

Central Administrative Tribunal
Principal Bench

O.A.No.1414/2001

Hon'ble Shri Shanker Raju, Member(J)

New Delhi, this the 17th day of July, 2002

Shri Udhbash Mukherjee
s/o Late Shri S.K.Mukherjee
r/o Qr. No.13, Teachers Staff Quarters
Kendriya Vidyalaya No.2
Near A.P.S.Colony
Delhi Cantt.,
New Delhi.

... Applicant

(By Advocate: Shri Sama Singh)

Vs.

1. Kendriya Vidyalaya Sangathan
through the Commissioner
7, Shaheed Jit Singh Marg
Near Jawahar Lal Nehru University
New Delhi.
 2. Chairman
Kendriya Vidyalaya Management Committee
Delhi Cantt.
K.V.No.2, Delhi Area Head Quarters
Near Gopi Nath Bazar
Delhi Cantt.
New Delhi.
 3. Principal
Kendriya Vidyalaya No.2
Gurgaon Road
Delhi Cantt.
New Delhi.
- ... Respondents

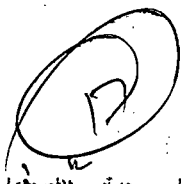

(By Advocate: Sh. S.Rajappa)

O R D E R

By Shanker Raju, M(J):

Applicant impugns respondents' letters dated 13.10.2000, 13.11.2000 and 20.12.2000 wherein on cancellation of his accommodation and rejection of his request to retain the Government accommodation has been asked to pay a market rent for the period of unauthorised occupation. Applicant has sought quashing of these orders and directions to retain the accommodation under consideration on normal licence fee.

- 2 -

2. Applicant has been working in Kendriya Vidyalaya Sangathan (in short as "KVS") as a Drawing Teacher and was allotted, while posted at KVS No.2, Gurgaon Road, Delhi Cantt, a Government accommodation of Quarter No. KV-II-66/3, Kandhar Lines, Delhi Cantt. Thereupon, in the year 1990, he was allotted another accommodation No.13, Type-II, in Teacher Staff Quarters, KV No.2, Delhi Cantt. Applicant continuous to reside in the same.

3. Applicant got transferred to KVS No.4, wherein the Principal of the School served upon the applicant an advance notice for vacation of Government accommodation on expiry of permissible period of two months from the date of the relieving, i.e., 1.9.2000 upto 31.10.2000. Another notice was served upon the applicant on 13.11.2000 stating that the applicant is to be treated as an unauthorised occupant and is liable to pay a market rent. Subsequently, by an order dated 20.12.2000 the request of the applicant for retention of the quarter was rejected and he has been directed to pay a market rent. The Cheque, tendered by the applicant, of normal licence fee was returned back.

4. Shri Sama Singh, learned counsel appearing on behalf of applicant, by referring to Allotment of Residences for Employees of Kendriya Vidyalayas Rules, 1976 and interalia referring to Rule VI (Allotment of Residences), contended that the issue of allotment is to be decided only by Allotment Committee and the

- 3 -

Principal is not empowered to allot the quarter and as such it is only the Allotment Committee who alone can cancel the quarter and the Principal is an incompetent to do so. As such it is stated that the letters issued by the Principal, who was biased with the applicant, as he had confronted in the Board or without any jurisdiction.

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5. It is further contended by Shri Sama Singh that all the KVS in Delhi Cantt, particularly KVS No.2 and KVS No.4 are situated in the same cluster and the working of the applicant in KV 4 does not affect the allotment of Quarter No.13. It is further stated that several Teachers and Officers, by filing representation, have been allowed to retain the accommodation and were allowed to pay normal licence fee and differential treatment meted out to the applicant is violative of Articles 14 and 16 of the Constitution of India, the action of the respondents is not legally sustainable.

6. Shri Sama Singh by referring to the amended rules of KVS (Allotment of Residence) Rules, 1998 and drawn attention to Rule 20 thereof, contended that in absence of any matters not provided under Rules, the Rules of Government and orders issued thereunder shall mutatis mutandis applies. In this back ground, it is stated that no provision has been laid down as to how damages are to be worked out as such in absence of any provision for damages being a Public Premises and the accommodation has been owned by the Central Government and belonged to defence accommodation, the cancellation of the accommodation

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and assessment of damages cannot be gone into under the allotment rules of the respondents but the action should be taken under Public Premises (Eviction of Unauthorised Occupants) Act, 1971 which interalia under Sections 4 and 7 envisages a detailed procedure.

7. Shri Sama Singh further contended that applicant does not own house in Faridabad where the construction is not even started and further stated that Co-ordinate Bench of this Tribunal in A.K.Shrimali Vs. KVS & Others, OA 869/2000, decided on 22.11.2000 directed to charge of double the licence fee as per the Rules of 1976 *ibid*. It is stated that he is in similar circumstance and the decision, in all fours, covers his case.

8. On the other hand, Shri S.Rajappa, learned counsel appearing on behalf of respondents, at the outset, stated that as the KVS is a Society, registered under the Societies Registration Act and being an autonomous body and not notified under P.P.Act, the provisions of P.P.Act, 1971 would have no application and by referring to the amended Rules of 1998, and referring to Clause 2 thereunder, it is contended that any allotment of Residence which is subsisting immediately before the commencement of these rules shall be deemed to be an allotment duly made under these rules and all the provisions of these rules shall apply in relation to that allotment.

9. It is further stated by Shri Rajappa that Principal of KVS has control over allotment and as the old Rules of 1976 ceased to exist, the same would not

have any application. It is further contended that as per the letter of allotment licence fee shall be payable from the date of possession of the quarter and the Principals reserve the right to cancel the quarter in accordance with the Rules. It is stated that the allotment does not create any right or tenancy in favour of the allottee.

10. By referring to Rule 12(2)(iv) of the Rules of 1998 *ibid*, it is stated that in case of an employee transferred to another KV, the permissible period to retain the accommodation is for two months, applicant has been served with an advance notice to vacate the accommodation within the stipulated period, i.e., from 1.9.2000 to 31.10.2000. Having failed to comply with the orders, the applicant has become an unauthorised occupant and is liable for damage rent. It is however stated that respondents have no objection of stay of the applicant in the premisses but subject to payment of damage/market rent. It is stated that as per Rule 19 of the Rules of 1998 *ibid* on deemed cancellation, the allottee, who remained in occupation, is liable to pay damages for use and occupation of the residence as may be determined by the Government or the Sangathan from time to time. He further referring to Rule 20, it is stated that in case there is no provision of assessment of damages, the Government orders issued on the subject and the rules thereunder shall apply *mutatis mutandis*. According to the Government rules the unauthorised occupant is liable to pay damages at market rent.

11. I have carefully considered the rival contentions of both the parties and perused the material on record. The issue requires our consideration, in this OA, is whether the accommodation allotted to the applicant is a public premises as to under Rule 2(e) of the P.P.Act, 1971 to attract the provisions of Act for recovery of damages and eviction of an unauthorised occupant.

12. Public premises has been defined in P.P.Act is as under:

"(e) "public premises" means-

- (1) any premises belonging to, or taken on lease or requisitioned by, or on behalf of, the Central Government, and includes any such premises which have been placed by that Government, whether before or after the commencement of the Public Premises (Eviction of Unauthorised Occupants) Amendment Act, 1980, under the control of the Secretariat of either House of Parliament for providing residential accommodation to any member of the staff of that Secretariat;
- (2) any premises belong to, or taken on lease by, or on behalf of,-
 - (i) any company as defined in Section 3 of the Companies Act, 1956 (1 of 1956), in which not less than fifty-one per cent of the paid-up share capital is held by the Central Government or any company which is a subsidiary (within the meaning of that Act) of the first-mentioned company,
 - (ii) any corporation (not being a company as defined in Section 3 of the Companies Act, 1956 (1 of 1956), or a local authority] established by or under a Central Act and owned or controlled by the Central Government,
 - (iii) any University established or incorporated by any Central Act,

- (iv) any Institute incorporated by the Institutes of Technology Act, 1961 (59 of 1961),
 - (v) any Board of Trustees constituted under the Major Port Trusts Act, 1963 (38 of 1963),
 - (vi) the Bhakra Management Board constituted under Section 79 of the Punjab Reorganisation Act, 1966 (31 of 1966), and that Board as and when renamed as the Bhakra-Beas Management Board under sub-section (6) of Section 80 of that Act;
 - (vii) any State Government or the Government of any Union Territory situated in the National Capital Territory of Delhi or in any other Union Territory,
 - (viii) any Cantonment Board constituted under the Cantonments Act, 1924 (2 of 1924); and
- (3) in relation to the National Capital Territory of Delhi,-
- (i) any premises belonging to the Municipal Corporation of Delhi, or any municipal committee or notified area committee,
 - (ii) any premises belonging to the Delhi Development Authority, whether such premises are in the possession of, or leased out by, the said Authority; and
 - (iii) any premises belonging to, or taken on lease or re-quisioned by, or on behalf of any State Government or the Government of any Union Territory;"

22

13. From the aforesaid definition any premises belonging to the Central Government and owned by the Central Government, is a public premises. Even as per the stand of the respondents in the reply, Quarter No.13 allotted to the applicant was a defence accommodation out of the station pool accommodation it was entrusted to the KVS. No right or interest or propriety was created in favour of the KVS. KVS is not a lessee of the Central Government. Merely handing over of the quarter to KVS under Station Pool,

Ministry of Defence has not lost control over the same as its owner. As held in Naresh Kumar Vs. ADJ, Varnasi, 1990(2) ARC 193, it has been held as under:

".....In order to attract the application of the Act it would be sufficient to prove firstly that the premises in question belong to the Central Government which term would include the concept of ownership and secondly the person sought to be evicted under the Act should be in unauthorised occupation as defined by clause (9) of Section 2 of the Act. If these two elements are present, the procedure laid down for the eviction of such unauthorised occupants would be clearly available to the Central Government irrespective of whether the person in unauthorised occupation holds directly from the Central Government or through someone managing the premises on behalf of the Central Government."

14. If one has regard to the aforesaid ruling the contention of the respondents that as KVS is an autonomous body and is registered under the Societies Registration Act, the accommodation provided to their employees does not fall within the ambit of public premises, cannot be countenanced. The accommodation which has been provided to the applicant was owned by the Government, i.e., defence accommodation which has been diverted to the KVS as Station Pool accommodation. Merely because the applicant is an occupation of the Central Government accommodation, through KVS does not take away the accommodation from the purview of the public premisses.

15. Having failed to establish that the premisses is not a public premisses within the definition of Section 2 (e) of the P.P.Act, 1971, as per the Section 4 and 7 of the Public Premises Act, ibid, before eviction of an unauthorised occupant, it

is incumbent upon the Estate Officer to serve a show cause notice under Section 4 of the Act *ibid* and thereafter in the matter of recovery of damages under Section 7 of the Act *ibid*. The assessment is to be done by the Estate Officer and after a due show cause notice recovery can be effected. Being a public premises the Rules of KVS (Allotment of Residence) Rules, 1998 would have no application in the matter of eviction of unauthorised occupant or charge of damage rent.

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16. Rule 20 of the Allotment Rules of 1998 *ibid* also provides application of rules of the Government and orders of the Government *mutatis mutandis* apply to the matters not provided under these rules. There is no procedure laid down under the above rules, for declaring the person unauthorised occupant and the eviction thereof. Also no procedure has been laid down as to how damages are to be worked out.

17. Subsisting Rules are to give way to the provisions of Public Premises (Eviction of Unauthorised Occupants) Act, 1971 an enactment of Parliament, the aforesaid P.P. Act, 1971 shall override the provisions of the Rules of the KVS as admittedly no notices have been issued to cancel the accommodation to declare the applicant as an unauthorised occupant and to recover damages from the applicant under P.P. Act, 1971, the orders passed by the respondents are without any jurisdiction and are not in consonance with the provisions of P.P. Act, 1971 *ibid*. As such, in my considered view, these orders are not sustainable.

18. In the result, OA is partly allowed. Impugned orders dated 13.10.2000, 13.11.2000 and 20.12.2000 are quashed and set-aside. However, this will not preclude the respondents to take up appropriate proceedings against the applicant, if so advised, for eviction and recovery of damages in accordance with the provisions of P.P.Act, 1971. No costs.

S. Raju

(Shanker Raju)
Member(J)

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