of the Apex Court in Rasila Ram's case ibid, the irresistible conclusion which can be derived is that once the Government servant is held to be in occupation of public premises within the meaning of P.P.Act and the appropriate orders have been issued, the jurisdiction of Tribunal is ousted.

23. I have carefully perused the material notice issued to the applicant under Section 4 of the P.P.Act, 1971 where Estate Officer has already ^uformed an opinion regarding unauthorised occupation of the applicant and a show cause notice for eviction has been issued and the same shall culminate ^uinto an order of eviction as prescribed under 5 of the Act, ibid.

24. The contention of the learned counsel for applicant that the accommodation first be cancelled and after the notice under Section 4 a specific order is to be passed by the Estate officer for declaration of the applicant as unauthorised occupant then only the Tribunal's jurisdiction is ousted, cannot be countenanced. As this will give rise to anomalous situation which renders the dictum of the Apex Court in Rasila Ram's case ^{is} impracticable and redundant, and in view of the Article of 141 of the Constitution, the same is a binding law upon the Tribunal.

25. From the perusal of the decision in Rasila Ram's case and the logical interpretation what has been meant by declaration of unauthorised occupant cannot be construed as declaration under Section 5 of the P.P. Act, 1971 as before issuing of notice under Section 4 the opinion firmed by the Estate Officer as to unauthorised occupation of public premises, shall have to be treated the order declaring the incumbent as an unauthorised occupant. Under Section 5 of the Act ^{ibid}, the eviction is to be ordered on satisfaction that the public premises are in unauthorised occupation. To my considered view, once the proceedings ^{start} under Section 4 of the P.P. Act, ^{ibid} then any order passed subsequently, the remedy lies under the Act in form of an appeal under Section 7 of the Act before the District Judge. As in the instant case, Estate Officer has already ^{formed} an opinion regarding unauthorised occupation of the applicant and he has been accorded an opportunity to

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show cause, this Court has no jurisdiction as the issue is not a service matter to take cognizance and the jurisdiction of this Tribunal is ousted.

26. In so far as ~~case of~~^u Milap Chand is concerned, therein no proceedings have been started under P.P.Act, 1971 as reflected from the order passed finally disposing of the OA, and moreover the case was of an unauthorised occupation on account of subletting which stands on a different footing, the case is distinguishable and would not apply to the facts and circumstances of the present case. Moreover, in the light of the decision of Rasila Ram's case which has more precedent value and is binding, the decision in Milap Chand supra would be of no help to the applicant.

27. In the result, and having regard to the reasons recorded, I am of the considered view that once a proceeding under Section 4 of the P.P.Act ibid is initiated, the Tribunal has no jurisdiction to take cognizance of such a matter and the jurisdiction of the Tribunal is ousted.

28. In the result, the OA is dismissed for lack of jurisdiction with liberty to the applicant to pursue his remedy under the relevant rules before the appropriate forum. Interim order already passed is vacated. No costs.

S. Raju

(Shanker Raju)
Member (J)

/rao/