

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A.NO.1217/95

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New Delhi, this the 12th day of February, 1996

Hon'ble Smt. Lakshmi Swaminathan, Member(J)

Shri Ganga Charan,
s/o Shri Nanka,
r/o 1394, Sector 5, Type I,
R.K. Puram, New Delhi.

... Applicant

By Advocate: Shri D.P. Avinashi

Vs.

1. Union of India,
through
The Director,
Directorate of Estates,
Ministry of Urban Development,
Nirman Bhawan,
New Delhi.

2. Estate Officer,
Directorate of Estates,
Nirman Bhawan,
New Delhi.

... Respondents

By Advocate: Shri B. Lall

ORDER (ORAL)

Hon'ble Smt. Lakshmi Swaminathan, Member(J)

The applicant, who is working as Class IV employee with the Asstt. Director General(Admn.), Directorate of Telecommunication Centre, New Delhi, is aggrieved by the order dated 29.6.95 passed by Respondent No.2 i.e. the Estate Officer (Annexure *12* Compilation I). By this order the respondents have,

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stated that under section 5(1) of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, by reason of the fact that the allotment of Q.No.Sector-V/1394, R.K. Puram, has been cancelled w.e.f. 15.4.95, he is in unauthorised occupation. Therefore, he has been required to vacate the said premises within 15 days, failing which they will take action to get the persons occupying the premises evicted.

2. The brief facts of the case are that the applicant, who is a Class IV employee, was allotted Govt. accommodation Type I bearing No.Sector-V/1394, R.K. Puram, New Delhi in 1990. According to the applicant, he alongwith his family members have been residing in the quarter. He states that he was surprised when he received a notice from Respondent No.1 on 17.2.95 asking him to show cause on the ground that he had sublet the quarter. He replied that he alongwith his family members were residing in the quarter allotted to him and that he had never sublet the same to anyone. He, therefore, submits that the allegations made in the show cause notice are due to some misunderstanding and wrong information. He applicant further relies on the ration card dated 22.1.92 (copy at pages 17 to 19), CGHS card issued in 1992 (page 22), the letter from the office of the Chief Electoral Officer, Delhi addressed to him calling him to appear on the date mentioned therein for his

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photograph and the copies of the letters said to have been
received by him in the aforesaid quarter on 1.10.93,
16.2.95 and 19.1.95 (pages 24 to 25) respectively, of the
paperbook.

3. Shri D.P. Avinash, learned counsel for the applicant
submits that when a surprise inspection was carried out by the
respondents in his quarter on 21.10.94 the applicant was away at work
and his family members consisting of his wife, three sons
and two daughters were away at village but his daughter
Smt. Raj Rani was present in the quarter along with her
two young children. The learned counsel submits that
Smt. Raj Rani is in fact his brother's daughter whom he
considers ^{as} his own daughter, as is common among the villagers.
This lady had come for her medical check up as she was
pregnant and he has also enclosed copies of the discharge
slip regarding the birth of her child on 31.5.95. According
to him, Smt. Raj Rani was the applicant's married daughter
who was present on the date when the surprise check was
carried out. He submits that the applicant had never
sublet the quarter, as the respondents have completely failed
to show any kind of consideration for such subletting. His

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contention is that on the basis of the documents submitted by him, the respondents have failed to establish the case against him of subletting the quarter.

4. The respondents have filed a reply controverting the above averments. According to them, on physical inspection of the quarter on 21.10.94 by two Gazetted Officers it was found that the family of one Shri Pradeep Kalsa, an Auto Driver was residing in the quarter. At the time of the inspection Smt. Raj Rani wife of Pradeep Kalsa and her two minor children namely Baby Pratima and Master Aakash were found in the quarter. They have also stated that neither the allottee nor any member of his family was there on 21.10.94. They state that after issuing a show cause notice dated 9.1.95 to the applicant and after also affording him all opportunity to be heard, the competent authority had come to a decision to cancel the allotment of ^{the} quarter in the name of the applicant vide order dated 14.2.95. The appeal filed by the applicant against the cancellation order to the Directorate of Estates was also rejected after affording him personal hearing on 19.4.95. In their reply, they have also referred to the various documents produced by the applicant like ration card and

CGHS card but according to them he has failed to explain the presence of the ^{family of} Shri. Pradeep Kalsa during the inspection

and total absence of himself or any member of his family.

They have also stated that one of the children of Smt. Raj Rani was studying in a Nursery school and another child Master Akash was not yet school going during inspection on 21.10.94.

They have also pointed out that while in the ration card the applicant has stated that his family consists of 4 members namely the applicant, his wife and two sons Shri Dharam Pal and Madan Pal, in the CGHS card it is stated that his family consists of 5 members namely the applicant, his wife, two daughters named Sushila and Shashi and son named Sushil.

In the circumstances, the respondents have submitted that the applicant was not residing in the quarter with his family members and that they have correctly passed the impugned order after giving a show cause notice to the applicant which is based on the evidence placed before them. In the circumstances,

Shri B. Lall, learned counsel for the respondents submits that the impugned order is legal and valid and this application may be dismissed. Shri B. Lall has also submitted the original record (file No.4/336/RKP/E/94) containing the inspection report of the two officers conducted on 21.10.94 and the statement given by the applicant on 19.4.95.

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5. I have carefully considered the pleadings, the arguments of both the learned counsel and the record.

6. In this case, the impugned cancellation and eviction orders have been passed by the respondents after issuing the show cause notices to the applicant. The applicant has himself stated that he has been afforded an opportunity to file replies and be heard before the competent authority to the show cause notice. In the facts and circumstances of the case, therefore, I am satisfied that the impugned order of eviction has been passed after complying^{with 1/2} the provisions of sections 4 and 5 of the Public Premies (Eviction of Unauthorised Occupants) Act, 1971 and that there has been no violation of the principles of natural justice in this case. The next question, ~~thereafter~~^{1/2} to be considered is whether on the basis of evidence adduced before the competent authority, the authority could have passed the impugned order. The applicant's case is that Smt. Raj Rani, who was found present in the premises when the officers inspected the quarter on 21.10.94 was his daughter. The learned counsel has strenuously explained that she was, in fact, his brother's daughter whom

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the applicant considers ^{as 18/} his own daughter. I find that in the replies furnished by the applicant to the show cause notice dated 17.2.95 and to the appellate authority dated 27.6.95, the applicant has referred to Smt. Raj Rani as his quarter, whereas in the rejoinder he has referred to her as his brother's daughter. He has also pleaded that this lady had come from the village for medical check up and for her delivery and was staying in the quarter. Assuming that the applicant did in fact consider ~~that~~ Smt. Raj Rani, his brother's daughter, as his own daughter who had come for medical check up etc. it is strange that none of his family members including his wife/mother of the lady was present in the house, if as he claims she needs medical check up/treatment. Another fact which has been stated by the respondents in their reply is that one child of Smt. Raj Rani was studying in a nursery school. In the orders of the appellate authority this fact has been referred to in which it is stated that the child was studying in R.K. Puram as per the inspection report. If ^{come} as stated by the applicant the lady had only ^{for a} medical check up and for delivery, the applicant has failed to explain as to how the child was found studying in R.K. Puram school i.e. in the same locality as the quarter is situated. I am ^{therefore,} satisfied that the impugned order is neither arbitrary nor

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unreasonable in the circumstances of the case. The applicant
 nodoubt has produced certain documents before the competent
 authority but it cannot be stated that the authority has
 either ignored these documents or taken into account any
 irrelevant material not germane to the issue.

7. It is well settled law that this Tribunal cannot
 substitute its decision for that of the competent authority
 unless the same is shown to be totally ~~perverse~~, arbitrary or
 one no reasonable person could arrive at in the circumstances.

In H.B. Gandhi, Excise and Taxation Officer-cum-Assessing
 Authority, Karnal and Ors. Vs. M/s. Gopi Nath and Sons and Ors.

(1992 Supp.(2) SCC 312), the Supreme Court has affirmed this
 principle as follows-

"Judicial review, it is trite, is not directed against
 the decision but is confined to the decision making
 process. Judicial review cannot extend to the
 examination of the correctness or reasonableness of a
 decision as a matter of fact. The purpose of judicial
 review is to ensure that the individual receives fair
 treatment and not to ensure that the authority after
 according fair treatment reaches, on a matter which
 it is authorised by law to decide, a conclusion which
 is correct in the eyes of the Court. Judicial review
 is not an appeal from a decision but a review of the
 manner in which the decision is made. It will be
 erroneous to think that the Court sits in judgement
 not only on the correctness of the decision making
 process but also on the correctness of the decision
 itself."

(See also UOI Vs. Parma Nanda (AIR 1989 SC 1185, Upendra
 Singh Vs. UOI (JT (1994)(1) SC 658 and Tata Cellulor Vs. UOI
 (1994 (6) SCC 651).

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9. It is ^{also} well settled law that in the garb of judicial review this Court cannot sit as a court of appeal but can only review the decision of the competent authority to ensure that the decision making process has been correctly followed and in accordance with the principles of natural justice. It is not the case of the applicant here that he has not been afforded reasonable opportunity to put forward his case. As mentioned above the arguments of the applicant have also been inconsistent on the facts and the decision of the competent authority can neither be termed as arbitrary or perverse justifying any interference.

10. Having regard to the aforesaid principles laid down by the Supreme Court and the facts in this case I find no merit in this application. The application is accordingly dismissed. No order as to costs. The stay order dated 5.9.95 is hereby vacated.

Lakshmi Swaminathan

(SMT. LAKSHMI SWAMINATHAN)
MEMBER(J)

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