

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 2291/2001

NEW DELHI, THIS ^{7th} DAY OF AUGUST 2002

HON'BLE SHRI GOVINDAN S. TAMPI, MEMBER (A)

Morries, Bearer,
Ram Manohar Lohia Hospital,
New Delhi

...Applicant

(By Shri Ashish Kalia, Advocate)

VERSUS

Union of India

1. Medial Superintendent,
Ram Manohar Loha Hospital,
New Delhi
2. CMO (Estates)
Ram Manohar Lohia Hospital,
NEW Delhi

...Respondents

(By Shri R N Singh, Advocate)

ORDER

BY HON'BLE SHRI GOVINDAN S. TAMPI, MEMBER (A)

Challenge in this OA is directed against the alleged arbitrary cancellation of allotment of residential accommodation as well as recovery of market rent as penalty.

2. S/Shri Ashish Kalia and R.N.Singh, ld. counsel appeared for the applicant and the respondents respectively.

3. The applicant, a bearer in R.M.L.Hospital since 25-9-1965, was allotted residential accommodation in Netaji Nagar in 1988, and thereafter in Gole Market area. He has been staying in the quarters with his family since then and had not permitted anyone to stay there. Still, on the basis of some survey, conducted

at his back, his allotment was cancelled and recovery of penal rent of Rs. 1807/- a month had been initiated. His representation against the illegal action has not been replied to while the recovery is continuing. Hence the OA.

4. According to the respondents, the impugned order has been passed by the competent authority after following the necessary procedure. Even otherwise, the OA was not maintainable in view of the Hon'ble Apex Court's decision in the case of **UOI Vs. Rasila Ram** (2000 JT (10) 503) ; 2000 (87) FLR 370). Respondents plead that the allotment was cancelled legally on its being noticed that the applicant had sublet his accommodation at C.249 (Type II), Albert Square, New Delhi, and after having given him all the necessary documents. He was also called upon to explain his conduct which he had failed to do. After receiving the Inspection report, the Estate Officer gave him an opportunity to explain his case. As he did not do so, order was issued on 30-10-99, cancelling the allotment and ordering recovery of Rs. 36,138/- which is in progress. All the submissions made by the applicant against the ;above are wrong and merit rejection.

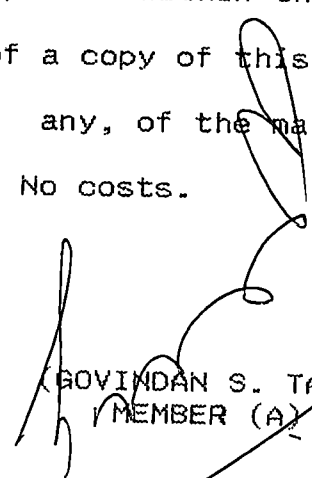
5. Both Sh. Kalia and Sh. Singh reiterated their pleadings during the hearing.

6. I have carefully considered the matter. While the applicant states that he has been denied the accommodation and directed to pay market rent the respondents aver that the impugned order has been issued after going through the necessary proceedings and that the applicant has been justly punished for subletting the accommodation. Respondents also state

17

that the Tribunal's jurisdiction is ousted on account of the Hon'ble Apex Court decision in Rasila Ram's case (supra). Hon'ble Apex Court has directed that the Tribunal has no jurisdiction to go into the legality of the order passed by the competent authority under the P.P.Act of 1971. However, it is seen that no order has been passed under the Act declaring the applicant as an unauthorised occupant, but a bald order has been passed, cancelling the allotment and ordering recovery of penal rent. In the circumstances, the Tribunal's jurisdiction is not taken away. On the merits, I find that no reference is made to the inspection report, its contents, any show cause notice issued or action taken by the Estate Officer under P.P.Act. That being the case, the applicant's case that he has been penalised without being heard is justified. The impugned order is, therefore, vitiated and is liable to be set aside.

7. in the above circumstances, the OA succeeds and is allowed. The impugned order is set aside and is remanded to the respondents with liberty to proceed once again, if so advised, after giving the applicant an opportunity to explain his case in reply to show cause notice containing full details of the charge and pass a reasoned and speaking order and take action thereafter in accordance with law. This exercise may be completed within three months from the date of receipt of a copy of this order. Till such time, recovery, if any, of the market rent, if in progress is stayed. No costs.


(GOVINDAN S. TAMPI)
MEMBER (A)