

Central Administrative Tribunal, Principal Bench

OA No.1293/98

New Delhi this the 11th day of August, 2000.

Hon'ble Mr. Justice V. Rajagopala Reddy, Vice-Chairman (J)
Hon'ble Mr. Govindan S. Tampi, Member (Admnv)

Gaje Singh,
S/o late Shri Neki Ram,
R/o Flat No.5127, Sector B-7,
Vasant Kunj,
New Delhi-70.

...Applicant

(By Advocate Shri N.S. Verma)

-Versus-

1. Union of India through
the C.G.D.A.,
West Block-V,
R.K. Puram,
New Delhi.
2. The C.D.A. (Army),
Meerut Cantt.
3. The Chief C.D.A. (Pension),
Allahabad.
4. The Defence Pension Disbursement
Officer, Meerut Cantt.
5. The State Bank of India,
(Pension Disbursing Officer),
Meerut Cantt.

...Respondents

(By Advocates Shri K.C.D. Gangwani and Shri Gajender Giri)

O R D E R (ORAL)

By Justice V. Rajagopala Reddy:

Heard the learned counsel for the applicant and the respondents. The applicant challenges the order of the Senior Accounts Officer of the C.D.A. Army, Meerut Cantt dated 20.5.98 by which he was asked to deposit the amount outstanding on account of rent and allied charges of Rs.1,85,281/- The facts of the case, in brief, are as under:

2. The applicant who has been working as Section Officer was under occupation of quarter No.B-1/1, Lekha Nagar, Meerut belonging to the CDA. He filed a Writ

Petition No.2948/1985 in the High Court of Allahabad for a declaration that he would be superannuated w.e.f. 30.11.95 and not w.e.f. 31.3.95, as claimed by the respondents. While admitting the Writ Petition the High Court passed the following interim order on 3.4.85:

"List this petition for admission on 6th May, 85. Respondents may file their counter-affidavit by 24th April, 85. Rejoinder-affidavit may be filed on or before 6th May, 85.

Meanwhile, until further orders of this court, the petitioner shall be entitled to payment of his salary and other emoluments due to him as if he had continued in service even after 31st March, '85 month by month subject to the undertaking given on behalf of the petitioner that in the event of this petition being dismissed the entire amounts which the petitioner may have drawn in pursuance of this order shall be refunded by the petitioner to the respondents within six weeks of the dismissal of the petition. The respondents shall, however, be at liberty not to take work from the petitioner. The petitioner shall not be evicted from the accommodation which he is occupying as Section Officer until further orders of this Court."

3. By virtue of the above order, the applicant, even after his date of retirement on 31.3.95 was allowed to continue in the quarter. As the Writ Petition was transferred to the Allahabad Bench of the Tribunal it was registered as TA-1792/87 and the same was disposed of by order dated 6.6.97 as under:

"In any view of the matter, the order of the respondents changing the date of birth of the applicant cannot be sustained. I hold that the applicant would be deemed to have superannuated on the afternoon of 30.11.95, and to have continued in service till that date. He would, therefore, be entitled to all consequential benefits including salary, increment if due and retirement benefits. The respondents are directed to consider any claim of the applicant arising out of this judgement and finally settle the claim alongwith a copy of this judgement from the applicant."



4. It is now stated by the parties that the applicant had vacated the premises in 1998. According to the applicant, he was only liable to pay the licence fee as the High Court has granted stay of eviction he should be treated as an authorised occupant and not unauthorised occupant. Hence, it is contended by the learned counsel for the applicant that the impugned order seeking to levy damages treating him as an unauthorised occupant is wholly illegal. He was not liable to pay any damages. He also raised an objection as to the competence of the officer to pass the impugned order contending that the impugned order having been passed by an officer other than the Estate Officer, who is the only competent officer under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (hereinafter called as P.P. Act), as the premises in question is public premises coming within the purview of the P.P. Act, it is only the Estate Officer who has jurisdiction to either evict an unauthorised occupant or to order recovery of rents or damages, it is argued. He also raised the question of limitation in claiming the damages.

5. The learned counsel for the respondents Sh. K.C.D. Gangwani, however, submits that the several notices have been issued to the applicant under the P.P. Act and the applicant has been paying only the licence fee but not the market rent which he was liable as an unauthorised occupant since he was deemed to have been retired in March, 1985 or in November, 1985 at the latest, he was an unauthorised occupant thereafter. He cannot continue unless he pays the market rent, subject to the extensions that may be granted by the Department.

6. It is also argued by the learned counsel for the respondents that the High Court has only directed not to evict the applicant and there was no direction to continue the applicant on paying only the licence fee. In the absence of any such direction the applicant was liable to pay the market rent. However, he was liable to pay the damages which are claimed in the impugned order.

7. We have given careful consideration to the contentions raised by the learned counsel for the parties.

8. We have to first dispose of the preliminary objection as regards the competence or jurisdiction of the officer who has passed the impugned order. In the notification dated SRO 350 dated 13.12.96 issued by the Ministry of Defence (Finance Division), in exercise of the powers conferred by Section 3 of the P.P. Act, the Central Government appointed the Controller of Defence Accounts, Central Command, Meerut as the Estate Officer for the purposes of the P.P. Act in respect of DAD accommodation under their control and to perform the duties imposed on Estate Officers under the said Act. Admittedly, the Senior Accounts Officer has raised the demand under the impugned order is a junior officer to the CDA. It was also admitted in the counter-affidavit that the Senior Accounts Officer who passed the order was not the Estate Officer under the P.P. Act. The P.P. Act has been enacted for the purpose of eviction of unauthorised occupants from public premises and other incidental matters. Section 3 speaks of appointment of Estate Officers, according to which the Central Government has to appoint, by way of notification in the official gazette, the gazetted officers of Government to be the Estate Officers for the purpose of this Act. It is

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not in dispute that the notification referred to supra was one such notification, appointing the Estate Officer. Sections 4 and 5 speak of issuing notices before eviction. Section 7 provides for the procedure to recover arrears of rent and damages from the unauthorised occupants. It reads as under:

"7. Power to require payment of rent or damages in respect of public premises.--(1) Where any person is in arrears of rent payable in respect of any public premises, the estate officer may, by order, require that person to pay the same within such time and in such instalments as may be specified in the order.

(2) Where any person is, or has at any time been in unauthorised occupation of any public premises, the estate officer may, having regard to such principles of assessment of damages as may be prescribed, assess the damages on account of the use and occupation of such premises and may, by order, require that person to pay the damages with such time and in such instalments, as may be specified in the order.

[(2-A) While making an order under sub-section (1) or sub-section (2), the estate officer may direct that the arrears of rent or, as the case may be, damages shall be payable together with simple interest at such rate as may be prescribed, not being a rate exceeding the current rate of interest within the meaning of the Interest Act, 1978 (14 of 1978)].

(3) No order under sub-section (1) or sub-section (2) shall be made against any person until after the issue of a notice in writing to the person calling upon him to show cause within such time as may be specified in the notice, why such order should not be made, and until his objections, if any, and any evidence he may produce in support of the same, have been considered by the estate officer."

9. Section 8 provides for the powers of the estate officers and appeals are provided under Section 9 to the District Judge of the District in which the public premises are situated against the orders of the Estate Officer. Rules are framed under the Act showing the manner of service of notices and the manner of conducting the



enquiry by the Estate Officer. Thus the Act is a self contained enactment enacted by the Parliament for the purposes mentioned in the Act, viz. for eviction of unauthorised occupants and for recovery of arrears and damages. The premises in question being the public premises, in our view only the estate officer, who has been appointed under Section 3 of the P.P. Act by way of notification by the Central Government, is the competent authority to issue notices conducting enquiry and for passing any order claiming arrears of rent or damages. It cannot be said that the arrears and damages are in the nature of civil liability as contended by the learned counsel, which can be recovered by way of Suit before a Civil Court. A civil Suit is also barred under Section 15 of the Act either for vacation or for claiming arrears of rent payable under Section 7 of the P.P. Act. Thus, it is clear that the impugned order was not issued by the competent authority.

10. The learned counsel for the respondents, however, contends that as the notices have been approved by the Estate Officer, as seen in the file, it can be treated as if the impugned order has also been passed by the competent authority (Estate Officer). We do not agree. Notices might have been issued by the competent authority, but unless the competent authority takes action under the P.P. Act, by way of an enquiry and passing the impugned order, the order cannot be said to be an order issued by the Estate Officer. The applicant has got a right of appeal when an order was duly passed by the competent authority to the District Judge. In the present case since the order was not passed by the competent authority the applicant was deprived of his valuable right of appeal. In the

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circumstances, we have no hesitation in holding that the impugned order is wholly incompetent and is without jurisdiction and is liable to be quashed on this ground alone.

11. Other grounds are also raised by the learned counsel for the applicant and refuted by the learned counsel for the respondents. We are advisedly not going into those grounds as all these grounds can be raised before the Estate Officer in accordance with law. In the circumstances, the impugned order is quashed. It is, however, open to the respondents to take action against the applicant in accordance with law and in the light of the observations made by us supra.

12. The O.A. is accordingly allowed. No costs.

(Govindan S. Tampi)
Member (Admny)

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