



CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA

No. O.A. 566 of 2017
M.A. 327 of 2017

Reserved on: 10.12.2019

Date of order: 26.12.2019

Present : Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

Bivas Chandra Das,
Son of Ashok Kumar Das,
Aged about 56 years,
Working as Examiner-II,
Base Censure Section,
C/O-99 APO,
Under the Administrative Control of JS (E/CAO),
Ministry of Defense,
Residing at AC-21/17/18, King Plaza,
Deshbandhunagar,
Baguihati,
Kolkata - 700059.

---Applicant

Versus

1. Union of India,
Through the Secretary to the
Ministry of Urban Development,
Government of India,
Nirman Bhawan,
New Delhi - 110108.
2. The Superintending Engineer,
Kolkata Central Circle No. II,
Central Public Works Department,
Nizam Palace - 700020.
3. The Estate Manager,
Government of India,
5 Esplanade East,
Kolkata - 700069.
4. The Head Clerk (Allotment),
Estate Manager's Office,
Kolkata - 700069.

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--Respondents.



For the Applicant : Mr. A. Chakraborty, Counsel

For the Respondents : Mr. B.P. Manna, Counsel

ORDER

Per Dr. Nandita Chatterjee, Administrative Member:

The applicant has approached this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 praying for the following relief:-

“(a) Office Order dated 10.12.2015 passed by the respondent No. 2 is not tenable in the eye of law and as such the same may be quashed.

(b) Office Order dated 09.09.2015 passed by the respondent No. 3 is not tenable in the eye of law and as such the same may be quashed.

(c) An order do issue directing the respondents not to give any effect or further effect to the Office Orders dated 10.12.2015 and 09.09.2015 issued by the respondent Nos. 2 and 3 respectively.”

2. An M.A. has been filed bearing No. 327 of 2017 praying for condonation of delay in filing the above mentioned O.A.

3. Heard rival contentions of both Ld. Counsel, examined pleadings and documents on record.

4. The facts, in a narrow compass is that, the applicant was allotted a Central Government Flat No. 197 under general pool accommodation from the office of the respondent No. 3, the Estate Manager, Government of India, 5, Esplanade East, Kolkata and the applicant had occupied the same on 30.12.2014. A complaint dated 9.7.2015 was received to the effect that the flat was unauthorisedly sublet to a private individual following which an inspection was held of the subject flat. Although the flat was found locked, the allottee of the adjoining flat namely, Flat No. 198 informed that one Ashis Anand was residing on rental basis in the said flat. The applicant was thereafter issued a show cause notice and asked to appear before the Hearing Officer. During hearing, the applicant admitted that he had indeed sublet the said quarter to Shri Ashis Anand and that he would vacate the flat as early as possible (Annexure R-4 to



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the reply). Thereafter, on the basis of the applicant's own admission that he had sublet the flat to an unrelated private individual, a memo was issued on 9.9.2015 cancelling his allotment and calling for payment of licence fee at double the rate of damages. The applicant was also directed to vacate the premises forthwith. A recommendation was further made to initiate disciplinary proceedings against the applicant and to hold him ineligible for Govt. accommodation for the remaining period of his service.

The applicant, thereafter, preferred a statutory appeal which was rejected by the appellate authority. Being aggrieved with the cancellation orders as well as the appellate order, the applicant has approached the Tribunal in the instant O.A. on the primary ground that such orders were issued by the Head Clerk of the Estate Manager's Office, who is an incompetent authority.

5. During hearing, a preliminary objection was raised by the Ld. Counsel for the respondents that this Tribunal lacks the jurisdiction to adjudicate the matter, which is under the purview of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971.

6. As the issue of jurisdiction is a preliminary issue to be raised and decided at the threshold, we would address this preliminary objection raised by the respondents with regard to admission of the O.A.

Administrative Tribunals have been established under the aegis of Administrative Tribunals Act, 1985. Chapter 3 of the Act provides for jurisdiction and authority of the Tribunal under the Act. The provisions make it clear that the Tribunals will exercise jurisdiction on recruitment and service matters relating to service matters or posts. The Tribunal has the same jurisdiction, which a Civil Court or High Court used to exercise before establishment of the Tribunal over all matters relating to

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recruitment and all service matters in respect of All India Service and Civil Service or Civil post or to a post held by a civilian in defence services. Although the forum depends on litigant's discretion and the litigant does reserve the right to chose the forum that will serve him better, it is trite law that such choice is limited only to such forum wherefrom the cause of action has arisen.

In this matter, the cause of action are two orders of the office of the respondent No. 3, namely, the Estate Manager, Government of India, Kolkata, acting under authority of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971.

7. In ***Union of India v. Sh. Rasila Ram & Ors. JT 2000 (10) SC 588*** (relied upon by the respondents) the Hon'ble Apex Court held as follows:-



"The aforesaid appeals are directed against the order of the Full Bench of the Central Administrative Tribunal in a batch of applications before it recording a finding that an order passed by the competent authority under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, for eviction would also come within the purview and jurisdiction of the Administrative Tribunal constituted under Administrative Tribunals Act, 1985. The Tribunal by the impugned order has construed the expression 'service matter' defined in Section 3 (q) of the Administrative Tribunals Act and because of the expression 'any other matter whatsoever' occurring in Clause (v) thereof, it has come to the conclusion, that the eviction of unauthorized occupants from the Government quarter would tantamount to a service matter, and therefore, Tribunal retains jurisdiction over the same, in view of the over riding effect given to the Act by virtue of Section 33 of the said Act.

The Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (hereinafter referred to as the Eviction Act) was enacted for eviction of unauthorized occupants from public premises. To attract the said provisions, it must be held that the premises was a public premises, as defined under the said Act, and the occupants must be held unauthorized occupants, as defined under the said Act. Once a Government servant is held to be in occupation of a public premises as an unauthorized occupant within the meaning of the Eviction Act, and appropriate orders are passed thereunder, the remedy to such occupants lies, as provided under the said Act. By no stretch of imagination the expression any other matter in Section 13 (q) (v) of the Administrative Act would confer jurisdiction on the Tribunal to go into the legality of the order passed by the competent authority under the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. In this view of the matter, the impugned assumption of jurisdiction by the Tribunal over an order passed by the competent authority under the Eviction Act must be held to be invalid and without jurisdiction. This order of the Tribunal accordingly stands set aside. The appeals are accordingly allowed."

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The Hon'ble Apex Court has, therefore, unequivocally ruled that the Administrative Tribunals are not conferred with jurisdiction to go into the legality of the orders passed by the competent authority under the provisions of Public Premises (Eviction of Unauthorised Occupants) Act, 1971.

The applicant would attempt to counter such ratio by referring to an order of this Tribunal of the Chandigarh Bench, which, although referred to in his rejoinder, is not annexed for ready reference precluding any conclusion as to whether it comes to his aid. Ld. Counsel for the applicant, during hearing however, would furnish an order of the Principal Bench of this Tribunal in **Shri Ram Singh v. Union of India (O.A. No. 159 of 2011)**, whereby the Principal Bench had quashed the orders of cancellation of quarters. The Tribunal upon being seized with the issue of jurisdiction, had held as follows:-



"4. Having given my careful consideration, I am unable to accede to the preliminary objection as the subject matter of the present Application is the correctness and legality of the order of cancellation. The proceedings under PP Act, proceed on the premises of valid cancellation of allotment. The issues raised in the present application are ante to the condition precedent for initiation of proceedings under PP Act."

Hence, the applicant before the Principal Bench in O.A. No. 159 of 2011 had raised issues which were ante to the orders issued under the PP Act. In the present matter, the applicant has questioned the competence of the authority under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. The notice dated 9.9.2015 (R VII) to the reply directs the applicant to vacate the possession of the quarter failing which eviction proceedings will be initiated against him. Hence, unlike the applicant in O.A. No. 159 of 2011, the notice so impugned is not confined only to the act of cancellation.

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Accordingly, the facts in the two O.A.s being distinct, we rely on the settled law that the horizontal principle of precedent and "stare decisis" is a rule of prudence which may be diluted by factors such as distinction of facts.

Hence, we are of the considered view that the O.A. fails due to lack of jurisdiction. M.A. No. 327 of 2017, praying for condonation of delay, is disposed of accordingly.

No costs.

(Dr. Nandita Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member



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