

**Central Administrative Tribunal
Madras Bench**

MA/310/00107/2016 (in)(&) OA/310/00744/2014

Dated Thursday the 25th day of February Two Thousand Sixteen

P R E S E N T

Hon'ble Mr.R.Ramanujam, Member(A)

C.A.George
S/o C.K.Antony,
Private Secretary to Commissioner of
Income Tax-IX, 2nd Floor,
Kannammal Building,
No.611, Anna Salai, Chennai 600 006. .. Applicant/Applicant

By Advocate M/s.Ravi Anantha Padmanabam

Vs.

1. Union of India, rep by
The Chief Commissioner of Income Tax,
121 Mahatma Gandhi Road,
Nungambakkam, Chennai 600 034.
2. The Income Tax Officer(HQ)(ESTATES),
121, Mahatma Gandhi Road,
Nungambakkam, Chennai 60 034.
3. The Administrative Officer,
O/o Commissioner of Income-Tax-IX,
121, Mahatma Gandhi Road,
Nungambakkam, Chennai 600 034. .. Respondents/Respondents

By Advocate Mr.M.T.Arunan

ORDER
(Pronounced by Hon'ble Mr.R.Ramanujam, Member(A))

The case of the applicant is that he is presently working as Private Secretary to the Commissioner of Income-Tax. He was allotted Type IV Quarters at SAF Games Village, Koyambedu, Chennai in 2007 on payment of licence fee as part of a special drive by the department. While so, he was asked to vacate the said quarters by letter dated 19.10.2012. On his representation to the respondents, the matter was treated as closed and thereafter the department did not pursue on the said letter. Accordingly, the applicant continued to remain in occupation of the same quarters. Thereafter, in January 2014 the applicant was allotted Type III Quarters at Anna Nagar and the Type IV quarters allotted to him was cancelled. The representation made by the applicant to cancel the Type III allotment was rejected by impugned order dated 17.3.2014 of the 2nd respondent. He was further directed to vacate the the Type IV Quarter, failing which the applicant would be treated as unauthorized occupant and damage charges of Rs.25,400/- would be charged from the month of April 2014 and recovered from his salary till he vacated the said Quarters. This was followed by impugned letter dated 9.4.2014 issued by the 2nd respondent to the 3rd respondent directing recovery of Rs.25,400/- from the applicant from the month of April 2014 for unauthorised occupation of the Type IV Quarters. Recovery had also been made for April and May 2014. Hence this OA seeking to quash the impugned orders the dated 17.3.2014 and 9.4.2014.

2. The applicant has also filed MA 107/2016 for a direction to the respondents

to permit the applicant to remain in Type IV Quarters at the Income-tax Quarters at SAF Village, Koyambedu till the end of December 2015 and to refund the amount of Rs.50,800/- which was recovered from the salary of the applicant for the months of April and May 2014.

3. The respondents resist the relief sought stating that the Quarter No.C8/11 Type IV was allotted to the applicant at SAF Games Village by Order dated 8.3.2007. The applicant accepted this allotment and took possession on 9.5.2007. Subsequent to the allotment, certain repairs had been carried out by the Department. Though the applicant was not eligible for allotment of Type IV Quarters, he was allotted the same since there was a vacancy at that time. Consequent to the postings of Officers in the rank of Assistant Commissioners of Income-tax, the demand for Type IV Quarters increased. Based on the decision of the then Chief Commissioner of Income Tax, notices were issued to 12 officials including the applicant who were staying in the 'one above' category to vacate the quarters on or before 31.3.2013. The action of the respondents is in accordance with the relevant rules and no grievance could be made out, it is submitted.

4. Heard the learned counsel for the applicant and the respondents and perused the pleadings, the reply, reply to MA and other material produced by the rival parties.

5. Learned counsel for the applicant submits that the applicant was unable to vacate the quarters allotted to him for the reason that his son was studying in Class 11 and had started taking lessons for Class 12 at the relevant time. Now, he has

vacated the accommodation in December 2015 and he is due for superannuation in October 2016. The respondents had recovered penal rent for the months of April and May 2014 from the applicant with a view to securing his eviction from the Type IV Quarters occupied by him. However, further recovery had been stayed by an interim order of this Tribunal. It is submitted that the applicant was never informed that he was not entitled to Type IV accommodation at the time of allotment in 2007 or later till the year 2012. Now that the respondents have succeeded in their objective and the applicant has vacated the accommodation, the amount deducted as penal rent may be directed to be refunded to him. Direction may also be issued not to recover penal rent for the period the interim order was in operation. Learned counsel for the applicant also draws attention to the representation of the applicant dated 21.12.2015 for refund of the amount of Rs.50,800/- and requests for a direction to the respondents to consider the same.

6. Learned counsel for the respondent however, draws attention to SR 317 P(4) of Allotment Rules, Department of Revenue and Company Law Notification dated 8th September 1964 which reads as follows:-

“The Head of the department may cancel the existing allotment of an officer and allot to him an alternate residence of the same class or in emergent circumstances an alternative residence of the class next below the class of residence in occupation of the officer, if the residence in occupation of the officer is required to be vacated.”

He further draws attention to the following statement of the applicant in the OA:-

“the applicant is desirous of vacating the Type-IV

Quarters by the end of the next academic year i.e., April 2015 as his son is doing plus tow course and for which, he goes tuitions nearby his home.”

However, the applicant vacated his quarters only in December 2015. It is submitted that the applicant was not entitled to the allotment of Type IV Quarters but he was allotted the said Quarters at the relevant time only because of sufficient availability. Once the demand for Type IV accommodation increased from Officers who were entitled to it, notice was issued to the applicant and others under the relevant rule.

7. I have carefully considered the facts of the case in the light of the relevant rules. It is not in dispute that the respondents allotted Type IV Quarters to the applicant knowing that it was one above his entitlement. The applicant enjoyed undisturbed possession for five years. He was also permitted to continue to occupy the house after the first notice was issued on 19.10.2012. The alternate Type III accommodation was allotted to him only on 22.1.2014. Though the earlier allotment dated 26.12.2012 had been declined by the applicant, the respondents had not made it an issue at that time.

8. It appears that the applicant was not aware of his non-entitlement to Type IV accommodation and the fact that he could be asked to vacate it any time, if the demand from incoming entitled officers could not be met otherwise subsequently. It would have been appropriate for the respondents to state either in the allotment letter itself or inform the applicant separately that the applicant had been provided accommodation one above his entitlement and he could be asked to vacate it at

short notice, if an officer of entitlement sought that accommodation. However, this was not done.

9. Nevertheless, in view of the allotment rule highlighted by the learned counsel for the respondents, the action of the respondents in directing the applicant to vacate the Type IV Quarters cannot be said to be unauthorised. The applicant could not, therefore, continue to remain in occupation of the quarters as a matter of right. However, in the light of the personal circumstances submitted by the applicant seeking time to vacate the accommodation, I am of the view that the applicant's representation deserves to be given a sympathetic consideration. I, therefore, deem it appropriate to permit the applicant to submit a detailed representation to the respondents for condonation of delay in vacating the quarters and waiver of penal charges within a period of two weeks. On receipt of such representation, the respondents shall consider the matter sympathetically in accordance with law and the relevant rules and pass a reasoned and speaking order within a period of four weeks thereafter. The applicant shall also be heard before passing final orders. No recovery shall be made from the applicant in the meantime.

10. The OA is disposed in the above terms. Accordingly, the MA also stands disposed of. No order as to costs.