

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA-12/99

New Delhi this the 30th day of November, 1999.

HON'BLE MR. JUSTICE V. RAJAGOPALA REDDY, VICE-CHAIRMAN

1. Sh. Rajender Pal Sharma,
S/o Shri Nekul Singh Sharma

2. Sh. Shalendra Kumar Sharma,
S/o Sh. Rajendra Pal Sharma

...Applicants

Both Residents of
B-311, Hari Nagar,
New Delhi-110 064.

(By Advocate Shri K.P. Gupta)

-Versus-

1. The Secretary (Land & Building),
Delhi Administration, Vikas Bhawan,
I.P. Estate, New Delhi.

2. The Estate Officer,
Land and Building Department,
(Delhi Administration), A Block,
Vikas Bhawan, I.P. Estate,
New Delhi-110 002.

...Respondents

Sd/- D.N. Goberlain, Proxy Counselor
(By Advocate Mrs. Geeta Luthra)

ORDER

The applicant No.1 was a Post Graduate Teacher (PGT) (English) in Government Boys Senior Secondary School. He retired from service on 30.6.93. He submitted an application on 3.2.93 to R-1, requesting that the Government Flat in which he was residing be transferred and regularised in favour of his son, applicant No.2 who has been working as a Trained Graduate Teacher (TGT) at Government Boys Senior Secondary School, R.K. Puram. Applicant No.2 was residing with applicant No.1, in the above quarter and he was not drawing any HRA. Applicant No.2 also submitted an application dated 17.8.93 to R-1 for regularisation of the aforementioned quarter in his name. However, the respondents had not taken any action

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in this regard. R-2 issued notice dated 31.10.95 under Section 4 (1) of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 to the first applicant ~~to the first applicant~~, holding that the applicant No.1 was an unauthorised occupant of the above Government quarter, directing him to vacate the premises within 15 days thereafter. The applicant challenged the above order before the District Judge, Delhi, the appellate authority under the Act. It was disposed of by an order dated 2.1.97, directing the respondents not to execute the impugned order till 20.1.97. This order was passed on the basis of statement made by the respondents counsel before the appellate authority that the second applicant has been allotted Government quarter No.1892, Type 'B' Sadhora Khurd, Gulabi Bagh. A copy of the order has also been produced before the Court. In view of the special circumstances applicant No.1 did not press the appeal. The respondents thereafter issued the impugned order (Annexure A-I) dated 12.2.97 claiming an amount of Rs.83,964/- being the penal rent from 30.6.93 till 12.2.97 for the unauthorised occupation of the Governemnt quarter. Since the applicant did not pay the said amount, the respondents have not handed over the possession of the quarter which was allotted to applicant No.2. The applicant thereafter moved an application before the appellate authority for the revival of the appeal, but it was however dismissed holding that the question of the liability of the applicant for payment of the licence fee cannot be decided by the appellate authority after the disposal of the appeal. Thereafter the applicants filed the present OA.

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2. The main contention of the learned counsel for the applicants is that the second applicant was entitled to be allotted the quarter in which the first applicant was residing or any other quarter after he retired from service, under the Delhi Administration Allotment of Government Residence (General Pool) Rules, 1977 as the second applicant had fulfilled all the conditions that are prescribed under the rules.

3. It is next contended that when once the second applicant has been allotted the quarter, his allotment cannot be cancelled on the ground that the first applicant has not paid the arrears of rent.

4. It is lastly contended that the applicant No.1 is not liable to pay any penal rent/damages as the applicants have been occupying the house in the absence of allotment of any other quarter in favour of the second applicant and hence he could not have been treated as an unauthorised occupant. Hence, he was not liable to pay any penal rent. The learned counsel for the respondents refutes the contentions and contends that as per the relevant rules, the applicant No.1 is liable to pay the penal rent, as he was occupying the quarter after his retirement and unless the amount demanded is not cleared, the second applicant is not entitled for the possession of the quarter allotted in his favour.

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5. I have carefully considered the arguments of the learned counsel for the parties and also perused the record. The applicant No.1, after his retirement in 1993 submitted an application for regularisation of the Government quarter in favour of his son, applicant No.2 who was working as TGT in the Government Boys School. His son also submitted an application for allotment. It is not in dispute that he was also residing with him and that he was not drawing any HRA. It is also not in dispute that the second applicant was eligible for allotment of a Government quarter, as he, in fact was allotted a quarter.

6. The only question that arises is, whether the first applicant is liable to pay the penal rent for his occupation of the quarter after his retirement, as a condition precedent for the handing over of the quarter to his son.

7. The rules for the allotment of Government quarters to dependents/relations of Government employees on their retirement are called as Delhi Administration (Allotment of Government Residences) Rules. They are contained in OM No.12035(7)/79-Pol.II dated 1.5.81 and OM No.12035 (14)/82-Pol.II Vol.II (i) dated 19.11.87 and 17.10.91. It provides that a Government servant in occupation of a Government residence retires from service his/her dependent may be allotted Government residential quarter on ad hoc basis subject to the following conditions:

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- (i) the dependent should be eligible for allotment of a Government residence;
 - (ii) he should submit an application to the competent authority;
 - (iii) he should have been residing continuously with the retiring Government servant for at least three years immediately preceding the date of retirement of the Government servant;
 - (iv) he should not have been drawing HRA;
 - (v) he will be allotted one type below his entitlement excepting in certain cases;
 - (vi) all the dues in respect of the quarter in occupation of the Government servant should be cleared before the allotment was sanctioned in favour of the dependent;
 - (vii) licence fee/damages will have to be paid by the retired Government servant if there is any delay in allotment.

8. The second applicant has fulfilled the requirements of conditions (i) to (iv) in the above order. Hence, he is entitled for the allotment of the residence Government quarter on ad hoc basis on the

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retirement of his father. Initially without making such ad hoc allotment the first applicant was sought to be evicted. When he questioned the said order in the appeal before the District Judge the respondents came up with the regular allotment of a quarter in favour of the second applicant. Consequently, the first applicant has chosen not to press the appeal and the appeal was accordingly rejected. But, before handing over the possession of the quarter No.1892, Type B, Sadhora, Khurd (Gulabi Bagh) the respondents have come forward with the demand for recovery of an amount of Rs.83,964/- towards penal rent due from the first applicant from the date of his retirement.

9. It is true that applicant No.2 was entitled for allotment of a quarter one type below his entitlement as per the OM dated 17.12.91 on ad hoc basis. But, as per conditions (vi) and (vii) it is clear that if there is any delay in allotment of alternative accommodation the retired official shall have to pay the licence fee/damages. It is also clear that the Government servant should clear all the dues of rent in respect of his quarter before the allotment is made in favour of the dependent. The applicant retired in 1993. Under the rules, he can stay for four months paying the licence fee. Thereafter he would be treated as unauthorised occupant and he would have to pay the penal rent. But he was not liable to be evicted in view of the above rules of allotment. He can continue to occupy the quarter till another quarter is allotted to his son, provided he pays the penal rent. Unless the

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dues are cleared, the second applicant is not entitled for asking possession of the quarter. I do not, therefore, find any infirmity in the impugned order.

10. In the circumstances, I direct the respondents to hand over possession of flat No.1892, Type B, Sadhora Khurd (Gualabi Bagh) to applicant No.2, subject to the condition that the applicants clear all the arrears, as demanded. *V with the above amount @ A's report of 2*
~~OA dismissed.~~ No costs.

V. Rajagopala Reddy
(V. Rajagopala Reddy)
Vice-Chairman(J)

"San."