

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No. 1950 of 1996

New Delhi, this the 10th day of July, 1997

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

Shri Rehti Prasad, S/o Shri Lahorey Ram,
R/o G-565, Srinivaspuri, New Delhi -Applicant
(By Advocate -Shri George Paracken)

Versus

1. The Director, Directorate of Estates, Nirman Bhawan, New Delhi
2. Junior Engineer, C.P.W.D., Enquiry Office, Srinivaspuri, New Delhi
3. Shri Deep Chand, G-563, Srinivaspuri, Delhi - 110 065

(By Advocate - Shri M.M. Sudan)

- Respondents

JUDGMENT (Oral)

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

The prayer in this Original Application is to quash an order dated 26.3.1996 (Annexure-A) cancelling the allotment of Quarter No.G-565, Srinivas Puri, New Delhi in the name of the applicant and also quashing the letter dated 2.7.1996 (Annexure-A-1) rejecting the appeal of the applicant against the said cancellation order. There is also a prayer to quash order of eviction dated 29.8.1996.

2. The facts in brief are that the applicant occupied a Type-I accommodation House No.619, Srinivaspuri. He was allotted subsequently a Type-II quarter No.G-565 at Srinivaspuri. He took possession of this house on 19.12.1995 (Annexure-B). Annexure-B-1 shows that he vacated the earlier accommodation H-619 on 19.1.1996. On the same day, ie. on 19.1.1996 officials of the Directorate of Estates inspected the quarter No.G-565 and found two persons Mr. Neeraj and

Mr. Suresh Kumar. A case of subletting was suspected and a show cause notice was issued on 2.2.1996 (Annexure-C). Later on, on the ground of violation of S.R.317-B-20 the said allotment was cancelled. The learned counsel for the applicant has taken me through the material evidence placed on record. In support of his claim that there was no subletting he states that on that very day i.e. on 19.1.1996 the applicant had vacated the earlier quarter and was in the process of physically occupying the new allotment. It has been explained in ^{response to} / an opportunity was given that the ration card was mutated to include his son and family as well at the ^{of} Type-II accommodation which he entered into after 19.1.1996. It was next pointed out that postal delivery was made at the impugned house. A copy of the Bank account also shows the address at G-565 Srinivaspuri. By Annexure-F there is a petition dated 7.8.1996 by the residents of the locality confirming that the applicant stayed in house No.G-565 Srinivaspuri in January, 1996. By Annexure-G dated 13.8.1996 the President of the Resident Welfare Association, Srinivaspuri also confirmed that the applicant and his family reside in Quarter No. G-565, Srinivaspuri. Most important document is a letter dated 20th August, 1996 (Annexure-H-I) addressed by the Joint Secretary, Ministry of Health and Family Welfare to the Director of Estates confirming the fact of genuine residence of the applicant and recommending re-inspection of the house. Whereupon a reinspection was conducted by the officers of the Directorate of Estate. The officers found the applicant's daughter-in-law and son and they have also recorded that this is not a case of subletting. Although, it is stated that the applicant himself was not residing in the said house but in a house at Lajpat Nagar.

The learned counsel for the applicant submits that there was one person by name Shri Devi Dass who was the previous tenant upto 26.3.1991 and from whom certain unremitted electricity bill liabilities were due. It was also stated that for a period of three years this ~~was~~ was in the custody of the CPWD and possibly during this period in the custody of the CPWD there might be occupants other than the regular allottees. He referred in this connection to an arrears bill in the name of Shri Devi Dass (Page 47 of the paper book), which later on was demanded from the applicant.

3. The learned counsel for the respondents Shri M.M. Sudan pointed out that the applicant had taken the possession of the house on 19.12.1995 and he vacated the earlier accommodation on 19.1.1996 H-619, Srinivaspuri. The respondents were very much within their rights to inspect the premises on 19.1.1996 and having found two strangers, namely, Neeraj and Suresh Kumar they had drawn a conclusion of subletting. Shri Sudan, relied on the counter reply filed on behalf of the Director of Estates.

4. I have carefully considered the submissions made by the rival counsel. I am of the view that the impugned orders cannot be sustained. In the first instance there is no evidence whatsoever that after physically occupying the Quarter No. G-565, Srinivaspuri which was in 1996 there was any subletting. On 19.1.96 if some strangers were found, although the applicant had taken the ~~occupied~~ possession of the premises, yet he physically moved ^{into} the premises as per the evidence on record only on that day. These two strangers seem to be totally unrelated to the applicant himself. That apart subletting has not been confirmed by any other corroborative evidence. On the contrary ration card, CGHS Card, Contd....4/-

Bank Pass Book, certificate from education institution, etc. are all evidence in support of genuine occupation of the applicant and his family in the premises. On the second inspection it was found that the son and his daughter-in-law stayed in the premises. These persons cannot be called alien but are within the permitted category of relatives as per the rules. Considering further the fact that the neighbours as well as the Welfare Association have confirmed the fact of residence which is itself corroborated by the respondents' second inspection, I do not find any justification to sustain the order of cancellation and eviction of the premises.

5. The learned counsel for the applicant has cited a decision of Madras Bench of the Tribunal in the case of Sheoraj Singh Vs. Union of India, O.A. No. 1406 of 1992 decided on 23.8.1993, 644 Swamy's CL Digest 1993. The Madras Bench referred to another decision of the same Bench in the case of Shri A. V. Govindan Kutty Vs. Union of India and another, O.A. No. 324 of 1992. Govindan Kutty's case also is a case of subletting the premises to an unauthorised person. On a challenge to the notice, the Bench held that the notice lacked basic details like to whom the house was sublet, the nature of the enquiry conducted and the substance of the report arising out of such enquiry; and there must be a substantive notice issued to the person who is threatened with civil consequences indicating the factual basis of the allegation. On the ground that the notice was vague, the Bench held that principles of natural justice were not followed and such a notice lacking any material particulars is only an empty formality. In the instant case the notice dated 2.2.1996 (Annexure-C) failed to convey the substance of the enquiry conducted, the name

of the person to whom the house was allegedly sublet and the evidence on which such a conclusion was said to be arrived at, whereas the notice itself threatens the applicant with civil consequences of declaring him as unauthorised occupant and consequent direction to evict. In the absence of any evidence to substantiate, I do not think the respondents are justified in arriving at a finding of subletting and thereby threatened the applicant of civil consequences of subletting.

6. I have also discussed the matter at great length in the case of Shri Ved Prakash vs. Director, Directorate of Estates & another, O.A.63 of 1997 decided on 30.6.1997 and held that impressions of a one-time inspection without any further corroborative material may not be adequate in drawing an adverse inference about subletting. In doing so I have relied on a Division Bench judgment of this Tribunal in the case of Bhupender Singh Vs. Union of India & others, (1993) 23 ATC 113, wherein the Division Bench also specified certain other criteria besides the one time inspection to strengthen a conclusion of subletting.

7. In view of the above discussion, the Original Application is allowed. The impugned order dated 26.3.1996 cancelling the allotment of Quarter No. G-565 Srinivaspuri, and eviction order dated 29.8.1996 are quashed. In the facts and circumstances of the case, no costs.

transcribed
(N. Sahu)
Member (A)