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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1541/2001
OA No.1542/2001

New Delhi this the 7th day of June, 2002.

HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)

OA No.1541/2001

Dr. J.S. Martolia,
S/o Shri Soban Singh,
R/o Flat No.1, Type-IV,
Central Jail Campus,
Tehar, New Delhi-110018.

-Applicant

(By Advocate Shri B. Krishan)

OA No.1542/2001

Dr. B.N. Mishra,
S/o Shri B.P. Mishra,
R/o Flat No.4, Tupe-IV,
Central Jail Campus,
Tehar, New Delhi.

-Applicant

(By Advocate Shri B. Krishan)

-Versus-

Govt. of N.C.T. through:

1. The additional Director General
Cum I.G. (Prisons),
Prisons Head Quarters,
Near Lajwant Garden Chowk,
Janak Puri, New Delhi.
2. Superintendent (PHQ),
Office of the Additional
Director General Cum I.G. (Prisons),
Prisons Head Quarters,
Lajwanti Garden Chowk,
Janak Puri, New Delhi.
3. The Medical Superintendent,
Deen Dayal Upadhyay Hospital,
Hari Nagar,
New Delhi-110 064.
4. The Secretary,
Land & Building Department,
"A" Block, Vikas Bhawan,
Indraprastha Estate,
New Delhi-110 002.

-Respondents

(By Advocate Shri George Paracken)

O R D E R

By Mr. Shanker Raju, Member (J):

As these two OAs involve common questions of law and fact they are being disposed of by this common order.



2. In OA-1541/2001, applicant impugns respondents' order dated 3.1.2001, cancelling his allotment of Government accommodation and further order dated 10.5.2001, wherein market rent at the rate of Rs.5.434/- per month has been worked out and directed to be recovered from the salary of the applicant every month till vacation of the Jail accommodation. He was transferred to Din Dayal Upadhyay Hospital. He is a handicapped person having 60% disability. In pursuance of his transfer he was initially allowed to retain the accommodation till 31.3.2001, failing which market rent at the rate of Rs.60/- per square meter shall have to be recovered till he vacates the quarter. Applicant retained the accommodation and has been imposed upon damages at a market rate from his salary. The accommodation was later on vacated and the applicant has requested the respondents to allot him an alternate accommodation which has not been paid any heed to.

3. In OA-1542/2001 applicant was allotted an accommodation in Central Jail, Tihar, since he has been transferred w.e.f. 7.12.2001 to Din Dayal Upadhyay Hospital. By the impugned order dated 3.1.2001 his allotment was cancelled by the respondents and was allowed extension to retain accommodation till 31.3.2001. As the applicant is still to vacate the Government accommodation orders have been issued on 10.5.2001 to recover Rs.5434/- from his salary till he vacates the accommodation as market rent. Applicant has also requested respondents to allot him an alternate accommodation which has not been allotted yet.

4. In both the OAs learned counsel Sh. B. Krishan raised the following contentions:

i) as it is not disputed that both the hospitals, i.e, Central Jail Hospital and Din Dayal Upadhyay come under Government of N.C.T. Delhi, in view of Rule 19 (4) of the Delhi Administration (Allotment of Government Residence General Pool) Rules, 1977 in case of officers/officials who are in occupation of earmarked houses for a particular post on transfer/deputation/appointment to a higher post under Delhi Administration, may be considered for allotment of accommodation according to rules on priority basis. Till then they are eligible to retain the said accommodation on payment of licence fee at normal rate under FR 45-A. Placing reliance on this it is contended that as the statutory rule is binding on respondents, i.e., Central Jail, Hospital, Tihar applicants have a right to be considered for allotment of alternate accommodation on priority basis and till then they are eligible to retain the accommodation on payment of normal rent.

ii) By referring to SR-317-B-2 it is contended that an allotment shall be effective from the date when it is accepted by the officer and may be retained on happening of any of the events specified in column 1 and corresponding entry and according to him in case of transfer to an ineligible office in Delhi the permissible period for retention of the residence is two months and not being a general pool accommodation the cancellation of accommodation without waiting for two months period renders the cancellation order illegal as well as consequent



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recovery of damages on market rent. It is also stated that the impugned orders have been passed by the respondents without assessing under the Act, i.e., Public Premises (Eviction of Unauthorised Occupants), Act, 1971 (hereinafter referred to as P.P. Act). As such the aforesaid orders which have no legal sanction are only administrative order and are not sustainable in view of the decision of the High Court in Lt. Col. B.B. Asthana v. Union of India & Ors., 65 (1997) DLT 86 (DHC).

iii) There are no rules, guidelines and instructions with the respondents to assess the damages and only provision which exists on the subject is rule 8 of the P.P. Act 1971, which, inter-alia, incorporates consideration of various factors while assessing the damages, i.e., purpose and the period for which the public premises were in unauthorised occupation; the nature, size and standard of the accommodation available in such premises; the rent that would have been realised if the premises had been let on rent for the period of unauthorised occupation to a private person; any damage done to the premises during the period of unauthorised occupation; any other matter relevant for the purpose of assessing the damages. It is stated that impugned orders have not been passed under the aforesaid Act and damages have been assessed arbitrarily and as such same have no legal sanction and cannot be acted upon. In fact the respondents have not ascertained the damages and market rent cannot be charged as, jail quarters cannot be allotted to any private person for which the market rent would be charged. It is contended that unless an occupant is adjudged as an authorised occupant, there is no question of

his being treated as such for recovery of damages and has placed reliance on the decision of the Apex Court in Shangrila Food Products Ltd. Vs LIC , (1996)5 SCC 54. It is also stated that the applicant in OA-1541/2001 is a physically disabled Govt. officer and special provisions exist for out of turn allotment of Government accommodation and the respondents have not considered the same. Learned counsel further stated that market rent is to be ascertained by the Estate Officer under the P.. Act, 1971 before resorting to damages against the applicant. It is stated that as the applicants are in essential services they are entitled for alternate accommodation in essential service accommodation.

5. Govt. of N.C.T. of Delhi in their reply though admitted that both the departments, Central Jail and DDU Hospital come under them but for Central Jail authorities they have separate rules. It is stated that allotment of quarter is on the basis of salary or on seniority grounds and as per seniority for medical category the houses have been allotted to those who have been appointed till 14.10.74 and eligibility for Type-IV is for appointees who have been appointed prior to 31.12.80.

6. Respondents' counsel for Central Jail Tihar Shri George Paracken has denied the contentions and referred to Delhi Prisons (Inspection, Meetings and duties of Officers) Rules, 1988 and more particularly to Rule 138 which deals with Jail Prisons allotment of residential accommodation. According to him Jail quarters are provided for the Jail officers employed therein and are having separate rules. Applicants being medical Doctors have been



allotted accommodation inside the jail premises. Due to exigencies of work since they have been transferred the other officers who are waiting for being allotted those accommodation have to be considered. It is also stated that applicant in OA-1542/2001 at the time of allotment has given an affidavit to vacate the accommodation. Having failed to do so is bound by the doctrine of estoppel and it is also stated that CPWD fix rent in respect of public premises as per their manual and once the allotment is cancelled the incumbent becomes automatically unauthorized occupant. As the Jail authorities are having separate pool the statutory rules of NCT Delhi are not applicable on them. Jail being not a department of Delhi Govt. rather an institution. As regards the market rent is concerned, which has been fixed by an expert body any grievance regarding the damages is to be gone in a separate proceeding. As these quarters are essential quarters are to be regulated and to be vacated as soon as the person shifts from Central Jail Hospital at Tihar. It is not a departmental pool. As per the terms of allotment applicants are not entitled to retain accommodation beyond two months from the transfer but they have been allowed to retain till 31.3.2001. As such beyond this period applicant No.1 is liable to pay damages and applicant No.2 to vacate the quarter and to pay damages also. After transfer one is not entitled to have rent free accommodation as the premises occupied is meant for an officer who is working in Jail only. As regards the eviction proceedings the same have already been referred to the Estate Officer under the P.P. Act, 1971. It is also stated that applicant in OA-1541/2001 has managed not to fill up the undertaking before his allotment.

7. Shri George Paracken relying upon the decision of the Apex Court in Union of India v. Sh. Rasila Ram & Ors., CA No.1301-04/1990 decided on 6.9.2000 contended that once a Government servant is held to be in occupation of a public premises as an unauthorized occupant within the meaning of the P.P. Act and more particularly Section 2 (g) which defines unauthorized occupant as a person who after the expiry of the period determined continues to be in occupation of any public premises and on passing appropriate orders cannot resort to an OA before this Tribunal as jurisdiction would not be conferred as per Section 13 (q)(v) of the Administrative Tribunals Act, 1985 and the legality of the order is to be gone into by the competent authority as prescribed under the Act, *ibid*. It is contended that by conferring jurisdiction when a proceeding has been initiated against the applicants under sub Section (2) of Section 4 by issuing them show cause notice for recovery of market rent and eviction results in simultaneous proceedings and the decision arrived at by the Estate Officer who is a quasi judicial authority would amount to encroaching upon the jurisdiction of the Estate Officer under the P.P. Act, 1971 and would also construe staying of the procedure.

8. Shri Krishan replying to the aforesaid objections stated that the jurisdiction of the Tribunal is not barred till an appropriate order under Sections 5 and 7 of the Act *ibid* is passed. It is contended that the remedy thereafter lies under Section 9 of the Act as the aforesaid show cause notice is only an opinion formed by the Estate Officer and not final order has been passed under the Act.

As such, Rasila Ram's case (supra) would not be attracted. He places reliance on the decision of the High Court of Delhi in Smt. Babli & Anr. v. Govt. of N.C.T. of Delhi, 95 (2002) DLT 144 (DB) (DHC) and contended that therein the decision in Rasila Ram's case (supra) has been incorporated only and in view of the decision of the coordinate Bench in Milap Chand v. Union of India & Anr., OA No.1859/2001 decided on 21.5.2002 where only a show cause notice was issued proposing penal action, the decision in Rasila Ram's case (supra) has not been made applicable and the Tribunal quashed the orders by holding that the jurisdiction of the Tribunal remains till an order is passed under the P.P. Act, 1971.

9. I have carefully considered the rival contentions of the parties and perused the material on record. In Rasila Ram's case (supra) the Apex Court has ousted the jurisdiction of the Tribunal under Section 13 (q) (v) as to the legality of the order passed by the competent authority under the provisions of the P.P. Act, 1971. It has been held that once a Government servant held to be in occupation of a public premises as an unauthorized occupant and appropriate orders are passed remedy lies under the said Act. In Babli's case (supra) the following observations have been made by the High Court:

"7. All this notwithstanding, we find that Tribunal had held petitioners OAs not maintainable upon reliance on the Supreme Court judgment in Rasila Ram case (supra) which laid down:

"Once a government servant is held to be in occupation of a public premises as an unauthorised occupant within the meaning of 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 Tribunal 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 PPE 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.

8. We have gone through that judgment which proceeds on the premises that once eviction action was initiated for his unauthorised occupation of premises under the relevant Act, Tribunal could not assume jurisdiction in the matter by reference to Section 2 (Q)(V) by treating it as "any other matter". That conclusively settles the issue once for all and it need be hardly expressed that law laid down by Supreme Court was binding on all including Tribunal and therefore its impugned orders could be faulted for that. This is so for the added reason that Eviction Act provides its own safeguards and remedies and where an employee felt aggrieved of any orders passed under this Act, he was to seek appropriate remedy provided therein instead of approaching the Tribunal with his grievance in this regard."

10. If one has regard to the aforesaid decision where eviction proceeding has been initiated under the P.P. Act, 1971 High Court was of the view that under any other matter figuring in Section 13 (q) (v) Tribunal could not assume jurisdiction in the matter. In view of the High Court decision the decision of the coordinate Bench of the Tribunal is to be ignored. Moreover, if a proceeding is initiated by issuance of notice under Section 4 assumption of Jurisdiction by the Tribunal would certainly amount to encroaching upon the jurisdiction of the Estate Officer under the P.P. Act, 1971. Being not an appellate authority Tribunal is not competent to install proceedings of the Estate Officer as this is the prerogative of the competent authority under the P.P. Act, 1971. The decision of the High Court wherein it has been observed

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that any matter is to be read as esjuda generis in the context of provision of Rule 3 (q) otherwise any contrary interpretation would lead to absurd result which would be against the intent and the purpose of the rules. As the P.P. Act provide its own safeguards and remedies in action where the employee is aggrieved by an order passed and this order cannot be construed as an order under Sections 5 and 7 of the Act but also any proceeding taken under Section 4 of the Act ibid. If any order figuring in Rasila Ram (supra) is to be construed as a final order then such an interpretation goes contrary to the ratio laid down by the Apex Court.

11. In my considered view once a proceeding has been initiated under the P.P. Act, 1971 the jurisdiction of this Tribunal and the relief claimed thereof by the applicant is barred and is not amenable to the jurisdiction of this Court. Admittedly, it is not disputed that the notices have been issued to the applicants under the P.P. Act, 1971 by the Estate Officer, as such the remedy of the applicant lies to the competent authority and before an appropriate forum, as envisaged under the P.P. Act, 1971.

12. In the result the OAs are dismissed for want of jurisdiction, giving liberty to the applicants to redress their grievance before the appropriate forum in accordance with law. The interim orders are vacated.

13. Let a copy of this order be placed in both the files.

S. Raju

(Shanker Raju)
Member (J)

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