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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.450/1999

New Delhi, this 23rd day of October, 2000

Hon'ble Shri M.P. Singh, Member(A)

B.D. Chaubey  
D-II Flat No.6, Road No.1  
Andrews Ganj, New Delhi

.. Applicant

(By Shri A.Chaturvedi, Advocate)

versus

Union of India, through

1. Secretary  
Ministry of Urban Affairs & Employment  
Nirman Bhavan, New Delhi

2. Director of Estates  
Nirman Bhavan, New Delhi .. Respondents

(By Shri M.K.Bhardwaj, Advocate)

ORDER

In this application filed under Section 19 of the Administrative Tribunals Act,1985, the applicant has challenged the orders dated 2.4.1997, 24.3.1998 and 19.1.1996.

2. In this case no counter has been filed despite several opportunities having been granted to the respondents. The case was partly heard on 17.10.2000 when none appeared for the respondents. I have finally heard the case on 18.10.2000.

3. Brief facts of the case, as stated by the applicant, are that the applicant was working as acting Chief Editor in the Ministry of Law. He is in occupation of D-II Flat No.6, road No.1, Andrews Ganj allotted to him since February, 1976. He has retired from service on 30.6.2000 on superannuation. A notice was received by him on 7.7.96 followed by another in



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September, 1996 for removal of improvised construction of temporary corrugated sheets for keeping cots etc. erected by the family of the servant of the applicant. The applicant could not remove the improvised construction for the reason that he was misled by some allottees similarly situated as well as by some authorities concerned to believe that the notice was nothing but a formality. Applicant received a letter dated 2.4.1997 whereby the allotment of the quarter was deemed to have been cancelled. He made a representation on 23.5.97 to R-2 stating that the improved construction has been removed. On 23.7.97 the applicant was asked to deposit a sum of Rs.94,475 towards damages rate of licence fee for the period from 27.6.96 to 6.5.97. Applicant gave a representation on 1.8.97 stating that the allotment ought to be treated as regular throughout for all purposes. In the meantime, the Estates Office have initiated eviction proceedings against the applicant under Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (PPE Act, for short). Aggrieved by this, the applicant has filed the present OA seeking to set aside the impugned orders referred to in para 1 above.

4. Heard the learned counsel for the rival contesting parties at length and perused the records.

5. At the outset, the learned counsel for the applicant submitted that he is challenging the validity of the rules relating to allotment/cancellation of government accommodation and therefore the case should be placed before the Division Bench for adjudication. Thereafter he argued the case on merits. His attention was drawn to the judgement of the Hon'ble Supreme Court in the case of UOI Vs. Rasila Ram & Anr. decided on 6.2.2000 in Civil Appeal





No. 1301-04/99. Learned counsel for the applicant vehemently argued that none of the reliefs sought for relates to PPE Act and therefore his case is not covered by the judgement of the apex court cited supra. He challenged the impugned orders on several grounds. The main grounds taken by him are as follows: According to him the impugned orders have not been issued by the competent authority. He has submitted that as per section 3 of the PPE Act, the central Government may by notification in the official gazette appoint such persons, being gazetted officers of government or officers of equivalent rank to be Estate Officer for the purposes of this Act. In this case, the officer who issued the impugned orders was not appointed by the Government as Estate Officer. He further submitted that in the order dated 2.4.97 it is stated that the allotment is deemed to have been cancelled in his name with effect from 26.7.96. According to him such a provision can be invoked by the legislature alone which has enacted the Act and not by a person who is delegated the authority by a legislature, i.e. Parliament. He also pleaded that the penalty which has been imposed for unauthorised construction is on a very high side and is not in accordance with the rules. He also argued that as per provisions of FR 45C read with SR 317 B-22, the damages shall not exceed 30% of the emoluments. As per the contention made by the learned counsel for the applicant, the applicant was drawing salary of Rs.11,000 at the relevant time. He also made the plea that the applicant has been singled out as no action has been taken by the respondents against other persons who have also made unauthorised constructions. Thus the applicant has been discriminated. In support of aforesaid arguments, the learned counsel has cited a number of judgements of the High Court and Apex Court.



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6. The learned counsel for the respondents submitted that the present OA is covered by the case of Rasila Ram (supra). He also submitted that although the applicant has stated in his OA that temporary construction was made by his servant without his knowledge. In his representation dated 23.5.97 (Annexure A-4) he has stated that "for convenient use of roof of my flat by servant as well as members of my family, I had not objected against erection of provisional small room by my servant with corrugated sheets of asbestos but in fact I had no intention permanently to keep it there". In yet another representation (Annexure A-6) he has admitted his fault and sought apology for the unauthorised construction.

7. From the records placed before me it is amply clear that the respondents have cancelled the allotment of the government accommodation in the name of the applicant and have initiated proceedings under the PPE Act vide their order dated 17.11.98 (Annexure A-10). However these proceeding could not be continued further due to interim order granted by the Tribunal on 25.2.99. This interim order has continued till now.

8. On a careful perusal of the judgement of Supreme Court dated 6.9.2000 (supra) and also the records placed before me, I am of the considered view that this case is squarely covered by the aforesaid judgement and this Tribunal has no jurisdiction to adjudicate upon this case. Accordingly the OA is dismissed. The interim order passed on 25.2.99 stands vacated. No costs.

  
(M.P. Singh)  
Member(A)

/gtv/