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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.2077/1995

New Delhi, this 11th day of October, 1996

Hon'ble Shri A.V. Haridasan, Vicer-Chairman(J)
Hon'ble Shri K. Ramamoorthy, Member(A)

Shri K. Singh Yadav
185/7, Andrews Ganj
New Delhi-110 0409 Applicant

(By Shri K.L. Bhandula, Advocate)

Union of India, through

- 1. Secretary
Ministry of Urban Development
Nirman Bhavan, New Delhi
- 2. The Director of Estates
Nirman Bhavan, New Delhi Respondents

(By Shri V.S.R. Krishna, Advocate)

ORDER

Shri K. Ramamoorthy, Member(A)

This OA has been filed seeking remedy against the eviction order dated 19.10.95, following earlier notice of cancellation of allotment dated 27.1.95. The applicant preferred an appeal dated 27.3.95 which was rejected by an appellate order dated 13.9.95. The applicant has not specifically impugned the appellate order. However, consequent to the order dated 27.1.95, the department had initiated eviction proceedings and passed eviction order on 19.10.95 which has been impugned here. The ground of allegation in this application relates to the applicant having been not given facility to defend himself properly and thereby he has alleged malafide and malice in the matters.

2. The facts of the case are as under.

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3. The applicant had been issued with notice on 5.12.94 asking him to show cause why the allotment should not be cancelled (Annexure A-2). Personal hearing was given to him on 13.1.95 to enable the applicant to reply to the notice. Thereafter, formal order of cancellation of allotment was made on 27.1.95. The applicant preferred an appeal on 27.3.95 which was rejected by order dated 13.9.95. Eviction proceedings were thereafter started under Section 4(1) of the PPE Act, 1981 vide notice dated 2.5.95 asking him to show cause on or before 18.5.95. After the issue of this notice, formal order of eviction was passed on 18.10.95.

4. Since the main argument of the applicant was that action has been taken to disentitle the applicant from his rightful allotment, the department was asked to produce the proceedings file. This file was produced and the same was gone through by the Tribunal.

5. The main contention of the applicant is that though he produced evidence from 5 members about his staying in the accommodation, the respondents have chosen to cancel his allotment on the ground of his wholly subletting the premises. It is the contention of the applicant that he has not been given an opportunity to defend himself properly as stated earlier.

6. On going through the department file, we find that the order dated 27.1.95 has been preceded by a specific notice dated 5.12.94 to explain the charge of his having sublet the premises No.185/7, Andrews Ganj. The whole thing arose out of a complaint and surprise inspection was also carried out on 30.10.94. The applicant was

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given time to reply and also opportunity of hearing on 31.1.95 at 5 PM. In the notice, it was also specifically mentioned that he would bring with him any evidence to prove his innocence such as ration card, CGHS card, registered letters received at this address, etc. When the applicant appeared before the competent authority, he had given a statement on 13.1.95 stating that he has no evidence to offer by way of either ration card or CGHS card or for that matter any evidence in this regard. This statement has been duly signed by the applicant and it is among the papers. He has of course tried to explain away the absence of ration card or CGHS card on the ground that he was waiting for some change of accommodation for which he had applied on 25.8.93.

7. It is specifically recorded on 13.1.95 that "The allottee appeared before me today for hearing and promised to give a documentary proof that Smt. Sarita is his wife. Pl. put up the case after a fortnight". It is also recorded that the argument advanced by the applicant was not found convincing and therefore the authority had found the charge of subletting proved. Thereafter formal order was issued on 27.1.95. It is true that this is a blunt order recording the conclusion regarding the applicant having been guilty of subletting. It is seen that this order was issued under section 317(b)(21) of the concerned rules.

8. Thereafter, the applicant has appealed against this order vide his appeal dated 27.3.95 alongwith further evidence regarding certificate from neighbours about the applicant's staying in the premises. In response to this appeal, the applicant was called on 4.7.95 and

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given a hearing. During the hearing, minutes had been recorded by the officer concerned regarding the fact of his children staying with grandmother, one son studying in Alwar and the applicant staying in village Hyderpur, Ring Road and formal order has been passed based on the evidence recorded during hearing on 4.7.95, to the effect that "his children don't stay at Delhi. Keeping in view the findings of I/R and in absence of any fact in favour of allottee, I am in agreement with the decision of deciding authority. The penalties be imposed". Formal rejection order dated 13.9.95 was also conveyed stating basically the conclusion arrived at. This particular order on appeal has not been challenged by the applicant in this application. Thereafter action was taken to evict the applicant under Section 4(1) of the PPE Act, 1981 since the issue involved the applicant being unauthorised occupant. In view of the cancellation of allotment, final order was passed on 18.10.95, which is impugned here. Against the eviction proceedings, the applicant has not advanced any argument excepting the argument that he could not be stated to be unauthorised occupant inasmuch as the allotment has been cancelled illegally.

9. As seen from the actual proceedings in the department file, there is no ground to accept the plea of the applicant that he has not been given any opportunity to put forward his case. Personal hearing had been given to him at the initial order stage and at the appellate state, though one would wish the actual orders to be more speaking. From the evidence produced before the authority concerned, it is seen that the proceedings have been recorded in the file as reproduced

above and therefore the main ground of the applicant not being given an opportunity of hearing does not survive. It is not open to the Tribunal to sit on an appeal on the conclusion arrived at on the basis of evidence produced before the competent authority. The eviction proceedings arise from the cancellation of allotment and no specific averments have been made about malafide in this particular proceedings.

10. In view of the above, the application fails and the OA is dismissed with however no order as to costs.


(K. Ramamoorthy)
Member (A)


(A.V. Haridasan)
Vice-Chairman (J)

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