

Central Administrative Tribunal
Principal Bench
OA 1302/96
New Delhi this the 10th day of September, 1997

2

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

Baij Nath Prasad,
S/o Shri J. Prasad,
Sr. Auditor,
Principal Director of Commercial
Audit and Ex-Officio,
Member Audit Board-I,
3rd Floor, A-Wing,
I.P. Bhawan,
New Delhi.

...Applicant.

By Advocate Shri G. D. Bhandari.

Versus

1. The Director of Estates (E),
Govt. of India,
Directorate of Estates (Enquiry Sec.),
Nirman Bhawan,
New Delhi.
2. Estate Officer & Assistant
Director of Estates (Litigation),
Nirman Bhawan,
New Delhi. ... Respondents.

By Advocate Shri Harveer Singh, proxy for Mrs. P.K. Gupta.

O R D E R (Oral)

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

The applicant is aggrieved by the order passed by the respondents dated 30.5.1996 asking him to vacate the premises which had been allotted to him, i.e. Flat No S-V-256, Saket, M.B. Road, New Delhi. In this order, the reason for vacating the premises by the applicant is stated to be the result of the order dated 7.12.1995 and cancellation of the allotment of the quarter w.e.f. 7.2.1996 on the ground that he is in unauthorised occupation of the premises. In the order dated 7.12.1995, it has been stated that the applicant had subletted the quarter to some unauthorised persons in contravention of the provisions contained in SR 317-B/20 of the Allotment of Government

PS

23

Residence (General Pool) Rules, 1963. By this order, he was directed to vacate the aforesaid quarter and hand over the vacant possession to the competent authority within 60 days, failing which the eviction proceedings under the P.P Act will be initiated. It was also stated that the licence fee at the rate of four times the normal licence fee will be charged for the intervening period.

2. Shri G.D. Bhandari, learned counsel for the applicant, has submitted that although in the impugned order dated 30.5.1996 reference to cancellation of the allotment of quarter by order dated 7.12.1995 has been mentioned, the respondents had issued another notice dated 4.3.1996 (Annexure A-15). In this notice, it has been mentioned that it has been sent with the direction of the Hon'ble Supreme Court in the order dated 29.1.1996 in CWP No.585/94 (Shiv Sagar Tiwari Vs. Union of India). The applicant states that he has submitted a reply to this show cause notice on 10.5.1996 i.e. before the due date. The learned counsel has, therefore, submitted that the respondents have issued the eviction notice dated 30.5.1996 without considering his reply to the notice dated 4.3.1996. In the circumstances, the learned counsel submits that the impugned orders should be quashed and set aside.

3. The respondents have filed their reply controverting the above facts. I have also heard Shri Harveer Singh, learned proxy counsel. The main contention of the respondents is that action has been taken against the applicant on the basis of the report by the officers who had inspected the quarter on 20.6.1995. According to them, they found that the quarter was fully

83

24

sublet. Accordingly, after hearing the applicant they passed the order dated 30.5.1996 cancelling the allotment in his name and the penalties for subletting under SR-317-B-21 of the Allotment Rules were imposed. Since the applicant did not vacate the quarter on 7.2.1996 as directed under this order, eviction proceedings were initiated under the P.P Act which ended in passing the eviction order dated 30.5.1996. In para 5.4. of the reply, they have further submitted that the orders of cancellation issued on 17.12.1995 have been passed after hearing the applicant. A reference has been made to the notice dated 4.3.1996 to which they also stated that the applicant had also appeared for the personal hearing before the Deputy Director of Estates on 4.12.1995. The eviction order dated 30.5.96 was issued after affording opportunity of personal hearing vide notice dated 9.4.1996 and considering all the materials available on record.

4. From the above facts, it is not clear whether the respondents have taken into account the reply said to have been filed by the applicant on 10.5.1996 (Annexure A-16) to the show cause notice issued by the respondents on 4.3.1996 before the impugned order dated 30.5.1996 was passed. If this is not done, this is a procedural lacuna because after having issued the notice on 4.3.1996 the respondents cannot proceed in the matter relying on previous cancellation order dated 7.12.1995 without considering the reply submitted by the applicant on 10.5.1996.

8/

25

5. In the facts and circumstances of the case, the impugned orders dated 30.5.1996 and 7.12.1995 are quashed and set aside. However, it is open to the respondents to proceed with the case subsequent to the issuance of the show cause notice dated 4.3.1996 in accordance with law.

O.A. disposed of as above. No costs.

Lakshmi Swaminathan

(Smt. Lakshmi Swaminathan)
Member (J)

SRD