

✓ ✓
Central Administrative Tribunal
Principal Bench: New Delhi

OA No. 1922 of 1996 decided on 30th June, 1997.

Shri Niranjan Lal ...Applicant
(By Advocate : Shri George Parackin)

vs

Director, Directorate of Estates,
New Delhi ...Respondent
(By Advocate : Shri M.M. Sudan)

CORUM

Hon'ble Mr. N. Sahu, Member(A)

1. To be referred to the Reporter or not? YES NO
2. Whether to be circulated to other Benches of the Tribunal? NO

N. Sahu
(N. Sahu)
Member(A)

13

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No. 1922 of 1996

New Delhi, this the 30th day of June, 1997

Hon'ble Mr. N. Sahu, Member (A)

Shri Niranjan Lal, C-176, Netaji Nagar,
New Delhi - 110 021

- Applicant

(By Advocate - Shri George Parackin)

Versus

Director, Directorate of Estates, Nirman
Bhawan, New Delhi - 110 011

- Respondent

(By Advocate - Shri M.M.Sudan)

JUDGMENT

Hon'ble Mr. N. Sahu, Member (A)-

This application is filed against an order of the Directorate of Estate, Enquiry Section, dated 21.6.1996 directing the applicant to vacate and hand over vacant possession of Quarter No.176, Block - C, Netaji Nagar, New Delhi within two months from the date of issue. The above order also proposed to charge four times the flat rate licence fee under F.R.45-A from 21.6.1996 to the date of vacation. An appeal filed by the applicant was rejected on 28.8.1996. The charge against the applicant is that he had sublet the above quarter to unauthorised persons in contravention of the provisions contained in SR 317-B-20 of the Allotment of Government Residences (General Pool in Delhi) Rules, 1963. The applicant is a Class-IV employee, having two brothers and a widowed mother. His younger brother died leaving behind his widow and three small children. Before he was allotted the above quarter he with his widowed mother, brothers and their families, was living in Jhuggi No.E-153, Dakshinpuri, a resettlement colony in South Delhi. The applicant has adopted the deceased brother's son, since he had no child of his own. Paragraphs 4.11 and

Contd....2/-

4.12 of the Original Application are reproduced below-

"4.11 That even after the adoption, the child Subhash a school going boy in the nearby M.C.D. school continued to live in the same juggi No.E-153, Dakshinpuri along with his mother. Since a sudden separation from the natural mother would adversely affect the emotional and mental health of the child, the applicant has decided that Mrs. Savita Devi should continue to live in the juggi looking after their adopted son till he become mentally prepared to stay separately from his natural mother with the adopted parent. This was done as per the advice of the family councillors who helped the applicant to get the adoption made.

4.12. That after the allotment of the one room general pool accommodation No.C-176 Neta ji Nagar was made to the applicant, it was decided that the applicant, his aged mother and his younger brother Radheshyam should shift to the government accommodation and till such time the adopted son get used to the wife of the applicant and accept her as his mother she should stay in the same juggi and look after the child with all motherly affection. During the weekend holidays and festivals, the adopted son and wife of the applicant come and stay with the applicant in his government accommodation. Now after 2 years of adoption, the child has almost accepted the applicant and his wife as his own parents and in the next academic year, the applicant has been planning to shift his adopted son to a school near to his Govt. accommodation so that he will study in a better environment along with the children of other Govt. employees staying in the same place."

2. The learned counsel for the applicant vehemently argued that this is not a case of subletting and impugned order deserves to be quashed. The reasons given are that at the time of inspection the person found in the premises was Smt. Sannu, wife of the brother of the allottee, Shri Radhey Shyam, who was a member of the family of the allottee. Smt. Sannu produced his ration card no. 067548 at the time of inspection. A brother and his wife are to be treated as close relatives and, therefore, if they are sharing the accommodation with the allottee this cannot be called subletting. In the Ration Card No. 067548 (Annexure-C) besides the applicant, his brother Radhey Shyam, his brother's wife Smt. Sannu and his two children are mentioned. Thus, along with the applicant his brother's wife and two children are also considered as residing with the family. They are not unauthorised persons as they are close relatives in the approved category. The applicant's name has been found in the CGHS Card issued by the Superintending Horticulture, Archeological Survey of India, under whom he is working as Gardener, along with his wife, son

and mother. He has also been issued an identity card. In the ration card, CGHS card and identity card the address given is C-176 Netaji Nagar, which is the allotted residence. That apart, postal mail has been delivered to the same residential address and number of instances have been produced to prove the same. As the younger brother's family is part of the documentary evidence as having stayed in the same premises and as the younger brother is a permitted relative this cannot be considered to be a case of subletting.

3. I have carefully considered the submissions of the learned counsel of parties and I am satisfied that the impugned order dated 21.5.1996 and the subsequent rejection of the appeal, cannot be sustained. The sheet anchor of the respondents' case is that the applicant had let out the Government accommodation to Smt. Sannu brother's wife and himself resided along with his wife in his own house at Dakshinpuri. In the first place, the two paragraphs quoted above, substantiates the claim of the applicant that his wife and child have stayed for quite some time even after allotment at Dakshinpuri and that he along with his brother and family are staying at C-176 Netaji Nagar, the house allotted to him. At the time of inspection being a working hour, the applicant was found in his office. The concept of letting out can only be conceived in respect of a person outside the permitted category of relatives to the exclusion of the allottee, usually for a monetary gain. It is clear that the applicant himself has stated to have stayed in the same premises and the respondents have no evidence that the applicant did not stay in the allotted premises. All the documentary evidence produced indicate that the applicant had been staying in the allotted premises. It is for the respondents to prove by cogent evidence and proper authority that the applicant did not live in the allotted residence.

and sublet the same to an unauthorised person. Brother Radhey Shyam's wife and the two children are not unauthorised persons. The error committed by the respondents is that by a single inspection they arrived at such an adverse inference, unsupported by any corroborative material. The respondents could buttress their case by conducting an enquiry in the neighbourhood as to the real state of affairs. They could have attempted a surveillance of Dakshinpuri Jhuggi, to arrive at a finding as to whether the applicant had been continuously staying at Dakshinpuri to the exclusion of Netaji Nagar residence. The family circumstances narrated in the Original Application, part of which is extracted above, appear to me to be credible and logical explanation of facts and events to clarify as to why only the applicant resided at Netaji Nagar and his wife and adopted child lived in the Jhuggi at Dakshinpuri. One inspection on the facts does not warrant an adverse inference of letting out the quarter. The respondents could have then and there taken statement of Smt. Sannu in a more detailed manner to cover all aspects of residence and whereabouts of the applicant. On the contrary, without any material on record they have jumped to the conclusion that the applicant had let out the accommodation to the brother and his wife. This does not authorise them to deprive and dispossess the applicant of his allotted accommodation. Repeated inspections, surveillance, enquiry about the allottee's normal habits and whereabouts from the residents of the neighbourhood and making surprise visit to the place where the allottee is suspected to stay would have revealed the truth in a complete manner. The impugned order of vacation dated 21.6.1996 is only based on suspicion and that too when the occupants are not unauthorised. It is not the case of the respondents that the applicant had availed of Government accommodation owing another accommodation in Delhi. That is not a ground on which the impugned order is based. The impugned order is

8:5 ::

based only on the ground that he permitted his brother and family to stay ⁱⁿ the allotted quarter whereas he himself stays at Dakshinpuri Jhuggi. The explanation given by the applicant shows that his family only stayed at Dakshinpuri whereas he himself stayed at the allotted residence. The conclusion drawn by the respondents is on incomplete material and drawn in haste. The impugned order dated 21.6.1996 is quashed and the application is allowed. The parties shall bear their own costs.

(N. Sahu)
Member (A)

rkv.