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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH

NEW DELHI

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O.A. No.555/1995

Date of decision 8-6-95

Hon'ble Shri S.R. Adige, Member (A)

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

Shri Gurdial Singh
s/o Shri Gopal Singh,
Flat No.D1/171,
Satya Marg, New Delhi

.... Applicant

(By Advocate Shri Shailesh K.Kapoor)

Vs.

1. Union of India,
through
Secretary,
Ministry of Urban Development,
Nirman Bhavan, New Delhi.
2. Director of Estates,
Government of India,
Nirman Bhavan, New Delhi.
3. Sh. Paramjit Singh,
Estate Officer,
Ministry of Urban Development,
Government of India,
Nirman Bhavan,
New Delhi.

.... Respondents

(By Advocate Shri E.X. Joseph, Sr.Counsel)

O R D E R

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

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In this application, the applicant, who was posted as Resident Commissioner of the Government of Tripura at New Delhi, is aggrieved by the order of eviction dated 27-9-1994(Annexure A-15). By this order, the Estate Officer has stated that after his allotment of the quarter No.D1/171, Satya Marg, Chankya Puri, New Delhi was cancelled

With effect from 21-2-1994 by letter dated 5-5-1994, he has failed to prove that he was not in unauthorised occupation of the said quarter. Notice under Section 5 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 had been initiated for having the premises vacated. The applicant has prayed for a direction to set aside the eviction order and the orders dated 11.8.1994 and 21.10.1994 as well as the order rejecting the applicant's representation for allowing him to continue in the quarter.

2. The applicant has pressed for an interim relief to restrain the respondents from evicting/ dispossessing his family from the aforesaid premises during the pendency of this O.A. Dasti notice had been issued on the interim prayer restraining the respondents from physically dispossessing the applicant from the premises in question which had been extended from time to time .

3. The respondents have filed a reply in which they submit that the applicant has no cause of action and the balance of convenience is also against him. They have submitted that the stay order passed on 13.3.1995 may be modified and that the original application itself is liable to be dismissed.

4. We have heard Shri Shailesh K.Kapoor, learned counsel for the applicant at length and Shri E.X. Joseph, Senior Counsel for the respondents.

5. The facts in this case are within a

narrow compass and are not disputed. The applicant was posted as Resident Commissioner, Government of Tripura at New Delhi on 21.12.1988. He was allotted flat No. D1/171, Satya Marg Chanakyapuri, New Delhi, and he has been in possession of the same from August, 1979. On 1-8-1991, he was posted as Additional Resident Commissioner, Govt. of Gujrat at New Delhi ^{and} so he continued to occupy the flat. He was transferred as Inspector General of Police, Ahmedabad, Gujrat with effect from 21.12.1993. ^{However, 13/} By order dated 16-6-1994 (Annexure A-5), it is seen that he continued as Additional Resident Commissioner, Government of Gujrat at New Delhi and handed over charge of the post only on 6.6.1994.

6. The applicant claims that by virtue of the letter dated 16.6.1994, referred to above, he was entitled to retain the accommodation till 6.6.1994 plus the concessional period admissible to him. His grievance is that even before he was relieved from the post of Additional Commissioner on 6-6-1994, the Estate Officer had issued the letter dated 5-5-1994 that on account of his transfer to Gujrat with effect from 21.12.1993, his allotment is deemed to be cancelled with effect from 21.2.1994. ^{18/} He claims that this is clearly

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erroneous. The learned counsel for the applicant submits that the impugned order issued by the Directorate of Estates treating him to be in unauthorised occupation of the quarter for which they are claiming damage rent from 21.2.1994 is without application of mind as they have not considered his applications, including the pending one with the Hon'ble Minister dated 5.10.94, for permitting him to continue in the quarter and is, therefore, unreasonable and illegal. He has relied on a number of decisions of the High Courts' and Supreme Court and submits that he can be evicted only by due process of law which has not been done in this case and hence the orders passed by the Estate Officer are illegal orders. (see (i) Testeels Limited v. V.N.M. Dasai (FB) (AIR 1970 Gujrat 1) (ii) Puran Singh v. State of Punjab (AIR 1975 SC 1674) (iii) G. Raja Lakshmi v. Appellate Authority (AIR 1980 A.P. 100) (iv) Karthiyayani Amma v. Govindan (AIR 1980 (Kerala) 224) (v) Khalilul Rehman v. Estate Officer (AIR 1977 Orissa 201).

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7. Shri E.X. Joseph, Sr.Counsel on behalf of the respondents, submits that the action for eviction and charging of rent after the cancellation of the quarter allotted to the applicant has been done in accordance with the relevant rules. He relies on the provisions of S.R. 317-B-11. Sub rule (2) of this Rule provides that in the case of a transfer of the persons to^a place outside Delhi, a residence allotted to the official may be retained for a period of two months, provided the residence is required for the bone fide use of the member or members of his family. Shri Joseph, submits at the Bar that even taking into consideration the letter issued by the Asstt. Resident Commissioner, Gujrat dated 16-6-1994 (Annexure A-5), that the applicant has handed over charge of the post of Additional Resident Commissioner only on 6-6-1994, the concessional period which can be allotted to him under the Rules is only upto 6-8-1994. Thereafter, the allotment of the quarter^{is by} deemed to have been cancelled under the rules and after this date he is in unauthorised occupation of the premises for which he is liable to pay the rent as prescribed in the rules.

Counsel

8. The applicants^{has} urged before us that he is unable to shift his family due to the prevailing ill-health of his wife as per the Doctor's certificates

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annexed to the application, which has not been considered by the respondents. He, therefore, submits that the applicant is willing to give an unconditional undertaking that he and his ^{will} family/vacate the flat by September, 1995, irrespective of whether his wife is completely well or not.

9. The learned counsel for the respondents has opposed this on the ground that the applicant cannot take one ground after another to prolong his stay in the quarter after the allotment has been duly cancelled under the rules. He draws our attention to the averments made by the applicant in the application and to his representation earlier, that the allotment of the accommodation should be extended to him till mid-May, 1995 on the ground of education of his children. since that Shri Joseph, therefore, submits that ground no longer exists, the applicant is merely giving other excuses for prolonging his stay which is, therefore, not tenable under the Rules.

10. Having considered the facts and circumstances of the case and S.R. 317-B-11 and 22, we find that there is considerable force in the submissions made by the learned for the respondents. S.R. 317-B-11(1) provides that the allotment made to an officer which has been accepted shall continue in force until, -

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- (a) the expiry of the concessional period permissible under sub clause(2) after the officer ceases to be on duty in an eligible office in Delhi.

(b) it is cancelled by the Director of Estates or is deemed to have been cancelled under any provision in these rules.

(c)&(d) ~~.....~~"

Sub-Rule (2) of this Rule provides that a residence allotted to an officer may be retained on the happening of ^{of the} any events specified in col.1 of the Table below for the periods specified in the corresponding entry. In this case, clause (4) of the Table is applicable which means that when the applicant was transferred outside Delhi, the members of his family could retain the use of the flat for a ^{further} period of two months. Taking into account the letter of the Assistant Resident Commissioner dated 16-6-1994, that the applicant handed over charge of the post of Additional Resident Commissioner, New Delhi only on 6.6.1994, therefore, his family could continue in the flat as per the rules upto 6-8-1994. Thereafter, after affording an opportunity of hearing to the applicant, the impugned eviction order was passed by the Estate Officer on 27-9-1994 which cannot be faulted in the circumstances of the case. The arguments of Shri Kapoor that several representations made by the applicant are still pending with the respondents, including the Hon'ble Minister for Urban Development, ^{which she has acknowledged} vide her letter dated 20-10-1994 (Annexure A-14) will not have the

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effect of nullifying the order passed by the Estate Officer. The decisions relied upon by Shri Kapoor, referred to above, will also not assist him as the facts and law dealt with in those cases are not germane to the case before us. Those cases did not deal with the provisions relating to the allotment, eviction or payment of damage rent under S.R. 317-B-11 which are applicable to the facts of this case. The decision of the Supreme Court in Union of India v. Wing Commander R.R. Hingorani (AIR 1987(1) SCC 1551) is relevant in which the court has held that the liability to pay damages equal to the market rent beyond the concessional period permitted under S.R. 317-B-22 of the allotment of Govt. Residences (Genl. Pool in Delhi) rules is absolute and not a contingent one. Whether under the circumstances of the case put forward by the applicant, the Rules should be relaxed or not is for the Respondents to consider, for which they have to pass a speaking order, which has not been done.

11. Therefore, having regard to the facts mentioned above, the interim order dated 30-3-1995 stands vacated. The applicant's allotment of the flat under the Rules also stands cancelled w.e.f. 6.8.1994. Thereafter, he has failed to produce any order from the Respondents that he or his family have been allowed to continue to occupy the flat in relaxation of the Rules. In the circumstances, we see no good ground to interfere with the impugned order except to the extent that the applicant shall be considered to be in lawful occupation of the flat till 6.8.1994 instead of 21.2.1994 and liable to pay the licence fee accordingly, in terms of the allotment Rules.

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However, in the event that the Respondents themselves are disposed to permit the applicant to continue in the said premises for any further period of time, nothing contained in this ^{Judgment} ~~O.A.~~ will operate as a bar in their doing so.

12. This O.A. is disposed of as above. No costs.

Lakshmi Swaminathan

(Smt. Lakshmi Swaminathan)
Member (J)

S.R. Adige

(S.R. Adige)
Member (A)