

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.NO.1513/95

Hon'ble Shri R.K.Ahooja, Member(A)

New Delhi, this 4th day of October, 1996

Shri Asa Ram
s/o Shri Kale Ram
working as an Assistant Operator
in Electrical Division No.XII,
SubDivision No.IV,
Central Public Works Department
Baba Kharak Singh Marg
NEW DELHI and
residing at Sector-III/1513,
M.B.Road
NEW DELHI.

... Applicant

(By Shri B.Krishan, Advocate)

Vs.

1. Director of Estates
Directorate of Estates
4th Floor 'C' Wing
Nirman Bhawan,
NEW DELHI - 11.

2. The Estate Officer
Directorate of Estates
4th Floor, 'B' Wing
Nirman Bhawan
NEW DELHI.

... Respondents

(By Mrs. Pratima Kumar Gupta, Advocate)

O R D E R

R.K.Ahooja, Member(A)

The applicant, an allottee of premises bearing
No.Sector - III/1513, M.B.Road, New Delhi challenges
the order of eviction (Annexure A1) as well as
cancellation of the allotment, A2. The applicant
alleges that in January, 1992, he was summoned by the
Respondent No.1 to explain as to why he should not
be charged penal rent as well as debarred from

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government residence for a period of five years due to subletting. The allegation was denied by him but Respondent No.1 without considering the documentary evidence produced by him, cancelled the allotment as per A2. The appeal, A3 was preferred by the applicant but during its pendency a show-cause notice, A4 was served upon him. In the mean time, his appeal was also rejected on 07.04.1992, A6. Thereafter, an eviction order, A8 was passed on 15.3.1994. The applicant further filed an appeal under Section 9 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (for short P.P. Act) before the District Judge, Delhi who set-aside the eviction order and remanded the case back to Estate Officer vide copy of Judgment, A9. This led to a fresh show-cause notice but the Respondent No.2, it is alleged, without considering the submissions and the documentary evidence, passed the impugned eviction order, A1. The applicant claims that the order of cancellation is arbitrary and illegal as he was not given a proper opportunity to be heard and the impugned eviction order is also illegal as he was not confronted with the inspection report, which deprived him of the opportunity to put up his proper defence and ^{rebut} the charge of subletting. It is also alleged that the impugned order of eviction has been passed by an officer who was not authorised to act as Estate Officer as required under the relevant provisions of the PP Act.

2. The respondents controvert the claim of the applicant and state that the premises in question were inspected on 24.11.1991 and one Mr. Khurshid Khan working as Assistant Manager in a private firm and his brother Mr. Shoab Khan were found living in the quarter. Neither the applicant nor any member of his family was found therein. The applicant failed to give any satisfactory explanation. The allotment therefore, had to be cancelled on the ground of subletting. An appeal filed by the applicant was also considered and rejected. Since the applicant failed to vacate the quarter, the eviction proceedings against him were filed on 1.4.1992. The respondents state that eviction order has been passed by the competent authority after giving due opportunity to the applicant and after fulfilling all legal requirements. The respondents therefore, submit that the allegations made by the applicant are baseless.

3. Shri B. Krishan, learned counsel for the applicant drew my attention to the order, A9, the judgment of the learned Additional District Judge in P.P. Appeal No.62/1994 decided on 11.5.1994 and submitted that the learned Additional District Judge, in Para 4 of his judgment had observed that there was total lack of application of mind on the part of the learned Estate Officer. Yet the Estate Officer, despite this ^{admonition} again passed an order in Form No.II without mentioning even the basic facts or the evidence leading to the passing of the order. I am

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unable to agree with the learned counsel. What the impugned order, A1 states is that the eviction is being ordered on account of cancellation of allotment despite which the applicant has not vacated the premises. The allegation of subletting led to the cancellation of allotment as per order, A2 dated 28.1.1992. So long as the order of cancellation of the allotment remains, the Estate Officer can on the basis of unauthorised occupation/order issue the eviction. The applicant submits that he had also challenged the cancellation order to show that he was not an unauthorised occupant, before the Estate Officer and his grievance is that in the impugned order, A1 the Estate Officer has mechanically passed an order of eviction without considering the documentary and oral submissions made by the applicant against the cancellation order.

4. In this context, it will be useful to reproduce Section 2(g) and Section 5 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971:

SECTION 2(g): "unauthorised occupation", in relation to any public premises, means the occupation by any person of the public premises without authority for such occupation, and includes the continuance in occupation by any person of the public premises after the authority (whether by way of grant or any other mode of transfer) under which he was allowed to occupy the premises has expired or has been determined for any reason whatsoever.

SECTION 5: (1) If, after considering the cause, if any, shown by any person in pursuance of a

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notice under Section 4 and (any evidence produced by him in support of the same and after personal hearing, if any, given under clause(b) of sub-section (2) of Section 4), the estate officer is satisfied that the public premises are in unauthorised occupation, the estate officer may make an order of eviction, for reasons to be recorded therein, directing that the public premises shall be vacated, on such date as may be in occupation thereof or any part thereof, and cause a copy of the order to be affixed on the outer door or some conspicuous part of the public premises.

(2) If any person refuses or fails to comply with the order of eviction (on or before the date specified in the said order or within fifteen days of the date of its publication under sub-section (1) whichever is later.) the estate officer or any other officer duly authorised by the estate officer in his behalf (may, after the date so specified or after the expiry of the period aforesaid, whichever is later, evict that person) from, and take possession of the public premises and may, for that purpose, use such force as may be necessary.

It is clear that unauthorised occupation means occupation by any person without authority. For ^{all free} ~~any person~~, the cancellation of allotment takes away the authority ^{or} for occupation and ^{as per} Section 2(g) of the P.P. Act, he becomes an unauthorised occupant. Section 5 requires that the Estate Officer should ascertain after giving notice whether the public premises are in unauthorised occupation or not. In other words, the Estate Officer hears the unauthorised occupant, whether there is an authority or not for that person to continue to occupy the premises. Question then is whether the Estate Officer can at that stage, go behind the order of cancellation and see whether the same was justified. It could be that in certain cases, the order of cancellation is passed by a person not competent or authorised to issue such an order. But apart from such a case which would render the order of cancellation ab-initio ^{to} invalid it would be outside the jurisdiction of the Estate Officer

in the scope and meaning of Section 5 of the P.P. Act, that he should review the order of a competent administrative authority or act as an appellate authority and reappreciate the evidence before that administrative authority to see if the cancellation of allotment was justified. It was concluded in Rasila Ram Vs. Union of India, 1989(2) SLJ 342(CAT) that the allotment and cancellation of house allotment is a 'service matter' which would entitle the public servant to agitate the legality of the order of cancellation before this Tribunal. The learned counsel was not ^{or} ~~able~~ to show that the same relief could be sought from the Estate Officer under the P.P. Act, acting as an appellate authority against the order of the competent administrative authority cancelling the order of allotment.

5. It is an admitted fact that the Estate Officer before passing the order under Section 4 has issued the necessary notice under Section 2 to show cause as to why such an order should not be made. It cannot thus be said that the applicant did not have any opportunity to show that he was not an unauthorised occupant. In the impugned order, the Estate Officer has concluded that the applicant had failed to prove that he was not an unauthorised occupant of the instant premises. The order of cancellation of allotment quoted in the preceding para is also an admitted fact. No further ground or reasoning is in my opinion required on the part of the Estate Officer, as he is not called upon, to give his reasons as to why he was rejected the grounds taken by the applicant against the order of cancellation itself.

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6. The learned counsel for the applicant also argued that the impugned order of eviction had been passed by an officer who had not been appointed to act as Estate Officer as required under the relevant provisions of the P.P. Act. The learned counsel for the respondents has however supplied a copy of the relevant notification dated 13.11.1968 which is now taken on record. In terms of notification dated 13.11.1968, the Assistant Director of Estates (Litigation) is an Estate Officer by virtue of his office in respect of Central Government properties within the Union Territory of Delhi. Thus, the impugned order of eviction has been passed by the competent authority.

7. In view of the above discussion, I find that the application is without merit and the same is dismissed. No costs.

R.K. Ahuja
(R.K. AHOOJA)
MEMBER(A)

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